

INDEX.

	PAGE
Writ of Error.....	1
Judgment .....	2
Return .....	16
Indictment .....	17
Testimony .....	19-253
The Court's Charge.....	253
Exceptions .....	262
Certificate .....	263
Assignment of Errors.....	264
Specifications of Causes for Reversal.....	265
Joinder in Error.....	267

WITNESSES FOR THE STATE.

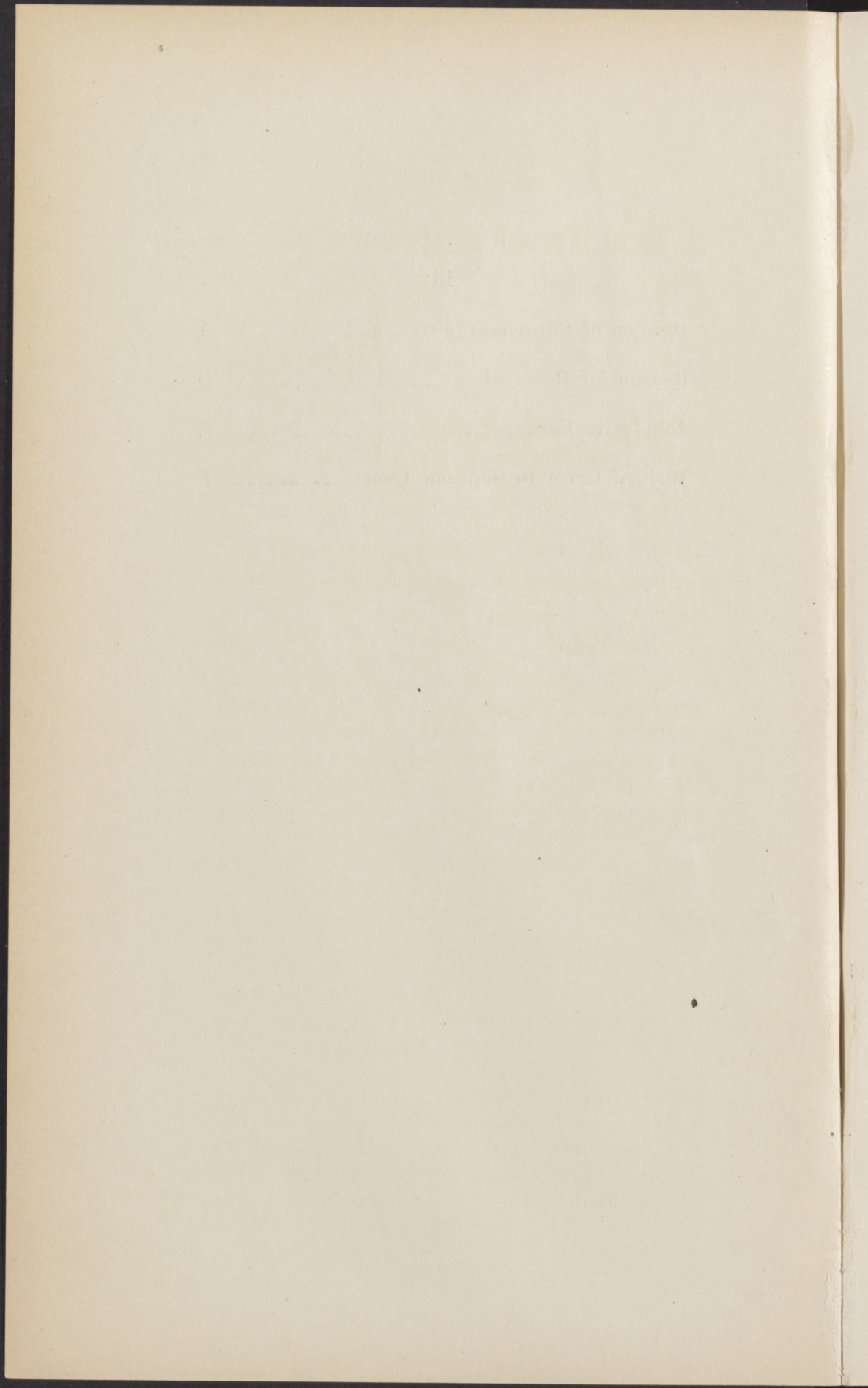
	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
Charlie Jung .....	20		28	
William R. Harrison.....	39			
Low Sing .....	41	47		60
Herbert Lee .....	60	62		
Edward Welsh .....	70	73		
Thomas Furlong .....	84	85		
Edward Farrell .....	88	89		
Emanuel Sichel .....	100	102		

	<i>Direct</i>	<i>Cross</i>	<i>Redirect</i>	<i>Recross</i>
Joseph Murray .....	103	104	105	
John Torpy .....	105	110		
(Rebuttal) .....	243			
Richard Burke .....	120	123		
Frederick Drewen.....	213	217	222	222
(Rebuttal) .....	250	250		
James Herbert Taylor.....	225	229	230	233
(Rebuttal) .....	251	251		

## WITNESSES FOR DEFENDANTS.

Nelson William Bowdish.....	128	130	134	135
Rudolph Pipper .....	136	137	140	141
Dorothy B. Schuchardt.....	141	144		
Charlotte Schuchardt .....	157	159		
Lambert Fairchild .....	161	164		
Sam Moy .....	166	172		
		198		
(Rebuttal) .....	245	248		
Gar Sing .....	196	197		
Ing Kee .....	198	203		
Dick Toy .....	205			
Ham Sue .....	207	208		
Frank Duck .....	209	211		

Opinion of Supreme Court.....	A
Reason for Reversal.....	D
Joinder in Error.....	E
Writ of Error to Supreme Court.....	F



Writ of Error.

New Jersey Supreme Court

STATE OF NEW JERSEY, Defendant-in-Error,	}	WRIT OF ERROR.	
<i>vs.</i>		New Jersey.	10
ING KEE and SAM MOY, Plaintiffs-in-Error.		ss.	

The State of New Jersey to the Court of General Quarter Sessions in and for the County of Hudson:

GREETING:

Because in the record and proceeding and also in the giving of judgment in a certain indictment pending before you, in which said indictment Ing Kee and Sam Moy were defendants and which said indictment was for assault with intent to kill, and upon which indictment they are convicted, as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial to the great damage of the said Ing Kee and Sam Moy, as by their complaint we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire record of proceedings had upon the trial of said indictment to our Supreme Court on the 19th day of March, 1925, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done thereupon what of right and according to law ought to be done.

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*Writ of Error.*

Witness, William S. Gummere, Esq., our Chief Justice at Trenton, aforesaid, the 27th day of February, 1925.

EDWARD J. KELLEHER,  
Clerk.

10 JOHN W. MCGEEHAN,  
Attorney for Plaintiffs-in-Error.

**Judgment.**

STATE OF NEW JERSEY, HUDSON COUNTY, TO WIT:  
Be it remembered that at a Court of Oyer & Terminer holden at Jersey City, in and for the said County of Hudson, on the Second Tuesday of December in the year of our Lord one thousand nine hundred and twenty-four, before Honorable JAMES F. MINTURN, one of the justices of the Supreme Court of Judicature of the State of New Jersey, and Honorable Robert V. Kinkead and Honorable Charles M. Egan and Daniel T. O'Regan, Judges of the Court of Common Pleas in and for the said County of Hudson, according to the form of the Statute in such case made and provided, by the oaths of

30	1 Alex F. Gillis, Foreman and	
	2 Fred Schmitt	13 Eugene Macchi
	3 Benjamin Lerner	14 Morris J. Weiss
	4 James G. Murray	15 John J. Phelan
	5 Frank Plynn	16 William Hill
	6 William Mayer, Jr.	17 Harry C. Greenfield
	7 Abraham A. Sarlett	18 John Harris
	8 Charles Borkholm	19 Isaac A. Canning
	9 John S. Rath	20 Louis Lange
	10 John Campana	21 Jerry J. O'Halloran
	11 Daniel A. Schnebel	22 Henry Garfunkel
40	12 Joseph Schaeffer	23 George W. Knoll

*Judgment.*

Good and lawful men of said County, duly empanelled, sworn and charged to inquire for the State in and for the body of the said County of Hudson, it is presented in manner and form following, that is to say, that the Bills following are true Bills.

A. F. GILLIS, 10  
Foreman.

And the foregoing being presented to the said Court on the Ninth day of January, in the year of our Lord one thousand nine hundred and twenty-five with Bills of indictment Nos. 60 to 66 inclusive, it is ordered by said Court that the said Bills of Indictment so as aforesaid included as Bills Nos. 65 and 66, for Assault with Intent to Kill as charged upon Ing Kee, Sam Moy, John Doe and Richard Doe, for Assault with Intent to Kill, be handed to the Court of Quarter Sessions, for trial and disposal according to law, and said Bills are in words as follows: 20

(INDICTMENT No. 65)

## HUDSON OYER AND TERMINER.

DECEMBER TERM, A. D. 1924.

HUDSON COUNTY, TO WIT: The Grand Inquest 30  
of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath PRESENT, That Ing Kee, Sam Moy, John Doe, whose true name is as yet unknown, but who is described as being five feet nine inches in height; about thirty-five years of age, weight about one hundred and seventy pounds, clean shaven; and Richard Doe, whose true name is as yet unknown, but who is described as being about five feet nine inches in height; about thirty-five years of age, 40

*Judgment.*

weight about One hundred and seventy pounds,  
clean shaven, late of the City of Jersey City in  
the said County of Hudson on the twenty-seventh  
day of December in the year of our Lord one thousand  
nine hundred and twenty-four, with force and  
arms at the City of Jersey City aforesaid, in the  
10 County aforesaid, and within the jurisdiction of  
this Court, with a certain knife and hammer,  
which they the said Ing Kee, Sam Moy, John Doe,  
described above, and Richard Doe, described  
above, in their hands then and there had and held,  
in and upon one Charles Jung, in the peace of  
God and of this State then and there being, did  
commit an assault with intent him the said Charles  
Jung then and there to kill, contrary to the form  
of the Statute in such case made and provided,  
20 and against the peace of this State, the govern-  
ment and dignity of the same.

And the Grand Inquest aforesaid, upon their  
oath aforesaid, do further PRESENT, That the said  
Ing Kee, Sam Moy, John Doe described above,  
and Richard Doe, described above, on the twenty-  
seventh day of December in the year of our Lord  
one thousand nine hundred and twenty-four at the  
City of Jersey City aforesaid, in the County of  
Hudson, aforesaid, and within the jurisdiction of  
30 this Court, in and upon one Charles Jung, in the  
peace of God and of this State, then and there  
being, an assault did make, and him, the said  
Charles Jung then and there did beat, wound and  
ill-treat and other wrongs to the said Charles Jung  
then and there did, to the great damage of the  
said Charles Jung, contrary to the form of the  
Statute in such case made and provided, and  
against the peace of this State and government  
and dignity of the same.

40

JOHN MILTON,  
Prosecutor of the Pleas.

*Judgment.*

Endorsed Bill No. 65 Hudson Oyer and Terminer, Term of December, 1924, the State *vs.* Ing Kee, Sam Moy, John Doe and Richard Doe as described within.

JOHN MILTON,  
Prosecutor of the Pleas. 10

A True Bill

A. F. GILLIS,  
Foreman.

(INDICTMENT No. 66)

HUDSON OYER AND TERMINER

DECEMBER TERM, A. D. 1924.

HUDSON COUNTY, To Wit: The Grand inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath. 20

PRESENT, That Ing Kee, Sam Moy, John Doe, whose true name is as yet unknown, but who is described as being: five feet nine inches in height; about thirty-five years of age; weight about one hundred and seventy pounds, clean shaven; and Richard Doe, whose true name is as yet unknown but who is described as being: five feet nine inches in height, about thirty-five years of age, about one hundred and seventy pounds, clean shaven, late of the City of Jersey City, in the said County of Hudson, on the twenty-seventh day of December in the year of our Lord, one thousand nine hundred and twenty-four, with force and arms, at the City of Jersey City aforesaid, in the County aforesaid, and within the jurisdiction of this Court, with a certain knife and hammer which they the said Ing Kee, Sam Moy, John Doe, described above and Richard Doe, described above, in their hands 30 40

*Judgment.*

then and there had and held in and upon one Low Sing in the peace of God and this State then and there being, did commit an assault with an intent him the said Low Sing then and there to kill, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

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And the Grand inquest aforesaid, upon their oath aforesaid, do further PRESENT, That said Ing Kee, Sam Moy, John Doe, described above, and Richard Doe, described above, on the Twenty-seventh day of Decem̄ber in the year of our Lord One thousand nine hundred and twenty-four, at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Low Sing in the peace of God and of this State, then and there being, an assault did make, and him, the said Low Sing then and there did beat, wound and ill-treat and other wrongs, to the said Low Sing then and there did, to the great damage of the said Low Sing, contrary to the form of the Statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

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JOHN MILTON,  
Prosecutor of the Pleas.

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*Judgment.*

Endorsed Bill No. 66 Hudson Oyer and Terminer of December, 1924, the State *vs.* Ing Kee, Sam Moy, John Doe and Richard Doe, described within.

JOHN MILTON,  
Prosecutor of the Pleas.

A TRUE BILL.

10

A. F. GILLIS,  
Foreman.

## PRESENTED

MAR. 9TH, 1925, AND HANDED DOWN  
TO THE COURT OF QUARTER SESSIONS.

JOHN J. MCGOVERN,  
Clerk.

20

And afterwards to wit on the twelfth day of January, in the year of our Lord one thousand nine hundred and twenty-five, at a Session of the Court of Quarter Sessions of the County of Hudson, aforesaid, being now of the Term of December one thousand nine hundred and twenty-four in the said year, before Honorable Daniel O'Regan, Judge of the Court of Common Pleas in and for the County of Hudson, who doth constitute and hold the Court of Quarter Sessions, in and for the County of Hudson here cometh the said Ing Kee, and Sam Moy, under the custody of their Bondsmen United States Fidelity and Guaranty Co., to whose custody they had before been committed for the cause aforesaid, who being brought here in their proper persons by their bail aforesaid, to whom they had been committed, and having heard the indictments read and forthwith being demanded of and concerning the premises in

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*Judgment.*

the said indictment above specified and charged upon them, how they will acquit themselves thereof, they say they are not guilty thereof, and therefore for good and evil they put themselves upon the country, and John Milton, Esq., Prosecutor of the Pleas of said County, who prosecutes for the State of New Jersey, in this behalf, doth the like.

Therefore, let said indictments be continued until Feb. 25, 1925, and let a jury come before the Honorable Daniel O'Regan, Judge of the Court of Common Pleas in and for the County of Hudson, constituting and holding the Court of Quarter Sessions for said County being now of the term of December (1924) One thousand nine hundred and twenty-four of twelve good and lawful men of this State and residence in the County of Hudson, over the age of twenty-one years and under the age of sixty-five years, by whom the truth of the matter may be better known, and who are not of kin to the said defendants to recognize on their oath whether the said Ing Kee, and Sam Moy be guilty of Assault with Intent to Kill as in the aforesaid indictments are charged against them, or not guilty thereof, because as well the said John Milton, Esq., Prosecutor of the Pleas of the County of Hudson aforesaid, who prosecutes for the State of New Jersey in this behalf, as in the said indictments have put themselves upon the same jury, and the same day is given to the parties aforesaid, at the same time and place.

At which time that is to say on the 25th day of February, in the year of our Lord One thousand nine hundred and twenty-five, at Jersey City aforesaid, in the County of Hudson aforesaid, before the Honorable Daniel O'Regan, Judge as aforesaid constituting and holding the Court of

*Judgment.*

Quarter Sessions as aforesaid, here come as well the said John Milton, Prosecutor of the Pleas aforesaid who prosecutes as aforesaid as well the said defendants under the custody of their bail aforesaid, to whose custody they had hitherto been committed and who being brought to the bar in their proper persons by their bail, and the jurors of the jury by the Sheriff of the County of Hudson aforesaid, for the purpose chosen, empanelled and returned to wit: William Harver, George F. Seyler, David Fischler, Morris Miller, George J. Dillon, Henry F. Wagner, William A. Gurley, Harry Daly, William F. Schwarz, Wiley P. Sauls, Henry Hendrickson, Frank P. Redfern, being called, come, who being chosen, tried and sworn to speak the truth and concerning the premises and thereupon the trial of the said issue commence before the said Court and jury at which days the evidence of the parties is submitted and the attorneys were heard thereupon, and the said issue after a charge from the Court was submitted to the said Jury in charge of the said officers of the Court being duly sworn for that purpose, were taken to a private room to consider of their verdict, and afterwards to wit: on February twenty-sixth, 1925, the last aforesaid, at the City of Jersey City aforesaid, the said jury returned to the Court in charge of said officers, sworn as aforesaid to keep them in charge and then and there in the presence of the said John Milton, Prosecutor of the Pleas as aforesaid and for the said defendants to say that the said defendants are guilty of Assault with Intent to Kill.

Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the said defendants,

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*Judgment.*

10 Ing Kee and Sam Moy be and is hereby sentenced to be confined in State Prison at hard labor for a Maximum term of Twelve (12) years and a Minimum term of eight (8) years and thence until the costs of prosecution are paid, and a fine of Three Thousand (\$3000.00) dollars, each defendant.

(ON INDICTMENT No. 65.)

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(SENTENCE ON INDICTMENT No. 66.)

20 Whereupon all and singular the premises being seen and by the Court here fully understood the sentence of the law is and is by the Court here considered and adjudged, that the defendants Ing Kee and Sam Moy be and is hereby sentenced to be confined in State Prison, at hard labor for a Maximum Term of Twelve (12) years and a Minimum Term of eight (8) years and thence until the costs of prosecution are paid, and a fine of Three Thousand (\$3000.00) dollars each defendant.

Judgment entered and signed this Twenty-seventh day of February, A. D. 1925.

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DANIEL O'REGAN,  
Judge of the Court of Quarter  
Sessions.

Attest:

JOHN J. MCGOVERN,  
Clerk.

40

*Judgment.*

## COURT OF QUARTER SESSIONS,

HOLDEN IN AND FOR THE SAID COUNTY.

STATE OF NEW JERSEY, }  
COUNTY OF HUDSON, }

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">ING KEE, SAM MOY, JOHN DOE and RICHARD DOE.</p>	}	<p>10</p> <p>On Sur Indictment. No. 65 Term of December, 1924. For Assault with Intent to Kill.</p>
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65 Q. S. Dec. 24. 20

Jan. 12, 1925. The deft. Sam Moy being charged pleads not guilty and is remanded for trial.

JUDGE O'REGAN.

738 Broad St., Newark, N. J.

Jan. 12, 1925. The defts. Kee and Moy and their bail United States Fidelity and Guaranty Co. enter into a recognizance in the sum of twenty-five thousand (\$25,000.00) dollars each deft. conditioned that the defts. appear from day to day for trial. 30

JUDGE O'REGAN.

Jan. 14, 1925. Case off.

JUDGE O'REGAN.

Jan. 27, 1925. The deft. Ing Kee being charged pleaded not guilty. See bail above.

JUDGE KINKEAD.

Feb. 4, 1925. Case off. 40

JUDGE O'REGAN.

*Judgment.*

Feb. 25, 1925. The Defts. Kee and Moy tried by jury and adjourned to Feb. 26, 1925.

JUDGE O'REGAN.

10 Feb. 26, 1925. Trial continued and the Jury find the defts. Kee & Moy guilty and they are remanded for sentence.

JUDGE O'REGAN.

20 Feb. 27, 1925. The defts. (Kee & Moy) being placed to the bar are sentenced to be confined in State Prison at Hard labor for a maximum period of twelve (12) years and a minimum period of Eight (8) years and thence until costs of prosecution are paid and a fine of Three Thousand (\$3,000.00) dollars each deft.

See Ind. #66. Dec. 24.

JUDGE O'REGAN.

30	<p style="text-align: center;">THE STATE vs. ING KEE, SAM MOY, JOHN DOE, RICHARD DOE.</p>	}	Assault with Intent to Kill.
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40 Mar. 2nd, 1925, the defts. Kee and Moy and their bail United States Fidelity & Guaranty Co. enter into a recognizance in the sum of Thirty Thousand (\$30,000) dollars each deft. conditioned that the deft. will sue with effect a certain Writ of Error issued out of the Supreme Court this bail includes Ind. #66 Q. S. Dec. 24.

JUDGE MINTURN.

*Judgment.*

STATE OF NEW JERSEY, }  
 COUNTY OF HUDSON, }

COURT OF QUARTER SESSIONS,  
 HOLDEN IN AND FOR THE SAID COUNTY.

<p style="text-align: center;">THE STATE  <i>vs.</i>          ING KEE,          SAM MOY,          JOHN DOE,          RICHARD DOE.</p>	}	<p>On Sur Indictment.          No. 66 Term of          December, 1924.          For Assault with          Intent to Kill</p>	10
---	---	--	----

Jan. 12, 1925. The deft. Sam Moy being charged  
 pleads not guilty and is remanded for Trial. 20

JUDGE O'REGAN.

Jan. 12, 1925. For bail both defts. see Ind. #65  
 Dec. 24.

JUDGE O'REGAN.

Jan. 14, 1925. Case off.

JUDGE O'REGAN.

Jan. 27, 1925. The deft. Kee being charged  
 pleads not guilty. For bail see Ind. #65 Dec. 24. 30

JUDGE KINKEAD.

Feb. 4, 1925. Case off.

JUDGE O'REGAN.

*Judgment.*

Feb. 26, 1925. Trial continued and the jury find the defts. guilty (Moy & Kee) and they are remanded for sentence.

JUDGE O'REGAN.

10 Feb. 27, 1925. The defts. Moy & Kee being placed to the bar are sentenced to be confined in State Prison at hard labor for a maximum period of Twelve (12) years and a minimum period of Eight (8) years and thence until costs of prosecution are paid and a fine of Three Thousand (\$3,000.00) dollars each deft. this sentence to commence at the expiration of sentence imposed on #65. Dec. 24.

JUDGE O'REGAN.

20

THE STATE  
vs.  
ING KEE,  
SAM MOY,  
JOHN DOE,  
RICHARD DOE.

Assault with  
Intent to Kill.

30 Mar. 2nd, 1925. Bail on Writ of Error. See page #496.

JUDGE MINTURN.

40

*Judgment.*

## NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error,  <i>vs.</i>  ING KEE and SAM MOY, Plaintiffs-in-Error.	}	WRIT OF ERROR.	10
		NEW JERSEY. SS.:	

The State of New Jersey to the Court of General Quarter Sessions in and for the County of Hudson:

GREETING: 20

Because in the record and proceeding and also in the giving of judgment in a certain indictment pending before you, in which said indictment Ing Kee and Sam Moy were defendants and which said indictment was for assault with intent to kill, and upon which indictment they are convicted, as we are informed, and, as we are further informed, manifest error hath intervened in the said proceedings and trial to the great damage of the said Ing Kee and Sam Moy, as by their complaint we are informed, we being willing that speedy justice should be done in this behalf, do command you distinctly and openly to send under your seal, the said indictment and the records and proceedings aforesaid, with all things touching and concerning the same, and also the entire record of proceedings had upon the trial of said indictment to our Supreme Court on the 19th day of March, 1925, together with this writ, that the record and proceedings aforesaid being inspected, we may 30 40

*Judgment.*

further cause to be done thereupon what of right and according to law ought to be done.

Witness, William S. Gummere, Esq., our Chief Justice at Trenton, aforesaid, the 27th day of February, 1925.

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EDWARD J. KELLEHER,  
Clerk.

JOHN W. MCGEEHAN,  
Attorney for Plaintiffs-in-Error.

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**Return.**

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The Answer of Daniel O'Regan, Esq., Judge of the Court of Quarter Sessions holden in and for the County of Hudson, and within named, the record and proceedings of the plaint whereof mention is within made, with all things touching the same, I send to the Justices of our Supreme Court of Judicature at Trenton, N. J., at the day and year within contained in a certain schedule to this Writ annexed as within I am commanded.

30

DANIEL O'REGAN,  
Judge.

Attest,  
JOHN J. MCGOVERN,  
Clerk.

40

**Indictment.**

HUDSON OYER AND TERMINER.

DECEMBER TERM, A. D., 1924.

HUDSON COUNTY, TO WIT: The Grand Inquest  
of the State of New Jersey, in and for the body of 10  
the County of Hudson, upon their respective oath  
PRESENT, That Ing Kee, Sam Moy, John Doe,  
whose true name is as yet unknown, but who is  
described as being five feet nine inches in height;  
about thirty-five years of age, weight about one  
hundred and seventy pounds, clean shaven; and  
Richard Doe, whose true name is as yet unknown,  
but who is described as being about five feet nine  
inches in height; about thirty-five years of age, 20  
weight about one hundred and seventy pounds,  
clean shaven, late of the City of Jersey City, in  
the said County of Hudson, on the twenty-seventh  
day of December in the year of our Lord one thou-  
sand nine hundred and twenty-four, with force and  
arms at the City of Jersey City aforesaid, in the  
County aforesaid, and within the jurisdiction of  
this Court, with a certain knife and hammer, which  
they the said Ing Kee, Sam Moy, John Doe, de-  
scribed above and Richard Doe, described above, 30  
in their hands then and there had and held, in and  
upon one Charles Jung, in the peace of God and  
of this State then and there being, did commit an  
assault with intent him the said Charles Jung then  
and there to kill, contrary to the form of the Stat-  
ute in such case made and provided, and against  
the peace of this State, the government and dignity  
of the same.

And the Grand inquest aforesaid, upon their  
oath aforesaid, do further PRESENT, That the said  
Ing Kee, Sam Moy, John Doe described above, and 40

*Indictment.*

Richard Doe, described above, on the twenty-seventh day of December in the year of our Lord one thousand nine hundred and twenty-four at the City of Jersey City aforesaid, in the County of Hudson aforesaid, and within the jurisdiction of this Court, in and upon one Charles Jung, in the  
10 peace of God and of this State, then and there being, an assault did make, and him, the said Charles Jung then and there did beat, wound and ill-treat and other wrongs to the said Charles Jung then and there did, to the great damage of the said Charles Jung, contrary to the form of the Statute, in such case made and provided, and against the peace of this State and government and dignity of the same.

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JOHN MILTON,  
Prosecutor of the Pleas.

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**Testimony.**HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

<p style="text-align: center;">THE STATE</p> <p style="text-align: center;"><i>vs.</i></p> <p style="text-align: center;">ING KEE, SAM MOY, Defendants.</p>	}	10
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Before:

HON. DANIEL T. O'REGAN,  
Judge, and a Jury. 20

Jersey City, N. J., February 25, 1925.

Appearances:

ALOYSIUS McMAHON, Esq., Asst. Prosecutor;  
ERIC JENTZ, Esq., Asst. Prosecutor; for  
the State.

GEORGE E. CUTLEY, Esq., JOHN W. MCGEEHAN,  
Jr., Esq., for the Defendants.

30

(A jury being empanelled and found satisfac-  
tory, they were sworn.)

Mr. Jentz: Is it consented that both of these  
defendants be tried at the same time?

Mr. McGeehan: Yes.

YAO CHUNG CHENG, was sworn as an interpreter. 40

*Charlie Jung, for State—Direct.*

CHARLIE JUNG, SWORN.

*Direct examination by Mr. McMahon:*

Q. Your name is Charlie Jung? A. Yes.

10 Q. You live at 357 Summit Avenue, Jersey City? A. Yes.

Q. What business are you in there? A. Laundry.

Q. How long have you had a laundry at that place? A. About two year and a half.

Q. Near what street is that on Summit Avenue? Is it near Vroom Street, or Academy Street? A. Yes, Academy Street.

Q. Was there a man named Low Sing working for you in that laundry?

20 The Court: I do not think he needs an interpreter, he seems to be doing fairly well. Talk English.

A. (Through the interpreter.) He worked for me six days.

The Court: He can get along in English.

30 Q. You say this Low Sing had worked for you about six days? A. (Through the interpreter.) Yes.

Q. On December 27, 1924, did anything happen in your laundry.

Mr. Cutley: May I ask that some one speak out so that we can understand whether that is interpreted by the other man.

40 Mr. McGeehan: We would like to hear through our associate what the witness himself says.

*Charlie Jung, for State—Direct.*

Q. Did anything happen in your laundry on December 27, 1924? The answer is either yes or no. I am not asking what happened; I am asking if anything did happen. What does he say now?

A. When I went downtown—

Mr. Cutley: I object to all this. He asked 10  
one question, did anything happen?

The Court: Did anything happen?

The Witness: Yes.

Q. What happened?

Mr. McMahon: We have another man here who may have more experience than this interpreter.

Mr. McGeehan: May we have him testify 20  
in English?

Mr. McMahon: We can on the simple questions.

The Court: Suppose you try it for a while in English.

Q. You say something happened in your laundry on what date? A. I cannot talk.

Q. You say you went out on that day. What time was it when you got back to the laundry? 30

The Court: I do not think he can describe it.

Mr. McMahon: Shall we use the other interpreter?

(Another interpreter was thereupon called.)

Mr. McGeehan: I would like to examine the interpreter to ascertain what connection he has with the complaining witness. The other interpreter is not objectionable 40  
from the standpoint of interest.

*Charlie Jung, for State—Direct.**Examination of the Proposed Interpreter by  
Mr. McGeehan:*

Q. Do you know the man who is on the stand?

A. I do.

Q. And you have been working for the State?

10 A. No, sir.

Q. You are familiar with this case? A. I have known of it from a newspaper account.

Q. How do you happen to be here? A. I came here because I was asked to be here to check up on their interpreters.

Q. So that you know the facts in the case? A. Only from the newspaper account.

Q. And discussing it with the representatives of the Prosecutor's office? A. I do not think I have ever discussed it before.

Q. You have talked with this man before? A. I have known him. I do not think I have talked with him.

Q. Oh, you have talked with him about this case? A. Yes.

Q. And you have certain connections with him, through associations or otherwise? A. I do not understand your question.

Q. You do not understand my question? You have certain connections with this man through associations or otherwise that interest you in him, have you not? A. He belongs to the same association as I do, yes.

Mr. McGeehan: I object to him as interpreter.

By Mr. Jentz:

Q. You interpret in New York City? A. I do.

Q. And you interpret for Mr. McGeehan's brother over there? A. Judge McGeehan, yes.

40

*Charlie Jung, for State—Direct.*

Q. How long have you been an interpreter? A. I have interpreted for about the last three months.

Mr. McGeehan: It is not to his qualifications that I object, but this is a little world different from our own, where association, relationship, is a tie between parties that interests them to a great extent, and I think that an interpreter in a language such as this ought to be a disinterested one. 10

The Court: Have you any interest in this case?

A. I came over here because he is a member of my society—association, rather.

Mr. Jentz: To be absolutely fair I am willing to do this. I am willing to have Mr. Ming check up on what this man says, and if there is anything that is not being interpreted right he knows the Chinese language and the English language, he is on their side, and I am willing to have him stand here and speak up if anything goes wrong. 20

The Court: I think the objection is well taken, you will have to get along with the other man, unless you have somebody else. 30

*(Examination of the witness continued with Chang acting as interpreter.)*

Q. What happened in your laundry shop on December 27, 1924, between you and these two defendants, Sam Moy, and Ing Kee, these two men sitting there, if anything? A. On that day Ng Kai Sow and Sam Moy and two white man came into my laundry and attacked me. 40

*Charlie Jung, for State—Direct.*

Q. What did they do when they got in there?

A. Sam Moy and Ng Kai Sow and one white man waited in my laundry. As soon as I get in they close the door behind me.

10 Q. Are these two Chinamen, the defendants in this case, the two Chinamen that were in your place on that day? A. Yes.

Q. Continue with what happened? A. As soon as I got in the house, Ng Kai Sow closed the door and got ready to assault me.

The Court: Who is Ungay Sow? A. The one with the black coat.

20 Q. What happened after they got in and did this? A. I was put into the bathroom. Ng Kai Sow and one white man attacked me.

Q. What did they do to you? A. Ng Kai Sow and the white man, they both used knives and my partner crawled in under the bed and they drew him out.

Q. Did either of these two men, the man you call Ung Kee Sow, and Sam Moy attack you in that place on that date? A. They four, all together, attacked me. Three of them had knives. One had a gun.

30 Q. Did their attack upon you with the knives leave any marks or scars on your body? A. Yes.

Q. How many scars, if you know? A. A good many. I was at the doctor's house and had pictures.

Q. Are there any on your body now? A. I have them all in the pictures.

Q. Are they still on your body? A. Not in my possession, those pictures.

40 Q. Are the scars still showing on your body? A. Yes, they are.

*Charlie Jung, for State—Direct.*

Q. Will you just step down and show to the jury any of the scars which you have?

Mr. McGeehan: I object. I think the testimony shows that he was attacked with a knife, and I think that itself would indicate the intent which the State intends to show by any scars which he has. 10

The Court: I will allow it.

Mr. McGeehan: Exception.

(Exception allowed and sealed accordingly.)

DANIEL T. O'REGAN,  
Judge.

(Witness exhibits his scalp to the jury.)

Q. Are there any marks on your body which you can show? A. I have none on my body, but my partner has. 20

Q. After you were attacked as you say by these two defendants and two white men, what happened? A. They assault my partner and my partner did not return anything, he did not do anything to them.

Q. Who assaulted your partner, that you saw? A. Sam Moy and one white man attacked my partner and they all four attacked me. 30

Q. Did you see them attacking your partner? A. Yes, I did.

Q. What happened after the attack was over, after they did these things to you and to your partner, what happened? A. Then the detectives, policemen and neighbors all came.

Q. Did the men run away? A. Yes, they ran away.

Q. Did you see any of them afterward? A. After that I did not, but I saw that Ng Kai Sow 40

*Charlie Jung, for State—Direct.*

was the last man that went out, and so he was caught.

Q. After he was caught did they bring him back to you that same day? A. Yes, just about half an hour.

10 Q. Is the man that the police brought back one of the defendants in this case? A. Yes, Ng Kai Sow.

Q. Is he one of the men who attacked you? A. Yes.

Q. After this were you taken to the hospital? A. Yes, I was sent to the hospital for ten days.

Q. Do you know why these two men came into your laundry and attacked you on that date?

20 Mr. McGeehan: I object as calling for a conclusion.

The Court: I will allow it.

Mr. McGeehan: Withdraw the objection.

A. I do not know. I have no enmity to him. I do not see any reason why he came in.

Q. Did you know either of them before? A. I know the two Chinese, but I do not know the two white men before that time.

30 Q. Did they belong to any society that you know of?

Mr. McGeehan: I object as immaterial.

The Court: Objection sustained.

Q. You do not know who the two white men were who came with these two Chinese? A. No, I do not know.

Q. After that time, and when you were in the hospital, did you at any time see Sam Moy, this other defendant, this young man with the glasses?

40 A. Sam Moy left a hat and overcoat in my laundry.

*Charlie Jung, for State—Direct.*

Mr. Cutley: I ask that that be stricken out. It is not responsive.

The Court: Strike it out.

Q. Did you, after that, between the time you were attacked and when you were in the hospital, see Sam Moy? A. Only in the laundry when they arrested me, and I was hurt at that time. 10

Q. Is Sam Moy, this other defendant, one of the men who attacked you? A. Ng Kai Sow, Sam Moy, and two white men all attacked me.

Q. When Sam Moy and these other men left the place after attacking you, did any of them leave anything behind? A. I do not know, because I was sent away to the hospital.

Q. You do not know whether they left a hat and coat there or not? 20

Mr. Cutley: I object as leading.

Q. I show you two garments, a hat and a coat, and ask you if you ever saw these before? A. Yes, Sam Moy left a hat and an overcoat in my laundry, and a card inside too.

Q. Are the hat and the overcoat which were left in your laundry by Sam Moy the hat and the coat which I now show you? A. Yes—Sam Moy. 30

Q. I show you two objects, two cards, and ask you whether those cards were or were not in that coat at the time it was found? A. Yes, right in the pocket of the overcoat.

Mr. McMahon: I ask that the hat and the coat and the paper and the card be marked in evidence at this time.

Mr. Cutley: I object. This man has said that immediately after he was attacked he was taken to the hospital and he did not 40

*Charlie Jung, for State—Cross.*

see Sam Moy or anything related to Sam Moy.

10 The Court: He is identifying these cards and the hat and the coat as cards and hat and coat which were left there by Sam Moy. He says he knows that. I will allow it.

Mr. Cutley: Exception.

(Exception allowed and sealed accordingly.)

DANIEL O'REGAN,  
Judge.

Admitted and marked as follows: Paper S-1; card S-2; hat S-3; coat S-4.

20 Q. Did you do anything to any of these four men which would cause them to attack you with knives? A. No; I did not do anything to them.

*Cross-examination by Mr. Cutley:*

Q. Did you say to the prosecutor that you were all cut up and bleeding when Sam Moy left? A. No, I did not.

30 Q. Well, were you bleeding and cut when Sam Moy left the store that way? A. I did not know, because I was almost fainted. I do not know because I was about fainted.

Q. How long did you remain in your store after Sam Moy left until they took you to the hospital? A. I do not know because I fainted.

Q. You were unconscious from the time Sam Moy left, or from the time you were stabbed until you were taken to the hospital? A. I sat in front of my bathroom fainting.

40 Q. Were you fainting, unconscious, or what

*Charlie Jung, for State—Cross.*

was the matter with you? A. No, I did not know anything. I faint.

Q. You did not know whether Sam Moy left that hat and coat because you were fainting and all cut up according to your own story, weren't you? A. The overcoat and the hat were hanging in my laundry. When I came back I found them.

10

Q. When you came back from the hospital you found them? A. Yes.

Q. That was ten days after the 27th of December? A. Yes.

Q. And so that is why you told the prosecutor they were left in your place, because ten days after this you came back and found a hat and coat in your laundry? A. My partner saw him hang the coat—

20

Mr. Cutley: I ask that that be stricken out.

Q. (Repeated.) A. Yes. I told the policeman.

Q. And during that whole ten days who had charge of your laundry? A. Lo Fok took care of my laundry. He is now in my laundry. He is not here to-day.

Q. Who was running the laundry while you were in the hospital—Lung Fook? A. Yes, Lo Fok.

30

Q. He was the only other Chinaman there, wasn't he? A. He was the only one.

Q. And he is not here to-day? A. He is in my laundry to-day.

Q. Is he here to-day? A. Not here.

Q. Not in court? A. No, sir.

Q. And he is not in your laundry? A. He is in my laundry to-day.

Q. You told the prosecutor that after this assault Sam Moy was brought back to your store.

40

*Charlie Jung, for State—Cross.*

Do you mean that he was brought back the same day? A. Two days after my coming out from the hospital I saw him.

Q. So twelve days after the 27th was the first time you ever saw Sam Moy after the date of the attack? A. Yes.

10 Q. And when you answered the prosecutor before did you mean to tell him you saw Sam Moy the same day of the attack?

Mr. Jentz: I think he said Ing Kee Sow was the man he saw that same day.

The Court: He says now he did not see him until twelve days after.

20 Q. Who is the man who worked for you? A. Lo Fok.

Q. And he was the only friend of yours who was there in the store? A. Yes, he is my good friend.

Q. And he was the only witness outside yourself?

Mr. Jentz: I think somebody is going off on a tangent. He says this man Lung Fook is the man who took care of the laundry while he was in the hospital.

30 Q. Was Lo Fok the other man who was in your store at the time of the attack? A. No. After I went to the hospital I sent for Lo Fok and asked him to take care of my business.

Q. He is the man who took charge of the store during all the time the hat and coat of Sam Moy were there? A. When I came back my partner said "This coat is not mine," and I myself looked it over and it was not mine, either.

*Charlie Jung, for State—Cross.**Cross-examination by Mr. McGeehan:*

Q. Did you say you knew Ing Kee and Sam Moy before this day? A. Yes, I know them. As soon as they step in I recognize them.

Q. And did you know their names too? A. Yes, I know them. 10

Q. So you knew Sam Moy's name was Sam Moy and Ing Kee's was Ing Kee, did you? A. Yes, I do.

Q. And this was when they walked into your place when you were attacked? A. As soon as I stepped in the laundry they closed in the door after me and pushed me right into my bathroom.

Mr. McGeehan: I ask that that be stricken out as not responsive. 20

The Court: Strike it out.

Q. You know a man by the name of Moy On, alias Frank Moy, do you not? Answer yes or no. A. Yes; I do.

Q. And you had met him five or six days before this happened in Jersey City and knew him to see and knew his name, didn't you?

Mr. Jentz: I object as irrelevant.

The Court: I will allow it. 30

A. No.

Q. Did you meet Moi On in Jersey City a week before you were attacked, and did you see him there? Yes or no.

Mr. Jentz: I object as immaterial.

The Court: I will allow it.

A. No, I did not see him.

Q. But you knew Moi On, didn't you? A. No, I did not know him. 40

*Charlie Jung, for State—Cross.*

Q. Didn't you tell the police that you knew one man that got away and that his name was Moi On, sometimes known as Frank Moi? A. No, I did not.

10 Q. Didn't you use the words Moi On to the Prosecutor and to the police who came to the hospital to see you? A. No, I never did, because I do not know him.

Q. Didn't you know Moi On, an interpreter from New York, and didn't you see him in the police station a week before in the presence of Chong Sing? A. I don't know him. I met him but I do not know him.

Q. You met him, though, didn't you? A. I do not know whether I did or not, because I did not know him.

20 Q. You remember being in the police court on the 22nd of December, 1924, three days before Christmas, don't you; yes or no? A. I do not remember.

Q. You remember Chong Sing, don't you? A. Yes, I do.

Q. You remember being in the police court before Christmas with Chong Sing? A. I remember the policeman arrest Chong Sing.

30 Q. Were you there when the interpreter was in the court with Chong Sing? A. Yes, I remember that.

Q. And that interpreter was Moi On, and you knew it, didn't you?

Mr. Jentz: I object as immaterial.

Mr. McGeehan: I want to show that he knew Moi On, and knowing him and knowing his name he stated to the Prosecutor that Moi On assaulted him, as a result of which an indictment was returned against Moi On.

40

The Court: I will allow it.

*Charlie Jung, for State—Cross.*

Q. That interpreter was Moi On, wasn't it, yes or no? A. I do not know his name.

Q. Did you tell the police that the man who assaulted you and who got away was the man who was the interpreter the week before and that was how you knew him? A. No. I just was called in to recognize the person, that is all. 10

Q. Where did you ever meet Sam Moy before this happened, if you met him before? A. I met him in Cleveland.

Q. You met him in Cleveland, that is Sam Moy? A. Yes, I did.

Q. When did you meet him in Cleveland? A. Around four years ago.

Q. Before you found the coat which you say you found after you came out of the hospital, did you tell the police who to look for—who the other man was that got away? A. No; I did not, until I found the overcoat know his name. 20

Q. Oh, the first time you knew of him then, was when you found the card in the overcoat, is that right? A. Yes, until I found out the name, but I knew the person.

Q. But not the name, is that right? A. Yes, I knew this person before, but I did not know exactly his Chinese name, because he has an American name. 30

Q. Which person are you talking about now, Ing Kee or Sam Moy? A. Sam Moy.

Q. So when you found these papers in the pocket then you knew his name, is that right? A. Yes, because his name in Cleveland was an American name, and I do not know his Chinese name exactly.

Q. You found it on these? A. Yes.

Q. And that is how you gave the police the name of Sam Moy, is that right? A. The policeman found him himself. 40

*Charlie Jung, for State—Cross.*

Q. And before that you never gave the police any name for the man that got away, did you? A. No, I did not, until I found out the name in the overcoat.

10 Q. Now, before you gave the police, as you say, this overcoat, were you talking to the police about Moi On and did the police ask you about him being in Chicago? A. No, I did not, I did not know him before, so I could not tell anything about him.

Q. Who was the policeman that talked to you in the hospital before you got out of the hospital, do you know? A. Toohey talked with me.

20 Q. Didn't you tell the police the men who assaulted you were these men, Ing Kee and Frank Moy alias Moi On, and a white man whose name you did not know, five feet nine inches tall, about thirty-five years of age, weight about 170 pounds, clean shaven, and another man, same weight and height as the other white man; didn't you give those names before the 30th of December? A. No, I did not.

Q. Where did you ever meet Ing Kee before? A. I met him before but I had not see him for quite a while.

30 Q. Where did you ever meet him before? Give the answer in one or two words, please? A. I do not remember where.

Q. As a matter of fact you never did see Ing Kee in your life before he was brought in to you by the police after this happening, did you? A. As soon as I got in the laundry I saw Ing Kee and the other fellow, both of them.

Q. Before that you never saw Ing Kee in your life, did you? A. Of course, I knew him before.

40 Mr. McGeehan: Will you ask him again whether he ever saw Ing Kee before the day he says he saw him in the laundry?

*Charlie Jung, for State—Cross.*

Mr. Jentz: I object on the ground he has already answered that.

Mr. McGeehan: My interpreter says he said otherwise. Without raising that question I would like to have him asked in Chinese again.

10

A. I met him a long while ago in Chinatown.

Q. How long ago? A. I forget exactly how long.

Q. And you met him just once? A. More than once; I did not know his name at that time. I met him several times.

Q. Didn't you swear before you did know his name when they came into the place? A. Yes; as soon as I met them I knew them, both of them.

20

Q. How long after you say you were hurt was Ing Kee brought in before you? A. The same evening.

Q. Where were you then? A. I was in the hospital.

Q. Was he the only Chinaman brought in to you there? A. He was the only one.

Q. You did not pick him out from any line, did you? A. He was the only one came to see me.

Q. The police told you when they brought those two Chinamen in that they had caught him near the place, didn't they? A. No, he did not.

30

Q. Did they bring him in and say, "Is this one of the men?" A. No.

Q. What name do you think is this man's name now? A. Ng Kai Sow.

Mr. McGeehan: Stand up. Is that Sam Moy or Ung Kai Sow? A. Ng Kai Sow.

Q. Did you give that name to the police then, that his name was Ng Kai Sow? A. No. I knew him.

40

*Charlie Jung, for State—Cross.*

Q. You say the men that went at you had knives, is that it? A. Yes.

Q. And you were bleeding a lot, were you, in this fight? A. Yes, quite a lot.

Q. What did you use in the fight there? A. No, I did not have anything in my hand.

Q. Well, what did you fight with, your fists? A. They used knives. I just tried to just guard myself, use my hands, you see, that way.

Q. Did you use any flat irons, or anything like that? A. No, I did not. Just bare hand.

Q. Bare hands. And you were all cut, and a lot of blood on you, is that right? A. Yes.

Q. And the man that was fighting with you, or one of the men, was Ing Kee, is that right? A. That officer talked to me. I don't know which one—

Q. You said one white man and Ing Kee came in the room and closed the door behind them and attacked you, didn't you? A. When I came in the laundry Ing Kee and one white man closed the door and attacked my partner,—Sam Moy, not Ing Kee—and one white man closed the door and then attacked my partner, and my partner crept himself under the bed. They dragged him out and attacked him, and then the four of them turned and attacked me.

Q. So the man you say is Ing Kee did not attack any one but you? A. Only Sam Moy and one white man attacked my partner.

Q. And then you say Ing Kee and a white man were attacking you, and later Sam Moy and another white man were attacking you, is that right? A. Yes.

Q. This laundry that this took place in is on Summit Avenue with a store window in the front of it, is that right?

*Charlie Jung, for State—Cross.*

Mr. Jentz: This other interpreter says this interpreter is not interpreting correctly. I do not know how we can straighten it out.

Mr. McGeehan: This witness just interrupted this interpreter while he was giving an answer in English and talked very intelligently. 10

Q. Can't you talk English yourself enough to answer everything I am asking you? A. I don't know English.

Mr. McGeehan: I have no objection to being interrupted if he is incorrectly interpreting. I have been through the same thing, so any time there is an incorrect interpretation just interrupt. 20

Q. When the white man and the man you say was Ing Kee were fighting with you Ing Kee had a knife in his hand, did he? A. Yes. The white man had a gun in his hand.

Q. Did any one shoot you that day? A. No.

Q. You did not tell the police anything about his having a gun there, did you?

Mr. Jentz: I object as immaterial. 30

The Court: I will allow it.

Q. You did not tell the police about any one having a gun there that day, did you? A. No, I did not.

Q. And the man you were fighting with, the Chinaman, he had a lot of blood on him too when you were fighting with him, did you? A. I did not know.

Q. You did not know; you were fighting so fast 40

*Charlie Jung, for State—Cross.*

you could not see that very well, could you? A. I did not know.

10 Q. When the Chinaman ran out that was in there, did he have that knife with him that you say he had? A. Two Chinese. Each had a knife in his hand, and one white man had the revolver and the other had a hammer.

Q. When they went out did they all carry those implements? A. As soon as I got in the laundry. I did not see it until they attacked me.

Q. Did those men carry out these knives and guns and hammers and whatever you said they had; did they carry them out of the place when they went? A. Yes, they brought them out.

20 Q. What time in the day do you say this happened? A. Around four o'clock, a little after four.

Q. Can you tell us, if you know, just exactly what time this happened, and how do you know it was that time? We want to fix that. A. I have a watch in my laundry. As soon as I got in I could see the time.

Q. And it was what time? A. Somewhere after four o'clock.

30 Q. When Ing Kee was brought to you, and when Sam Moy was brought to you you knew that they did not belong to your society that you were a member of, didn't you? A. No, I did not know. I did not know which Tong they belonged to.

Q. You did not know whether they belonged to any Tong, did you? A. No, I did not.

Q. But you had never met him in your Tong, had you? A. No.

40 Q. When Ing Kee was brought before you and when Sam Moy was brought before you was there a Chinese interpreter there with the police, with these defendants?

*William R. Harrison, for State—Direct.*

Mr. Jentz: I object as immaterial.

The Court: Objection sustained.

Mr. McGeehan: I wanted by that to indicate that this witness in identifying these defendants was influenced by the knowledge that they were not members of a society that he belongs to. 10

Q. At the time you identified those men was this man sitting at the table, Mr. Dan Quew there?

Mr. Jentz: I object as immaterial.

The Court: Objection sustained.

WILLIAM R. HARRISON, SWORN.

*Direct-examination by Mr. Jentz:* 20

Q. Where do you reside? A. In Jersey City.

Q. What is your profession? A. Photographer.

Q. How long have you been such? A. Forty years.

Q. Do you take pictures for the Jersey City police authorities? A. Yes.

Q. I show you several photographs and ask you if you took those? A. Yes.

Q. Will you tell us where you took them? A. 30  
My gallery, on January 8th, 1925.

Q. Can you tell us who they are pictures of?  
A. Some of them of the last witness who testified here.

Q. This last man here? A. His name was given to me as Charlie Jung.

Q. Can you tell us who the other pictures are?  
A. Loo Sin was the name given to me by himself.

Mr. Jentz: Will Loo Sin stand up.

A. That is the other man. 40

*William R. Harrison, for State—Direct.*

Q. And the other picture is this witness who was on the stand this morning? A. Yes.

Q. Do those pictures correctly represent the physical condition of the men whose pictures you took on the 8th of January, 1925? A. Yes.

10 Mr. Cutley: I object as too remote. It is no part of the *res gestae* and has no competency, relevancy or materiality.

The Court: I will allow it.

Mr. Cutley: Exception.

(Exception allowed and sealed accordingly.)

DANIEL O'REGAN,  
Judge.

20 Mr. McGeehan: We also ask an exception.

(Exception allowed and sealed accordingly.)

DANIEL O'REGAN,  
Judge.

Mr. Jentz: I offer them in evidence.

Mr. McKeehan: I object to them as not relevant of material to the issue.

The Court: I will allow them.

30 Mr. McGeehan: Exception.

(Exception allowed and sealed accordingly.)

DANIEL O'REGAN,  
Judge.

Admitted and marked Exhibits D-5, 6, 7, 8, 9, 10 and 11 of this date.

Adjourned to 2 P. M.

*Low Sing, for State—Direct.*

2 P. M.

Low SING, sworn:

(Examined through an interpreter.)

*Direct examination by Mr. Jentz:*

Q. You are the man that was with this other man, Charles Jung, when this happened? You were in the laundry on that day with him? A. I was in his laundry for six days. 10

Q. You worked for him? A. Yes, I worked for him.

Q. Do you remember December 27, 1924; were you in the laundry on that day? A. Yes, sir.

Q. While you were in the laundry did anything happen about 5 o'clock that afternoon? A. Four men came in, to attack me. 20

Q. Were you in the laundry alone at that time? A. Yes, I was alone then.

Q. And who were the four men that came in? A. There were two white men and two Chinese.

Q. Do you see any of the Chinese that came in on that day? A. Yes, right here.

Q. Are these two defendants, Sam Moy and Ing Kee, the two Chinamen that came in with the two white men? A. Yes, these two.

Q. All right. When they came in what did they do to you? A. When they came in they asked me if I have a revolver. 30

Q. Then what did they do? A. They asked me whether I belonged to any Tongs.

Q. And what did you say? A. I said no.

Q. What did they then do? A. They drove me into the room and the three surrounded me.

Q. They drove you into what room? A. The place for drying the laundry.

Q. And when they got you in the drying room 40

*Low Sing, for State—Direct.*

what did they do? A. It was too hot, so he took off his overcoat and hung it up.

Q. Who took off his overcoat? A. Moy.

Q. One of the defendants? A. Yes, sir.

10 Q. I show you a hat and overcoat and ask you whether this is the hat and overcoat that Sam Moy had on on that day when he came into that laundry shop? A. Yes.

Q. And what did he do with his hat and coat when he took them off? A. He just hung it behind the door of the room.

Q. And what did they do to you, these four men? A. They asked me where is my master, the proprietor—

20 Q. And what did you say to that? A. I said he went out to get food.

Q. And what did they do to you while he was out? A. They insisted on asking me which Tong I belong to.

Q. They asked you again? A. Yes, sir.

Q. What did you say? A. I said that I do not belong to any Tong.

Q. Did they do anything to you at that time? A. They did nothing until my master came back.

Q. And your master is the man that was on the stand before you? A. Yes, that is my master.

30 Q. Did they keep you in the room until he came back? A. Yes, they did.

Q. And how did they keep you in the room, what did they do to you? A. They did nothing, they just wanted to search for weapons.

Q. And how long did you have to wait before your master returned? A. I waited quite a long time.

40 Q. And when he came in you and the two white men and the two Chinamen were there, is that right? A. Yes.

*Low Sing, for State—Direct.*

Q. And when he came in what happened between the four men, your master and yourself, tell us what took place there? A. They showed themselves.

Q. What did they do; did anybody do anything to you? A. One white man and one Chinese attacked my master and one white man and one Chinese attacked me. 10

Q. Which of these Chinamen attacked you? A. Moy.

Q. And the other one attacked your master, is that right? A. Yes.

Q. What did the one Chinamen, Moy, and the one white man do to you that were attacking you? What did they do? A. They used a knife and also used a hammer to attack me.

Q. Were you cut anywheres on your body? A. Yes, my body, as well as my head. 20

Q. And how many cuts did you receive? A. One cut over here and one over here and how many on the head I forget.

Q. Have you still the scars from these wounds? A. Yes, sir.

Q. Can you show the jury any of these scars? A. Yes.

(Witness exhibits scars to the jury.) 30

Q. How long did this attack last while you and your master were being cut? A. Quite a long time.

Q. How did they came to stop? A. I don't know how long.

Q. How did they come to stop, what caused them to stop?

Mr. McGeehan: One minute, the last answer is perfectly apparent. The witness 40

*Low Sing, for State—Direct.*

used his fist to illustrate something that he was saying. My interpreter here says that he said something about hitting with his fists. I think the interpreter ought to be asked what he said.

10 The Court: Mr. Interpreter, you must interpret exactly what this witness tells you. Just repeat in English as nearly as you can what he tells you in Chinese.

A. Until I broke the window and ran outside.

Q. You got away, broke the window and ran out, is that right? A. Yes, sir, I did.

Q. And when you got out, what happened then?

A. I got out and I called a policeman and the policeman came.

20 Q. Did you make any outcry? A. Yes, I did. I walked as I cried.

Q. And what happened to the two Chinamen and the two white men that were in the place attacking you after you broke out? A. I don't know, because I went out straight; I knew they were all arrested.

Q. How far did you run from the laundry? A. I just went to the opposite side of the street, to the drug store.

30 Q. Were you bleeding? A. Yes, a whole lot of blood was on my coat.

Q. And did you at any time see Ing Kee after that? A. Yes, sir.

Q. I show you some clothing and ask you if you know whose clothing this is? A. Mine.

Q. What is that, a shirt or what? Just look at it and tell us? A. This is the underwear and this is the shirt.

40 Q. And this is the clothing that you had on that day? A. Yes, sir, I did.

*Low Sing, for State—Direct.*

Q. And those brown, reddish brown stains that are on there, how did they get there? A. They took it off in the hospital.

Q. I mean these reddish brown stains; were they caused by the wounds that you got? A. Yes, those are blood spots.

10

Mr. Jentz: I offer these articles of clothing in evidence.

Mr. McGeehan: No objection.  
(Marked Exhibit S-12.)

Q. I show you some more clothing, this overcoat and sweater and ask you whose clothing that is? A. That is my master's.

Q. I show you this overcoat. Look at it and tell me if you recognize it as being your master's? A. Yes, that is my master's.

20

Q. I show you this sweater and ask you whether that is also your master's? A. Yes, sir, it belonged to him.

Mr. Jentz: I offer those in evidence, your Honor.

The Court: They may be received.  
(Marked Exhibit S-13.)

Q. You could not recognize this as being the underwear of your master, could you? A. Yes.

30

Q. Look at it carefully? A. Yes, that is my master's.

Q. Do you know how those blood stains got on that overcoat and this sweater and on this underwear of your master's? A. When they used the knife to stick my master the blood ran out over the coat and everything.

The Court: It may be received.  
(Marked Exhibit S-14.)

40

*Low Sing, for State—Direct.*

Q. You were taken to the hospital, were you?

A. Yes, sir.

Q. How long did you remain in the hospital?

A. Altogether 11 days.

10 Q. When was the next time after this attack took place that you saw Ing Kee, the one defendant? A. When they were arrested on the street and asked me to identify them, I saw them at that time.

Q. Did you look at the Chinaman who was arrested? A. Yes.

Q. And did you or did you not identify him?

A. Yes, I did identify him.

Q. Was he the man who is here in Court today?

A. Yes, he is here.

20 Q. When next did you see Sam Moy, the other defendant? A. When I came out of the hospital I found the overcoat and I found cards in the pocket of that overcoat.

Q. Is this the overcoat here that you say you found? A. Yes.

Q. And the hat? A. Yes.

30 Q. You speak of finding some cards in the pockets, or seeing some cards in the pockets—I show you Exhibits S-1 and S-2, and ask you if those are the papers that were in the pocket of that coat? A. Yes.

Q. And when after that did you see Sam Moy?

A. The second day from my coming out of the hospital I saw him arrested.

Q. And the man you saw after you came out of the hospital, arrested, is he the same man that was in the store on December 27th?

Mr. McGeehan: Objected to as leading.

The Court: I will allow it.

40 A. Yes, it is him.

*Low Sing, for State—Cross.*

Q. And this overcoat and hat that were shown to you in Court, and which you saw after you came out of the hospital, is that or is it not the overcoat and hat which Sam Moy hung up in your room? A. Yes, I saw him take it off because it was too hot for him.

Q. You have not seen the other two white men since then, have you? A. No, sir. 10

Mr. Jentz: Cross-examine.

*Cross-examination by Mr. Cutley:*

Q. You say that Sam Moy took off his overcoat when he came into your place, do you? A. Yes, he took it off because it was too hot.

Q. And you saw Sam Moy running away after beating you? A. No, sir, I didn't see him run away at all because I was knocking at the window and escaping myself. 20

Q. Well, you ran out? A. Yes, I broke the window and ran out.

Q. Well, did the Police come right away to the store, to the laundry? A. Well, in a few minutes the Policeman came.

Q. Where was this door behind which Sam Moy put his coat? A. Outside of the bedroom.

Q. And you saw that coat after it was brought to the Station, did you? A. At the start only. 30

Q. Did you see May Moy put on his coat and run out? A. No, I didn't see them. I lost my hat.

Q. What way did Sam Moy go out of that place on that day? A. I was too busy taking care of my life. I cried for a Policeman. I don't know.

Q. Did you go out before Sam Moy went out? A. I went out first.

Q. Did you see May Moy coming out? A. No, I didn't see him. I saw him arrested only. 40

*Low Sing, for State—Cross.*

Q. Why didn't you tell the Policeman the day you were injured that the hat and coat of the man that stabbed you was on that door?

Mr. Jentz: Objected to, calls for a conclusion.

10 The Court: I will allow it.

A. When I went to the hospital I didn't know whether he put the hat and coat on or not.

Q. Did you tell the Policemen in the hospital that he took off his hat and coat and put it on the hook?

Mr. Jentz: Objected to as immaterial.

The Court: I will allow it.

20 A. I was faint, I didn't know whether he put his hat and coat on again or not.

Q. Did you sign any paper while you were in the hospital, making a complaint against the men who stabbed you?

Mr. Jentz: Objected to as immaterial.

Mr. McGeehan: I am going to show the complaint was made against Frank Moy.

The Court: I will allow it.

30 A. Yes, I signed against Moy and Ng.

Q. When did you sign that?

Mr. Jentz: Just a minute, I think the complaint itself is the best evidence.

Mr. McGeehan: Well, I ask you to produce it.

Mr. Jentz: I have not got it.

The Court: I am going to allow it to go in now and if it cannot be connected up it will be stricken out.

40

*Low Sing, for State—Cross.*

Q. Did you sign the complaint against Frank Moy while you were in the hospital? A. Yes, I did sign my name.

Q. Did you know what you were signing when you signed your name?

Mr. Jentz: Here is the complaint. 10

Mr. McGeehan: This complaint was not signed by this man. This man says he signed a complaint.

Mr. Jentz: I can truthfully state that we have no such complaint that I know of.

Q. Who came to the hospital and asked you to sign that complaint?

Mr. Jentz: I object to that.

The Court: See if he knows what he did sign. 20

Q. Did you know what kind of a paper it was that you signed at the hospital? A. I didn't know what kind of a paper.

Q. How many papers did you sign in the hospital? A. Just one.

Q. Did you know what it was? A. No, I didn't know.

Q. Did you have a chinese interpreter there? 30  
A. No, sir.

Q. Who was the man that asked you to sign that paper while you were in the hospital?

Mr. Jentz: Objected to. I don't see what difference it makes whether the Chief of Police or anyone else asked him to sign a paper. It has no connection with this case.

The Court: I will allow it.

Mr. McGeehan: There is another phase to it. This man first signed a complaint 40

*Low Sing, for State—Cross.*

against Frank Moy and a few days after Frank Moy is indicted by the Grand Jury of this County. Now I am entitled to examine him as to whether or not Frank Moy and Sam Moy are the same persons.

The Court: Proceed.

10

Q. Do you know Frank Moy? A. Yes, I know his sister only.

Q. Is Frank Moy the same man as Sam Moy? A. I know his sister only.

Q. Is Frank Moy the same man as Say Moy? A. Yes.

Q. Frank Moy and Sam Moy are the same man? A. I don't know his name.

20

The Court: Sam Moy stand up.

(Sam Moy, the defendant, stands up.)

The Court: Is that Sam Moy?

The Witness: Yes, Sam Moy.

The Court: Is he the same man you mean by Frank Moy?

The Witness: No, not he.

Q. Was Frank Moy the man in the laundry the night of December 27th? A. Sam Moy.

30

Q. Was Frank Moy there? A. No.

Q. Did you ever tell the Police that Frank Moy was the man and have Frank Moy arrested? A. I don't know the name, I know the person only.

Q. When did you meet Sam Moy; when did you ever see Sam Moy before this night? A. I met Sam Moy when he came to attack me, and after I came out from the hospital.

Q. Before this night when did you ever meet Sam Moy? A. I did.

40

Q. Where did you meet him and when? A. I met him several times in Chinatown.

*Low Sing, for State—Cross.*

Q. How long ago? A. Several months ago.

Q. Were you talking to him? A. No, because I didn't know him, and I didn't know his name either.

Q. You never knew his name at all, did you, until you found the card and the Policeman told you about the card? A. Yes. 10

The Court: What does that mean?

A. Yes, when I find this card I knew the name.

Q. Whose lingeries is this? A. My master's.

Q. How did he get the blood over there? A. I don't know.

Q. This is his sweater, is it? A. Yes.

Q. Did he have this sweater on, do you know?

A. It was my master's. 20

Q. Did he have his overcoat on too? A. Yes.

Q. How did he get the blood all over it, all over it, all over his overcoat and through the sweater?

A. It ran down from the head.

Q. It must have gone down the inside then? A. Yes, it flowed right in.

Q. There is no blood down there on the sweater, is there? A. (No answer.)

Q. What were these two men with the revolvers doing? Hitting you with the revolvers or shooting you? A. They have three knives, one revolver and a hammer and also possibly an axe. 30

Q. Now let me get that. Who had the three knives? A. Ing Kee—the two Chinese have knives and the white men got the revolvers.

Q. Did each of the white men have one revolver or two revolvers? A. Only one revolver.

Q. One revolver? A. Yes.

Q. One revolver each? A. Altogether one.

Q. There was one between the two of them? A. One revolver, one for both. 40

*Low Sing, for State—Cross.*

Q. Who had the axe? A. When they used the axe they hit me, I was too busy trying to cover up my head, I didn't know which is which.

10 Q. You were hit by the axe by one of the white men, is that it? A. The white man got hold of me and the two Chinese used a knife to attack me.

Q. Who attacked you with the hammer? A. The white man pushed me into the room and knocked me, I don't know how.

Q. Did you crawl under the bed? A. Yes, I did, then I said I broke the window and ran out.

Mr. Cutley: That is all.

*Cross-examination by Mr. McGeehan:*

20 Q. Did you know Charles Jung? A. I knew him quite a long time.

Q. And you came to work for him about a week before this happened? A. I started to work.

Q. You started to work for him on Monday and this thing happened on Saturday? A. Yes.

Q. Did he have anyone working for him before you worked for him, do you know?

Mr. Jentz: Objected to as immaterial.

30 The Court: I will allow it.

A. I don't know.

Q. Right after you came to work for him, the same day, did you meet Chong Sing at your place or near your place? A. No, not the same day.

Q. The day after?

Mr. Jentz: I object.

The Court: I will allow it.

40 Q. While you worked for Charles Jung you met Chong Sing, didn't you? A. No.

*Low Sing, for State—Cross.*

Q. Did you meet Chong Sing and Moy in the Police Court here in Jersey City, after you came to work for Charles Jung?

Mr. Jentz: I object.

The Court: I will allow it.

A. I didn't see both of them; I worked on Monday in the laundry. 10

Q. Did you point out Chong Sing in the Police Court and identify Chong Sing as the man who was around your place? A. No, I didn't point him out.

Q. But you saw your friend, Charles Jung, point him out, didn't you? A. I saw him in the Court when they came out.

Q. All right, and you were in the Court at the time when Chong Sing was in Court with Charles Jung and an interpreter was there on the 23rd of December, last year, weren't you? A. I was not here in this city at that time. 20

Q. You met Moy Jung, didn't you—you know Moy Jung, don't you? A. No, I don't know him.

Q. Don't you know who he is? A. No.

Q. You know Frank Moy? A. No.

Q. Didn't you tell the Police after you were arrested that it was Moy Jung, known as Frank Moy who was the man that got away from your place? A. I told the Policeman Moy and Ng. 30

Q. Now, let's see what you mean. You told the Policeman Moy Ng, is that right? A. Yes.

Q. Moy means Moy Ng, doesn't it? A. Two persons, Moy and Ng.

Q. So that you did tell the Police the name was Moy before you ever found the coat or the card in it, didn't you? A. Yes.

Q. And did you tell the Police that the Moy you 40

*Low Sing, for State—Cross.*

meant you had seen in Jersey City a week before in Court as an interpreter?

Mr. Jentz: Objected to, anything he told the Police.

The Court: I will allow it.

10

A. No, I didn't.

Q. And didn't the Police say to you that they traced Moy Jung up and found that he had left for Chicago the day before so that it could not be him, and did you then tell the Police after you came out of the hospital that it was not Moy Jung?

Mr. Jentz: Objected to.

The Court: I will allow it.

20

A. No, I didn't, because I was sick in the hospital.

Q. When you were in the hospital you were able to talk to the Police, weren't you, and you knew what you were doing, didn't you? A. No, I didn't.

Q. You were not out of the hospital until about the 6th of January, were you? A. On the 6th day I came out.

30

Q. And on the 30th of December you were still in the hospital, weren't you? A. Yes, sir.

Q. And on the very day you were hurt the Police brought Ing Kee into you, didn't they? A. Yes.

Q. And they told you they had caught Ing Kee and they asked you to identify him, didn't they? A. Yes.

Q. And after they asked you to identify him you did identify him, didn't you? A. Yes, I did.

40

Q. You did not know his name then, did you? A. I know him when he is coming in the laundry.

*Low Sing, for State—Cross.*

Q. You did not know his name, did you? A. I know they call Ng and Moy.

Q. And didn't you say before that Ng meant somebody else? A. Ng and Moy.

Q. What does Ng mean in Chinese? A. It is a Chinese name just called Ng.

Q. Now, by Ng you meant the color, is that it? 10  
A. The dark complexion.

Q. What do you mean by dark complexion? A. The thinner one.

Q. But what does Ng mean, dark? A. That is the man. I know a person with a name Ng and the other one is Moy.

Q. When you say Ng you mean a man's name, isn't that it? A. They both call each other Moy and Ng.

Q. Then by Ng, you mean a man's name, is that right? A. I don't know whether it is his last name or his first name. 20

Q. All right now, before you had this fight in the laundry, did you ever know the name of this man who is in Court now, Ng Kee? A. I know the persons, but not the names.

Q. So that you learned that his name was Ng Kee after the Police brought him into you, didn't you, after you heard them call one Ng Kee and the other Moy, as I understand it? 30

Mr. Jentz: That is objected to.

The Court: I think the question is proper.

A. I don't know them, but I saw them passing around a cigar to each other and saying, "Moy, you want to have a cigar" and "Ng, you want to have a cigar"?

Q. This was before your master came in, was it? A. Yes, the master was not back. 40

*Low Sing, for State—Cross.*

Q. There was no fight before your master came there, was there? A. No, not until he came back.

10 Q. And when your master came in, did one of the men take your master into a room and close the door behind him, so that there was a white man and one Chinaman and your master in a room away from you? A. Yes, one Chinese and one white man.

Q. So that they closed the door between them and where you were, did they? A. My master was driven into the sleeping room and I was driven into the drying room.

Q. And did they close the door between the two of them? A. They closed the door, but the door was not locked.

20 Q. Before that you did not see any knives or hammers or axes or guns, did you? A. No, I didn't, not until the fight.

Q. Now, the fight started in another room where your master was with the white man and the Chinaman, is that right? A. Yes, in the sleeping room.

Q. And you don't know who started that fight in there, do you? A. All four started at the same time, one Chinese and one white man.

30 Q. Well, you could not see into the other room, could you? A. I could not see, it was too dark, there was no light there.

Q. And when you were under the bed you could not see what was going on, could you? A. It was too dark, I could not see anything.

Q. And you broke your way out with your fist, didn't you? A. I pushed my way out, broke the window and hurt my hand.

40 Q. And this fight took a long time, didn't it? A. When they used knives and did it to me, I could not suffer much more so I ran away.

*Low Sing, for State—Cross.*

Q. You said on your direct examination, didn't you, that this was a long fight, took a long time?

A. I ran out to the street.

Q. And you had no coat on or sweater over your shirt, did you? A. No.

Q. And no hat on? A. No.

Q. And you had blood all over you, didn't you? 10  
A. Yes, sir.

Q. And the blood on this shirt was on your face and neck and arms, wasn't it? A. It ran from my head down.

Q. Now, those men that were fighting with you got blood all over them, didn't they? A. I don't know whether they did or not.

Q. You could see that they had blood all over them, couldn't you, on their hands and on their clothes? A. I don't know whether they had or not. 20

Q. Did you get out the back window or the front window? A. Out of the back window.

Q. Did you hide in the yard before you went out into the street? A. Just right out and cried for help.

Q. And you ran across the boulevard or across Summit Avenue? A. Yes.

Q. And you went into the drug store? A. Yes, I ran into the drug store and blew the whistle.

Q. You blew the whistle in the drug store, did you? A. The proprietor of the drug store blew the whistle. 30

Q. All right then, the Policeman and the crowd came over to the drug store, didn't they? A. Yes.

Q. And during that time you looked around through the streets there, didn't you, from the drug store door? A. By that time I felt too painful to look.

Q. Then you went back to your store after that, didn't you? A. No, I didn't go back. 40

*Low Sing, for State—Cross.*

Q. Then you went to the hospital, did you? A. Yes, sir.

Q. And you went to the hospital and later in the afternoon they brought in Ing Kee up to you at the hospital, is that right? A. Yes.

10 Q. You took a good look at Ing Kee when they brought him in, didn't you? A. Yes, I did, because he attacked me, so I looked at him carefully.

Q. Who was it that asked you to identify him? A. I myself.

Q. Well, you testified on your direct examination "they asked me to identify him." Who asked you to identify him? A. A group of white men brought him before me and asked me, and I said, yes, he was the person.

20 Q. And they told you they caught him somewhere down around where your store was, didn't they?

Mr. Jentz: I object, anything they told him.

The Court: I will allow it.

A. No, they didn't tell me anything about where he was arrested.

30 Q. When you found the card in the pocket of the overcoat in your place, you knew then that the man's name was Sam Moy, did you? A. I know the person, I know the name Moy and I just saw the detective and asked him to investigate.

Q. During all the time that you were in the hospital did you know where Sam Moy, this defendant, lived? A. I didn't know when I was in the hospital.

40 Q. Did you know where Moy Jung lived? A. I didn't know neither.

*Low Sing, for State—Cross.*

Q. Did you know about where Moy Jung lived?

A. I don't know where he lived.

Q. You do not know where Moy Jung lived but did you know where Moy Jung did his work every day? A. I didn't know that.

Q. Where did you think he worked? A. I didn't know. 10

Q. Did you know about where Moy Jung worked or what he did for a living while you were in the hospital? A. I didn't know.

Q. You knew Moy Jung was in New York and not in Jersey City, didn't you? A. No, I didn't know where.

Q. Did you know Moy Jung was an interpreter? A. I didn't know whether he was an interpreter or not.

Q. You did not know whether he was an interpreter or not but you knew about him being named Moy Jung, although you did not know whether he was an interpreter or not? A. I knew his name but I didn't know if he was an interpreter or not. 20

Q. You knew Moy Jung was an On Leong, didn't you? A. I don't know him, I don't know whether he is or not.

Q. Didn't you just say that you knew Moy Jung was an On Leong, but you did not know what his business was? A. I don't know him, I don't know anything about him. 30

Q. Didn't you just say you knew Moy Jung was an On Leong? A. I don't know whether he is or not.

Q. But you thought he was, didn't you? A. I don't know.

Q. You are a Hip Sing, aren't you? A. No, I don't have any tong.

Q. Your master was a Hip Sing, wasn't he? A. 40  
Yes.

*Low Sing, for State—Re-direct.*

*Herbert Lee, for State—Direct.*

10 Q. And when you pointed out this man Ing Kee when he was brought before you, and later, when you said Sam Moy was the man, you didn't know whether they belonged to any tong, but you knew they were not Hip Sings, didn't you? A. I know they attacked me, but I don't know if they are On Leongs or Hip Sings.

Mr. McGiegan: That is all.

*Re-direct examination by Mr. Jentz:*

20 Q. You said something before about losing your cap at this time, is that right? A. When I came back from the hospital I looked around and I could not get my cap.

Q. What kind of a cap was it? A. Brown color.

Mr. Jentz: That is all.  
(Witness excused.)

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HERBERT LEE, SWORN:

30 *Direct examination by Mr. Jentz:*

Q. You live at 357 Summit Avenue? A. Yes, sir.

Q. Do you recall December 27th, 1924? A. Yes.

Q. Did anything happen in the vicinity of your building around 5 o'clock on that day? A. Yes, sir.

40 Q. Just tell us what happened within your sight and hearing? A. Around a quarter to 5 o'clock on the evening of December 27th I heard a noise in the rear of my building, and thinking it was

*Herbert Lee, for State—Direct.*

some trouble with the Chinamen, I went to the street. When I got to the street I seen the store was closed. The door of the adjoining room was closed. I went to the corner store and called Mr. Walsh for help. When we came out of the corner store some one there said that the Chinaman——

10

Mr. Cutley: I object to what somebody said.

Q. Just tell us what you did? A. Running north on Summit Avenue, turning right and running east on Rock Street, I overtook Ing Kee at High and Baldwin Avenue——

Q. Is this defendant, Ing Kee, the man you overtook? A. Yes, sir.

Q. On Rock Street and Baldwin Avenue? A. 20  
Yes.

Q. And did you hear any noise coming from this laundry prior to that time? A. I heard Charles Jung's helper screaming.

Q. That is the last witness, Low Sing? A. Yes.

Q. You heard him screaming? A. Yes.

Q. And that is what attracted your attention?  
A. That is what attracted my attention, the screaming, and I went right down the two flights of stairs.

30

Q. What was Ing Kee doing there when you overtook him? A. Walking on Baldwin Avenue with his hands in his pockets.

Q. Had you seen him running prior to that time? A. No, sir.

Q. What did you do when you took hold of him?  
A. We kept walking with him and every step he took we took one with him.

Q. And then what happened? A. Then Officer Furlong came along and took him from us.

40

Q. You turned him over to the officer? A. Yes.

*Herbert Lee, for State—Cross.*

Q. What did the officer do with him, if you know? A. He put him in a machine and took him to the dug store where Charles Jung's partner was, and Charles Jung's partner identified him—

Mr. Cutley: I move to strike that out.

10 The Court: Why?

Mr. Cutley: As a conclusion of law.

Q. What did he do in the drug store when you and the Policeman brought Ing Kee back? A. He said that was the man that gave him the beating.

Q. Then what happened? A. Why, another Police Officer came along and took them away in a Patrol Wagon.

20 Q. What did you and Walsh do then? A. We went on about our business and went to our homes.

Mr. Jentz: That is all.

*Cross-examination by Mr. Cutley:*

Q. You say you heard this man say that this man gave him a beating? A. Yes, sir.

Q. Did he talk Chinese? A. Broken English.

Q. Are you sure about that? A. I heard him say "That is him".

30 Q. Did he say "that is the man that gave me the beating" or did he say "that is him"? A. That is him.

Q. Then why did you say before he said this was the man that gave me the beating? A. I cannot say it in his exact words—

Q. Are you sure now he was not speaking in Chinese? A. I am not going to commit myself.

Q. You are not going to commit yourself?

40 The Court: You must answer that. Was he speaking Chinese or was he speaking in English?

*Herbert Lee, for State—Cross.*

The Witness: Well, he was all excited.

Q. What is your interest in this case? A. Nothing at all, just as a citizen taking care of anybody else's trouble.

Q. You make yourself the guardian of the peace of the whole neighborhood? 10

Mr. Jentz: Objected to, if the Court pleases.

Q. Where do you live? A. The top floor of 355 Summit Avenue.

Q. And how did you come to go down to the Chinaman's store? A. I heard someone screaming and I started down to see what the trouble was. 20

Q. When you got to the street what did you do? A. I looked in the front door and I could not see anything.

Q. Did you still hear the screaming when you got to the street? A. The helper was standing on the corner of Academy Street and Summit Avenue.

Q. When you were standing in front of the door did you still hear the screaming? A. No, sir.

Q. How long did it take you to come down from your house to the front of 357 or whatever the Chinaman's place is? A. I should say about three minutes. 30

Q. About three minutes? A. Yes.

Q. Why didn't you go into the Chinaman's store when you got downstairs? A. Because I didn't care to mingle among them.

Q. You were taking care of other people's safety, according to you? A. As every citizen should. 40

Q. As a matter of fact, you were not there at all

*Herbert Lee, for State—Cross.*

when this fight was going on? A. Not when they were fighting, no, sir.

Q. And the first thing you knew, you went over Rock Street and you saw this man about half way down the block? A. Some children said, "one of them ran through Rock Street."

10

Mr. McGeehan: I ask that that be struck out, what the children said.

The Court: Yes, strike it out.

Q. This man was pointed out to you going down Rock Street? A. The screaming had taken place and the Chinaman was in the back yard and I heard him run through.

Q. You did not see any scrimmage take place?

20

A. No, sir.

Q. And your only desire to get into this case was to make a big fellow out of yourself? A. No, sir.

Mr. Jentz: I object.

The Court: I don't think that is fair.

Q. After you saw this Chinaman what did you do? A. Why, my friend Mr. Walsh and I started chasing him.

30

Q. Did he run? A. He was walking ahead, two blocks distant. We turned the corner of Baldwin Avenue and Rock Street and saw him between—

Q. Just stop there, if you please. He had two blocks on you? A. Yes.

Q. And you came down, you say, in three minutes? A. Yes, sir.

Q. You do not mean to say it took three minutes to come down stairs, do you? A. I stood on the first landing, I thought there might be a shooting and I didn't want to get mixed into it.

40

*Herbert Lee, for State—Cross.*

Q. And when you got down the screaming and the scrimmage was all over, is that right? A. Yes.

Q. And Rock Street is how far distant from this laundry? A. I should say about 100 feet, or 150 feet.

Q. And how far down Rock Street was he when the children told you that the man had gone that way? 10

Mr. McGeehan: That is not in evidence. I don't want that to be part of the case.

Mr. Cutley: I will withdraw it.

Q. How far away was Ing Kee from you at the time when he was furthest away from you? A. When we were at the corner of Rock Street and Baldwin Avenue, Ing Kee was on Baldwin Avenue between Newkirk and High. 20

Q. You say he was on Baldwin Avenue between Newkirk and High? A. Baldwin Avenue between Newkirk and High.

Q. And Rock Street runs parallel to Newark Avenue? A. Yes.

Q. He was walking slowly? A. Yes.

Q. And when you say you first saw him did you run after him? A. Mr. Walsh and myself walked after him. 30

Q. What overtaking was done, you did it? A. Both of us.

Q. When you got up near him what did you do? A. We walked by him and he turned around and looked at us, and we stopped him within 50 feet of the corner of High and Baldwin. Officer Furlong came along and took him.

Q. Did you frisk him or did the Officer frisk him in your presence? A. The Officer in our presence. 40

*Herbert Lee, for State—Cross.*

Q. And found nothing on him? A. Nothing that I know of.

Q. That was down at the corner of High Street and Baldwin Avenue? A. Yes, sir.

Mr. Cutley: That is all.

10

*Cross-examination by Mr. McGeehan:*

Q. What floor do you say you lived on? A. The top floor left, 355 Summit Avenue.

Q. And this happened about what time of day? A. I should say about quarter of 5.

Q. Do you think it might have been quarter after 5? A. It was around quarter of 5, 20 or 25 minutes, to, I should say.

20 Q. What were you doing when you first heard the noise? A. Sitting in the kitchen of my home, reading.

Q. Reading at that time? A. Yes.

Q. And you were in the rear of your house? A. In the kitchen, in the rear, yes.

Q. You said something about a scrimmage in the rear yard. You of course just imagined that there had been a scrimmage in the rear yard, didn't you? A. I could not see anybody, but I could hear the screaming.

30 Q. You know now, as a matter of fact, there was no scrimmage in the rear yard, don't you? A. Yes.

Q. Then you came through your house and down stairs and waited there for some time, did you? A. Yes.

Q. And you estimate that to be three minutes or five minutes, is that right? A. Within the neighborhood of that, yes.

Q. Somewheres in that neighborhood? A. Yes.

40 Q. And when you came out you were then about

*Herbert Lee, for State—Cross.*

100 feet or 150 feet from the Chinese laundry? A. Well, the hallway and the Chinese laundry window adjoin, it is right next to it.

Q. You went and looked in the window there, did you? A. I went up to the front door and looked in.

Q. And there was nothing in sight? A. Nothing at all. 10

Q. Nothing going on? A. No, sir.

Q. And you saw no one coming out of the place or from the rear, or anywhere? A. No, sir.

Q. There were not any signs of trouble, were there? A. Not that I could see then.

Q. None at all? A. No.

Q. So that you would not even know at that time and did not know at that time that there had been a fight in the laundry? A. No, sir. 20

Q. Then you came out and the next thing you knew you saw the man that you knew as the helper of Charles Jung across the street? A. He was on the corner, bleeding.

Q. Then you went over there, did you? A. We found him there when we came back.

Q. You found him there when you came back? A. Yes, sir.

Q. You did not even see him at all before that, did you? A. No, sir. 30

Q. He probably was in the drug store at the time? A. Well, I could not say where he was then.

Q. You heard no police whistle at all, did you? A. No, sir.

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

Q. And were there policemen with him when you came out, do you know? A. With who?

Q. The Chinaman who was over near the drug store? A. No, sir. 40

*Herbert Lee, for State—Cross.*

Q. You do not know if there were or not, when you came out, do you? A. I didn't see him then.

Q. So that you do not know if there were policemen there or not? A. I do not know.

10 Q. And you do not know how long before you came out of the place whistles had been blown from the drug store, do you? A. No, sir.

Q. So then, you finally saw a Chinaman walking about a block away, is that right? A. Well, within three blocks of the place where the trouble had started.

Q. Within three blocks? A. Yes, sir.

Q. And you could see from that distance this man walking? A. I am giving you the distance he was from where this trouble started.

20 Q. Well, how far from you was this Chinaman walking at the time? A. He was walking on Baldwin Avenue, he was traveling a block ahead of us.

Q. About a block from you? A. Yes, sir.

Q. And what street was he walking along? A. On Baldwin Avenue.

Q. Which direction was he walking in? A. Walking north, coming this way towards Newark Avenue, and Baldwin.

Q. And he was not going from this laundry then, was he? A. Well, on the same block, no, sir.

30 Q. He was a block away across the street, wasn't he? A. He was walking on Baldwin Avenue.

Q. Then you went up after him? A. Yes, sir.

Q. He did not run at any time, did he? A. No.

Q. And you and your friend followed behind him for how far? A. Well, for the next block.

Q. But at no time did he run? A. No, sir.

Q. With his hands in his pockets? A. Yes, sir.

40 Q. There was no blood on him at all, was there?

*Herbert Lee, for State—Cross.*

A. Well, we could not see it with his hands in his pockets.

Q. Well, now, you were with him until you brought him back, until the Officer came along, then back to the drug store with him? A. Yes, sir.

Q. You were with him when the Officer searched him, weren't you? A. Yes, that was at Baldwin and High. 10

Q. And you saw no blood on his hands, no blood on his features at the time, did you? A. Not at that time, no.

Q. Now you were there, you say, when the identification took place? A. Yes, sir.

Q. As a matter of fact, when you got to the drug store the Chinaman who had been there was unconscious, he had fainted, hadn't he? A. He was large as life, standing there, talking. 20

Q. You think he was standing there talking? A. Yes, sir.

Q. You heard him testify here that he fainted and didn't see this man until he got to the hospital, didn't you? A. Yes.

Q. Now, do you disagree with that? A. I do.

Q. You think he identified him in the drug store on the corner? A. Yes.

Q. Were there any other Chinamen brought to the drug store that day for him to identify? A. Not at that time that I know of. 30

Q. So that, according to you, at the time of this identification, this defendant was the only one brought before him? A. Yes.

Q. Now, was there a knife in his possession at that time? A. Not that I saw.

Q. Well, you were there when he was searched, weren't you? A. I was there, yes.

Q. There was no hammer in his possession, was there? A. No. 40

*Edward Welsh, for State—Direct.*

Q. And there was no gun in his possession? A. No.

Q. And there was no axe resting on his shoulder? A. No.

10 Q. During all the time you followed him, could you have seen if he threw any kind of a knife or gun or other weapon? A. We would.

Q. And he didn't throw away any such thing? A. Not that I saw.

Q. And at the time you did not see any other Chinese in the vicinity, did you? A. No, sir.

Q. That is all you know about this? A. That is all.

20 Q. Where were you standing when you first saw the man whom you say was Ing Kee walking along with his hands in his pockets? A. The corner of Rock Street and Baldwin Avenue.

Q. At the corner of Rock Street and Baldwin Avenue? A. Yes, sir.

Q. That was a block and a half away from where the laundry is, is that right? A. About.

Q. And you then saw the Chinaman walking along which street, Baldwin Avenue or High Street? A. Baldwin Avenue.

30 Q. And that was a block away, along a street that runs parallel with Summit Avenue, a block away from Summit Avenue, wasn't it? A. Yes, sir.

(Witness excused.)

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EDWARD WELSH, SWORN:

*Direct examination by Mr. Jentz:*

40 Q. You live at 218 Academy Street, Jersey City? A. Yes, sir.

*Edward Welsh, for State—Direct.*

Q. Is that near 357 Summit Avenue, Jersey City? A. Right in the rear.

Q. Do you recall Saturday, December 27th, 1924? A. I do.

Q. Do you recall being in that neighborhood at that time? A. Yes, sir.

Q. Is there a Chinese laundry at 357 Summit Ave.? A. There is. 10

Q. Do you know anything about what happened in that laundry on that afternoon? A. I know what happened there.

Q. Just tell us what you know about it? A. I was sitting in the store next to the Chinaman's and I didn't hear any noise or anything but the first that I knew of any trouble was when Lee opened the door and said—

Q. By Lee you mean the man who was just on the witness stand? A. Yes, sir, the man who was just on the witness stand. He opened the door and said— 20

Mr. McGeehan: Never mind what he said, please. I object to what he said.

The Court: Objection sustained. As a result of what he said what did you do?

A. I ran out into the street and ran up to Rock Street and over Rock Street. While I was running through Rock Street I saw a man starting in to walk, so I ran down Baldwin Avenue and turned north and followed the man who had been running on Rock Street, and overtook him at Baldwin Avenue and High Street. I just caught up to the man when Officer Furlong came along and Officer Furlong took him in charge. 30

Q. Did this man have his hands in his pockets or was he carrying them open? A. What do you mean? 40

*Edward Welsh, for State—Direct.*

Q. At the time you saw him walking? A. While he was walking?

Q. Yes? A. He had his hands in his pockets.

Q. Was he brought back then to the drug store, in front of the drug store? A. He was brought right back to the corner of Summit Avenue and Academy Street.

Q. Did you have any occasion to look at his hands after that? A. No, sir.

Q. Did you see his hands at all? A. No.

Q. Did you take any notice of them? A. I didn't take any notice of them, no, sir.

Q. He was with Officer Furlong at the time? A. He was with Officer Furlong at the time.

Q. Did you see him being brought to where this Low Sing was? A. Yes, I went back in the car with them.

Q. From where did you ride back in the car? A. From Baldwin Avenue and High Street.

Q. Back to the drug store? A. Back to the drug store at Summit and Academy.

Q. When you got back then what happened? A. When I got back, then Charles Jung's helper was standing on the corner.

Q. Is that the man, Low Sing, who testified here today? A. Yes, sir.

Q. What happened between him and the man you caught? A. Well, nothing more than when he saw the man sitting in the car he hollered "that was him".

Q. Was he bleeding at that time? A. Yes, sir, he was bleeding from the head.

Q. Did you at any time see any blood upon Ing Kee, this man that you caught? A. No, I did not.

Q. How did you come to get into this car? A. Officer Furlong put him into the car. There was a car standing there with two young fellows in it, a

*Edward Welsh, for State—Cross.*

Ford car, and he put him into the car and those fellows drove him to Summit and Academy.

Q. Drove him back? A. Yes, sir, drove him back.

Mr. Jentz: That is all.

*Cross-examination by Mr. McGeehan:*

10

Q. What is your business? A. Elevator mechanic.

Q. Were you working on this day? A. I was, that morning.

Q. And do you know what time this occurred? A. Well, somewheres between half past 5— I don't know exactly.

Q. The first time you left where you had been was when your friend, who just left the stand, came to you— A. He opened the door of the store where I was sitting.

20

Q. You had not heard any police whistles? A. No, sir.

Q. How near is that store where you were sitting to the laundry? A. Right next to it.

Q. In which direction from the laundry, north or south? A. South.

Q. Had you been looking out? A. No, sir.

Q. Then your friend came in and you went with him, didn't you? A. Yes, sir.

30

Q. And you remained by his side all the time up to the time he grabbed hold of Ing Kee? A. Not at his side.

Q. Well, together? A. Yes.

Q. And you were with him when he saw the Chinaman walking, weren't you? A. I was.

Q. And the Chinaman was walking when you first saw him, wasn't he? A. No, he was just stopping from running, he was taking his last step from running.

40

*Edward Welsh, for State—Cross.*

Q. Was he crossing the street at the time? A. No, he was on the sidewalk on Rock Street.

Q. And you think he was running a few steps when you saw him? A. Yes.

Q. Finishing running? A. Yes, sir.

10 Q. What street were you on when you first saw him? A. Rock Street.

Q. Weren't you on Baldwin Avenue? A. Yes, sir, after I left Rock Street.

Q. Well now, Baldwin Avenue is one block away from Summit Avenue, isn't it? A. It is.

Q. It is not quite a block from the laundry to Baldwin Avenue? A. Not quite a block from the laundry to Rock Street.

20 Q. Isn't the laundry on Summit Avenue and Rock Street? A. No, sir.

Q. At the corner? A. No, sir.

Q. How near is it to Summit Avenue and Rock Street? A. It is not on Rock Street, it is on Summit Avenue.

Q. Isn't it on Summit Avenue and Rock Street? A. Summit Avenue.

Q. And in order to get to Baldwin Avenue and Rock Street, you have to go about a half a block to Rock Street, haven't you? A. On Summit?

Q. Yes? A. Yes.

30 Q. Then a whole block from Rock Street—through Rock Street to Baldwin Avenue? A. Yes.

Q. Weren't you near Baldwin Avenue and Rock Street when you first saw him? A. No.

Q. Weren't you with the last witness? A. I was.

Q. Where do you think you were when you first saw him? A. On Rock Street.

Q. How far up the street? A. How far from this man?

40 Q. How far up Rock Street from Baldwin Ave-

*Edward Welsh, for State—Cross.*

nue were you when you first saw the Chinaman?

A. Probably half a block away from Baldwin.

Q. About half a block; about midway between Summit and Baldwin? A. Right.

Q. So that the Chinaman was across the street at the time you saw him first, wasn't he? A. No.

Q. How near to the curb was he? A. He was on the sidewalk. 10

Q. Across the street on Rock Street, less than a half block away from you, was he? A. Yes.

Q. Now then, you started out after the police whistles were blown and all this trouble was over, didn't you? A. I didn't hear no police whistles.

Q. You started out of course after your friend had reached your place, came in and spoke to you and brought you out with him, is that right? A. Yes. 20

Q. And then you walked from this point around to Rock Street? A. I ran.

Q. Did he run with you? A. He did.

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

Q. What distance did you run, about? A. Well, about a block and a half all told.

Q. And the Chinaman, when you came into Rock Street, you could not see him, could you? A. I could.

Q. Well, didn't you just say that when you first saw the Chinaman you were in the middle of the block between Summit Avenue and Baldwin Avenue on Rock Street? A. Yes. 30

Q. And the Chinaman was then near the corner? A. He was near the corner of Rock Street and Baldwin Avenue.

Q. On Rock Street? A. On Rock Street.

Q. How is it you could not see him when you first turned into Rock Street, before you got half way down the block? A. Because Rock Street goes up at a good grade. 40

*Edward Welsh, for State—Cross.*

Q. You mean to say there is such a steep grade in the center of the block that you could not see over it? A. Almost, yes.

Q. You mean to testify to that, do you? A. Yes.

10 Q. And that is the reason you could not see anybody from the corner of Rock Street and Summit Avenue who might be in the middle of the block? A. In the middle of the block? He was past the middle of the block.

Q. He was past the middle of the block when you got to the middle of the block, wasn't he? A. Yes.

Q. So that he was past the middle of the block on Rock Street when you turned into Rock Street or you would have seen him? A. Yes.

20 Q. And you did not see him? A. No.

Q. So that he must have been beyond the middle of Rock Street when you came into Rock Street, is that right? A. Right.

Q. And you were not running all that distance? A. I was running.

Q. Fast or slow? A. Well, I don't know what someone else would call it, but I thought I was running pretty fast.

Q. You were running together with your friend, is that right? A. Yes.

30 Q. Do you know how many minutes it took before you got started to go? A. No, I could not tell you.

Q. Now, isn't it true that you saw the Chinaman only when your friend saw him and that you were then with your friend when you and your friend were at Baldwin Avenue and the Chinaman was walking along Baldwin Avenue? A. No, sir.

40 Q. Why didn't you point this Chinaman out to your friend when you saw him and he didn't see him? A. He was right at my side, running along.

*Edward Welsh, for State—Cross.*

Q. And you were together all the time? A. We were together, yes, but we did not have to be holding hands to be together. Probably he was two or three steps behind me, but he was with me.

Q. And you did not tell him you saw him running, did you? A. No.

Q. And you stopped and walked behind him for quite a distance before you got hold of him, didn't you? A. On Baldwin Avenue, yes, sir. 10

Q. And not until you reached the corner of Baldwin Avenue did you say anything to your friend about seeing the Chinaman about a quarter of a block ahead of you, did, you? A. No.

Q. Those are 200 feet blocks, aren't they? A. Those are short blocks.

Q. I mean Rock Street between Baldwin and Summit Avenue? A. It is. 20

Q. That is the length of two city lots, isn't it, two 100 feet lots? A. I think it is a little longer than that.

Q. Now, as a matter of fact, you cannot say that you saw the Chinaman running at any time, can you? A. I just did, didn't I.

Q. And are you continuing to say it because you did or because you actually know that to be the fact? A. Because I saw him.

Q. And you cannot tell us how it is that your friend didn't see him running? A. I cannot. 30

Q. Now, you trailed and walked behind him all that distance then, didn't you, the entire length of Baldwin Avenue between Rock Street and High Street? A. Yes, sir.

Q. And did a Policeman come along the same street you came along? A. I don't know just which way the Policeman came along.

Q. You do not know that? A. No, sir.

Q. You told the Policeman to arrest him? A. I 40  
didn't tell anybody to arrest him.

*Edward Welsh, for State—Cross.*

Q. But he grabbed him when he came along? A. Yes.

Q. Now, the Chinaman came right back with you to where you took him, didn't he? A. He got into the car with the Officer, yes, sir.

10 Q. And he was being held by the Officer all the time he was in the car? A. Yes, sir.

Q. And you know that from the time you saw him he didn't throw anything away, either a gun or a knife or a hatchet or anything like that, did he? A. No.

Q. And he had no blood on him, did he? A. No.

Q. And you could have seen it if he had blood on him, couldn't you? A. I didn't take any particular notice to look for blood or anything like that.

20 Q. You stayed right with him until he came back to the drug store? A. Yes, I did.

Q. And you were there while he was searched by the Policeman? A. The Officer searched him at the corner first; he searched him no more than he took hold of him.

Q. And found nothing on him? A. Nothing that I saw.

Q. What kind of a car was this you rode in? A. Ford.

Q. Closed or open? A. Open.

30 Q. Who drove it? The young man that owned it? A. I don't know if he owned it or not, but he was driving the car.

Q. You do not know who he is? A. No.

Q. Is he in Court now? A. Not that I know of.

Q. Was this Chinaman riding in the back? A. In the back.

Q. How many men were in the back of the car? A. There was Officer Furlong and myself and Mr. Lee were in the back.

40 Q. Three of you? A. Yes, four of us.

*Edward Welsh, for State—Cross.*

Q. And the Chinaman in the center? A. Yes, he was sitting in the center.

Q. And where was this man standing on the sidewalk who was bleeding? A. Standing on the sidewalk in front of the drug store.

Q. There was a crowd around him? A. Yes.

Q. A big crowd around at the time? A. Quite a sized crowd. 10

Q. And you do not mean to say that when this car ran along Summit Avenue he yelled out "that is the man" before this Chinaman was ever taken out of the car? A. They pulled right up to the curb and brought the Chinaman in front of him.

Q. And the crowd was surrounding this man who was bleeding? A. Yes, when the car came along they opened up and he came right to the curb. He could put his hand on the door of the car. 20

Q. And you heard him say "this is the man"? A. "This is the man".

Q. In English? A. In English.

Q. Those are his exact words? A. His exact words.

Q. You have no doubt about that? A. I have no doubt about it.

Q. Was he bleeding at the time? A. The helper? 30

Q. The man that said "that is the man"? A. Yes, he was bleeding.

Q. And was any doctor or anyone helping him there? A. No one was there.

Q. Any Policeman with you? A. Yes, there was another plain clothes man around and another Policeman had come at the time.

Q. Was he talking Chinese at the time, the man who was bleeding? A. No, sir.

Q. Not a word of Chinese? A. No, sir. 40

*Edward Welsh, for State—Cross.*

Q. Talking in English? A. That is the only thing I heard.

Q. "That is the man"? A. Yes, sir.

Q. You never heard another word come out of his mouth excepting that? A. That is all.

10 Q. He said nothing to the Policeman? A. Nothing.

Q. Nothing to the crowd around there? A. No.

Q. You are sure that is all he said? A. Yes.

Q. How many times have you been questioned about this case by anyone? A. This is the second time.

Q. And you have been asked about these details twice before?

20 Mr. Jentz: He said this is the second time.

A. Once before.

Q. And when was that? A. Well, it may have been two or three minutes after the trouble happened.

Q. Who questioned you or spoke to you?

Mr. Jentz: Objected to as immaterial.

The Court: I don't think I will let it go any further.

30 Mr. McGeehan: I withdraw the last question.

Q. Do you know Charles Jung? A. Only that he keeps a laundry there.

Q. You have been living next to him for a long time? A. I have.

Q. You are a friend of his? A. What do you mean by a friend?

40 Q. You know his name and you go in there occasionally, don't you? A. I take my laundry in there, yes.

Mr. McGeehan: That is all.

*Edward Welsh, for State—Cross.**Cross-examination by Mr. Cutley:*

- Q. What store were you in? A. The store right next door.
- Q. What kind is it? A. A cafe.
- Q. How long were you there? A. Probably an hour. 10
- Q. What were you doing there? A. Playing cards.
- Q. Did you have any coco cola to drink? A. Nothing at all.
- Q. You didn't have a drink the whole time you were there? A. I did not.
- Q. Where is this, the corner of Academy and Summit? A. Summit and Academy.
- Q. Where were you and how previous to that? A. Previous to what? 20
- Q. Previous to the time you entered the cafe? A. In the house.
- Q. While you were in the cafe you did not hear any screaming or anything else coming from the laundry? A. I did not.
- Q. And you would not have known a thing, would you, unless brother Lee opened the door and took you away from your game of cards? A. I would not have.
- Q. What were you playing, pinochle? A. Cribbage. 30
- Q. What was the condition of the day as to light? A. Well, it was a clear afternoon.
- Q. Was it light or dark? A. Light.
- Q. What time was this? A. About quarter of 5.
- Q. Quarter of 5? A. Yes, sir.
- Q. How do you fix that time? A. By the time I have gone back to the house and started to wash up for supper it was around 5 o'clock.
- Q. Well, was it getting dark then? A. It was getting dark when I went to the house, yes. 40

*Edward Welsh, for State—Cross.*

Q. Wasn't it quite dark at the time you left the cafe, the saloon? A. No.

Q. You are sure about that? A. Yes.

Q. And wasn't that the reason you could not see this man going down Rock Street? A. I did see him going down Rock Street.

10 Q. And you were with this other gentleman, Mr. Lee, all the time, weren't you? A. Yes.

Q. Although you were more active in the chase than he was? A. Maybe a little.

Q. Do you say Rock Street has a crown or hill and that you could not see beyond it? A. You cannot see the traffic on Baldwin Avenue from Summit Avenue.

20 Q. You cannot see the traffic on Baldwin Avenue from where? A. Standing anywhere on Summit Avenue, the corner of Summit Avenue and Rock Street you cannot see the traffic on Baldwin Avenue.

Q. Because of the hill in the middle of Rock Street? A. Yes.

Q. Approximately 100 feet down? A. I don't know whether that is 100 feet.

Q. How long have you lived there? A. 27 years.

30 Q. How long a block is Rock Street from Summit Avenue to Baldwin? A. I don't know just exactly in feet.

Q. You have been 27 years passing there, haven't you? A. Yes, I have passed there 27 years.

Q. Is it built up or is it vacant land? A. It is built up; there are a few lots there.

Q. Would you say it was 400 feet? A. It may be more than that?

*Thomas Furlong, for State—Direct.*

Q. How much more? A. I don't know how much more.

Q. Is it 200 feet, 400 feet or 800 feet? A. I don't know just how long the block is in feet.

Q. Is it 200 feet? A. I don't know how long the block is in feet.

Q. Well, you have very decided opinions as to the points of vision on it, haven't you? A. I have, sure. 10

Q. When you came back to the corner you heard this Chinaman say "that is the man"? A. Yes, "that is the man".

Q. And he said that in English? A. Yes, in English.

Q. You had the same point of observation as your friend, Mr. Lee had, didn't you? A. I did. 20

Q. You did not hear any police whistles blown while you were chasing this Chinaman, did you? A. No.

Q. Did you hear any Chinese talked by that man that night? A. No, I did not.

Q. And was it broken English or pure English that this man spoke? A. It was fairly good English, I think.

Q. At any time did you hear him say "that is the man that gave me the beating"? A. No, I did not. 30

Q. You did not hear that part? After all of this, where did you go, back to the cafe to your game of cribbage? A. I went back to my house and had supper.

Mr. Cutley: That is all.

(Witness excused.)

*Thomas Furlong, for State—Direct.*

10 A. M., February 26, 1925.

THOMAS FURLONG, SWORN:

*Direct examination by Mr. Jentz:*

10 Q. You are a Police Officer of the Jersey City Police Department? A. Yes, sir.

Q. How long have you been a Police Officer? A. Three years.

Q. Do you recall December 27th, 1924? A. Yes.

Q. Were you in the vicinity of 357 Summit Avenue on that day or in that neighborhood? A. Yes, sir.

Q. Did you see the defendant, Ing Kee, on that day? A. Yes, sir.

20 Q. This dark defendant? A. Yes, sir.

Q. Will you tell us when you first saw him and what happened when you saw him? A. At 4:50 on December 27th I was standing on Academy and Summit Avenue and I heard an alarm whistle come from the vicinity of Newkirk Street and Summit Avenue. I saw a crowd turning east on Newkirk Street from Summit Avenue and I gave chase and turned north on Baldwin Avenue. At Baldwin and High Street Ing Kee was pursued by Herbert Lee of 357 Summit Avenue, and Edward Welsh of 222 Academy Street. They had this Chinaman and turned him over to me.

30 Q. When they turned him over to you what did you do with Ing Kee? A. I put him into the car and brought him back to Academy and Summit Avenue where Charlie Jung's helper identified him as the man that had assaulted him in the rear of the laundry.

40 Q. And Charles Jung's helper, is that the second Chinaman who was on the stand yesterday? A. Yes, sir.

*Thomas Furlong, for State—Cross.*

Q. Then what did you do, Officer? A. I took him to the Station House in the patrol.

Q. You took Ing Kee to the Station House in the patrol wagon? A. Yes.

Q. Did you do anything in regard to Low Sing? A. No.

Q. You had nothing to do with taking him to the hospital? A. No, sir. 10

Mr. Jentz: That is all.

*Cross-examination by Mr. McGeehan:*

Q. The first you saw of the man you know now to be Ing Kee was when the other two men already had him? A. Yes, sir.

Q. And they were standing on the corner with him? A. Baldwin and High Street. 20

Q. That is the first you saw of him? A. That is the first I saw of him.

Q. Before that time or— A. Before that time I didn't see him.

Q. Then you got into the car and rode back to the drug store across from Charles Jung's laundry, is that right? A. Yes, sir.

Q. And you said Charles Jung's helper identified him? A. Charles Jung's helper identified him. 30

Q. That is the man, Low Sing? A. Yes.

Q. The assistant of Charles Jung, is that right? A. Yes, sir.

Q. Now, do you remember where you took him after you arrived there in the automobile—where did you take him? A. Charles Jung's helper was standing outside of the drug store and the car stopped alongside the curb and his helper said, "That is him".

Q. Who said that? A. Charles Jung's helper, Low Sing. 40

*Thomas Furlong, for State—Cross.*

Q. And you had a talk with Low Sing, did you?

A. No, I did not.

Q. Is that all he said? A. Yes, sir.

Q. Didn't you say something about his identifying him as the man who was in the back of the store? A. Yes, he pointed to the car, he said,  
10 "That is him".

Q. Did you know what he meant by "that is him"? A. Yes, I knew already that he had assaulted him.

Q. You knew that Low Sing had been assaulted?

A. Yes, sir.

Q. Did you know where? A. In the rear of the laundry of 357.

Q. Then he had told you about what happened back there, did he? A. No, he didn't tell me, but  
20 the fellows that were standing on the corner told me.

Q. Was there another Police Officer there when you got there? A. Not at the time I got there, no, sir.

Q. So that you questioned Low Sing fully about what happened then, didn't you? A. No, I didn't question him.

Q. Did you know that two Chinese and two white men had taken part in the fight besides Low Sing and Charles Jung? A. Yes, I heard about  
30 it.

Q. Did you know the two white men and one Chinaman had disappeared? A. Yes, sir.

Q. Or that two Chinamen had disappeared, did you know that? A. Yes.

Q. And Low Sing told you who the Chinamen were that were not around? A. No, sir.

Q. He didn't? A. No.

Q. Didn't give you the name? A. No.

Q. And did he tell you that he didn't know  
40 him? A. No, sir.

*Thomas Furlong, for State—Cross.*

Q. What did he tell you? A. He didn't tell me anything.

Q. You asked him about it, didn't you? A. I didn't ask him.

Q. You thought that you had one of the four men that took part in that, didn't you? A. Yes.

Q. And that is because Low Sing told you, is that right? A. Low Sing didn't tell me anything.

Q. Didn't Low Sing tell you that is the man that took part in it? A. He said "That is him".

Q. That is the only reason you had for arresting him, is it? A. Yes, sir.

Q. And Low Sing didn't tell you that four men altogether attacked him? A. No, he didn't tell me anything.

Q. Well, you knew it while you were there? A. I knew that, yes, sir.

Q. Didn't you question Low Sing about who the others were?

The Court: I think he said he didn't two or three times.

Q. Low Sing didn't give you the name of Moy Jung or Frank Moy, did he, at the time? A. No.

Q. Did you go to the hospital to investigate and interview him at any time? A. I didn't go to the hospital.

Q. Who had charge of interviewing Low Sing at the hospital? A. I don't know who took charge at the hospital, I don't know that.

Q. Who made up the Police report of this? A. The detectives, I guess.

Q. The detectives from headquarters, is that right? A. I guess so, yes.

Q. And he didn't at the time mention the name of Sam Moy, did he? A. No.

*Edward Farrell, for State—Direct.*

Q. Did he mention the name of Ing Kee at any time?

Mr. Jentz: Just a minute, this witness has said about seven times that all the man said was "That is him". He didn't say anything else.

10

Q. Did he mention the name of Ing Kee at all?

A. No, he didn't mention anything.

Mr. McGeehan: That is all.  
(Witness excused.)

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EDWARD FARRELL, SWORN:

20 *Direct examination by Mr. Jentz:*

Q. You reside at 165 Neptune Avenue, Jersey City? A. Yes, sir.

Q. On December 27th, 1924, were you a taxicab driver? A. Yes, sir.

Q. And about 4.30 P. M. that day where were you, where were you working that afternoon? A. In Jersey City.

Q. And where was your cab stationed? A. Bergen Avenue and Montgomery Street.

30 Q. And while you were stationed there around between 4.30 and 5 o'clock did you have a passenger? No, sir.

Q. Did you take anybody or did anybody hire your car to go any place? A. Yes, sir.

Q. Who was it hired your car? A. A Chinaman.

Q. And is that Chinaman here in Court today? A. Yes, sir.

40 Q. Will you point him out, please? A. The fellow with the eye glasses.

*Edward Farrell, for State—Direct.*

Q. This defendant, Sam Moy? A. Yes, sir.

The Court: Go down and point him out.

Mr. Jentz: The witness indicates the defendant Sam Moy.

Q. And when he hired your cab where did he ask you to take him? A. To Newark. 10

Q. To Newark? A. Yes, sir.

Q. Where in Newark did you take him? A. Mulberry Street, Chinatown.

Q. Did he get out at Mulberry Street? A. Yes.

Q. Who paid you your taxicab fare? A. Some old Chinaman, a friend of his.

Q. Then did you come back to Jersey City? A. Yes.

Q. How was Sam Moy dressed at that time with regard to whether or not he had an overcoat on? A. Well, he had a dark suit on and a cap. 20

Q. A dark suit and a cap? A. Yes; he had no eye glasses at that time.

Q. Did he or did he not have an overcoat on? A. No, sir.

Q. Now, Bergen Avenue and Montgomery Street is in the same neighborhood as Summit Avenue and Academy Street, that is, it is in the near vicinity of Summit Avenue and Academy Street? A. It is about four or five blocks away, I guess. 30

Q. Four or five blocks away? A. Yes.

Mr. McGeehan: That is all.

*Cross-examination by Mr. Cutley:*

Q. Do you remember anybody else you rode on the 27th day of December, Mr. Farrell? A. Do I remember them? 40

*Edward Farrell, for State—Cross.*

Q. Yes? A. If there were some particular case came up I might remember them.

Q. I mean without any particular case coming up? A. I cannot recall just now, no.

Q. Do you remember anybody you rode on the 27th day of January? A. I could not answer that.

10 Q. Do you remember anybody you rode a week ago Monday night? A. I could not answer that.

Q. What time of day was this that this man got into your cab? A. It was about quarter to 5, just about break of day, just turning to be dark.

Q. It was dark, wasn't it? A. It was just getting dark, it was dark by the time we reached Newark.

Q. And it was dark when you left Jersey City, wasn't it? A. No, sir.

20 Q. You are positive about that? A. Just about breaking day. It was around quarter of 5 in the evening.

Q. By what you mean the sun was gone down? A. Yes, sir, it was going down.

Q. And the sun went down that day about half past 4? A. The sun was just going down, I said it was just the break of day.

Q. When you got to Newark this man got out, didn't he? A. Yes, sir.

30 Q. And immediately upon getting out of your taxicab some Special Policeman came up, didn't he? A. Yes, sir.

Q. What, if anything, did he do when he got up to the taxicab? A. Well, they questioned him and they took him aside and gave him a frisk.

Q. You saw them frisk him, did you? A. I just turned my cab around, yes.

Q. Are those the two men? A. One man I remember, the first man.

40 Q. Don't you remember the other one? A. Well,

*Edward Farrell, for State—Cross.*

he is the man I was talking to, I came in contact with him.

Q. Well, how far away were you from the other man? A. Well, the other man I didn't see. This is the man that came to the taxicab as soon as I got there.

Q. And was this other man at the cab or not? 10  
A. I didn't see the other man.

Q. You only saw one man? A. Yes, sir.

Q. You are sure of that? A. Yes, sir, he was alone at the time.

Q. Didn't you say before, prior to this trial, you saw two Special Officers come over and frisk him? A. No; one frisked him.

Q. Didn't you say you saw two Special Officers come over and either one or both of them frisked him? A. No, sir. 20

Q. You never said that? A. No, sir.

Q. So that you do not remember the other man at all, the second man? A. No, sir.

Q. It was dark when you got out there, I suppose? A. I answered that before.

Q. Well, won't you answer it again? A. I said it was dark, yes.

Q. And it was dark when you left Jersey City too, wasn't it? A. No, it was just breaking day.

Q. You do not mean that, do you? A. Certainly. 30

Q. It was break of night?

The Court: Don't bandy words; you understand what he means.

Q. Did you have any talk with this man going over in the cab? A. No, I didn't; I had a talk with him out there when he was going to beat me out of the fare.

40

*Edward Farrell, for State—Cross.*

Q. What talk did you have out there? A. Well, he says, "you wait for me, you take me back to Jersey City". We do not make a practice of that, but I said "Pay me as far as we went now then I will wait."

10 Q. And that was the time the Special Officers were there? A. Yes, this one man, the first one was standing up there.

Q. And all the time he was trying to beat you out of the fare, as you say, this Officer was there? A. Yes, sir.

Q. You are sure one man was there? A. Yes, one man, and the old Chinaman that paid the fare.

Q. And you cannot recall whether there was only one man there? A. No.

20 Q. And whatever frisking of this man that came out of your cab was done, was done by this one man? A. Yes.

Q. And that was in the presence of the old Chinaman? A. No, the old Chinaman went away. We went back looking for him. I went back with a couple of detectives. They stopped me on the highway and took me back, but the old Chinaman was gone.

30 Q. Where were these detectives? A. They were going on their way out to Newark.

Q. They met you coming back? A. They met me coming back and they were on their way out and they saw the Jersey City cab and they stopped me and asked me where was I going and I told them Newark. They asked me who I had and I said a Chinaman and they told me to go back and show them where I left the Chinaman.

Q. And what did you do, go back? A. Yes, sir.

40 Q. Do you recall having a conversation with a lady named Miss Schuchardt around January

*Edward Farrell, for State—Cross.*

7th? A. After I identified the Chinaman in the Seventh Precinct they came over to hire my taxi to take them down to Police Headquarters.

Q. Do you remember having a conversation with them? A. On my way down they were talking to me, telling me—

Q. Did you have a conversation with them, yes or no? A. Yes, on the way down. 10

Q. And in that conversation did you say to them that you were not sure that this man was the man who rode out to Newark with you? A. No, sir.

Q. You did not say that? A. No, sir.

Q. Did you say that all Chinese were hard to identify but you were pretty sure he was the man? A. No.

Q. You did not say that? A. No, sir. 20

Q. Didn't you have any such conversation? A. No.

Q. And did you also say to them that the reason you were going to stick to your story was that you were afraid of the Police? A. No, sir.

Q. You did not say that? A. No, sir.

Q. Now, is there any doubt whatever in your mind that that was the man that was in your car? A. No, there is not, not after I seen him in the Seventh Precinct. 30

Q. Did you have to wait until you got to the Seventh Precinct to get the doubt out of your mind? A. No. I knew him. When he was explaining to me saying he was going to come back to Jersey City and I was arguing with him to get the fare as far as we went, until that old Chinaman came up and started to interfere—the old Chinaman paid me my fare—during that time I got a pretty good look at him.

Q. Is that what impressed upon you the fact 40

*Edward Farrell, for State—Cross.*

10 that this was the man, that you had a good look at him in Newark? A. Well, before he got in the cab I seen him and I also seen him twice on the way out, two or three times because he stopped. First he wanted—he said Newark, then he said on the way out “Market Street”. When I got to Market Street I opened the door of the cab and I asked him what part of Market Street he wanted to go and he said, “Mulberry Street”. When I got to Mulberry Street again I looked at him and asked him where and he said “Chinatown”; that was about three times I looked at him on the way out.

20 Q. Do you mean to say now that if you had not these looks at him out in Newark you would not be able to identify him from the look you had at him when he got into your cab at Bergen Avenue—in other words, looking at him in Bergen Avenue, you would not recognize him if you had not looked at him on the way to Newark and had the argument with him? A. Well, I will tell you, he was the only Chinaman I have ever rode since I have been in the taxi business.

30 Q. Assuming you had not talked to him in Newark, would you be able to identify him from the fact that he got on at Bergen Avenue? A. I could identify him, but I would not be as sure as I am, seeing him in Newark.

Q. So that after going out to Newark, having the talk with him on Market Street—was the taxicab lighted? A. There was a light in the back, but it was not necessary; you could see a man’s face, it was not so very dark that you could not see a man’s face.

40 Q. Then, having the talk in front of this detective and the old man paying the fare, you had an opportunity to look at this defendant? A. Yes, sir.

*Edward Farrell, for State—Cross.*

Q. And that impressed upon your mind that this was the man? A. Yes.

Q. What kind of a suit did he have on, could you say? A. A dark suit.

Q. Well, was it a blue or a black or what? A. I didn't look that far, it was a dark suit.

Q. He had no overcoat on? A. No overcoat, a little brown tie and a cap. 10

Q. Well, when you were arguing about your fare were you in the light, where there was a lamp or anything? A. There were stores and it was all lit up.

Q. Could you tell whether he had a blue or a black suit on? A. No.

Q. What color cap did he have on? A. I think it was a dark cap, I don't know the color of it. 20

Mr. Cutley: That is all.

*Cross-examination by Mr. McGeehan:*

Q. This cap that he had on, was it pulled down pretty well over his eyes? A. I didn't notice.

Q. I mean by that, it fitted him normally like a cap usually does, covering most of his forehead? A. Yes.

Q. The cap sat well down on his head, did it? A. I didn't look at that cap to see whether the cap fitted him or not. 30

Q. I do not mean that, but I mean it was a cap with a peak that covered down nearly to his eyebrows, didn't it? A. Well, it seemed to fit him all right.

Q. It had a large peak on it, didn't it? A. I didn't look that much to see if it was a large peak.

Q. At any rate, all you could see of his face with the cap on was from his eyes down, including his eyes, isn't that right? A. Well, after he had the cap on, yes, that is all I could see. 40

*Edward Farrell, for State—Cross.*

Q. And did you not notice whether he had a sweater on or not, did you? A. No.

Q. You do not know now what his height is, approximately, do you? A. I don't think I could be very exact.

Q. Well, is he tall or short? A. Medium.

10 Q. He didn't impress you as a tall man for a Chinaman, did he? A. No.

Q. Or short for one? A. No.

Q. There was nothing distinctive about him that made you remember him from any other Chinaman except when your attention was called to him some time later when he was brought before you, isn't that right? A. I don't know, I think he is different than the average Chinaman.

20 Q. He wore no glasses that day, did he? A. No, he didn't.

Q. So that you think you could take a look at this man and pick him out from any of the other Chinese if you had only seen him once with a cap on and no glasses on? A. Yes, sir.

Q. As a matter of fact, you did not pick him out from any other Chinese, did you? A. No.

30 Q. He was not put in any line up for you to pick him from, was he? A. Well, there was a line up in the Seventh Precinct, there was a line up of about four or five people.

Q. And he was in that line up? A. Yes, sir.

Q. And were the other men white men? A. Well, there was one white man and one—

Q. Was there any other Chinese there? A. Yes, two other Chinese there.

Q. Was Ing Kee there, the other defendant in this case? A. No, that was one of the complainants, and some man who was there for something else.

40 Q. At any rate, you knew just who he was,

*Edward Farrell, for State—Cross.*

didn't you, that other Chinaman? A. I didn't know who he was, I know there was another Chinaman there.

Q. How long was this after the ride in the taxi-cab; how long after the 27th of December was it that you were confronted with Sam Moy and asked whether he was the man? A. Oh, I imagine about two weeks. 10

Q. And during that time you had not seen him at all, had you? A. No, sir.

Q. Then, when he was brought before you you said you believed that he was the man? A. I said that is the man, yes.

Q. Now, you were not sure you could identify him until he was actually brought before you, were you? A. Well, I went out with the detectives that night and we were all through Chinatown there and I didn't pick him out, I could not see him. 20

Q. You do not know if you saw him or not, do you? A. Well, I knew I didn't see him out there or I would have identified him.

Q. You mean, seeing a great many Chinamen you could not pick anyone out as the one rode with you, that is what you mean, isn't it? A. I could have picked him out that night if he had been there.

Q. You think you could? A. I know I could. 30

Q. Didn't you say on your direct examination that you became sure when he was brought before you in the Police Station, that is when you became sure you could identify him? A. (No answer.)

Q. Don't you remember if you said that or not? A. I think I did.

Q. And that was true, that you were not sure whether you could identify him until they brought that man before you and said "Is this the man that rode with you"? 40

*Edward Farrell, for State—Cross.*

Mr. Jentz: He never said that and I object to the question.

A. Well, they didn't bring him before me. They put him in a line up with these four or five people and they asked me was the man there.

10 Q. Who was in that line up? A. Well, there was the Chinaman and—

Q. There were two ladies there, weren't there?

A. Yes, sir.

Q. Low Sing was there, one of the complaining witnesses, wasn't he? A. Yes.

Q. And this man, the defendant in this case? A. Yes, sir.

Q. Well, that was no line up, was it? A. Well, they were lined up there.

20 Q. You mean they were all in that room, weren't they? A. Yes.

Q. And you saw this defendant talking to the ladies there, didn't you? A. They brought me in first, then they said to pick the man out, they were all lined up, five of them.

Q. Who was lined up in that line up? A. The two men, that is these two Chinese and another man.

30 Q. You mean to say after you told the Police that you had driven a Chinaman to Newark, that they had two white men in the line up so that you could pick out and identify the man that rode with you, is that right? A. Well, the two men were there.

Q. You mean they were just in the room, don't you? A. Yes, sir.

Q. And Low Sing was just in that room and not in the line up with these defendants, was he?

40 A. He was beside the defendant there.

*Edward Farrell, for State—Cross.*

Q. You mean they were standing around there, don't you? A. Yes, sir.

Q. And did Low Sing have bandages on him at the time? A. No.

Q. You mean to say that he had no bandages on his head at the time when you were brought there?

A. He had his cap on.

10

Q. Was his face cut? A. No.

Q. Did you notice any plaster or any court plaster on his head? A. I guess you could see them hanging down.

Q. You knew he was the man that was hurt, didn't you? A. I didn't know he was the man who was hurt, no, I never seen him before.

Q. You saw them looking at him and you said he had court plaster or something hanging down?

A. Yes, but I didn't know—

20

Q. You knew he was the man who apparently had been hurt, didn't you? A. He could have been hurt but I didn't know if he was hurt in this case or not.

Q. You knew he was hurt and you knew that they were after you to identify a man in an assault and battery case, didn't you? A. Yes, sir.

Q. And you saw a man there with his head bandaged and you didn't know that he was the man who was the complainant? A. No, he could have been in some other fight there.

30

Q. He was the only other Chinaman there except this man that you were asked to identify, wasn't he? A. Yes, sir.

Q. And that is how you identified him? A. Yes.

Q. And there were Policemen there at the time you were doing that, weren't there? A. Yes.

Q. And they had questioned you about driving him before this, hadn't they? A. About driving him that night, yes, sir.

40

(Witness excused).

*Emanuel Sickel, for State—Direct.*

EMANUEL SICKEL, SWORN:

*Direct examination by Mr. Jentz:*

Q. You are an M. D. A. Yes, sir.

Q. And attached to the Jersey City Hospital?

10 A. Yes, sir.

Q. And you were attached there on December 27th, 1924? A. Yes, sir.

Q. What was your position in that hospital on that day? A. Well, I was on the emergency room that day, accident department.

Q. Did you on that day have any occasion to examine either Charles Jung or Low Sing, two of the witnesses who testified yesterday in this case?

A. Why, I examined specifically Charles Jung.

20 Q. The older man? A. Yes, sir.

Q. And how did you come to examine him at the time? A. I was summoned on the ambulance call and I came there and found—— I found both of them, in fact, pretty well covered with blood.

Q. What did you do as to Charles Jung? A. Charles Jung, I brought him in, in conjunction with the other patient to the hospital and I treated him.

30 Q. What was his condition? A. Well, his head was smeared with blood, his face and his hands.

Q. Did you make any examination as to where this blood came from? A. Yes.

Q. What was it caused by? A. Why, the cuts were small cuts as though done by some sharp instrument.

40 Q. And whereabouts on his body were those cuts? A. The cuts were mostly confined to his head and neck, also on his hands, a couple of cuts I believe.

*Emanuel Sickel, for State—Direct.*

Q. You say you examined the older man? A. Yes.

Q. I show you Exhibits S-5, S-7, S-8, S-9 and S-10 and ask you whether or not any of these indicate the wounds of Charles Jung, and if so, which? A. As I said, the cuts were multiple, more than one. 10

Q. About how many did you find at the time? A. Approximately— I didn't count them but about 15 or 20, I suppose.

Q. Did you have to take any stitches in them? A. Yes, they all required stitches.

Q. And about how long was this man in the hospital?

Mr. McGeehan: I object, I think it is immaterial to the issue in this case. 20

Mr. Jentz: I want to show that there was an assault with intent to kill, and the severity of the wounds is of evidential value.

The Court: I will allow it.

Mr. McGeehan: Exception.

Q. How long was this man in the hospital? A. Well, that was, in a sense, out of my jurisdiction. However, he was said to be in the hospital about ten days. 30

Q. You say, in your opinion as a doctor, upon examining these wounds they were caused by some sharp instrument? A. They impressed me as such.

Q. From your experience in that sort of work? A. Yes, sir.

Q. Did you examine the other man? A. I did not, not specifically.

Q. But you saw him there? A. I saw him there. 40

*Emanuel Sickel, for State—Cross.*

Q. And he was bleeding at that time, too? A. Yes, sir.

Q. But you made no specific examination of his condition? A. No, sir, I did not.

Q. That was taken care of by another doctor? A. Yes, sir.

10

Mr. Jentz: That is all.

*Cross-examination by Mr. Cutley:*

Q. Do you say these wounds were caused by a hammer or how? A. I could not say, they were small incisions.

Q. What you mean is, you do not know what they were caused by except on what somebody would tell you? A. No, I know they were caused by a sharp instrument.

20

Q. Would you say they were caused by a hammer? A. Well, a hammer is not a sharp instrument.

Q. I mean, would you say they were caused by a hammer? A. I would not, no, sir.

Q. Would you say they were caused by the butt end of a revolver? A. I would not.

Q. Were there any wounds there that indicated to you that they were caused by an axe? A. No, sir, unless it was by the sharp end of an axe, of course.

30

Q. What other way do you think I meant, to hit him with the handle? A. Well, there is a blunt end of an axe too.

Q. As a matter of fact, as far as you know, the wound or wounds could have been made with a black jack or some other object? A. They were made by some sharp instrument.

40

Mr. Cutley: That is all.

Mr. McGeehan: No questions.

(Witness excused.)

*Joseph Murray, for State—Direct.*

JOSEPH MURRAY, SWORN:

*Direct examination by Mr. Jentz:*

Q. You are an M. D. A. Yes, sir.

Q. And you are attached to the City Hospital of Jersey City? A. Yes, sir.

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Q. And you were there on December 27th, 1924? A. Yes, sir.

Q. What was your position in that institution on that day? A. Well, I was in the emergency room.

Q. On the afternoon of that date, December 27th, 1924, did you have occasion to examine either Charles Jung or Low Sing, the two Chinamen who testified yesterday? A. Well, I had the younger fellow, I don't know his name.

20

Q. The younger man? A. Yes, sir.

Q. And where did you first see him, Doctor? A. Well, he was brought in from the ambulance and I, being there, Dr. Sickel asked me to help him out with the case.

Q. Did you make any examination of Low Sing? A. Yes, I made a specific examination of the younger fellow.

Q. And what was the result of your examination, what did you find? A. Well, he had a multiple laceration of the scalp, one on the right side of his chest and some abrasions on the right arm.

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Q. How many lacerations would you say there were upon his head, Doctor? A. I would say there were about fifteen, anyway, ten or fifteen.

Q. And what wounds did you find on the body? A. There was one on the right chest.

Q. How many abrasions were there? A. There were about three or four, down the right arm.

Q. Can you tell us from your experience in this sort of work what caused these lacerations?

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*Joseph Murray, for State—Cross.*

Mr. McGeehan: That is objected to.

The Court: Allowed:

Mr. McGeehan: Exception.

10 A. Well, when I examined him, I thought I saw two different types of wounds, a number of them were knife wounds, clean cut wounds and the others were lacerated wounds, whether caused by the same instrument or not, I could not say.

Mr. Jentz: That is all.

*Cross-examination by Mr. McGeehan:*

Q. All you know is these were cuts, and you have no knowledge of how they were caused, have you? A. No, sir.

20 Q. They could have been caused by breaking through a pane of glass, couldn't they? A. Yes.

Q. At any rate, whatever caused the wounds, they were of a nature that would cause blood to flow immediately on their being sustained, were they not? A. Yes.

Q. And there was quite a profuse flow of blood from the wounds you saw, was there not? A. Yes, sir.

Q. That was so at the time you examined him?

30 A. Well, when I looked at him, he was not bleeding so very much, but he had bled quite a lot.

Q. Can you tell as a doctor whether he had bled quite a lot? A. Yes.

Q. And you could tell from the nature of the wounds that he had bled immediately upon sustaining them, is that right? A. Yes.

Mr. McGeehan: That is all.

Mr. Cutley: No questions.

*Joseph Murray, for State—Re-direct.*

*John Torpy, for State—Direct.*

*Re-direct examination by Mr. Jentz:*

Q. I show you Exhibit S-6 and ask you if that is a true representation of the Chinaman you examined? A. Yes.

Q. And are these cuts that you have told us about, these specific wounds, that you noticed? A. Yes, sir. 10

(Witness excused.)

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JOHN TORPY, SWORN.

*Direct examination by Mr. Jentz:*

Q. You are a lieutenant of the Jersey City Police Department? A. Yes, sir. 20

Q. And have been for how long a police officer? A. Eleven years.

Q. How long have you been a lieutenant? ..A. Going on three years.

Q. And you are the officer who was in charge of the investigation of this assault of Charles Jung and Low Sing on December 27th, 1924? A. Yes, sir.

Q. When did you first learn of this case lieutenant? A. Ten minutes to five of the evening of December 27th, at the 7th Precinct. 30

Q. Upon learning about the case, what did you do? A. I immediately went over to 357 Summit Avenue, where the assault was committed, and upon arriving at Summit Avenue and Academy Street, I learned that one of the Chinamen was arrested.

Mr. McGeehan: I object to what he learned. 40

*John Torpy, for State—Direct.*

A. (Continued): I went to the drug store at the corner of Academy and Summit Avenue and I found Ing Kee in the custody of Officer Furlong and another officer.

Q. Ing Kee, the man you saw there, is this the dark defendant? A. Yes, sir.

10 Q. What happened next, Lieutenant? A. I was instructed by the Inspector to take Ing Kee to the City Hospital to have him identified.

Q. Did you do that? A. Sergeant Burke and I took Ing Kee to the City Hospital. When we arrived Charles Jung and Low Sing were being treated by the doctors for cuts and we had to wait until the doctors had finished with them. In the  
20 meantime an alarm had been sent out and between eight and ten Chinamen had been picked up in different parts of the City and were brought to the City Hospital and after Low Sing and Charles Jung had been treated and dressed for their wounds, I lined the different Chinamen up in the City Hospital, with Ing Kee in the line and Charles Jung and Low Sing picked Ing Kee out as one of the men that assaulted them.

Q. What did you do next? A. I immediately brought him back to the 7th Precinct and prepared to take a statement from Low Sing and Charles  
30 Jung at the time.

Q. When did you first find out there was another Chinaman? A. I was at the 7th Precinct. We received a message that a Chinaman—a couple of Chinamen and a white fellow was in a taxicab and they had been apprehended in the 2nd Precinct and I told the Inspector—

Mr. McGeehan: I object to the conversation.

40 Q. What if anything, did you or the men in your precinct do toward the apprehension of the other

*John Torpy, for State—Direct.*

defendant who appears in this case? A. You mean Sam Moy?

Q. Yes. A. Well, on January 6th I was here, prosecuting John Sing and another Chinaman.

Q. That is, the man that has been mentioned by Mr. McGeehan? A. By some of the lawyers there.

Q. Yes, go on. A. And another Chinaman whom we had apprehended on Summit Avenue. 10

Mr. McGeehan: I object.

A. And while I was here in court, Low Sing showed me an overcoat and a hat and told me that the coat and hat does not belong to him. Upon searching the overcoat I found a Christmas card

Q. I show you this hat, Exhibit S-3 and another Exhibit S-2, I believe, and ask you whether this hat and coat is the hat and coat that you were shown and in which you found the Christmas card? 20

A. Yes, sir.

Q. I show you Exhibit S-2 and Exhibit S-1 and ask you whether that is the card that you referred to and another paper which you found? A. Yes, sir.

Q. Will you read it to us now? A. "To Sam with Christmas cheer and New Year's prosperity, Dorothy E. Schuchardt." 30

Q. Upon reading that card, what, if anything, did you do toward locating this defendant Sam Moy? A. Why, I looked up the New York telephone directory—

Mr. Cutley: Come right down to the point, tell how you got him.

A. Well, in looking up the telephone directory, I found there was a Dorothy Schuchardt lived in Jersey City. The Jersey telephone book gave her 40

*John Torpy, for State—Direct.*

address as Dorothy Schuchardt, 121 Garrison Avenue. Sergeant Burke and I went down there on the morning of January 7th and showed her the overcoat.

10 Mr. Cutley: I object to any conversation with Dorothy Schuchardt.

Q. All right. After talking with Dorothy Schuchardt and learning something, which you must not tell us now, what did you do next? A. Why, we waited in the neighborhood of Garrison Avenue and arrested Sam Moy.

Q. When you first saw Sam Moy what was he doing? A. Coming through a lot from Tonnelle Avenue to Garrison.

20 Q. On what day was that? A. January 7th at about 1:20 P. M.

Q. And what did you do with him after you placed his under arrest? A. We asked him what he was doing in the neighborhood and he said he was going up see a friend of his at 121 Garrison Avenue.

Q. And then what did you do? A. We found out who his friend was and we went up with him.

Q. Took him up to this friend? A. Yes, sir.

30 Q. And was that friend Dorothy Schuchardt? A. Yes, sir.

Q. What took place in the presence of Sam Moy and Dorothy Schuchardt, if anything?

Mr. Cutley: I object as immaterial and irrelevant.

The Court: I will allow it.

Mr. Cutley: Exception.

40 A. Why, when he sat in there, I started questioning him about what he was doing in Jersey City and he said he was taking English lessons, so I

*John Torpy, for State—Direct.*

showed him this card. Now, I said, "Did you ever see this card before?" He said, "Yes."

The Court: I don't think you ought to go into that.

Q. After you had this talk, did you take him to police headquarters or any other place? A. Took him to the 7th Precinct. 10

Q. Did you, at that time, Lieutenant, show him this hat and coat? A. At the 7th Precinct.

Q. And what if anything did he say about the hat and coat? A. He said he loaned the coat to a fellow by the name of Lone Lung.

Q. What did he say as to whether it was his hat and coat or not? A. He said it was his hat and coat. 20

Q. What, if anything, did he say about the card? A. The card he said—he told me in Miss Schuchardt's home on Garrison Avenue that he had thrown it away. 20

Q. And what did he tell you at police headquarters? A. I showed the other slip of paper in Miss Schuchardt's home in Garrison Avenue, then he admitted they both were his and he thought he had thrown them away.

Q. After he was taken to the 7th Precinct, was he at any time confronted by Charles Jung and Low Sing, the complainants in this case? A. He was confronted by Low Sing. 30

Q. And what happened, in your presence, Lieutenant, between Low Sing and Sam Moy? A. Why, Low Sing identified him as the man who assaulted him.

Q. At any time subsequent thereto was he confronted by Charles Jung? A. Charles Jung on the evening of the same day at headquarters. 40

*John Torpy, for State—Cross.*

Q. And what did Charles Jung say in the presence of Sam Moy? A. Charles Jung identified him as being the Chinaman who assaulted.

Mr. Jentz: That is all at this time.

10 *Cross-examination by Mr. Cutley:*

Q. Now, Mr. Torpy, you were on this case from ten minutes of five on the day it happened and at all times subsequent to that, weren't you? A. Only while I was sick.

Q. But ever since that, you and Lieutenant Burke have been on this case? A. Yes, we made the arrests.

20 Q. And you were one of the men who went to Newark with Mr. Farrell? A. No, sir, I didn't go to Newark with Mr. Farrell.

Q. When did you first go back to the laundry after the arrest of Ing Kee? A. Why, I was back in the laundry, I think about three days after Ing Kee was arrested.

Q. Did you go through the place? A. No, sir.

Q. What rooms did you go through? A. I went through all of them.

Q. How many rooms are there? A. Two.

30 Q. You went through the store— A. The store, the bedroom and what they call a dining room.

Q. Where are the doors of these two rooms? A. There is a door on the side, like, that they call this dining room, then there is a door closing the sleeping room from the dining room.

Q. Did you go through these rooms? A. Yes, sir.

40 Q. And your idea was to go through there as a detective, wasn't it? A. I went there with a Chinese interpreter and two Chinamen who were

*John Torpy, for State—Cross.*

going to run the place while Low Sing and Charles Jung were in the hospital.

Q. After that did you visit the place, between that day and the day of the trial of John Sing?

A. No.

Q. So that you were only there once? A. Once.

Q. And did you look around the place at all?

A. No, sir.

Q. Did you see this hat and overcoat there?

A. I didn't look for anything, I just went there with the two Chinamen who were going to take charge of the laundry.

Q. How long did you stay there? A. About four or five minutes.

Q. Now, who is Eddie Gar? A. He is a man acting as interpreter.

Q. And was he one of the men who were held up by the police in Jersey City on the night of January 27th? A. Yes.

Q. As a matter of fact, he is secretary of Hip Sings, isn't he? A. I don't know what his office, but I know he is connected with them.

Q. Now, you say you were in this laundry and didn't make any observation or see this coat and hat? A. I was in the place three days after this crime was committed.

Q. And the first time you knew about this coat was the 7th day of January? A. The 6th.

Q. That would make ten days after the date of the alleged assault? A. Yes, sir.

Q. Which one of your detectives were in that place? A. Why, I could truthfully say three of them were in there, that is, the night the crime was committed.

Q. But between the night the crime was committed and the day you went down and put in the men Eddie Gar brought over, do you know of your

*John Torpy, for State—Cross.*

own knowledge whether any of these detectives had been in there? A. The store was closed up.

Q. Eddie Gar was the interpreter for Low Sing and Charles Jung? A. Yes, sir.

Q. And he is, as a matter of fact, in all matters of this kind.

10 Mr. Jentz: That is objected to.

The Court: I will allow it.

A. When I first became acquainted with Eddie Gar, our friend, I arrested John Sing and he acted as interpreter.

Q. Was it in Judge O'Regan's court that this coat was brought over to you by Low Sing? A. Yes.

20 Q. And was Eddie Gar there that day? A. No.

Q. He was not over in Judge O'Regan's court? A. No.

Q. Now, after you had been to the hospital and waited for these men to get fixed up by the doctor, when did you first get any statement from them, if you got any? A. Why, about half past eight on the evening of December 27th.

Q. Were they able to talk to you then? A. Through the interpreter.

30 Q. Who was the interpreter? A. Eddie Gar.

Q. Who did they say assaulted them? A. They had identified Ing Kee as one of them, and through the interpreter, they told me that the other man was Frank Moy.

Q. Now, Eddie Gar was there? A. Yes, sir.

Q. He speaks perfect English, doesn't he? A. Yes, sir.

Q. And he said it was Frank Moy? A. Yes.

40 Q. Did they give you any other names for Frank Moy? A. They gave some Chinese names.

Q. Moy Ing? A. Something like that.

*John Torpy, for State—Cross.*

Q. Did you take a statement from this man, Lieutenant? A. I took a statement from both of them.

Q. Have you got those statements with you? A. I have not.

Q. They are matters of police record? A. Yes, sir. 10

Q. Did you give them to the prosecutor? A. They were handled in the regular course.

Q. Was any action taken in the First Criminal Court in regard to this case? A. In the First Criminal Court, Ing Kee was held without bail.

Q. Was there a complaint there? A. For Ing Kee.

Q. And one for Frank Moy? A. No, sir.

Q. Did they mention the name of Frank Moy that night? A. Frank Moy was the only name they mentioned to me that night. 20

Q. And you immediately took steps to apprehend Frank Moy, didn't you? A. Yes, sir, we did.

Q. And he was in Chicago? A. I don't know where he was.

Q. Well, you know this, don't you, that acting upon the information that they gave you, on the 30th day of December following the assault an indictment was found by the Grand Jury— 30

Mr. McGeehan: Objected to on the ground that the indictment itself is the best evidence.

Q. Did you appear before the Grand Jury? A. I did.

Q. And the defendants were in the hospital at that time? A. Yes, sir.

Q. They did not appear? A. No. 40

*John Torpy, for State—Cross.*

Q. And it was on your information that the indictment against Frank Moy was handed down?

A. That, I don't know.

Q. When was the first time that the same Sam Moy came in? A. The first time I ever knew about Sam Moy was on January 6th—January 7th, excuse me.

10

Q. Now, on the date of John Sing's trial was Sam Moy in Judge O'Regan's court? A. He was not.

Q. Not to your knowledge? A. No, because if he was here I would have had him arrested.

Q. Why would you have had him arrested? A. Because they said he was the man and they described him, I knew him.

Q. And at that time, did you see Frank Moy?

20 A. Frank Moy acted as interpreter for John Sing.

Q. Did they say that the interpreter for John Sing was the man that assaulted them? A. They did not say anything of the kind. I was only asking questions through the Chinese interpreter.

Q. What did the interpreter say? A. Just said Frank Moy.

Q. When did Sam Moy's name come into the case? A. January 7th.

30 Q. And after you got this postal card with Dorothy Schuchardt's name on it, you went to her house? A. Yes.

Q. And asked her about Sam Moy? A. I did not.

Q. And she told you she would produce Sam Moy or something like that? A. No, sir.

Q. As a matter of fact after you saw her, Sam Moy came over? A. We went to her house about quarter to ten on that morning, January 7th. Sam  
40 Moy came over to her house about one-twenty on that afternoon.

*John Torpy, for State—Cross.*

Q. And that is when you arrested him? A. We arrested him.

Q. Didn't you have a conversation with Dorothy Schuchardt in which she said she would bring him over any time you wanted him? A. We had a conversation with her and while we were talking to her Sam Moy called up.

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Q. While you were there? A. Yes, and he wanted to come over and she told him not to come over until half past twelve or one.

Q. How do you know that he wanted to come over? A. She told us that.

Q. And you said all right, let him come over at that time? A. She made the arrangement before she consulted us.

Q. Is that the time she said she would have him there? A. While we were there Sam Moy telephoned and after she hung up, she told us that she had made arrangements for him to be here at one o'clock.

20

Q. To bring him over? A. He was coming over.

Q. And he did come over? A. He did.

Q. And Frank Moy has never been apprehended to your knowledge, has he? A. Not to my knowledge.

Mr. Cutler: That is all.

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*Cross-examination by Mr. McGeehan:*

Q. At the time you took Ing Kee to the hospital to have him identified, did you know that he had been shown to Low Sing before that? A. No, sir.

Q. Didn't know that? A. No, sir.

Q. And you didn't know that Low Sing or Charles Jung had seen Ing Kee before you brought him to the hospital? A. Before the assault or after the assault?

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*John Torpy, for State—Cross.*

Q. I mean before you brought Ing Kee to the hospital to be identified and when you brought him there you did not know that he had been shown to Low Sing before that, did you? A. No.

10 Q. The policeman who was there at the time did not report any identification at the drug store to you, did he? A. Not to me.

Q. And you had charge of the case? A. I was the lieutenant in charge. When the Inspector came there, he had charge.

Q. But you were actively working it on the man from headquarters? A. I was from the precinct it happened.

20 Q. And when you first arrived there Ing Kee was being held in the drug store? A. Ing Kee was in the drug store when I first arrived there, yes.

Q. Now, then, as I understand it, there were eight or ten Chinamen in that vicinity picked up within an hour? A. No, not in that vicinity, all over the City.

Q. At any rate, eight or ten of them were picked up within an hour, you say? A. Yes.

Q. Was Eddie Gar at the hospital when you got there first? A. No, sir.

30 Q. Eddie Gar came into the matter about three hours after it happened, didn't he? A. Yes, sir.

Q. And Eddie Gar you found to be a friend of these two men who had been assaulted? A. Yes, sir.

(Recess.)

40 Q. When you say Frank Ing or Moy Ing acted as interpreter for Charlie Sing, you meant at the police court hearing? A. Sir?

*John Torpy, for State—Cross.*

Q. Where was Moy Ing or Frank Moy interpreter for Charlie Sing? A. At police headquarters.

Q. And was he interpreter for John Sing about a week before this was supposed to have happened? A. December 22nd.

Q. And at that time the two of these witnesses, Low Sing and Charles Jung were present down these? A. No, sir. 10

Q. Which one was there? A. Charles Jung.

Q. But Charles Jung was there, wasn't he? A. Yes, sir.

Q. And he met Moy Ing there at the time, didn't he? A. Yes.

Q. Now, after you got the information from these two men through Eddie Gar as interpreter, that Frank Moy or Moy Ing was one of the men that assaulted him, proceeded then to look for Frank Moy or Moy Ing? A. Yes. 20

Q. That is, Frank Moy and Moy Ing being the same, is that right? A. Yes.

Q. And you learned that Frank Moy, Moy Ing had left for Chicago on the morning of the day that this assault was supposed to have taken place? A. I heard of it, but I don't know how true it was.

Q. But you were in communication with the Chicago police, weren't you? A. No, sir. 30

Q. But your investigation indicated to you that Frank Moy, Moy Ing was not in Jersey City on that day? A. No, sir, it did not.

Q. Did you believe on the 30th of December that Moy Ing or Frank Moy was the man that had perpetrated this assault? A. Yes.

Mr. Jentz: Objected to, what he believes.

The Court: He answered it. 40

*John Torpy, for State—Cross.*

Q. And you continued to believe so up to the time that Low Sing came to you, is that right? A. I continued to believe so until I was informed by Miss Schuchardt who this card was sent to.

Q. And the card is what changed your mind? A. The card and the coat and hat.

10 Q. When you saw this card and talked to the lady at whose house you visited after you received the card, then you told Charles Jung and Low Sing about what you learned, didn't you? A. No, sir.

Q. Didn't you speak to them about the name of Sam Moy? A. I didn't know anybody by the name of Sam Moy.

20 Q. Did either of them mention the name Sam Moy to you? A. Through the interpreter they mentioned the name Frank Moy.

Q. But the question now is, you never mentioned the name of Sam Moy, to them, did you? A. I didn't know a thing about Sam Moy, no, until Miss Schuchardt told me about the card.

Q. And these two men, even after you found the card—by these two men I mean the men that were hurt—didn't mention the name Sam Moy to you, did they? A. No.

30 Q. They didn't tell you they knew a man by the name of Sam Moy, did they? A. Sam Moy's name was never mentioned by them or by me.

Q. And Ing Kee's name was never mentioned by them, was it? A. Ing Kee's name was.

Q. It was mentioned after you took Ing Kee to the hospital and showed Ing Kee to them, was it? A. That was the first time I spoke to them after they were assaulted.

Q. You had not spoken to them before? A. No.

40 Q. Did they tell you that they knew Ing Kee's

*John Torpy, for State—Cross.*

name or knew him before? A. The conversation was entirely through the interpreter.

Q. Well, through the interpreter, they didn't say they ever knew Ing Kee or knew his name, did they? A. I never asked them such a question.

Q. And they never volunteered it or told you through the interpreter, did they? A. No, sir, they didn't. 10

Q. You got Ing Kee's name from Ing Kee, didn't you? A. I knew his name was Ing Kee when I left the drug store.

Q. He gave his name as Ing Kee, didn't he? A. But when I took Ing Kee to the complainant they identified the defendant as Ing Kee.

Q. But the name Ing Kee you got from this defendant, Ing Kee, didn't you? A. Yes, I knew his name was Ing Kee after he was arrested. 20

Q. Well, you did not know it except from what he said to you? A. I knew it from the Policemen that arrested him.

Q. He told the Police that his name was Ing Kee? A. When he was brought to the Station House, we took the names of the witnesses and that is when we got the name Ing Kee.

Q. As far as you know, he told the Policemen his name was Ing Kee? A. At the Station House, when we took his pedigree. 30

Q. Now, after this occurred a number of other officers were in this laundry? A. I was not in the laundry.

Q. Didn't you go to the laundry at all? A. No, sir.

Q. At any time? A. At no time that day the assault was committed.

Q. Well, three days later? A. Three days later I went. 40

*Richard Burke, for State—Direct.*

Q. Did you look through that laundry? A. No, sir.

Q. What officers had searched the laundry? A. Why, Detectives Newhouse and Lieutenant Elman.

10 Q. They found no overcoats there, did they? A. I don't know what they found, I was not there when they searched it.

Q. They reported no finding of an overcoat or cards there, did they? A. The overcoat and the hat was given to me in the Court room.

Q. The question is, they reported to you before the 6th of January no finding of any overcoats by them? A. No overcoat or hat was found.

20 Q. And no knife or other weapon was found upon Ing Kee? A. No knife or other weapon was found upon him.

Q. And there were no blood stains upon his clothes? A. Not when I had him.

Q. And none was reported to you? A. None was reported to me.

(Witness excused).

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RICHARD BURKE, SWORN:

30 *Direct examination by Mr. Jentz:*

Q. You are a Sergeant of Police of Jersey City?

A. Yes, sir.

Q. How long have you been a Police Officer, Sergeant? A. Nine years.

Q. And how long have you held the rank of Sergeant? A. Three years.

40 Q. Are you familiar with the investigation of this case against these two defendants? A. Yes, sir.

*Richard Burke, for State—Direct.*

Q. When did you first learn about it, Sergeant?

A. Why, about 10 minutes of 5 on the night of December 17th, I was in the Seventh Precinct Station with Detective Neuhaus and a call came in that two Chinamen had been assaulted at 357 Summit Avenue. Detective Neuhaus and myself got on the motorcycle and went to the laundry. I got out of the motorcycle and went into the laundry. When I got there I saw Charles Jung sitting on a box with his body over the table, bleeding from the head and from the ears. I ran outside, to send an alarm, and after I had telephoned, I came on the street and about 10 or 15 feet from the corner, that is about in front of the laundry I saw Low Sing and he was bleeding very badly from the head and from the neck. The ambulance came and they took him into it and my attention was called to a crowd in front of the drug store corner of Academy Street and Summit Avenue. I went there and I saw Patrolman Furlong and he had in custody this defendant, Ing Kee. I went in and I started to give him a frisk to see if he had anything on him. I asked him what his name was and he told me Ing Kee. At that time Inspector Biggers, Lieutenants Mulvaney and Corpey came. Captain Biggers ordered Lieutenant Corpey and myself to take him to the Jersey City Hospital to have him identified. When we arrived at the Hospital the two men that were assaulted were being attended to by the doctors and we waited until they got through. In the meantime a number of Chinese were brought in by different Policemen from different parts of the city, and after the Doctors had gotten through with these Chinese after attending to them, Lieutenant Corpey took these Chinese, along with Ing Kee and placed them in the adjoining emergency

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*Richard Burke, for State—Direct.*

room and then he called to Charles Jung and Low Sing and they identified Ing Kee, the defendant, as the man that assaulted them.

10 Q. Did you take any part in the apprehension of the other defendant, Sam Moy? A. On January 7th—on January 6th, rather,—after the trial of John Sing, after the trial was over, Low Sing said that he had a coat and hat—

Mr. McGeehan: I object.

A. (Continuing.) That had been brought to him at the Jersey City Hospital after he was discharged and he showed us a card, and a piece of paper that was in the coat and we took the coat and card—

20 Q. This coat and hat, which is here, is this the coat and hat which he showed you? A. That is the coat and hat, yes.

Q. And these cards, Exhibits S-1 and S-2, were they the papers? A. Yes, sir.

30 Q. What happened after that Sergeant? A. Why, the next morning Lieutenant Torpey and I started in to investigate this card and we came to touch with the different directories and telephone books. Lieutenant Torpey called up a party by the name of Schuchardt some place in Brooklyn, and this party we inquired about and asked for—

Q. Never mind that, you finally located this lady in Jersey City? A. Yes, sir.

Q. Dorothy Schuchardt? A. Yes, sir.

Q. The name signed to this card? A. Yes, sir.

Q. After you located her, what did you do? A. I was there about 20 minutes after 12. We placed under arrest this other defendant, Sam Moy.

40 Q. Where was he when you placed him under arrest? A. He was coming across the street, in front of 121 Garrison Avenue.

*Richard Burke, for State—Cross.*

Q. That is where Dorothy lived? A. Yes, sir.

Q. After he was placed under arrest was he at any time confronted with either of the complaining witnesses? A. He was confronted with Low Sing at the Seventh Precinct Station House and later in the evening was confronted with Charles Jung.

10

Q. What happened when he was confronted with Low Sing? A. Low Sing identified him as the man that had assaulted him on the night of December 27th.

The Court: And Charles Jung?

The Witness: Charles Jung identified him in Police Headquarters that evening as the man that assaulted him.

Mr. Jentz: That is all.

20

*Cross-examination by Mr. Cutley:*

Q. This arrest you speak about, that was all arranged, wasn't it? A. The arrest?

Q. In other words, the opportunity for you to arrest Sam Moy was given by Miss Schuchardt?

A. Yes.

Q. She said, "I will get that man and have him over here, he will be here at half past 12, and if you are here you will have him"? A. Yes, sir.

30

Q. Do you think so, Mr. Martin? You know that about that? A. No, sir.

Q. Passing through the lot was not any crime? A. No, sir.

Q. So that when you mentioned that you do not mean anything by it? A. I just told you how the arrest was made.

Q. In other words, it was all set to music, it was all arranged? A. Yes, he was to come over, that is how we knew he was to be there.

40

*Richard Burke, for State—Cross.*

Q. Now, Mr. Burke, were you at 357 Summit Avenue between the 27th day of December and the time that Mr. Torpey took the two Chinamen in possession of the place? A. Yes, I was there.

Q. How many times were you there? A. Maybe once a week.

10 Q. What were you doing there? A. Why, we went there to take these men to Court when we had occasion to go to Court.

Q. I mean between the 27th day of December and the 30th? A. While these men were in charge?

Q. Yes? A. There was a Policeman there.

Q. And was the Policeman there all the time? A. Yes, sir.

Q. You did not see this coat while you were there, or the hat? A. In the laundry, no.

20 Q. Who was the Policeman that was there all the time? A. Why, there were different Policemen there at different times.

Q. And the laundry men were there, they were there after Torpey took them there, weren't they? A. Yes.

Q. How many other detectives were there, to your knowledge? A. Neuhaus and Lieutenant Ellman.

30 Q. You know that of your own knowledge, they were in there during that time? A. Neuhaus was there once with me.

Q. But there was a Policeman there all the time? A. All the time.

Q. Was he there at any time when there were no Chinese there? A. Who?

Q. A Policeman. As I understand from Mr. Torpey, Eddie Gar got permission to put two Chinese in there? A. Yes.

40 Q. And Mr. Torpey fixes it as the third day after the arrest? A. Yes.

*Richard Burke, for State—Cross.*

Q. Between the day of the arrest and the third day after the arrest was there a Policeman there all the time? A. There was a Policeman assigned there at all times.

Q. Were there any Chinamen there in that interval? A. I could not say as to that.

Q. But notwithstanding that, the times you were in there, you never saw this coat and hat hanging up there? A. No, sir.

Q. Or any other place? A. I didn't have any occasion to go in and look; I didn't search the place.

Q. But you were in there? A. Yes, but I didn't search the place.

Q. If they were hanging up on the wall when you would open the door, the chances are you would have seen it? A. If it was right in front of me in the store, yes.

Q. Now, were you with Mr. Torpey when he got the statement through Eddie Gar of these two complainants at the hospital? A. Yes.

Q. Did you hear them, through the interpreter, say that Frank Moy was the man? A. Yes.

Q. And as a result of the talk about Frank Moy you went before the Grand Jury with Torpey? A. I was subpoenaed, I didn't go before them.

Q. And that was three days after the alleged assault? A. A few days after.

Q. The assault occurred on Saturday and the following Tuesday, I think, the 30th, Frank Moy was indicted? A. It was only a few days after the assault.

Q. You heard this interpreter talk, didn't you, Eddie Gar? A. Yes.

Q. You knew Eddie Gar then, didn't you? A. Yes.

Q. Did you know whether or not he was the

*Richard Burke, for State—Cross.*

representative of a rival clan of Tong? A. I didn't know anything about that, all I knew was that he knew these other two men that were assaulted.

10 Q. And he was kind of taking care of their rights—he was the fixer, wasn't he? A. He came there to interpret for them.

Q. And he was in Jersey City the night the thing happened, wasn't he? A. The night of the assault—he got there later in the evening.

Q. Well, he was interested in another case, wasn't he, Chong Sing's case? A. Yes, sir.

20 Q. And it was not until Low Sing got out of the hospital that the question of this coat came up? A. It was after Chong Sing and Low Sing had been discharged from the Hospital that Low Sing told it to me.

Q. Then the coat was shown to you? A. Yes, sir.

Q. And it was shown by Low Sing to Mr. Torpey and you in the court room? A. Yes, sir.

Q. During all that time, from the 27th down to the day of Chong Sing's trial, ten days approximately, nothing was ever said about the coat? A. No.

30 Q. Although a Policeman was there and the detectives were in and out? A. Yes.

Mr. Cutley: That is all.

(Witness excused.)

40 Mr. Jentz: Mr. Cutley has suggested that for the purpose of saving time that the other two detectives, Neuhaus and Leffhelm, if called, would testify to the same thing that Sergeant Burke testified to. I am willing to admit that if they took the stand their testimony would be exactly the same as to what happened and what took place.

*Richard Burke, for State—Cross.*

Mr. Cutley: That is satisfactory.

Mr. McGeehan: That is satisfactory to me.

Mr. Jentz: We rest.

Mr. McGeehan: I move for a direction of a verdict in favor of the defendant, Ing Kee, on the indictment charging him with assault upon Low Sing. 10

The testimony, as your Honor will recollect, of Charles Jung is that he was attacked by this defendant in a room, the door of which was closed, that he was set upon by the defendant and two white men or one white man and that subsequent to that his friend in another room had gotten under a bed and then this defendant was joined by the other defendant and the white men in a continuance of the attack upon Charles Jung. The other defendant states that at no time did Ing Kee attack him. At no time was he in the room with him. When he was attacked, according to his statement, and for the purpose of this motion, of course, it must be accepted as true, at no time was he attacked by anybody but the other defendant and one white man. There is no evidence as to why the fight started, if it did, and if this defendant was present, and there is no evidence as to how the fight in that other room started. At any rate, the evidence does not show any assault upon Low Sing by this defendant, and I think that as to him, the indictment charging him with this assault must be dismissed and a direction of a verdict for acquittal directed on that one indictment. 20 30

The Court: I deny the motion. 40

Mr. McGeehan: Exception.

*Nelson W. Bowdish, for Defendant.—Direct.*

DEFENDANT'S CASE.

2 P. M.

Mr. McGeehan opened for the defendant, Ing Kee.

10 Mr. Cutley opened for the defendant, Sam Moy.

NELSON WILLIAM BOWDISH, SWORN:

*Direct examination by Mr. Cutley:*

Q. Where do you live? A. 22 Buffington Avenue, Newark, New Jersey.

Q. What is your occupation? A. Special Police Officer.

20 Q. On December 27th, 1924, were you such Special Police Officer in Newark? A. Yes, sir.

Q. And at or about 5 o'clock that night were you on Mulberry Street, Newark? A. Yes, sir.

Q. And at that time did you see a taxicab driven by Mr. Farrell, who was on the stand here this morning? A. Yes, sir.

Q. And at that time did you see anybody come out of the taxicab? A. I saw one person.

Q. Was that person a Chinaman? A. Yes, sir.

30 Q. Was the person whom you saw come out of that taxicab the defendant Sam Moy, who is present here in Court today? A. I have not looked over to see if he is in Court or not.

Mr. Cutley: Sam Moy, stand up, take off your glasses.

A. He does not appear to be the man.

Q. Well, will you say he is not the man? A. I should say he is not the man.

*Nelson W. Bowdish, for Defendant.—Direct.*

Q. And the man who came out of the taxicab, you frisked, did you, looking for a revolver or something? A. Yes, sir, anything in the line of concealed weapons.

Q. And the man whom you did frisk, did he have any concealed weapon upon him? A. No, sir, none whatever. 10

Q. At the time you were accompanied by another Special Officer? A. No, sir, I was all alone.

Q. Was there another Officer in the neighborhood or the vicinity? A. Within a few doors away from me.

Q. What was his name? A. Rudolph Popper.

Q. Would you say the Chinaman who got out of that taxicab bears any resemblance to this defendant, Sam Moy? A. No, sir, the man that came out of that taxicab was a taller man and a thinner man. 20

Q. What kind of clothes did he wear, if you recall? A. Well, it was either a black or blue, it was something in a dark cloth.

Q. What kind of a hat did he have on? A. A sort of a brownish hat, dark.

Q. While you were engaged in conversation with him or near him, did you have an opportunity to look at him? A. Well, I do not hold any conversations with them. I just go over their person and if they have not got anything on them I turn them loose. 30

Q. Well, how long did that operation take you? A. Oh, two or three minutes.

Q. And at that time did you have an opportunity for observing the features and the height, the stature of this man who came from the cab? A. Well, pretty much.

Mr. Cutley: That is all.

*Nelson W. Bowdish, for Defendant—Cross.*

*Cross-examination by Mr. Jentz:*

Q. Where was this? This was in Mulberry Street, facing 201.

Q. Is that the Chinatown section of Newark?

A. Yes, sir.

10 Q. There are a lot of Chinamen around? A. All Chinese.

Q. How many? A. I could not go to work and say. There is a block both sides, coming and going.

Q. A block both sides filled with Chinamen? A. Yes, sir.

Q. What is your duty there? A. To see anybody comes in there during these Tong wars.

20 Q. Who sent you there? A. We were sent down there from the Police Department, called up and got Special Officers to go down there, as far as I understand.

Q. Are you regularly employed by the Police Department of Newark? A. No, sir, I am appointed as a Special Officer in Newark.

Q. Who appointed you? A. The Commissioner.

Q. When? A. Oh, he appoints every year.

The Court: Have you got your commission?

30 The Witness: Yes, sir (handing paper).

Q. This is just a permit from the Newark Police Department for you to have a Special Police badge, No. 620, issued to anybody upon the payment of \$10 in Newark, isn't it? A. Yes, sir.

Q. You are not regularly connected with the uniformed force of Newark or any other place, are you? A. No, sir.

40 Q. Now, how did you come to be down there on Mulberry Street on that night? A. I was sent down.

*Nelson W. Bowdish, for Defendant—Cross.*

Q. Who sent you down there? A. Why, the President of the Newark Special Police Association.

Q. And who paid you for being down there—how much do you get a day? A. \$8 a day.

Q. And who paid you? A. The people we work for. 10

Q. And who were you working for at the time? A. Hip Wash & Co.

Q. That is a Chinese company out there? A. Yes.

Q. And what were you employed by them as?

A. As a Special Officer.

Q. To do what? A. Why, to protect them during this Tong war.

Q. There was a Tong war on and you were there to protect people in the neighborhood of that place, is that right? A. Yes, sir. 20

Q. And that is all you did, you work for these washing people to see that they were not annoyed, is that right? A. Yes, sir.

Q. And that was right down there in the heart of Chinatown, where there are about how many Chinese? A. There is a whole block both sides, I have no idea how many there are there.

Q. And what do you do generally, what is your duty? A. Why, my orders was to take in this— 30

Q. Your orders from who? A. From the man I am working for.

Q. Who were you working for? A. The Hip Wash Company.

Q. Who do you see in the Hip Wash Company? A. Well, I don't know. Um Long, there is a man there ahead of me, my partner.

Q. Never mind about the man ahead of you? A. That is the man that gives me the orders, this man ahead of me, working. 40

*Nelson W. Bowdish, for Defendant—Cross.*

Q. Is he a special cop too? A. Yes, sir.

The Court: And you got your orders from another Special Policeman?

The Witness: Yes, as I came on the job.

10 Q. And what were your orders to be? A. Why, to frisk all Chinese that entered or came into the colony.

Q. You were kept very busy there, weren't you? A. I am very busy, yes, sir.

Q. A lot of Chinamen there? A. Yes, sir.

Q. And you were kept busy frisking people constantly, weren't you? A. Pretty much of it, yes, sir.

20 Q. And about how many people did you frisk on that night? A. That is a question I could not answer. I could not begin to count them.

Q. Was there anybody else besides the man that got out of the taxicab? A. Yes, sir.

Q. A lot of other taxicabs in Newark too? A. Yes, coming and going all the time.

Q. And as soon as they come out you frisk the people? A. Yes, sir.

Q. About how many days did that continue? A. That is continuing even up to the present day.

30 Q. This Tong war is still going on, is it? A. Yes, sir.

Q. And you are still drawing \$8 a day? A. Yes, sir.

Q. And you are constantly frisking Chinamen who come there and get out of taxicabs? A. Yes, or that walk in, or anything.

40 Q. And yet now you can remember that on this night you frisked this man that came out of Farrel's taxicab, and you are sure it was not Sam Moy, is that right? A. Why, it don't appear to me to be Sam Moy, no, sir.

*Nelson W. Bowdish, for Defendant—Cross.*

Q. Did you notice Farrel's taxicab? A. Yes, I believe I was talking to the chauffeur.

Q. Did you notice his cab? A. Yes, it has Bergen on it.

Q. Do you know what number was on it? A. No, sir.

Q. Did you look at Farrel's license or find out where he came from or anything about him? A. No, sir, I just noticed the cab. 10

Q. You just made a quick frisk of the man that got out, and that is all you were interested in? Is that right? A. Yes.

Q. What were you before you were a special cop? A. A railroad man.

Q. While you were frisking him did anybody else come out there on that night, any other Chinaman? A. I dare say there were twenty-five or thirty of them walking up and down. 20

Q. While you were frisking the man, did another Chinaman come out, an old Chinaman? A. No, there were some old ones stood there.

Q. Did you see anybody pay the fare? A. Yes, an old man.

Q. And did this old man tell you anything about whether or not the man that got out of the cab was all right? A. He didn't say anything at all.

Q. Did anybody say for you to let him go, as he got out? A. No, sir. I even went up to the house he was going in to make sure I was right. 30

Q. Who was the old man, do you know? A. I could not say, I looked around that night and tried to get him and could not.

Q. What do you mean you looked around that night and tried to get him and could not? A. Why, I went around to try to get the old man, the same night, the detectives from Jersey City came over to locate him. I went around with them and tried to locate him for them. 40

*Nelson W. Bowdish, for Defendant—Re-direct.*

Q. You did not find either the old man or the young man? A. I certainly did not, no, sir. If I did, I would have pointed them out.

Q. You did not see the man you saw there at all? A. No, sir, nor the old man.

10 Q. You are still in the employ of those people?  
A. Yes, sir.

Q. And doing the same duties? A. The same duties.

Q. How did you come to get into this case? A. Why, I don't know. The lawyer sent for me.

Q. The first thing you knew about this case was a lawyer sent for you and told you you had to be here, is that right? A. Yes, sir.

20 Q. Do you know how the lawyer got it into his mind that you knew anything about this case? Had you ever told anybody before? A. No, sir, I don't know, I am surprised I am over here.

Q. Did you mention anything to anybody? A. No, sir.

Q. Yet a lawyer tells you you have to be here in court and testify, is that right? A. As far as I know about it.

30 Q. And nobody knew what you were going to testify to and you never told anybody before you got on the stand? A. No, sir, I told nobody.

Mr. Jentz: All right, that is all.

*Re-direct examination by Mr. Cutley:*

Q. The reason why this thing is impressed upon your mind as happening on that night—

Mr. Jentz: Objected to as leading.

*Nelson W. Bowdish, for Defendant—Re-cross.*

Q. Were the detectives from Jersey City out there the same night that this boy Farrell arrived with this Chinaman? A. Yes, sir.

Q. And that is why your attention is particularly directed to it? A. Yes, sir.

Mr. Cutley: That is all. 10

*Recross-examination by Mr. Jentz:*

Q. But you never told anybody about it? A. No, sir, it would make no difference who the man was, if the man was there, I would point him out.

Q. And all you know is some lawyer told you to be here? A. Yes, sir.

Q. And tell your story? A. He didn't ask me to say anything, he just sent for me.

Q. And didn't know what you were going to say? A. No, sir. 20

The Court: Are you still holding these people out there with this paper?

The Witness: With the badge.

The Court: With the badge and the paper?

The Witness: Yes, sir.

The Court: And that is all you have?

The Witness: I have a license to carry concealed weapons also. 30

The Court: And you stop people on the street and search them?

The Witness: As they go in the doorway.

(Witness excused.)

*Rudolph Pipper, for Defendant—Direct.*

RUDOLPH PIPPER, SWORN.

*Direct examination by Mr. Cutley:*

Q. Where do you live? A. 86 17th Avenue, Newark, New Jersey.

10 Q. What is your occupation? A. Special police officer.

Q. And were you such on December 27th, 1924? A. Yes, sir, special police officer.

Q. And were you in Newark on that day, around five o'clock? A. Yes, sir.

Q. And where were you, what part of Newark? A. 193 Mulberry Street.

20 Q. Do you know Edward Farrell from having seen him in court here today? A. You mean the chauffeur?

Q. Yes, the driver? A. I have seen him there when he came back from Jersey City with the detectives.

Q. Did you see him in Mulberry Street, Newark, around five o'clock on December 27th, 1924? A. No, sir.

Q. You did not see Farrell? A. The night he came back with the detectives, about a half an hour or so later.

30 Q. Did you see him when a Chinaman got out of his cab? A. No, sir.

Q. You were not there then? A. No, sir.

Q. Did you see the Chinaman who did get out of his cab? A. No, sir, I didn't see him get out of the cab, no, sir.

Q. Did you see the man at all, did you see the man get frisked? A. Yes, I seen him.

40 Q. Tell us what you saw? A. All I know about him is that I frisked him when he got up to my place.

*Rudolph Pipper, for Defendant—Cross.*

Q. Where is your place? A. 119 Mulberry Street.

Q. And was the man whom you frisked and who got out of the cab Sam Moy?

Mr. Cutley: Sam Moy, stand up and take off your glasses. 10

A. No, sir.

Q. What kind of a man was it that got out of that taxicab? A. He was a much taller man, much thinner and was much darker. He looked to be like a Philippino.

Q. And was Farrell there again that night? A. He was back about a half an hour later.

Q. And was he with some detectives from Jersey City? A. Yes, sir. 20

Q. Any of those detectives here that you know, Torpy or Burke? A. I don't remember them. There was, I believe five or six of them, and then our old headquarters men were there.

Q. And they talked to you about this? A. They didn't say a word to me.

Mr. Cutley: That is all.

*Cross-examination by Mr. Jentz:*

Q. You also have one of those papers you paid \$10 for to have a badge? A. Yes, sir. 30

Q. What authority did you have to frisk people?

Mr. Cutley: I object.

The Court: Sustain the objection.

Q. Who are you employed by? A. Foo Chung & Company.

Q. In other words, you were hired as a guard 40

*Rudolph Pipper, for Defendant—Cross.*

for some other outfit there, is that right? A. Yes, sir.

Q. To do what? A. To see that nobody comes in with concealed weapons.

Q. And how long had you been doing that? A. Two months.

10 Q. You were very busy at that time, weren't you? A. Not so very.

Q. There were a lot of Chinamen coming in and going out all the time? A. Yes.

Q. And you frisked all of them? A. Strangers.

Q. Day time or night time? A. Yes, sir.

Q. You said first to Mr. Cutley that you did not see this man getting out of the taxicab, did you? A. No, sir.

20 Q. How did you know the man who first got out of the taxicab, if you did not see him get out? A. I did not see him get out of the taxi.

Q. Then, why do you say the man you frisked got out of the taxi when you did not see him get out of the taxicab? A. Because I was not the chief.

Q. Then you do not know if the man you frisked was the man who got out of the taxicab, do you? A. I don't remember saying I searched the man that got out of the taxicab.

30 Q. Then how do you know the man you searched was the man that got out of the taxicab if you did not see him get out of it? A. I know I searched a man—do you want me to tell you how it came about?

The Court: Answer the question if you can answer it.

40 A. (continued) I will answer the question. Special Officer Bowdish came running up and he said he just got out of the taxicab. There was a little commotion around there.

*Rudolph Pipper, for Defendant—Cross.*

Q. What was the commotion about? A. I don't know what the commotion was about. It was spoken in Chinese, I didn't understand it.

Q. How long did you see this man? A. Well, about three or four minutes.

Q. Later on that night—by the way, you did not see Pierce or see Farrell on the taxicab at the time—you did not take any notice of him? A. No. 10

Q. Later on that night you say Farrell came out with some detectives from Jersey City and some Newark detectives and you saw them there? A. They broke in one door there.

Q. And they were looking for somebody around there? A. Yes, sir.

Q. Were you with them? A. I was out in front.

Q. Trying to help them locate this man? A. I was there and they asked me if I would recognize the man and I said yes, one in a million. 20

Q. Why would you recognize him as one in a million? A. He seemed to be—there appeared to a scar to me on the side of his face.

Q. How was he dressed? A. He had dark clothes on, a brown cap.

Q. How tall was he? A. Well, I should judge about five feet ten or eleven inches.

Q. And how long were you with the detectives on that night? A. Oh, about ten minutes. 30

Q. Did you notice what kind of an overcoat this man had on that you searched? A. He didn't have any overcoat on.

Q. How long were you with the detectives? A. About ten minutes.

Q. Did they speak to you? A. There was one of them spoke to me.

Q. You talked with them? A. There was some crowd around there, excitement, and there was an officer came around— 40

*Rudolph Pipper, for Defendant—Re-direct.*

Q. Can you identify any of the detectives from Jersey City? A. I do not recollect.

Q. Are you still working for this Foo Chung Company, whatever it is? A. Yes, sir.

Q. How much do they give you? A. \$8 a day.

10 Q. How did you come to come over here from Newark today? A. I was sent for by Mr. Cutley.

Q. Have you ever seen Mr. Cutley before in your life? A. No, sir.

Q. Do you know why Mr. Cutley should get you here if he had never seen you or heard of you before? A. I do not know.

Mr. Jentz: That is all.

*Re-direct examination by Mr. Cutley:*

20 Q. Do you think the reason might be that Mr. Cutley got you here because he was informed that you had searched this man?

Mr. Jentz: Who did you tell you had searched this man?

The Witness: Why, my side-partner.

Mr. Jentz: Who is that?

The Witness: Mr. Bowdish.

Mr. Cutley: Wait until I finish please.

30 Q. Did you give your name to the detectives from Jersey City that night? A. No, sir.

Q. They didn't ask you your name? A. No, sir.

Q. Well, you spoke to them? A. Well, I spoke to several around there, I don't know who they were.

Q. You were subpoenaed by the State? A. No, sir.

Mr. Cutley: That is all.

*Rudolph Pipper, for Defendant—Re-cross.*

*D. B. Schuchardt, for Defendant—Direct.*

*Re-cross-examination by Mr. Jentz:*

Q. Were you subpoenaed by Mr. Cutley? A. No, sir. I was asked to come over here.

Q. Did you receive a subpoena to come over here today? A. No, sir. 10

Q. Who asked you to come over here? A. Mr. Cutley.

Q. Mr. Cutley did not go out to see you in Newark, did he, and ask you to come over? A. Mr. Bowdish and I came over here.

Q. Then why did you say Mr. Cutley got you here?

Mr. Cutley: What difference does this all make? 20

Mr. Jentz: All right.  
(Witness excused.)

DOROTHY B. SCHUCHARDT, SWORN.

*Direct examination by Mr. Cutley:*

Q. On or about the 17th day of January, 1925, were you visited by Detective Torpy and Detective Burke? A. I was. 30

Q. In relation to one Sam Moy, the defendant here? A. Yes, sir.

Q. And as a result of that conversation with them did you arrange for the production of Sam Moy in Jersey City? A. I did.

Q. And you told the detectives that you would have him there at a certain time? A. Yes, I told them I would have him there at twelve-thirty, but he could not come until after one. 40

*D. B. Schuchardt, for Defendant—Direct.*

Q. On the 27th day of December, 1924, at about four or between four and five in the afternoon did you see Sam Moy? A. Why, mother and I were with him from four in the afternoon until six-thirty at night.

10 Q. Where did you see him? A. Thirty-third Street in a restaurant.

Q. What is the name of the restaurant? A. Lee Garden.

Q. And how long were you there? A. About five minutes after four we came in the restaurant and remained there until six-thirty.

Q. And your mother was with you? A. Yes, my mother was with me.

20 Q. Do you know a man named Ward? A. No, I do not.

Q. Did you see another man at the same time you were there? A. There were about twenty or twenty-five people in the restaurant and I didn't take any particular notice of any one.

Q. You stayed in that restaurant, you say, from four until about six? A. We stayed there until half past six.

Q. During that interval did Sam Moy, the defendant, leave that place? A. No, he did not.

30 Q. Did he stay continuously with you people?  
A. Well, not continuously right in the restaurant. We were talking to him about five minutes after four until about five o'clock and he invited us to dinner and we finally consented and he could not dine with us because he had duties about the restaurant, but he didn't leave, he didn't go outside.

Q. What was he doing in the restaurant? A. Well, he talked to different customers and they came in as manager of the restaurant.

40 Q. And you left at half past six, you say? A. Not later than twenty-five minutes to seven. I

*D. B. Schuchardt, for Defendant—Direct.*

noticed my watch at half past six when we rose from the table and I decided it was about half past six or twenty-five minutes to seven.

Q. How long have you known Sam Moy? A. Since 1917.

Q. What is your occupation? A. English teacher. 10

Q. And is he one of your pupils? A. Yes, he is.

Q. And from the time that you first knew him has he been taking lessons from you? A. Only for about a year, I have known him since 1917.

Q. And he has taken lessons about a year? A. About a year.

Q. How many other pupils have you? A. Well, it would be very hard for me to say. I teach a great many gratuitously. I have ensemble and private lessons, those that study privately, naturally pay for the lessons, but those that study ensemble do not. I have taught fifteen nationalities and I have had seventeen pupils in a class and it would be very hard for me to know how many I had or have at the present time. 20

Q. Where do you have your classes? A. Well, I have them at my house and I teach in Chinatown and teach in New York.

Q. And you have known Sam Moy practically seven years, have you? A. Well, seven years, about seven years. I knew him first when he was in the Navy. 30

Q. What was he in the Navy? A. Well, I don't know whether he held any official position. I know he was doing convoy duty and that he served fourteen months overseas.

Q. Did your mother know him practically the same time? A. Yes, he was brought to my home by another Chinese pupil and mother met him at the same time. He asked to study with me then, 40

*D. B. Schuchardt, for Defendant—Cross.*

but he didn't consider the time opportune on account of going to the Navy.

Q. And you sent him a Christmas card, did you?

A. Yes, I did, and I identified it when the detectives, Torpy and Burke brought it to the house.

10 Q. They talked to you about this Sam Moy—  
did they tell you what they wanted him for? A.  
No, they didn't. They just simply said—first  
they showed me the card and then I said it was  
mine. I said, "You must have found it in China-  
town." And they said, "Whose card is it?" I  
said, "Sam Moy's," because it had Sam on it, so  
then they informed me that they were detectives  
and naturally I was very much shocked and so  
was my mother, and finally—first of all I told  
20 I didn't know just exactly what they wanted to  
tell me about him, then when they made known  
their mission I knew that Sam was coming at  
ten-thirty that morning and I expected a telephone  
call from him, and I made up my mind that if  
he were guilty I would turn him over to justice,  
but when they told us what had happened, I knew  
we were with him on that day because I keep  
diary, and if it happened before that time I  
thought that the police should have him, but if  
30 happened at the time we were with him, I nat-  
urally would testify for him, and if he were a  
man he could come to vindicate himself because  
only a coward would flee from justice.

Q. Well, anyhow, you arranged that he come  
over? A. Yes, I did.

Mr. Cutley: Cross-examine.

*Cross-examination by Mr. Jentz:*

40 Q. When did you first know he was in the Navy,  
madam? A. 1917.

*D. B. Schuchardt, for Defendant—Cross.*

Q. Did you see him with a sailor suit on? A. I did.

Q. And did you know where he was in the Navy at the time? A. I knew he was on a ship in Brooklyn.

Q. What was the name of the ship? A. The U. S. Steamship "Lawrence". 10

Q. Did you visit him on that ship? A. No, I did not, but I often spoke of going, but as far as the ship is concerned, I was not interested in him to that extent.

Q. How many times did you see him while he was in the Navy? A. Well, I saw him about three or four times.

Q. Three or four times you say? A. Yes.

Q. Do you know of your own knowledge when he was discharged from the Navy? A. Why, I know he was discharged from the Navy, I cannot recall the date just now, but I have seen his discharge papers. 20

Q. Do you know about when it was? A. Well, he served twenty-five months.

Q. You know that of your own knowledge? A. I know that of my own knowledge from seeing his discharge papers.

Q. Do you know of your own knowledge that he served on the U. S. "Lawrence"? A. I do. The man could not possibly have discharge papers unless he served in the United States Navy. 30

Q. How do you know that? A. I saw the papers.

Q. So that from the papers he showed you you know that he served in the United States Navy on the U. S. S. "Lawrence"? A. Why, yes, I knew he was in the Navy.

Q. What else was said other than U. S. S. "Lawrence"? A. I don't recall.

Q. You looked at the discharge papers of this 40

*D. B. Schuchardt, for Defendant—Cross.*

man Sam Moy and you came to the conclusion that he served on the U. S. S. "Lawrence" while he was in the Navy? A. I don't know whether it said "Lawrence" on those papers or not.

10 Q. You recall all that it did say on it? A. No, sir, I do not recall; I have read so many of those discharge papers.

Q. Do you recall what the nature of the discharge was? A. I do not, only that he was honorably discharged. I was not particularly interested.

Q. How do you know he was honorably discharged? A. I know, having read the discharge papers that he was honorably discharged, but that is a long time ago.

20 Q. That is a long time ago? A. Well, I saw his papers two years ago. He has them in a safe deposit vault in New York.

Q. Do you know the name he went under at the time? A. I do. Tom Moy, that was on the paper.

Q. Do you know why he changed his name to Sam Moy? A. Well, his name always was Sam Moy.

30 Q. Do you know why he entitled under that name, Tom Moy? A. No, I cannot tell you, you will have to ask him.

Q. Did you ever ask him why? A. Yes, I did and I think—I don't recall what he told me, I only know he said they called him Tom in the Navy.

Q. Didn't he go under the name Kim? A. I never heard such a name.

Q. You say you teach Chinese, English? A. I do.

40 Q. Was Sam Moy one of your private pupils or one of your ensemble pupils. A. He was one of my private pupils.

*D. B. Schuchardt, for Defendant—Cross.*

Q. That is, he pays for his lessons, according to what you say? A. He does.

Q. About how many lessons did you give him a week? A. It all depends upon his business. He takes from two to three lessons a week.

Q. Well, do you know where this young man was born, Madam? A. In China. 10

Q. Are you sure of that? A. In China, I am positive of it. He said so, but I understand that when a man had enlisted in the Navy, he comes out as a citizen.

Q. Just please answer the questions and we will get along very much quicker. You say you know he was born in China because he told you? Is that right? A. Yes.

Q. Would it surprise you to know that he was born in San Francisco? A. Nothing would surprise me. 20

Q. And when you first met him could he speak English well? A. Quite well, but not as well as he does now. He had a very bad accent.

Q. What does your teaching consist of? A. Well, of eradicating his accent and giving him a vocabulary.

Q. Have you got a teacher's certificate from any State? A. I have not.

Q. You teach the English language—any other language? A. No. 30

Q. Do you hold a certificate either from the Regents of the State of New Jersey or any normal school of the State of New Jersey? A. I studied in private.

Q. And you had no certificates from the Board of Regents of the State of New York? A. I do not. I hold no certificate whatever.

Q. Where did you go to school, madam? 40

*D. B. Schuchardt, for Defendant—Cross.*

Mr. Cutley: I object to that.

The Court: She says she is a teacher.

Mr. Cutley: Unless they show a teacher has to have a certificate.

The Court: I will allow it.

10 Mr. Cutley: Exception.

A. I went to several schools here in the City and I studied privately before——

Q. You went to No. 6 school in Jersey City? A. Yes, and 23.

Q. You went to No. 6 school? A. I did.

Q. How far did you go in No. 6 school?

Mr. Cutley: I think that is absolutely objectionable.

20 The Court: I will allow it.

Mr. Cutley: Exception.

A. I do not mind if they ask, Mr. Cutley.

Q. How far did you go in any school? A. To the last class, but I did not stay to graduate.

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

Q. Did you go to any other public school in Jersey City? A. I did.

Q. What other public school? A. 23.

30 Q. Did you graduate from 23? A. I did not. I went there before I went to No. 6.

Q. What other schools did you go to besides No. 23 and No. 6? A. No. 11.

Q. Did you graduate from No. 11? A. I did not. I did not graduate from any public school.

Q. What private school did you go to? A. I did not attend a private school. I studied privately under Professor Benet.

40 Q. Who is Professor Benet? A. He was a lecturer from England.

*D. B. Schuchardt, for Defendant—Cross.*

Q. When did you start studying with the Professor? A. In 1911, when I was 11 years old.

Q. What did you study with him? A. Literary work and composition.

Q. You studied that when you were 11 years old? A. I did.

Q. And how long did you continue with the Professor? A. Till 1917, until I studied psychology. 10

Q. When did you start teaching Chinese, English? A. When I had finished my high school course.

Q. Where was this Professor's studio? A. He has no studio.

Q. Where did he live at the time you took lessons from him? A. He lived in New York.

Q. Whereabouts? A. Sometimes he was at the Ritz-Carlton and sometimes at the Plaza Hotel. 20

Q. What did he do, give you lessons at your home or at the Ritz-Carlton? A. In my home.

Q. Now, you say that on this day, December 27th, 1924, you met this man? A. What man?

Q. Sam Moy. A. On December 27th, yes, we went into his restaurant, my mother and I at four o'clock.

Q. The restaurant where he worked was in Brooklyn, wasn't it? A. Not that I know of, the only restaurant I know of— 30

Q. Don't you know he was a waiter in the Kings Garden Restaurant on Fulton Street, Brooklyn? A. He was not a waiter. He gave that statement at Police Headquarters, I know the entire thing.

Q. Just a moment, we will see how much you really do know. Do you know he was a waiter there in this Kings Garden Restaurant? A. He was not a waiter there.

Q. Well, isn't it a fact it was on Monday night, 40

*D. B. Schuchardt, for Defendant—Cross.*

December 29th, that you met him in this Lee Garden in New York? A. No, I did not. I had an appointment to meet him, my mother and I to meet him on December 29th, that was a Monday in the Chopstick Restaurant to see a man in reference to obtaining another position for my school in Chinatown, and that man is Duy Mai.

10 Q. Where is your school in Chinatown? What number? A. I do not care to divulge that because—

The Court: Have you a school in Chinatown?

The Witness: At the present time I have been advised to stay away on account of this affair.

20 Q. Did you have a school in Chinatown? A. Not a school.

Q. Didn't you tell me before that you had a school in Chinatown? A. Not that I know of.

Q. Didn't you say you taught some pupils in Chinatown and some over here? A. I did, certainly.

Q. Where in Chinatown did you teach these pupils? A. I have taught in several Chinese homes.

30 Q. Then you did not have a school over there? A. That is not called a school at all.

Q. Then you didn't have a school over there? A. That is not a school, no.

Q. Where were your ensemble classes? A. In Chinatown, Mott Street.

Q. What number Mott Street? A. Is it necessary to divulge the number.

40 The Court: You will have to tell us Madam, or you will be in contempt of Court.

*D. B. Schuchardt, for Defendant—Cross.*

A. Well, 15 and 30, but if you ask me who lives there, I cannot tell you. I only know there are Chinese there, I cannot tell you. I only know there are Chinese there and I don't know them.

Q. You went to some place where you did not know who the people were that lived there? A. I do not have to know the host or hostess of the house if I go there to teach. 10

Q. Don't you know, as a matter of fact, Madam, that there is no No. 30 Mott Street in Chinatown?

A. There is no number 30?

Q. Didn't you say you went to fifteen and thirty? A. Well, if I am wrong in the number—of course, I knew the houses where I went to teach.

Q. You realize that you are under oath here, Madam and you are to tell us facts within your own knowledge. A. It is possible that I made a mistake in a number, but I can go there almost with my eyes closed. 20

Q. If you are so uncertain as to the number, why did you just tell us it was 15 and 30? A. Because I still think it is 15 and 30.

Q. Where is 15, near what other street? A. There are only two other streets, Doyer and Pell.

Q. Doyer and Pell are parallel with one another? A. Yes.

Q. And what cross street is No. 15 near? A. Well, I should say it is—I don't know which street is the first, Pell or Doyer Street. 30

Q. Well, all these meetings and schools, you had these ensemble classes were on what street? A. On Mott Street.

Q. And that is the first street as you come up from Pell Street? A. It is.

Q. What other street is it between? A. Well, there is Pell and Doyer Street, but I do not recall just which one comes first. 40

*D. B. Schuchardt, for Defendant—Cross.*

Q. How many times have you been over to these ensemble classes, as you call them? A. Very often.

10 Q. Yet you do not know what streets they are between? Is that right? A. I do not, because when I go over there I go to teach and not to find out just what street the house is near.

Q. How many times have you been out to dinner at the invitation of this Chinaman? A. By invitation? Whenever we go we pay for our own dinner, if you call that an invitation.

Q. I am not asking you who paid for it, I am asking you how many times have you been out at the invitation of this Chinaman? A. I do not recall.

20 Q. Any other time outside of this once? A. Yes.

Q. How many more times? A. Well, I could not say how many times, I can tell you very often, but I cannot tell you how many times.

Q. Once a week or twice a week, every night or how often? A. No, sometimes every two weeks, sometimes every three weeks, sometimes not for five or six weeks.

Q. When was the last time he was over to your house before this day that the officers intercepted him? A. On Tuesday, the day before.

30 Q. And when was he there before that? A. Monday.

Q. And on this night in question, the night of December 27th, how did you get over to this Lee Restaurant—did you know he was going to be there? A. He was to have his lesson that morning at eleven-thirty and he did not come. I had to go to New York to buy some supplies and I asked my mother if she would care to go. She said she could not go just then and she said she would go later.

40

*D. B. Schuchardt, for Defendant—Cross.*

I met her in Macy's and we did our shopping tour and I suggested that we go around to see Sam, which we did, and we got to the restaurant about five minutes after four, and he said he telephoned me about one o'clock to tell me that he could not come for his lesson, but there was no one home.

Q. Was it customary for this man to telephone your home and for you to telephone him? A. It is very customary when a person cannot keep an appointment due to business. 10

Q. How many other students did you have at the time this man was going to your house? A. I don't remember.

Q. Don't you know how many pupils you had? A. No, I never counted them.

Q. So many you could not count them? A. Sometimes I have a great many and sometimes I haven't. 20

Q. Don't you keep any record of the progress they make in their work, how far each one is? A. It is not necessary to keep a record of the pupil, I do that in my mind when they are there; I know just how much progress they are making from lesson to lesson.

Q. You keep no record of what they do or what you teach them? A. Not on paper.

Q. How far was this man? A. How far was this man? 30

Q. Yes. A. Just what do you mean, how far was he?

Q. What was he studying in English, rhetoric or what? A. Well, he was studying vocabulary mostly.

Q. What books was he studying? A. Well, he has so many different things.

Q. You taught this man for some time? A. Yes, sir. 40

*D. B. Schuchardt, for Defendant—Cross.*

Q. What book or books did you use in teaching him his subject of English? A. Well, first of all he has read a great deal of American patriotic works, prose and verse, the speech of Patrick Henry.

10 Q. What books did you assign him to read? A. I gave him speeches, mostly and they go from the Virginia Conference in 1775 to Woodrow Wilson. I give those to all my pupils. Then he had collateral readings of course.

Q. That is what I want to find out. A. Is it necessary for me to tell you all the books I give.

Q. I would like to know some of the books, for my own information? A. Marcus Aurelius; Meditation, Shakespeare, Demosthenes Orations.

20 Q. Any other books? A. Well, he started Homer's Iliad, but he has not finished it.

Q. In Greek? A. Not in Greek, in English.

Q. And you have the books that he uses, Homer's Iliad and Demosthenes? A. Of course, I have the books.

Q. Who publishes those books? A. I cannot remember the publisher, I would have a hard time to remember the publisher with all the books I have.

30 Q. You cannot remember the publishers? A. No, I cannot remember the publisher of any of them.

Q. Yet this man is a waiter in a restaurant in Chinatown? A. He is not a waiter.

Q. Under your guidance he is studying Demosthenese Orations and the works of Marcus Aurelius, is that correct? A. He is not a waiter.

Q. Well, a head waiter? A. A head waiter is not a manager and a manager is not a head waiter.

40 Q. All right, manager then of a Chinese res-

*D. B. Schuchardt, for Defendant—Cross.*

taurant, studying under your guidance Marcus Aurelius' "Meditation" and Demosthenes' speeches and Homer's "Iliad," is that correct?  
A. Correct.

Q. This is 15 Mott Street you have spoken about and the other place where you have your school, that is the headquarters of a Tong known as the On Leong Tong, is that so? A. I do not know anything about the Tongs, I know several members of the Hip Sings and the On Leongs, but I do not know where the Tong headquarters are. 10

Q. Just confine yourself to my question. You know that is the headquarters of the On Leong Tong? A. I do not.

Q. What sort of a place is there there? A. Well, an organization of that sort can have their headquarters anywheres, but you do not know where it is. 20

Q. No. 15 Mott Street, what is there? A. It is an apartment house.

Q. What is on the ground floor? A. A store.

Q. What kind of a store? A. I don't know.

Q. How many floors upstairs? A. Two.

Q. Who lives on the first floor above the store?

A. I don't know, I told you before I do not know who is in the house, I only know my pupils. 30

Q. How do you get in there when you do not know who lives there or anything about it or what kind of a place it is, how do you get inside?

A. Through my pupils. If they cannot come to Jersey City to study, I simply ask them where is the most convenient place and if they suggest Mott Street I say, "Very well, I will teach ensemble but not privately in Mott Street."

Q. How do you know which house to go to? A. Well, if I go once, I naturally know it again. I have had observation power since my childhood. 40

*D. B. Schuchardt, for Defendant—Cross.*

Q. Who took you there the first time? A. Some of my pupils.

Q. Who? A. I do not recall.

Q. What did the ensemble classes consist of, how many people? A. Well, sometimes fifteen, sometimes four. Less than five I very rarely had if I went to teach ensemble.

Q. And where in this building were those classes you held? A. In a room.

Q. The first floor or the second floor? A. The second floor overlooking Mott Street, I presume it was a living room.

Q. And who lived there, Madame? A. I do not know.

Q. Did you ever see any people there when you came there outside of your pupils? A. No, only someone let me in; most generally that was a pupil.

Q. And you say there were always at least five pupils? A. I never had less than five pupils at least ensemble.

Q. Do you know what sign there is on the front of the building? A. I do not.

Q. Did you ever teach Sam Moy there? A. I did not.

Q. He always came to Jersey City, is that right? A. Always came to Jersey City to study at my home.

Q. What signs are on the front of that building, do you know? A. Which building?

Q. 15 Mott Street. A. I don't remember.

Q. Did you take any notice of any special insignia on the front of the building? A. I did not.

Q. You have been writing a lot of letters to the papers about this case, haven't you? A. I have written but one.

*Charlotte Schuchardt, for Defendant—Direct.*

Mr. Cutley: I object:

Mr. Jentz: I want to show that some of the material which she gave the papers is contradictory to her statements here today.

Mr. Cutley: Then why don't you sue for libel.

10

Q. You have lived in Jersey City all your life, haven't you? A. Yes.

Q. With your mother? A. Yes.

Mr. Cutley: I object as being immaterial. This woman is not being tried here.

The Court: She has answered.

Mr. Jentz: That is all.

Witness excused.

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CHARLOTTE SCHUCHARDT, SWORN.

*Direct examination by Mr. Cutley:*

Q. You are the mother of the last witness? A. Yes, sir.

Q. And you live at 121 Garrison Avenue, Jersey City, New Jersey? A. I do.

Q. How long have you been a resident of Jersey City? A. Many years. 30

Q. And your daughter has lived with you all her life? A. All her life.

Q. You have lived in this Hudson City section? A. No, I would not call it the Hudson City section.

Q. On December 27th, 1924, between four and five o'clock on that evening where were you? A. I was in the Lee Gardens, 33rd Street.

Q. New York City? A. Yes, sir.

40

Q. In that restaurant? A. Yes, sir.

*Charlotte Schuchardt, for Defendant—Direct.*

Q. Were you there with the defendant Frank Moy? A. Sam Moy.

Q. What time did you get there? A. Well, I should say it was around four o'clock it might have been five minutes after four.

10 Q. How long did you remain in that restaurant?  
A. Until six-thirty.

Q. During all that time was Sam Moy there?  
A. Sam was there.

Q. What was his position, if any, in that restaurant? A. Manager.

20 Q. Are you sure that from the time you entered until you left at half past six that no interval intervened whereby Sam Moy could have gone from that place and come over to Jersey City and back? A. No, he was back and forth to our table constantly.

Q. What was the longest interval of time that he was away from your company during the time you were in that restaurant? A. I should say five minutes, or ten minutes at the longest.

Q. And you had dinner with him that night?  
A. We had dinner.

Q. Do you know a man named DeWitt Ward?  
A. No, I do not. There were a number of people in there.

30 Q. Do you recall the 7th day of January, when Mr. Torpy and Mr. Burke came to your house? A. I do.

Q. Were you listening to their conversation with your daughter? A. Yes.

Q. In relation to Sam Moy? A. Yes, sir.

Q. And as to what time he would be brought to Jersey City? A. Oh, yes.

Q. About one o'clock that day Sam Moy did come to Jersey City and was arrested? A. Yes.

40 Q. Did you have any conversation with one Ed-

*Charlotte Schuehardt, for Defendant—Cross.*

ward Farrell, the chauffer or driver of the taxicab, on the 7th day of January at police headquarters? A. We had.

Q. In that conversation did you talk to Farrell and ask him how he came to identify Sam Moy?

Mr. Jentz: Objected to as leading. 10

The Court: I will allow it.

A. Why, he said that the police had brought him in. He said, "You know how they are," and he said, "I really am not sure about the man," and I said, "Well, why is it you made the statement?" and he said,—he just could not give me any answer. I wanted him to go to the first precinct with us. He took us down in a cab, and I wanted him to go in and make that statement to the police. 20  
He said, "No, I want to, but if you will get a lawyer, I will make that statement on the stand, that I am not sure he is the man; in fact, I didn't get a good look at him. All I know is that the man wore dark clothes."

Mr. Cutley: That is all.

*Cross-examination by Mr. Jentz:*

Q. Did you get a lawyer then and get Farrell? 30

A. We sent up for Mr. Kalish.

Q. Did you meet the lawyer and bring Farrell to the lawyer? A. We called Mr. Kalish as soon as Mr. Kalish arrived.

Q. Is Mr. Kalish here to-day? A. No, he is not.

Q. Did you see anybody else about telling about that, that Farrell said if the lawyer put him on the stand he would tell this story? A. I told Mr. Cutley all about it.

Q. Where is this restaurant you were eating in on Monday night? A. Monday night? 40

*Charlotte Schuehardt, for Defendant—Cross.*

Q. Saturday night, excuse me. A. thirty-third Street between Sixth and Seventh Avenues, right opposite the Pennsylvania Hotel.

Q. Who runs it? A. Well, it is called The Lee Garden. Sam is the manager.

10 Q. And how long has he been the manager? A. Well, I don't know. I am not a great hand at asking people questions.

Q. Well, you are interested in this young man to some extent? A. Yes, Sam is a pupil, a good pupil, and he has been more or less of a friend.

Q. How long had this friendship existed at the time this trouble took place? A period of years, wasn't it? A. No. We have known him, but he has only studied a little over a year, and we have found him to be a very fine young man.

20 Q. Do you know anything about the courses of instruction that your daughter gave, what they consisted of? A. Well, yes, she teaches English, elementary and advanced. I never bothered with her work.

Q. You do not know if Sam is an advanced pupil or an elementary pupil? A. Sam has made very good progress.

Q. Do you remember when he was in the navy? A. Well, yes, I remember when he was in the navy.

30 Q. Did you ever go with your daughter to Chinatown when she went to this 15 Mott Street for the ensemble classes? A. No.

Q. She always went by herself? A. She went by herself.

Q. Was it customary for you to go to Chinese restaurants with your daughter, in company with this Chinaman? A. We did occasionally, yes.

Q. About how often? A. Well, sometimes every two weeks.

40 Q. When was the time just previous to this

*Lambert Fairchild, for Defendant—Direct.*

December 27 that you went with him? A. That we dined with him?

Q. Yes. A. I do not just recall.

Q. You are very much interested in him, aren't you? A. As a pupil and a friend, why, yes.

Q. You are so interested that you went to police headquarters when he was arrested and advised this young man, Farrell, to change his testimony, didn't you? A. Yes, because we knew Sam was innocent. 10

Q. Just a minute now. You heard him identify Sam in police headquarters, didn't you? A. Yes.

Q. And he was positive of that identification there, wasn't he? A. No, he was not, because I asked him right in the seventh precinct, I took him by the arm and asked him if he was positive, and he hung his head and— 20

Q. Then you followed him outside and continued talking to him to get him to say he was not positive? A. Not intentionally; we went out to secure a taxicab.

Mr. Jentz: That is all.

(Witness excused.)

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DE WTT WARD called, no response. 30

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LAMBERT FAIRCHILD SWORN.

*Direct examination by Mr. Cutley:*

Q. Where do you live? A. 19 West 103d Street, New York City.

Q. You have some connection with the American Legion, have you? A. I have.

Q. What is that connection? A. I have been a 40

*Lambert Fairchild, for Defendant—Direct.*

member for some years. I am at present commander Belvidere Brook Post 450, New York County.

10 Q. How long have you been commander of that Post of the American Legion? A. Since the first of this year.

Q. You were in the American Army during the Great War? A. Yes.

Q. And as commander of that Post of the American Legion, have you come in contact with the defendant Sam Moy? A. Yes, sir, I have.

Q. And for how long have you known him? A. I have known the defendant—I think that he first called and made his application for membership either the late summer or early fall of 1924.

20 Q. What was your post in the Army, Mr. Fairchild? A. I was discharged as a first-class private.

Q. And in what corps? A. At that time Company T, Camp Pike, Arkansas.

Q. At the time of your discharge? A. Yes.

Q. In the American Legion are included members of the naval, as well as the land forces, are there not? A. Navy, Marine, and nurses.

30 Q. And before admitting one to the American Legion, what qualifications must he display and possess. A. Evidence of American citizenship, honorable discharge from the Army or Navy or Marines, or in the case of a nurse, in the Nurses Corps.

Q. And in checking up on those qualifications, you have the cooperation of the Government, haven't you? A. When necessary.

Q. And was this man an honorably discharged sailor of the United States? A. He was, yes, sir.

40 Q. And since he came into the American Legion you have come in contact with him frequently? A. Not very frequently, just from time to time.

*Lambert Fairchild, for Defendant—Direct.*

Q. And does he come into the same circles of the American Legion that you are commander of?

A. Absolutely. He is a member of the American Legion. We know no distinction.

Q. And in connection with your associations with him and his friends and comrades in that organization, did you come in contact with members of the community in which he lives in Brooklyn or New York? A. No, sir. 10

Q. Are there members of the American Legion in the post of which you are commander from the City of New York? A. In the main they are residents of the City of New York?

Q. And have you seen the defendant Sam Moy in association with other members of that organization? A. Yes.

Q. And at meetings and at other times? A. Yes, sir. 20

Q. And is he the only Chinaman that is a member of that post?

The Court: Well, is he a member of your post?

A. He is, yes. He is a member of my post. As far as we are concerned, Sam Moy is not a Chinaman, he is an American citizen and a member of the post. 30

Q. Is he the only man of Chinese descent or ancestry that is a member of your post? A. Of that post, yes.

Q. And as such, have you discussed him and his character with other residents of New York who are members of that post? A. Yes.

Q. Do you know his reputation for peacefulness and orderliness in his community in New York? A. In a general sense, not intimately. 40

Q. I mean his general reputation? A. Yes.

*Lambert Fairchild, for Defendant—Cross.*

Q. That is the very thing we want. A. Yes.

Q. What is that reputation? A. It is good.

Mr. Cutley: That is all.

*Cross-examination by Mr. Jentz:*

10 Q. Where is the headquarters of the Belvidere Brooks post of the American Legion? A. 270 West Ninety-sixth Street, New York City.

Q. And for how long have you been the commander? A. Since January of this year.

Q. Did you ever see the honorable discharge of this man? A. I have not.

20 Q. Then you only know he is an honorably discharged sailor by hearsay, isn't that right? A. No, sir, it is not. His application, which I have seen, bears the endorsement of one of the most trusted members of my post, who passed upon his discharge at the time the application was received, which is always essential with us.

Q. But you, as a matter of fact, never saw the discharge, did you? A. I have not seen his discharge.

30 Q. And your only knowledge of the fact that he is an honorably discharged sailor of the United States navy is that it appears upon his application, is that right? A. That is sufficient for me.

Q. Aside from that, that is the only reason you have for saying he is an honorably discharged sailor? A. Yes.

Q. Would it surprise you very much to find out that this man is a deserter of the United States navy? A. It would astonish me.

Q. How many times have you seen him in the past six or seven months? A. Not over six or seven times.

40 Q. How often does the post meet? A. The post

*Lambert Fairchild, for Defendant—Cross.*

holds a regular meeting once a month, a regular business meeting, which is attended usually by about twenty-five per cent. of the members.

Q. And how often does Sam Moy attend, to the best of your recollection? A. I cannot say definitely; I had not always been in attendance myself up to the time my duties compelled me to. 10

Q. But since your duties compelled you to, how often has he been in attendance? A. Three times, to my knowledge.

Q. Then your statement here, that he is of good character, is from what you observed of him at the three meetings at which he attended, is that right? A. No, sir.

Q. Just because he belongs to the American Legion? A. No, sir.

Q. Just because you say he has an honorable discharge from the navy? A. No, sir. 20

Q. Why? A. Based upon my own observation and the reports of others who have come into contact with him more closely than myself.

Q. Do you know where he works? A. I do not except from what I have heard here to-day.

Q. You never knew where he worked at the time you made your observations and conclusions? A. No, sir.

Q. You do not know what his business or trade is, is that right? A. I understood he was in the restaurant business. 30

Q. You didn't know where, or anything about it? A. My impression was he was managing a restaurant which belonged to a relative of his father, or something like that. That was not definite; that was simply my understanding.

Mr. Jentz: That is all.

(Witness excused.)

*Sam Moy, for Defendant—Direct.*

SAM MOY sworn.

*Direct examination by Mr. Cutley:*

Q. Where do you live? A. 37 Mott Street.

Q. New York City? A. Yes, sir.

10 Q. And how long have you lived there? A.  
About two years.

Q. And how long have you been in this country? A. I was born in this country.

Q. Where? A. San Francisco.

Q. How old are you? A. Twenty-four.

Q. And you are now in the restaurant business, are you? A. Yes, sir.

Q. Where do you work? A. Lee Garden.

Q. Where is that? A. 135 West 33d Street.

20 Q. Between Sixth and Seventh Avenue, New  
York City? A. Yes, sir.

Q. On December 27, 1924, were you in Jersey City between four and five o'clock? A. I was not in Jersey City.

Q. Where were you? A. I was in New York.

Q. What place? A. I was in the restaurant, 135 West Thirty-third Street.

30 Q. What time did you go to work in that restaurant in New York on that day? A. About ten o'clock.

Q. What time did you quit work in the restaurant that day? A. About ten o'clock.

Q. Between the hours of four and six that day did you meet Miss Schuchardt and her mother? A. Yes.

Q. Where? A. In the restaurant.

40 Q. And between those hours, at any time, did you leave there and go to Jersey City and then come back? A. I did not, I did not go to Jersey City.

*Sam Moy, for Defendant—Direct.*

Q. Did you leave the restaurant at all? A. Yes.

Q. What did you leave it for? A. I went down to Mott Street to buy some supplies for the restaurant.

Q. What time? A. I left the restaurant about eight o'clock that night.

Q. But between four and six o'clock you did not leave the restaurant? A. No, sir. 10

Q. Who else do you recall was in the restaurant at that time? A. Mrs. and Miss Schuchardt and a Mr. Ward.

Q. DeWitt C. Ward? A. Yes, sir.

Q. Where does he live? A. He lives in East Orange.

Q. East Orange, New Jersey? A. Yes, sir.

Q. In addition to your work at the restaurant, do you do any work of a clerical nature for any other person or company? A. No. 20

Q. You do not? A. No.

Q. You do not work for anybody else? A. No.

Q. You did not in December work for anybody else? A. I worked for the Lee Garden restaurant.

Q. Does that company control just one restaurant? A. It controls more than one restaurant.

Q. Well, in the course of your duties—what is your title with that company? A. I was manager of that restaurant. 30

Q. As part of your official duties as manager, did you have supervision or anything to do with any other restaurant other than the one you have talked about, whether New York, Brooklyn, Jersey City, or any other place? A. No.

Q. You had nothing at all to do with any other restaurant? A. No.

Q. On the 7th day of January you were arrested in Jersey City, weren't you? A. Yes, sir.

Q. About what time? A. About half-past twelve or one o'clock. 40

*Sam Moy, for Defendant—Direct.*

Q. By whom? A. By Lieutenant Torpy and Sergeant Burke.

Q. How did you come to go to Jersey City that day? A. Miss Schuchardt—I called up Miss Schuchardt that morning and she asked me to come over.

10 Q. And did you come over? A. Yes.

Q. Did she tell you what she wanted you for? A. She told me that some detectives were in the house and—

Q. Go ahead, talk out. A. —and she told me that there were detectives in her house and she wanted me to come over to explain myself.

Q. And you came over as soon as you could? A. Yes, sir.

20 Q. Now, during the war you were connected with the Navy? A. Yes.

Q. How old were you when you enlisted? A. I was about seventeen.

Q. What was your title in the Navy? A. Seaman.

Q. And under what name were you enlisted? A. My own name,, my American name, Tom Moy.

Q. Is Sam the Chinese? A. Som is my Chinese name.

Q. Som? A. Yes.

30 Q. How long did you serve in the Navy? A. Twenty-five months.

Q. And what were you, just an ordinary seaman? A. Yes.

Q. And on what boat were you? A. I was on different boats.

Q. What were they? A. The "Luzon", then the "Lawrence", the "Melville", and the Naval Air Training Station at Akron, Ohio.

40 Q. On these various boats, most of these were engaged in convoying troops across to France?

*Sam Moy, for Defendant—Direct.*

A. When I was on the U. S. S. "Lawrence" I was doing convoy duty, and after I got a transfer to the "Melville".

Q. Whose hat and coat is that? Is that your hat and coat? A. That is mine.

Q. That coat is alleged to have been found in the store at 357 Summit Avenue, Jersey City, New Jersey, and it is said it was left there by you. Did you leave that coat and hat there? A. No, sir. 10

Q. How did that coat and hat get out of your possession? A. I loaned my coat and hat to a Chinese friend of mine on the 20th of December, 1924.

Q. How did you come to do that? A. This friend of mine came to me and he asked me if I could not lend him my hat and coat.

Q. What is the name of that fellow? A. Lew Long. 20

Q. Where is he, in New York? A. I have not seen him since that day.

Q. Have you endeavored to find him since that time? A. I have, since I was arrested.

Q. When you loaned your coat and hat to this man was there anybody else present? A. Yes.

Q. Is that man here in court to-day who was present at the time? A. Yes, he is.

Q. When you were arrested by Torpy and Burke, you were taken to the station house, weren't you? A. Yes, sir. 30

Q. And how soon after you were taken there were Low Sing and Charlie Jung brought in? A. Low Sing was brought in about a half an hour after I was taken to the station.

Q. And when was Charlie Jung brought in? A. I saw him at police headquarters.

Q. When did Farrell, the driver or chauffeur of the car come in? A. They brought him into the 40

*Sam Moy, for Defendant—Direct.*

police station before I went to police headquarters.

Q. It has been said by the Prosecutor that you are a deserted from the Navy. Did you desert from the Navy? A. No, sir.

10 Q. Did you get a discharge from the Navy? A. I got a release paper from the Navy?

Q. What difference is there between a release paper and a discharge? A. Well, when a man enlisted for the duration of the war, when he came out he had a release paper, relieving him from active duty. That is, they can be called back to active service if the Government needs their services.

20 Q. After you got out of the Navy did you join the American Legion post of which Mr. Fairchild is the commander? A. I joined the Legion post in Detroit.

Q. Did you join it in New York? A. Yes.

Q. And in each of those was it necessary to give your papers and your position in the Navy and what you had done? A. Yes.

Q. And did you do that? A. Yes, sir.

Q. And as a result of giving that information to these two posts, were you elected to membership in each of them? A. Yes.

30 Q. And are you still a member of the New York post? A. Yes.

Q. Do you know Ing Kee? A. No.

Q. Are you a member of either of these tongs, the Hip Sings or the On Leongs? A. No.

Q. Neither one of them? A. No, sir.

Q. Do you know a man named Frank Moy? A. No.

Q. Did you ever see Ing Kee before you were brought into this case? A. No.

40 Q. You never saw him? A. No.

*Sam Moy, for Defendant—Cross.*

Q. How long have you been taking lessons from Miss Schuchardt? A. About a year.

Q. And you came over to take lessons to Garrison Avenue, did you? A. Yes, sir.

Q. How long have you been wearing glasses? A. About three months.

Q. Did you know anything about this attack upon these two men before you came over to Jersey City? A. Well, I heard from two Chinese that came into the restaurant that Saturday night, and I bought a Sunday newspaper the following Sunday. 10

Q. You were arrested and brought down to Jersey City, weren't you, to headquarters? A. To the police station, first.

Q. And you made some kind of statement down there? A. It was not a voluntary statement. 20

Q. And you gave them some information in that statement, at the bottom of the statement, which you signed because you believed you were obliged to sign? A. Yes.

Q. And part of what was in that statement was not so, you said so? A. That was not so.

Q. Why did you do that? A. I signed it because I believed I had to sign it.

Q. Well, why did you give them any false information at all? A. I didn't want to implicate Mrs. and Miss Schuchardt. 30

Q. And the reason you didn't want to implicate them—you mean by that you didn't want to bring them any notoriety, is that so? A. Yes.

Q. And you made some notation on the bottom of the statement, and you talked to the officers along that line, too, didn't you? A. I made a statement before I signed the paper to the effect that it was not a voluntary statement and I thought I had to sign it before I left police headquarters. 40

*Sam Moy, for Defendant—Cross.*

Q. You were never arrested before and convicted of crime, were you? A. No, sir.

Q. Did you know Charles Jung or Low Sing before this time? A. No.

Q. You never saw them before? A. Never saw them before.

10 Mr. Cutley: Cross-examine.

*Cross-examination by Mr. Jentz:*

Q. How long have you been wearing those glasses? A. About three months.

Q. You never had them on when you came to see Miss Schuchardt? A. I did.

Q. You didn't have them on the day you were arrested, did you? A. I have them.

20 Q. You didn't have them on when you came here to plead with your lawyer, to plead to the indictment? A. The police took my eyeglasses.

Q. When did you get them back from the police? A. The second of February.

Q. And when you came in here to plead to this indictment, the second one, you came in in the morning, brought over from the jail? A. The following Monday after I was arrested.

30 Q. Where did you say you were born? A. San Francisco.

Q. Did you tell your friend, the teacher, you were born in China? A. Sometimes I say that just for fun.

Q. Did you tell your friend, the teacher, you were born in China? A. Yes.

Q. Why? A. I said that because that is the birthplace of my father.

40 Q. And the reason you told her is so that you could make a plea that you could not understand English and so that you could take lessons from

*Sam Moy, for Defendant—Cross.*

her, is that it? A. I am not trying to make anybody believe I do not understand English.

Q. You understand it very well, don't you, Mr. Moy? A. I just want to appear as I am.

Q. I say you understand very well—there is no doubt about your ability to speak English and understand English thoroughly, is there? A. I beg your pardon? 10

Q. I say is there any doubt about your ability to understand the English language and speak it thoroughly? A. No, I have no doubt.

Q. When did you first start to take English lessons from this lady? A. About a year ago.

Q. Why did you want to take lessons when you knew how to speak and understand English? A. Because I wanted to go back to school again. 20

Q. Why didn't you go to school? Nobody was stopping you, was there? A. I have to work for a living and I cannot very well go to school without doing any work.

Q. What did you want to study in school—you said you wanted to go back to school again—what did you want to study? A. I wanted to study law.

Q. Did you try to go to any school here to prepare to study law? A. Well, my English education is so limited just now that I didn't think I was capable of passing that examination to go to law school. 30

Q. But you were familiar with the English language though, weren't you? A. But that does not seem I can pass the examination for law school.

Q. But why did you, if you wanted to study to become a lawyer, and you could speak and understand English—you were not worried about that part of it—why did you want to take English lessons from Miss Schuchardt? A. I thought to study 40

*Sam Moy, for Defendant—Cross.*

with her privately for a year or so and that would enable me to pass those examinations.

Q. Well, she was not a lawyer, was she? A. No.

Q. You received no legal training from her?  
A. No, you do not receive any legal training until  
10 you go to a law school.

Q. But all you kept on studying, in your ambition to be a lawyer, was English, is that right?  
A. Yes.

Q. And that you took up with Miss Schuchardt, is that right? A. Yes.

Q. Although you admit to me now that you are thoroughly familiar with English, both understanding it and speaking it? A. Yes.

Q. When you were born in San Francisco, did  
20 you go to school there? A. No, sir, I did not go to school there.

Q. Not at all? A. I went to the Chinese school there.

Q. Where did you learn to speak English? Were you raised in San Francisco? A. I left San Francisco for Salt Lake City when I was six years old.

Q. Did you ever go to school any other place at all? A. I went to school in Salt Lake City.

Q. How long did you go to school in Salt Lake City? A. I finished grammar school in Salt Lake City.

Q. Did you ever take any higher course? A. Yes, I went to high school.

Q. You went to a high-school in Salt Lake City? A. In Detroit.

Q. How long did you go to high-school? A. My second year in high-school.

Q. And you learned other subjects besides English, you had other classes besides English? A.  
40 Yes.

*Sam Moy, for Defendant—Cross.*

Q. Chemistry, history, and various subjects?

A. I did not take up chemistry in high-school. This was a commercial high-school.

Q. I mean other things besides English, you had algebra and different things? A. Yes, I had.

Q. And you knew that those subjects, if you passed them in high-school, would enable you in your law studies to make the necessary points? 10

A. Yes.

Q. But nevertheless, having these other points you concentrated on English under Miss Schuchardt, is that right? A. Yes.

Q. Now, what did you study with her? A. Comprehensive word study.

Q. What subject of English does that come under? A. Vocabulary enlargement.

Q. What else, what books did you study? A. 20  
Patrick Henry.

Q. "Give me liberty or give me death?" ? A. Yes.

Q. What else? A. Speeches of George Washington.

Q. What else? A. Abraham Lincoln.

Q. You have learned all those in high-school, haven't you? A. Just reviewed them again.

Q. Just to review them again, is that right? A. 30  
Yes.

Q. About how many visits did you pay to Miss Schuchardt's house for the purpose of review? A. About three times a week.

Q. Were you progressing rapidly? A. I was making pretty good progress.

Q. How far did you get? What was your last topic before this arrest? A. What do you mean?

Q. I mean when this trouble occurred, what was it she was teaching you, what was the last topic you were on in your studies? A. Psychology. 40

*Sam Moy, for Defendant—Cross.*

Q. And whose books on psychology did you study? A. Professor Smith.

Q. And where does Professor Smith hail from?

A. I don't recall.

10 Q. Did you study anything else aside from Professor Smith's book on psychology? A. I studied English.

Q. You went there quite often, didn't you, to see this lady? A. What do you mean quite often?

Q. About how often, two or three times a week?

A. Yes, I felt it was necessary, if I wanted to make any headway, I had to study at least three times a week.

Q. Did you ever attend ensemble classes in Chinatown? A. No.

Q. You never went there? A. No.

20 Q. How many times did you have her over in your restaurant in New York for dinner? A. Not very often.

Q. About how many times? A. Oh, about—maybe once in two weeks or three weeks. I didn't ask her to come over for dinner.

Q. What do you mean, ever time? A. I mean all of those times she went to the restaurant, sometimes she came in without notifying me in advance.

30 Q. Sometimes you telephoned her and asked her to meet you, didn't you? A. No.

Q. Never? A. Never.

Q. On this day you telephoned her, didn't you, and told her to be over there, and she said she would be over, when you telephoned to her? A. On what day?

Q. I mean on this December day. A. December what day?

40 Q. December 27 we are all talking about. A. December 27 I was to go over to Jersey City at eleven o'clock that morning.

*Sam Moy, for Defendant—Cross.*

Q. For your lesson? A. Yes.

Q. Did you have your homework done? A. Yes, I usually have my homework done before I go over to take my lesson again.

Q. Did you have it written out? A. Sometimes it does not require written work.

10

The Court: What homework did you have done this time?

The Witness: She asked me to study some—a few paragraphs in psychology.

The Court: In Professor Smith's book?

The Witness: Yes.

The Court: And you studied them?

The Witness: Yes.

The Court: Do you know them now?

The Witness: Well, I remember, yes.

20

The Court: What are they?

The Witness: Such as the twelve principal faculties of the mind.

The Court: Yes, what are they?

The Witness: Comparison, concentration, meditation, intuition, memory, imagination, observation, and will.

The Court: That was the lesson for that night?

The Witness: I had something else that night, I mean before.

30

The Court: Well, tell us all about it.

The Witness: Why, I do not recall the rest.

The Court: Do you recall any other principles of Professor Smith's psychology?

The Witness: I just started to study psychology.

The Court: That was your first lesson?

The Witness: Yes, sir.

40

*Sam Moy, for Defendant—Cross.*

Q. When were you born, what day? A. I was born in July, 1900.

Q. And where were you when you enlisted in the Navy? A. Chicago.

Q. Chicago, Illinois? A. Yes, sir.

10 Q. And from there you were transferred where? A. I went to the "Luzon" right from the recruiting station. I went to Detroit from Chicago, to Cleveland.

Q. There are no boats there at Cleveland. A. No boats in Cleveland? A. The "Luzon" was a tug-boat.

Q. And when did you go aboard the U. S. S. "Lawrence"? A. I was aboard the U. S. S. "Lawrence"—I mean Brooklyn.

20 Q. When were you transferred to the U. S. S. Lawrence"? A. I don't remember now.

Q. Have you got your release paper here? A. No, I have not.

Q. Where is it? A. It is in New York.

Q. Didn't you think it was important enough to bring it if you were going to have a man here to testify that you were an honorably discharged sailor? Didn't you think it was necessary to bring your release paper?

30 Mr. Cutley: I object, there is nothing to indicate that there was to be any question about his being an honorably discharged sailor or anything else.

The Court: I will allow it.

Mr. Cutley: Exception.

Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

*Sam Moy, for Defendant—Cross.*

Q. When you had this man here from the Belvidere Brooks Post, the gentleman who testified about your honorable discharge from the Navy, you knew he was going to come here and testify, didn't you? A. Yes.

Q. And you knew that the best evidence of that honorable discharge would be the discharge itself, didn't you? A. Why, I have a couple more members here besides Mr. Fairchild. 10

Q. But you knew the best evidence you could bring of having been discharged from the Navy was the discharge that you had, didn't you? A. I think the best evidence I have is being a member of the American Legion. That should be acceptable.

Q. Were you ever on the "San Francisco"? A. No. 20

Q. What kind of discharge have you got? A. I have a release paper.

Q. And when did you get that? A. August 19.

Q. Did you ever get an honorable discharge? A. Yes, if I write to the Naval Commander of the 11th District.

Q. Did you ever write to him? A. No.

Q. Did you ever get one? A. No.

Q. Then you never had any, did you? A. A release paper is considered— 30

Q. You never had an honorable discharge from the United States Navy, did you? A. I could have had one, if I write for one.

Q. But you never got one, did you? A. No.

Q. Did you ever apply for a sailor's or a soldier's bonus? A. Yes.

Q. Where? A. In Illinois.

Q. I mean for the Government bonus that you have to send to Washington for. A. No, I did not apply for the National bonus. 40

*Sam Moy, for Defendant—Cross.*

Q. And the reason you did not apply is because you have not got an honorable discharge, is that right? A. No, that is not right.

Q. When did you say you were on the "Lawrence"? A. I was on the "Lawrence" in 1917—1918, to the last part of 1918.

10 Q. What rating did you hold on the "Lawrence"? A. Seaman.

Q. First-class or second-class? A. First-class.

Q. And who was the first boatswain on the boat while you were on it? A. I don't remember his name now.

Q. Who was the master-in-arms on the "Lawrence"? A. I don't remember his name.

Q. Who was the chief cook on the "Lawrence"? A. I don't remember those fellows' names.

Q. Who was the commanding officer on the "Lawrence"? A. Lieutenant-Commander Kulp.

Q. What is his first name? A. According to the naval regulations is is not customary for enlisted men to call a superior officer by his first name.

Q. I don't care what you called him. Did you know his first name? A. No.

Q. Do you know the name of the executive officer on the "Lawrence"? A. I don't remember his name.

Q. Or did you have any band on the "Lawrence"? A. Yes.

Q. Who was bandmaster on the "Lawrence" while you were on it? A. I don't remember his name.

Q. Do you remember the name of the sailors who were on the "Lawrence" with you? A. I remember two Philippino mess attendants.

Q. Isn't it a fact that when you were in the Navy you were a mess attendant? A. I was a mess attendant, yes.

40

*Sam Moy, for Defendant—Cross.*

Q. You were not a seaman at all, were you? A. I was.

Q. When? A. I was transferred to the deck department.

Q. What were you on the "Lawrence"? A. Seaman.

Q. First-class or second-class? A. First-class. 10

Q. You were a mess attendant on the "Lawrence," weren't you? A. No.

Q. Give me the name of some of the seamen on the "Lawrence" when you were on it? Who was the fellow who had the hammock next to you, if you remember his name? A. James Smith.

Q. And what was he? A. He was a seaman, first-class.

Q. Now, just give us again the date you were transferred to the "Lawrence." A. I don't remember the date. 20

Q. Well, when was it—where was the ship lying when you got aboard her? A. That was in the early part of 1918.

Q. Would you say it was January, February, or March? A. The early part of 1918, I don't remember.

Q. And how long did you stay aboard the "Lawrence"—

The Court: Did he tell you where he got aboard it? 30

Q. Where did you get about the "Lawrence," where was she lying when you were transferred to her, what station? A. The Brooklyn Navy Yard.

Q. And where did you come from to get aboard her at the Brooklyn Navy Yard? A. I was transferred from "Luzon".

Q. Where was the "Luzon"? A. The "Luzon" came to New York. 40

*Sam Moy, for Defendant—Cross.*

Q. And you were transferred from the "Luzon" and you don't remember what date—just that it was the early part of 1918? A. Yes, sir.

Q. How long were you on the "Lawrence"? A. I was on the "Lawrence" about seven months.

10 Q. And in those seven months the only name of anybody in that whole crew you know is James Smith, seaman, first-class, is that right? A. Yes.

Q. What were your duties on there as a seaman, what did you have to do? A. Scrub the decks, paint, seaman guard duty.

Q. What kind of ship is the "Lawrence"? What is it, a destroyer, a battleship, or what? A. A torpedo boat destroyer.

20 Q. And how many men in the crew? A. A little over one hundred.

Q. And you were on that boat, did you say, under the name of Tom Moy? A. Yes.

Q. And that is the only name you went under while you were in the United States Navy, is that right? A. Yes.

Q. Never went under any other name? A. No.

Q. When you were a mess attendant did you go under the name of Moy? A. I was mess attendant on the "Luzon" when I enlisted.

30 Q. Did you go under the name Tom Moy when you were on the "Luzon"? A. Yes, that is my name.

Q. Then you never went under any other name? A. No, sir.

Q. And you were not raised to a seaman, first-class, until you got on the "Lawrence," is that right? A. Why, I had some trouble with the colored mess attendant on the "Luzon," so I applied for a transfer.

40 Q. And you got it and you were immediately promoted to first-class seaman, is that right, from mess attendant? A. Yes.

*Sam Moy, for Defendant—Cross.*

Q. Don't you know, Mr. Moy, that in the entire existence of the United States Navy, no Chinaman can be a seaman? That the only position a Chinaman can have in the United States Navy is mess attendant, and that is what you were?

Mr. Cutley: I object unless it is a matter of absolute proof. 10

Mr. Jentz: I will prove it during the course of the trial.

The Court: If you prove it, all rights; if not it will be stricken out later.

A. Well, I was a seaman, first-class.

Q. And isn't it a fact that you were in the Navy under the name of Chong Kum Sing and that you enlisted in Brooklyn, New York? A. No, I was not. 20

Q. And that you gave your place of birth as New York City, and the date of your birth as March 3, 1898, and your home address as Central Hotel, New York City? A. No.

Q. You say you are not that person? A. I say I am not that person.

Q. And that you were dropped as a deserter from the United States Navy on the eighth of March, 1918? A. No. 30

Q. Not you at all? A. No.

Q. Did they take your finger-prints when you went into the Navy? A. Yes.

Q. All of them? A. Yes.

Q. They took a regular finger-print, all of your fingers? A. Yes.

Q. Now, when Miss Schuchardt on that day telephoned you to come over, you came over, didn't you? A. Yes.

Q. Because she told you she could get some 40

*Sam Moy, for Defendant—Cross.*

matter straightened out, to come over and get it straightened out, that some detectives were there?  
A. Yes.

Q. And you felt confident that if you came over you could get the matter straightened out, is that right? A. Yes.

10 Q. And after you came over you were arrested, is that right? A. Yes.

Q. And when you were arrested you made a statement to the police which you say was partly untrue and partly true, is that right? A. I was so excited—

20 Q. Just answer the question. You told Mr. Cutley on direct examination that when you were arrested you made a statement to the police which was partly true and partly untrue, and that the untrue part was made by you to keep the name of Miss Schuchardt out of it, is that right? A. I told Mr. Cutley that most of those questions were untrue and that—

Q. And the reason they were untrue was because you wanted to keep the name of Miss Schuchardt and her mother out of it, is that right? A. That is right.

Q. And that is the only reason you made untrue statements? A. Yes.

30 Q. Do you remember the police asking what your name was, and you said Sam Moy? A. Yes.

Q. That was true, wasn't it? A. That was my Chinese name.

Q. That was true? A. Yes.

Q. Where you lived—do you remember being asked that? A. Yes.

Q. And you said 37-39 Mott Street, New York City? A. Yes.

Q. Is that true? A. That is true.

40 Q. Do you remember their asking you how old you were and your saying twenty-four? A. Yes.

*Sam Moy, for Defendant—Cross.*

Q. That is true, as n't it? A. Yes.

Q. Do you remember their asking you what your occupation was and your saying a waiter?

A. That was not right.

Q. You told them you were a waiter, though, didn't you? A. No, I did not tell them that.

Q. What did you tell them? A. I told them I was working in the Lee Gardens Restaurant, New York City.

Q. You were working there? A. Yes.

Q. Didn't you tell them you were working in the Kings Garden Restaurant, Brooklyn, New York.

Mr. Cutley: I object to that on the ground that this is an examination on this alleged confession supposed to have been taken from him. I crave the opportunity of examining on that first.

Mr. Jentz: I am not cross-examining him, I am asking him what he told the police.

The Court: Go ahead.

Mr. Cutley: Exception.

Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

Q. Did you tell them you were employed in the Kings Tea Garden, Brooklyn, New York? A. No, sir.

Q. Then did they ask you or tell you you were charged with assault with intent to kill, that you and three other men had entered the laundry of Charles Jung, 357 Summit Avenue, Jersey City, on December 27 about four p. m., and did assault

*Sam Moy, for Defendant—Cross.*

these men, and to that you said, "I am innocent of that charge"? A. Yes, sir.

Q. That was true? A. Yes.

10 Q. Did they ask you this question, "Is this your overcoat and hat that was left in the laundry shop of Charles Jung, 357 Summit Avenue, on Saturday, December 27, 1924," and did they show you the hat and coat? A. Yes.

Mr. Cutley: I object on the ground that if the questions of the Prosecutor are predicated on this paper, I make this point: that having denied to the police that he did commit this alleged crime, therefore, this is no confession and no use can be made of it.

20 The Court: Same ruling.

Mr. Cutley: Exception.

Exception allowed, signed and sealed accordingly.

DANIEL T. O'REGAN,  
Judge.

Mr. Jentz: I withdraw the question.

30 Q. When the police showed you this coat and hat, which is an exhibit in this case, you admitted that it was yours? A. Yes.

Q. That is true, that you told the police that? A. Yes.

Q. Then, what you told them is the truth? A. Yes.

40 Q. Then did they ask you this question: "How did your overcoat and hat come to be in Charles Jung's laundry, 357 Summit Avenue, on Saturday, December 27, 1924"? and did you say, "A man by the name of Leon Ling came to me that day and asked me to lend him my hat and coat, and I gave

*Sam Moy, for Defendant—Cross.*

him my hat and coat, and that was the last I saw of him''? Did you tell the police that? A. Yes, I told the police that.

Q. Is that true or not? A. That is true.

Q. That the man you lent your hat and coat to is a man by the name of Leon Ling? A. I did not tell the police that I loaned my coat and hat to Leon Ling on the 27th of December—I did not tell them that.

10

Q. What date did you tell them you did lend it to him? A. I told the police I loaned my hat and coat the 20th of December.

Q. To Leon Ling? A. Yes. That was Saturday also.

Q. Did they also ask you why Leon Ling wanted your hat and coat, and did you say, "because his overcoat was shabby looking''? Did you tell the police that? A. Leon Ling told me that was the reason he wanted—

20

Q. Is that the reason you gave to the police when they asked you? A. Yes.

Q. And that was the truth, according to your story? A. Yes.

Q. Where did you give the overcoat and hat to Leon Ling—did they ask you that? A. I don't believe they asked me that, I do not recall their asking me that question.

30

Q. And was your answer "15 Mott Street, New York City''? A. No. They did not ask me that.

Q. "What time of the day or night'' did they ask you that? A. Well, they did not ask me that.

Q. And was your answer "About eleven a. m. that Saturday''? A. What Saturday.

Q. Did they ask you what time of the day or night you lent your overcoat and hat to Leon Ling, and did you answer "About eleven a. m. that

40

*Sam Moy, for Defendant—Cross.*

Saturday''? A. Saturday the 27th? or Saturday the 20th?

Q. And you answered "eleven a. m. that Saturday''? A. I loaned my hat and coat to this man eleven a. m. the 20th of December.

10 Q. Yes, but did you tell the police that? A. Yes.

Q. Did they ask you this question: "Did you learn anything that Saturday night, December 27, that caused you to telephone anyone''? A. Yes.

Q. And your answer was "I heard two Chinamen in Jersey City had gotten beaten up and I telephoned Miss Schuchardt at 121 Garrison Avenue on Saturday night''; is that right, did you tell them that? A. I telephoned Miss Schuchardt that night, yes.

20 Q. Did you tell them that? A. Did I tell the police I telephoned to Miss Schuchardt Saturday night?

Q. Yes. A. Yes.

Q. I thought you said that the only false statement you made in this statement were to keep Miss Schuchardt's name out of it. You admit now that you put her name in, is that right? A. What did I tell the police?

30 Q. That you called up Miss Schuchardt on Saturday night. A. Yes, I called Miss Schuchardt Saturday night and I told her that I cannot come over.

Q. Were you supposed to come over again Saturday night? A. Yes.

Q. You only had left her in the Lee restaurant at half-past six that same night, hadn't you? A. I did not leave the restaurant at half-past six that night.

40 Q. Well, you saw her in the restaurant until

*Sam Moy, for Defendant—Cross.*

half-past six? A. I was at the restaurant until eight o'clock.

Q. Was she there with you on Saturday night, December 27, 1924? A. Yes, sir.

Q. And what time did she leave the restaurant? A. They left the restaurant about half-past six. 10

Q. And what time did you telephone to her? A. I telephoned to her about half-past eight.

Q. And didn't you just say before that the night you telephoned was not the night she was in the restaurant? A. I beg your pardon?

Q. You know that Monday night is the night you were with her in the restaurant? A. The following Monday night?

Q. Monday night, December 29, is the night you were in Lee's restaurant in New York? A. Not Monday night. 20

Q. Didn't you tell the police it was Monday night? A. I did not.

Q. All right, we will see. In answer to this question: "Did you learn anything that Saturday night, December 27, that caused you to telephone to anyone?" and did you give this answer to that question: "I heard two Chinamen in Jersey City got beat up. I telephoned Miss Schuchardt at 121 Garrison Avenue Saturday night. I told her something terrible had happened in Jersey City and that I am not coming over tonight"; is that right? A. Yes. 30

Q. Was that the same night, the night you met her in the restaurant? A. Yes.

Q. Then, in addition to meeting her in the restaurant, as soon as she left the restaurant you intended to go back to Jersey City and meet her at her house the same night? A. She told me to come for my lesson that night, before she left.

Q. Well, you had already tried to have your les- 40

*Sam Moy, for Defendant—Cross.*

son that morning, hadn't you? A. Yes, but I did not go over—I did not go over to Jersey City that morning.

10 Q. And you did not go over that morning and you did not go over that night because there was some trouble in Jersey City, is that right? A. I did not go over here that night because it was too late for me to come over to take my lesson.

Q. You didn't stay away because of any trouble among the Chinese here, did you? A. That was not the cause of my staying away from Jersey City that day.

Q. Why did you tell the police it was, then? A. I didn't tell them anything.

20 Q. You said a minute ago that that is what you told them. A. What did I tell them.

Q. I just read this to you and you said it was what you told them: "I heard two Chinamen in Jersey City got beat up and I telephoned Miss Schuchardt at 121 Garrison Avenue, Jersey City; I told her something terrible had happened in Jersey City and I am not coming over tonight." A. Well, but that was not the cause of my not coming over that night.

30 Q. Well, what was the cause of your not coming over that night? A. Because it was too late for me to come over to take my lesson.

Q. It was only eight o'clock when you got through? A. I called her up from Mott Street. It was half-past eight when I called her up. I was not through until ten o'clock.

Q. Did she say anything in the restaurant about coming over to Jersey City after she left at half-past six? A. She asked me to come over for my lesson that night, before she went home.

40 Q. Did you tell her what time you were getting through? A. Yes.

*Sam Moy, for Defendant—Cross.*

Q. You told her about eight o'clock, didn't you?

A. Yes.

Q. Then, you did not go over because you went down to Mott Street first, and it got too late, is that right? A. Yes.

Q. And the reason you told the police, that you did not go over was because two Chinamen had been beaten up, is not correct, is that right? A. I did not tell the police that was not the cause of my going. 10

Q. Just one moment, please. I am asking you if what you told the police is true. A. What did I tell the police?

Q. I have just read it to you. Did you tell them: "I heard two Chinamen had got beat up and I telephoned Miss Schuchardt at 121 Garrison Avenue, Jersey City. I told her something terrible had happened in Jersey City and I am not coming over to-night"? A. I called up Miss Schuchardt and I told her I had to stay in Chinatown until ten o'clock, and I thought it was too late for me to come over. 20

Q. You told her that, did you? A. Yes, I told her that.

Q. About what time was that, 10 o'clock? A. Well, I called her about half past 8 and I told her that I cannot leave Chinatown until 10 o'clock and— 30

Q. Did you tell her about something terrible having happened? A. Yes, sir.

Q. Didn't you tell her that that was the reason you could not come over? A. No, that was not the reason.

Q. Did you tell her that was the reason? A. No.

Q. Where did you stop on the night of December 27th—did the Police ask you that question 40

*Sam Moy, for Defendant—Cross.*

and did you say at 37-39 Mott Street? A. Yes, sir.

Q. And that was true, was it? A. It was.

Q. Where did you stop the following night, Sunday, December 28th? Did the Police ask you that and did you at home at the same place? A. Yes.

10

Q. That was true, was it? A. Yes.

Q. Did they say "Where did you go Monday, December 29th, 1924", and what answer did you give? A. I told the Police I went to Philadelphia Monday morning.

Q. Did you go to Philadelphia Monday morning? A. Yes, sir.

Q. Where did you go to Philadelphia? A. I went to Mine Street.

20

Q. What was your purpose in going to Philadelphia on the 29th of December? A. I went to Philadelphia to work as a Court interpreter.

Q. Where? A. In a Police Court.

Q. What case? A. Assault and battery.

Q. Do you remember the name of the man you were interpreter for? A. I don't remember his name, but I remember the name of the lawyer.

30

Q. How did you happen to go down there, who sent for you? A. The defendant in that case asked my friend to go to Court for him that morning and he was busy so he telephoned to me and asked me if I could not come over to work for his friend.

Q. On the 27th did the Police ask you this question, "Where were you on that day", and did you say, "I was at 15 Mott Street until 11:30 A. M."? A. No, sir.

Q. They did not ask you that question and you did not give that answer, is that right? A. They did not ask me that question.

40

Q. And you did not give that answer? A. No.

*Sam Moy, for Defendant—Cross.*

Q. Well, was your answer: "I was at 15 Mott Street up to 11:30 A. M. and I went to work in King Tea Garden, 500 Fulton Street, Brooklyn, New York." A. No, sir.

Q. They did not ask you that and you did not them them that, is that right? A. No.

Q. Did they ask you this question: "What time did you go to work on that day and when did you finish" and did you say "I went to work from 11:30 in the forenoon and I got through at 2:30 P. M. and went to work again at 4 P. M. and worked until 4 A. M. Sunday morning". A. That was not my answer.

Q. What was your answer? A. They asked me where I worked and I told them I worked in the Lee Gardens, 135 West 33rd Street.

Q. Did they ask you what were your hours of work on that day? A. I don't remember whether they asked me that question or not.

Q. Did they ask you this: "Did you have two ladies eating with you on Monday, December 29th, 1924". A. I don't remember their asking me that question.

Q. Then you say they didn't ask you those questions? A. I don't believe they did.

Q. And was your answer, "Tuesday evening I went to China Inn, 59th Street and Broadway, New York City, with Mr. and Mrs. Schuchardt", did you tell them that? A. That place I went to, China Inn with Mr. and Mrs. Schuchardt on Tuesday night.

Q. So was that true or not? A. It was true.

Q. Then you were with them on Tuesday night? A. I was there.

Q. Did the Police ask you, "Did they give you anything that night"? A. Well, they gave me a Jersey paper.

*Sam Moy, for Defendant—Cross.*

Q. Didn't you tell the Police, "She brought a Jersey Journal with her about two Chinamen being assaulted in Jersey City and gave it to me", is that right? A. Yes.

Q. And that was Tuesday night? A. Tuesday night.

10 Q. This statement was read to you, wasn't it? A. No, sir.

Q. Did you read it yourself? A. No.

Q. Did you find anything on the bottom of the statement? A. Yes, I signed, before I signed my name on that statement, I added a few words first to it before I signed it.

Q. I show you the statement and ask you to indicate what few words you added there, Mr. Moy?

20 A. Do you want me to read those words or just want me to read them over?

Q. Just read them for yourself and see if they are the words you added or if anybody changed them? A. Yes, I wrote those words.

Q. And that is your signature there? A. Yes, sir.

Q. And after you wrote those words you signed the statement? A. Yes, but I did not sign to this statement, I signed to my own statement.

30 Q. You signed your name as it appears on here? A. Yes, sir.

Q. Now, what I read to you and what you said you told the Police as being the truth, that was the truth, wasn't it? A. No, I did not say anything.

Q. Just a minute ago when I read these different questions to you you said some of them were true—they were true, weren't they? A. Yes.

Q. Where you said you did not tell them about the King Garden, that was not the truth, was it?

40 A. That was not the truth.

Q. Now, which statement in here did you make

*Sam Moy, for Defendant—Cross.*

to shield Mrs. Schuchardt, as you say you did? Just read the statement through and show where you told lies to shield Mrs. Schuchardt? A. I figured the answer I made to the Police will be a question of shielding Mrs. Schuchardt. I did not want to implicate Miss and Mrs. Schuchardt.

Q. Read the question and the answer? A. "I went to work in King's Tea Garden, 500 Fulton Street, Brooklyn, New York" 10

Q. Go ahead. A. "Q. What time did you go to work that day, and when did you finish"? "A. I went to work from 7:30 forenoon, I got through at 2:30 P. M. and went to work again at 4 P. M. and worked until 4 A. M. Sunday morning."

Q. And that is what you told the Police to shield Miss Schuchardt, although in some other questions you brought her name right in, is that right? A. Yes. 20

Q. You signed this statement in some other places too, didn't you? A. That is the only place I signed.

Q. Just at the end? A. Yes.

Mr. Jentz: I ask that this be marked for Identification.

Marked Exhibit P-13 for Identification.

Q. You say you loaned your hat and coat to some one? A. Yes. 30

Q. Because his was shabby, is that right? A. Yes.

Q. Do you know who that fellow was, Leon Lung? A. Yes, that is his name.

Q. Where did you lend it to him? A. He came to my house.

Q. And borrowed your hat and coat, is that right? A. Yes, sir. 40

Q. And you loaned it to him? A. Yes.

*Gar Sing, for Defendant—Direct.*

Q. Have you seen that man since? A. No, I have not.

Q. Where does he live? A. He lives No. 8 Allen Street, New York City.

10 Q. How well do you know him? A. I have known him about two years.

Q. How long has he lived at 8 Allen Street? A. Not very long, he moved over there.

Q. Where did you know him before that? A. In New York City.

Q. A very good friend of yours, was he? A. Yes.

Q. You have not seen him since then? A. No.

20 Q. Although you knew him well enough to lend him your hat and overcoat in the middle of December in the winter of 1924, is that right? A. That was not the only overcoat I had.

Q. You loaned him your hat and overcoat, is that right? A. Yes.

Mr. Jentz: That is all.  
(Witness excused.)

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GAR SING, sworn:

30 *Direct Examination by Mr. Cutley:*

Q. Where do you live? A. 37 Mott Street.

Q. And do you know Sam Moy? A. Yes, sir.

Q. How long do you know him? A. I know him about three or four years.

Q. And how old are you? A. 24.

Q. On or about the morning of December 20th, 1924, 11 o'clock or thereabouts, did you see Sam Moy? A. Yes, in our apartment.

40 Q. And what if anything, happened there at

*Gar Sing, for Defendant—Direct.*

that time? A. Why, we were just getting up around 10 o'clock and I was getting dressed and there was a knock on the door and Sam Moy opened the door and Leon walked in. There was a conversation, he wanted to get the loan of an overcoat and hat, and while I was dressing he gave it to him. 10

Q. Who gave it to him? A. Sam Moy.

Q. What did the other man say he wanted it for? A. I didn't hear no special reason at all.

Q. What time do you fix this conversation as having occurred? A. Around half past 10.

Q. You are a room mate of Sam Moy? A. Yes, sir.

Q. How long have you been one? A. Since May.

Q. Did you know this other man that got the hat and overcoat? A. I have known him for about two years, but on and off at different intervals, not personal friends, see, just by face. 20

Q. Well, since that time when you heard about Sam Moy's trouble, did you make any effort to find this man? A. No, sir.

Q. Did you hear Sam say, "You can have my hat and coat"? A. Yes, I heard him say that.

Mr. Cutley: That is all. 30

*Cross-examination by Mr. Jentz:*

Q. You say you made no effort to find him? A. No.

Q. Sam Moy is a great friend of yours? A. He is a great friend of mine, sure.

Q. Yet you knew that partly through this hat and overcoat he was implicated in a serious crime here in New Jersey? A. Yes. 40

*Sam Moy, for Defendant—Re-cross.*

*Ing Kee, for Defendant—Direct.*

Q. And despite that fact although you are such a good friend of his you never helped him look for Leon? A. I was busy.

Q. You do not work 24 hours in the day, do you?

10 A. Well, I work long enough and I do not get enough time to sleep. I just work and sleep, that is all I do.

Q. You made no effort to find him, did you? A. No.

(Witness excused.)

Mr. Jentz: May I recall Mr. Moy for two or three questions on cross-examination?

The Court: Yes.

20

SAM MOY, recalled:

*Re-cross-examination by Mr. Jentz:*

Q. Your finger prints were taken by Mr. Drewin, this gentlemen here, when you were arrested and at Police Headquarters? A. Yes.

Q. That is the man that took your finger prints?

A. Yes, sir.

30

(Witness excused.)

ING KEE, SWORN:

*Direct examination by Mr. McGeehan:*

Q. Where do you live? A. New York, 28th Street, 257.

Q. You speak a little English, do you? A. That is all.

40

*Ing Kee, for Defendant—Direct.*

Q. How long did you live there? A. I live about five months.

Q. Where did you live before that? A. Before I lived New York, uptown, Williams Bridge.

Q. Did you work in Jersey City? A. Yes, last year.

Q. 1924? A. 1924. 10

Q. Where did you work in Jersey City? A. I work about a few months in the summer.

Q. Where, what place? A. Montgomery Street, 670.

Q. What kind of a place was that, a laundry?  
A. Yes, a laundry.

Q. You are a laundryman, aren't you? A. Yes, work in the laundry.

Q. Who did you work for? A. For a friend of mine. 20

Q. Were you a partner? A. I was not a partner, just working for my friend, that is all.

Q. And who was that friend, what is his name?  
A. Hugh Tung.

Q. He was a laundryman, was he? A. Yes.

Q. And he is the man you worked with on Montgomery Street? A. Yes, sir.

Q. Then you went where? A. 46 Mott Street.

Q. You worked there after that? A. Yes.

Q. But in the summer or winter of last year did you go away from Montgomery Street to Mott Street? A. The summer, July. 30

Q. When you left the Tung place on Montgomery Street, did you ever come back to see him?

A. Once or twice.

Q. And did you owe him some money or did he owe you some money? A. I owe him.

Q. And did you come over here on December 27th, two days after Christmas last year? A. Yes. 40

*Ing Kee, for Defendant—Direct.*

Q. Where did you come from? A. 33rd Street, New York.

Q. On the Hudson Tubes? A. Yes.

Q. And what station did you get off? A. Summit Avenue.

10 Q. Now called Journal Square, is that right?  
A. Yes, sir.

Q. Was Summit Avenue Station near the Tung laundry on Montgomery Street? A. Yes.

Q. And was that the nearest Tube Station to Tung's place, Summit Avenue? A. Yes, that is the nearest one.

Q. Were you working over on Mott Street in the laundry on that day before you started for Jersey City? A. Yes, sir.

20 Q. What time of day by the clock did you stop work that day, before you came over here to Jersey City? A. About 3 o'clock.

Q. What time did you take the train from 33rd Street? A. 4 o'clock.

Q. What did you do in that hour between 3 o'clock when you stopped work up to 4 o'clock when you took the train at 33rd Street? A. Walked up to 33rd Street.

30 Q. Between 3 and 4 o'clock what were you doing? A. In that hour I got ready and changed my clothing.

Q. What did you come over here to Jersey City for? A. Because I owe my friend some money, I wanted to come over here to tell him I could not give it to him.

Q. Came over here to give a promise for the money you owed, is that it? A. Yes.

Q. Wat it time for you to pay that money back on that day? A. I had no money, I just came over to tell him.

40 Q. You were working at the Mott Street—I withdraw the question.

*Ing Kee, for Defendant—Direct.*

Q. Did you work in a laundry on Mott Street?

A. I didn't work in Mott Street.

Q. You lived in Mott Street, didn't you? A. Yes, I lived in Mott Street.

Q. And you worked on 28th Street, is that right? A. Yes, just now I work on 28th Street.

Q. Who do you work for in 28th Street, who was the boss of the laundry? A. Ham Sue. 10

Q. That is the man you work for? A. Yes.

Q. Is that the man, Ham Sue, standing up in the back? A. Yes.

Q. That short man? A. Yes.

Q. Now, did Ham Sue say anything to you about him wanting a laundry over in Jersey City?

Mr. Jentz: Objected to, anything give and told him. 20

The Court: Go ahead.

Q. Now, did Ham Sue say anything to you about him wanting a laundry over in Jersey City? A. About looking around, he tells me, go over to Jersey City and look for some laundry place to get business. He told me, go look for some place.

Q. So that you were going to do that while you were on your way to Tung's laundry to talk about the money you owed, is that right? A. Yes. 30

Q. Now, when you got over here you got out of the train at Summit Avenue and went onto the street, is that right? A. Yes.

Q. And did you at any time have another Chinaman or any American or white person with you? A. No, nobody.

Q. You were all alone all the time? A. Yes.

Q. How long after you got out of the train was it that somebody grabbed hold of you while you were walking along? A. Somewhere between 20 and 30 minutes. 40

*Ing Kee, for Defendant—Direct.*

Q. So that during that time that you were in Jersey City, were you ever in the laundry of Charles Jung? A. No.

Q. Do you know Charles Jung? A. No, I do not know him.

Q. Do you know Low Sing? A. No.

10

Q. Did you ever see him or meet him in your life before? A. No, never.

Q. Do you belong to any Tong? A. No.

Q. Did you know what they were grabbing you for when they seized hold of you on the street? A. I see lots of people on the street.

Q. A whole lot of people you saw on the street, is that right? A. Yes.

20

Q. Did you know what they were grabbing hold of you for, why they grabbed hold of you? A. I do not know.

Q. And did those Policemen ask you your name later? A. Yes, they did.

Q. Did you tell them your name was Ing Kee? A. I told them my name at the hospital.

Q. Did you tell them when you lived? A. Yes, I told them.

Q. Now, did you have any knife with you or any gun or hammer on that day you were in Jersey City? A. Nothing at all.

30

Q. Did you at any time in the laundry or anywhere assault Charles Jung and Low Sing? A. No, I never see them.

Q. Or anyone else? A. No.

Q. You were taken to the hospital after you were arrested, were you? A. Yes.

Q. And before you were taken to the hospital did they ride you in an automobile to or near a drug store? A. First the car came over to the drug store and after the car went over to the hospital.

40

*Ing Kee, for Defendant—Cross.*

Q. Then you were locked up? A. Yes.

Q. Did you at any time from the time you got to Jersey City and came out of the Tubes run away from anyone? A. No, I do not run, I just walk, that is all.

Q. Do you know this man, Sam Moy? A. No, I do not know him. 10

Mr. McGeehan: That is all.

*Cross-examination by Mr. Jentz:*

Q. This was on a Saturday, Ing Kee? A. Yes, sir.

Q. And you are in the Chinese laundry business? A. Yes, sir.

Q. Saturday is a busy day, isn't it? A. Yes.

Q. Saturday night and Sunday morning? A. Saturday night and Monday and Tuesday. 20

Q. But I mean, Saturday is when everybody wants their collars, isn't that right? A. Yes.

Q. And although it was a very busy time, yet you found time to come away over to Jersey City to see this man about the money, is that right? A. Saturday.

Q. You picked out a busy time to come over and see him? A. Yes. 30

The Court: I think we had better use the interpreter.

A. (Through interpreter) About 3 or 4 o'clock. By that time the business is not so busy.

Q. By the time you came back to New York after seeing your friend it would be very busy, wouldn't it? A. Yes.

Q. And which way were you going when these men grabbed you, towards your friend's place on Montgomery Street or away from your friend's 40

*Ing Kee, for Defendant—Cross.*

place on Montgomery Street? A. Away from my friend's place.

Q. In other words, you had seen your friend and were going back, is that right? A. No.

Q. You had not seen him? A. No.

10 Q. Then why were you going back without seeing him? A. Why, I had not quite reached his laundry yet.

Q. Were you going towards his place, to Montgomery Street on Baldwin Avenue? A. I had not quite reached Montgomery Street, I was east.

Q. I want to know whether you were going towards Montgomery Street at that time or coming away from Montgomery Street? A. Not quite reached it yet.

20 Q. Then you were going to Montgomery Street? A. I was not returning, I was going forward.

Q. You were going towards Montgomery Street? A. Yes, sir.

Q. What did you say a minute ago about coming back to see about some business? A. I was going forward, I just wanted to come back to find out the name of the street before I got to the place.

30 Q. You knew where Montgomery Street, you had lived there two years, hadn't you? A. Yes.

Q. Then you did not have to find the name or number of the street to get to it if you knew where it was and had lived there two years? A. I got to come back and see two blocks before I knew it.

Mr. Jentz: That is all.

(Witness excused.)

*Dick Toy, for Defendant—Direct.*

DICK TOY, sworn:

*Direct examination by Mr. McGeehan:*

Q. You were subpoenaed to come here today, weren't you? A. I got a paper.

Q. You did not want to come, did you? 10

Mr. Jentz: Objected to as immaterial.

Mr. McGeehan: I want to show he is a hostile witness.

The Court: All right.

A. When the Court calls me to come I had to come.

Q. You say you are afraid to come?

Mr. Jentz: Objected to as immaterial. 20

Q. What is your business? A. Laundry.

Q. Where? A. Montgomery Street.

Q. What number? A. 670.

Q. How long have you been there? A. More than four years.

Q. Are you the boss? A. Yes, sir.

Q. Do you know Ing Kee? A. They came up to my place—

Mr. McGeehan: Stand up, Ing Kee. 30

Q. Do you know Ing Kee? A. Yes, sir.

Q. Did he work there? A. When I was sick I employed him.

Q. Up to what month? A. I could not remember.

Q. You could not remember? A. No.

Q. Was it summer or winter? A. Summer.

Q. And after he left your place did he come back to see you sometimes? A. After he left my place 40

*Dick Toy, for Defendant—Direct.*

he came back and then after that he never came back any more.

Q. Did he owe you some money? A. He owed me \$12 and also the laundry, \$12.

Q. So that he owed you a total of \$24, is that right? A. Yes.

10 Q. Did you hear from him about that, did he come to see you about paying this back to you? A. No.

Q. Did you expect him to come on the 27th of December to see you about paying that back? A. No.

Q. You were in your laundry on the 27th of December, were you? A. No.

20 Q. But you still ran that laundry? A. I have two laundries and I was just going up to the other one.

Q. Now, when was Ing Kee to pay that \$24 to you that he owed you? A. He didn't return it yet.

Q. But when was he to do it, when did he say he would do it and when did you expect him to do it? A. I didn't tell him when he will return it to me, but I just tell him whenever you have the money, just return it to me.

Q. When is the Chinese New Year?

30 Mr. Jentz: Objected to as immaterial.

Mr. McGeehan: I want to show that the Chinese New Year is at a time close to this time and that it is the custom among the Chinese to pay their debts or to renew them before that time.

The Court: I will admit it.

Q. When is the Chinese New Years? A. I could not remember the Chinese calendar.

40 Q. You know the English, American calendar? A. Yes.

Mr. McGeehan: That is all.

(Witness excused.)

*Ham Sue, for Defendant—Direct.*

HAM SUE, sworn:

*Direct examination by Mr. McGeehan:*

Q. Where is your place of business? A. Eighth Avenue and 28th Street.

Q. Do you own a laundry there? A. Yes, partners. 10

Q. Do you and your partner own any more laundries besides that? A. That is the only one.

Q. And did Ing Kee, the defendant, in this case work for you? A. Yes.

Q. Did he work for you on December 27th, 1924? A. Yes, sir.

Q. And how long had he been working for you? A. About five months and a half.

Q. When is the Chinese New Years? A. The new calendar, that is January. 20

Q. The Chinese New Years is right after the Christian New Years, is it? A. Yes.

Q. And it is customary among the Chinese to pay or renew their debts shortly before the end of each year?

Mr. Jentz: Objected to on the ground the witness is not an expert on Chinese customs.

The Court: I will allow it. 30

A. Yes.

Q. Now, did Ing Kee get off on the afternoon of the 27th of December, 1924, from work? A. Yes, he went out about between 3 and 4 o'clock that day.

Q. And do you know where he was going? A. He wanted to see his friends and wanted to find out whether his friend's laundry is open.

Q. Do you know where he was going to see his 40

*Ham Sue, for Defendant—Cross.*

friends or his friend's laundry? A. He didn't tell me where, but he just said to see his friend.

Q. Did he tell you whether it was in New York or Jersey City? A. He said Jersey City.

Q. He didn't know the number of the street?

10 A. No, he didn't say nothing.

Q. Did you say anything to him about looking around for a good location for another laundry for you?

Mr. Jentz: Objected to as immaterial and leading.

The Court: I will allow it.

20 A. Yes, I did, I told him to look around and find another place and then we can go and found another one.

Q. When he left your laundry that day, did he leave alone or did he leave with some other people? A. He, himself.

Mr. McGeehan: That is all.

*Cross-examination by Mr. Jentz:*

Q. You were a partner in this laundry? A. Yes.

30 Q. A partner, not a friend, is that right? A. Yes, I am a partner.

Mr. Jentz: That is all.

(Witness excused.)

Mr. McGeehan: We rest.

*Frank Duck, for Defendant—Direct.*

FRANK DUCK, SWORN.:

*Direct examination by Mr. Cutley:*

Q. Where do you live? A. 28 Division Street, New York City.

Q. On the 27th day of December, 1924, where were you employed? A. 135 33rd Street, Lee Garden. 10

Q. Was that where Sam Moy was employed? A. Yes.

Q. On that day between 4 and 6 in the afternoon did you see Sam Moy in that restaurant? A. Yes, he was there.

Q. Was he there all the time? A. Sometimes he went out.

Q. Between 4 and 6 o'clock on that day was he there all the time? A. He left the place about 7 or 8—somewhere about 35 to 40 minutes. 20

Q. What does that mean, 7 or 8, what do you mean by that?

The Interpreter: That means counting the five minute divisions on the clock, seven or eight of them.

Q. Well, what do you mean, he was out 7 or 8 times for 5 minutes, or was he out for 40 minutes? A. He left the place from 35 to 40 minutes. 30

Q. At what time did he leave the place for 35 or 40 minutes at a time? A. About quarter of five or somewheres around 5 o'clock.

Q. Quarter to 5? A. Yes.

Q. Do you know where he went? A. He didn't tell me, so I didn't know.

Q. And did he come back? A. Three-quarters after 5 or half-past 5.

Q. Was Mrs. Schuchardt and the other lady on 40

*Frank Duck, for Defendant—Direct.*

the stand in that restaurant that day? A. Yes.

Q. What time did they get there? A. Around 4 o'clock, I don't remember very well.

Q. Was Sam there with them during all the time they were there? A. Yes, they were there and talking.

10 Q. What time did you see them there with Sam? A. Around 4 o'clock.

Q. How long did they stay with Sam? A. At least two hours and a half.

Q. Well, if they stayed with Sam at least two hours and a half from 4, which would make it half past 6, what do you mean by saying that he was out for 40 minutes?

20 Mr. Jentz: Objected to, he is arguing with his own witness.

The Court: I will allow it to be explained, if possible.

A. He had business, he had to go out.

Q. Well, what time did he leave the place? A. Three-quarters after 4.

Q. He left the place at three-quarters after 4? A. Yes, sir.

30 Q. And what time did he come back? A. Around half-past 5 or quarter of 6.

Q. And were the women there all the time? A. Yes, they were talking there as well as eating.

Q. And were they eating with him all the time? A. No, sir.

Q. Did Sam have his dinner with the women? A. Not at that time, not at the same table. They were at the same table, but they didn't finish altogether, not finished at the same time.

40 Q. Who finished first. A. Sam finished first, because he had something to do.

*Frank Duck, for Defendant—Cross.*

Q. And what time did he finish? A. Ten minutes before 6.

Q. Well, after he finished at ten minutes before 6, how do you say he came back at quarter to 6?

A. Sam eat just a little bit, then he went out.

Q. Did you see him go out? A. After his eating Sam stayed in that restaurant because he had something to do there. 10

Q. How long was Sam away from the table of the Schuchardts? A. As soon as he finished he left the table.

Q. How long was he gone at that time? A. About five minutes. They sat together and ate.

Q. When Sam was away those 40 minutes was he away from the restaurant or away from the table? A. Left the restaurant. 20

Q. And what time do you say he left the restaurant, quarter to 5? A. Yes.

Q. And from 4 to quarter to 5 you are sure Sam was in the restaurant? A. Yes, he came back.

Q. From 4 to quarter to 5 are you sure Sam was in the restaurant? A. Yes, he was there.

Q. You are sure of that? A. Yes.

Mr. Cutley: That is all. 30

*Cross-examination by Mr. Jentz:*

Q. You are a waiter there? A. Yes.

Q. You speak English, do you? A. Not much.

Q. You do not need an interpreter. Didn't you just tell him before that when he asked you how long he was away from the restaurant, didn't you tell him in English 40 minutes? A. Not too much.

Q. You take the orders in the restaurant there, don't you? A. They talk easy.

Q. Didn't you tell the interpreter before when 40

*Frank Duck, for Defendant—Cross.*

he figured out the time, didn't you tell him in English 40 minutes, in English? A. I know he was away.

Q. What day was this when this happened? A. I do not know.

Q. You do not know the day? A. I do not know.

10 Q. Do you know Miss Schuchardt and her mother? A. They always came to eat in the restaurant.

Q. And you know them because they came there so much, don't you? A. Yes, I served them always.

Q. And you knew they were friends of Sam Moy's, good friends? A. Yes, they always seemed to look for Sam Moy.

20 Q. They always came to look for him and they had been there lots of times, haven't they? A. several times.

Mr. Jentz: That is all.

(Witness excused.)

Mr. Cutley: That is the defendant's case.

(RECESS UNTIL 8 P. M.)

30 Mr. McGeehan: May I ask leave to re-open our case for the purpose of offering the indictment of Moy Ng and Frank Moy. Perhaps the Prosecutor will admit on the record all that could be shown by a copy of the indictment.

Mr. Jentz: I will admit these indictments—

Mr. Cutley: I think we ought to have the indictments here.

40 The Court: The Clerk has them and when he returns with them you may introduce them.

*Frederick Drewen, for State—Direct.*

REBUTTAL.

FREDERICK DREWEN, SWORN:

*Direct examination by Mr. Jentz:*

Q. You are a Lieutenant of the Jersey City Police Department? A. Yes, sir. 10

Q. How long have you been connected with the Jersey City Police Department? A. Ten years.

Q. And what position do you hold now in that Department? A. In charge of the finger print department.

Q. How long have you been in charge of that department? A. About three years.

Q. And what experience have you had with identifying persons by means of their finger prints? A. About six years. 20

Q. And for the last three years have you had complete charge of that work in the Jersey City Police Department? A. Yes, sir.

Q. Did you take the finger prints of Sam Moy, one of the defendants in this case? A. Yes, sir.

Q. I show you a paper and ask you whether that is the finger prints that you took of Sam Moy, one of these defendants? A. That is the copy of the print taken of Sam Moy. 30

Q. And are they the actual impressions of his fingers on that paper, taken by you? A. Yes.

Q. And this data that is on here, what is that? A. That is the pedigree furnished by the prisoner.

Q. And was that given to you— A. By Sam Moy.

Mr. Jentz: I offer this in evidence, if the Court please.

The Court: It may be admitted. 40

*Frederick Drewen, for State—Direct.*

(Marked Exhibit F-14.)

Mr. Cutley: Is that a copy?

Mr. Jentz: The original.

10 Q. I show you another paper bearing finger prints and ask you whether you have compared the finger prints that you took of Sam Moy with these finger prints?

Mr. Cutley: I object on the ground that the paper has not been properly proved, the finger prints you have, to have been taken of Sam Moy.

The Court: What is this paper you are referring to now?

20 Mr. Jentz: This paper is——

Mr. Cutley: I object to reading anything from it.

The Court: All right, identify the paper, go ahead with your question.

Q. I show you this paper and ask if those marks on that paper are finger prints? A. Yes, sir.

Q. And I ask you whether or not you have compared the finger prints that you took of Sam Moy with those finger prints on that paper?

30 Mr. Cutley: I object on the ground that it has not been shown that these finger prints are the finger prints of Sam Moy.

The Court: Objection sustained. What is that paper?

Mr. Jentz: This paper is the finger prints of a man taken who joined the United States Navy and it is my purpose to show——

40 Mr. Cutley: I don't think that ought to be argued before the jury.

*Frederick Drewen, for State—Direct.*

The Court: What is the first paper you introduced?

Mr. Jentz: The first paper I introduced is the actual finger prints that Mr. Drewen took at Police Headquarters.

The Court: Those are the original finger prints, or a copy? 10

Mr. Jentz: The original.

Mr. Cutley: May I ask him a few questions?

The Court:

By Mr. Cutley:

Q. Are these the originals, P-14? A. Yes, sir.

Q. And is this Sam Moy's signature over here?

A. That is on the bottom of the front right hand side of the page. 20

Q. Whose writing is this? A. My writing.

Q. And whose writing is January 7th? A. My writing.

Q. And this is Sam Moy's? A. Yes, sir.

Q. There is a decided similarity between the writing of Sam Moy and yours, isn't there? A. Not that I know of.

Q. You would not say so from observation? A. No. 30

Mr. Cutley: That is all.

*Examination by Mr. Jentz (Continued):*

Q. I show you this paper and ask you if you ever saw that? A. Yes, sir.

Q. And does that paper bear certain finger prints? A. It bears all the finger prints.

Q. Of somebody? A. Yes, sir.

Q. Did you at any time, Lieutenant, compare the finger prints on that paper with the original 40

*Frederick Drewen, for State—Direct.*

finger prints of Sam Moy that you took and which I show you? A. Yes.

Q. And what did you actually do to compare them, what did you have to do? A. The prints on this paper were identical with the prints taken of Sam Moy in Jersey City.

10 Q. And what to you, as a finger print expert, does that mean? A. It means positive identification.

Q. That the finger prints of that man and the finger prints you took of Sam Moy are finger prints of the same person? A. Yes.

Q. And there could be no doubt of that, could there? A. No, sir.

20 Mr. Jentz: I offer that second paper for Identification.

The Court: You may have it marked.

(Marked Exhibit S-16, for identification.)

Q. I show you this document and ask you whether that bears certain finger prints? A. It bears all the prints.

30 Q. And have you made a comparison of those prints with the original finger prints that you took of Sam Moy? A. Yes, sir.

Q. With what results, Lieutenant? A. That they are identical.

Q. Can you from your experience as a finger print expert say that the man who made the finger prints which you hold in your hand and the man that made Sam Moy's finger prints, are one and the same person? A. Yes.

Mr. Jentz: That is all.

*Frederick Drewen, for State—Cross.**Cross-examination by Mr. Cutley:*

Q. You have no doubt about the scientific accuracy of finger prints, have you, Mr. Drewen?

A. No, sir.

Q. In other words, as an expert, as you are, I assume there is no diversity of opinion as to whether finger prints are conclusive of identification? A. No, sir. 10

Q. And there is no known method of forging finger prints? A. No, sir.

Mr. Jentz: Objected to as immaterial, unless it is shown that the finger prints were forgeries.

The Court: He answered the question.

Q. In going over those finger prints, how many points of resemblance did you find between the finger prints which you took of Sam Moy and those which you hold in your hand? A. I didn't mark them off. 20

Q. Isn't that the ordinary method of comparison? A. No, sir.

Q. What is? A. Just to compare them and compare them to memory.

Q. Isn't there any scientific way? A. Yes, their characteristics. 30

Q. And there is what you call points of similarity? A. Yes.

Q. Did you ever hear of Frederick W. Clavering of Philadelphia? A. No, sir.

Q. Did you ever read his book? A. No.

Q. Did you ever know the ratio of similarity and dissimilarity in ascertaining whether one finger print is an exact replica of another? A. I never have read that.

Q. Now, what is the lowest margin of points of 40

*Frederick Drewen, for State—Cross.*

resemblance which two different finger prints will have? A. One in a series of 32 zeros, which is impossible to pronounce—32 naughts.

Q. Whose system is that? A. That is with the Henry System.

10 Q. Do you know anything of the Galton System?  
A. The Henry System is taken from the Galton System, they are one and the same. There is no Galton System.

Q. Aren't there two systems, in which the possibility of error is something like 64,000,000 in one case and billions and trillions in another case?  
A. Not that I know of.

Q. Did you ever hear of finger prints being forged? A. No, sir.

20 Q. By police? A. No, sir.

Q. Did you ever hear of the method by which that is done? A. No, sir.

Q. You never heard of that? A. No, sir.

Q. Did you ever hear of anybody obtaining a finger print on a smooth surface that can be handled without leaving any digital marks, and then developing the marks and bringing them into bold relief by putting powder on them? A. Yes.

Q. Then you have heard of that? A. Yes.

30 Q. And the powder will be of a different color than the object on which the print adheres? A. Yes, sir.

Q. That is the ordinary method, isn't it, of starting? A. Yes, sir.

Q. Did you ever hear of them photographing this impression by making a negative the exact size of the original? A. Yes, sir.

Q. You did? A. Yes, sir.

40 Q. Did you ever hear of them making an etching from this negative, making it on copper? A. No, sir.

*Frederick Drewen, for State—Cross.*

Q. You never heard of that? A. I do not understand you—are making what?

Q. Making an etching on copper? A. Yes.

Q. You have heard of that? A. Yes.

Q. Did you ever hear that the etching was a positive and served as a die, having the original lines etched into it? A. Yes, sir. 10

Q. Did you ever hear of them putting a piece of paper, any fairly heavy correspondence paper moistened slightly and force it into the ridges by rubbing the back with any hard substance? A. No, sir.

Q. Did you ever hear that when that operation is done and the paper removed, it was found that the portions of it which bears the finger impression is now the exact replica of a design of the fingers involved? A. No, sir. 20

Q. Never heard of that? A. No, sir.

Q. You are an expert, are you? A. Yes, sir.

Q. Did you ever hear of a man named Weghe? A. No, sir.

Q. An expert etcher and engraver? A. No, sir.

Q. Do you know what the associations for identification are? A. Yes, sir.

Q. You have followed those papers up? A. No, sir. 30

Q. You read the literature in your profession, don't you? A. Only the Fingerprint Magazine.

Q. Did you ever hear of such an operation as I have described, appearing in your magazine? A. Only in the New York American.

Q. You never read the American Mercury, do you? A. No, sir.

Q. So that you have never heard of that possibility, of forging fingerprints? A. No, sir.

Q. Now, I want you to point out to us the re- 40

*Frederick Drewen, for State—Cross.*

semblance that you find between the fingerprints in that book and the actual fingerprints that you took of Sam Moy's fingers. A. In the first place, the characters in the right hand are the same and the characteristics, taking any one finger, for instance this, which is what is known as the "whorl", is identical with that. Likewise here.

10 Q. Let's get that. A. This is also a whorl, also here, even to the scars, which are not taken into consideration in making comparisons, at all. The same here.

Q. Do you say the right fingers, this little finger and this middle finger are identical? A. I do.

Q. Where do you get those marks on that one? A. Those are scars. They are not taken into consideration with the character at all. They will heal. When a man has a scar, the character does not efface at all. The same way here.

20 Q. So that, when there is the existence of these marks in any of the pictures, that does not compare with yours, then in your opinion they are scars? A. They are scars.

Q. Where are the scars on the picture you took? A. Here.

Q. Where are the scars on this picture? A. The scars are not taken into consideration—

30 Q. Where are the scars on this picture? A. That was taken a great deal before this one.

Q. Are there any scars on this one? A. They do not enter into the case at all.

Q. I am not asking you whether they do or not; I am asking you whether there are any scars on this? A. Yes, sir.

Q. Where are they? A. Here.

Q. All these little white lines? A. They are called scars.

40 Q. And what is the technical terminology of a scar? A. A mark on the finger.

*Frederick Drewen, for State—Cross.*

Q. It means a cut? A. A cut or anything like that, or a wart, that will leave a scar on printing.

Q. What is the distinctive feature which characterizes these? A. The character itself.

Q. What is the character? A. A whorl.

Q. Would you come over to the jury and explain that, please? A. Take the right hand, starting from the thumb to the little finger on the right hand, all these characters are the same. They are what is known as whorls. That is the one taken at the Department of Labor, and that is the one taken in Jersey City. This is a whorl, and this is a whorl. 10

*Cross-examination by Mr. Cutley:*

Q. Now, Mr. Drewen, you call those little white marks immaterial characteristics, don't you? A. Yes, sir. 20

Q. They are due to some changes in the flesh that healed up? A. Yes, sir.

Q. And have nothing at all to do? A. No.

Q. What is the particular characteristic that differentiates one fingerprint from another? A. The arch, whorl, the loop, tented arch, and so forth.

Q. There are no mistakes made in the fingerprint business? A. No. 30

Q. Now, then, did you ever hear about the case of George Brandon? A. No, sir.

Q. Did you ever hear about the Collins case? A. No, sir.

Q. Did you ever hear about the Billings-Mooney case in San Francisco? A. No, sir.

Q. There are no post-mortems of fingerprints, are there? A. No, sir.

Mr. Cutley: That is all.

40

*Frederick Drewen, for State—Re-cross.*

*Re-direct examination by Mr. Jentz:*

Q. You did not do any of this hocus-pocus with these fingerprints, that Mr. Cutley talks about, did you? A. No.

10 Mr. Cutley: He said he didn't know about that.

The Court: When you say there is a possibility of mistake one in thirty-two zeros, what do you mean by that?

The Witness: I would say that the possibility of a mistake between finger-prints—the books show where a mathematician figured it out by calculus that there is a possibility of two being alike within that figure.

20

By the Court:

Q. What do you mean by that, millions of millions. A. Millions of millions, but the probabilities of two being alike is one in ten generations, taking a million people to a generation.

Q. When you state thirty-two zeroes, you mean millions and trillions? A. An unmentionable number.

30

*Recross-examination by Mr. Cutley:*

Q. There are thirty-three or thirty-four points of similarity between the same set of fingerprints, without calling them identical? A. No.

Q. Did you ever hear of that? A. No, sir.

Q. Well, isn't that so, isn't that an accepted fact? A. No, sir.

40 Q. In other words, there may be thirty-three points of similarity between the finger-print that you took of Sam Moy and the one to which Mr.

*Frederick Drewen, for State—Cross.*

Jentz referred you and yet finger-print science will not say that they are identical? A. I have never seen them to be identical.

Q. Have you ever heard of that theory? A. No, sir.

Q. You have not? A. No, sir.

10

Mr. Cutley: That is all.

*Cross-examination by Mr. McGeehan:*

Q. Does it require an expert to determine the comparison between finger-prints? A. Yes, sir.

Q. So that a similarity that might appear to a layman or one inexperienced in the art of examination of them, would not necessarily mean that they were the same persons, the same finger-prints? A. Yes, because the characteristics vary so.

20

Q. The characters do vary? A. Yes, the characteristics I should say.

Q. But those are characteristics that can be determined accurately only by an expert, isn't that so? A. In making comparisons, it can be explained to anyone.

Q. Yes, it can be explained. A. But they have to be classified by an expert.

Q. But it takes an expert to know whether or not two sets of finger-prints are the same or not? A. An experienced man.

30

Q. Well, an expert? A. Yes, sir.

Q. And there is a considerable similarity between some persons' finger-prints, isn't there? A. Just what do you mean by a similarly?

Q. They all have convolutions and lines, haven't they? A. Yes.

Q. They all have depressions and ridges that make the marks, don't they? A. Yes.

40

*Frederick Drewen, for State—Cross.*

Q. And they are all about the same size, aren't they? A. You mean——

Q. I mean in the width of the ridges and depressions. A. Yes, but the width is not taken into consideration at all. It is the form of those lines.

10 Q. All right, so that there is not, you say, a difference in width, is there? A. No.

Q. An the general direction of the whorls and turns are the same in all fingers, are they not? A. No.

Q. All of them involve a partially circular design centering and converging near the center of the digit, isn't that true? A. Not all whorls, not all characters that are known as whorls.

20 Q. No, but the lines in question are like a whirlpool beginning in the center of the finger? A. All the particular whorls which appear in this hand.

Q. I mean on all persons' hands? A. No, I could not say on all persons' hands.

Q. So that all persons have whorls and they are about the same width, and in general they are similar, are they not? A. No.

Q. Not the same exactly, but similar to others? A. No, sir, there is no similarity.

30 Q. Then why does it require an expert to determine that? A. Because the whorl character you speak of, you see one here, and another will be an entirely different shape and still take the character of a whorl in the classification.

Q. The same lines, but would have a different shape, is that right? A. Yes.

Q. And it takes a microscope and an expert eye to determine that, doesn't it? A. Yes.

Q. And when you finally determine it, that is your opinion, isn't it? A. Yes.

40 Q. And your opinion might wrong, might it not?

*James H. Taylor, for State—Direct.*

A. No, it has never been wrong. I don't say *my* opinion, but my comparison with the prints has never been known to be wrong.

Q. Now in this particular case you believe that they are the same prints, don't you? A. Yes.

Q. And whether you are right or wrong, you will not know it, of course, hereafter? A. Whether am right or wrong? 10

Q. Whether you are right or wrong, the future won't tell you that, will it?

The Court: Isn't that a little obtruse, now?

Mr. McGeehan: I want to know what he means when he says he has never been wrong.

The Witness: I don't say I have never been wrong, but finger-prints have never been wrong. 20

By Mr. McGeehan:

Q. That is, you have never learned of a mistake? A. Never.

Mr. McGeehan: That is all.  
(Witness excused.)

30

JAMES HERBERT TAYLOR, SWORN.

*Direct examination by Mr. Jentz:*

Q. Where do you live? A. Alexander, Virginia.

Q. What is your occupation? A. Chief Navy Identification Officer, Navy Department, Washington, D. C. 40

*James H. Taylor, for State—Direct.*

Q. Have you your commission, your authority with you? A. I have this letter from the office and I have this permit.

Q. How long have you been connected with the United States Navy in any capacity? A. I went into the Navy Department, I think, in July, 1898.

10 Q. And you have been in the navy, in one capacity or another, ever since that time? A. I was Assistant Chief Clerk for about five years prior to 1910, and on May 1, 1910, I was made chief of the Navy Identification Office. That was about from 1898 to 1905 I was a clerk in the Bureau of Navigation.

Q. And since then have you been chief of the Identification Department of the United States Navy? A. Since May 1, 1910.

20 Q. And you have held that position at all times? A. Ever since that date, yes.

Q. Are you in charge of the finger-prints of the United States Navy? A. Yes, sir.

Q. The finger-prints of all enlisted men? A. All enlisted men, officers, and nurses of the navy, yes, sir.

Q. And every person that is connected with the navy or has been connected with the navy, their prints are on file in your office? A. As far as we know, yes.

30 Q. And you have charge of that office, haven't you? A. Yes.

Q. Have you had any actual experience in finger-print work, Mr. Taylor? A. Well, I have had since May 1, 1910 up to the present time.

Q. Has that been your constant employment, to take charge of the finger-prints, classification? A. Well, now, I have twenty-five finger-print classifiers under me, and I have to supervise their work.

40 Q. You are the man in charge? A. Yes, sir.

*James H. Taylor, for State—Direct.*

Q. I show you exhibit S-14 and ask you if you ever saw that before, the original Police Department record, which Mr. Drewen spoke about.

A. Yes, that has been shown to me before.

Q. Did you at any time, Mr. Taylor, compare the finger-prints which you now have in your hand, exhibit S-14, with any other finger-prints? 10

A. I compared these finger-prints with the record in the Navy Department, and this.

Q. By indicating this, you mean exhibit S-15 for identification? A. Yes, sir.

Q. And this is the service record here? A. Yes, sir.

Q. And what were the results of your comparison, Mr. Taylor, of those three records? A. I took the ridge characteristics of these three records and found the finger-prints were made by one and the same person. 20

Q. And how many finger-prints do you examine in your work? A. How many have I examined?

Q. Yes, how many have you examined in your work? A. Our files have 1,300,000. Of course, I have not been all over those finger-prints, but I have supervised the classification and searching and filing of them.

Q. And in filing and classification of them, you must know finger-print work thoroughly, must you not, Mr. Taylor? A. That is the position I hold, yes. 30

Q. Would you say from your examination, that the finger-prints shown on the police paper and the finger-prints on the other two documents are the finger-prints of the same man? A. Unquestionably, yes.

Q. There is no doubt about that, is there, Mr. Taylor? A. No doubt at all in the world. 40

*James H. Taylor, for State—Direct.*

Q. What is Exhibit S-15 for identification, if you know? A. That is what we call Bureau of Navigation Form 2, an identification record which is prepared on board the ship at recruiting stations when a man is enlisted in the navy.

10 Q. Did you bring that record with you from Washington? A. Yes, sir.

Q. And is that record part of the record in the office of which you have control? A. Yes.

Q. Is it an original record? A. It is.

Q. I show you this other record, containing finger-prints, and ask you what that is? A. Well, that is just a duplicate of this finger-print record; it is on Bureau of Navigation Form 2.

Q. And what is this other record? A. That is what we call the service record of a man.

20 Q. And is that a record which is made where he is stationed and his entire record while he served with the navy? A. This record remains with the man on board the ship in the station in which he is serving.

Q. And when the man leaves the service where does that record go? A. It is sent to the Bureau of Navigation, for filing in his jacket.

Q. And did you bring that record with you from Washington? A. Yes, sir.

30 Mr. Jentz: Now, I ask that this Exhibit S-15 for identification be marked in evidence.

Mr. Cutley: I object to that on the ground that it has not been shown who took the finger-prints, whether they were taken before or after the time of the alleged finger-prints taken by Mr. Drewen. The evidence is that this is a copy. Whatever has been said as to how it was procured is merely hearsay.

40

*James H. Taylor, for State—Cross.*

The Court: He testified that that was an original record made on ship board by the enlisted man, as I understand it.

Mr. Cutley: May I cross-examine him on that?

The Court: Yes.

10

*Cross-examination by Mr. Cutley:*

Q. Do you know of your own knowledge that this is a copy of the original made by the enlisted man? A. That is what the department so considers it.

Q. You only know that from the routine of the department? A. Let me explain that to you.

Q. You do not need to explain it.

The Court: Yes, let him explain it.

20

A. There are thousands of men that enlist in the navy, all over the country and all over the world. Enlisted officers in the navy supervise the taking of these finger-prints and certify to them, that they are the finger-prints of certain men, and send them on to the department.

The Court: Is that what was done in this case?

The Witness: Yes, sir.

30

Mr. Cutley: The position is that this purports to be the finger-prints of a man named Kung Ling Chin.

The Court: Whom he identifies as Sam Moy.

Mr. Cutley: Only by reason of his comparison with these prints. I renew my objection.

The Court: The objection is overruled.

Mr. Cutley: Exception.

40

*James H. Taylor, for State—Direct.*

Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

10 (Exhibit S-15 for identification marked in evidence S-15.)

Mr. Jentz: I now offer this service record for the same reason.

Mr. Cutley: I object on the same ground, that the record shows the record of a man named Kung Ling Chin.

The Court: who was identified as Sam Moy, the defendant in this case.

20 Mr. Cutley: Who is identified or whose fingerprints are alleged to be the same or identical with Sam Moy's, the defendant in this case.

The Court: I will allow it, you may have an exception.

Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

30 (Marked in evidence, exhibit S-16.)

*Direct examination by Mr. Jentz (continued):*

40 Q. This service record, Mr. Taylor, what does that show? When did the man bearing those finger-prints go into the navy? A. He enlisted February 2, 1918, as mess attendant, third-class, on board the "San Francisco" at Brooklyn, New York, under the name of Kung Ling Chin, and the record shows he deserted from the "San Francisco" on March 8, 1918, at the Brooklyn Navy Yard, Brooklyn, New York.

*James H. Taylor, for State—Cross.*

Q. And does that record show that this man ever served on the United States ship "Lawrence"? A. There is only one ship here, the "San Francisco". He enlisted on board there and deserted from that ship.

Q. And where was he stationed when he deserted? A. In Brooklyn, New York. 10

Q. You also have in your custody, Mr. Taylor, the muster rolls of various vessels in the United States Navy? A. Yes, sir.

Q. I show you this book and ask you what it is. A. That is the muster roll of the U. S. S. "Lawrence" from September 30, 1917, to December 31, 1918.

Q. And is that an original record of the United States Navy? A. The original records, the personnel on board the U. S. S. "Lawrence" are sent to the Navy Department quarterly, then they are prepared, put up into book form at the end of a certain period. 20

Q. And is this book that you now hold in your hand the original muster roll of that vessel? A. The original muster roll of the "Lawrence", and it is the original muster roll on file in the Navy Department.

Q. Did you bring this book with you from Washington? A. Yes, sir. 30

Q. Have you made a search of your book for the name Sam Moy? A. Yes, sir, I went over it four times.

Q. Did you find anybody by that name as having served on the vessel? A. No, sir.

Q. Or anyone by the name Tom Moy? A. No, sir, I could not find anybody by that name.

Q. Did you find any Chinaman on that boat? A. No, sir, I did not.

Q. Did you find a James Smith on that boat? 40  
A. I found a Harold Smith.

*James H. Taylor, for State—Direct.*

Q. There wasn't any James Smith? A. No, sir.

Q. Can you tell us who the commanding officer of the United States "Lawrence" was during the time that this muster roll shows? A. In 1918 it was W. K. Veer.

10 Q. Was ever a Commander Cook in command of that vessel? A. No, sir.

Q. It would show he was a commanding officer during that time? A. If he was commanding officer it would be on the front page of that muster roll.

Q. Was there a band on board, according to the muster roll? A. It does not show it.

20 Q. It would show it; the men in the band would be on the muster roll. A. The "Lawrence" was a torpedo-boat and it would be too small to carry a band.

Q. From your many years' experience in the Navy Department, Mr. Taylor, have you ever known of any Chinaman, or do you know what grade Chinaman hold in the United States Navy?

30 Mr. Cutley: I object to that on the ground that there is proof in this case that Sam Moy was born in San Francisco, and if that is so, he is, under the Constitution, born in the United States, and therefore—

Mr. Jentz: Or anyone of Chinese nationality or descent?

Mr. Cutley: I object to that.

The Court: Sustain the objection.

Mr. Jentz: I offer the muster rolls of the U. S. S. "Lawrence" in evidence at this time.

Mr. Cutley: I have no objection.

40 (Marked Exhibit S-17.)

*James H. Taylor, for State—Cross.*

By Mr. Jentz:

Q. Did you make a complete search? Is there any possibility of there being a mistake in any way? A. How do you mean?

Q. I mean whether there is no doubt in your mind that, as a finger-print expert, those finger-prints are of the same man? A. Unquestionably. You can pick out in these three records here on each finger at least sixty-four ridge characteristics. The theory I work on in identification of finger-prints is that the possibility of two individuals having the same finger-print with characteristics appearing in the same places in two different individuals is one in one million. With sixty-four characteristics on each finger and take the ten fingers, the probabilities of two different individuals having the same finger-prints would be one in about 640,000,000, and from my experience and study of finger-prints—I have studied a number of them—and the information that I can gather is that there has never been found two individuals with finger-prints alike since the year 400 B. C.

Q. That is your opinion, as an expert? A. Yes, sir.

Mr. Jentz: That is all.

*Cross-examination by Mr. Cutley:*

Q. I show you a paper and ask you if you remember that? A. Yes, sir.

Q. What does that purport to be? A. This purports to be a carbon of a release from active duty.

Q. Given to whom? A. I cannot read the name on top there.

Q. Thomas Moy, you can read that all right? A. I cannot see, it, sir.

*James H. Taylor, for State—Cross.*

Q. Well, you can see the finger-prints? A. I cannot say that that name is Thomas in there. I cannot see it, my eyesight is not sharp enough.

Q. Nevertheless you can tell— A. I have been over those finger-prints with glasses.

10 Q. And you can tell us they are O. K.? A. Yes.

Q. And you can read that letter? A. I can read that letter, but this is blurred to me.

Q. What is the first name? A. The first name looks like Moy to me.

Q. What does that paper purport to be? A. A release from active duty, Naval Reserve Force.

Q. When is it dated? A. August 9, 1919.

Q. What does it say? A. Do you want me to read the whole thing?

20 Q. Yes. A. You are hereby discharged from such duties as you may be performing and will proceed to your home at Chicago, Illinois, and will consider yourself released from active duty on August 9, 1919. Transportation furnished you from Akron, Ohio to Chicago, Illinois at the rate of five cents per mile in compliance with—I can't see that number there—

Q. That is signed by Lieutenant Hoyt, U. S. Navy? A. U. S. Air Station, Akron, Ohio, certified to be a true copy, R. S. Tyler.

30 Q. Assuming that that was a true copy, Mr. Taylor, what would that paper indicate? A. That would indicate—

Mr. Jentz: I object on the ground it is not proper cross-examination.

The Court: I will allow it.

By Mr. Cutley:

40 Q. Assuming that that was a true copy, what would that mean?

*James H. Taylor, for State—Cross.*

Mr. Jentz: I object to any assumption on the part of this witness.

The Court: I will allow it.

A. Assuming that that is a true copy it would mean that whoever Thomas Moy is, he was released from active duty in the Naval Reserve Force. 10

Q. In August, 1919? A. Yes.

Q. Notwithstanding that Kung Ling Chin deserted in 1918, according to your record, is that so? A. According to that record that is there, yes, sir. We do not know anything about that.

Q. Do you know R. S. Tyler, lieutenant? A. No.

Q. Or H. W. Hoyt? A. I have not a register, I could not tell you. I presume he is an officer. 20

Q. Now, this is what is known as a release from service, isn't it? A. Yes.

Q. As contra-distinguished from a discharge? A. That the person who got this letter on September 30, 1921, should get a discharge with it.

Q. They should get a discharge with it? A. Yes, sir.

Q. And assuming they got a release from the United States Navy Department in 1920— A. That is from the naval recruiting station in Cleveland, Ohio, not the Navy Department. 30

Q. Well, the recruiting station is part of the Navy Department? A. A part of the Navy Department, but there is a difference between a recruiting station and the Navy Department.

Q. What difference, in fact, is there between them? A. I will explain it to you. The difference between the Navy Department and a recruiting station would be the difference between a lieutenant and a sergeant. The Navy Department is 40

*James H. Taylor, for State—Cross.*

the major branch of the Government and the recruiting station is a branch or a division in the Navy Department.

Q. It is all the Navy Department; you do not go into a recruiting station to joint the Salvation Army, do you? A. I never heard of that.

10 Q. You are trying to draw a distinction because recruiting officers do clerical work, that they are not part of the Navy Department? A. I told you the distinction between the Navy Department and the recruiting station.

Q. Is the recruiting department of the navy part of the navy or part of the army? A. Part of the navy, certainly.

Q. I show you a letter purported to be posted in Youngstown, Ohio, February 25, 1920? A. Yes.

20 Q. If Thomas Moy, the defendant in this case—

Mr. Jentz: I object to that on the ground it is not proper cross-examination.

The Court: Let him finish the question.

30 Q. If Thomas Moy, the man Thomas Moy, received a letter similar to the one that you have just read to the jury, would it be possible for him to have received that if he had been a deserter from the navy? A. If the Navy Department didn't know it, it would be possible for him to receive it, but we have no record of a man by that name whose finger-prints are on file in our department. Now, it is possible for that man never to have had his finger-prints taken and we not have his record on file.

Q. I show you this paper and ask you what you think it is. A. That is not a navy paper.

40 Q. What is it?

*James H. Taylor, for State—Cross.*

Mr. Jentz: Objected to as immaterial.

The Court: I will allow it.

A. I had nothing to do with this, sir. This is an immigration passport, I should say.

Q. Did you ever see one of them? A. I have seen them, yes, sir. 10

Q. What is their purpose? A. My understanding of their purpose is that so they can get on merchant vessels.

Q. And would it have been possible for you to have gotten anybody from the "Lawrence" who served during the time that Sam Moy says he served, and have him here to-day if the prosecutor had asked you to.

Mr. Jentz: Objected to. 20

The Court: Sustain the objection.

Q. You say there are no finger-prints in the Navy Department of a man named Thomas Moy?

A. Not as far as we can find.

Q. And there are of everybody else who enlisted in the Navy? A. As far as we know. That is a pretty broad field. All the records of men that enlisted in recruiting stations are sent to the Navy Department and we are presumed to have them all. 30

Q. But you, nevertheless, have the record of Kung Ling? A. I don't think that is the name; it is Kung Ling Chin.

Q. You did not find any Thomas Moy on the "Lawrence"? A. I could not find the name, no, sir.

Q. Well, do you mean that when you could not find it that it does not exist? A. There is the book there. I went over it four times. 40

Q. Is there any other record? A. That is the

*James H. Taylor, for State—Cross.*

only one I know of in the Navy Department, of the "Lawrence."

Q. And do you say that if it is not in that book he was not physically on board there? A. That is all the Navy Department goes by. I cannot go any further than that.

10 Q. Well, you do not believe the Navy Department would be corresponding with a man supposed to be Thomas Moy, if he was not in the navy? A. It might be possible for this man to have been there; I could not say he was not there.

Q. Then, you do not mean to say that the man, if you say that he was not there or that he might not have been there, then you would be mistaken about Mr. Kung Ling Chin? A. Not any more than you are standing there.

20 Q. Well, if he served in the navy up to August 19, 1918 or 1917, and this man Kung Ling Chin deserted in 1918, they are certainly not the same men? A. No, indeed, that would not be so.

Q. That is apparent, isn't it? A. Since the year 400 before Christ, I don't think—

Q. What are you talking about 400 years before Christ? What has that got to do with it? A. I say there have been no two finger-prints found alike since the year 400 before Christ.

30 Q. That is your answer as to whether Thomas Moy could have been on the "Lawrence" and not be the Kung Ling Chin, the deserter in 1918? A. I said that; I answered your question before.

Q. You think that is correct? A. That is correct.

Mr. Cutley: That is all.

*Cross-examination by Mr. McGeehan:*

40 Q. This muster roll only goes to December, 1918, doesn't it? A. Yes, sir.

*James H. Taylor, for State—Cross.*

Q. It does not carry into the year 1919 and up to the time stated as the time of release in this letter that you have identified? A. No, I think it is up to December 31, 1918.

Q. You mean the muster roll? A. Yes, sir.

Q. It does not carry those on board from January 1 up to August 9, 1919, does it? A. No, sir, I have not that record. 10

Q. So that there is a seven month period in this man's service that is not covered by the muster roll? A. I have not that part, no, sir.

Q. What became of the roster after December, 1918? A. There will be another muster roll of that. This is just the period from 1917 up to 1918. I don't know when she went out of commission, I was only asked to bring the muster roll for the year 1918. 20

Q. Now, with respect to that printed document which you have referred to as an original, is this a seaman's identification card issued under section 4588 of the Revised Statutes of the United States, that describes a Thomas Moy? A. Yes, sir.

Q. It is the regular form of seamen's identification? A. I have seen several of them; I am not familiar with this.

Q. Now, you have full access to all of the records of the Naval Department during the war? A. Of the enlisted personnel, yes, sir. 30

Q. And you would be able to determine whether or not a Thomas Moy was an enlisted man in the Naval Reserve, wouldn't you? A. We should have that, yes.

Q. You have never made a search of those records aside from this muster roll, have you? A. Not Thomas Moy, no, sir.

Q. You have been working on this case at the 40

*James H. Taylor, for State—Cross.*

direction of the Prosecutor, having in your possession the name of Thomas Moy?

Mr. Jentz: I object. There is no evidence that he ever had possession of a name Thomas Moy.

10 Mr. McGeehan: I withdraw that part of the question.

By Mr. McGeehan:

Q. You have been working how long looking up the records pertaining to this case? A. Well, I can tell you in a very few words how long I have been looking it up.

20 Q. Can't you tell me how many months or how many weeks? A. I would say about forty-five minutes is the time I have spent on it.

Q. When was that spent on it? A. In the Navy Department at Washington.

Q. When? Last month or this month, or when? A. I could not say the exact date.

Q. Two weeks ago, a month ago, or when? A. About two weeks ago.

Q. Since that time you have made no effort to locate a man named Say Moy or Thomas Moy, have you? A. No, sir.

30 Q. So that you cannot say that a Thomas Moy, whose picture is on this identification card, was or was not a member of the Navy during the years 1917, 1918, and 1919? A. I never have looked up that name, no, sir.

40 Q. Now, when you speak of the infallibility of finger-prints, and that there never were two alike since the year 400 B. C., where do you get your authority? A. I got it out of various books from the Congressional Library; I could not recall the names of the books.

*James H. Taylor, for State—Cross.*

Q. Now, your common-sense tells you that cannot be an actual statement, doesn't it? A. Theory is the only thing I can go by.

Q. You know that four hundred years before Christ they were not taking finger-prints, don't you? A. I have books that come out of the Smithsonian Institute showing that in the year 400 Before Christ they were taking finger-prints. Finger-prints were placed on documents. The Chinese were the first to use finger-prints. 10

Q. And do you know how long ago ink was invented? A. No, I can't say I do.

Q. Do you know when paper was invented? A. No, I cannot say I do.

Q. Do you know when cameras were invented? A. No, I cannot say I do. 20

Q. Have you ever seen a finger-print or any picture of a finger-print taken before twenty years ago? A. Only in books. I have seen pictures purporting to be finger-prints taken off of mummies.

Q. You mean King Tut might have left a finger-print? A. I never have seen his.

Q. Now, then, this letter calls for a sixty dollar gratuity for service? A. Yes.

Q. A man would not get that unless he served in the navy— 30

Mr. Jentz: Objected to, not proper cross-examination, and calling for a conclusion.

The Court: I will allow it.

A. That letter does call for a sixty dollar gratuity.

Q. And, as a navy officer, you realize that that would not be given to a man unless he was entitled to it? A. I would not think so.

Q. And this man whose name you mention, whose finger-prints look like Moy's, was in the 40

*James H. Taylor, for State—Cross.*

navy less than a month when he deserted? A. From February 2 to March 8, 1918.

Q. About a month? A. Yes, sir.

Q. You have no record of his discharge or his release? A. We have no further record than that.

10 Q. You say that when this release was given, a man is entitled to his discharge? A. No, sir.

Q. You did not mean that, did you? A. No, sir. I said this: I say that when he is given this letter of release—he is a Naval Reserve man—that on September 30 when all of the reserves were released, that the Commandant of that district should have sent him a naval discharge.

20 Q. You mean to say that you said that before to this jury? A. That was the statement I made, yes, sir.

Q. And you deny that you said to this jury, under examination by Mr. Cutley, that when he got this paper he should have gotten his discharge with it; he was entitled to it.

The Court: I think he said "he was entitled to it."

30 Q. Now, he was not entitled to a discharge when he got this paper, was he? A. The way they did that, yes.

Q. Can you answer that yes or no? A. I don't think I can answer that yes or no. The procedure in giving those release papers is that on September 30, 1921, they mustered all the reserves in, then they sent them honorable discharges.

Q. Two years and one month after this is dated? A. About that.

Q. So that in August, 1919, he was not entitled to a discharge, was he? A. Not at that time.

40 Q. And two years and one months later the

*James H. Taylor, for State—Re-direct.*

*John Torpy, for State—Direct.*

government should have mailed him one, is that right? A. That is the procedure.

Mr. McGeehan: That is all.

*Redirect examination by Mr. Jentz:*

10

Q. As a matter of fact, could he have applied and gotten it, too? A. If the department saw fit to release him, yes.

Mr. Jentz: That is all.  
(Witness excused.)

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JOHN TORPY, recalled.

20

*Direct examination by Mr. Jentz:*

Q. I show you this paper which has been marked "Exhibit S-13" and ask you if you ever saw that before? A. Yes, sir.

Q. What is it? A. A statement of Sam Moy.

Q. And was that statement taken in your presence, Lieutenant? A. Taken by me.

Q. And reduced to writing by you? A. Yes, sir.

Q. Who was the statement taken from? A. The defendant, Sam Moy. 30

Q. And were the questions propounded by you, and the answers given by him reduced to writing in your presence? A. Yes, sir.

Q. By you? A. Yes, sir.

Q. Who else was present at the time? A. Detective Newhouse, Judge William McGovern, and Inspector Beggans.

Q. Did you say anything to the defendant before you questioned him? A. Yes, sir. 40

*John Torpy, for State—Direct.*

Q. What did you say to him? A. I told him I was going to take a statement from him of the crime for which he was arrested; he might answer it or not, as he saw fit, but what he did say must be of his own free will, a voluntary statement, to be taken down in writing and used at his trial.

10 Q. And what did he reply to that? A. I asked him what is his name and he told me Frank Moy.

Q. And did you write that down? A. I did. I then asked him where he lived.

Q. And all the questions on that paper were asked by you and the answers given by him in your presence and written down in your presence? A. Yes, sir.

20 Q. What did you do with the paper after the questions and answers were completed? A. Why, I read it to him.

Q. You read it to him? A. I read it to him; I read the questions and then the answers.

Q. What did you say then? A. Then I gave it to him to read.

Q. Did he read it through himself? A. He read it through himself, yes.

Q. And after he read it through himself, what did he say? A. I asked him to sign it.

30 Q. And what did he say? A. He said he didn't care to sign it until he saw his counsel first.

Q. And then what happened? A. I asked him if what he said in the statement was true, and he said "Yes". Then I said, "Why are you afraid to sign it?" He said, "Oh, well, I will sign it, but I want to put something on the statement, as long as I am going to sign it." So I said, "Take the statement and put whatever you want on it." I told him to write below the line I had finished, so that nothing could be added on to the statement.

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*Sam Moy, for Defendant—Direct.*

Q. I show you the statement and ask you whether he wrote that on there? A. Yes, Sam Moy wrote that.

Q. And that is his signature on there? A. Yes, sir.

Mr. Jentz: I offer this statement in evidence. 10

Mr. Cutley: I object to it on the ground that it is not a confession, in the first place, because it denies the guilt of the offense.

The Court: I will allow it.

Mr. Cutley: Exception.

Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge. 20

(Marked in evidence, "Exhibit S-13.")  
(Witness excused.)

Mr. Jentz: That is our case.

Mr. McGeehan: I ask permission to open the defendant's case.

The Court: You may.

Mr. McGeehan: I offer these two indictments in evidence of December 30, 1924.

The Court: They may be received.

(Exhibits marked in evidence "D-1 and D-2.") 30

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DEFENDANT'S REBUTTAL.

SAM MOY, recalled.

*Re-direct examination by Mr. Cutley:*

Q. I show you an envelope postdated Youngstown, Ohio, February 25, 11:10 a. m., addressed to 40

*Sam Moy, for Defendant—Direct.*

Thomas Moy, 131 East Commerce Street, Youngstown, Ohio, and ask you did you ever seen that envelope before? A. Yes, sir.

Q. Where did it come from?

Mr. Jentz: Objected to.

10

A. It came from Cleveland.

Q. What did it contain, if anything? A. I gave my release papers to a chief petty officer of the United States Navy—

Mr. Jentz: I object to this.

The Court: Sustain the objection.

Q. What came in that envelope? A. This came from Cleveland, Ohio.

20

Q. I show you a letter dated August 19, 1919. Did that come in the envelope to which I have just called your attention? A. It did. I sent that letter to Cleveland—

Mr. Jentz: Objected to, what he did about any letter.

A. (Continuing) —for my Victory Button.

The Court: What came in the envelope?

30

Q. What came in the envelope? A. This letter.

Q. And have you had this letter in your possession all this time? A. I put it in the safe deposit box.

Q. And who is Lieutenant H. W. Hoyt?

Mr. Jentz: Objected to.

The Court: If he knows.

40 A. He is commanding officer of the Naval Air Station, Akron, Ohio.

*Sam Moy, for Defendant—Direct.*

Q. And who is R. S. Tyler? A. He is one of the lieutenants under Lieutenant Hoyt.

Q. And you received this letter from them? A. Yes, sir.

Q. I show you a paper with a picture on it and ask you if that is your picture? A. Yes, sir.

Q. Dated August 19, 1919, and signed by C. E. Schaeffer, Deputy Collector of Customs. What is that supposed to be? A. That is an identification card.

Q. For what kind of service, if any? A. For the merchant marine, for the merchant service.

Q. And how did you come to get that? A. After I was released from the United States Navy—

Mr. Jentz: I object to that, if your Honor please, on the ground that there is not proper proof of that paper. It has to be proved in a regular way. 20

The Court: I will allow him to answer it.

Q. When you procured from Mr. Schaeffer this paper, did you show him this copy?

Mr. Jentz: I object to anything that took place between this man and Mr. Schaeffer.

The Court: I don't see what harm can be done by that. 30

A. I had to produce my release paper from the navy, and my birth paper.

The Court: Did you show it?

The Witness: Yes, sir.

Q. And as a result of that you got this paper from the Deputy Collector of Customs? A. Yes, sir. 40

*Sam Moy, for Defendant—Cross.*

Q. Is that your picture on there? A. Yes, sir.

Q. And it describes you? A. Yes, sir.

Q. And you had these papers all that time in your possession? A. Yes, sir.

Q. And you were discharged on August 9, 1919?

10 A. Yes, sir.

Q. And you never went in the navy under the name of Kung Ling Chin? A. No, sir.

Mr. Cutley: That is all.

Mr. Jentz: No questions.

Mr. Cutley: I offer the paper in evidence.

Mr. Jentz: Objected to on the ground it refers to Thomas Moy and this man's name is Sam Moy.

20 The Court: That has been explained; he says Tom is his American name and Sam is his Chinese name. I will allow it.

(Letter offered in evidence and marked "Exhibit D-3". Envelope offered in evidence and marked "Exhibit D-4". Picture offered in evidence and marked "Exhibit D-5".)

(Recess for five minutes.)

30 Mr. Jentz: I would like to recall the defendant, Moy, for a few questions.

The Court: You may.

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SAM MOY, recalled.

*Cross-examination by Mr. Jentz:*

40 Q. You got this paper which you told us about in this envelope, is that right? A. You mean the first time I received that paper?

*Sam Moy, for Defendant—Cross.*

Q. This paper you told Mr. Cutley you received in that envelope, is that right? A. Yes, sir.

Q. I show you the envelope and ask you to look at it and see when it was post marked. A. February 25, 1920.

Q. And what date is this on the paper? A. 10  
August 9, 1919.

Q. And you say you received a paper dated August 9, 1919, in an envelope dated February, 1920, is that right? A. Well—

Q. Is that right? A. Yes, that is right, but I want to explain to you.

Q. Wasn't there an original attached to this carbon copy when you got it? A. Yes.

Q. Where is the original? A. I cannot find the 20  
original.

Q. You cannot find the original but you got the carbon copy, is that right? A. Yes, sir.

Q. And where did you last see the original? A. Before I left Cleveland.

Q. Didn't you have that in your safe deposit box? A. No; I had a safe deposit box in New York City, but since I lost the original I put that in the safe deposit box.

Q. When you get a letter from the navy there is always an original and a copy fastened together; that is the way you get them? A. I lost my original. 30

Q. These finger-prints on there, are those your finger-prints? A. Yes, sir.

Q. Where did you put those on? Down at the Custom House? A. Yes, sir.

Q. There is no doubt about it that these are your finger-prints? A. These are my finger-prints. 40

Mr. Jentz: That is all.

*Frederick Drewen, for State—Direct—Cross.*

THE STATE'S SUB-REBUTTAL.

FREDERIC DREWEN, recalled.

*Direct examination by Mr. Jentz:*

10 Q. I show you this paper, Exhibit D-5, and ask you if you have looked at it? A. Yes, sir.

Q. I call your attention to the finger-prints on that paper. Did you make an examination of those finger-prints, Mr. Drewen? A. Yes, sir.

Q. Did you compare them with the finger-prints on Exhibits S-14 and S-15? A. Yes, sir.

Q. And what is the result of your comparison? A. I find this to be identical with the left thumb on the two exhibits offered there.

20 Q. In other words, this man here, whose finger-prints are on the paper you now hold, is the same man of these other exhibits? A. Yes, sir.

Q. There is no doubt about that in your mind? A. No, sir.

Mr. Jentz: That is all.

*Cross-examination by Mr. Cutley:*

30 Q. You mean it is the same finger-print of the same man? A. Yes, sir.

Q. Are you as sure about that as Mr. Taylor, the Washington expert, is about the fact that Moy was in the navy? A. I am sure about this.

Mr. Cutley: That is all.  
(Witness excused.)

*James H. Taylor, for State—Direct—Cross.*

JAMES HERBERT TAYLOR, recalled.

*Direct examination by Mr. Jentz:*

Q. Did you make an examination of the finger-prints on this Exhibit D-5? A. Yes, sir.

Q. Did you compare it with the finger prints on Exhibit S-14 and S-15? A. I compared them with the long record there. 10

Q. This police record? A. Yes, sir.

Q. Would you say that the finger-prints you examined are the same finger-prints that appear on these two exhibits? A. Yes, sir.

Q. And there is no doubt in your mind that these are finger-prints of the same man? A. No, sir.

Mr. Jentz: That is all. 20

*Cross-examination by Mr. Cutley:*

Q. Are you as sure about that as you are that he was entitled to a discharge immediately upon his release? A. I am absolutely sure that this is—

Q. I am not asking you that; I am asking you if you are as sure about that as you are that he was entitled to his discharge immediately upon his release? A. I didn't say he was entitled to his discharge at the same time he got his release. I said men in the Naval Reserve Force, when they were sent letters of release, were also on September 30, 1921, given discharges. 30

Q. Now, let's just get this right. Didn't you say to me, when I was cross-examining you, that when he got his release he was entitled to his discharge; and when Mr. McGeehan was examining you, you said he was not entitled to it until September 30, 1921; is that so, didn't you make a 40

*James H. Taylor, for State—Cross.*

different statement to me than you did to Mr. McGeehan? A. If I did, you misinterpreted it.

Q. Then, you made a mistake? A. I wouldn't say I made a mistake; I would say you misinterpreted it.

10 Q. When you made the mistake— A. I didn't say I made a mistake.

Q. But do you say that when he got his release he was entitled to his discharge? A. No, I said when he got his release, the Navy Department, on September 30, 1921, sent the men of the Naval Reserve Force their discharge.

20 Q. Then, how could he get his discharge if he was released in August, 1919, and this regulation didn't go into effect until September 30, 1921? A. I said that the Navy Department gave those papers September 30, 1921.

Q. Then he was not entitled to have a discharge in 1919? A. They never gave discharges then; they gave releases.

(Witness excused.)

Mr. Jentz: That is our case, your Honor.

30 Mr. McGeehan: If the Court please, I move for a direction of a verdict of acquittal, on behalf of the defendant Ing Kee, on the indictment charging him with assault and battery in the several counts on the ground that there is no evidence to connect him with the assault and battery, or to show that he was present, aiding and abetting.

The Court: That motion is denied.

Mr. McGeehan: Exception.

Exception allowed, signed and sealed accordingly.

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DANIEL O'REGAN,  
Judge.

*James H. Taylor, for State—Cross.*

Mr. Cutley: If the Court please, I move for a direction of a verdict of acquittal, on behalf of the defendant Sam Moy, on the ground that the State has failed to substantiate the allegations in the indictment in respect to each and every count contained therein against him. 10

The Court: Motion denied.

Mr. Cutley: Exception.

Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

(Counsel for the respective sides summed up.) 20

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### The Court's Charge.

The Court: Gentlemen of the jury: Ing Kee and Sam Moy, together with two others, who are described as John Doe and Richard Roe, were indicted by the December term of the Grand Jury of Hudson County for assault with intent to kill. The two indictments are worded the same, the only difference between them being that one of them is for an assault on Charles Jung, and the other is for an assault on Low Sing. I shall read to you one of the indictments. The wording of that is the same as the wording of the other indictment. 30

“The Grand Inquest of the State of New Jersey, in and for the body of the County of Hudson, upon their respective oath presents that Ing Kee; Sam Moy; John Doe, whose true name is as yet 40

*The Court's Charge.*

unknown, but who is described as being five feet nine inches in height; about thirty-five years of age; weight about 170 pounds, clean shaven; and Richard Roe, whose true name is as yet unknown, but who is described as being five feet nine inches in height, about thirty-five years of age, weight about 170 pounds, clean shaven, late of the City of Jersey City, in the said County of Hudson, on the 27th day of December, in the year of our Lord, 1924, with force and arms, at the City of Jersey City aforesaid, in the county aforesaid, and within the jurisdiction of this Court, with a certain knife and hammer which they, the said Ing Kee, Sam Moy, John Doe, described above, and Richard Roe, described above, in their hands then and there had and held, in and upon one Charles Jung, in the peace of God, and of this State, then and there being, did commit an assault with an intent him, the said Charles Jung, then and there to kill, contrary to the form of the statute in such case made and provided, and against the peace of this State, the Government, and the dignity of the same."

And in addition to this count for assault with intent to kill, there is a count in this indictment, and in the other also, for simple assault and battery.

The statute describes assault with intent to kill as follows:

"Any person who shall commit an assault with intent to kill, or to commit a burglary, rape, robbery, or sodomy, or carnally abuse a woman-child under the age of sixteen, with or without her consent, shall be guilty of a high misdemeanor." That is the crime for which they are charged, and those are the indictments found, which you will take with you into the jury-room.

*The Court's Charge.*

The defendants in this case, gentlemen of the jury, are Chinamen, but they are not being charged because they are Chinamen. The law gives them the same protection that it gives every defendant who is put on trial. There are certain barriers which surround them, and these barriers the State must knock down before they are convicted. The principal barrier is that these defendants are presumed to be innocent. They are innocent until they have been found guilty beyond a reasonable doubt by a verdict of the jury. That presumption of innocence runs throughout the entire case and through every material element in the case, and the State must rebut that presumption of innocence in every material allegation in the complaint, beyond a reasonable doubt. The State must establish the guilt of these defendants beyond a reasonable doubt. Reasonable doubt is not any mere possible doubt that you might have. It has been defined by our courts in a certain manner, and we are instructed, in defining reasonable doubt to you, to use the definition that has been given is as follows:

Reasonable doubt is not a mere possible doubt. It is that state of the case which after the entire comparison and consideration of all the evidence, leaves the minds of the jurors in that condition that they cannot say that they feel an abiding conviction to a moral certainty of the guilt of the accused.

If, therefore, gentlemen of the jury, after you carefully and entirely compared and considered all the evidence in this case, your mind is left in that condition that you cannot say that you feel an abiding conviction to a moral certainty of the truth of the charge, then you have what

*The Court's Charge.*

10 the law calls a reasonable doubt, and it is your duty to give to the defendant the benefit of that reasonable doubt. You must not give them the benefit of any mere doubt that you have, but you must give them the benefit of any reasonable doubt, and if, after a consideration of the entire evidence in the case, you feel that you have that abiding conviction to a moral certainty of the guilt of the accused, then it is your duty to so find.

20 You are the sole judges of the facts, gentlemen of the jury. I have made it a rule not to discuss the facts with you. You have listened to those facts for two days. You have paid strict and particular attention to all of the evidence. You are the sole judges of those facts. Your recollection and remembrance of the testimony is what is to bind you, not what counsel for the defense says in his summation, or what either of them say in summation, and not what counsel for the State says. If any of the counsel, in their summations, have said to you anything in their interpretation of the evidence which is in conflict with your remembrance of it, it is your remembrance of the evidence that is to guide you, and not what they say. Counsel, of course, try to make the best of their own case and present the evidence in the most suitable light for them. You are to remember that, and if a conflict does arise between what they say and what you think it is, then what you think it is, is what is to bind you.

30  
40 Gentlemen, in considering the evidence, you have a right to take into consideration the interest of the parties in this case. You have a right to consider the interest or the motive by which the witnesses, those for the State and those for the defendants, may have been moved in giving their testimony. You may consider the extent to which

*The Court's Charge.*

any witness or witnesses may have permitted his or her interest or other improper motives to influence or color their testimony. For example, in considering the testimony of the defendant, you may weigh the circumstances that they are the most interested persons in all the world in the outcome of this trial. Has that interest been strong enough to induce them to depart from the truth? or to color their testimony? It may have and it may not. You may take that into consideration. That will apply to all of the witnesses in the case. 10

Testimony has been offered as to the character of one of the defendants. I do not remember that any testimony as to the previous good character was offered for Ing Kee, but there was testimony offered as to the good character of Sam Moy. You will take that into consideration. I will read you what the leading cases of the State say in reference to that character testimony. Evidence has been offered on behalf of the defendant as to his general reputation—that is, to the defendant Sam Moy—in the community where he lives. A witness has testified that his reputation is good. It is proper and competent for the defendant to offer that evidence, because evidence of previous good character or reputation tends to render it improbable that one possessing such virtues and qualities would be likely to commit such a crime as is charged against him, but evidence of previous good character or reputation manifestly should not, itself, prevail against a convincing belief that the defendant committed the crime as charged, if such belief is established by all the evidence of the case beyond a reasonable doubt, because it is quite possible that even a person of the highest character and reputation in a community 20 30 40

*The Court's Charge.*

might fall from his lofty position and commit the meanest crime at a time when he possessed, in the opinion and estimation of the community, a good reputation for those virtues and qualities which ordinarily would repel such a belief.

10 If you should be convinced by the evidence that the defendant's general reputation in the community in which he lived prior to the time of the alleged commission of the crime was good, but in spite of that fact you are also convinced, beyond a reasonable doubt, from all the evidence in the case, that he committed the crime as charged, it is your clear duty to convict him.

20 You are therefore to take this evidence of the previous good character or reputation of the defendant and carefully consider it in connection with all the other evidence in the case, giving to all the evidence such weight and credit as you believe it is entitled to, and if upon such consideration there exists in your mind a reasonable doubt of his guilt, even though that doubt be engendered by his previous good character and reputation, you should give him the benefit of that reasonable doubt and acquit him.

30 There has also been presented in this case an alibi, and the alibi applies particularly to Sam Moy, but I think it also affects Ing Kee. I shall read to you what the law says you may use in your determinations in considering an alibi as a defense to an accusation.

40 Absence from the scene of the crime is not an unreasonable position for those charged with crime to take, and it is sometimes the easiest and surest way of escape, though escape, by this means, frequently involves criminal contrivance and perjury on the part of the accused. While the defense of alibi may be thus abused, it is

*The Court's Charge.*

nevertheless a legal defense and a most complete one, when truthfully and fully established. The fact that an alibi can be presented as the result of perjury and connivance imposes upon the jury the duty of carefully weighing and scrutinizing the testimony, which is offered, establishing it.

10

No better rule can, perhaps, be prescribed as to what weight must be given to testimony to successfully establish an alibi—or to make it effective as a defense—than this: that it must be of such force as to create a reasonable doubt of the defendant's guilt as made out by the State. The State is required to make out a case of guilt beyond a reasonable doubt, before a conviction can legally be had.

It follows, therefore, in this case, that if the State has by the proofs made out a clear case against the defendant—and they (the defendants) rely upon the defense of an alibi—they must, in order to escape conviction, establish such alibi by such evidence and to such a degree as will, when taken and considered together with all the rest of the evidence in the case, create in your minds a reasonable doubt of their guilt.

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Gentlemen of the jury, you are not to be swayed by anything in this case except what has been testified to. Let no outside interference guide you in this case. You are not to be swayed by sympathy or by animus. The fact that there is a tong fight or what is supposed to be a tong fight must not enter into your deliberations at all. You are trying these two defendants for one particular offense; that, and that alone, is what they are charged with. That offense must be proved to you by the State beyond a reasonable doubt, and the only way that the State has to offer that proof is by the witnesses they produce here. The wit-

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*The Court's Charge.*

nesses who testify are the ones who are to be considered by you, and what they said, and what they said alone, in addition to the exhibits offered, is what should be taken into consideration in your determination of this case.

10 The prosecutor for the State, in his summation, told you about a proverb in law "false in one thing, false in everything". There is such a proverb, gentlemen of the jury, and he was entitled to take that into consideration. "*Falsus in uno, falsus in omnibus*—false in one thing, false in all." You may take that into consideration, but in doing so you must not consider that that is an outstanding, sure test, because it is to be used only with discretion. You are to take it  
20 into consideration with everything else in the case, and you must not say to yourselves, because one particular witness lied in one particular thing, it must necessarily follow that he or she lied in everything. But you may test their credibility by taking that into consideration.

You gentlemen have listened patiently to this case for two and a half days, and you took your solemn oath that you would render a verdict according to the evidence "so help me God." Each  
30 one of you said that, gentlemen of the jury. You have a solemn duty to perform. A crime has been committed. Somebody committed that crime. The two complaining witnesses were brutally assaulted. Did these two defendants commit that offense? Has the State established their case to your satisfaction beyond a reasonable doubt? You have a solemn duty to perform and you are the bulwarks of our institutions. The jury system is the greatest protection the people of this State and of the United States have. You must  
40 uphold that system, and the only way you can up-

*The Court's Charge.*

hold it is by performing your duty according to your oaths, so help you God.

The Prosecutor has called my attention to an omission I made in telling you what verdicts you might render. There are two indictments here and two counts in each indictment. One indictment charges Ing Kee, Sam Moy, and two men who are not in this case at this time, with assaulting Charles Jung with an intent to kill, and in that indictment there is a count for simple assault and battery, so you may discharge them entirely, you may discharge both of them, you may discharge one of them and find the other guilty. You may render a verdict against Ing Kee and discharge Sam Moy. You may render a verdict against Sam Moy and discharge Ing Kee. You may render that verdict for assault with intent to kill, or you may render it for simple assault and battery, or you may discharge either of them. On the other indictment you may do the same thing. You may find Ing Kee guilty of assault with intent to kill and discharge Sam Moy, or you may find Sam Moy guilty of assault with intent to kill and discharge Ing Kee, or you may discharge both of them on that count and find them guilty of simple assault and battery, or either of them, or you may find them not guilty on each count.

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*Exceptions allowed by Judge.*

Mr. McGeehan: Exception to that portion of the Court's charge where the Court stated "you are not to be swayed by anything except what has been testified to", on the ground that the jury may take into consideration not only the evidence in the case, but the lack of evidence in the case.

10      Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

Exception to that portion of the Court's charge wherein the Court stated that in order to escape conviction, if they rely upon the defense of alibi, they must establish such alibi to an extent that will raise the reasonable doubt of their guilt, on the ground that this throws upon them a burden that takes away, in the charge of the Court, the burden of the State to prove the defendants guilty.

20      Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

Mr. Cutley: I take a general exception to the Court's charge, and also except on the grounds set forth by Mr. McGeehan, set forth above.

30      Exception allowed, signed and sealed accordingly.

DANIEL O'REGAN,  
Judge.

**Certificate.**

## NEW JERSEY SUPREME COURT.

STATE OF NEW JERSEY, Defendant-in-Error,	}	On	10
<i>vs.</i>		Indictment.	
ING KEE AND SAM MOY, Plaintiffs-in-Error.		CERTIFICATE.	

I, DANIEL T. O'REGAN, Judge of the Court of Oyer and Terminer in and for the County of Hudson, before whom the above indictment was tried, do certify that the foregoing is the entire record of the proceedings including the testimony of the witnesses had and taken upon the trial of the indictment in the above stated cause, in the State of New Jersey *vs.* Ing Kee and Sam Moy. 20

DANIEL O'REGAN,  
Judge.

Dated: September 29, 1927.

*To the Honorable Justices of the Supreme Court of Judicature at Trenton, N. J.:* 30

I return herewith, as I am commanded, the entire record in the case of The State *vs.* Ing Kee and Sam Moy, for assault with intent to kill, December Term 1924, with all things touching the same.

In testimony whereof, I have hereunto set my hand and affixed the seal of said County this 29th day of September, 1927. 40

DANIEL O'REGAN,  
Judge.

### Assignment of Errors.

#### NEW JERSEY SUPREME COURT.

10	THE STATE OF NEW JERSEY, Defendant-in-Error,	}	In Error.
	<i>vs.</i>		ASSIGNMENT OF ERRORS.
	ING KEE AND SAM MOY, Plaintiffs-in-Error.		

20 Afterwards, to wit, before our Justices of our said Supreme Court, at Trenton, comes the said Ing Kee and Sam Moy, by their attorneys John W. McGeehan and George E. Cutley, and say that the record and proceedings aforesaid and also in the giving of judgment upon the indictment there is manifest error in this:

1. Because the Court refused to direct a verdict of acquittal.
2. Because the Court allowed the State to introduce the finger prints of a man named Kun Ling Chin.
- 30 3. Because the Court charged:

40 “It follows therefore, in this case that if the State has by proofs made out a clean case against the defendants, and they (the defendants) rely upon the defense of an alibi, they must in order to escape conviction, establish such alibi by such evidence and to such a degree as will when taken and considered together with all the rest of the evidence in the case, create in your minds a reasonable doubt.”

*Assignment of Errors.*

4. Because the verdict was contrary and against the weight of the evidence.

Wherefore, said plaintiffs-in-error, Ing Kee and Sam Moy, pray that the judgment and sentence aforesaid by reason of the aforesaid errors in the record and proceedings aforesaid and the giving of judgment and passing of sentence aforesaid be reversed, cancelled and held for nothing and that the said Ing Kee and Sam Moy may be restored in all things by them lost on occasion thereof.

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JOHN W. MCGEEHAN AND GEORGE E. CUTLEY.  
Attorneys of Plaintiff-in-Error.

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**Specification of Causes for Reversal.**

NEW JERSEY SUPREME COURT.

THE STATE OF NEW JERSEY,  
Defendant-in-Error,

*vs.*

ING KEE and SAM MOY,  
Plaintiffs-in-Error.

In Error.

SPECIFICATION  
OF CAUSES FOR  
REVERSAL.

30

The plaintiffs-in-error set forth the following specification of causes for reversal of the judgment heretofore entered against the plaintiffs-in-error in the Hudson County Court of Oyer and Terminer, wherein the plaintiffs-in-error claim that they suffered manifest wrong and injury in

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*Specification of Causes for Reversal.*

the admission and rejection of testimony, in the charge of the Court, and the denials of matters of discretion by the Court, to wit:

1. Because the Court refused to direct a verdict of acquittal.
- 10 2. Because the Court allowed the State to introduce the finger prints of a man named Kun Ling Chin.
3. Because the Court charged:

20 "It follows therefore, in this case that if the State has by proofs made out a clean case against the defendants, and they, (the defendants) rely upon the defense of an alibi, they must in order to escape conviction establish such alibi by such evidence and to such a degree as will when taken and considered together with all the rest of the evidence in the case, create in your minds a reasonable doubt."

4. Because the verdict was contrary and against the weight of the evidence.

The verdict, judgment and sentence was in many respects illegal and contrary to law and should be set aside.

30 JOHN W. MCGEEHAN and  
 GEORGE E. CUTLEY,  
 Attorneys for Plaintiffs-in-Error.

**Joinder in Error.**HUDSON COUNTY COURT OF QUARTER  
SESSIONS.

THE STATE OF NEW JERSEY

*vs.*ING KEE and SAM MOY,  
Defendants.

In Error.

JOINDER IN  
ERROR.

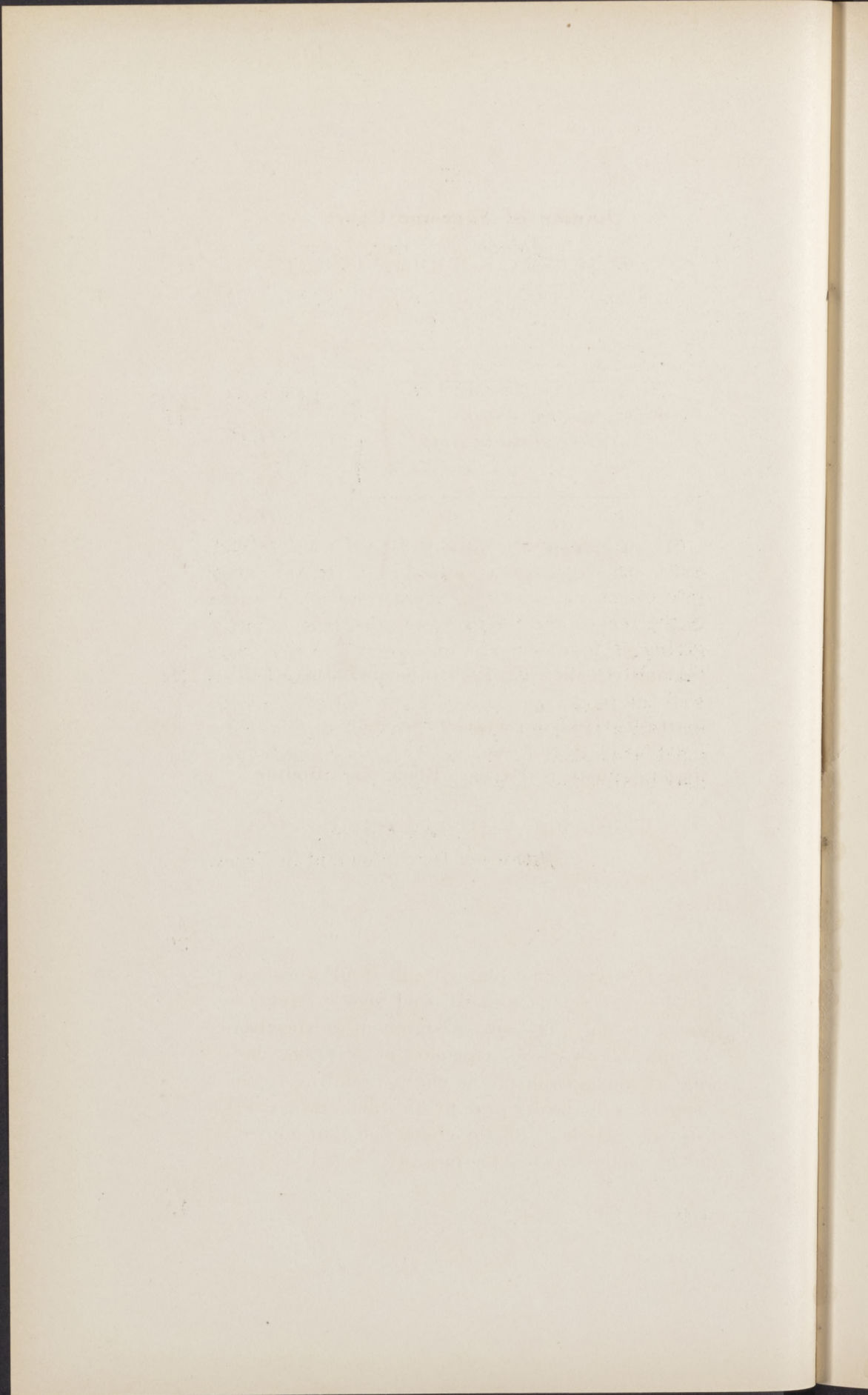
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And thereupon the State of New Jersey, defendant-in-error, by John Milton, its attorney, comes into Court and says that there is no error either in the record and proceedings aforesaid or in the giving of judgment aforesaid, and it prays here that the Court here may proceed to examine as well the record and proceedings aforesaid, as the matters aforesaid assigned for error and the judgment aforesaid, in the manner aforesaid given. may in all things be affirmed, etc.

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JOHN MILTON,  
Attorney for Defendant-in-Error.

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## Opinion of Supreme Court

## NEW JERSEY SUPREME COURT

No. 4, MAY TERM, 1929.

STATE OF NEW JERSEY,  
*Defendant-in-Error,*

vs.

ING KEE and SAM MOY,  
*Plaintiffs-in-Error.*

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Submitted May 17, 1929; Decided July, 1929. 20

Error to Hudson Quarter Sessions.

Before Justices Parker, Black and Bodine.

For the plaintiffs-in-error, George E. Cutley.

For the State, John Drewen, prosecutor of the pleas.

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PER CURIAM. The plaintiffs-in-error were convicted of atrocious assault, and seek to reverse the conviction. The only assignment or specification laid before us as a ground of reversal, challenges a paragraph of the charge relating to the claim of alibi interposed by the defendants. It does not include all of the charge on that subject, and on well-settled principles, all should be read

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*Opinion of Supreme Court*

together. The following is the complete charge on that point:

10           “There has also been presented in this case an alibi, and the alibi applies particularly to Sam Moy, but I think it also affects Ing Kee. I shall read to you what the law says you may use in your determinations in considering an alibi as a defense to an accusation.

20           “Absence from the scene of the crime is not an unreasonable position for those charged with crime to take, and it is sometimes the easiest and surest way of escape, though escape, by this means, frequently involves criminal contrivance and perjury on the part of the accused. While the defense of the alibi may be thus abused, it is nevertheless a legal defense and a most complete one, when truthfully and fully established. The fact that an alibi can be presented as the result of perjury and connivance imposes upon the jury the duty of carefully weighing and scrutinizing the testimony, which is offered, in establishing it.

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          “No better rule can, perhaps, be prescribed as to what weight must be given to testimony to successfully establish an alibi or to make it effective as a defense—than this: that it must be of such force as to create a reasonable doubt of the defendant’s guilt as made out by the State. The State is required to make out a case

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*Opinion of Supreme Court*

of guilt beyond a reasonable doubt, before a conviction can legally be had.

“It follows, therefore, in this case, that if the State has by the proofs made out a clear case against the defendant—and they (the defendants) rely upon the defense of an alibi—they must, in order to escape conviction, establish such alibi by such evidence and to such a degree as will, when taken and considered together with all the *rest of the evidence* in the case, create in your minds a reasonable doubt of their guilt.” 10

It is the last paragraph, beginning: “It follows, therefore” that is attacked as erroneous. 20

We deem it needless to consider it as standing alone. Take with what precedes it, the plain purport is that if, in the language of the first head-note of *State v. Parks*, 96 N. J. L. 360 “the personal presence of the defendant at the scene of the alleged crime is an essential of his guilt, and the defense of alibi is interposed, defendant is entitled to an acquittal if the testimony creates such a degree of uncertainty as to his whereabouts that the jury are not satisfied beyond a reasonable doubt of his guilt.” 30

Such in our estimation, though at considerably greater length, was the effect of the charge, which might well have been compressed into the authoritative language of the Court of Errors and Appeals in the case cited.

The judgment will be affirmed. 40

**Reason for Reversal**

NEW JERSEY COURT OF ERRORS AND  
APPEALS

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ING KEE and SAM MOY,  
*Plaintiffs-in-Error,*

vs.

STATE OF NEW JERSEY,  
*Defendant-in-Error.*

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On Writ  
of Error.

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And now come ING KEE and SAM MOY by George E. Cutley, their attorney, and say that in the record and proceedings aforesaid, and also in giving the judgment aforesaid, there is manifest error, and the said Ing Kee and Sam Moy say that the said judgment should be reversed and assign the following reason or cause:

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1. Because the Supreme Court affirmed the judgment of the Hudson County Court of Quarter Sessions though that judgment should have been reversed.

Respectfully submitted,

GEORGE E. CUTLEY,  
*Counsel for Plaintiffs-in-Error.*

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## Joinder in Error

NEW JERSEY COURT OF ERRORS AND  
APPEALS

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ING KEE and SAM MOY,  
*Plaintiffs-in-Error,*

vs.

STATE OF NEW JERSEY,  
*Defendant-in-Error.*

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On Writ  
of Error.

And thereupon, the said State of New Jersey,  
by John Drewen, its attorney, comes into Court  
and says that there is no error either in the  
record and proceedings aforesaid, or in giving  
the judgment aforesaid and he prays that the  
Court here may proceed to examine as well the  
record and proceedings as the matters aforesaid,  
in manner aforesaid given, may in all things be  
affirmed, etc.

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JOHN DREWEN,  
*Attorney of Defendant-in-Error.*

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## Writ of Error to Supreme Court

NEW JERSEY, ss:  
(L.S.)

*To the Honorable, the Justices of the Supreme  
Court of the State of New Jersey:*

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Because in the entire record and proceedings and entire record of the proceedings and also in giving a judgment against ING KEE and SAM MOY upon a certain indictment in the County of Hudson, State of New Jersey, aforesaid, for assault with intent to kill, and the said Ing Kee and Sam Moy as it is said manifest error hath intervened to the great damage of the said Ing Kee and Sam Moy, as from their complaint we have received information, and we being willing in this behalf

20 to correct the error in due manner if any there shall be and that speedy justice be done to them, the said Ing Kee and Sam Moy, command you that if the judgment be thereon given that you distinctly and openly send under your seal the records and proceedings aforesaid with all things touching the same to the New Jersey Court of Errors and Appeals on the 22nd day of August next, and this writ, that the record and proceedings aforesaid being inspected we may further

30 cause to be done thereupon for correcting that error what of right and according to law ought to be done.

Witness, EDWIN ROBERT WALKER, Chancellor at Trenton, aforesaid the 2nd day of August, A. D., Nineteen hundred twenty-nine.

JOSEPH F. S. FITZPATRICK,  
*Clerk.*

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GEORGE E. CUTLEY,  
*Attorney for Plaintiffs-in-Error.*

# New Jersey Court of Errors and Appeals

ING KEE and SAM MOY,  
*Plaintiffs-in-Error,*

vs.

THE STATE OF NEW JERSEY,  
*Defendant-in-Error.*

On Writ  
of Error.

## BRIEF FOR PLAINTIFFS-IN-ERROR.

The plaintiffs-in-error have sued out for a writ of error from the New Jersey Court of Errors and Appeals, directed to the New Jersey Supreme Court, to review a judgment of affirmance on the convictions of the plaintiffs-in-error on two indictments for assault with intent to kill. In the trial court, the plaintiffs-in-error were found guilty and sentenced to a term in State Prison. To review the judgment of the New Jersey Supreme Court and the proceedings taken therein, in addition to the proceedings in error, the plaintiffs-in-error have taken advantage of the provisions of Chapter 136 of the Act concerning criminal procedure, for the purpose of testing the legality of the judgment of the New Jersey Supreme Court.

In the New Jersey Supreme Court, the *per curiam* opinion was as follows:

“PER CURIAM. The plaintiffs-in-error were convicted of atrocious assault and seek to reverse the conviction. The only assignment or specification laid before us as a ground of reversal, challenges a paragraph of the charge relating to the claim of alibi interposed by the defendants. It does not include all of the charge on that subject, and on well settled principles, all should be read together. The following is the complete charge on that point:

“There has also been presented in this case an alibi, and the alibi applies particularly to Sam Moy, but I think it also affects Ing Kee. I shall read to you what the law says you may, use in your determinations in considering an alibi as a defense to an accusation.

“Absence from the scene of the crime is not an unreasonable position for those charged with crime to take, and it is sometimes the easiest and surest way of escape, though escape, by this means, frequently involves criminal contrivance and perjury on the part of the accused. While the defense of alibi may be thus abused, it is nevertheless a legal defense and a most complete one, when truthfully and fully established. The fact that an alibi can be presented as the result of perjury and connivance imposes upon the jury the duty of carefully weighing and scrutinizing the testimony, which is offered, establishing it.

“No better rule can, perhaps, be prescribed as to what weight must be given to testimony to successfully establish an alibi or to make it effective as a defense, than this: that it must be of such force as to create a reasonable doubt of the defendant's guilt as made out by the

State. The State is required to make out a case of guilt beyond a reasonable doubt, before a conviction can legally be had.

“It follows, therefore, in this case, that if the State has by the proofs made out a clear case against the defendant—and they (the defendants) rely upon the defense of an alibi—they must, in order to escape conviction, establish such alibi by such evidence and to such a degree as will, when taken and considered together with all the *rest of the* evidence in the case, create in your minds a reasonable doubt of their guilt.”

It is the last paragraph, beginning: “It follows, therefore” that is attacked as erroneous.

We deem it needless to consider it as standing alone. Taken with what precedes it, the plain purport is that if, in the language of the first headnote of *State v. Parks*, 96 N. J. L. 360 “the personal presence of the defendant at the scene of the alleged crime is an essential of his guilt, and the defense of alibi is interposed, defendant is entitled to an acquittal if the testimony creates such a degree of uncertainty as to his whereabouts that the jury are not satisfied beyond a reasonable doubt of his guilt.”

Such in our estimation, though at considerably greater length, was the effect of the charge, which might well have been compressed into the authoritative language of the Court of Errors and Appeals in the case cited.

The judgment will be affirmed.”

The plaintiffs-in-error have assigned error on the judgment of the New Jersey Supreme Court and respectfully insist that in the charge of the trial court, referred to in the opinion of the New Jersey Supreme Court, the plaintiffs-in-error suffered manifest injury, sufficient under the statute to justify a review and reversal by this Court.

### POINT I.

#### **The Supreme Court erred in construing the charge of the Trial Court.**

In the case of *Sherlock v. State*, Atl. Rep. 37, page 435, the trial Court charged among other things that the defendant must prove the fact of an alibi set up by him by a preponderance of evidence.

Judge Garrison in writing the opinion in the *Sherlock* case spoke as follows:

“These instructions are erroneous, and rest upon a misconception of the nature and effect of the line of evidence offered. In a case where the presence of the defendant at the commission of the crime is essential to the conviction, the state must establish that fact beyond a reasonable doubt.

Testimony tending to break the force of the state's *prima facie* case, by testimony that the defendant was ‘alibi,’ is not the offer of an affirmative issue advanced by the defense; it is merely showing a state of facts inconsistent with an essential element of the indictment.”

In the Sherlock case the Court said that the charge of the trial court deprived the defendant absolutely of the benefit of such reasonable doubt, and hence was prejudicial in the extreme.

In the case of *State v. MacQueen*, Alt. Rep. 55, p. 209, the trial Court gave the jury to understand that while a defendant establishing an alibi is not bound to prove it beyond a reasonable doubt, he must establish it beyond a clear preponderance of evidence. The impression left upon the jury, in the MacQueen case, Judge Pitney said:

“ \* \* \* must have been that the evidence tending to show the absence of Grossman, was to be disregarded, unless it outweighed that which tended to prove his presence at the scene of the riot. But, whatever goes toward proving an alibi (although it falls short of establishing it) at the same time tends to throw doubt upon the commission of the crime, where the presence of the defendant is essential to guilt. And if a reasonable doubt of guilt is raised, even by inconclusive evidence of an alibi, the defendant is entitled to the benefit of that doubt. *Sherlock v. State*, 60 N. J. Law 31.”

In the case of *State v. Parks*, 115 Atl., page 305, Justice Parker said:

“ \* \* \* and that by putting the burden on him to prove his absence by preponderance of evidence he is deprived of the benefit of that reasonable doubt.”

In the case of *State v. Sahazian*, 119 Atl. 780, Judge Katzenbach in writing the opinion of the Supreme Court spoke as follows:

“(1) The first point argued for the plaintiff-in-error is with reference to that portion of the court’s charge which dealt with the subject of reasonable doubt. The court said:

‘The law requires that the state before it can claim a conviction in this case, as in all criminal cases, shall produce before you such evidence as convinces you beyond a reasonable doubt that these men are guilty as charged. If the testimony that has been presented to you satisfies you to that degree that you can say you have no doubt or a reasonable doubt of their guilt, it is then, of course, your duty to find them guilty as charged.’

The first sentence is a correct statement, but the second sentence is erroneous in that it required the jury to convict the defendants if they had a reasonable doubt of their guilt. This sentence deprived the defendants of the right to which they were entitled. This case is similar to the case of *State v. Sandt*, 95 N. J. Law, 49, 111 Atl. 651. In that case the judge charged:

‘If these men are convicted they must be convicted on testimony which leaves in your minds no reasonable doubt of their guilt. If, after a consideration of all the testimony, you are satisfied that the men are not guilty beyond a reasonable doubt, you should acquit them; but if you have no such reasonable doubt you ought to convict them.’

(2) This court held that this was error because it put on the defendants the burden of showing that they were innocent beyond a reasonable doubt when, by law they are to be assumed innocent until the state

overcomes that presumption and establishes the guilt of the defendants beyond a reasonable doubt. The state contends in the present case that, taking the whole paragraph, the jury could not have gotten any other meaning than that the court was in fact saying that the jury must have neither a reasonable doubt nor any doubt if it would convict these defendants. The case of *State v. Sandt, supra*, this court pointed out that while other parts of the charge, on the subject of reasonable doubt, were correct, this did not cure error for the jury is not required to determine what part of a contradictory charge is correct. This part of the charge is in our opinion unsound in law and was prejudicial to the defendants."

In the Sahazian case at page 781 Atlantic Reporter 119, an excerpt from the charge of the Trial Court appears as follows:

"On the question of alibi, I will state to you what I conceive to be the law on that subject, the true doctrine seems to be that where the state has established a *prima facie* case and the defense has relied upon its defense as an alibi, the burden is upon it to show it by the production of proof not beyond a reasonable doubt, not by preponderance of evidence, but by evidence of such character and of such a degree of certainty as will, when taken together with other testimony in the case leave in the minds of the jury still a question of doubt and certainty as to whether the defendants were at the place where the crime was alleged to have been committed at the time of its commission. If that is the effect of the testimony produced on the part of the alibi, it is said to be established and the defendant is entitled to a verdict of not guilty."

In the case at bar the Court said that if the State has by its proofs made out a clear case against the defendants and they rely upon the defense of an alibi they must in order to escape conviction establish such alibi by such evidence and to such a degree as will when taken and considered together with all the rest of the evidence in the case create in the jury's minds a reasonable doubt of the defendants' guilt. This excerpt it seems to the plaintiffs-in-error is practically identical with the charge given by the trial Court in the Sahazian case and in the present case necessarily imposes upon the defendants the establishment of their alibi to such an extent that there is created in the minds of the jury a reasonable doubt of their guilt. In the Sahazian case the Supreme Court said that the trial Court used words of uncertain meaning when it referred to "evidence of such character and of such a degree of certainty as will, when taken together with the other testimony in the case, leave in the minds of the jury still a question of doubt and uncertainty as to whether the defendants were at the place where the crime was alleged to have been committed."

In the Sahazian case the Court said the words "doubt" and "uncertainty" had no well settled legal meaning. In this case the words "such evidence" and "to such a degree" have no well settled and legal meaning. The jury were led into the realms of speculation and uncertainty by the Court's charge. The defendants were deprived of the benefit of a reasonable doubt to which they were entitled in that element of the case, when it was necessary for the State to prove beyond a reasonable doubt the presence of the defendants

at the place of the alleged crime. Under the Court's charge in this case the defendants were compelled to exculpate themselves and to exculpate themselves by the positive and exclusive method of presentation of their proofs. They had to create a reasonable doubt of their guilt by the evidence of their alibi. This, we submit, was an erroneous criterion as the jury's determination deprived the defendants of the right to have the State at all times assume and maintain the burden of proof and obviously rendered their conviction inevitable under the law as laid down in the Court's charge.

*See also State vs Guarino decided  
by the Court of Errors and Appeals October 1929  
not yet reported.*

#### POINT II.

In the opinion of the New Jersey Supreme Court as set out in this brief, the following observation of the affect of the trial court's charge was set forth as follows:

"We deem it needless to consider (referring to the last paragraph of the excerpt from the Court's charge) it as standing alone. Taken with what precedes it, the plain purpose is that if, in the language of the first headnote of *State v. Parks*, 96 N. J. L. 360, the personal presence of the defendant at the scene of the alleged crime is an essential of his guilt, and the defence of alibi is interposed, defendant is entitled to an acquittal if the testimony creates such a degree of uncertainty as to his whereabouts that the jury are not satisfied beyond a reasonable doubt of his guilt."

The first headnote in the syllabus in the Parks case, is as follows:

“In a criminal case, where the personal presence of the defendant at the scene of the alleged crime is an essential of his guilt, and the defence of alibi is interposed, defendant is entitled to an acquittal if the testimony creates such a degree of uncertainty as to his whereabouts that the jury are not satisfied beyond a reasonable doubt of his guilt.”

The plaintiffs-in-error respectfully insist, with due deference to the New Jersey Supreme Court's opinion, that under the charge of the Court contained in the excerpt to which exception was duly taken, the trial Court placed upon the defendant below a burden of proof which is sanctioned neither by the ordinary rules of criminal evidence or by the cases which have passed upon the criterion of evidence necessary to be maintained in cases where an alibi is set up. The plaintiffs-in-error respectfully insist that they concede the propriety of the contents of the first syllabus in the Parks case, and no one can deny that the Parks case accurately and fully states the law as applicable to alibi, but it is respectfully insisted that the charge of the Court below fails to take into consideration the three mental processes through which the jury might go in considering the question of alibi. As it was said in the Parks case that upon the interposition of alibi the jury might find any one of three conclusions, firstly, that the defendant was present, notwithstanding such defense, that is of alibi, secondly, that he was absent, in which case he is said to have proved his whereabouts, or thirdly, that the testimony may create such a degree of uncertainty

as to his whereabouts, that the jury are not satisfied beyond a reasonable doubt of his guilt of the crime in question. These three mental processes which the jury might undergo in reaching a conclusion, we respectfully insist differ from the decisive and unequivocal language of the trial Court for the following reasons.

Assuming, for the purpose of argument, that it is not fair to isolate an excerpt of the charge and attempt to allege error on this isolated excerpt, without setting forth the antecedent part of the charge, the plaintiffs-in-error call to the attention of this Court that in the preliminary presentation of the defense of alibi, <sup>by the trial court</sup> was to say the least, a judicial insinuation to the jury that the "easiest and surest way of escape, though escape, by this means, frequently involves criminal contrivance and perjury on the part of the accused. While the defense of alibi may be thus abused, it is nevertheless a legal defense and a most complete one when truthfully and fully established." This immediately prepared the jury for a consideration of the defense which the Court, by its inference had stamped as one that "frequently involves criminal contrivance and perjury on the part of the accused."

The Court, among other things, in its charge, and as quoted in the New Jersey Supreme Court's opinion, says:

"No better rule can, perhaps, be prescribed as to what weight must be given to testimony to successfully establish an alibi or to make it effective as a defense—than this: that it must be of such force as to create a reasonable doubt of the de-

fendant's guilt as made out by the State. The State is required to make out a case of guilt beyond a reasonable doubt, before a conviction can legally be had."

The plaintiff-in-error respectfully say that the creation of a reasonable doubt by the defendants below was in this case made a substantive burden when the Court said, "if the State has by the proofs made out a clear case against the defendant—and they (the defendants) rely upon the defense of an alibi—they must, in order to escape conviction, establish such alibi by such evidence and to such a degree as will, when taken and considered together with all the rest of the evidence in the case, create in your minds a reasonable doubt of their guilt."

What language could be more convincing or persuasive? Taking the statement that the defendants having interposed no other defense but alibi, the jury were entitled to assume from what the Court said, that "the State has by its proof made out a clear case against the defendants," and that in order to exculpate themselves and get out of the judicial net which the State's clear case had enmeshed them, they, the defendants below, to escape conviction, had to assume a rigorous burden and "establish their alibi to such a degree as will, when taken and considered with all the rest of the evidence in the case, create in your minds a reasonable doubt of their guilt."

The New Jersey Supreme Court in its opinion below, in commenting upon the charge of the Court, said that: "Such in our estimation, though at considerably greater length, was the effect of the charge, which might well have been com-

pressed into the authoritative language of the Court of Errors and Appeals in the case cited," namely, the Parks case.

In the Parks case, the instructions complained about was as follows:

"He interposes as a defense what is known as an alibi, which means nothing more or less than that he was elsewhere at the time that it is alleged this operation was performed, and you must reconcile that testimony with the testimony of the State alleging his guilt. The burden is upon the defendant to prove his alibi by the greater preponderance of the proof. That does not relieve the State, however, of the duty cast upon it by proving his guilt beyond a reasonable doubt. But since the defendant interposes an alibi, the burden is upon him to satisfy you by the greater preponderance of the proof that he was not at his office at the hour that the young woman alleges this operation was performed."

and the vice of the objection was predicated upon the fact that the trial court in the Parks case placed upon the defendant the burden of proving his whereabouts by the greater preponderance of proof, and while the Court in the Parks case in one of the paragraphs in its charge, that the state was not relieved, however, of the duty resting upon it to prove the guilt of the defendant beyond a reasonable doubt in this case, the trial Court said that, "to escape conviction the defendants had to establish their alibi so as to create a reasonable doubt of their guilt."

Attention is further directed to the Court, to the language of the trial Court mentioned in the

opinion of the New Jersey Supreme Court, where the trial Court uses the following language, "that if the State has by the proofs made out a clear case against the defendants", the language used was not calculated to convey to the jury what kind of a case a clear case was, whether it was by proof beyond a reasonable doubt of the guilt of the defendants, but inferentially, the jury must have gotten the impression from the Court that the State had made out a clear case against the defendants, and that it was necessary for the defendants, in order to escape conviction, to establish their alibi by the creation of a reasonable doubt in the minds of the jury.

The case of *State v. Parks*, 96 N. J. L. 360, has been followed on numerous occasions in this and the New Jersey Supreme Court.

*State v. Sherlock*, 60 N. J. L. 31;  
*State v. MacQueen*, 69 N. J. L. 522;  
*State v. Tapack*, 78 Id. 208;  
*State v. Diamond*, 84 Id. 17.

It may be suggested, that if the Trial Court did not use language that was apt to convey the rule as heretofore mentioned in the Parks case other parts of the charge should be considered as curing any such error as has been discussed in this brief, but adopting the language of the Parks case, the plaintiffs-in-error say: "But, at the best, this would merely make a case of contradictory instructions, and, unless the erroneous instruction is withdrawn, the error is not cured". and this has received approval in this State, but particularly in case of *State v. Clayton*, 83 N. J. L. 673, where the Court spoke as follows:

“Our theory of jury trials proceeds upon the fundamental assumption that the jury will take the law from the Court, not that they shall be judges of its correctness or that as between two conflicting statements of the law they will unerringly single out the correct one.”

The plaintiffs-in-error respectfully pray that this Honorable Court will enter a reversal of the New Jersey Supreme Court, for the reasons stated in this brief.

GEORGE E. CUTLEY,  
*Attorney of Plaintiffs-in-Error.*

JOHN E. MCGEEHAN,  
*Of Counsel.*

