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People of New York vs. Van Wormer Brothers

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5-22-1903

### People of New York vs. Van Wormer Brothers, Second Copy, Vol. 2

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**Trinity College**  
HARTFORD CONNECTICUT

Hudson, N. Y.

Monday, April 14, 1902, 10:30 A. M.

HARVEY BRUCE, called:

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Mr. Cady- I ask now whether the District Attorney will now admit upon the record that the person named as Harvey Bruce, not yet sworn, called by the prosecution and having taken his seat in the witness' chair, is the same person named as Harvey Bruce in the indictment for murder in the first degree, for the killing of Peter A. Hallenbeck under which the three defendants now on trial are jointly indicted with Harvey Bruce and are now upon trial.

Mr. A. F. B. Chace - Yes, sir.

Mr. Cady- Then I object, if the court please, upon that admission of the District Attorney to the administration of the oath to Harvey Bruce as a witness upon the present state of the record in this action, including the indictment, including the arraignment of the four defendants jointly accused in the indictment before Mr. Justice Herrick, and including the motion made by the learned District Attorney at the opening of this trial for the trial of the four defendants under this indictment, and I desire to formulate my objections as follows:

1. The person named Harvey Bruce and admitted upon the record by the District Attorney in open court to be the same person named and known as Harvey Bruce in the indictment in this case against Harvey Bruce and the three Van Worners, under which indictment the three Van Worners are now upon trial and now sought to be examined by the Dis-

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trist Attorney as a witness in behalf of the prosecution,  
is a party to the record as a principal. That he is jointly  
indicted with those against whom he is sought to be pro-  
duced as a witness as equally guilty with his co-defendants.  
That he was jointly arraigned with them and his trial was  
jointly moved with theirs, which is the present trial now  
pending and the record shows there has been no nolle  
prosequi or dismissal of the indictment entered as to him,  
and no application upon the part of the District Attorney  
for leave of the court to enter such a nolle prosequi or  
dismissal.

2. That a nolle prosequi or dismissal of the indict-  
ment of such defendant so offered as a witness against all  
or any co-defendants on this record, should be or should  
have been entered on the record before the time expired in  
which the defendants or either of them could demand or have  
demanded a separate trial. That the right of each defendant  
to demand a separate trial is a substantial statutory right,  
and that the acceptance of the witness offered and whose  
competency is now objected to would impair such right of  
each co-defendant now upon trial without an entry of an  
order nolle prosecuting or dismissing the indictment as to  
said Harvey Bruce.

3. That the rights of the co-defendants Willis Van  
Worner, Burton Van Worner and Frederick M. Van Worner,  
jointly and severally, cannot be affected by the circum-  
stance that the defendant produced and offered as a witness  
by the prosecution and whose competency is now objected to



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unbroken rule. The best practice of the most experienced prosecuting officers in this State, is certainly against the practice which is sought to be pursued now. When the District Attorney's office of the county of New York came to the conclusion that upon the trial of Albert T. Patrick for the murder of Rice, it would be essential to use Jones, the servant, the valet of Rice as a witness against Patrick and for the prosecution, that district attorney's office did neither of two things, it did not indict Jones with Patrick and it did not indict Jones for the commission of the murder, and up to this time, so far as my information extends, no indictment for anything has ever been found against Jones. Jones was permitted, under the care of the Central detective officers and under the charge of the county detectives of the District Attorney's office, to leave the Tombs and to go about the city of New York under such supervision as the District Attorney's office saw fit to exercise upon him. But the District Attorney of the county of New York was anxious, in view of the law, to find no indictment against Jones, certainly no joint indictment against Jones, and no indictment against him for anything. More than 25 years ago in this county of Columbia, there was a homicide committed in the city of Hudson for the commission of which John V. Kiere and Elenora Kiere, his wife, and one Irene Branceri, were charged. The District Attorney's office of this county was then conducted by a very experienced lawyer, the late Gershon T. Buckley, of Kinderhook, and he had in his assistance, the late John B. Longley

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who for many years had been disatrick attorney and whose knowledge of the criminal law and the procedure under it was second to that of no lawyer at this bar. The course adopted in the case of the Kieres was to indict John V. Kiere and his wife jointly, ~~not to~~ *leave out* indict Irene Branceri with him, because Irene Branceri was to be used as a witness against John V. Kiere and his wife and she was not included in the indictment. ~~She~~ *was* used as a witness upon the trial of the case. It is fair to say that she was indicted but the District Attorney's office cautiously found a separate indictment against her, and on the very morning as the records of this court show, after the verdict of guilty in the second degree was brought in against John V. Kiere and after the jury had acquitted Elenora Kiere upon the trial and before John V. Kiere was arranged before the court for sentence and judgment to be pronounced upon him, the District Attorney's office caused a nolle prosequi to be entered of record upon the minutes of the court and the nolle prosequi and the order of the court dismissing the indictment against Irene Branceri---who was solely indicted, not jointly indicted with Kiere and his wife--- appears upon the records of this court intermediate, the rendition of a verdict against Kiere, and a verdict of acquittal for his wife and the imposition of sentence upon Kiere. And that case, in this county, has to my mind an especial significance. The homicide there was committed on Christmas Eve, of 1876. The indictments were found at the January term of 1877, and their trial was moved and had in

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February of that year. In 1876, for the first time in the  
history of this State, the Legislature passed an Act  
which permitted co-defendants, jointly indicted, to be wit-  
nesses in their own behalf. That statute remained upon  
the statute books of the State, in its original form, for  
some years and <sup>was</sup> subsequently repealed and found its exist-  
ence in another form. Now if the District Attorney of  
this county, who caused the indictment to be framed----  
that indictment against the Kieres and Branceri----had  
thought for a moment the effect of the statute passed in  
1876, in relation to co-defendants being witnesses in their  
own behalf, had so far relaxed the rule of the common law  
in regard to witnesses as by implication to permit co-de-  
fendants to be witnesses against each other, where the in-  
dictment had not been dismissed, then he would not have  
been so cautious as to have refrained from indicting Irene  
Branceri with the two Kieres and in indicting her separate-  
ly. Now that question arose pretty early in this State in  
a very important case which was tried in your own county of  
Albany, before Mr. Justice Duer, sitting in 1826 or 1827,  
where one Strang, the son of wealthy parents in the county  
of Dutchess, was placed upon trial for the killing of one  
Whipple. It appears that meretricious relations had arisen  
between the wife of Whipple, who was killed, and Strang.  
Strang and Whippæ's wife were separately indicted and  
Strang was placed upon trial. He was convicted of murder in  
the first degree and thereupon and cautiously before any en-  
try of record had been made upon the records of the court

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showing the conviction of Strang, the trial of Mrs Whipple was moved and the district attorney called Strang, who had already been convicted of murder in the first degree, to the witness chair, as a witness against Mrs Whipple. Now that was a case where there was no joint indictment and they were separately indicted, and Mrs Whipple was indicted, as I remember the case, as an accessory to the murder of her husband which was committed by Strang. The case was very carefully argued by eminent counsel, before the Supreme Court. Duer wrote an elaborate opinion upon the question and he resolved and so adjudged, that the rule of the common law was so strong and prevailed so strongly in this State, that there must be, whenever a co-defendant (an accomplice) was placed upon the witness stand, as a witness against his associates, or his alleged associates in guilt, there was so strongly implied by the very act of the district attorney in calling the defendant to the stand the proposition that the co-defendant called as a witness should receive the leniency of the court and that he should not suffer the penalty which it was proposed to inflict upon his associates in guilt, after that, if he permitted Strang, although he had been convicted of murder in the first degree, to be called to the witness chair on the strength of that principle of law, that the co-defendant, the accomplice, should receive his reward for testifying as a witness against his associates in guilt, would compel the court to exercise leniency against Strang and relieve him from the legal effect of his conviction of

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murder in the first degree, by way of pardon on the part of  
the Governor, or by way of the dismissal of the indictment  
against him, or a refusal to enter the judgment against  
him, and so in its discretion the court refused to permit  
Strang to go upon the witness stand as a witness against  
Mrs Whipple and in that case, which is reported at a very  
considerable length in the 9th Cowen, the learned Judge  
read a very lengthy opinion, in which he referred to the  
case of the negro Jack, who before that time had been  
charged with murder, in the county of Dutchess, in con-  
junction with several others, who had not been jointly in-  
dicted with any of his alleged associates in guilt, who  
testified against his associates, and it appeared that  
Judge Duer had been a member of the Legislature of this  
State when a bill for the pardon of the negro, Jack, who  
testified against his associates in guilt, was brought be-  
fore the Legislature and very fully discussed upon the  
floor of the Assembly. (Judge Duer was then an Assembly-  
man) and the conclusion was reached that the bill must be  
passed, and that the implied promise of leniency---prom-  
ise of immunity or promise of pardon, put it any way you  
please, whether it be made in words by the District Attor-  
ney to the witness Jack, the colored man, or whether it  
was one to be implied from the circumstance that Jack was  
to be called and was needed as a witness to the stand, was  
so strong that the sovereignty of the State, in its legis-  
lative department, was obliged to enforce the execution of  
the actual or implied promise, and a bill was passed re-

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~~mitting the punishment of the negro Jack.~~

Counsel <sup>for defendants</sup> ~~further~~ argued, citing cases from this and the other States.

The District Attorney replied to the argument of defendants' counsel.

Jury cautioned.

Recess to 2:30 P. M.

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A f t e r n o o n S e s s i o n .

The Court: The question presented by the objection to the testimony of Bruce or to his being sworn as a witness in this case is one of considerable importance. At the same time I have had no substantial trouble in coming to a conclusion in my own mind upon that objection. I have been very much interested in the very able and very full argument of counsel upon both sides of that question and I think they have ~~referred~~<sup>referred</sup> to me all the cases in this State that have any substantial bearing upon the question or that are fairly entitled to consideration in determining it. But two cases, however, appear to me to be directly in point. The case of Lindsay against the People, in 63 N. Y. in the Court of Appeals, at page 143, is one where it was not necessary for that court to determine the question now presented, for the reason that the facts there were not like the facts here. In that case before the alleged accomplice was called to be sworn there had been a nolle prosequi of the indictment entered, so that the proceeding against that alleged accomplice had been discontinued. The only two cases referred to or called to my attention are two cases in the General Term, one in the New York General Term and one in the Monroe General Term. The first was the one in the New York General Term decided in 1855, and in that case it was held by two justices out of three (and the third justice does not appear to have either concurred or to have dissented, but two justices wrote very Brief opinions), and

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there it was held where several persons are jointly in-  
dicted one of them is not a competent witness for or  
against the others without being first acquitted or con-  
victed. It makes no difference whether the defendants  
plead jointly or separately. I take that statement from  
the head note of the case. The other case at the Gen-  
eral Term, (that is the one at the Monroe General Term) was  
the case of Wixson against the People, reported in 5 Par-  
ker's Criminal Reports, page 119. That was a later case,  
having been decided in 1860, and in that case, the case  
in 2 Parker's Criminal Reports, the one at the New York  
General Term, was reviewed by the learned Justice who  
wrote the opinion in the later case, justice Knox. He  
declines to follow that earlier case as an authority, and  
comes to a directly contrary conclusion from that arrived  
at in the earlier case. And they hold in that case,  
in substance, the entire court concurring, as I understand,  
that where two or more persons jointly indicted are tried  
separately, one of the defendants not on trial way, by  
permission of the court, be examined as a witness on behalf  
of the people against the defendants on trial, though the  
person so called and examined has not been convicted or  
acquitted, nor otherwise discharged. This being the latest  
utterance of the General Term and being an utterance made  
after a review of the former cases, it seems to me that I  
should follow it.

But we are not left alone to this case, nor to  
the cases referred to by counsel in their argument, in

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determining this question. I think there have been substantial changes wrought by legislative enactments concerning rules of evidence and the competency of witnesses in criminal cases.

Section 392 of the Code of Criminal Procedure provides that "The rules of evidence in civil cases are applicable also to criminal cases except as otherwise provided in this Code". Now it is true that that refers to the rules of evidence rather than to the competency of witnesses in express terms. Formerly witnesses interested in the event could not be sworn as witnesses, either in criminal or civil cases, but that rule has been abrogated both as to civil cases and to criminal cases. Now there was a good reason why an alleged accomplice should not be used as a witness against those associated with him in crime when the defendants were not competent witnesses in their own behalf. Now that law has been extended so that a defendant in all actions may testify as a witness in his own behalf. But of course his neglect or refusal to testify does not create any presumption against him and ought not. I cannot see any fair distinction existing between a joint indictment and a separate trial and a separate indictment of the defendants acting together in the commission of crime as to the competency of an accomplice as a witness. In either case the accomplice is a competent witness against the others but of course the amount of credit to be given to the statements of such a witness and the weight to be given to his testimony are

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for the jury to determine and the jury must determine those questions with full knowledge on their part that the accomplice is a party charged with the same crime and may testify in the hope of receiving some immunity because of his testimony. I have no doubt whatever as to the competency of such a witness to be sworn on behalf of the People. The statute of 1876 provides expressly that he may be sworn on behalf of the defendant. That leaves the only question open for determination, the question of the propriety of the use of the testimony of Bruce in this case on behalf of the people and that question <sup>it</sup> has been conceded by counsel upon both sides is a question of discretion, and the burden is upon the court to determine that question, and upon that question I think I should be influenced very largely by the attitude of the officer charged by law with the prosecution of this case. <sup>He is familiar with all the facts in his possession.</sup> He is charged with a grave public duty and a duty of a quasi judicial character in relation to the matter and it would require a strong case that would justify a Justice in refusing to permit the use by the District Attorney of a witness who is charged in the indictment as a co-defendant charged with the same crime. I am inclined to think in ~~that~~ <sup>this</sup> case that I should exercise that discretion in favor of the prosecuting officer. Of, course, reserving to myself, when the time shall come, in this case, to state to the jury fully what amount of weight and credit should be given to testimony of that character. It is especially my province to determine both of those questions with proper

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instructions and I therefore hold that Bruce may be sworn as a witness in this case on the offer of the District Attorney.

Mr. Cady- In behalf of the Defendants jointly and on behalf of each of them severally, counsel for the defendants except to the ruling of the court upon each and every ground stated there-in and upon and as to each objection interposed to the administration of the oath to the witness.

The oath was then administered to Harvey Bruce.

Mr. Cady: In order to preserve each right of all of the defendants, we object upon the same grounds as those upon which we jointly and severally objected to the administration of the oath to the witness Bruce and to any examination of him by the prosecution as a witness in behalf of the people.

The Court: Objection overruled.

Mr. Cady: We jointly, on behalf of all the defendants, and severally, on behalf of each of the defendants, except to the ruling of the court. What is the witness' full name?

Mr. Chace: Harvey Bruce.

Examined by Mr. A. F. B. Chace:

Q. Mr. Bruce, <sup>are</sup> you ~~are~~ aware that an indictment is pending

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against you charging yourself with Willis Van Wormer, Burton Van Wormer, ~~and~~ Frederick M. Van Wormer, with murder in the first degree in killing Peter A. Hallenbeck with gun shot or revolver wounds? A. Yes, sir.

Q. What is your answer now--speak up so the jury can hear you? A. Yes, sir.

Q. A little louder? A. Yes, sir.

Q. Are you willing, notwithstanding that indictment, to be examined as a witness in this case?

Mr. Gady: Objected as immaterial and irrelevant to any issue in this case. There is no statutory provision for a caution on the part of counsel.

The Court: I don't think it is important. The fact that he has been sworn as a witness shows his willingness to be sworn and to testify.

Q. Have you counsel? A. Yes, sir.

Q. *Who is that counsel?*

Objected to as immaterial and irrelevant to any issue in this action.

The Court: I don't think it is material.

Q. Is your counsel present in court?

Objected to as last above.

The Court: I don't think it is material.

Q. Are you acquainted with Inond Vener? A. I know him by sight.

Q. Were you in his store at any time when any rasks were bought? A. Yes, sir.

Objected to as irraterial and irrelevant on behalf of each of the three defendants on trial.



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Overruled. Defendants excepted.

Q. The answer is what? A. Yes, sir, I was.

Q. Were either of the defendants? A. I couldn't tell you that.

Q. If so which one? A. Willis Van Worker.

Q. On what date was it as near as you can recollect or what day of the week? A. It was on the Monday before Christmas.

Q. Who purchased the masks there that evening? A. That day?

Q. That day?

Mr. Cady: I object to the testimony asked for by the question, on behalf of the defendants Burton Van Worker, Frederick M. Van Worker.

Overruled. Received upon the question of whether there was a common purpose with which the defendants were actuated.

Mr. Cady: I desire to add a ground of objection that as an alleged accomplice, who is jointly included with the three defendants now on trial named in the indictment, is now upon the stand and under the control of the prosecution and under examination by them, it is incumbent upon the prosecution to show by the witness an unlawful and illegal combination and conspiracy upon the part of him and all of the defendants before he can testify to the acts of either one.

The Court: The prosecution is not obliged to show

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that by one witness. I make my ruling largely upon prior testimony in this case that justifies me in submitting this testimony and other testimony of circumstances in this case to the jury upon that question.

Defendants excepted.

(Question repeated) I will change the question to on that day---who purchased masks there on that day? A. On the day of Christmas?

Q. On the Monday before Christmas? A. Willis Van Worner and myself.

Q. State what occurred as to the purchase? A. I bought a suit of underclothes, just the drawers, just the underdrawers.

Q. Then what? A. And then we bought the masks, the false faces.

Q. What was said between you and Willis in reference to it? A. I happened to see the false faces in a box and took one up and put it over my face.

Q. What then? A. He said that that is just what we needed.

Q. Describe the masks or false faces which you bought and which Willis bought as near as you can? A. The one I had was a smooth face, the one that Willis bought had whiskers on it.

Q. Where were the whiskers located on it? A. On the chin and on the sides here (ind.)

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Q. On one of both sides? A. On both sides.

Q. Where did you take the masks or false faces? A. To the house.

Q. Did you know of any other masks being bought or brought to the house before Christmas night? A. No, sir. The next mask that was bought was on Christmas.

Q. Did you go to Mr. Brown's office or place of business during the day preceding Christmas last? A. Yes, sir.

Q. Who accompanied you? A. Burton Van Worner.

Q. Who did you see and have conversation with----

Mr. Cady: I object to the testimony asked for by that question as to the defendant Willis Van Worner and defendant Frederick M. Van Worner.

Objection overruled. Defendants excepted.

(Question continued) at Mr. Brown's place of business?

A. Mr. Brown and I believe there was another gentleman in his office.

Q. State what was said to Brown?

Mr. Cady: I object as last above on behalf of defendants Willis Van Worner and Frederick M. Van Worner.

Overruled. Defendants excepted.

A. Burton was speaking about working on the railroad, about the hiring of the horse.

Q. What was said about hiring the horse and who by?

A. He wanted the horse to go to Stuyvesant and North Chatham.

Q. Go on, what further was said? A. Mr. Brown didn't

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want to let the horse go, to go to both places.

Q. What was then said by Burton or you? A. I said it was not necessary to go to Stuyvesant.

Q. What did Burton say or you then? A. He said he would only go to North Chatham then.

Q. When did you tell Mr. Brown, if at all, at what house you wanted the horse? A. At 5 o'clock.

Q. Who went after the horse? A. Burton and I.

Q. Who did you see then? A. The man that worked for Mr. Brown.

Q. Do you remember his name? A. Coons.

Q. Who hitched up the horse for you, if anybody?  
A. The man that works for Brown by the name of Coons.

Q. What time did you leave the premises of Mr. Brown with the horse? A. At 5 or a little after.

Q. What kind of horse was it? A. It was a bay horse, clipped.

Q. What kind of a wagon? A. Top buggy, end spring buggy, I believe; an end spring buggy, I think.

Q. Describe it further as to character of box and as to curtains? A. I think it had a square box and the curtains were down from the top.

Q. When you left the premises of Brown with the horse and wagon where did Burton and you go with that team first?  
A. We drove to Mr. Coon's, a brother of the man that hooked up the horse for us.

Q. From there where? A. To the Van Wormer house.

Q. What was done at the Van Wormer house? A. Burton

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got out of the wagon and went to the house.

Q. What did you do? A. I was tying the horse.

Q. What then occurred? A. Then Burton and his two brothers came out and got in the wagon.

Q. Did you also get in the wagon? A. Yes, sir.

Q. Before you got into the wagon what, if anything, did you see put in the wagon? A. One of the boys put the false faces in the back of the wagon.

Q. How many? A. Three.

Q. Where was the other or fourth one? A. That was a cloth.

Q. After getting in the wagon at the Van Wormer house where did you go and what road did you take? A. We drove across the covered bridges and then down on the post road.

Q. Where to, what was the first village you struck? A. Stuyvesant Falls.

Q. State whether or not any stop was made at Stuyvesant Falls? A. There was no stop made at Stuyvesant Falls.

Q. What was said by either of the occupants of the wagon on the way either before reaching Stuyvesant or just after passing Stuyvesant? A. I asked them what they was going that way for, when they hired the horse to go to North Chatham.

Q. Where did you make that inquiry? A. As soon as we started for the covered bridges.

Q. What answer did they make? A. They said they was going "down the line". That is the expression they used.  
Q. <sup>What was said?</sup> <sup>they said they were going "down the line";</sup> that is the expression they use?  
Q. Do you remember which one said it? A. Burton.

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Q. What, if anything, was said that you can recall after passing nearer Stuyvesant? A. Nothing only the question that I asked that was not answered.

Q. What was that? A. I kept asking----  
Objected to. Overruled. Defendants except.

Q. What was it you said or asked? A. I asked where they was going and they still gave me the same answer "down the line" and wouldn't tell me where they were going.

The Court: Who was driving? A. Burton.

Q. Describe how you sat in the carriage---how the four sat? A. Burton sat on Willis' lap and I sat on Frederick's lap.

Q. What was the next village you reached or passed through? A. After passing through Stuyvesant Falls?

Q. Yes, sir. A. Rossman.

Q. What, if anything, was said after leaving Stuyvesant or near Rossman that you can now recollect? A. When we were on top of Rossman's, what is called the Rossman Hill, I demanded them to know where we were going as I knew we were not headed----.

Mr. Cady. Never mind what you knew.

Q. What did any one say to you in reply to that question? A. They said they were going to give Mr. Hallenbeck a surprise.

Q. Did they state what Hallenbeck? A. Uncle Peter, they said.

Q. What village or collection of houses or buildings did you next pass? A. Stottville.

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Q. Stottville do you mean?

Mr. Cady: I object to the question as to what he means, as the answer speaks for itself.

Q. Do you know a store and hotel---store run by Tinker?

Objected to as leading.

The Court: He may ask that.

Defendants excepted.

Q. Do you know the hotel and store, the store being occupied by one Tinker? A. Yes, sir.

Q. Where was that? A. Stockport.

Q. Did either of you four get out at that store?

A. Yes, sir.

Q. Which one? A. I did.

Q. Where did you go? A. In the store.

Q. Where did you leave the other three men who were in the wagon with you? A. In the wagon.

Q. What did you do in the store? A. I bought a paper of chewing tobacco.

Q. What did you do with the paper of chewing tobacco?

A. I gave it to Frederick Van Worrer.

Q. Did you chew tobacco? A. No, sir.

Q. Did either of the defendants here chew tobacco?

A. Yes, sir.

Q. Which one of them? A. Frederick and Burton.

Q. What, if anything, was said to you before you went into the store as to why you should go in?

Objected to as leading.

The Court: I think it is a proper question.

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Defendants excepted.

A. I was sitting on Burton's lap and I suppose it was handier for me to get out.

Q. What was said, if anything? A. They asked me to get out and get the tobacco.

Q. Which one made that request of you, if you can recall? A. Fred.

Q. Which side of the wagon were you sitting? A. On the left side.

Q. Which side of the wagon would be towards the store? A. The left side.

Q. When you came out of that store did you meet or see any men? A. I saw two gentlemen.

Q. Where were they? A. Standing in front of the hotel that is in the same building with the ~~store~~ <sup>store</sup>.

Q. Did you recognize either of them? A. I did not.

Q. Do you know George Greenwood? A. Yes, sir.

Q. After you had got the tobacco and went back to the wagon where was the wagon taken? A. To Stottville.

Q. And from there where? A. To Hudson.

Q. Is the Stottville you refer to on the main road or direct road from Tinker's store to Hudson? A. Yes, sir.

Objected to as leading.

Mr. Chace proceeded to state the location of Stottville and defendants counsel objected to the statement of counsel as not evidence in the case and Mr. Chace proceeded to state that "Stottville is on the direct road from Tinker's and is a



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harlet and immediately east of that, about a mile, I should judge is a vilage known as Stottville and that is where the mills are."

Mr. Cady: This is all under objection.

The Court: Yes. He may be asked where he was when he said he passed Stottville.

Mr. Cady: We don't object to that. I object to the geographical statement made by the counsel for the prosecution as unsworn and as not given by any witness under oath and as illegal, improper and incorrect.

The Court: Statements made by counsel as to the geographical location of mills in this county are not evidence in this case but the court may take judicial notice of localities of that character. I think the remarks were proper in order to advise me upon the question put to the witness. He may ask this witness where he was when he passed the place he calls Stottville and I will strike out the statement of counsel as far as having any bearing upon the evidence in this case.

Q. After leaving Tinker's store what road did you follow? A. Direct road to Hudson.

Q. Are you acquainted with a place where mills are located? A. At Stottville?

Q. Yes. A. Yes, sir.

Q. Did you pass those? A. No, sir.

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Q. Which road did you enter Hudson upon? A. Coming past the Fairgrounds.

Q. Where further did you go after you passed the fair ground? A. Right straight up over the hill.

Q. Over what hill? A. I don't know the name of the hill.

Q. What buildings did you pass if you know, after passing the fair ground? A. Went over the hill and then passed the hospital.

Q. On which side of the hospital did the road run? A. The left side.

Q. Left side as you proceeded down? A. Yes, sir.

Q. Then where did you go? A. To Greenport church.

Q. What did you do there, what was done there by you or either of the occupants of that carriage? A. One went and looked in the window of the church.

Q. Which one? A. Frederick Van Worrer.

Q. What else was done by either of the others or yourself? A. The other two boys were looking in the wagons around there, the sleighs.

Q. How long did you remain there at the church? A. About four minutes.

Q. What occurred then? A. We all got in the wagon and drove to Hallenbeck's barn.

Q. What, if anything, was put in the wagon at or near the church? A. Two whips.

Q. Anything else? A. A robe.

Q. What kind of a robe? A. A black robe.

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Q. Of what ~~material~~ material? A. Long black hair.

Q. What kind of whips were put in the wagon? A. One was a straight whip and the other was a crooked lashed whip.

Q. Where were they put in the wagon? A. In the top.

Q. Where in the top? A. Right in the seat and in the top; bent them up a little and put them in the top.

Q. One of them you said had a lash, what color? A. White

Q. What was the other whip as to being long or short?  
A. It was a long, straight whip.

Q. What color? A. I do not know what color it was.

Q. Can you identify either of the whips if they were shown to you, do you think? A. I would know the white one, the one with the crooked lash.

Q. (Presenting same) I show you two whips and ask you?  
A. This (ind.) is the one, it was one like that (ind.).

Q. What, if anything, was said by either of the others that were in the wagon, either at the church before getting into the wagon or while going to Hallenbeck's? A. Frederick Van Wormer said that Charles Hallenbeck was in the church and his wife.

Q. Any one else? A. And the hired man, I believe.

Q. Can you recall anything further that was said after you got into the wagon at the church? A. They said that would leave uncle Peter and his wife and the old lady in the house.

Q. Who made that remark? A. One of the boys, I do not remember which one.

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Q. At any point between the church and the barn where you say you drove to did any of the four in the wagon get out?

Objected to as leading.

The Court: Let him state what was done.

Question waived.

Q. What was done, if anything, on the way from the church to the barn that you have mentioned? A. Willis Van Wormer and I got out and walked behind the wagon.

Q. Where was the wagon when you got out? A. In front of Hallenbeck's orchard.

Q. What was <sup>then</sup> done with the wagon? A. The horse was tied down to the barn.

A. Who drove it down? A. Burton.

Q. Where were you and Willis? A. Right there almost as soon as they were there: <sup>we</sup> walked right down behind the wagon and were there just about as soon as they were there.

Q. State whether or not the horse was tied? A. The horse was tied.

Q. Can you recall who tied it? A. No, I can't.

Q. Who, if any one, blanketed the horse? A. I did.

Q. Where was the horse tied, to what? A. Tied to the barn at what they call Hallenbeck's lower place.

Q. What is there just easterly of the barn there?  
A. House.

Q. Just easterly of the barn I mean, right next to the barn, what is there that goes in from the highway? A. <sup>A</sup> Lane.

Q. What was done by yourself or either of the defendants

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there after the horse was tied and blanketed? A. Took off our coats, our under coats, and turned them wrong side out.

Q. Where were the overcoats left, what was done with them? A. Put in the top of the wagon.

Q. What else was done there? A. Then the false faces were put on.

Q. How many were put on? A. Three.

Q. What else was put on? A. Black cloth.

Q. What did you wear? A. A false face.

Q. Who wore the other two false faces? A. Burton and Frederick.

Q. Who wore the cloth? A. Burton wore a cloth; Willis and Frederick were the ones that wore the false faces and myself.

Q. I mean cloth, how was it fixed? A. It was a black cloth with holes cut into it for eyes.

Q. How were the false faces adjusted or kept on? A. By strips of cloth.

Q. Who, if anybody, tied yours on? A. I tied mine on myself.

Q. How was it tied on? A. With a strip of white cloth.

Q. Placed about where? A. Right across the mouth.

Q. Right across the mouth of the mask? A. Yes, sir.

Q. Where tied? A. In back, in my neck.

Q. How were the two false faces worn by Willis Van Wormer and Frederick Van Wormer adjusted? A. They were tied on about the same as mine.

Q. How was the cloth adjusted? A. I do not know, I

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never saw it only on to the fellow.

Q. What was then done? A. We walked up the road and past the Hallenbeck house.

Q. Where did you go first after passing Hallenbeck's house? A. Through the fence and through the orchard.

Q. How did you get through the fence or over it? A. There was some pickets out and we crawled through the fence.

Q. After you got into the orchard describe where you went and how you walked with reference to each other? A. We spread out, walked side by side.

Q. Where did you go? A. To the back kitchen door.

Q. How did you get to the back kitchen door? A. From the back of the house.

Q. Where was the back kitchen door? A. Well, in the back of the house; built in the back part of the house.

Q. What, if anything, was there about it? A. There was a covered stoop.

Q. What was said by any of the defendants to you before entering the back stoop and going to the kitchen door? A. Burton told me to follow him and Frederick next.

Q. Where did Frederick go and where did you go? A. We followed Burton.

Q. I meant Burton, where did Burton go and where did you go? A. Burton went up on the stoop and I followed him.

Q. Where did you locate yourself on the stoop, which side of Burton? A. On the left side.

Q. Which side did Frederick stand? A. He stood back of

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Q. What, if anything, was there about it? A. There was a covered stoop.

Q. What was said by any of the defendants to you before entering the back stoop and going to the kitchen door? A. Burton told me to follow him and Frederick next.

Q. Where did Frederick go and where did you go? A. We followed Burton.

Q. I meant Burton, where did Burton go and where did you go? A. Burton went up on the stoop and I followed him.

Q. Where did you locate yourself on the stoop, which side of Burton? A. On the left side.

Q. Which side did Frederick stand? A. He stood back of

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Q. Well, what next followed after you got on the stoop?

A. Burton knocked on the door.

Q. What followed? A. Mr. Hallerbeck came to the door.

Q. What followed? A. Burton pushed him in the room when he opened the door.

Q. With which hand? A. With his right hand.

Q. What, if anything, was in his left hand? A. His revolver.

Q. Where was your revolver when the door was pushed open? A. In my right hand.

Q. Where was the revolver of Frederick who stood next you? A. In his right hand, I think.

Q. Go on and describe now what occurred after you say Burton pushed Peter A. Hallerbeck back? A. He immediately jumped in the room---Burton immediately jumped in the room.

Q. What further did he do? A. He fired a shot.

Q. What then followed? A. The door swung back and I put my foot against it to stop it from going shut.

Q. Go on and describe what you did? A. When I pushed the door open I fired one shot in the ceiling and one in the siding.

Q. Where in the siding? A. Towards the left.

Q. Describe it more definitely, if you can, in what direction you fired the second shot? A. Right in the siding near the door.

Q. Which side? A. Left.

Q. Which side of the building? A. The left of the



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building I should say, I am not acquainted with the house.

Q. Did you see any object or thing in the kitchen anywhere near where you fired the second shot? A. No, sir, I did not.

Q. What next occurred with reference to firing?  
A. Frederick came in and immediately commenced firing.

Q. What next? A. My revolver was knocked, taken from my hand.

Q. What else with reference to firing, who else fired?  
A. Willis.

Q. Go on and state all that occurred there now, in your own way? A. Burton was grappling with Mr. Hallenbeck, had hold of him.

Q. Burton had hold of Mr. Hallenbeck? A. Yes, sir, while Frederick was firing.

Q. Where was Frederick firing? A. Towards his back.

Q. Go on and describe how he fired towards his back, where he held his pistol? A. About on the level of his shoulders.

Q. How close was the pistol to him? A. Very close: the fire seemed to almost touch him from the revolver.

Q. Can you tell how many shots were fired? A. No, sir, I cannot.

Q. How rapidly were they fired? A. Very rapid.

Q. Can you identify the revolvers that were there on that occasion? A. Yes, sir.

Q. (Presenting same) I show you four revolvers and ask you to select from them, if you can, the revolver which you used that night? A. This (ind.) one.

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Q. Look at the number of it? A. I never knew the number of it. This (ind.) one is mine.

Mr. Chace-The witness identifies the large revolver numbered upon which two figures are jammed.

The Court: 400361 as I make it. The four is somewhat jammed. The three looks somewhat like an eight but I think it is a three.

Q. That revolver you identify as your revolver.  
A. Yes, sir.

Q. How long had you carried it? A. One year about.

Q. Is that the revolver you had and used at Hallenbeck's house that night? A. That I fired two shots with, yes, sir.

Q Look at the other three revolvers and see if you can select a revolver used by Willis Van Worrer? A. That one (ind.) American Bull Dog.

Q. What is upon it? A. "American Bull Dog".

Q. That you identify as the revolver belonging to or used by Willis Van Worrer, that night? A. Yes, sir.

Q. Look at the other two revolvers and tell me which, if you can, is the revolver used that night by Burton Van Worrer? A. This one (ind.) Iver Johnson.

Q. That is an Iver Johnson revolver? A. Yes, sir.

Q. Can you read the number on the end of the handle?  
A. 15684.

Q. Do you know who owns that revolver? A. Yes, sir.

Q. Who? A. Jerome Bauer.

Q. Were you present when it was borrowed? A. Yes, sir.

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Q. When was it borrowed? A. On Christmas day---the day before.

Q. (The Court) Who borrowed this revolver? A. Burton Van Worrer.

Q. Where? A. At Jerome Bauer's store.

Q. Can you identify the other revolver as to who used it at Peter ~~the~~ Hallenbeck's house? A. This (ind.) is Frederick Van Worrer's revolver. "Young America, Double action" it says.

Q. In how many rooms in the house did you go that night? A. One.

Q. Did you see any of the defenadnts here go----

Objected to as leading.

Q. State whether any of the party consisting of the three defenadnts and yourself went into----

Objected to as leading.

Q. Go <sup>on</sup> and state where you saw any of the party go?

Objected to as assuming he saw them go anywhere.

Q. (The Court) State what occurred there that you have not already stated? The Witness. Burton Van Worrer let go of Hallenbeck and went in the other room.

Q. Go on and state what was done there, what you saw or heard? A. I saw a lady run across the room.

Q. Go on and state anything else, what did you hear, if anything else? A. I heard a report of a revolver.

Q. Can you state how many times? A. ~~Mr. Hallenbeck~~ No, I cannot, because Willis was firing at the tire.

Q. Who was Willis firing at at the tire? A. Mr. Hallenbeck

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Q. Who else? A. That is all.

Q. Where was Mr. Hallenbeck, in what part of the room when you say you saw Burton go into the other room? A. He walked across the room towards where the gun stood.

Q. (Mr. Cady) That is Mr. Hallenbeck? A. Yes, sir.

Q. How near did Willis stand when firing at him as you have just now described? A. Almost against the man.

Q. Go on and describe what occurred after you saw Burton go into the other room and Willis firing at Mr. Hallenbeck while he went towards where the gun was, then what occurred?

A. Fred left the room and Willis followed him. Burton came out of the other room and called out and he says "For God's sake run, if there is any one here, or you will get your heads blowed off, he is after the shot gun".

Q. What then occurred? A. Burton immediately run out on the stoop, out of doors, and I followed him; on the way out on the stoop I noticed something shining and picked up my revolver, it was laying out on the stoop.

Q. On what part of the stoop? A. On the step.

Q. What stoop, where was it? A. On about the third step; it was a few steps down.

Q. How many? A. It was about on the third step.

Q. What was the condition of that revolver when you picked it up as to being loaded or otherwise? A. It was empty.

Q. What was its condition when you entered the house? A. It was loaded.

Q. How many cartridges? A. Five cartridges.

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Q. How long were you in the house? A. A minute.

Q. Not longer than that? A. It couldn't have been longer than a minute and a half at the longest.

Q. Bruce, what is the condition of your eyes? A. I am blind in one eye.

Q. Which eye? A. The right eye.

Q. State whether or not the eye has been removed?  
A. The eye has been removed.

Q. What do you wear in place of it? A. An artificial eye.

Q. Do you know Mrs. Hallenbeck? A. Yes, sir.

Q. Did you see her that night? A. I didn't see her to her face but I should judge it was Mrs Hallenbeck.

Q. Where was she when you saw her? A. She was running across the room from the kitchen.

Q. When you got off the stoop which of the defendants, if any, did you see? A. Burton.

Q. Where did he go or did you go? A. He was running towards the barn and I followed him; Hallenbeck's barn.

Q. Now describe where you went? A. We run to the back of the barn and he crawled through the fence and I jurped over the gate and around through a small lot, a lot, I don't know how large it is.

Q. Where did you go? A. To where the horse was tied at the lower barn.

Q. Who did you find there when you and Burton got there?  
A. Willis and Frederick.

Q. What was being done? A. The horse was untied and

1 ready to go on.

2 Q. How did you get out of the lane, how was the horse  
3 and wagon got out of the lane? A. Just backed a few steps  
4 and driven down towards Catskill station.

5 Q. Who got into the wagon? A. We all got in.

6 Q. How soon after you got there? A. Just as soon as  
7 we got there.

8 Q. Go on and state how you drove? A. Quite fast when  
9 we first got in the wagon for about three-quarters of a  
10 mile or a mile.

11 Q. What was then done? A. Then we came to a woods and  
12 we got out and changed our coats and took the false faces  
13 off of our faces; we put on our overcoats.

14 Q. What do you mean by changed coats? A. We had our  
15 undercoats turned wrong side out and we turned them back  
16 and then put on our overcoats and got into the wagon and  
17 drove to Kinderhook.

18 Q. What did you do with the masks or false faces? A. Put  
19 them in our pockets.

20 Q. What, if anything, did you do to them before you  
21 put them in your pockets? A. Crushed them up, kind of.

22 Q. Now state what was said ~~XXXXXXXXXXXX~~ by yourself or  
23 either of the three defendants after you got together at  
24 the barn or while you were going on the road to where you  
25 changed your coats and crushed up the masks and put them in  
your pockets? A. I asked them right away where they had  
been shooting at that ran, and they didn't tell at first;  
after a while they commenced to tell where they had been

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shooting.

Q. What did they say? A. Burton said before any of us got in the room that he made a Czolgosz shot.

Q. What did either of them say? A. Frederick said that he shot him in the back.

Q. What did Willis say? A. He said he didn't get past him without getting what his revolver held.

Q. What was said and done with reference to revolvers on the way down to Hallenbeck's that night?

Objected to.

Question waived.

Q. How many cartridges did you have with you that night?

A. What my revolver held, five cartridges.

Q. How many cartridges did the others have? A. They had some 15 or 20 cartridges apiece.

Q. Where did you ascertain that? A. What is that?

Q. Where did you learn that? A. On the road down.

Q. State whereabouts, as near as you can, on the road down? A. After we left Stockport.

Q. State how that occurred? A. They asked me how many cartridges I had.

Q. What did you reply? A. I said five.

Q. What then occurred? A. They wanted to know why I didn't have more with me.

Q. What further occurred with reference to theirs?

A. Then they commenced to count how many cartridges they had.

Q. Did you have any watch with you that night?

A. No, sir.

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Q. Where did you last see a time piece that night before going to Hallenbeck's or hear the clock strike? A. I do not remember; I didn't notice what time it was when we left Kinderhook.

Q. Do you know what time you reached Greendale or Greendale church? A. No, sir, I do not.

Q. Have you any means of telling what time you got to Hallenbeck's that night? A. No, sir, I do not.

Q. Where did you drive from the place in the woods you have described and after leaving there? A. Drove straight to Hudson.

Q. Can you recall where you passed through Hudson? A. No, sir, I cannot for I didn't know the streets very well.

Q. Describe ther as well as you can? A. We entered Hudson by the Underhill pond road, as they call it----

Q. (Int'g.) When, coming into Hudson when you came back? A. By what they call the Bay road; when we struck the first street in the city here we drove up about a block or two and then drove right across Main Street (Warren Street) down to the Underhill Pond road going toStottville.

Q. From there where? A. To Stottville.

Q. Then where? A. Then to Kinderhook.

Q. Stottville the same place where you spoke of coming down? A. Yes, sir.

Q. Did you take the direct road from Hudson to Kinderhook? A. Yes, sir.

Q. Where did you enter Kinderhook? A. By the back road.

Q. Which is the back road? A. Going across the covered



1 bridges.

2 Q. Went back the same way you came down? A. Yes, sir.

3 Q. Did you meet any team on your way down? A. Yes, sir.

4 Q. Any that you can recollect who was in? A. No, sir.

5 Q. Did you know any of them? A. No, sir.

6 Q. How many can you recollect meeting coming down?

7 A. I can't remember but in all about half a dozen teams  
8 both going and coming.

9 Q. Did you meet a team or teams coming back? A. Yes,  
10 sir.

11 Q. Can you recall where? A. No, sir, I cannot, but I  
12 remember passing teams.

13 Q. Did you have on rubbers that night? A. No, sir.

14 Q. Did either of the others? A. No, sir.

15 Q. What kind of shoes did you wear that night? A. Pair  
16 of winter enamel shoes.

17 Q. Where did you last see those when they were in your  
18 possession? A. In the jail.

19 Q. To whom did you deliver your shoes? A. Mr. Best.

20 Q. What Best? A. Sheriff Best.

21 Q. Can you describe the shoes worn by Willis that  
22 night? A. Yes, sir.

23 Q. Describe them as well as you can? A. They were the  
24 same as mine only half a size or a size smaller.

25 Q. Can you describe Burton's shoes? A. Yes, sir.

Q. Describe them? A. They had silver buttons, I think.

Q. And Frederick's? A. They were patent leather shoes.

Q. (Presenting same) I show you four pairs of shoes and  
ask you to pick out yours, if you can? A. These (ind.) are

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wine; 7's I guess.

Q. Can you read the marks on the heels of those in pencil? A. "Bruce."

Q. On each of them? A. Yes, sir, "Bruce" on each of them.

Q. Are those the shoes you wore that night? A. Yes, sir.

Q. Select the shoes of Willis Van Worrer, if you can? A. Those (ind.) are Willis.

Q. Can you read the mark upon it? A. Yes, sir. That is "Willis".

Q. Marked with pencilmark "Willis" on the ball of the shoe? A. Yes, sir.

Q. Select Burton's shoes? A. These (ind.) are Burton's.

Q. How are they marked in pencil? A. Burton---"Bert".

Q. On each one? A. Yes, sir, right there (ind.).

Q. What kind of buttons did they have on? A. Same as those: those are Burton's; silver.

Q. Whose are the other pair of shoes? A. Those are Frederick's.

Q. How are they marked? A. "Fred" with lead pencil.

Q. What shoes are those (ind.)? A. Frederick, Willis and Burton Van Worrer's and mine.

Q. What pair of shoes did you have on that night? A. Enameled shoes.

Q. This pair here (ind.)? A. Yes, sir.

Q. What pair did Willis Van Worrer have? A. Pair of enameled shoes.

Q. The ones that are here? A. Yes, sir.

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Q. What pair did Burton have? A. Pair of shoes with silver buttons on them.

Q. Same pair you see here? A. Yes, sir.

Q. What pair did Frederick have on that night? A. Pair of patent leather shoes with heel plates on the sides, the same as you have there.

Q. The pair that is here? A. Yes, sir.

Q. State whether or not any of the persons in the wagon with you loaded their revolver----

Objected to as leading.

The Court: He may state what was done in that respect, if anything. I will exclude that question under your objection.

Q. State what was done with the revolvers after you got into the wagon to go home? A. The Van Worrer boys loaded their revolvers at the place where we changed our coats and took the false faces off of our faces.

Q. When was your loaded? A. Not until I got to Kinderhook.

Q. What further can you recall as having been said by yourself or either of the defendants on your way home from Hallenbeck's that night? A. I asked them about where they had fired their shots into Mr. Hallenbeck.

Q. What was said? A. Frederick said he shot Mr. Hallenbeck in the back and Willis didn't say where he fired any more than Mr. Hallenbeck didn't get past him without getting what his revolver held and Burton spoke about making a Czolgosz shot.

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Q. Where was that talked? A. On the way going back.

Q. Whereabouts as near as you can recall, if you can?

A. I don't just remember where it was.

Q. Can you recall whether it was before you changed your coats or after? A. I think it took place where we changed our coats.

Q. What further, if anything, was said by you on the way back or by them to you? A. They didn't talk much.

Q. What further did you say to them? A. I kept asking them questions and they would tell me to shut up.

Objected to and motion to strike out.

The Court: He didn't respond to the question.

Q. What did you say to them? A. I asked them questions and they wouldn't answer.

Objected to.

Q. State what ~~was~~ question you asked them? A. I asked them what they shot in that ran for, what they shot in those places where they had said.

Q. What did they say? A. They wouldn't answer.

Q. Where did you first ask that question? A. As soon as we got in the wagon.

Q. Did you afterward ask them any question? A. Yes, sir.

Q. What question? A. I asked them the same thing about the shooting and the first place they started to tell me anything was where we changed our coats.

Q. That you have told---where they shot him? A. Yes, sir

Q. Where else did you ask any questions? A. All along

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the road; they would answer me, tell me to shut up, every  
time; they wouldn't give me an answer.

Q. What further was said anywhere on the way by Burton?

A. He did not talk anything.

Q. Where did you drive when you first got home? A. To  
the Van Wornor house.

Q. What did you do there? A. Went into the house.

Q. Where was the horse? A. Outside, tied to a post.

Q. Blanketed? A. Yes, sir, I tied her and blanketed  
her.

Q. How long did you remain there? A. About ten minutes.

Q. What then occurred? A. Then Burton and I went up to  
the depot.

Q. How? A. Drove the horse.

Q. Who drove? A. Burton did.

Q. Where did you go? A. I went to the Conner house.

Q. What time did you get there? A. To the depot?

Q. Yes. A. About 15 minutes to 10.

Q. Who did you see at the door? A. I knocked to the  
house of Mrs Connors and she came to the door.

Q. Who else did you see? A. One of her daughters.

Q. Anyne else? A. No, sir.

Q. Did you see any one about the depot? A. I saw some  
one but I didn't recognize who it was.

Q. Where was Burton, where did he go? A. We drove up  
and down the street until the car came in and then he saw  
Miss Pearl Connors.

Q. Which way did the car come from? A. From Albany.

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Q. Do you know about what time that car reaches Kinderhook? A. Yes, sir.

Q. About what time? A. It was what they call the 10:15 car.

Q. Can you recall whether it was on time that night? A. No, sir, I cannot.

Q. What was said by any of the party, the three Van Worrers or yourself, before you left the house, if anything, about going anywhere and who said it? A. We drove, Burton and I, up the street so we could be seen.

Q. Who said that? A. Burton.

Q. After you had showed yourself or seen these people at the depot, where did you and Burton go then? A. Drove over to Valatie.

Q. At whose suggestion, Burton's or yourself? A. Burtons

Q. What did he say with reference to going to Valatie? A. He thought he would drive over there so that we could be seen in Valatie.

Q. What rate of speed did you drive in going to the depot and back and going to Valatie and back? A. Very slowly.

Q. When you came back <sup>from</sup> Valatie where did Burton and you go? A. To his home.

Q. That was where? A. To the Van Worner house.

Q. What was done with the horse then? A. Tied outside to a post.

Q. Where did Burton and you go after tying the horse? A. In the house.

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Q. Who did you find there? A. Frederick.

Q. What occurred there? A. Burton asked Fred to go with him to the stable to put the horse out.

Q. Go on and state what occurred? A. He said he didn't want to go because his knee hurt him and they had a sort of quarrel and I got disgusted with it and took the horse to the stable myself.

Q. Who did you see at the stable? A. Mr. Brown.

Q. What were you doing when Brown came out? A. I was watering the horse.

Q. Where? A. In its stall.

Q. What had you done to the horse before that? A. Unharnessed it.

Q. What else? A. Put the blankets on it.

Q. What did Mr. Brown say to you? A. He asked me what I was watering the horse for.

Q. What reply did you make? A. I said I thought it needed water. He said isn't she too warm, I says "no, sir, she is perfectly cool"; he felt of her himself and said that she was.

Q. How was she when she reached Kinderhook that night as to being warm or not? A. She was not warm, she was a clipped horse.

Q. What time did you take her back to the stable? A. At about 11 o'clock.

Q. Where did you first see any watch or clock that night after you returned from Peter A. Hallenbeck's?  
A. At the Van Worner house.

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Q. Is the Van Wormer clock the only clock you saw prior to your going to take the horse back? A. Yes, sir.

Q. How long have you carried your revolver? A. The one that you have?

Q. Yes. A. About one year.

Q. How recently did you carry it? A. I generally had it with re.

Q. How regular did Willis and Frederick carry their revolvers? A. They generally carried theirs at night and had it hanging up in the house in the day time.

Q. Where was the gun of Peter A. Hallenbeck that night when you left the house, if you know? A. I do not know where it was.

Q. Did you see any gun in the kitchen that night? A. No, sir, I did not.

Q. How soon after Burton halloed, as you have described, that he had his gun and would shoot your heads off, that you left the room? A. Immediately.

Q. Where was Mr. Hallenbeck then? A. He was in the corner where he said that the guns were.

Q. Where who said they were? A. Burton did.

Q. Whereabouts did you stand when Burton shouted out as you have described about the gun, where were you standing? A. Over towards the wall where it felt what I had hold of was a table, backed up against the table.

Q. Out of which door did you come when you came out? A. The same door I went in, the back kitchen door.

Q. And in going from where you were in the kitchen to



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the back kitchen door, on which side would be your halt side? A. On the right side.

Q. On which side of you was Mr. Hallenbeck? A. On the right side.

Q. What did you do with the masks or false faces when you got home? A. Willis burned them up.

Q. Where? A. In the kitchen stove.

Q. Who was there at the house when you got home? A. Mrs Van Worner and Miss Pearl Van Buren.

Q. State what was done or said with reference to burning up the masks? A. The two ladies went in the dining room and while they were in there Willis asked us for the masks; he said "give us the masks quick, we will burn them up, the false faces."

Q. What was said between yourself and these three defendants, the Van Worner's, that night with reference to secrecy, keeping your expedition to Peter A. Hallenbeck's secret? ~~Q.~~

Mr. Cady: Objected to the witness being led any further.

The Court: He may ask this question.

Defendants excepted.

Mr. Cady: Objected further as assuming a fact not proven, that anything was said upon that subject.

The Court: I will allow it to be asked.

No apparent exception.

Q. What was said, if anything? A. Burton said to his

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brothers "if you tell or Bruce tells, we will fix him".

Q. Where was that said? A. On the way home.

Q. Whereabouts? A. After we passed through Hudson, it was between Hudson and Stuyvesant.

Q. After your return home from your trip to Peter A. Hallenbeck's, what was done with the revolvers? A. They had ther in their pockets.

Q. When did you next see them? A. The next morning I saw Burton and Frederick cleaning theirs in one of the front rooms.

Q. What did you do with yours? A. I cleaned mine next morning.

Q. After they were cleaned what was done with reference to loading them? A. I loaded mine and hid it away.

Q. Where did you put it? A. Under the radiator in the dining room.

Q. What was done with the two you saw being cleaned?  
A. I do not know.

Q. You didn't see whether they were loaded or not?  
A. No, sir.

Q. When was anything taken out of the wagon at the Van Wormer house? A. When we arrived there.

Q. The first time that night? A. Yes, sir.

Q. What was taken out? A. Two whips and a buffalo robe.

Q. Do you mean a buffalo robe? A. Well, a robe.

Q. The robe you mentioned as having seen put in the wagon at the church? A. Yes, sir.

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Q. And the two whips which you saw put in the wagon down there? A. Yes, sir.

Q. What is your age? A. I am 20.

Q. When were you 20? A. The 27th day of last September.

Q. Who carried the whips and robe into the house that night? A. Willis, I believe; I don't know just exactly.

Q. You are not certain? A. No, sir.

Q. How long had you been living at the Van Worrer house before the 25th of December last? A. About six or seven weeks.

Q. Where had you lived before that? A. Stephentown.

Q. In what county? A. Rensselaer county. I had been visting there, I hadn't been living there.

Q. How long? A. Since August.

Q. Who were you visting with? A. My father.

Q. Where were you before that? A. Newark, N. J.

Q. Who were you with there? A. My mother.

Q. Where does she live? A. Newark, N. J.

Q. How long had you been there? A. About a year.

Q. What had you been doing, if anything? A. I was working for a contractor.

Q. At what work? A. A bridge builder.

Q. How many times have you been in the Peter A. Hallenbeck house that you can recollect? A. I never was there in the house but once before the night of Christmas eve.

Q. In what room or rooms were you at that time? A. At the time I was there before?

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Q. Yes. A. In what I should think was the front room of the house.

Q. When was it? A. About two years ago.

Q. Did you hear any one say anything in the kitchen after the door was opened and before you left, except the statement which you say Burton made with reference to leaving the room? A. No, sir.

Q. Did you hear Peter A. Hallenbeck say anything that night? A. No, sir, I did not.

Q. And none of the others that you can recollect made any remark while you were in the room? A. No, sir, Burton was the only one that I heard.

CROSS-EXAMINATION by Mr. Cady:

Q. Let us see, Bruce, you say you purchased a pair of under drawers at Imond Vener<sup>y</sup>? A. Yes, sir.

Q. On what day did you do that? A. Monday before Christmas.

Q. What day of the month was that, Bruce? A. I do not know the date.

Q. What time of the day? A. I think it was in the afternoon.

Q. Do you know when it was, do you know what time of the day it was? A. No, sir, I do not.

Q. The best you can say is to say that you think it was in the afternoon? A. I should judge it was in the afternoon.

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Q. Have you any way of fixing your recollection?  
 A. No, sir, I have not.

Q. You have thought of it a great deal since, have you not?  
 A. No, sir, not very much.

Q. Have not the events of those few days been very much impressed upon your mind?  
 A. Yes, sir.

Q. Haven't you thought of that question at all, as to when you were at Irond Vener's and bought the drawers and when the masks were bought?  
 A. No, sir, not any more than that it was Monday and I do not remember what time of day it was.

Q. You can't tell the time of day at all?  
 A. No, sir.

Q. That is a thing you have not thought of?  
 A. No, sir, I have not thought of it.

Q. That is a thing nobody has said anything to you about?  
 A. No, sir.

Q. Who was with you when you bought the drawers?  
 A. Willis Van Worrer.

Q. Anybody else?  
 A. No one else.

Q. How long were you in the store?  
 A. Just long enough to purchase the underdrawers and the two false faces.

Q. Who was in the store with you and Willis at that time?  
 A. I don't remember although there was a couple of other customers in there.

Q. Who waited upon you?  
 A. Irond Vener.

Q. You saw him plainly?  
 A. Yes, sir.

Q. Did you talk with him?  
 A. Not any more than about

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purchasing the things.

Q. You purchased them? A. Yes, sir, I purchased the underdrawers and one false face.

Q. What kind of a face was that? A. It was just a plain, smooth face.

Q. How many days was this before you went down to Mr. Hallenbeck's? A. It was the Morday before Christmas.

Q. How many days before you went down to Mr. Hallenbeck's, just think it over and tell me? A. What day was Christmas on?

Q. I am not telling you, I am not under examination? A. About three or four days.

Q. Which do you think, three or four? A. Three.

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

Q. You haven't any doubt about it? A. Yes, sir.

Q. Did you buy the underwear before you bought the masks? A. Yes, sir.

Q. Where were the masks? A. In a box.

Q. Where was the box? A. On the floor.

Q. You saw the masks in a box on the floor, did you? A. Yes, sir.

Q. Had anybody said <sup>y</sup> anything about masks there in the store until you saw the masks in a box on the floor?

A. No, sir.

Q. And then you first spoke of them? A. Yes, sir.

Q. Did you speak of them first to Mr. Vener or to Willia? A. No, I just merely picked one up out of the box.

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Q. You spoke first to Willis about it? A. Yes, sir.

Q. Nobody had said anything about any masks up to that  
tire? A. No, sir.

Q. You had bought the underwear before you looked at  
the masks, hadn't you? A. Yes, sir.

Q. And then had the underwear been wrapped up when you  
looked at the masks? A. Yes, sir.

Q. Did you have the bundle in your possession? A. It  
laid on the counter.

Q. Now how far away from where you and Willis stood  
was this box of masks when you first saw it, Harvey?  
A. About four feet.

Q. Did you speak to Willis about them before you  
spoke to Vener? A. Yes, sir.

Q. After speaking to Willis about them did you speak  
to Vener about them? A. No, I just merely picked one out  
of the box.

Q. Did you ask him what the price was? A. No, sir.

Q. You said nothing to Vener at all? A. No, sir.

Q. You say you picked it up, I think you told Mr.  
Chace "I think I picked it up and drew it up on my face?"  
A. Yes, sir.

Q. Is that so? A. Yes, sir.

Q. Had Willis touched any mask up to the time you  
picked up the mask and drew it on your face? A. No, sir.

Q. Did Willis have any mask in his hand that day in  
Vener's store? A. Yes, sir, he took one up and put it over  
his face.

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Q. That is, you both tried masks on there, didn't you?  
A. Yes, sir.

Q. In the store? A. Yes, sir.

Q. In the presence of the customers? A. If they were looking at us, yes.

Q. It was in their presence? A. Yes, sir.

Q. I didn't ask whether the customers were looking at you or not, it was <sup>in</sup> the presence of the customers? A. Yes, sir.

Q. And in the presence of Mr. Vener? A. Yes, sir.

Q. And in the presence of Vener's assistant in the store there---didn't he have clerks there of his wife or somebody helping him? A. I didn't notice that.

Q. If anybody was in the store then you put on masks in their presence and so did Willis? A. Yes, sir.

Q. While you were picking up these masks and trying them on, did you tie them around your heads? A. No, sir.

Q. You didn't do that there? A. No, sir.

Q. Now after you had picked these masks up in the store, you and Willis, and tried them on, had either Frederick or Burton bought any masks and brought them to the house? A. No, sir.

Q. You and Willis bought those two masks there that day? A. Yes, sir.

Q. On that Monday? A. Yes, sir.

Q. And up to that time as far as you know, neither Frederick or Burton had bought any? A. No, sir, they had not as far as I know.



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Q. And the subject had not been talked about, had it?

A. No, sir.

Q. You went there that day to buy underclothes? A. Yes, sir.

Q. You needed a pair of under drawers and you bought them? A. Yes, sir.

Q. After you saw the masks you tried them on? A. Yes, sir.

Q. And then you and Willis bought one apiece? A. Yes, sir.

Q. That is all there was on that transaction, was it? A. Yes, sir.

Q. Was this in day light? A. Yes, sir.

Q. And whether it was in the forenoon or afternoon you can't tell? A. No, sir I cannot.

Q. Did you and Willis take the masks with you when you left the store? A. Yes, sir.

Q. After leaving the store, where did you go? A. To Willis Van Worner's home.

Q. That was your home there practically? A. Yes, sir.

Q. While you were staying in Kinderhook? A. I was just visiting there.

Q. The house where you were staying? A. Yes, sir.

Q. What did you do with the masks? A. Put them in a closet.

Q. Which closet? A. Little closet that was in a corner of the dining room.

Q. Were the other boys there (Burton and Frederick) when you brought the masks in? A. Yes, sir.

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Q. And you showed them to them? A. Yes, sir.

Q. And then put them in the closet? A. Yes, sir.

Q. Was anything said in particular about the masks at the house when you got home with them? A. Only that the other two boys said that they would get one for themselves.

Q. They rather liked yours? A. Yes, sir.

Q. Now did they get any for themselves? A. Yes, sir.

Q. When? A. The day before Christmas.

Q. And nothing had been said upon the subject between that time and the day before Christmas, had there? A. No, sir.

Q. You hadn't mentioned it, had you? A. No, sir.

Q. You hadn't heard the subject of masks mentioned? A. No, sir.

Q. Between the time you brought them into the house when you purchased them on Monday afternoon and the time that the other boys got theirs? A. No, sir.

Q. Now you are telling me the truth about that? A. Yes, sir, I am.

Q. There had been no conversation in the Van Worrer house between the three of you about masks? A. No, sir.

Q. After you showed the masks which you and Willis bought and the time the other boys bought one mask? A. No, sir, there hadn't been no conversation.

Q. The other boys only bought one mask between them, didn't they? A. Yes, sir.

Q. Which one bought that? A. Frederick.

Q. What time was that bought? A. I forget. I don't know

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Q. Were you present when it was bought? A. No, sir.

Q. That was <sup>r</sup> bought into the house? A. Yes, sir.

Q. What time of the day? A. I think it was in the afternoon.

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

Q. What time in the afternoon? A. I don't know what time, I know it was after dinner.

Q. Do you know what Mr. Vener says upon the subject as to the time when the masks were bought or any mask was bought on the day before Christmas? A. No, sir, I don't.

Q. You have not heard his testimony about it or read it? A. No, sir, I have not.

Q. Are you sure these boys bought any masks at Vener's before 3 o'clock on the day before Christmas? A. No, I do not know what time.

Q. What is your best recollection about it? A. I couldn't say.

Q. Have you any recollection about it? A. No, sir, I have not.

Q. Have you any recollection at all about the time on the day before Christmas when either of the boys bought any masks? A. No, sir.

Q. Your mind is a blank upon that, is it? A. Yes, sir, it is.

Q. You can't tell anything about it? A. No, sir, I can't

Q. Did you see the masks brought into the house? A. Yes sir.

Q. Who brought them in? A. Frederick.

Q. Where were you when he brought them in? A. In the

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kitchen.

Q. Who was with you? A. Burton.

Q. What was said upon the subject when the mask was brought in? A. Burton said he couldn't get one to fit him.

Q. Is that all that was said? A. Yes, sir.

Q. What was done with the mask Frederick had when he brought it into the house on the day before Christmas?

A. He put it on his face.

Q. He didn't keep it there all the time, did he? A. No, sir.

Q. How long did he ~~keep~~ it on his face? A. Just a short time, so the rest of us could see him.

Q. To see how it looked? A. Yes, sir.

Q. What kind of mask was that? A. Sort of Indian face.

Q. Did you admire it, think it was a good fit? A. Yes, sir.

Q. Did you so express yourself? A. No, sir.

Q. Did anybody in the house on that afternoon when the mask was brought back or at any time after it speak about that mask? A. No, sir. Yes, Fred put hair on it; he said he had to put some hair on the mask.

Q. Was anything else said about it? A. No, sir.

Q. What was done with it? A. Put in the closet with the other ones.

Q. Did you see it put in there? A. No, sir, but he said he put it there.

Q. How do you know it was put in the closet? A. He said

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he put it with the others there.

Q. You didn't see it done? A. No, sir.

Q. What did you do on Monday after you bought the underwear and masks in Veners, what did you do the rest of the day? A. Came back to the house and staid there.

Q. What did you do there? A. I can't remember what we did.

Q. Who was there? A. I don't remember who was there any more than----

Q. You must remember some who were there? A. Any more than the boys were present.

Q. Don't you remember Mrs Van Wormer was there? A. I don't remember.

Q. You don't remember that? A. No, sir.

Q. Were all four of the boys in the house on Monday afternoon after you bought the masks? A. When Willis came in there there was four there then.

Q. What four? A. Willis, myself, Bert and Fred.

Q. What did you four or any of you four do that afternoon, if you can remember? A. I can't remember what we did.

Q. I wish you would try to think, Bruce, if you have got to take time to think, take it but be as brief about it as you can? A. I can't tell what we did.

Q. Can't you think of a subject which occupied your mind, what you did? A. No, sir, I cannot.

Q. Can you tell what was said? A. No, sir.

Q. Not a thing about it? A. No, sir

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Q. What did you do Monday evening? A. We went out for a walk.

Q. Where did you go? A. Around the street.

Q. Who went? A. All of us.

Q. What do you mean by "all of us"? A. All four.

Q. You four boys together? A. No, sir, not together, but we all left the house.

Q. What time? A. I do not remember just what time it was.

Q. Did you all leave the house together? A. No, sir.

Q. In what order did you leave? A. Burton went out first I believe, then Willis, and Frederick and I went out together.

Q. What time did Willis and Burton go out? A. They went out early, about half past six.

Q. Can you state any conversation you boys had together that Monday evening? A. No, sir.

Q. Can't you think of any subject you talked over? A. No, sir. I cannot.

Q. None at all? A. No, sir.

Q. You can't tell of anything you talked over from the time you bought the masks and underwear on Monday, some time during the day, until you went out Monday night, is that so? A. Yes, sir.

Q. You spent the night in the village? A. Yes, sir.

Q. Did you go around with other boys? A. Yes, sir.

Q. And then went home and went to bed? A. Yes, sir.

Q. Now what time did you get upon Tuesday? A. I do

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not remember.

Q. Haven't you any recollection about it? A. No, sir; we used to get up early.

Q. Did you get up late Tuesday? A. Yes, sir.

Q. Can you remember any subject you talked about on Tuesday? A. No, sir.

Q. Not from the time you got up in the morning or during the day until you went to bed at night? A. We spoke about taking a ride.

Q. On Tuesday? A. Yes, sir.

Q. What time on Tuesday did you speak about taking a ride? A. In the forenoon.

Q. Who were present when that subject came up for conversation? A. All of the boys.

Q. All you four? A. Yes, sir.

Q. Did you say where you were going? A. Yes, sir.

Q. Where? A. They said they just wanted to go out for a ride and didn't state where they wanted to go.

Q. Nobody said where they were going? A. No, sir, they asked where they should hire a horse.

Q. What time on Tuesday was this? A. In the forenoon.

Q. You were with them all the day Tuesday? A. Yes, sir.

Q. Can you remember any part of the day Tuesday when you were not with them? A. No, sir, I cannot.

Q. Your best recollection is you were constantly with them from the time you got up until you went to bed Tuesday night? A. Yes, sir.

Q. That is your best recollection? A. Yes, sir, with

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some of them anyway.

Q. With one or all of them? A. Yes, sir.

Q. And the only subject you can recollect<sup>1</sup> having talked about on Tuesday was the fact of taking a ride somewhere?

A. Yes, sir.

Q. When that subject came up who were present, all four of you? A. Yes, sir.

Q. No place was mentioned? A. No, sir.

Q. No time was mentioned? A. No, sir.

Q. Nothing was done that day about taking a ride---you are talking about Tuesday now? A. Yes, sir.

Q. Anything done that day about taking a ride? A. I don't remember it.

Q. Try to think, Bruce, because I don't want to have to go back? A. I should remember if you will tell me what day Christmas came on.

Q. No, you must try to remember those things yourself, I am talking about Tuesday, it is the day after you bought some masks and underwear, underclothing---are you sure it was Tuesday you talked about taking a ride? A. Yes, sir.

Q. No place was mentioned? A. No, sir.

Q. Nothing was done about it that day? A. Yes, sir, the horse was spoken for.

Q. What was Tuesday? A. Yes, sir.

Q. Who spoke for it on Tuesday? A. Burton.

Q. That is not the day of the night you took your ride down to Hallenbeck's, is it? You say you bought the masks three days before you went to Hallenbeck's---are you sure



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you went to hire that horse on Tuesday? A. Not in particular either; I couldn't say just.

Q. I want you to think about it, because this is too serious to guess about? A. I can't remember it.

Q. Why can't you remember it? A. Simply because I cannot.

Q. Isn't your memory good enough to remember it? A. Oh, yes.

Q. Then you can remember it if your memory is good enough? A. Oh, it is too far away.

Q. Was any ride talked about on Tuesday? A. Yes, sir, they talked about riding.

Q. ~~Are~~ You <sup>are</sup> sure about that? A. Yes, sir.

Q. Are you sure they went to see about the horse on Tuesday? A. Yes, sir, I am.

Q. Did you go down to Hallenbeck's that night? A. I don't remember that.

Q. What was done next day? A. I can't remember the days like that.

Q. Can't you remember about days? A. No, sir.

Q. I should think you could about those days? A. Well, I can't.

Q. Now, if you are right when you swore to me a little while ago that it was three days after you bought the under drawers and the masks on Monday before you went down to Hallenbeck's, then are you sure you hired that horse on Tuesday? A. The horse was spoken for, I think.

Q. On Tuesday? A. Yes, sir.

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Q. What time on Tuesday? A. I couldn't say just what time.

Q. You spoke for it, didn't you? A. No, sir, I didn't.

Q. Who did? A. Burton did.

Q. Are you sure of it? A. Yes, sir, I am.

Q. You went for it, didn't you? A. No, sir.

Q. Then Mr. Coons is wrong when he says you went after the horse at 5 o'clock or about 5 o'clock? A. I went with Burton.

Q. Didn't you go there to the stable for the horse?  
A. Yes, sir, I went with Burton.

Q. Did you go to the stable for the horse? A. I went with Burton.

Q. I didn't ask you if you went with anybody, did you go for the horse when you went there, didn't you go to the Brown stable for the horse? A. Yes, sir, Burton was with me.

Q. I didn't ask that, what day of the week was that?  
A. On the day before Christmas.

Q. What day of the week? A. I don't know what day it was.

Q. Now up to the time when you and Burton, as you say, went to the stable for the horse what, if anything, had been said by all or any of you boys about taking a ride? A. On the day before Christmas?

Q. At any time before you and Burton, as you say, went to the stable after the horse, what had been said by any or all of you, in your presence about taking a ride? A. They wanted to go riding.

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Q. Who said that? A. I don't remember just which one.

Q. How did he say it, use the words or something like them? A. I don't know, any more than he wanted to know if we wanted to take a ride.

Q. How did he say it? A. I can't recall his words.

Q. Try to tell the substance of it, the words as near as you can or the substance of it? A. I can't.

Q. Did he say "don't you want to take a ride"? A. I suppose it was something like that, that is about the way he would ask.

Q. Who was it? A. Burton.

Q. You are sure now? A. Yes, sir.

Q. You didn't know who it was that spoke of it a moment ago, now you are sure it was Burton? A. Yes, sir.

Q. Having become sure that the man who spoke about going to take the ride was Burton, isn't your memory better about what he said upon that subject? A. No, sir.

Q. Now try to state to the jury just as nearly as you can what Burton said about taking a ride that day, in your presence, and every word he said as far as you can state it? A. On the day before Christmas he asked us if we wanted to take a ride; he says "we will hire a horse to go to North Chatham".

Q. That is all he said? A. Yes, sir.

Q. Now after that and before you hired the horse or before you went after the horse about 5 o'clock in the evening with Burton, what if anything, else was said upon the subject of taking a ride besides what you have just

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stated Burton said? A. Nothing more.

Q. That you are sure of? A. Yes, sir; merely that, that we were going out to have a good time on Christmas eve.

Q. No place mentioned? A. No, sir.

Q. Now are you sure Harvey, that you didn't go over to Brown's to hire the horse---didn't you go over there with Burton to hire the horse? A. Yes, sir.

Q. What time did you go over there to do that?

A. Some time around noon, I don't know just at what time it was, it was in the middle of the day.

Q. In the middle of the day? A. Yes, sir.

Q. Where did Burton and you go from, start from, when you went there? A. From the Van Worrer house.

Q. Did you leave the other boys there? A. Yes, sir.

Q. Are you sure they were there? A. Yes, sir.

Q. Did they know where you were going? A. Yes, sir.

Q. When you got over to Mr. Brown's you say you saw him? A. Yes, sir.

Q. You saw Brown? A. Yes, sir.

Q. And you saw somebody else in the office? A. Yes, sir, in the office.

Q. I wish you would tell me if you can any more accurately, what time you got to Brown's? A. I cannot tell you.

Q. Who was the other gentleman in the office? A. I do not know.

Q. Did you ever see him before? A. Yes, sir, I had seen him before.

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Q. Where had you seen him? A. I don't know just where, but I would recognize him.

Q. Do you know whether it was Mr. Brown's brother? A. I don't know; I don't know his brother.

Q. You can't tell? A. No, sir.

Q. How long did you remain there at that time? A. May be an hour.

Q. At George Brown's? A. Yes, sir.

Q. What were you doing all that time? A. Bruton was talking with Mr. Brown.

Q. And you were present? A. Yes, sir.

Q. What did they talk about? A. He was talking about his position on the New York Central road.

Q. Who was talking about his position on the New York Central road? A. Burton was.

Q. Talking to Mr. Brown about it? A. Yes, sir.

Q. What did he say about it? A. Just merely about the job that he had.

Q. He and Mr. Brown visited there for about an hour, you think? A. Yes, sir.

Q. Who did the talking with Mr. Brown about hiring the horse? A. Burton.

Q. Did he do that talking about hiring the horse before he talked with Brown about that place on the railroad or afterwards? A. Afterwards.

Q. So that the talk about hiring the horse was the last thing that happened before you went out? A. Yes, sir.

Q. Now please tell me, Bruce, just what Burton said to

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Brown on the subject of hiring a horse? A. He asked Mr. Brown to let him have this mare to go to Stuyvesant and North Chatham with.

Q. Go on? A. Mr. Brown said he didn't want to let the horse go, to go so far.

Q. Go on? A. Because he thought the road was quite heavy. There had been some snow on the ground.

Q. Go right along? A. And I said to Burton it wasn't necessary to go to Stuyvesant.

Q. When in that conversation did Burton say anything to Brown or to you about the matter of carrying a bundle for your mother or for Burton's mother? A. Burton spoke of it.

Q. You didn't mention that to Mr. Chace. What did Burton say after that? A. He said to me the only reason I wanted to go to Stuyvesant was to take that package to your mother.

Q. What did you say to that then? A. I said it wasn't necessary. I had never heard----

Q. Never mind about that, you said it wasn't necessary? A. Yes, sir.

Q. That ended the conversation? A. Yes, sir.

Q. Then having been at Brown's about an hour, what time was it when you left Brown's? A. I don't know; I didn't notice the time.

Q. Is there not any other way by which you can get at it? A. No, sir.

Q. Did you see Jerome Bauer that day? A. Yes, sir.

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Q. What time? A. I don't know what time it was.

Q. Try to fix it? A. I can't.

Q. Was it before or after you went with Burton to Brown's to hire a horse? A. I don't remember that.

Q. Try to think? A. I can't.

Q. Where were you when you borrowed that revolver?  
A. I didn't borrow it.

Q. Who did? A. Burton.

Q. You were with him? A. I was in the store.

Q. Where was the revolver borrowed? A. In the store.

Q. Whose store? A. Mr. Bauer's store.

Q. Who was present? A. I was present.

Q. Go on? A. There was another small boy in the store, I don't know what his name was.

Q. Can you tell whether it was before or after you went with Burton to Brown's to hire the horse, that Burton borrowed the revolver of Bauer? A. No, I can't.

Q. Hadn't there been practicing there that morning in Bauer's store? A. Yes, sir.

Q. You took part in it? A. Yes, sir.

Q. Was this in the forenoon or afternoon? A. I don't remember that.

Q. Can't you tell anything about it? A. No, sir.

Q. Your memory was poor---that was the day of the evehing you took this ride, you remember? A. Yes, sir.

Q. How long were you in the store of Bauer practicing?  
A. I don't know; an hour and a half.

Q. Can't you tell what part of the day it was? A.No,sir

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Q. You can't tell whether it was in the afternoon or forenoon? A. No, sir, I cannot.

Q. You can't say whether you went to Brown's before or after you got through at Bauer's? A. After we got through at Bauer's.

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

Q. Now while you were in Bauer's was anything said that day about taking a ride? A. Yes, sir.

Q. What was said in Bauer's about taking a ride? A. Nothing more than we were going to take a ride.

Q. Who did you tell that to? A. I didn't tell it to anyone, Burton spoke of it.

Q. To whom did he speak of it? A. To me.

Q. He told you in Bauer's you were going to take a ride? A. Yes, sir.

Q. In what part of the store were you when he said that? A. Right near the counter.

Q. Was Bauer standing by? A. No, I don't think he was.

Q. Just what did Burton say? A. Well, said he was going to borrow Jerome Bauer's revolver to go out that night.

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

Q. Had anything else been said by you or by any other of the defendants here about taking a ride on that day except what you have already stated? A. No, sir.

Q. What time did you go after the horse that night? A. At about 5 o'clock.

Q. Between the time you left Brown's stable and the hour of 5 o'clock, when as you say Burton and you went after



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the horse had anything been said upon the subject of taking a ride? A. That is the time we went to get the horse at 5 o'clock.

Q. Is that the only time he spoke about taking a ride? A. No, sir, we spoke about it during the day before that.

Q. Don't you get my idea? ~~As~~ I ask you whether between the time you and Burton engaged the horse at Brown's and the time that you and Burton went after the horse at Brown's at about 5 o'clock on the day before Christmas, during that interval between those two occasions was there anything said upon the subject of taking a ride? A. Yes, sir.

Q. What was said? A. Just that we would go out and have a good time.

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

Q. Didn't you say where you were going? A. No, sir.

Q. Was there not any place where you would drive mentioned? A. No, sir, any more than North Chatham.

Q. Who talked about North Chatham? A. Burton.

Q. When did he talk about North Chatham? A. He said that was where he hired the horse for.

Q. He said that after he had hired the horse? A. Yes, sir after he had hired the horse at noon.

Q. What time of day did he say that? A. Between the time we spoke for the horse and when we went to go riding; I don't know what hour it was.

Q. How long was that before you went after the horse? A. I don't know just how long.

Q. Did you have supper before you started out? A. I

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don't remember.

Q. Did you have supper at any time on the day before  
Christras? A. I think we had a late dinner.

Q. What time of day? A. Half past three or 4 o'clock.

Q. That is your best recollection of it? A. Yes, sir.

Q. Anything said at the dinner table about taking a  
ride? A. Yes, sir.

Q. What was said? A. He merely said we were going riding

Q. Who said it? A. One of the party I don't know which  
one it was.

Q. I wish you would try to remember? A. I can't.

Q. What did he say? A. He told his aunt we were going  
riding.

Q. Did he say where? A. No, sir.

Q. Did he say when? A. At about 5 o'clock we were  
going to get the horse.

Q. Can you think of anything else that was said upon  
that subject of taking a ride before you started, I want all  
that was said by you boys in those three days from Monday  
which ended at Peter Hellenbeck's, I want every word that  
was said on the subject of taking a ride at any time upon  
those three days before you started on your ride? A. I  
can't think of anything more than I have told you.

Q. You think you have stated it all? A. Yes, sir.

Q. I want you to be careful if you want any further time  
to think it over in I will give it to you; do you need any  
further time to think that subject over? A. No, sir, I do  
not.

1 Q. And on that thing your mind is clear? A. Yes, sir.

2 Q. Then nothing had been said Harvey before you left

3 the house about your going to see Peter Hallenbeck? A. No,

4 sir.

5 Q. Not a word? A. No, sir.

6 Q. Had the name of Peter Hallenbeck been mentioned in

7 those three days? A. No, sir, it had not; not to me.

8 Q. Not so far as you heard? A. Yes, sir.

9 Q. You were with the boys most of the time, weren't

10 you? A. Yes, sir.

11 Q. You were on good terms with them, were you not?

12 A. Yes, sir.

13 Q. Friendly? A. Yes, sir.

14 Q. Happy? A. Yes, sir.

15 Q. Enjoyed yourself around there? A. Yes, sir.

16 Q. No trouble between you that you know of? A. No, sir.

17 Q. Each one speaking to the other about his pleasures?

18 A. Yes, sir.

19 Q. And his occupations? A. Yes, sir.

20 Q. You were companions and confidents of one another?

21 A. Yes, sir.

22 Q. Up to that time? A. Yes, sir.

23 Q. Now you tell me, that never before you started on

24 your ride that night, was the name of Peter Hallenbeck

25 mentioned during those three days? A. No, sir, it was not,

not to me.

Q. Not to you? A. No sir, it was not.

Q. When had you seen Peter Hallenbeck last before that

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right? A. On the fair ground here at fair time.

Q. Were you living at the Van Worners then? A. No, sir, I was not.

Q. Were you visiting there? A. No, sir, I was not.

Q. Now who drove from the stable over to your house? A. Bert Van Wornner.

Q. You and he were sitting together in the seat? A. Yes sir.

Q. Did you get out over there, both of you? A. He went right into the house and I tied the horse; I got out.

Q. Did you have a blanket on the horse there? A. Yes, sir

Q. You both went into the house? A. I didn't get into the house before the boys all came out.

Q. You had your revolver in your pocket? A. Yes, sir.

Q. Do you know whether Burton had any in his pocket while you were driving over from Brown's to the house? A. I don't.

Q. Did you see either of the other boys take any revolver from the house, that night? A. No, sir.

Q. But you took yours in your pocket? A. Yes, sir.

Q. When you got into the wagon in what way did you boys sit down there? Let me ask you first if you are not slightly in error or perhaps I am, when you left the premises with the horse and wagon, you and Burton, you say you drove to the house? A. No, sir.

Q. You went to Coons? A. Yes, sir.

Q. What Coons is that? A. I think his first name is Thew.

1 Q. Is he a brother of James Coons who is hostler for  
2 Brown? A. Yes, sir.

3 Q. What did you go there for first? A. To speak to him  
4 about a street light.

5 Q. What did you say to him about the street <sup>lamp</sup> light?

6 A. I threw a snow ball at Burton Van Worrer and broke a  
7 street lamp and I went to tell the man that I broke it.

8 Q. What time did you throw the snow ball at Burton and  
9 break the light? A. At the time we went to hire the horse  
at 5 o'clock.

10 Q. What does this man Coons have to do in regard to the  
11 lights? A. He is the man that takes care of the lights.

12 Q. After you got the horse you went over to speak to  
13 him about the light? A. Yes, sir.

14 Q. How long did you remain there? A. Just long enough  
to tell him, not over five minutes.

15 Q. Did you speak to him about the light? A. No, sir,  
16 he was not at home.

17 Q. Did you see him at all? A. I saw his wife.

18 Q. So you told her? A. Yes, sir.

19 Q. Burton was with you? A. Yes, sir; he was in the  
20 wagon and I was at the door talking to the lady.

21 Q. How far was that place from the Coons house? A. I  
22 couldn't say: it was on the back street of Kinderhook and  
it was quite a little drive.

23 Q. It was then about 5 o'clock when you left Brown's?  
24 A. Yes, sir.

25 Q. How long did it take you to go over to Coons?

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A. Not over 15 minutes.

Q. Do you mean by that the time it took you to drive over there or the time it took you to drive over and stay there? A. And back.

Q. You think you got back to the Van Wormer's house about quarter past 5 o'clock? A. Yes, sir.

Q. How long did you remain at the Van Wormer house in the manner you have described? A. Not over two or three minutes.

Q. You blanketed the horse, didn't you? A. Yes, sir.

Q. You had time to blanket the horse and tie it? A. Yes, sir.

Q. And wait for the other boys to come out? A. No, sir, I didn't wait; they came right out as soon as I had the horse tied and blanketed.

Q. Have we got everything that happened between the time you and Burton got the horse at Brown's and the time the boys had come out from the Van Wormer house and you were all ready to start? A. Yes, sir.

Q. Can you think of anything else? A. No, sir, I cannot.

Q. That was said or done? A. I cannot.

Q. That horse was untied and the blanket taken off? A. Yes, sir.

Q. Who did that? A. I did.

Q. Then you four got into the wagon? A. Yes, sir.

Q. Tell me the way in which you got in or the way in which you sat after you got in? A. Fred and Burton got in and sat on the seat and Burton sat on Willis' lap and I sat

1 on Frederick's lap.

2 Q. Who drove? A. Burton did.

3 Q. When you started off? A. Yes, sir.

4 Q. When you left the house what streets did you go  
5 through in Kinderhook? A. We drove down across the covered  
6 bridges.

7 Q. Is your house or the Van Worrer house where you were  
8 then, situated on the public square in the village of Kin-  
9 derhook? A. Yes, sir.

10 Q. How far away from the hotel of Herrick's? A. About  
11 100 yards.

12 Q. In which direction? A. Towards the east.

13 Q. That is practically on the street that leads from  
14 the public square in the village of Kinderhook down to the  
15 two covered bridges on the east? A. Yes, sir.

16 Q. And when you left your house you say you drove east?  
17 A. Yes, sir.

18 Q. And drove down that road across the covered bridges?  
19 A. Yes, sir.

20 Q. On the way from your house down to the covered  
21 bridges, what, if anything, was said among you boys?

22 A. I said that this is not the way to North Chatham.

23 Q. Did you say that on your way or before you got to  
24 the bridges? A. Before we got to the bridges.

25 Q. How long was that after you left the house? A. Just  
as soon as we started that way.

Q. When you testified to Mr. Chace, if my notes are  
right, and I think they are right in the order in which you

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testified, I may not give the exact language but I think you said "we drove across the covered bridges and down on the post road to Stuyvesant Falls; there was no stop there. I asked them where they were going", now you remember the order in which you gave that testimony on your direct examination, and bearing that in mind, are you right now in saying you mentioned that fact or asked that question before you got to the covered bridges? A. Yes, sir.

Q. Why didn't you mention it in that order to Mr. Chace?

Mr. Chace. I submit he did.

The Court: The testimony is in the record and shows what it was.

Mr. Cady: On the way down Rossran Hill he said he asked that.

Q. How far had you got before you asked that question?

A. As soon as we started I knew we were not on the North Chatham road.

Q. How far had you got from the house before you asked that question? A. Not over 50 yards.

Q. What did you say? A. I said "this is not the road to North Chatham".

Q. Who spoke first in response to that, if anybody?

A. I don't know which one.

Q. Now try to think? A. I cannot; I can't think which one it was.

Q. One of them spoke? A. Yes, sir.

Q. What did he say? A. He said "we are going down the line".



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Q. What did you say? A. I says "down where"; he gave me the same answer.

Q. He said "we are going down the line"? A. Yes, sir.

Q. Peter A. Hallenbeck's name hadn't been mentioned up to that time? A. No, sir, it was not.

Q. And was not mentioned at that time? A. No, sir, it was not.

Q. Can't you tell who said that? A. No, I can't.

Q. You testified in answer to Mr. Chace that Burton said it, how is your memory about it now, you said Burton said this and that Burton said it or did somebody else say it?  
A. One of them said it.

Q. You can't tell which one? A. No, I can't.

Q. Then you are not sure that you were right when you told Mr. Chace that Burton said this? A. No, sirs I am not.

Q. Well, now immediately after you had had this brief talk, after somebody had said twice "we are going down the line" what was the next thing said by anybody? A. I don't know.

Q. Now try to think? A Oh, the next question I asked was----

Q. I don't want the next question you asked, I want the next thing that was said among the boys? A. I don't know what was said next, I can't think of it.

Q. Can't you think of a thing that was said after you asked the question and got that answer? A. No, sir, that they were not going to North Chatham, that is all.

Q. Did you make any reply when this one said he was

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going down the line and said it twice? A. I asked what part, whereabouts down the line, and he didn't give me any answer.

Q. That was all you said? A. Yes, sir.

Q. You didn't make any attempt to get out and go back?

A. No, sir.

Q. You kept right on? A. Yes, sir.

Q. If you please, Bruce, try to search your memory and tell me the next thing you can remember as to what was said by any of you after that colloquoy or those remarks took place? A. Nothing more than only when we passed through

Stuyvesant Falls.

Q. You don't mean to say you sat dumb all the way down? A. There was scarcely a word spoken, there was no happiness in them.

Q. You spoke a little while ago that you started off happy and nothing up to this time has happened to make you unhappy and I move to strike it out. You were happy when you left the house? A. Yes, sir.

Q. You had been happy all the day? A. Yes, sir.

Q. You were happy when you got into the wagon? A. Yes, sir.

Q. And nothing had occurred to prevent your being happy? A. No, sir.

Q. Not a word had been said? A. No, sir.

Q. To indicate anything that wouldn't make you happy? A. No, sir.

Q. What is the next thing you remember hearing at all? A. When we came to Stuyvesant Falls.

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Q. What was said there? A. They started to drive right through the place---

Q (Int'g.) I didn't ask you what they started to do, I asked you what was said? A. I can't remember.

Q. You can't remember what was said? A. No, sir.

Q. Did you say anything? A. Yes, sir.

Q. Did anybody else say anything? A. Yes, sir.

Q. But you can't remember what it was? A. Yes, sir, I can remember what it was.

Q. What was said? A. I asked them why they didn't stop there. I says " this is just as good a place to have a good time as anywhere else". They said they were going---

Q. (Int'g.) Who said that? A. Burton said it, he said they was going down the line; he still used the same expression.

Q. Is that all that was said? A. Yes, sir.

Q. Your mind is perfectly clear about that? A. Yes, sir, it is.

Q. Nothing had been said about Peter Hallenbeck's place up to this time? A. No, sir, there was not.

A. What is the next point at which anything was said? A. That I remember was on Rossman hill.

Q. Go on and state what was said? A. There I demanded to know where we were going.

Q. I move to strike out that you demanded. What did you say, tell the words you used? A. There I says "where are we going"; he used the same expression.

Q. Who did? A. Burton did, that he was going down the

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line. I said I would get out if I didn't know where I was going, he says "well, we are going down to uncle Pete's."

Q. When you found you were going down to uncle Pete's you didn't get out? A. No, sir.

Q. You sat right there? A. Yes, sir.

Q. How did you know who he meant when he said uncle Pete's? A. Because I knew how he used to call uncle Pete.

Q. So although he didn't mention Mr. Hallenbeck's name you knew just who he meant when he said it? A. Yes, sir.

Q. When he told you he was going down to uncle Pete's you didn't get out of the wagon? A. No, sir.

Q. And made no objection to going down? A. No I didn't get out.

Q. After that you stopped and got some tobacco? A. Yes, sir.

Q. Got out and got it? A. Yes, sir.

Q. And paid for it, didn't you? A. Yes, sir.

Q. That was at Tinker's? A. Yes, sir.

Q. In Stockport? A. Yes, sir.

Q. What time? A. About 6 o'clock, I should judge.

Q. Now when Burton on Rossman hill told you he was going down to Peter ~~Hallenbeck~~'s what was the language he used? A. He said he was going down there to give him a surprise.

Q. What did any of the other boys say? A. They kind of laughed, they didn't give any answer.

Q. They didn't say anything? A. No, sir.

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Q. You didn't say anything? A. No, sir, I asked him what kind of a surprise he was going to give him and he wouldn't tell.

Q. What did he say? A. He said he wouldn't tell, he wouldn't tell me what he was going to do.

Q. But still you kept in the wagon? A. Yes, sir.

Q. Went right along? A. Yes, sir.

Q. With your revolver in your pocket? A. Yes, sir.

Q. How long did you stay at Stottville? A. At where?

Q. At Stockport, at Tinker's? A. Just long enough to go in and get a paper of tobacco, I couldn't tell how long it was.

Q. Then you went on the public road to Stockport?

A. Yes, sir.

Q. And by the depot at Stockport Center? A. Yes, sir.

Q. And over the bridge? A. Yes, sir.

Q. Near the depot? A. Yes, sir.

Q. And up the hill through the village of Stockport?

A. Yes, sir.

Q. Now the road from Stuyvesant Falls to Stockport, through the village of Stockport is lined with houses practically all the way on both sides? A. Yes, sir.

Q. Is one of the most populous parts of this county as far as you know for a country outside of any city or village? A. Yes, sir.

Q. Then practically there is a line of houses on both sides of the road all the way down from Stuyvesant Falls to this end of Stockport village? A. No, sir.

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Q. Where is it not? A. Between Rossman's and Stuyvesant Falls there is no houses.

Q. Is that the only place you think of along that line where it is not very thickly settled? A. Yes, sir.

Q. Between Stuyvesant Falls and Stockport Center, did you meet any teams? A. I don't remember just there.

Q. What is your best recollection about it? A. I don't remember as we passed a team ~~there~~ there.

Q. Did you meet any teams on the Post road? A. Yes, sir, just after we left Kinderhook we met a team.

Q. You don't know who that was? A. No, sir.

Q. It had been snowing in Kinderhook that day, had it not? A. Yes, sir.

Q. How much snow was there on the ground when you started? A. I don't know, I didn't measure it, I couldn't tell.

Q. What is your best recollection about it? A. I couldn't positively say.

Q. Was it a bright moonlight night? A. Yes, sir.

Q. What do you say as to it being very bright and clear? A. It was a very bright night.

Q. Would you say it was an unusually bright moonlight night? A. Yes, sir.

Q. With snow on the ground? A. Yes, sir.

Q. Fresh snow that had fallen that day? A. Yes, sir.

Q. Now after something had been said about going to uncle Peter's was anything said by any ~~one~~ of you about the route you would take to get there? A. No, sir.

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Q. Not a word? A. No, sir.

Q. You kept driving right along? A. Yes, sir.

Q. You drove down to the end of Stockport village and down on through that settlement which you call Stottville?

A. Yes, sir.

Q. Was it light when you went through there? A. Yes, sir.

Q. And thence on to Hudson from the Park house out here? A. Yes, sir.

Q. Which road did you take? A. Entering Hudson?

Q. Yes, sir. A. We passed the fair grounds.

Q. That is the upper road running along the Hudson and Albany Railroad track? A. Yes, sir.

Q. When you got to Hudson had anything been said about visiting Hallenbeck except what you have already told?

A. No, sir, they wouldn't tell, they wouldn't speak about it.

Q. Was anything said about it? A. No, sir.

Q. Did you say anything about it? A. Yes, sir.

Q. What did you say and where did you say it? A. Different places along the road.

Q. Name one place after you got down Rossman hill?

A. I can't remember the place.

Q. Tell me the next place after you left Rossman hill when you spoke about going to Peter Hallenbeck's? A. I don't know exactly where I spoke of it; I remember one place, I don't know whether I spoke of it then or not.

Q. I want the first place, where was it? A. After we

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left Tinker's store, just after we started off.

Q. State just what was said? A. I asked them what they were going down to Mr. Hallenbeck's for. A. They said to give him a surprise again.

Q. Used just the same language? A. Yes, sir.

Q. Did you ask that before you got into the wagon at Tinker's or after you got in? A. After I got in.

Q. You didn't get out again? A. No, sir.

Q. You stayed right in? A. Yes, sir.

Q. Rode right along? A. Yes, sir.

Q. Where next was anything said on that subject by you or anybody else? A. Just after we left Hudson.

Q. Now state just what was said then and who said it? A. I asked the question over again.

Q. What did you say? A. I asked them what they were going to go down there.

Q. What did they say? A. They said to give him a surprise over.

Q. Who said it? A. Burton.

Q. How many other times on the road down there was that language repeated, if at all? A. I can't remember just how many times it was repeated.

Q. I would like to have you try to? A. I remember those times I have told and those are the only ones.

Q. Whereabouts did the two boys get out of the wagon--- did you get out of the wagon as you approached Hallenbeck's? A. Yes, sir, at the top of the hill in front of the orchard.



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Q. Did the wagon stop there? A. Yes, sir.

Q. Two of you got out? A. Yes, sir.

Q. Which two? A. Willis and myself.

Q. And the wagon went on ahead of you? A. Yes, sir.

Q. You walked down the hill to the wagon shed? A. Yes, sir.

Q. Bright moonlight shining? A. Yes, sir.

Q. Bright snow on the ground? A. Yes, sir.

Q. How far behind the wagon were you and Willis?

A. About ten feet.

Q. Hallenbeck's house lit up? A. Yes, sir.

Q. What did you and Willis say, if anything, as you were walking down the hill together? A. He said he saw Hallenbeck sitting in the room.

Q. Did you see him sitting in the room? A. No, sir.

Q. Did you look? A. Yes, sir.

Q. What else did he say besides the fact that he said he saw Mr. Hallenbeck sitting in the room? A. He didn't say anything else.

Q. Just how did he say that? A. He says, "there is uncle Pete sitting in the room now reading, he looks as if he was reading".

Q. What kind of tone of voice did he say that in ordinary tone? A. Yes, sir.

Q. You didn't notice anything peculiar about it? A.No, sir.

Q. What did you say? A. I didn't say anything. Yes, I did, I says "is he in there".

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Q. Is that all? A. Yes, sir.

Q. Can you tell me whether the shades were up? A. They were up.

Q. Was the room brightly lighted? A. Yes, sir.

Q. Now east of that house and about at the point where you got out of the wagon with Willis Van Worrer, there is an orchard with trees? A. Yes, sir.

Q. How thick are the trees in the orchard? A. I couldn't say; just merely that it is an ordinary orchard.

Q. There was nothing to stop you getting into that orchard from the highway? A. A fence.

Q. You got through that fence later on? A. Yes, sir.

Q. You got through the fence into the orchard?  
A. Yes, sir.

Q. How near does the orchard approach the west side of the house, how close does it come to the house? A. I don't know, I didn't notice, I am not acquainted with the property.

Q. Was there anything said about that orchard that night at all? A. No, sir.

Q. You went on down to the barn at the foot of the hill? A. Yes, sir.

Q. Walking in the same way? A. Yes, sir.

Q. Tied the horse down there? A. I don't know which one tied the horse.

Q. Are you sure you didn't? A. Yes, sir.

Q. Were they all out of the wagon when the horse was tied? A. Yes, sir.

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Q. Was the horse blanketed? A. Yes, sir, I put the blanket on the horse myself.

Q. Did you put the girth on? A. No, sir.

Q. How did you fasten the blanket? A. Just threw it over him.

Q. Was ~~it~~ there not any sort of fastening to it at all? A. No, sir.

Q. No buckles in front? A. No, sir; I didn't put a blanket on, I threw a robe over the horse.

Q. Did you tuck the robe in the harness to keep it on? A. Yes, sir.

Q. You are sure about that? A. Yes, sir.

Q. You remember doing that? A. Yes, sir.

Q. You were perfectly cool and collected? A. Yes, sir.

Q. Where were the other boys when you tucked the robe in under the harness in that way? A. They were turning their coats inside out.

Q. After you got the robe tucked in under the harness and securely fastened did you put your mask on? A. Yes, sir.

Q. Where was your mask at that time? A. It was handed to me by one of the boys.

Q. Who first talked about putting the masks on down there? A. They said "get yourself ready".

Q. Nothing had been said up to that time on the road about putting any masks on? A. After they left the church there was.

Q. What was said there? A. They said they would go in the---

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Q. (Int'g.) Who said it? A. Willis.

Q. He spoke about putting masks on? A. Yes, sir.

Q. That hadn't been spoken of at any time before?

A. No, sir.

Q. How did you know that your mask was in the wagon?

A. I didn't know that it was there.

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

Q. You were very much surprised when you found it was there? A. Yes, sir.

Q. And you put it right on? A. Yes, sir.

Q. How did you fasten it? A. With a string that was handed to me with the false face.

Q. Now stand up and tell how you did it? A. (Illustrating.)

Q. Go through the motions as you did it? A. Just simply put the false face over my face and tied it with a string, with a string through the mouth of the false face.

Q. Where did the string fasten? A. Around back of my neck.

Q. Did you tie it? A. Yes, sir.

Q. What kind of a knot? A. Hard knot.

Q. You remember that? A. Yes, sir.

Q. You were collected when you did that? A. Yes, sir.

Q. Perfectly collected just as you are now? A. Yes, sir.

Q. Tied it in a hard knot so it wouldn't fall off?

A. Yes, sir.

Q. You were cool enough so you did all that? A. Yes, sir.

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Q. How long did the operation of putting the masks on there occupy? A. Not over four or five minutes.

Q. What was said while you were putting them on? A. Burton was giving orders how to follow him.

Q. I move to strike that out. State what was said? A. Burton said to follow him.

Q. How did he say it to you? ~~Do~~ Do it as if you were Burton speaking to me, and repeat what he said? A. I can't tell what he said.

Q. Did he say "Harvey, follow me"? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. What else at the time was said or done? A. We started to walk up----

Q. (Int'g.) What else did he say? A. He told Fred to come third. He said "Fred, you follow Bruce".

Q. What else did he say? A. Willis to follow----

Q. (Int'g.) What did he say he was to do? A. He said for him to come fourth, after Fred.

Q. What else was said down there while putting those masks on and before you proceeded to go to the house? A. He said to get revolvers ready to shoot.

Q. Who said that? A. Burton. He said to get the revolvers ready and to shoot anywhere we wished, in the siding or anywhere as long as it would scare him--to give him a good scare, to surprise him.

Q. Where was that said? A. As we were putting on the false faces and turning our coats wrong side out.

Q. What was said about firing revolvers---repeat what

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was said about firing revolvers? A. To fire the revolvers in the siding or anywhere; Burton said to fire the revolvers in the ceiling or in the siding anywhere we wished as long as it would give them a surprise and scare them.

Q. Where were you when that was said? A. By the wagon.

Q. How far from the wagon? A. Just ready to start up the road towards the house.

Q. Were you all together? A. Yes, sir.

Q. Had you heard any dogs barking at that time?  
A. No, sir.

Q. Did you hear any dog bark while you were there?

A. No, sir.

Q. Now after Burton gave those instructions about firing in that way what did anybody say, what did you say or either of the other boys? A. I don't know; they were very quiet and didn't say anything.

Q. Nothing was said that you can remember? A. No, sir.

Q. All that was said upon the subject of firing any revolvers was what you have just told as to what Burton said? A. Yes, sir, until a little while later when he gave us some more orders.

Q. After that was said did you start up the hill?

A. Yes, sir.

Q. What way did you go up the road? A. Burton and Fred was ahead, walking side by side, and Willis and I were behind them walking side by side very close together.

Q. You said that while you were blanketing the horse or

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putting the buffalo robe on the horse<sup>s</sup> had changed their coats? A. Yes, sir.

Q. Did you change your coat? A. Yes, sir.

Q. What kind of coat did you have on? A. A coat the same as this one and I had an overcoat on.

Q. Did you take your overcoat off? A. Yes, sir.

Q. What did you do with it? A. I put it in the top of the wagon; the top was up and we put them on the seat in the top.

Q. Did you take your overcoat off after or before you put the buffalo robe on the horse? A. After I put the buffalo robe on the horse.

Q. First thing you did after that was to take your overcoat off? A. Yes, sir.

Q. After that did you change your coats? A. Yes, sir.

Q. That is you turned them inside out? A. Yes, sir.

Q. Then you started up the hill? A. Yes, sir.

Q. Up the highway? A. Yes, sir.

Q. Up as you told Mr. Chace to the back door near the fence? A. Yes, sir.

Q. Went through an aperture in the fence? A. Through a hole in the fence.

Q. As you went up the hill from the shed where the horse was fastened, when you got in front of Peter Hallenbeck's house you could see in front of the house? A. Yes, sir.

Q. Was it brightly lighted? A. Yes, sir.

Q. As you passed the house going up the road towards the hole in the fence did any of you say anything? A. Yes, sir.

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Q. What was said when you passed the house? A. Burton says "there is Aunt Mag now"; she was by the window.

Q. Anything else said? A. He said "there she is by the window".

Q. Did you see her? A. Yes, sir, I saw her.

Q. She was so plain in sight that even with your defective eye you could see her? A. Yes, sir.

Q. Was anything said at that point? A. No, there was not

Q. Did you stop in front of the house? A. No, sir, walked right on.

Q. Did you see Peter A. Hallenbeck at the time you saw Aunt Mag? A. No, sir, I didn't.

Q. Nobody at that time said anything about seeing Peter A. Hallenbeck? A. No, sir.

Q. Who spoke about seeing Aunt Mag? A. Fred.

Q. How did he speak? A. He said "there is Aunt Mag now by the window".

Q. Speak in an ordinary tone of voice? A. Yes, sir.

Q. Pleasantly? A. Yes, sir, he spoke just about the same as <sup>I</sup> did then.

Q. "Where is Aunt Mag now"? A. Yes, sir.

Q. Then you went through the hole in the fence? A. Yes, sir.

Q. In what order did you go through? A. I don't know which one went through first; I know I was third, Willis followed me.

Q. Now Bruce, is there anything that you remember that was said by you or by anybody else up to the time you boys



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went through the hole in the orchard fence that you can remember or which you have not told on this examination either to Mr. Chace or to me? A. No, sir.

Q. Well, now, in what order did you go down through the orchard and turn west towards the house? A. We kind of spread out in the orchard.

Q. Then you went north for a short distance, didn't you, after you went through the hole in the fence? A. I don't know just the directions down there.

~~They continued.~~

Adjourned to 9:30 A. M.

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Tuesday, April 15, 1902, 9:30 A. M.

HARVEY BRUCE, resumed on cross-examination.

Examined by Mr. Cady:

Q. Bruce, where were you born? A. Stuyvesant Falls.

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

Q. And if I recollect right you said to Mr. Chace you were 20 years old in September last? A. Yes, sir.

Q. The 27th day? A. Yes, sir.

Q. How long did you live in New Jersey? A. About a year.

Q. When did you go there? A. I don't remember just exactly.

Q. What year did you go there in? A. I don't remember.

Q. When did you leave? A. In August last.

Q. Well, now, you left there in August last and can't you remember the year you went there? A. I suppose it was 1900.

Q. What month in 1900? A. I don't remember just exactly.

Q. What is your best recollection about it? A. I can't tell but I know I was there just about a year.

Q. What season of the year did you go there in?  
A. The spring.

Q. In one of the spring months? A. Yes, sir.

Q. Can't you tell which one? A. No, sir, I cannot.

Q. Where did you go from when you went there? A. Sand Lake.

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Q. In Rensselaer county? A. Yes, sir.

Q. How long did you live there? A. About nine months.

Q. What did you do while you were there? A. I worked for my father.

Q. In what business? A. In a hotel.

Q. What did you do in the hotel business? A. Took care of the horses.

Q. For how long had you been engaged in that occupation? A. While I was in Sand Lake.

Q. How long was that? A. About nine months.

Q. What had you done before that? A. I worked in Poughkeepsie.

Q. For whom? A. Dr. McCormack.

Q. A physician there? A. Yes, sir.

Q. What did you do there? A. I took care of Dr. McCormack's horses.

Q. Has a great deal of your life been spent in taking care of horses? A. Yes, sir.

Q. What other places did you take care of horses besides the hotel in Sand Lake and Dr. McCormack's? A. Mr. Lasher in Valatie.

Q. What Lasher? A. Bemis.

Q. How long were you engaged there? A. About four months.

Q. In a livery stable? A. Yes, sir.

Q. You say you worked for a bridge builder in New Jersey? A. Yes, sir.

Q. Who was it? A. Alberts & Conklin was the company's

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name.

Q. What did you do there? A. I was time keeper for them.

Q. For how long? A. For the time I was in New Jersey.

Q. Whereabouts was the establishment? A. Their office was in Newark.

Q. Where did you work as time keeper? A. At different jobs around through New Jersey.

Q. Different parts of the state? A. Well, just near Newark.

Q. Putting up bridges? A. Yes, sir.

Q. How long did you work at that? A. About nine months.

Q. When did you go into his employ? A. In March.

Q. When did you leave it? A. In August.

Q. Of the same year? A. Yes, sir.

Q. What time in March? A. First of March, I think.

Q. In what months did you work for him, state them?  
A. I worked from March to August.

Q. State the months? A. All of the months.

Q. How many months are there from March to August?  
A. Six months.

Q. Then you didn't work for him nine months? A. No, sir.

Q. You were mistaken in that answer? A. Yes, sir.

Q. You worked for him then? A. Yes, sir, six months.

Q. Do you desire to correct your answer in that particular? A. Yes, sir.

Q. When you left his employ what did you do? A. I came

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here to Columbia County.

Q. Whereabouts in Columbia County? A. I came to the Hudson fair.

Q. What did you do there? A. Stayed to the Hudson fair for a day or two.

Q. Did you do any work there? A. No, sir.

Q. Where did you spend your time nights while you were at the fair? A. I stayed one evening in Greenport.

Q. Where? A. To Van Worners.

Q. Where else? A. Stuyvesant Falls.

Q. Who did you stay with there? A. My uncle Frank Bruce.

Q. After you got through with the Hudson fair where did you go? A. Stephentown, Rensselaer County.

Q. To the village of Stephentown? A. Yes, sir.

Q. How long did you remain there? A. I don't know exactly.

Q. What is your best recollection about it? A. Perhaps two months; little over.

Q. In what month did you go to Stephentown? A. Very last of August.

Q. When did you leave there? A. The last of October.

Q. Who did you stay with while there? A. My father.

Q. What business was he in? A. Hotel business.

Q. Did you stay at the hotel? A. Yes, sir.

Q. What did you do at the hotel? A. I didn't do anything---I was visiting.

Q. You did nothing at all but were visting? A. I didn't do anything but visiting.

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Q. Spend your time around the stable? A. No, sir.

Q. Whereabouts around the hotel? A. Just around the house.

Q. When you left there where did you go? A. Chatham.

Q. Whereabouts in Chatham? A. To my aunt's.

Q. Who is she? A. Mrs Everts.

Q. How long did you remain there? A. Three or four days.

Q. Where did you go then? A. To Kinderhook.

Q. Whereabouts in Kinderhook? A. To Van Worner's.

Q. To Mrs Estella Van Worner's? A. Yes, sir.

Q. You remained there until the time you were arrested?  
A. Yes, sir.

Q. In the week preceding the Monday on which you purchased these masks and the set of underdrawers, of which you have spoken, were you in Kinderhook? A. Yes, sir.

Q. What were you doing in the village? A. Nothing.

Q. Well, you must have done something; you mean you were doing no work? A. Yes, sir.

Q. You were spending your time where and with whom?  
A. With the Van Worner boys.

Q. Were you with them all of the time? A. Yes, sir.

Q. With whom did you sleep while you were at the Van Worner house? A. Willis Van Worner.

Q. Did you sleep with him from the time you went there until the time of your arrest? A. I slept with Burton first.

Q. How long did you sleep with Burton? A. I don't know exactly.

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Q. What is your best recollection? A. I couldn't say.

Q. Well, now try to recollect it because I would like to know? A. I remember I slept with Burton first but I couldn't say how long.

Q. Then after ceasing to sleep with Burton who did you sleep with? A. Willis.

Q. Did you sleep with Willis in the week before the Monday that you purchased the underdrawers and masks?

A. Yes, sir.

Q. Every night? A. Yes, sir.

Q. During all of the time you stayed at the Van Wormer house you slept with one or the other of the boys, Burton or Willis? A. Yes, sir.

Q. Did you ever sleep there with Frederick? A. No, sir.

Q. During the day time did you spend your time with the boys? A. Yes, sir.

Q. At the house? A. Yes, sir.

Q. And about the village? A. Yes, sir.

Q. At night you slept with either Burton or Willis? A. Yes, sir.

Q. In the week preceding this tragedy was anything said by you and Willis about Mr. Hallenbeck? A. No, sir.

Q. Was anything said by you to the other boys about Mr. Hallenbeck? A. No, sir.

Q. Was anything said by Willis or any of the other boys in your presence about Mr. Hallenbeck? A. No, sir.

Q. Now during the Sunday preceding the Monday upon which you bought the masks and the underwear, where were you?

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A. I don't remember.

Q. Well, can't you recollect at all? A. No, sir.

Q. Were you about the house with the boys? A. Yes, sir, I must have been.

Q. With all three of them? A. I don't remember that.

Q. What is your best recollection about it? A. I couldn't say.

Q. Haven't you any recollection about it at all? A. No, sir.

Q. You don't remember that you were away from them at all, do you? A. No, sir.

Q. Was anything said on that Sunday or during that Sunday evening about Mr. Hallenbeck? A. No, sir.

Q. Or about his wife Mrs Margaret Hallenbeck? A. No, sir.

Q. Or any of the family? A. No, sir, nothing of any of the family.

Q. Was anything said about Mr. Hallenbeck during the week in which you purchased the underdrawers and the masks up to the time that you started from the house to take your drive that night? A. No, sir, there was not.

Q. So the first time in at least a week and a half that Mr. Hallenbeck's name had been mentioned in your presence by anybody was on the route down there? A. Yes, sir.

Q. And it was then mentioned in the way in which you have spoken? A. Yes, sir.

Q. Your habit of carrying a revolver you say is about a year old---you say you had carried a revolver about a



1 year? A. Yes, sir.

2 Q. That is, a year prior to the time when you started  
3 on your drive that night? A. Yes, sir.

4 Q. Where were you when you commenced carrying a re-  
5 volver? A. I have carried a revolver since I was 12 years  
6 old and I have carried this one you have now here, about a  
7 year.

8 Q. That is what you meant when you gave your answer to  
9 Mr. Chace yesterday afternoon? A. Yes, sir, the one you have  
10 now.

11 Q. Where were you living when you commenced the habit  
12 of carrying a revolver? A. I can't remember, somewhere in  
13 ---

14 Q. (Int'g.) Try and remember where you were living when  
15 you were 12 years old, that is eight years ago? A. Stuy-  
16 vesant Falls, I believe.

17 Q. Who were you living with then? A. My mother.

18 Q. Were there any other members of the family? A. Yes,  
19 sir.

20 Q. Who? A. My father.

21 Q. Your father and mother were living together there?  
22 A. Yes, sir.

23 Q. And you were a boy 12 years old? A. Yes, sir.

24 Q. Going to school? A. Yes, sir.

25 Q. Where did the Van Wormers live then? A. In Green-  
dale.

Q. They were not living with you or you with them?  
A. No, sir.

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Q. And so your practice of carrying a revolver was commenced then while you were living with your father and mother? A. Yes, sir.

Q. When you were 12 years old? A. Yes, sir.

Q. You have carried a revolver ever since, everywhere you have been? A. Yes, sir.

Q. You were accustomed to shooting revolvers? A. Yes, sir.

Q. You kept that practice up to the time of your arrest? A. Yes, sir.

Q. So that your having a revolver on your person when you started out to take a ride that night was no unusual circumstance? A. No, sir, it was not.

Q. When had you loaded that revolver prior to that time? A. It had been loaded for three or four days.

Q. By you? A. Yes, sir.

Q. You remember loading it? A. Yes, sir.

Q. You were in the habit of loading your revolver? A. Yes, sir.

Q. In the habit of shooting it? A. Yes, sir.

Q. You had been accustomed to then for over eight years? A. Yes, sir.

Q. Carrying revolvers and shooting them? A. Yes, sir.

Q. You can't refresh your recollection now can you as to who was in the store when you bought the masks? A. No, sir, I cannot

Q. Who has visited you since you have been locked up in jail? A. My mother.

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Q. What members of your family? A. My mother and aunt.

Q. How many times has your mother been there? A. Four times I believe.

Q. Your aunt how many? A. Three or four.

Q. Any other people been in there? A. My grandmother.

Q. When was she there? A. I can't just remember the dates.

Q. Anybody else been there? A. My uncle once.

Q. Who was that? A. Frank Bruce.

Q. Anybody else that you can recall? A. Mr. Chace.

Q. Which Mr. Chace? A. The district attorney.

Q. How many times? A. Twice.

Q. When? A. Once when I first came here.

Q. And when again was Mr. Chace there? A. About two days ago.

Q. Well, have you been taken out of jail since you were put in it? A. No, sir.

Q. You had a conversation, didn't you, while the inquest was pending, with some people? A. The inquest?

Q. While the coroner's inquest was going on? A. No, sir.

Q. Didn't you have conversation before Mr. George Macy and before some other people, didn't you make a statement?

A. Yes, sir, I gave a confession before----

Q. (Int'g.) You were taken out of your cell then?

A. Yes, sir.

Q. That you had forgotten? A. I was taken downstairs.

Q. You were taken out of your cell? A. Yes, sir.

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Q. That you had forgotten when you gave your answer?

A. No, sir, I hadn't forgotten it.

Q. Then why didn't you state it to me; when I asked you if you had been taken out of your cell since you were put there, why didn't you tell me you had been taken out of your cell and in another room in the building here? A. I only just went down in the office.

Q. But you were taken out of your cell, were you not? A. Yes, sir.

Q. You spent considerable time down there? A. Yes, sir.

Q. Where were your mother and aunt then? A. They were sitting near me.

Q. Now when I stopped examining you last night you were approaching, you were in that part of the statement where you boys, according to your statement, were approaching the kitchen door, do you remember that? A. Somewheres about there.

Q. All those facts about your going up to the kitchen door are pretty clear in your mind now, are they not?

A. Yes, sir.

Q. You have no doubt about your recollection of any of them? A. No, sir.

Q. Who was walking ahead? A. Burton and Frederick.

Q. Side by side? A. No, sir.

Q. One ahead of the other? A. Yes, sir.

Q. Where were you? A. I made a mistake there, I was following Bert.

Q. Burton was first and you were second? A. Yes, sir.

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Q. Who came next? A. Frederick.

Q. Who last? A. Willis.

Q. Did you maintain that order as you approached the kitchen door? A. Yes, sir.

Q. Did you maintain that order as you went up the steps in the entry? A. Yes, sir.

Q. How far were you behind Burton when you went up the entry steps? A. Close at his heels.

Q. As close as you could get? A. Well, pretty close to him.

Q. Didn't you hear any dogs bark? A. Yes, sir.

Q. How far behind you was Frederick? A. Very close.

Q. How far? A. I didn't look behind me, to see.

Q. You didn't see where Frederick was? A. No, sir, but I knew he was right behind.

Q. Never mind that you don't know how far Frederick was behind you? A. No, sir.

Q. And you didn't look behind you to see? A. No, sir.

Q. That you are sure of? A. Yes, sir.

Q. How far behind Frederick was Willis? A. I do not know.

Q. When you approached the kitchen door, when did you last see Willis before you went up the entry stairs?

A. Standing on the ground by the side of the house.

Q. Standing on the ground at the side of the house?

A. Yes, sir.

Q. How far away from the entry? A. I can't just remember.

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Q. Now try to think? A. I couldn't think.

Q. You say you remember those facts distinctly about your approaching to the kitchen door? A. Yes, sir.

Q. You remember that you and Burton were ahead and you remember that Frederick was back of you, you don't know how far? A. No, sir.

Q. You say that Willis was back of Frederick? A. Yes, sir.

Q. Do you know how far Willis was back of Frederick? A. I do not.

Q. When you last saw Willis he was standing still? A. Yes, sir.

Q. *When you saw Willis standing still, where were you?* A. *On the stoop.*  
Q. Whereabouts on the stoop? A. By the side of Burton.

Q. Then you and Burton had got - instead of Burton being ahead of you, you and Burton had got side by side? A. Yes, sir.

Q. How far were you at that time when you were side by side from the door that entered from the entry into the kitchen? A. Ready to knock on the door.

Q. You hadn't yet knocked on the door? A. No, sir.

Q. But you stood side by side? A. Yes, sir.

Q. Did you see Frederick at that time? A. Yes, sir.

Q. Where was Frederick? A. At my side.

Q. And Willis was down on the ground at the foot of the stairs? A. Yes, sir.

Q. Did you see Willis there plainly? A. Yes, sir.

Q. Did you look around for the purpose of seeing him? A. Yes, sir.

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Q. Now after you had arranged yourselves in the order you have described, how long a time elapsed before anybody knocked at the door? A. Burton knocked as soon as we were there.

Q. But when Burton knocked at the door Willis was down at the foot of the stairs on the ground? A. Yes, sir.

Q. How far away from you three? A. I don't know.

Q. You don't know the dimensions of that entry? A. No, sir, I do not.

Q. You don't know the length of the stairs, how much space they took up? A. No, sir.

Q. How far out on the ground away from the entry was Willis? A. A few steps.

Q. A few feet? A. Yes, sir.

Q. When you say a few steps you mean by that several feet? A. Well, perhaps four or five.

Q. Four or five feet away from ~~the~~ the entry? A. Yes, sir.

Q. You turned around and got a good look at him? A. Yes, sir.

Q. And saw him standing still? A. Yes, sir.

Q. In the moonlight? A. Yes, sir.

Q. It was bright there, was it? A. Yes, sir.

Q. Was the entry light or dark? A. It was a little dark where I stood.

Q. It was dark where you stood? A. Yes, sir.

Q. Was there any light in the entry, I mean before the door was opened, Bruce? A. There was some light but not

1 like it was outside.

2 Q. Now just where did you stand with reference to the  
3 door, at which side of the door, the side of the door on  
4 which the hinges were or the side of the door on which the  
5 latch is? A. The side of the door on which the latch was.

6 Q. You stood nearest to the latch? A. Yes, sir.

7 Q. Who stood next to your right? A. Burton.

8 Q. And Willis on the extreme right? A. Willis was on  
9 the ground.

10 Q. I mean Frederick on the extreme right? A. On the  
11 left of me.

12 Q. Then did you stand so that you could take the latch  
13 in your hand? A. I don't remember as to that, I didn't  
14 notice.

15 Q. What do you think about it? A. I didn't notice the  
16 latch; I didn't look at it.

17 Q. How do you know you stood on the side of the door  
18 that the latch was? A. As the door swung open.

19 Q. You knew from that? A. Yes, sir.

20 Q. Burton stood on your right? A. Yes, sir.

21 Q. And Frederick on your left? A. Yes, sir.

22 Q. How far away from you did Frederick stand? A. Very  
23 close to me.

24 Q. Now who knocked at the door? A. Burton.

25 Q. After a knock on the door was it opened? A. Yes,  
sir.

Q. How long a time elapsed between the rap on the door  
and the opening of it? A. I couldn't say, an ordinary time



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for a person to come and answer their door.

Q. Did some little time elapse? A. Yes, sir.

Q. You knew where Peter A. Hallenbeck was sitting and where Mrs Margaret Hallenbeck was when you went by the house? A. Yes, sir.

Q. In your judgment was it about long enough for some one to come from there to the kitchen door? A. Yes, sir.

Q. There was a space of time? A. Yes, sir.

Q. Between the rapping on the door and the opening?  
A. Yes, sir.

Q. How many knocks were given? A. One knock.

Q. When the door was opened could you look into the kitchen? A. No, sir. I was looking at the door----yes.

Q. You could look into the kitchen when the door was opened? A. Yes, sir.

Q. Who came to the door? A. Mr. Hallenbeck.

Q. Did you see Mrs Hallenbeck? A. No, sir, not then.

Q. How wide was the door opened? A. Not very wide.

Q. How wide? A. Just wide enough to let any one enter.

Q. You say you pushed your foot against the door, you stated to Mr. Chace, perhaps you didn't say pushed but you said "I put my foot against the door"? A. Yes, sir, after Burton had entered.

Q. That was after Burton had entered? A. Yes, sir.

Q. You say Burton went in first? A. Yes, sir.

Q. That Burton put out his hand and pushed Mr. Hallenbeck? A. Yes, sir.

Q. Anything been said by anybody up to that time?

1 A. No, sir.

2 Q. Describe more accurately the pushing of Mr. Hallen-  
3 beck by Burton? A. When Mr. Hallenbeck opened the door  
4 Burton pushed him back with his right hand.

5 Q. Where did he put his hand on Mr. Hallenbeck's person?  
6 A. Against his face.

7 Q. Which was the taller, Mr. Hallenbeck or Burton?  
8 A. I don't know.

9 Q. What is your recollection about it? A. I couldn't  
10 say.

11 Q. You had seen Mr. Hallenbeck before, hadn't you?  
12 A. Yes, sir.

13 Q. A good many times? A. Not very often.

14 Q. You can't tell how tall he was? A. No, sir.

15 Q. Did you see any movement on the part of Mr. Hallen-  
16 beck's hands? A. No, sir.

17 Q. You are sure of that? A. Any more than he had hold  
18 of Burton.

19 Q. When did he take hold of Burton? A. He had hold of  
20 Burton when I came into the room.

21 Q. Did he have hold of Burton when Burton tried to  
22 push him back? A. No, sir.

23 Q. Did Burton put his hand on Hallenbeck before Mr.  
24 Hallenbeck took hold of him? A. Yes, sir.

25 Q. Where did Mr. Hallenbeck take hold of Burton? A. I  
couldn't say.

Q. Did he take him by the throat? A. I don't know where  
he had hold of him.

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Q. You saw him have hold of him? A. Yes, sir.

Q. You were still in the entry? A. I came in the room right after Burton entered.

Q. Where were you when you saw Mr. Hallenbeck take hold of Burt.? A. They had hold of each other when I entered the room.

Q. Now, tell the jury, if you can, how they had hold of each other? A. I can't.

Q. Had you begun to get excited then? A. No, sir.

Q. You say your recollection is perfectly ~~and~~ distinct as to what took place as you approached the kitchen, and you have very coolly described what was done as you went up the kitchen steps and lined up against the door, and you have described with equal calmness and apparent distinctness the length of time it took after the rapping before the door was opened and the opening of the door by Mr. Hallenbeck--now can't you describe to the jury how those men had hold of each other? A. I can't.

Q. Why not, Bruce? A. I can't; I couldn't see exactly how they had hold of each other.

Q. Why couldn't you see? A. Because they were very close together.

Q. Were they apparently grappling with each other?  
A. Yes, sir.

Q. Can you say whether or not Mr. Hallenbeck had hold of Burton by the throat? A. No, sir, I can't.

Q. Will you say he did not? A. No, sir, I won't.

Q. Haven't you stated since that time that he had hold

1 of Burton by the thro<sup>r</sup>at. A. He had him by the collar, or  
2 somewheres around there.

3 Q. Did he have hold of him with one hand or both hands?

4 A. I don't know; they were very close together, I couldn't  
5 see both of his hands.

6 Q. How close together did they stand---illustrate with  
7 me? A. Very close.

8 Q. Where were Hallenbeck's hands? A. About here (ind.)  
9 somewheres.

10 Q. Where was Burton's hand with which he was pushing  
11 him? A. He had hold of Mr. Hallenbeck somewheres around the  
12 collar also.

13 Q. Haven't you stated since that Mr. Hallenbeck took  
14 hold of Burton by the throat; A. It either looked as  
15 though he had him by the throat or by the collar.

16 Q. Haven't you since said on various occasions that he  
17 had Burton by the throat? A. Yes, sir.

18 Q. When did you first say that? A. I think I said that  
19 in my confession.

20 Q. When did you say it after that? A. To my counsel,  
21 Mr. Daley.

22 Q. How long after that? A. When he came up to see me.

23 Q. That was pretty near the time of this tragedy?

24 A. Yes, sir.

25 Q. Your recollection was certainly as good of what  
occurred at that time as it is now? A. Yes, sir.

Q. And then you said Mr. Hallenbeck had hold of Burton  
by the throat? A. Yes, sir.

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Q. Haven't you said so on several other occasions since that time? A Only to Mr. Daley.

Mr. Chace: I object to what he stated to Mr. Daley.

The Court: He was not asked that question and you may strike that statement out.

Q. Now, bearing in mind what you have stated to others since the tragedy occurred and your own reflection upon the matters since I have been examining you, you have no doubt that Mr. Hallenbeck had Burton by the throat, have you? A. No, sir.

Q. How long did Mr. Hallenbeck and Burton continue in that position, grappling with each other; Mr. Hallenbeck had hold of Burton by the throat and Burton with his hand against Hallenbeck---how long did they stand in that position? A. A half a minute.

Q. By that you mean a short time? A. Yes, sir, 30 seconds.

Q. Now, Bruce, while that struggle was going on between Hallenbeck and Burton did you see Willis? A. Yes, sir.

Q. Where was he? A. He came in the door.

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

Q. Where was Frederick? A. He was in the room, in the center of the room near Hallenbeck.

Q. What were you doing? A. I was over towards the table.

Q. Hadn't you before that put your foot against the door? A. Yes, sir.

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Q. And put your foot against the door, as you say, for the purpose of keeping it open? A. Yes, sir.

Q. Now, were Mr. Hallenbeck and Burton engaged in this struggle when you put your foot against the door?

A. Yes, sir, when I pushed the door open they were struggling.

Q. Why did you push the door open? A. So that I could gain an entrance.

Q. So you could get in? A. Yes, sir.

Q. Although the struggle was going on you were still determined to get into the house? A. Yes, sir.

Q. Did anybody help you push the door open? A. Frederick gave me a push.

Q. Where was he when he gave you a push? A. Behind me.

Q. Was there anybody holding the door, trying to shut it? A. No, sir.

Q. Why was it necessary for you to put your foot against it? A. Because it swung shut.

Q. Now, you say you think the struggle between Burton and Mr. Hallenbeck lasted for a minute? A. Yes, sir.

Q. Let me test for a minute here-----(pausing)---did it last as long as that? A. Yes, sir; just about that time. From the time the door was opened until they let go of one another.

Q. Was this a pretty violent struggle? A. Yes, sir.

Q. Pretty active; was it? A. Yes, sir.

Q. Did either of them say anything? A. No, sir; I didn't hear any one say anything.

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Q. Did Mr. Hallenbeck have both of his hands to Burton's throat? A. ~~No, sir.~~ *I could only see the one.*  
Q. *Will you say he didn't have both of his hands on Burton's throat?*

A. *No, sir.*  
Q. Was the struggle the first thing that happened after the door was opened? A. Yes, sir; they grappled immediately.

Q. You are sure of that are you? A. Yes, sir.

Q. Did nothing happen from the time the door was open up to the time the struggle commenced? A. There was a shot fired.

Q. Now, was that shot fired while the struggle was going on? A. Yes, sir.

Q. And while that struggle was going on and the shot was fired, did you notice how close the muzzle of the revolver from which the shot was discharged was from Mr. Hallenbeck's cuff and coat sleeve? A. No, sir.

Q. You don't know? A. No, sir; the shot was fired before I entered the room.

Q. That is, you heard a shot? A. Yes, sir.

Q. What else can you tell me about that shot---do you know who fired it? A. Yes, sir.

Q. Do you know whose pistol discharged it? A. Yes, sir.

Q. Whose was that? A. Burton's.

Q. That was the time the struggle was going on? A. Yes, sir.

Q. In which hand did Burton have his revolver? A. When he entered the room he had the revolver in his left hand.

Q. It was the right arm of Mr. Hallenbeck's coat sleeve that was burned, was it not? A. I don't know.

Q. Now, that struggle was going on and you heard a pis-

1            tol shot? A. Yes, sir.

2            Q. You pushed the door open and went into the room?

3            A. Yes, sir.

4            Q. Was there any smoke in the room by this time? A. Just  
5 a very little from one revolver.

6            Q. You told Mr. Chace yesterday that you fired a shot  
7 up through the ceiling? A. Yes, sir.

8            Q. You did? A. Yes, sir.

9            Q. Do you know about how far that bullet hole is ir-  
10 side the kitchen door? A. No, sir; I can't tell.

11           Q. Can't you tell about how far into the kitchen door  
12 you were when you fired that shot? A. I was on the sill of  
13 the kitchen door.

14           Q. Was the struggle going on? A. Yes, sir.

15           Q. Had Burton's pistol gone off before you fired that  
16 shot or not? A. Burton had shot his pistol.

17           Mr. Cady: I move to strike that out.

18           Q. I ask if Burton's pistol had gone off before you  
19 fired that shot off into the ceiling? A. Yes, sir, it  
20 had.

21           Q. When you fired the shot into the ceiling was the  
22 struggle still going on? A. Yes, sir.

23           Q. You lifted up your revolver and fired it into the  
24 ceiling? A. Yes, sir.

25           Q. That added to the smoke and confusion, didn't it?  
A. Yes, sir.

            Q. Then you fired another shot, didn't you? A. Yes, sir.

            Q. Do you know where you fired that shot? A. Yes, sir.



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Q. Where were you when you fired that shot? A. In the same place I was when I fired one in the ceiling.

Q. You fired two shots in there? A. Yes, sir.

Q. The second shot you fired, as I understand, you fired over towards the left? A. Yes, sir.

Q. Over towards the north side of the kitchen? A. I don't know how the house lays now.

Q. Was it towards the wall on the left that run at right angles--you know what that means? A. Yes, sir.

Q. That ran at right angles to the side of the kitchen through which you entered---take my bent arm, my shoulder to be the side of the kitchen from which you entered and now was it this wall running at right angles to that into which you fired? A. Yes, sir.

Q. Now, the shot that you fired into that side wall increased the confusion and smoke, didn't it? A. Yes, sir.

Q. The smoke began to be pretty thick after there had been three pistol shots fired there? A. There had been four fired.

Q. I hadn't got to the fourth; I am talking about the three; the smoke had commenced to get a little thick? A. Yes, sir; it commenced to get a little smoky.

Q. In what position were you when you fired that shot into the side wall of the kitchen? A. Just as any one would enter a door.

Q. How far into the doorway were you? A. Just on the threshold of the door.

Q. When you fired that second shot was the struggle

1 still going on between Burton and Mr. Hallenbeck? A. Yes, sir  
 2 Q. Had you seen Mrs. Hallenbeck up to that time? A. No,  
 3 sir; I had not.  
 4 Q. Now, when did you first see Mrs Hallenbeck? A. When  
 5 Burton let go of Mr. Hallenbeck to get to the other room.  
 6 Q. Where were you? A. I was in the center of the room.  
 7 Q. You had got into the center of the kitchen? A. Yes,  
 8 sir.  
 9 Q. You saw Mrs Hallenbeck? A. I wouldn't say it was  
 10 her; it was a large lady.  
 11 Q. You saw a female figure or form? A. Yes, sir.  
 12 Q. You stood in the center of the kitchen? A. Yes, sir.  
 13 Q. You say you had stopped shooting then? A. Yes, sir.  
 14 Q. You were looking to the South, were you not?  
 15 A. I don't know.  
 16 Q. You were looking from the kitchen towards the sitting  
 17 room, were you not? A. Yes, sir.  
 18 Q. You were looking through the door from the kitchen  
 19 into the sitting room? A. I could see in the other room.  
 20 Q. You were looking through there, were you not?  
 21 A. Yes, sir.  
 22 Q. How long did you stand in that position, or looking  
 23 through that door? A. Just a second.  
 24 Q. You saw this female figure? A. Yes, sir.  
 25 Q. While you were looking through that door where was  
 Willis Van Wornner? A. Standing against the siding.  
 Q. Against what siding? A. Of the kitchen.  
 Q. Which side? A. Just as he stepped in the door had

1 stepped up against the siding.

2 Q. On which side? A. Towards the place where the little  
3 stairs was in the kitchen.

4 Q. You were standing looking south, weren't you?  
5 The Court: He says he didn't know the points of  
6 compass.

7 Q. You were standing looking into the sitting room?  
8 A. Yes, sir.

9 Q. ~~XXXXX~~ So that your right side was towards the door  
10 through which you came from the entry into the kitchen?

11 A. Yes, sir.

12 Q. That door enters from the entry into the kitchen  
13 there (ind.) we will say? A. Yes, sir.

14 Q. Of course, the proportions are not right: <sup>this</sup> ~~that~~ is  
15 the kitchen where we are, we will say, and the door through  
16 which you looked into the sitting room is where that (ind.)  
17 window is? A. Yes, sir.

18 Q. I don't mean the proportions are the same, but the  
19 same relative situation? A. Yes, sir.

20 Q. So if you stood looking into the sitting room your  
21 right side was towards the door from which you entered?

22 A. Yes, sir.

23 Q. Which is your defective eye? A. My right eye.

24 Q. So that your defective eye was also towards the  
25 right? A. Yes, sir.

26 Q. And you say that it was on the right that Willis  
27 was standing? A. Yes, sir.

28 Q. Whereabouts did Willis stand with reference to the  
29 kitchen door? A. Where he entered.

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Q. Yes. A. To the left of the kitchen door, I believe.

Q. That is, up toward the left hand corner of the room?

A. Yes, sir, as he enters; to the left as you enter.

Q. Do you know how much space there is in there between that door and the platform where the gun rack stood?

A. No, sir, I do not.

Q. Are you sure that Willis was up there? A. Yes, sir.

Q. Do you recollect that distinctly although your defective eye was towards him? A. Yes, sir.

Q. And you were looking into another room? A. Yes, sir.

Q. Did he stand back of you, that is, diagonally back of you? A. He stood to the right of me.

Q. Stood back of you, further in the kitchen? A. No, sir; he just stood side of the door.

Q. You said you stood in the middle of the kitchen? A. Yes, sir.

Q. How far from the door? A. In the center of the room.

Q. How far from the door? A. I don't know; I couldn't tell.

Q. Willis was up against the wall, you say? A. Yes, sir.

Q. He must have been diagonally back of you, to your right, must he not? A. Yes, sir.

Q. Do you mean to say you could see Willis with your glass eye, your artificial eye, while you were looking into the sitting room and seeing Mr. Hallenbeck who was standing back of you on the side of your glass eye? A. No, sir.

Q. You couldn't see him, could you? A. No, sir, but I knew where he stood.

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Q. Where was Frederick while you were looking into the sitting room? A. He was near me.

Q. How near you? A. To my right.

Q. How far from you? A. Right at my side.

Q. Any other shots been fired then? A. Yes, sir.

Q. Room full of smoke? A. Yes, sir.

Q. Very full of smoke; was it not? A. Yes, sir.

Q. And the smoke was dense? A. Yes, sir.

Q. How many shots had been fired at the time you were looking at Mr. Hallenbeck? A. About half a dozen shots.

Q. That is in addition to the two that were fired by you? A. Yes, sir.

Q. In addition to the shots that were fired when Burton's revolver was discharged in the struggle? A. Yes, sir, and Frederick's also.

Q. Then there had been three shots in addition to those? A. There had been more than three.

Q. How many more than three---you said six---now how many all together? A. I couldn't count them.

Q. What is your best recollection? A. I couldn't say; they had been fired very rapidly.

Q. Had any shot been fired into the sitting room that made a hole in the ceiling of the sitting room at that time? A. I don't know.

Q. What is your recollection about that? A. I couldn't say.

Q. Do you know who fired that shot? A. No, sir.

Q. You stood right ~~xxxx~~ there in the room, didn't you?

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A. Yes, sir.

Q. You were the first man to go into the room, weren't you? A. No, sir.

Q. You were the second man to go into the room? A. Yes, sir.

Q. You were the last one out of it? A. Yes, sir.

Q. You stood right there in the center of the kitchen? A. Not all the time.

Q. Where did you go? A. I backed up to where there was a table.

Q. Didn't you see anybody fire from the kitchen into the sitting room? A. No, sir.

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

Q. That you are sure of? A. Yes, sir.

Q. When you saw Mrs Hallenbeck going through the sitting room you didn't see any shot fired into that sitting room? A. No, sir.

Q. You have a pretty definite recollection of what took place, there have you not? A. Yes, sir.

Q. And you undertook to tell Mr. Chace who fired certain shots; now can't you remember, having been in that room longer than anybody else with one exception, being the last to leave it and the second one <sup>in</sup> it, and being able as you claimed yesterday to describe the firing of certain shots, can't you tell who fired the shots into the sitting room?

A. No, sir, I cannot.

Q. That must have passed through the kitchen door, and into the sitting room ceiling? A. No, sir; I couldn't tell.

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Q. That is something you have forgotten? A. I didn't know at the time.

Q. Why couldn't you tell? A. I didn't know who fired that shot.

Q. Why can't you tell about that shot as you have told about others? A. I can't tell; I don't know why.

Q. Think of some reason why you couldn't tell about that? A. I could not.

Q. Now, it appears also that there was a bullet hole through the kitchen door through which you entered that swung back against the cupboard; do you know who fired the shot through the kitchen door? A. No, sir.

Q. Why can't you tell that? A. I couldn't tell where any one shot.

Q. Didn't you see anybody fire through that kitchen door? A. No, sir.

Q. You stood in a position where you could see everything in the room, didn't you? A. Most everything.

Q. ~~Here~~ Here were two shots fired that you can't tell who fired them? A. No, sir.

Q. When you left the room did you know that any shots had been fired through the kitchen door? A. No, sir.

Q. When you left the room did you know that any shot had been fired into the sitting room? A. There had been a shot fired in there but not from the kitchen that I know of.

Q. Did you know that a shot had been fired into that room---into the ceiling of it? A. No, sir, I did not.

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Q. Now, is it not a fact that at the time Burton's revolver was first discharged that that revolver was very close to Mr. Hallenbeck? A. Yes, sir.

Q. I think you told Mr. Chace yesterday that the fire almost seemed to touch Mr. Hallenbeck? A. Yes, sir.

Q. That is so, is it? A. Yes, sir.

Q. Were their hands up in the air when the pistol went off, Burton's and Mr. Hallenbeck's hands? A. No, sir.

Q. They were grappling each other as you have described? A. Yes, sir.

Q. That you are sure of? A. Yes, sir.

Q. That is the first pistol shot that was discharged? A. Yes, sir.

Q. You told Mr. Chace that Mr. Hallenbeck walked across the room, didn't you? A. Yes, sir.

Q. How long had you been in the room when Mr. Hallenbeck walked across it? A. About a minute.

Q. Was the struggle between Mr. Hallenbeck and Burton over before Mr. Hallenbeck walked across the room? A. Yes, sir.

Q. Had you fired both of those shots before Mr. Hallenbeck walked across the room? A. Yes, sir.

Q. Where did he walk to? A. From the direction of the door entering the sitting room and towards where the stairs was where the guns were----

Q. Did you see him when he reached the wall? A. Yes, sir.

Q. Did you see him walk up the stairs on to the landing?



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A. Yes, sir.

Q. Did he go pretty quick? A. Not very.

Q. He took his time? A. He walked like any man.

Q. I didn't ask you that. How long did it take to go there? A. Just merely long enough to walk across the room.

Q. Did you see him take down the gun? A. No, sir.

Q. Where were you when he approached the place where the gun was? A. Back to the wall where the table was.

Q. Was it then that you heard somebody call out "he has got the gun"? A. Not until a moment afterwards, a moment later.

Q. Very shortly after that? A. Yes, sir.

Q. Now, after somebody called out---do you know who it was called out first in the kitchen? A. Yes, sir.

Q. Who was it? A. Burton.

Q. What did he say? A. He says "For God's sake get out of here, he is after the shot gun. You will get your head blowed off".

Q. Where were you standing when that was said? A. By the table.

Q. By the kitchen table? A. Yes, sir.

Q. Whereabouts in that room was the kitchen table? A. Back "agin" the wall.

Q. In the kitchen? A. Yes, sir.

Q. Do you know where the cook stove or range was in the kitchen? A. On the side towards where the door entered the sitting room, I believe.

Q. Was the kitchen table further back towards the wall

1 than where the range was, towards the wall of the kitchen  
of the kitchen opposite to which you entered? A. Yes, sir.

2 Q. And it was further from the door that led from the  
3 kitchen into the sitting room than the range was, was it?

4 (No answer)

5 Q. Assume that that window in front of which Sheriff  
6 Getty sits was the door which led from the kitchen into the  
7 sitting room? A. Yes, sir.

8 Q. The range was along here (ind.) on that side, on the  
9 left side of that door? A. No, I believe it was to the  
right.

10 Q. Are you sure of that? A. I would not say for sure;  
11 I never was in the room before.

12 Q. How was it with reference to the door through which  
13 you looked into the sitting room? A. I can't really re-  
14 member that very distinctly.

15 Q. Was the table anywhere near the corner of the room?  
A. I don't remember that.

16 Q. But you remember while you were standing by that  
17 table you saw Mr. Hallenbeck walk across the room to the  
18 place where the gun rack was and you heard Burton say  
19 what you have stated he said? A. Yes, sir.

20 Q. What did you do when Burton made that exclamation  
21 "For God's sake run---for God's sake---he has got the gun",  
or whatever he said? A. I left the room.

22 Q. How did you leave it? A. I ran.

23 Q. You ran? A. Yes, sir.

24 Q. You ran fast, did you? A. Yes, sir.

25 Q. And yet you were the last one out of the room? A. Yes,  
sir.

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Q. All the Cohers had run out before you did? A. Yes, sir.

Q. Did you see them run? A. Yes, sir.

Q. Why did you run? A. Because I didn't want to get shot.

Q. Now, up to that time had anything been said by anybody in that room excepting what Burton said? A. Not that I heard.

Q. You were watching the whole transaction? A. Yes, sir.

Q. When you ran out of the room where was Mr. Hallenbeck? A. In the corner where the gun was.

Q. Did you run <sup>as</sup> fast as you could run? A. Yes, sir.

Q. You thought you were running for your life? A. Yes, sir.

Q. You ran down the entry steps? A. Yes, sir; I slowed up when I stepped upon the stoop.

Q. Where did you find your pistol? A. On the steps.

Q. On what step? A. I don't know on just what step.

Q. You told Mr. Chace yesterday it was the third step?

A. It was along the center of the ~~step~~ <sup>stoop</sup> somewhere.

Q. Do you mean along the center of the steps that lead up to the entry? A. Yes, sir.

Q. Did you step on it? A. No, sir.

Q. How was your attention attracted to it? A. I saw it shining.

Q. And did you count the steps up and see which step it was? A. No, sir.

Q. You stopped and picked that pistol up, you say?

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A. Yes, sir.

Q. You hadn't yet told me this morning in describing what took place there that anybody took that pistol away from you----you told Mr. Chace so yesterday. At what time after you got into the room was your pistol taken away from you? A. When I got to the center of the room.

Q. What hand did you have it in then? A. My right hand.

Q. Firmly grasped in your right hand? A. Yes, sir.

Q. You had just shot it off twice, you know? A. Yes, sir.

Q. Then what happened to this pistol all at once ?

A. I was struck there (ind.) and it was jerked out of my hand.

Q. Who struck you? A. I don't know.

Q. Why don't you know? A. I couldn't tell.

Q. Could you see the person who struck you? A. No, sir; he was on my right side.

Q. That is on your glass eye side? A. Yes, sir.

Q. Didn't you see the person that struck you? A. No, sir.

Q. Do you know whether it was one of these defendants?

A. Yes, sir.

Q. Which one? A. I couldn't say.

Q. How do you know it was? A. Because they were the only ones on that side of me.

Q. Was not Mr. Hallenbeck on that side of you? A. No, sir; he was kind of in front of me.

Q. You were nearer Mr. Hallenbeck than they were?

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A. No, sir.

Q. How were you struck, which arm? A. On my right arm.

Q. A violent blow? A. Quite a hard blow; yes, sir.

Q. Besides being struck on the arm by quite a hard blow the pistol was wrenched out of your hand? A. Yes, sir.

Q. Didn't you take the trouble to look around to see who did those things? A. Yes, sir; I looked around immediately.

Q. You didn't see who did it? A. There was two there but I couldn't say which one did it.

Q. Why can't you say? A. Because they were so close together.

Q. Then you didn't see the pistol in the hand of either one of them? A. No, sir.

Q. And you didn't see that pistol again until you say you saw it glitter in the entry steps? A. No, sir; I didn't.

Q. After you had picked the pistol up what did you do? A. After I picked it up?

Q. Yes, sir? A. I was running at the time.

Q. How long did you keep running? A. Until I got to the wagon.

Q. Why did you run? A. Because I thought the man would ~~man~~ be out of doors with a shot gun.

Q. You were running to save your life? A. Yes, sir.

Q. Were the others all running also? A. Burton was the only one I saw.

Q. He was with you, you say? A. Yes, sir.

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Q. He was running? A. Yes, sir.

Q. Did he say why he was running? A. No, sir, only what he said about the gun, to get out of there.

Q. He said "For God's sake to get out?" A. Yes, sir.

Q. Which got down to the wagon first, you and Burton or Frederick and Willis? A. Frederick and Willis.

Q. They were there? A. Yes, sir.

Q. Was the horse untied when you got there? A. Yes, sir.

Q. And the buffalo robe off? A. No, sir.

Q. Who took that off? A. I pulled it off.

Q. Did you do it quickly? A. Yes, sir.

Q. You all got in? A. Yes, sir.

Q. Did you get in slowly or quickly? A. Very quickly.

Q. How did you start to drive when you left that point? A. Towards Catskill station.

Q. At what rate of speed? A. About as fast as the horse could trot.

Q. And that was a pretty fast horse? A. Yes, sir.

Q. Who drove? A. Willis.

Q. Why did you drive so fast? A. Wanted to get away from there.

Q. Afraid he would shoot you? A. Yes, sir.

Q. Now, I want to go back to the episode you have described of the pistol being taken away from you---how long had you been in the house when the pistol was taken away from you? A. Half a minute.

Q. Was the struggle going on between Mr. Hallenbeck and Burton at that time? A. Yes, sir.

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Q. Still going on? A. Yes, sir.

Q. You are sure of that? A. Yes, sir.

Q. They were struggling about how far away from you?

A. They swung around very close to me at the time the pistol was taken away from me.

Q. Did they move around the room in their struggle?

A. Yes, sir.

Q. Over how large a space of room did they move?

A. Towards the center of the room.

Q. How far towards the center of the room? A. They

were about at the sitting room door when I come in the kitchen and they swung out in the center of the room.

Q. Had they got as far as the dining room door when you entered the kitchen? A. Yes, sir.

Q. That is where you saw them struggling? A. Yes, sir.

Q. From there where did they go? A. They swung over into the corner of the room.

Q. Were they still struggling in the center of the room when your pistol was wrenched away from you? A. Yes, sir.

Q. And yet you can't tell who did it? A. No, sir, I can't.

Q. Mrl Hallenbeck and Burton were engaged in a struggle? A. Burton was just about at my side and Mr. Hallenbeck in front of me.

Q. They still had their hands at each others throats and necks? A. One hand was all I could see.

Q. But you saw that? A. Yes, sir.

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Q. Do you know where Willis was at that time? A. He was at the side of the door.

Q. Side of which door? A. The door that you enter into the kitchen.

Q. Had he yet come into the kitchen? A. Yes, sir.

Q. Was it Willis that took your pistol away from you? A. I don't think so.

Q. You didn't observe that act close enough to be able to tell? A. No, sir; I couldn't tell.

Q. Now, how long did you continue to drive at a rapid rate of speed? A. From the time we got into the carriage?

Q. Yes, sir. A. For about a mile or three-quarters.

Q. What road did you take? A. Went straight towards Catskill station and then took the first right hand road.

Q. Is that the road that leads up by Mr. Chhrrch's property down here, do you know? A. I don't think that we passed Mr. Church's; I wouldn't say for certain though.

Q. Did you stop before you got to the road running north and south? A. No, sir.

Q. You drove as fast as your horse could trot on the road towards Catskill? A. Yes, sir.

Q. When you reached the main road running north and south the horse was still trotting? A. Yes, sir.

Q. You turned up that road to the north to come towards Hudson? A. Yes, sir.

Q. How far up that road did you continue to drive at a rapid rate of speed at which you left the barn? A. I don't know just how far it is.



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Q. What is your best recollection? A. From the time we left Hallenbeck's barn until we stopped was, I should judge, a mile or three-quarters of a mile.

Q. Do you know how far it is from Hallenbeck's barn to the turn in the road that you took to go north? A. No, sir.

Q. You can't tell? A. No, sir.

Q. I want to know how far you drove up the road towards Hudson before you stopped? A. From the turn?

Q. Yes, sir. A. I couldn't say exactly.

Q. What is your best recollection? A. It might have been half a mile.

Q. It might have been more? A. Yes, sir.

Q. Did you stop in among ~~some~~ trees? A. Yes, sir.

Q. Were there trees on both sides of the road? A. Yes, sir.

Q. Was it in woods? A. Yes, sir.

Q. Did you think then it was a piece of woodland?

A. There was a woods on each side of the road.

Q. There you made your stop? A. Yes, sir.

Q. Had anybody said anything up to that time about hearing a wagon after you? A. No, sir.

Q. Did anybody say anything on the route about hearing a wagon after you? A. No, sir.

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

Q. Anybody say anything about that after you left the woodland where you stopped about hearing a wagon after you? A. No, sir.

Q. How long did you stay in that piece of woodland?

1 A. Well, long enough to put our overcoats on and turn our  
2 undercoats right side out.

3 Q. Didn't you take off your masks? A. Yes, sir.

4 Q. All took off your masks? A. Yes, sir.

5 Q. And made your change of clothing? A. Yes, sir.

6 Q. Now, Bruce, you told me yesterday afternoon that  
7 while you were putting the buffalo robe on the mare at the  
8 barn and tucking it under the straps of the harness, the  
9 other boys were changing their coats---is that so? A. Yes, sir

10 Q. Had you, up to that time, heard anything about  
11 changing coats? A. They said to get themselves ready.

12 Q. Had anybody said anything about changing the coats  
13 up to that time? A. Yes, sir, coming from the church one  
14 of the boys spoke of it, I can't remember which one.

15 Q. You changed your coat when you got down there just  
16 as the others did? A. Yes, sir.

17 Q. And changed it as soon as you got a chance to do it  
18 after you had put the robe on the mare? A. Yes, sir.

19 Q. What did you say, if anything, while changing your  
20 coats? A. I didn't say anything.

21 RE-DIRECT EXAMINATION by Mr. A. F. B. Chace:

22 Q. What was the condition of the roads the night you  
23 went down to Mr. Hallenbeck's? A. There was a little snow  
24 on the ground.

25 Q. What further can you say about them? A. The roads  
were smooth and hard.

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Q. Who were nearest to you when you say your right arm was struck and your revolver taken out of your hand?

A. Burton and Mr. Hallenbeck and Frederick were very close to me; I couldn't say which one was the nearest.

Q. After the revolver had gone out of your hand (your revolver), did you hear it discharged.

Objected to as leading and suggestive of the answer which the counsel desires the witness to make.

(Question waived.)

Q. After your pistol had been taken from you, as you have described, what pistol shots did you hear? A. I heard a very loud one.

Q. What was the character of sound made by your revolver as distinguished from the other three revolvers?

A. It was much louder.

Q. How many times did you hear a loud report of a revolver after the revolver was taken from your hand? A. I don't remember how many times, but I remember the first time I recognized the very loud report from the others.

Q. In which room? A. I couldn't say which room.

Q. When you told Judge Cady that you saw Mr. Hellenbeck going from somewhere near the center of the room in the direction of the back stair case, or kitchen stair case, who, if anybody fired into it? A. When he was going there Willis Van Worker fired.

Q. Into what part of his person? A. I couldn't say.

Q. Which one of them was it that you saw fire into his back? A. Frederick.

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Q. Where was he then? A. About in the center of the room.

Q. Before or after he had started to go in the direction of the kitchen stair case? A. Before he started to go in that direction.

Q. After leaving the barn where the horse was tied did you hear either of the defendants here, the Van Wormer young men, say anything with reference to shooting at Mrs Hallenbeck? A. Yes, sir.

Q. Which one? A. Burton.

Q. What did he say? A. He said that he shot at her.

Q. How did he say it? A. He said he shot at her hips as he was running across the room.

Q. That is not the word he used, is it? A. No, sir.

Q. Can't you tell us a little more definitely without being vile what he said? A. About the part of the body he shot at?

Q. Yes, sir. A. Shall I say it here.

Q. Yes, sir. A. He said that he shot at her butt as she went across the room.

Q. What part of his body that expresses or means the same? A. He said that he pointed at her butt as she ran across the room.

Q. Her buttocks? A. Yes, sir.

Q. Where was that said, before you changed your clothes or after? A. As we were changing our clothes in the woods.

Q. When Burton said he had given a Szolgosz shot de-

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scribe anything further that he said? A. He said "Before any of you other fellows got in the room I made a Czolgosz shot".

Q. What further? Where? A. He said he shot the man in the storach.

Q. What did he say, if anything, as to where the revolver was? A. He said he pressed the revolver against his storach.

Q. What name for himself did he use in that connection? A. He said "The Big Lobster made a Czolgosz shot". He called himself "The Big Lobster". He said "The Big Lobster made a Czolgosz shot."

Q. What name is he called among the boys? A. "The Big Lobster."

Q. Any other of those boys got names other than their given names that they are called? A. No, sir.

Q. How as to Fred? A. They call him the "Kid".

Q. Judge Cady asked you if you were not taken from your cell at one time down into some office and made a confession; when was that; how soon after you were arrested? A. The second day, I believe.

Q. Who was present when that confession was made and to whom did you make it? A. I believe there was a Mr. Macy and Mayor Harvey and my aunt and mother, and a stenographer.

Q. Can you see the stenographer in court, the one who took it? A. Yes, sir, that gentleman there (ind.).

Q. The one sitting in front of the jury? A. Yes, sir.

Q. Look behind you and see if you recognize another man <sup>that was</sup>

1 that ~~was~~ present? A. That gentleman there, Mayor Harvey.

2 Q. Which one? A. This gentleman over here (ind.).

3 Q. Look over behind you and see if you see anyone that  
4 was present at any part of it? A. Yes, sir; this gentleman  
5 behind me (Mr. Getty).

6 Q. What did he do? A. He signed his name to a paper.

7 Q. Did you also sign the same paper? A. Yes, sir.

8 Q. Who swore you to it? A. I don't know; I don't re-  
9 member.

10 Q. But you recognize Mr. Getty who sits behind you as  
11 the man who signed that same paper? A. Yes, sir.

12 Q. Was your mother or aunt present when you made that  
13 confession? A. Yes, sir, both of them.

14 Q. How long before you made the confession had you  
15 first seen your mother or aunt? A. I had only seen them a  
16 moment.

17 Q. How soon after Burton pushed Mr. Hallenbeck back in  
18 the room did he fire that first shot? A. Immediately after  
19 he got in there.

20 Q. How soon did he fire the second shot after the first?  
21 A. Between the two shots that I fired when I stood on the  
22 door sill.

23 Q. Who else did you see fire at Mr. Hallenbeck?  
24 A. Frederick.

25 Q. Where was Mr. Hallenbeck then? A. Grappled with  
Burton.

Q. Where did Frederick fire at him? A. Towards his  
shoulders.

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Q. How near did he hold the pistol to him? A. Very close.

Q. Give us some idea how close? A. It couldn't have been more than a foot away.

Q. How many shots did you see him fire? A. He must have fired four or five shots.

Q. Where did you see Willis fire at him? A. I couldn't say where Willis fired.

Q. Did you see him firing? A. Yes, sir.

Q. How near was he to Mr. Hallenbeck? A. Very close.

Q. After Burton had fired the second shot did you see him fire other shots? A. No, sir.

Q. Did you hear him? A. Yes, sir.

Mr. Cady: Now that it has been proved there was a signed statement made by this witness shortly after his arrest I ask that it be produced for the purpose of his cross-examination.

Mr. Chace: I don't know that I have any objection to its production.

Mr. Cady: I don't know that we care to introduce it.

Mr. Chace: I submit we asked no questions on the direct examination of the witness as to his having made any confession and referred to it in no connection. Counsel for the defense called attention to the fact first.

Mr. Chace: I will ask a few questions further.

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Q. Before you went down into this room you have mentioned, from your cell, had you seen the present district-attorney, Mr. Chace? A. No, sir.

Q. Had you seen me? A. No, sir.

Q. Do you know the late district-attorney, Mr, Dantz?  
A. By sight, yes, sir.

Q. Had he been in your cell or seen you before you went down into this room? A. No, sir.

Mr. Chace: We lay the written confession before the Court: (same handed to the court) and abide the decision of the Court as to its production.

The Court: I do not think anything has occurred upon your examination that would require you to produce it. It rests with you to say whether you will submit it to the other side or not. Nothing has occurred that would justify me in ordering it to be submitted to the defense.

Upon the cross-examination Mr. Cady asked certain questions of this witness with reference to those who were present at the time he made the statement. That made it entirely proper for the counsel for the prosecution to refer to that upon the re-direct examination, but nothing has occurred that would justify me in making a direction that they submit this for examination. I know nothing about what is contained in the paper. I never saw it until it was now laid upon the bench. I think it fairly rests with the prosecuting officer to say whether in the discharge of his duty he ought to submit *it* to you.



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Mr. Cady: I am not asking to look at the paper upon the ground of anything that has been done by the prosecution in the course of their examination. I don't claim any right to introduce the paper in evidence, but I think it is our fair right and common humanity that we have an opportunity to look at the paper, the existence of which has been ascertained during this examination, and it will be conceded has never been inspected by us. If there should be anything in the paper that we think should be made the basis of a cross-examination it seems to me that fair justice toward the defendants would require it.

The Court: It is for the counsel for the prosecution to say first whether they object to your seeing it or not before I am required to rule upon it.

Mr. Chace stated he had not read the alleged confession and that later in the day he would determine whether he would furnish the paper to the defense, but until then, unless the Court should think there was some responsibility resting upon the prosecution whereby they should hand the paper to the counsel for the defendants to be examined he would decline to do so.

The Court: I will not make an order requiring it to be produced until counsel has had a chance to read the paper. The question may be brought up later after counsel has had a chance to examine it.

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RE-CROSS EXAMINATION by Mr. Gady:

Q. You didn't say anything yesterday, Bruce, about anybody shooting at Mrs Hallenbeck, did you? A. I don't know whether I was asked.

Q. Did you say anything yesterday---

Mr. Gady. I move to strike the answer out.

The Court: I strike it out.

Q. You didn't say anything yesterday about anybody firing at Mrs. Hallenbeck, did you; answer that yes or no?

A. I think I did.

Q. That is your best recollection? A. Yes, sir.

Q. Is your recollection as good about that as it is about anything you have testified to? A. Yes, sir.

Q. And you are willing to say to this jury, are you, that you testified ~~that~~ yesterday that somebody shot at Mrs Hallenbeck? A. Yes, sir.

Q. You didn't say anything yesterday about any "Big Lobster", answer that yes or no? A. No, sir.

Q. That has been brought to your attention later on, has it not? A. No, sir.

Q. It has not? A. No, sir.

Q. Have you spoken about *it* to anybody since the adjournment last night? A. No, sir.

Q. Had you ever spoken about it to anybody before? A. Yes, sir.

Q. To whom? A. My lawyer.

Q. But you didn't say anything about it yesterday? A. No, sir.

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RE-DIRECT EXAMINATION by Mr. A. F. B. Chace:

Q. Since you were examined yesterday have you seen or had any talk with me? A. No, sir.

Q. Since you were examined yesterday have you seen or had any talk with the district attorney? A. No, sir.

~~Jury cautioned.~~

R e c e s s t o 2 P. M.

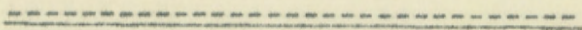
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HARMON HALLENBECK, recalled for people, testified.

Direct Examination by Mr. A.F.B.Chace.

I have already been sworn in this case and examined. In my wagon at the Greendale church on the evening of December 24th last, other than the whip that I have described, I had two robes, two cushions and two yellow goat skin blankets. I left the robes one thrown over the back of the hind seat and the other in front. One was a black robe with a green lining, green plush lining and double border, bishop robe, and the other was a white robe. I left them in the wagon when I went into the church. When I came out I found one of them gone. The black one was gone. The other was not missing. I made inquiry for the missing one, I made a search about where the team stood that night for it. I didn't find it. The material of that black robe was goat skin colored--colored goat skin. It had the fur on.

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Mr. CADY:- I except to the refusal of the Court to permit us to examine the confession made by Harvey Bruce.

Mr. CHACE:- In response to that I would inform the court that since the recess was taken I have read the deposition called the confession of Harvey Bruce. Counsel for the People consent in open court that that deposition may be read in evidence before this jury but he declines to deliver it to the counsel for the purpose of cross examining Bruce upon matter that has not been introduced in evidence

Mr. CADY:- I except to the statement made by counsel that he consents that the deposition should be offered in evidence upon the ground that it is plainly illegal, immaterial and incompetent evidence; second upon the ground that its introduction in evidence has not been sought for by the counsel for the defense.

The COURT:- It will not be received in evidence. The people have not offered it in evidence.

Mr. CADY:- We have our exception. Does the Court refuse to order that the alleged confession of Harvey Bruce shall be delivered to counsel for the defense for the purpose of cross examining Bruce

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The COURT:- There has nothing occurred upon the examination of Bruce that would justify me in my judgment in directing them to produce it to the counsel for the defense for the purpose of cross-examination of Bruce. It has not been used by either side upon examination---by the people upon the direct or by counsel for the defense on the cross-examination. It has simply been referred to by the witness.

Mr. CADY:- We except to the reasons given by the Court and each of the reasons for refusing permission to the counsel for the defense to examine the alleged confession of Harvey Bruce in writing as described by him in his testimony this morning, for the purposes of his cross-examination, upon the ground that it is material to such cross-examination, and that counsel for the defense have not been able to have access to it, and we also except to the ruling of the court upon the subject.

I now move under section 410 of the Code of Criminal Procedure on behalf of all the defendants now on trial jointly, and upon the behalf of Willis Van Wormer, Burton Van Wormer and Frederick M. Van Wormer severally, that the court advise the

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jury to acquit the defendants and each of said defendants upon the grounds:-

1st:- That the evidence is insufficient to warrant a conviction of the crime alleged in the indictment.

2nd:- That there is no evidence for the jury and that the evidence on the part of the people is not sufficient on which to base a conviction of the crime alleged in the indictment.

3rd:- That the People have failed to prove beyond a reasonable doubt that all of the defendants, or either of said defendants, is guilty of the crime charged in the indictment.

4th:- That the people have failed to prove beyond a reasonable doubt each and every element of the crime of murder in the first degree as alleged in the indictment.

5th:- That the evidence against each and all of the defendants is insufficient to warrant a conviction either of the crime charged in the indictment against all or any of the defendants, or to warrant a conviction of any crime against all or any of the defendants of which a jury is authorized to convict a defendant under an indictment for mur-

der in the first degree.

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6th - That there is no evidence for the jury and that the evidence on the part of the people is not sufficient on which to base a conviction of any crime of which a jury is authorized to convict all or any of the defendants under the indictment for murder in the first degree in this action.

7th:- That the People have failed to prove beyond a reasonable doubt that the defendants or any of them are guilty of any crime of which a jury is authorized to convict a defendant under the indictment for murder in the first degree in this action.

The COURT:- I decline to advise the jury to acquit the defendants or either of them.

Mr. CADY:- We except in behalf of all the defendants and each of them,

We now move that the court withdraw the question of murder in the first degree from the consideration of the jury for the reasons,

1st:- That there is no proof in the case of a deliberate and premediated design on the part of all of the defendants or either of them, to effect the death of the person killed.

2nd:- That the evidence in the case is insufficient to sustain the charge of murder in the



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first degree against the defendants or either of them.

3rd:- That the evidence fails to show any deliberate and premeditated design on the part of the defendants, or either of them, to effect the death of Peter A. Hallenbeck, or of any other person.

4th:- That the jury would not be justified upon the evidence and the proof in finding a verdict of murder in the first degree upon the evidence in this case against the defendants or either of them.

5th - That there is no evidence in this case which would justify the jury under the definition of murder in the first degree as contained in section 183 of the Penal Code, or any other statute of this state, which was in effect at the day of the killing of Peter A. Hallenbeck, in finding a verdict of guilty in the first degree against all of the defendants or either of them.

6th- That the evidence fails to establish a case against the defendants or either of them by the evidence for the crime of murder in the first degree

The COURT:- I decline to comply with the request.

Mr. CADY:- I except upon each ground upon be-

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half of each and all of the defendants now upon trial.

We move also to strike from the records <sup>the evidence of</sup> each and all of the witnesses who testified upon the subject of putting shoes in tracks in the neighborhood of the residence of Peter A. Hallenbeck upon the several grounds upon which we objected to the original introduction of the evidence.

The COURT:- Motion denied.

Mr. CADY:- We except in behalf of each and all of the defendants now upon trial.

We further move to strike from the record all of the evidence of the witness Shaw in regard to the identification of the defendant Harvey Bruce, who is not now upon trial, which was based upon Bruce's subsequent declaration to Shaw while in jail.

The COURT:- My recollection is that I did strike out at the time evidence based upon declarations, but I allowed to stand his testimony in court where he said in substance that he recognized Bruce as the same party that he saw upon the prior occasion. I will let the record stand just as made at the time to that effect.

Mr. CADY:- We further move that all the evidence

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of the witness Shaw as to his recognition of Harvey Bruce be stricken from the record.

The COURT:- Denied.

Mr. CADY: We except on behalf of each of the the defendants and on behalf of all the defendants severally.

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Mr. DeLaMater opened the case on behalf of the defendants.

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BURTON VAN WORMER, sworn for the defendants, testified;  
Examined by Mr. Cady:

Q. Mr. Van Wormer, you are one of the defendants in this criminal action? A. Yes, sir.

Q. About what is your age? A. 22.

Q. When were you 22 years old? A. Last May.

Q. What day of the month? A. 20.

Q. Where were you born? A. Greenport, town of Greenport.

Q. What was your father's name? A. Charles Van Wormer.

Q. When did your father die? A. A Year ago last September.

Q. What was your mother's name before her marriage?

A. Smith; Ella Smith.

Q. Was she a sister of Mrs Margaret Hallenbeck? A. Yes, sir.

Q. The wife of Peter A. Hallenbeck? A. Yes, sir.

Q. Is your mother living? A. No, sir.

Q. When did she die? A. 16 or 17 years ago, I think.

Q. That is as near as you can recollect? A. As near as I can remember.

Q. How long did you live in the town of Greenport?

A. Well, nearly all my life.

Q. You had a common school education there? A. Yes, sir.

Q. When you didn't live in the town of Greenport, where did you live? A. We lived a short while at Albany.

Q. In the city of Albany? A. Yes, sir.

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Q. How long did you live there? A. I can't just recall how long I did live there.

Q. Did your mother move to the city of Albany? A. Yes, sir.

Q. When did she go there? A. I was rather small; my father was a boatman from Albany and lived there.

Q. What was he, an engineer on the river? A. Yes, sir.

Q. Did your mother die in Albany? A. No, sir, died at Greenport.

Q. Now, besides living in Albany where did you live? A. Castleton.

Q. How long did you live in Castleton? A. I couldn't recall that.

Q. You can't recall it? A. No, sir.

Q. Where else did you live? A. Greenport is the only place I can remember.

Q. And then in Kinderhook? A. Yes, sir.

Q. So the only places you have lived were Greenport, Kinderhook, Albany and Castleton? A. Yes, sir.

Q. While you lived at Castleton what was your occupation? A. I was too small to do anything.

Q. Were you at one time in the employ of the New York Central railroad? A. Yes, sir.

Q. In what line of service? A. Signal service.

Q. The tower service? A. Yes, sir.

Q. Whereabouts? A. Why, I was a short while at Yonkers and the remainder part of the time at this end of the road ---between Poughkeepsie and Albany.



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Q. Road? A. I think it was from October until May 13th.

Q. What was your duty in the employ of the Long Branch Steamboat Company? A. I was oiler; engineer's assistant.

Q. How long were you there? A. I was there from June until January, I think.

Q. What date did you move to Kinderhook? A. The latter part of September.

Q. Of last year? A. Yes, sir.

Q. 1901? A. Yes, sir.

Q. Your <sup>father</sup> ~~father~~ had remarried before his death? A. Yes, sir.

Q. And you have a stepmother? A. Yes sir.

Q. And that was the Mrs Estella Van Wormer who has been spoken of in the course of this trial? A. Yes, sir.

Q. Who made up your family when you went to Kinderhook? A. My two brothers and stepmother and myself.

Q. Those were the only members of it? A. Yes, sir.

Q. What is the relation of Harvey Bruce who is indicted with you and who was a witness on the stand yesterday and to-day to you? A. He is a cousin.

Q. In what way? A. My mother's sister--he is a second cousin--my mother's sister's son's child, wife's child.

Q. Your mother's sister's son's child? A. Yes, sir; his father is my cousin.

Q. And your aunt, a sister of your mother, was his grand-mother? A. Yes, sir.

Q. How long have you known Harvey Bruce? A. Nearly all his life.

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Q. When did he come to Kinderhook? A. In November.

Q. And what time in November? A. Sometime before Thanksgiving. He was with us about two months, I should judge.

Q. Before your arrest? A. Yes, sir.

Q. He lived there in your family? A. Yes, sir.

Q. Where did he sleep during his stay there? A. He slept with me a short while first and then with Willis.

Q. Your brother? A. Yes, sir.

Q. How long did he sleep with you after he came there, if you remember? A. He might have slept with me a couple of weeks you might say; I couldn't say.

Q. All of the rest of the time with Willis? A. Yes, sir.

Q. Well, now, you listened to his testimony on the witness stand? A. I did, yes, sir.

Q. You heard him describe the expedition to Peter Hallenbeck's? A. I did.

Q. Now, I want you to tell this jury so they can hear you when the subject of going to Peter A. Hallenbeck's was first talked about, if at all, and where? A. It was on December 23rd it was mentioned about, right after dinner; we spoke about going to Chatham at the same time; that was not decided finally until the afternoon of the 24th, about five o'clock, when we went to get the horse when we concluded to go down there.

Q. You say going down to Peter A. Hallenbeck's was first mentioned on the 23rd after dinner? A. Yes, sir.



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Q. Who were present when it was spoken of? A. Both of my brothers, Bruce and myself.

Q. What was said upon the subject? A. We were speaking about going out to have some fun. Bruce mentioned about some young ladies in North Chatham; he said we will go up there; so we said--we finally said "let's go down to uncle Peter's and give him a scare; have some fun with him."

Q. Do you remember who spoke about that first? A. I can't just remember; it was one of us.

Q. One of you three brothers? A. Yes, sir.

Q. You say that Bruce spoke about going to North Chatham? A. Yes, sir.

Q. Was it spoken of at that time what night this trip should be taken? A. No, sir.

Q. Whether Christmas eve or--- A. (Int'g.) It was not decided, any night.

Q. If there is anything else that was said upon the subject there at that time I would like to have you tell this jury? A. There was nothing else that I remember.

Q. How long were you talking about it? A. Only a short while.

Q. That was sometime in the afternoon of the 23rd? A. Yes, sir.

Q. Now, did you go into Imond Vener's? A. No, sir, I did not.

Q. You didn't? A. No, sir.

Q. Did you buy any mask at Imond Vener's? A. No, sir, I did not.

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Q. Never at any time? A. No, sir.

Q. Did you go into Imond Vener's with either of your brothers? A. No, sir, I did not.

Q. Or did you go into Vener's with Bruce? A. No, sir.

Q. When was the subject of this trip either to North Chatham or to Mr. Hallenbeck's again spoken of? A. After the masks were bought; in the afternoon of Monday--Tuesday, I would say.

Q. The afternoon of Tuesday? A. Yes, sir.

Q. How did you know that any masks were bought? A. I saw them; I was into Mr. Stitz's jewelry store at the time Willis and Harvey came by and I went out to see them and they showed me the masks on the street; they took the package apart and showed me the two masks.

Q. Where is Stitz's Jewelry store? A. I should say may be a couple of hundred feet from my house towards Mr. Vener's store.

Q. Between your house and Vener's store? A. Yes, sir.

Q. Just where is Vener's store? A. It is on the right hand corner; it is opposite the bank at Kinderhook.

Q. Opposite the old Kinderhook bank building? A. No, sir, the new bank.

Q. That is the Union Bank, as they call it? A. Yes, sir

Q. Is Stitz's Jewelry store between the Union Bank and your house? A. It is, but it is on the opposite side of the street; it is nearly direct across from Mr. Herrick's hotel, on the opposite side.

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Q. And on the same side of the street that the brick hotel is? A. Yes, sir; it is between our house and where we did live.

Q. On which side of that street did you live, on the south side; the side upon which the brick hotel is or on the north side, the side upon which Herrick's hotel is? A. South side.

Q. You lived east of the brick hotel? A. Yes, sir.

Q. Stitz's store is between the brick hotel and your house? A. Yes, sir.

Q. And what time were you in Stitz's jewelry store that afternoon, Monday afternoon? A. Shortly after dinner; it was in the afternoon; I can't say just what time.

Q. Can you fix the time a little better? A. I could not really; it might be three o'clock; I wouldn't say; I wouldn't be sure; it was in the afternoon.

Q. You say Bruce and Willis go by? A. Yes, sir.

Q. Did they call you out on the street, or did you go out when you saw them? A. I went out.

Q. They had the package with them as you stated? A. Yes sir.

Q. They then showed you the mask? A. Yes, sir; I asked them what they had in the package.

Q. And they opened it and showed you the mask? A. Yes, sir.

Q. How long after that was anything further said about your taking a ride either to North Chatham or to Mr. Hallenbeck's? A. Just before five o'clock.

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Q. That same afternoon? A. Yes, sir.

Q. Whereabouts? A. In the house.

Q. In whose presence? A. In both of my brothers presence and Bruce and myself.

Q. What was said at that time about this contemplated trip? A. We talked whether we was going to my uncle's, or whether we was going to North Chatham and concluded to go to my uncle's.

Q. That is to your uncle Peter Hallenbeck's? A. Yes, sir; that was shortly before five o'clock.

Q. What was said about it; tell the jury as near as you can what you all said? A. We concluded that we would go to my uncle's and give him a scare and have some fun with him.

Q. Was anything else said about it that day---that is the 23rd you remember? A. 24th.

Q. Nothing was said on the 23rd upon the subject after the masks were bought? A. No, sir, there was nothing said after the masks were bought.

Q. It was the next day that you finally reached the conclusion? A. Yes, sir, on Tuesday.

Q. Now, what do you know, if anything, about masks that had been bought by Willis and Frederick? A. I didn't know anything about Frederick's masks; I knew that Harvey and Willis had one, but I didn't know that Fred had any.

Q. You didn't know that Fred had any? A. No, sir, I did not.

Q. When did you first find out that Frederick had the

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mask? A. On our way down, when we got in the wagon.

Q. You had found out that Willis had a mask the day before? A. Yes, sir.

Q. You had no mask? A. I did not.

Q. Well, the other three did have? A. Yes, sir.

Q. What did you do, not having any mask of your own?  
A. I had a piece of cloth.

Q. A piece of cloth? A. Yes, sir.

Q. Do you know Charles Schumacher? A. Yes, sir, I do.

Q. How long have you known him? A. Nearly as long as I have lived at Kinderhook.

Q. Did you have a talk with him at any time on the 24th? A. Yes, sir, I did.

Q. Whereabouts? A. In front of Mr. Herrick's hotel.

Q. Were you talking with anybody when Schumacher came along? A. Yes, sir.

Q. With whom? A. Isaac Van Slyke.

Q. What, if anything, was said between you and Schumacher?  
A. He came up to me and asked me if I was going to get that suit of clothes to-night that I had ordered of him. I told him I would get it to-morrow. He said to me he was going away and wouldn't be home to-morrow. I said "Perhaps I can get it to-night." He said he wouldn't be around. I said "You fix it with the express agent and I will get it of him."

Q. Did you say to him in words or in substance that you were going to get a team and would get the money that night? A. No, sir, I did not.

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Q. But you stated what you have now stated? A. Yes, sir, those are the very words I said.

Q. Had Schumacher ever spoken to you about that suit of clothes before? A. Yes, sir, several times.

Q. What had he said about them? A. He asked me when I was going to get it.

Q. Wanted the pay for them? A. Yes, sir; he wanted me to get it from the depot; he said he hadn't the money and that I would have to get it.

Q. Go on? A. I told him I would get it the next day.

Q. When was that? A. I told him this on several occasions.

Q. You hadn't yet got it? A. No, sir.

Q. Had there been any question about the suit of clothes between you and him?

Objected to as immaterial.

The Court: He may state it.

A. There had, yes, sir.

Q. What was it? A. He agreed to have my clothes for me before Thanksgiving, the week during Thanksgiving, and they didn't come until December. He sold me the suit for fifteen dollars and I went up to the station when they came and they were marked twelve and I concluded I wasn't going to take it.

Q. And yet you had made these answers to him from time to time when he dunned you about them? A. Yes, sir.

Q. And you made the answer to him on the 24th that you have now stated to this jury? A. Yes, sir.

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Q. On the 34th were you in Bauer's store, or shooting gallery? A. Yes, sir.

Q. What time did you go in there? A. I think it was in the afternoon, or about dinner time; I can't just remember what time it was; I was in there during the day.

Q. Who were in there? A. Harvey Bruce and my brother Fred and Jerome Bauef, and a couple of colored fellows and a boy by the name of Earls; I don't know his first name.

Q. Earl? A. Yes, sir, Earl.

Q. Do you know who the colored men were? A. I do; I can't recollect who they are just now.

Q. They were men you had seen before? A. Yes, sir.

Q. How long did you stay in Bauer's store? A. I don't know just how long; we were in there quite sometime.

Q. How long were the other people whom you have described in there? A. They were in there as long as I was.

Q. Did you say they were there longer than you? A. They were there as long as me.

Q. You saw them there when you went in? A. Yes, sir.

Q. Who went out first, you or any of these people---who went out first? A. I couldn't say who went out first; I don't remember.

Q. Was there practice with a rifle there that day? A. Yes, sir.

Q. Who took part in it? A. Mr. Bauer and a colored fellow and myself, my brother and Harvey Bruce and this Earl boy.

Q. The young lad Earl? A. Yes, sir.

1 Q. Anybody borrow a pistol there that day? A. Yes, sir.

2 Q. Who did? A. I did.

3 Q. Of whom? A. Jerome Bauer.

4 Q. Whereabouts were you when you borrowed that of him?

5 A. In the front of the store.

6 Q. In the front part of his store, or down in the

7 street? A. In the front part of his store.

8 Q. How is that store lighted from the street? A. It has

9 plate glass windows in it.

10 Q. What is the size of those windows? A. I think they

11 nearly extend from the top to the bottom.

12 Q. You and he were on the inside of the store, how far

13 from those windows? A. Right near them; right near the

14 door.

15 Q. Was any one else in the store when you borrowed the

16 pistol of Bauer? A. Yes, sir.

17 Q. Who else? A. Harvey Bruce was there when I borrowed

18 it.

19 Q. Anybody else? A. And the colored fellow and this

20 Earl man.

21 Q. Had Mr. Earl gone away yet? A. No, sir, he hadn't.

22 Q. He was there? A. Yes, sir.

23 Q. What was said upon the subject of borrowing that

24 pistol between you and Bauer? A. I asked him if I could

25 have the loan of his revolver; he said that I could.

Q. Had you borrowed the pistol of him before? A. Yes,

sir.

Q. How many times? A. I think twice before that.



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Q. And returned it to him? A. Yes, sir.

Q. What did he say when you asked him that question?

A. He said that I could take it.

Q. And you took it? A. Yes, sir.

Q. Was that one of the pistols that has been offered in evidence here? A. Yes, sir.

Q. Is that the same pistol that you spoke about to Mr. Bauer and that Mr. Bauer spoke to you about at the station at Kinderhook on the night of the 25th, after you had been arrested? A. Yes, sir, it is.

Q. You then told him where it was? A. Yes, sir, I did.

Q. Did you tell him correctly? A. I did.

Q. In whose presence did you tell him that? A. In the presence of Sheriff Drumm and officer Martin and my brothers.

Q. You have seen officer Martin on the stand since you have been on trial? A. Yes, sir.

Q. It is the same man? A. Yes, sir.

Q. What time did you leave Bauer's store that day?

A. I couldn't say; after dinner.

Q. Did you leave there alone? A. No, sir.

Q. Who went with you? A. My brother and Bruce.

Q. Which brother? A. Fred.

Q. You took that pistol that you borrowed with you?

A. Yes, sir.

Q. Where did you go? A. Home.

Q. Where was Willis? A. I think he was at the house.

Q. When you got there? A. Yes, sir.

Q. Now, after you and Harvey Bruce and Frederick

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reached the house and found Willis there was there any conversation between you? A. Not that day that I remember.

Q. About where you were to go? A. No, sir; not that I remember.

Q. Not at that time? A. To my remembrance there was not. I can't recall any conversation.

Q. On that subject? A. No, sir.

Q. When did you next talk about it? A. Shortly before five first.

Q. On that same day? A. Yes, sir.

Q. You had already hired a horse that day? A. Yes, sir I had.

Q. What time? A. I think I went to see Mr. Brown in the forenoon about that horse.

Q. Can you tell what time in the forenoon? A. I could not say just exactly what time it was, but it was in the forenoon.

Q. You knew George Brown? A. Yes, sir.

Q. How long had you known him? A. I had dealt with him.

Q. How long had you known him? A. Well, since I moved to Kinderhook; I knew him personally then.

Q. You went there with Harvey Bruce? A. Yes, sir.

Q. How long did you stay in Mr. Brown's office? A. Some little while; I couldn't say how long; we were there some time.

Q. Had a talk with him? A. Yes, sir.

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Q. You heard Bruce testify this morning? A. I did.

Q. Did you hear Bruce testify that you and Brown talked about your railroad service?

Objected to.

The Court: You may ask it.

A. I did.

Q. Did such a conversation take place or not? A. It did.

Q. Between whom? A. Mr. Brown and myself.

Q. When did you get the horse of Brown during that inter-view, before you had this conversation with him or afterwards? A. Afterwards.

Q. Where did you go after leaving Brown's office? A. Went to the store of Jerome Bauer.

Q. And then you went home? A. Yes, sir.

Q. That was the order of events so far as that was concerned? A. Yes, sir.

Q. While you were at Mr. Brown's office was anybody else there besides you and Bruce? A. I can't recall.

Q. Did you know James Coons, his hostler? A. Yes, sir, I do.

Q. How long had you known him? A. Since we moved up there; since we lived at Kinderhook.

*& you had seen him when you had been at Brown's place?* A. Yes, sir

Q. *did* You ~~had~~ see// him that day when you went to hire the horse? A. I did not.

Q. You didn't see anybody but Mr. Brown? A. That is all

Q. You don't remember there was anybody else in the office? A. Not to my recollection.

1 Q. Now, what time that night or that afternoon was the  
2 horse procured? A. About five o'clock.

3 Q. Who went after him? A. Harvey Bruce and myself.

4 Q. Was Mr. Brown there then so far as you saw? A. No,  
5 sir, he was not so far as I saw.

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

7 Q. Who did you see? A. James Coons.

8 Q. What wagon was first drawn out for you to take?  
9 A. Rubber tire runabout wagon; spindle seat wagon.

10 Q. What do you mean by "spindle seat wagon"? A. It has  
11 a seat constructed with spindles below the back.

12 Q. Small wooden spindles? A. Yes, sir.

13 Q. Did you take that? A. No, sir.

14 Q. You did take the wagon that has been described in the  
15 testimony? A. I did, yes, sir.

16 Q. When you took it did it have side curtains on? A. It  
17 did.

18 Q. Did you know whether or not it had been out that day  
19 before? A. I don't know, but there was mud on the wagon.

20 Q. The side curtains were on? A. Yes, sir.

21 Q. Did you state any reason to Coons why you didn't want  
22 to take the spindle seat wagon? A. No, sir; not to my  
23 recollection, only I told him I didn't want that wagon.

24 Q. Did you notice the spindle seat? A. Yes, sir.

25 Q. Was it of light or strong construction? A. Yes,  
sir; I had bought one of Mr. Brown myself; I owned one my-  
self that I bought of Mr. Brown myself.

Q. How long did you and Bruce stay there at that time?

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A. Well, long enough to harness the horse.

Q. Where did you go then? A. To the house of Thew. Coons.

Q. His name is Bethewel Coons? A. I don't know; I have always heard him called Thew.

Q. Where did he live? A. In a back street in Kinderhook; a street known as Coon street.

Q. Did you and Bruce both go there? A. Yes, sir; Bruce got out of the wagon and went to the house and rapped at the door and asked to see Mr. Coons. His wife, Mr. Coons, wife, came to the door and said he wasn't there. Bruce started to explain to her about what had happened and I got out of the wagon and went in where he was and told the story that on our way to Mr. Brown's we had broken a street light and that we were willing to pay for it and didn't wish any trouble about it, and wished to pay for it, and if we could pay for it.

Q. Whereabouts was the street light broken? A. Near the Episcopal church.

Q. Did you hear Bruce's testimony upon that subject that morning? A. Yes, sir.

Q. Had it been broken by his throwing a snowball at you? A. It had, yes, sir.

Q. Now, Burton, what time did it commence snowing on that day in Kinderhook, as you remember? A. I have lost all recollection of it; I couldn't say; I couldn't say whether it snowed or hadn't.

Q. You don't remember whether there was snow on the

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ground or not? A. I remember there was snow on the ground.

Q. What time it snowed you don't now remember? A. No, sir; I do not.

Q. How deep was the snow in Kinderhook? A. It was a light snow; there might have been a couple of inches.

Q. So Bruce made a snowball up from that snow? A. Yes, sir.

Q. That was the snowball he threw at you and hit the lamp? A. Yes, sir.

Q. Did you see Mr. Coons that day? A. We did not.

Q. You only saw his wife? A. That is all.

Q. When you went to Mr. Coons' house you went in the wagon? A. Yes, sir.

Q. You had the wagon you had hired of Brown? A. Yes, sir.

Q. You had the horse you had hired of Brown? A. Yes, sir.

Q. Did you and Bruce go there in the wagon together? A. Yes, sir, we did.

Q. And stopped in front of their house that day? A. Yes sir.

Q. And got out of that wagon? A. Yes, sir.

Q. And Mrs Coons saw it? A. Yes, sir.

Q. Where did you go then? A. Came to the house where we were living.

Q. How far was that from Coons? A. Short distance; not very far.

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Q. What did you do when you got there? A. Drove in front of the house to a tie post and got out. I tied the horse and Bruce put the blanket on her and we went into the house. My brother Fred had his shoes off and we told him to put his shoes on and that we were ready to go. I took the mask and Bruce put on his overcoat and we got in the wagon and went.

Q. When did you have dinner that day? A. It was a late dinner, I believe.

Q. At about what time? A. I couldn't say; it was in the afternoon.

Q. You had two meals? A. Yes, sir.

Q. How long did you stay in the house? A. We were only in there a few minutes.

Q. How long? A. A short while; short time.

Q. Did you all go out of the house? A. We did, yes, sir.

Q. You and Bruce? A. Yes, sir.

Q. And your two brothers? A. Yes, sir.

Q. You had a pistol with you, didn't you? A. Yes, sir, I did.

Q. You had the pistol you had borrowed from Bauer? A. Yes, sir.

Q. Did Bruce have a pistol? A. Yes, sir.

Q. And the other two? A. I saw them afterwards; I didn't know at the time they had them.

Q. Was there any extra store of cartridges carried with you that night to your knowledge? A. Not to my knowledge,

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there was not.

Q. Did you have any extra cartridges? A. No, sir, I did not.

Q. Which road did you take after you started? A. We crossed the Kinderhook covered bridges and down by the road to Stuyvesant Falls, and through Rossman, Stockport Center and Stottville to Hudson and out Academy hill and out Worth Avenue.

Q. On the way out did Bruce ask where you were going? A. No, sir.

Q. Did you tell him "down the line"? A. No, sir; I never did.

Q. Or words to that effect? A. No, sir; he knew where we were going.

Mr. Chace: I object to the last clause as not responsive and not called for.

The Court: Strike it out; it was not responsive to the question.

Mr. Cady: I except to the ruling.

The Court: You may ask the question.

Q. Did Bruce know where you were going? A. Yes, sir, he did.

Q. He had known how long? A. He had known for a certainty since five o'clock that day.

Q. The subject had been talked about the day before? A. Yes, sir.

Q. Did he, while you were going down--you know where Rossman hill is? A. Yes, sir.



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Q. Did he while you were going down Rossman hill demand to know where you were going? A. He did not.

Q. Where is Rossman hill? A. Well, I should think it was about two miles and a half or three miles below Stuyvesant Falls towards Hudson.

Q. Between Stuyvesant Falls and Stockport Center?  
A. Yes, sir.

Q. Now, you made a stop at Stockport Center? A. We did.

Q. Bruce got out? A. Yes, sir, he did.

Q. And got some tobacco? A. Yes, sir.

Q Stopped there in front of the hotel? A. Store and hotel.

Q. There was a store in one end of the building? A. Yes sir.

Q. Where was the hotel? A. Right next; there was just a wall or partition between the two places. It was the same building.

Q. You continued on in the route you have described?  
A. We did.

Q. What time did you reach Hudson? A. About seven o'clock.

Q. What route did you take through Hudson? A. Over Academy hill, down past the hospital.

Q. And down out what street? A. Out Worth Avenue past the hay press.

Q. Do you know the hamlet that is called Jonesburg, the collection of houses? A. I don't remember.

Q. You went down to the Greenport church? A. Yes, sir.

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Q. What took place there? A. On our way down to the Greenport church we saw that the church was lighted. My brother said "let's drive up to the church---

Q. (Int'g.) Which brother? A. Fred. "Let's drive up to the church and see who is there". He got out at the Greenport church and went by to see who was in the church.

Q. (The Court) Who got out? A. My brother Fred, Harvey Bruce and Willis and me got out of the wagon and I took a whip out of a wagon that has been produced in court and my brother tok a yellow whip and Bruce took a Buffalo robe.

Q. Did your brother Fred. go into the church? A. I couldn't say.

Q. He went up to it? A. Yes, sir; I saw him go up to it.

Q. Did you go up to the church? A. I did not, no sir.

Q. Where were your masks at that time? A. In the back part of the wagon.

Q. What road did you take after that? A. The direct road to Catskill station leading to my uncle's house.

Q. To Mr. Hallenbeck's house? A. Yes, sir.

Q. How far is it from the Greenport church to the house of Mr. Hallenbeck by the way you went? A. About half a mile, I should think.

Q. Was there anything said after you left Greenport on the subject of Charles Hallenbeck being in the church.

A. There was, I believe; my brother said he saw him in there.

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Q. Which brother? A. Fred.

Q. What did he say about it? A. He said he saw Charlie Hallenbeck in the church.

Q. Did he tell of any others he saw in the church?

A. No, sir, he did not.

Q. What happened when you got along by the orchard at the top of the hill near Peter A. Hallenbeck's house?

A. We stopped and two of the boys got out.

Q. Which ones? A. Willis and Harvey.

Q. You and Frederick went where? A. We went on past the house.

Q. Did you stay in the wagon? A. I did.

Q. When you went by the house down the hill what did you observe about the house? A. I observed some people sitting in the sitting room.

Q. What do you say about lights in the house? A. It was brightly lighted.

Q. What room? A. Front room, sitting room.

Q. Did you see anybody in there? A. Yes, sir, I saw some, but I couldn't tell who they were.

Q. Do you know anything as to whether the shades were up or down on the windows facing the road? A. They were up.

Q. They were up in that room that was lighted? A. Yes, sir.

Q. How far behind the wagon did the two boys walk down the hill? A. I couldn't say; I didn't look.

Q. You have no knowledge of that? A. No, sir.

Q. You were in the wagon? A. Yes, sir.

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Q. Where did you stop? A. At the barn near the highway just below the house.

Q. What was down there? A. We got out and the horse was tied and blanketed and we took off our overcoats and turned our undercoats inside out and put on our masks and started back up the road.

Q. You took the masks out of the wagon after you got out? A. Yes, sir.

Q. How did you walk, one by one, up the road? A. Why, I think Frederick and I were ahead; I won't say; we were walking by twos.

Q. What route did you take? A. The same way we came.

Q. Right up the highway? A. Yes, sir.

Q. Towards Greenport, up the hill? A. Yes, sir.

Q. And past the house? A. No, sir.

Q. When you walked up that road what did you observe at the house? A. Saw them looking out at us.

Q. Saw who? A. I think my aunt.

Q. Well, now, what direction did you take? A. We walked up past the house aways and there was a hole in the fence, a picket off, and we crawled through the hole and went through the orchard north and then west to the rear entrance to the house.

Q. What shoes did you have on that night? A. A pair of russet shoes on.

Q. Was it either pair of the shoes that have been presented in court? A. No, sir.

Q. You have seen four pairs of shoes here? A. I have.

1 Q. But you did not have on that night either of those  
2 pairs of shoes? A. I did not.

3 Q. Do you know where the russet shoes are that you had  
4 on that night? A. They were in the house that night.

5 Q. Do you know they are in the possession of Mr. Farrar,  
6 one of the counsels? A. I do not.

7 Q. State the route you took? A. We went through the  
8 orchard and back of the house and up on the back stoop  
9 there, that little entry.

10 Q. Tell what took place there? A. Before I got there  
11 I told the boys to be careful and not shoot anybody; that  
12 they didn't shoot anybody.

13 Q. Did you say anything upon that subject down by the  
14 barn, generally? A. Yes, sir, I did.

15 Q. Did you hear Bruce testify upon that subject? A. Yes  
16 sir, I did.

17 Q. Tell me whether that was or was not substantially  
18 correct.

19 Objected to. (Question waived.)

20 Q. What did you say down there? A. I told them for  
21 all they did not to shoot any one.

22 Q. State what took place? A. I went up on the stoop  
23 and as we came around the house the dogs were out and they  
24 came rushing at us and we took out our revolvers.

25 Q. How many dogs? A. Two. We took our revolvers out  
and some one kicked the dogs away and I went up on the  
stoop and I had my revolver in my left hand and I rapped  
with my right hand. Bruce was next to me and my brother

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Fred. stood on the steps and Willis was on the ground.

Q. How far back of you was Willis? A. He was on the ground some ways from the stoop.

Q. Can you give any idea in steps as Bruce did this morning? A. I should think he was five or six feet from the foot of those steps; he was back some ways from the entrance.

Q. On the ground? A. Yes, sir.

Q. The ground was covered with snow? A. Yes, sir.

Q. What was the character of the night? A. Very bright light, moon light.

Q. You went up there on the steps, you three, and Willis some five or six feet back on the ground, and go on and tell all that took place in your own way? A. I rapped at the door. When it was opened I stood right near the door and Bruce stood to my left and when it was opened my uncle saw our faces and uttered an oath and told us to get out and struck me under this (ind.) eye and when he pushed me back I grappled him. I had him by his shoulders.

Q. Where did he have you? A. Near the throat, around the throat at one time; then in our struggle my revolver was discharged.

Q. In which hand was your revolver? A. My left hand.

Q. In which hand was it when it was discharged? A. My left hand.

Q. In which hand was it when you left? A. My left hand.

Q. Now, how long did the struggle between you and your uncle last? A. Well, it was not very long; short struggle;

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it was a hard one.

Q. In what respects was it hard? A. Well, I was trying to get away from him and he was trying to hold me and trying to choke me.

Q. Where was Harvey Bruce, if you know, at that time while the struggle was going on? A. I couldn't say; I didn't see him.

Q. Had any shot been fired up to the time your revolver was discharged in the course of that struggle? A. No, sir; there had not.

Q. Had any other been fired that you know of until yours was discharged? A. No, sir, there hadn't.

Q. What do you say as to your revolver being the first revolver that was discharged or not? A. Mine was discharged.

Q. It was discharged in the way you have described? A. Yes, sir.

Q. What else took place? A. I broke away from him finally in our struggle and he struck me as I got away from him.

Q. Did you have your mask on when he struck you? A. Yes, sir, I did; I had this cloth over my face. I went to the right, in the dining room or sitting room, and I ran in there and I took my revolver in my right hand and I discharged it while I was there in the room.

Q. How many times? A. Four times.

Q. You heard about the bullet hole in the ceiling? A. Yes, sir.

1 Q. Do you know by whose pistol that was made? A. I  
2 couldn't say; no sir.

3 Q. You heard about the bullet hole in the breast of  
4 the chimney in the bedroom? A. Yes, sir.

5 Q. Who made that, if you know? A. I think I did.

6 Q. That is your best recollection? A. Yes sir.

7 Q. How many shots did you have in your revolver that  
8 night? A. Five.

9 Q. How many times did you fire it off? A. I dis-  
10 charged it myself four times and it went off in the struggle

11 Q. That made five? A. Yes, sir.

12 Q. Where were you when you discharged it the four  
13 times? A. To my recollection I was in the sitting room;  
14 I might have been in the bedroom; I wouldn't say I was or  
15 was not.

16 Q. By the bedroom do you mean the bedroom in which  
17 appeared a door? A. Where my aunt slept.

18 Q. Where a bullet hole was found as we have heard de-  
19 scribed here? A. Yes, sir.

20 Q. Now, Bruce spoke about the subject of a gun this  
21 morning. What have you to say upon the subject of a gun?

22 A. I saw my uncle get it.

23 Q. Where?

24 A. Out of the platform or stairway.

25 Q. Where were you when he got it? A. When I first  
26 saw him I was in the sitting room.

27 Q. You and he had separated in the scuffle and struggle  
28 before he got the gun? A. Yes, sir.

29 Q. When you first saw him with the gun in his hand you



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were in the sitting room? A. Yes, sir.

Q. Where was he? A. He was right there at the stairway getting the gun.

Q. What did you see next? A. I said "For God's sake run, boys, he has got the gun; he will shoot our heads off?"

Q. Where were the other boys then? A. By the door.

Q. Which door? A. Kitchen door; door leading into the kitchen from the outside.

Q. At the time you saw him with the gun you were in the sitting room? A. Yes, sir.

Q. How many shots had you heard fired, if you know?  
A. I couldn't say.

Q. Had you heard more than one? A. Yes, sir; there had been more than one shot.

Q. How many, if you can tell? A. I couldn't say; there had been some shots fired; I couldn't say how many.

Q. What was the condition of the room as to being smoky? A. It was black with smoke, or blue rather.

Q. Did you or not see any of your party fire at Mr. Hallenbeck that night? A. I did not, no, sir.

Q. State whether or not you aimed at him? A. I did not.

Q. What was your condition after your pistol was discharged and after your uncle had grappled you and you had grappled him in the manner you have described, as to being excited or not? A. I was frightened.

Q. What was your condition as to being excited or not?  
A. I was excited.

Q. How long did you remain in the house? A. But a

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very little while; we were not there but a short time all together.

Q. Did you see your aunt Margaret? A. I did.

Q. Did you shoot at her? A. I did not.

Q. Where did you see her? A. I saw her going up the stairs leading from her bedroom upstairs; small stairway, was the last I saw her---the first I saw her.

Q. Did you ever say you shot at her? A. I did not, no sir.

Q. Can you give to this court and jury any sort of idea as to how long you were in the house that night? A. I could not; not but a short while is the most I could say.

Q. Now, what else took place there at the house that you can describe, before you got out? A. Why, when I hollered to the boys to run he had his gun and there was some shots fired.

Q. Hadn't you heard shots before that? A. Mes, sir, I had.

Q. There were some shots fired after that? A. Yes, sir.

Q. Now, do you know anything about the subject of Bruce's pistol in the course of that struggle down there? A. I do not; I knew he had it, that is all.

Q. Did you strike him on the hand? A. I did not, no, sir.

Q. Did you take any pistol away from him? A. I did not.

Q. If there is anything else that happened in that house that you have not told I want you to tell it in the

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way you recollect it happened? A. I think I have told all that I remember.

Q. How did you go out of the house? A. Run.

Q. You ran? A. Yes, sir.

Q. How did the others go out? A. They ran.

Q. Do you know who went out first or who went out last?

A. I couldn't say who went out first.

Q. You don't know whether you went out first or last?

A. I was not the first; there was some out ahead of me.

Q. Did you see your brother Willis in the house that night? A. No, sir; I did not.

Q. You don't know of your own knowledge whether he was or was not? A. No sir; I do not.

Q. All you can say is you didn't see him? A. I didn't see him.

Q. How far did you run after you started? A. To where the horse was tied.

Q. Who went with you? A. Bruce.

Q. Where did the other two go? A. I couldn't say; I didn't see them until I met them where the team was tied.

Q. Why did you run? A. I expected to be shot.

Objected to.

The Court: I will let his answer stand. The reason is not very important, but I will let it stand.

Q. With what intent did you go to the house of Peter A. Hallenbeck that night? A. To have some fun with him; to scare him.

Q. Did you go there with the intent to injure him per-

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sonally? A. I did not; no, sir.

Q. Did you go there with the intent to wound him?

A. I did not; no, sir.

Q. Did you go there with any other intent than that you have described? A. No, sir.

Q. Did you say to Harvey Bruce at any time that night that you had given your uncle, or given Peter A. Hallenbeck a Czolgosczech shot? A. I did not, no, sir.

Q. Did you say to your cousin, Harvey Bruce, at any time that night that you had shot at your aunt? A. I did not; no, sir.

Q. Or use any offensive epithet or description of any part of her person? A. No, sir.

Q. Did you hear any of your brothers doing so in your presence? A. No, sir.

Q. How far east of the house did you turn in to the orchard through the hole in the fence? A. Only a short ways.

Q. Did you know the locality; did you know the premises there? A. Yes, sir.

Q. Been there before? A. A great deal.

Q. How often? A. I couldn't mention.

Q. You couldn't tell? A. No, sir.

Q. Did you use to work there? A. I did, yes sir.

Q. For how long? A. I worked there a number of times.

Q. How many years? A. They were not years; short times different times.

Q. During how many different years---in how many separate years did you work there? A. Two or three, I should

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think.

Q. So you knew the ground? A. Yes, sir.

Q. Do you know Miss Althizer who was on the witness stand here? A. I do.

Q. Did you tell her that you would kill your uncle if you had a chance? A. I never did.

Q. Did you see the witness Kellerhouse who was on the stand? A. I did.

Q. Who told about an interview he had with you in cherry time once? A. Yes, sir.

Q. Did you tell him that your uncle had foreclosed the mortgage, or was going to foreclose the mortgage, or words to that effect? A. No, sir.

Q. And that you would "get even with him"? A. No, sir; I never spoke to him.

Q. Had the mortgage on your stepmother's house been foreclosed at that time, in cherry time? A. It had not to my recollection.

Q. There was a foreclosure of that mortgage afterward? A. Yes, sir.

Q. And you and your brothers and your stepmother left and got out of the house and went up to Kinderhook? A. Yes, sir.

Q. Did you see your uncle while that foreclosure suit was pending? A. Yes, sir.

Q. How many times? A. I saw him several times; I saw him the day of the sale here at the Court House.

Q. You were here? A. Yes, sir.

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Q. And he was here? A. Yes, sir.

Q. Was there any trouble about it? A. No, sir; he was talking to me that day.

Q. Had there been any trouble between you and your uncle? A. Never.

Q. Describe your relations with him? A. They were the same as any nephew would be to the uncle; there was not any trouble between us at all.

Q. He had employed you? A. Yes, sir.

Q. You had worked for him? A. I had.

Q. Now, when you ran away from the house that night you had your coats turned inside out? A. Yes sir.

Q. And your masks on? A. Yes, sir.

Q. Now, at what rate of speed did you drive away? A. Very fast trot.

Q. When did you take off the masks? A. Took them off at a point in Mr. Church's woods.

Q. How far away from your uncle, Peter A. Hallenbeck's? A. By the road we took it must have been a couple of miles or more.

Q. Now, was there any conversation there about any shooting of your uncle? A. There was not.

Q. Did Willis say in substance that he had given him all the shots that he had? A. He did not, no, sir.

Q. Did you say that you had given him a Czolgoscz shot? A. I did not, no, sir.

Q. Or did Frederick say that he had hit him? A. No, sir; there was no shots mentioned.

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Q. Did you or did you not know that your uncle had been hit at all? A. I did not.

Q. When did you first ~~mention~~ ascertain that your uncle had been injured? A. The next day, Christmas day.

Q. About what time? A. Nearly noon.

Q. Did your mother ever nurse in your uncle's family? A. She did, yes, sir.

Q. When was that? A. Last year, I believe.

Q. What time of the year? A. I think it was around March; something like that.

Q. How long was she there as a nurse? A. I think some forty or fifty nights.

Q. Were you there at the house while she was there? A. No, sir.

Q. Where were you then? A. I was in New York City.

Q. Do you know there had been any controversy between your mother and your uncle about collecting the bill? A. There had, yes, sir.

Q. When did you hear of that? A. While we were in Kinderhook.

Q. Did you hear that the claim was in Mr. Farrar's hands for collection? A. I went with my mother to Mr. Farrar's office.

Q. Did you know whether or not a suit had been commenced? A. It was pending, I think.

Q. What effect, if any, did that have on your mind towards your uncle? A. Not any.

Q. What time did you get back to Kinderhook that night? A. 9:30.

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Q. About 9:30? A. Yes, sir.

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Q. Where did you go? A. In the house.

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Q. Into what house? A. House where we were living.

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Q. Who were there? A. My mother and a lady by the name of Pearl Van Buren.

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Q. How long did you remain in the house? A. A short time.

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Q. About how long, Van Wornner? A. I couldn't say just to the minute; we were there but a very short time.

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Q. Where did you go then? A. Harvey and I went out and took a ride; I said to him "let's go up and see the Connor's. We went up to the Kinderhook depot. We drove in the yard of Mrs Connors' house and told Harvey to get out and go and see if Miss Pearl Connor was home and he did and Mrs Connor came to the door and said that she was not home; that she was at Albany. I asked what time she would be back and she said she didn't know. I asked if she would be back in the quarter-past ten car and she didn't know whether she would be back on that or the twelve. So we drove up to the depot and waited for the quarter past ten car and she came on that car and I stayed there and had quite a long talk with her and from there we went to Valatie.

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Q. Whereabouts did you go in Valatie? A. I am not acquainted with Valatie. We drove through the streets and around the block of streets and back home.

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Q. What time did you get home finally? A. I couldn't say what time we got home.

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Q. What is your best recollection? A. It was before eleven, I think.

Q. Did you remain at home the rest of the evening? A. I did.

Q. Who were there when you got home? A. I guess Fred had gone to bed and Willis had gone down to the house with Miss Van Buren. There was nobody home but my stepmother.

Q. You didn't take the horse to the stable? A. I asked Bruce if he would take it down.

Q. And he did so? A. Yes, sir.

Q. Did he start with the horse for the stable before or after he went in the house himself? A. He was in the house.

Q. Had you tied your horse out of doors? A. Yes, sir.

Q. Was there anything in the nature of a dispute as to who should take the horse back to the stable? A. No, sir; there was not to my recollection.

CROSS-EXAMINATION by Mr. A. F. B. Chace:

Q. What is the distance from Kinderhook to Peter A. Hallenbeck's house? A. I can only give you an estimate.

Q. You are pretty familiar with the road, are you not? A. I have been over it; yes, some.

Q. You are well acquainted with the distance from Peter A. Hallenbeck's to Hudson by way of the McKinstry Place and Worth Avenue, are you not? A. Yes, sir.

Q. What is that distance? A. I should think about four and a half miles.

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Q. What is the distance from here to Kinderhook? A. I could not say.

Q. What did you understand it to be? A. 12 miles.

Q. You say you left Kinderhook on the night of December 24th about what time? A. Before six o'clock.

Q. How much before? A. I couldn't say.

Q. Give us your nearest estimate? A. I wouldn't want to give you an estimate. I think I might be wrong.

Q. Do you think it was as much as a quarter before six? A. I couldn't say.

Q. Will you say it was as much as 20 minutes before six? A. I would like to, but I couldn't.

Q. Will you say it was as early as half-past five? A. I couldn't tell you Mr. Chace.

Q. How many hours were you making that trip according to your best estimate? A. We returned at 9:30.

Q. Who did the driving? A. I drove down.

Q. Which direction was made the quickest, the down trip or the up trip? A. I couldn't say.

Q. No idea? A. No sir; I have not.

Q. You can't give any estimate? A. No sir. We drove rapidly both ways.

Q. What do you say? A. We drove along quite a good gait both ways.

Q. You knew, did you not, when you took that horse and wagon from the premises of Mr. Brown what trip was to be taken? A. Yes, sir.

Q. And you knew also when you took that horse and wagon

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from the premises of Mr. Borwn how many persons were to ride in the wagon? A. I did.

Q. Had he in his possession any wagon arranged for four people? A. Yes, sir.

Q. Why didn't you take one of those wagons? A. I couldn't say; we didn't wish for it.

Q. You didn't wish one of them? A. We didn't want any other.

Q. You were told by Mr. Borwn when you applied for that horse that he objected to its making as long a trip as from Kinderhook to Stuyvesant and North Chatham and back, were you not? A. Yes, sir.

Q. What is the distance from Kinderhook to Stuyvesant? A. Five miles one way.

Q. What is the distance from Stuyvesant to North Chatham? A. I should judge about 12 miles.

Q. What is the distance from North Chatham to Kinderhook? A. Seven.

Q. You knew when you told Mr. Brown that you would only go to North Chatham that you were going to drive that horse to Peter A. Hallenbeck's, did you not? A. Yes, sir.

Q. How did you come to stop at the Greendale church? A. Went up to see who was there. We saw it was lighted and my brother Fred made a suggestion to go up and see who was in church.

Q. Any reason given by him why you wanted to know who was in the church? A. Nothing more than to see who was there and to see the tree, the Christmas tree.

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Q. Did you go up to the church to see the Christmas tree? A. I didn't go up to the church.

Q. Did Willis go up to the church to see the Christmas tree? A. No, sir.

Q. Did Bruce? A. No, sir.

Q. When Fred got out and went up to the church who else got out first? A. We drove down to a shed and turned around below a hill east of the church; then came back in front of the church and stopped.

Q. Who got out there first? A. I couldn't say which one of us got out first; we all three got out--Bruce and my brother Willis and myself.

Q. What did you do first after you got out? A. We went along the wagon<sup>s</sup>; I took a black whip from a wagon.

Q. Who went along the wagons? A. All three of us.

Q. Who remained with the horse? A. It stood alone.

Q. Untied? A. Yes, sir.

Q. Have you seen that whip in court that you took? A. Yes, sir.

Q. Which one was it? A. The long, black one.

Q. What else did you see that was taken there at the church that night? A. Another whip and robe.

Q. Who took the other whip? A. My brother Willis.

Q. Who do you say took the robe? A. Harvey Bruce.

Q. Who put in into the wagon? A. Harvey Bruce put the robe in and I put one of the whips in and brother Willis put the other in.

Q. Are you accustomed to stealing--you knew you were

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stealing there that night, didn't you? A. Yes, sir.

Q. Is that a habit of your life? A. Not very.

Q. What do you say? A. No sir, it is not.

Q. You are not accustomed to it then? A. I am not; no sir.

Q. How did you come to do it that night? A. We took them.

Q. What do you say? A. We took them; that is all I know.

Q. You never done it before? A. I never stole a whip before.

Q. Never stole a whip? A. No sir; nor a robe or anything.

Q. You say this expedition down to your uncle's house was in order to give him a surprise? A. To scare him.

Q. You gave him quite a surprise before you left him? A. It was a fatal surprise.

Q. It was a fatal surprise? A. Yes, sir.

Q. You have heard the doctors testify here, have you not? A. Yes, sir.

Q. As to the result of the autopsy? A. Yes, sir.

Q. As to the number of bullets taken out of the body of your uncle? A. Yes, sir.

Q. And you have told your counsel here on the examination that only one bullet was discharged from your pistol anywhere near him? A. That I know of, yes, sir.

Q. You can't remember them? A. No, sir.

Q. Do you know of any other persons that shot any of the

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large number of shots that night into the body of your  
uncle? A. No, sir.

Q. You don't know anybody? A. No, sir.

Q. When you came out to go away and saw, as you say,  
your uncle undertaking to take a gun into his hand, you  
shouted out, "For God's sake, get out of here; he has got his  
gun; he will blow your heads off", or something like that,  
who did you see in the room? A. I saw a person, one per-  
son.

Q. What person? A. I couldn't say who it was.

Q. Where did you see a person? A. He stood to my left  
near the door.

Q. Did you see Bruce? A. I couldn't tell whether it  
was Bruce or who.

Q. Did you go directly from the door leading from the  
dining room into the kitchen to the outer door when you  
saw this man? A. Yes, sir.

Q. Did anybody follow you? A. Followed me out.

Q. Who was it? A. I couldn't say.

Q. Didn't you afterwards ascertain that night who  
followed you out? A. Only what I was told.

Q. Don't you know from the condition of things? A. Did  
you see Fred or Willis at any time after you ran through  
the kitchen to go out until you got down to the wagon  
house? A. I did not.

Q. Did you see Bruce at any time? A. I saw him down to  
the barn; I saw him by the barn.

Q. Did you hear somebody following you out of that house?  
A. I did.

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Q. Didn't you hear somebody following you in the direction of the barn? A. I don't remember; I couldn't say.

Q. What do you say? A. No, sir.

Q. You say that after you saw your uncle taking the gun you heard shots fired? A. I did.

Q. How many? A. I couldn't say.

Q. Several or one? A. I heard shots; more than one.

Q. Is that the most you can say? A. That is the most I can say.

Q. From what point in the kitchen were they firing?

A. From the door.

Q. When you got to the door you didn't find Bruce there, did you? A. I did not.

Q. How far would a person standing by the door be from where you saw your uncle when you say he was getting his gun? A. A short distance.

Q. About how many feet according to your recollection of that house? A. I might say wrong in telling you the number of feet.

Q. I ask you to estimate it? A. About ten feet, I should judge, or more; I couldn't say.

Q. If he was off the steps it would be still less, wouldn't it--if he was off the platform, down off of the kitchen floor, it would be less than the number of feet you have mentioned? A. Possible it would.

Q. Where was he *when* you saw him? A. Coming from the steps.

Q. Didn't you see him at all up on that platform? A. I did.

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Q. What? A. I did.

Q. When you saw him on the stairway where were you?

A. I was coming from the dining room; from the living room.

Q. Where were you when you first saw him? A. I was coming to the door.

Q. Had you got into the kitchen? A. No, sir.

Q. How near to the door had you got? A. I couldn't say.

Q. You couldn't see to that platform until you had substantially got in the door that leads from the sitting room into the kitchen? A. My mind was in a condition at that time that I couldn't say how many feet I was away.

Q. What was the matter with your mind then? A. It was excited.

Q. When did you first get excited? A. When we were in the grapple.

Q. Four athletic young men there, were there not---three others there? A. There was three other boys with me.

Q. Boys enough to have taken that man and thrown him <sup>1</sup> bodily out of there if you hadn't had pistols? A. No, sir; I don't think so.

Q. What? A. No, sir.

Q. What are you, right or left handed? A. Right handed.

Q. In which hand do you use a revolver when shooting? A. Right hand.

Q. Where was your revolver when you knocked on the door? A. In my left hand.



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Q. Why did you carry your revolver in your left hand when you knocked on the door? A. I had it in that hand when the dogs came out.

Q. If you had been going to use it on dogs in which hand would you use it? A. I couldn't say.

Q. Did you ever shoot a revolver with your left hand at any object? A. I have sometimes.

Q. Expecting to hit it? A. Not always.

Q. Are you willing to say under your oath to this jury that the reason you had your revolver in your left hand when you approached the door of Peter A. Hallenbeck's house that night was because of the dogs? A. I put it in my left hand when the dogs came at us.

Q. What for--what were you going to do with it in your left hand? A. Going to do some shooting.

Q. Do some shooting with your left hand? A. Yes, sir.

Q. Which hand are you the most accurate with in shooting? A. With my right hand.

Q. Were you holding your revolver in your left hand because the dogs were barking? A. Because the dogs were at us, around us.

Q. You say that Willis was off the steps? A. He was.

Q. When you were in front of the door? A. Yes, sir.

Q. And was armed with a revolver? A. I didn't see his revolver.

Q. At no time that night? A. No sir; I didn't see his revolver.

Q. Did you hear him shoot at any dogs? A. I couldn't say.

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Q. The dogs would have to pass where Willis was in order to get up into the stoop, wouldn't they? A. No, sir.

Q. Where would they come from? A. Come between Willis and where we were.

Q. They would have to pass him, wouldn't they? A. They could come in front of him.

Q. How much space was there in front of him right there in that doorway--how wide is the doorway? A. He was not by the doorway; he stood back from the stoop.

Q. How far from the stoop? A. Five or six feet.

Q. If he stood six feet from the steps how near would the dogs have to pass to him in order to go up those steps? A. About six feet.

Q. You didn't hear him fire at any dogs? A. I did not.

Q. You didn't ~~hear~~ fire at any dogs? A. I did not.

Q. And yet you tell the jury you put your revolver carefully in your left hand because you wanted to use your left hand in shooting at dogs? A. Yes, sir; I put it in my left hand.

Q. Which hand did you use to knock on the door? A. My right.

Q. You could have made a reasonable alarm upon that door with the revolver in your right hand and used your left hand to make the knock? A. I could have, yes, sir.

Q. Where did you first put your hands on the person of Peter A. Hallenbeck; what part of his person? A. Up here.

Q. Wasn't that done immediately when the door opened?

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A. After he had struck me; he had struck me after he opened the door.

Q. Where did he hit you? A. Under this (ind.) eye.

Q. Did you hear any mark of that the next day? A. I bore a mark of it while up in jail.

Q. Did you show it to anybody? A. No, sir.

Q. It was a mark that would have been observable?

A. It was just a blue mark.

Q. How long did you remain hold of Peter A. Hallenbeck?

A. A short time.

Q. What do you mean by a short time? A. A very short while.

Q. What do you mean by a very short while? A. It wasn't long.

Q. How many minutes? A. I couldn't say.

Q. What is your best impression about it? A. I couldn't say that.

Q. Was it a minute? A. I couldn't say.

Q. Was it two minutes? A. I couldn't say.

Q. Was it three minutes? A. I couldn't tell you.

Q. Will you answer that it was less than three minutes?  
A. It was a very short time.

Q. Will you swear it was less than three minutes?  
A. I couldn't swear.

Q. Will you swear that it was less than two minutes?  
A. No, sir.

Q. Where did you have hold of him? A. After he struck me I shoved him back; when I pushed him back with my hand he grappled me.

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Q. What did you do with your hands then? A. I was trying to get away from him.

Q. How? A. Trying to shove him away from me.

Q. You didn't get away from him? A. I tried to break the hold of his hand.

Q. Which hand did you use in trying to break his hold? A. Both of them.

Q. Revolver in it? A. Yes, sir.

Q. Where do you say he had hold of you when you were trying to break away from him? A. He had hold of my throat and on my arm.

Q. How many hands did he have on you? A. Both of them; sometimes on my throat, about me in different places.

Q. Where were his hands when the revolver went off? A. I think they were---I think he had one hold of my left hand with his hand.

Q. Which of his hands had hold of your left hand? A. The right hand.

Q. When the revolver went off? A. Yes, sir.

Q. Whereabouts did he have hold of you? A. I think around the wrist.

Q. In which direction did your revolver point when you had hold of it in your right hand? A. I had it in my left hand; had it in my hand this way (ind.).

Q. Pointed from you? A. Yes, sir.

Q. And from your arm? A. Yes, sir.

Q. Where was your right hand at that time? A. Hold of his other hand, or shoulder, or arm.

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Q. You say his hand, or shoulder, or arm--which?  
 A. His arm---anywhere from there (ind.) up.

Q. You had your finger on the trigger? A. I did, yes, sir.

Q. You had your finger on the trigger when you entered the room? A. I did, yes, sir.

Q. That revolver went off in your hand while your finger was on the trigger? A. While we were in the struggle; yes, sir.

Q. Do you know where it hit him? A. I do not.

Q. Did you see any fire about the person of Peter A. Hallenbeck that night? A. I did not.

Q. At no time? A. At no time.

Q. You saw no blood on his wrist, flowing from his hand? A. No, sir.

Q. Or about his hand? A. No, sir.

Q. Or about his face or mouth? A. No, sir; not at all.

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

Q. Who, if any one of these four people that were there, did you see fire towards any ceiling or floor, or side wall? A. I didn't see anybody shoot.

Q. You heard many shots being fired there? A. I heard shots.

Q. Many of them, didn't you? A. Quite a few, yes, sir.

Q. Did you learn that evening at any time how many shots had been fired in that house? A. I did not, no, sir.

Q. Where did you load <sup>up</sup> your revolver? A. At home.

Q. When? A. Next day.

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Q. When you went down to Peter A. Hallenbeck's that night to surprise him and only to shoot some bullets around about him, what did you turn your coats wrong side out for?

A. Didn't want him to know who we were.

Q. What did you wear masks for? A. For the same reason.

Q. Why didn't you want him to know who it was? A. We didn't want him to know.

Q. Why? A. We didn't want him to know.

Q. What were you going to do there that you would be ashamed to have him know that you were going to do it?

A. Scaring him.

Q. Scaring him <sup>how?</sup> A. By shooting.

Q. In his kitchen? A. In his house.

Q. Would there been anything in shooting in his house ---could you not alarm him just as well if your faces were exposed? A. We could, yes, sir.

Q. Your coats on rightly? A. There would be an after clap.

Q. You thought that would be illegal to go there and shoot about those rooms? A. Yes, sir, I did.

Q. By an after clap you thought he might have you arrested if you went there and did it? A. Yes, sir, for shooting.

Q. If you went there to make a noise in the house only and to scare these old people, why didn't you use blank cartridges? A. I didn't think of them; we didn't have them.

Q. You could have found them? A. I didn't think about them.

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Q. That is the only reason you can give? A. Yes, sir.

Q. You could have removed the bullets from the cartridges you had and fired them blank? A. If we had thought about it.

Q. You want this jury to believe that you thought it was safe for you to go into that old man's house with drawn pistols and assault him with pistols loaded? A. We thought the shooting was safe.

Q. It didn't turn out to be safe, did it? A. No, sir, it did not.

Q. You have seen blank cartridges? A. I have not.

Q. Never fired one? A. No, sir.

Q. And you don't know that they are used? A. I never heard of them being used.

Q. You don't know that they are commonly used? A. No, sir; I don't.

Q. Have you ever been at any 4th of July? A. I never used any.

Q. You never saw any boys use a cartridge on the 4th of July? A. No, sir.

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

Q. You want this jury to believe that stuff do you? A. Yes, sir; I do; I never had one.

Q. Haven't you participated in 4th of July celebrations with other boys? A. Yes, sir; when I was small we fired crackers.

Q. Haven't you see them using pistols? A. Yes, sir; cap pistols.

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Q. Never seen a pistol used on 4th of July with blank cartridges? A. I never have, no sir.

Q. Tell me where you fired the four cartridges or bullets out of your pistol besides the one you say was discharged while you had hold of Peter A. Hallenbeck? A. In the dining room; in the living room.

Q. All discharged in that room? A. I might have been in the bedroom, but I can't remember whether I was or not.

Q. How many times did you fire in the living room? A. I discharged four shots; I don't know whether I discharged them all in the living room or some of them in the bedroom.

Q. How many did you discharge in the bedroom? A. I couldn't say; I don't remember; I can't say whether I discharged any there or not; I am not positive about that.

Q. Did you discharge any into the ceiling overhead in the dining room? A. I discharged bullets in that room; I am not certain whether I discharged any in the ceiling.

Q. What did you fire at? A. I don't know what I fired at; I discharged them in that room.

Q. You were so excited then that you can't tell what you fired at? A. No, sir.

Q. You were so excited, weren't you, that you can't tell how many bullets you fired in the sitting room and how many in the bedroom? A. I fired the four bullets.

Q. Answer my question? A. I couldn't say as to that, whether I fired.

The Court: Strike out the answer.



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(Question repeated) A. I discharged four bullets.

Q. I asked you if you were excited and you state you were and now I ask if you were so excited at that time that you cannot remember how many of those you fired in the sitting room and how many you fired in the bedroom.

A. I cannot say.

Q. Is it because you were so excited at the time?

A. I don't remember how many I fired.

Q. Why don't you remember? A. I have forgotten.

Q. You heard your uncle was killed as the result of the visit of this party to his house on the 24th? A. Yes, sir.

Q. You heard it the next day early? A. About noon time of next day.

Q. The incidents of that night as they occurred at the house were then fresh in your mind, were they not?

A. Some parts of them.

Q. You found it was a pretty important matter when you learned that Peter A. Hallenbeck was dead, did you not?

A. I knew it was an important matter.

Q. And yet you tell me in the presence of this jury that you can't tell where you fired that pistol off?

A. I know of two bullets I fired. I know where two of them landed.

Q. Where? A. One in the chimney and one through the door.

Q. Through what door? A. Through the bedroom door.

Q. In what room were those? A. Those were in the bedroom.

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Q. Do you know where any others landed, or what they were directed at? A. Two in the dining room; I can't say where they landed.

Q. Did you see Bruce make any shots there? A. I did not.

Q. You don't know that he fired any shots at all then? A. I do not.

Q. You can't say how many he did fire? A. I cannot.

Q. What had you four boys, or young men, been doing anterior to December 24th with reference to labor? A. We hadn't done any work since October.

Q. Who did any work in October, which one of you? A. Up to October---we hadn't done anything from the first of October.

Q. Who did work prior to the first of October? A. My brother Fred and me.

Q. For whom? A. For the New York Central.

Q. What service? A. Signal department; tower service.

Q. At what place were you at work? A. I worked a short while between High Bridge and Poughkeepsie and the remainder between Poughkeepsie and Albany.

Q. Where did your brother work? A. He first worked Hudson, between Poughkeepsie and Albany, and then was transferred to Garrison.

Q. How did you come to leave that employment? A. Neglect of duty.

Q. Discharged? A. Yes, sir.

Q. Both of you? A. Yes, sir.

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M o r n i n g S e s s i o n .

BURTON VAN WORNER, resumed on Cross-Examination.

Examined by Mr. A. F. B. Chace.

Q. When you were down at the horse barn on the night of the 24th of December last changing your clothes and putting on your masks, you say you gave some instructions to the others? A. I did.

Q. About what they should do and what they should not do? A. Yes, sir.

Q. Did you tell them when they should commence firing? A. I did not; no, sir.

Q. Did you tell them what signals would be used by you to show them when to commence firing? A. No, sir.

Q. You were in command of that battalion, were you not? A. No, sir; I was not.

Q. Who was? A. There was not anybody in particular.

Q. Who gave instructions with reference to firing into the floor and ceiling and side walls other than you?

A. There was not any instructions given to that effect.

Q. Didn't you testify on your direct examination that you told the boys down at the horse barn, or wagon house, that they should fire into the floors, or ceiling, or side walls? A. No, sir, I did not.

Q. You did not testify on your direct examination that they should be fired in the ceiling, side walls or floor

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and be particularly careful not to hit any one? A. I told them of all they done not to shoot anybody.

Q. But you didn't so testify yesterday? A. No, sir, I did not.

Q. When did you first see Mrs Margaret Hallenbeck after the rap was made on the door? A. I saw her going up the stairway in her bedroom.

Q. You didn't see her in the kitchen at all? A. No, sir I did not.

Q. You were the first man in the kitchen? A. Yes, sir.

Q. No one between you and Peter A. Hallenbeck? A. That is all I saw.

Q. That is not an answer to my question? A. I didn't see any one else but him.

Q. No one stood between you and Peter A. Hallenbeck? A. Not that I saw.

Q. Plain, clear light in the kitchen, was there not, when you went in? A. There was a light there, I think.

Q. Bright light, was there not? A. I couldn't say whether it was bright.

Q. You could see plainly in the kitchen? A. I could see Mr. Hallenbeck.

Q. Plainly? A. Yes, sir.

Q. You didn't see Mrs Hallenbeck at all in the kitchen? A. No, sir, I did not.

Q. That you swear positively to? A. Yes, sir.

Q. You didn't see her pass out of the kitchen? A. I did not.

Q. You didn't see her in the sitting room? A. No, sir.

Q. You didn't

- 1 Q. You didn't see her in the bedroom? A. No, sir.
- 2 Q. Where did you see her? A. Going up the stairs from
- 3 her bedroom.
- 4 Q. Leave that door open? A. I think she did.
- 5 Q. What? A. As I remember she did.
- 6 Q. How many dogs were there that night? A. Two.
- 7 Q. You knew them well? A. Well, not very well; I knew
- 8 one of them very good.
- 9 Q. Your brothers knew them? A. Well, not very well;
- 10 they knew that dogs were there and seen them.
- 11 Q. They were accustomed to be there a good deal? A. Yes
- 12 sir; at different times.
- 13 Q. And these dogs were there? A. Yes, sir.
- 14 Q. What was the relation between your stepmother and
- 15 your mother? A. Sisters.
- 16 Q. What money did you have when you were arrested? A. I
- 17 don't know; I think I had 10 or 12 dollars; something
- 18 like that.
- 19 Q. What did you do with it? A. I gave it to my mother.
- 20 Q. Where? A. Kinderhook, at the house.
- 21 Q. You say you didn't go to Wener's and buy a mask?
- 22 A. I did not.
- 23 Q. At no time? A. No, sir.
- 24 Q. On or before the 24th? A. No, sir.
- 25 Q. When did Fred get his mask? A. I don't know.
- Q. When did you first see it? A. I didn't see it
- until the night when he put it on; that is the first I
- knew he had one.
- Q. Where did you get your mask? A. I had a piece of
- cloth.

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Q. Used it as a mask? A. Yes, sir.

Q. Holes cut in it? A. Yes, sir.

Q. For what? A. Eyes. Two eyes.

Q. How far down did it come? A. All over my face.

Q. Where did you prepare that mask? A. I had it Halloween night, when I first had it.

Q. You kept it from that time? A. Yes, sir.

Q. Where did you get it to take it with you that night? A. Before I went after the horse.

Q. When did you first know that the three false faces were taken down that night? A. I knew there was two put in the wagon that night when we started; I knew Willis and Harvey put theirs in.

Q. You didn't know there had been any preparation made by Frederick, or for Frederick, as to concealing his face? A. No, sir.

Q. You didn't make any inquiries? A. No, sir; I did not.

Q. It didn't occur to you that if he went there bare faced the party would be known just as well as though all of the party were bare faced? A. I didn't know he had a mask.

Q. You didn't take any concern whether he had or not? A. No, sir, I did not.

Q. It didn't occur to you that if went unmasked the party would be known? A. No, sir, it did not.

Q. Where did you see the masks when they were put in the wagon? A. I saw the masks put in the back end of the wagon when we came out.

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Q. Who put them in? A. Willis.

Q. Did you ask whether Frederick had any? A. No, sir, I did not.

Q. You didn't go to Vener's store on the day or early evening of the 24th? A. No, sir, I did not.

Q. You didn't go there with Frederick? A. No, sir.

Q. You didn't go there with Willis? A. No, sir.

Q. You didn't go there with Bruce? A. No, sir.

Q. How was your mask kept on? A. Strings.

Q. Describe the string, how was it applied? A. Tied on the side of the cloth and tied at the back of my head.

Q. When were you in Greenport prior to the evening of the 24th? A. At the time we moved our last load of furniture from there.

Q. When was that? A. I don't remember what day it was; it was sometime after we had been living in Kinderhook.

Q. You were acquainted with the bay mare you hired and drove on the night of the 24th? A. Yes, sir.

Q. How long had you been acquainted with her? A. I had hired her several times.

Q. How many times? A. I couldn't just say how many, but I had hired her a number of times.

Q. Give us as near as you can the number that you can now recollect? A. I could not give you the correct number, *A. I had a number of times, yrs. sir. Q. Where did you drive her?*

Q. Many times? A. I drove her to Chatham and to Stottville, and I have been to Stockport Center with her, and at Rossman with her.

Q. When did you last drive her prior to the night of the

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34th? A. I couldn't say.

Q. She was rapid roadster? A. Yes, sir; a good roadster.

Q. If you went down to your uncle's only to give him a surprise what reason can you give, if any, for the rapidity with which you drove down there and back? A. We wanted to get down there and back home.

Q. Why in such great haste? A. That is all I can tell you; I can't tell you further than that.

Q. That is all you can say? A. Yes, sir.

Q. Now, you have said in your examination that the kitchen was very full of smoke, black or blue with it, as you called it; that is quite a large kitchen, is it not?

A. Yes, sir.

Q. A door opening from that into the sitting room?

A. Yes, sir.

Q. Which was opened? A. Yes, sir.

Q. That is also a large room? A. Yes, sir.

Q. Don't you know as a fact that pistols of the size of cartridges used by you make but a small amount of smoke each time they are fired? A. There is a difference in the smoke of cartridges.

Q. It depends largely upon the size of the cartridge and the amount of powder? A. A small cartridge will make a large amount of smoke sometimes, according to the powder.

Q. That depends upon the quality of the powder?

A. Yes, sir.

Q. How many shots were fired in that kitchen to make all this smoke? A. I couldn't say.



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Q. What is your best recollection as to the number of shots that were fired? A. I couldn't give you an estimate as to how many were fired.

Q. How do you account for the number of bullets that were found in the body and clothing of Peter A. Hallenbeck by the doctors? A. I can't account for them.

Q. You saw nothing that occurred there that night in that kitchen which would in any way account for the number of bullets found in the body of Peter A. Hallenbeck? A. I did not.

Q. Or in his clothing? A. No, sir.

Q. You told me yesterday, I think, that when you came out of the sitting room, or back from the sitting room to the kitchen, that when you reached the kitchen door you saw Peter A. Hallenbeck on a platform at the foot of the kitchen staircase getting his gun? A. I saw him from the dining room.

Q. You must have nearly reached the kitchen door before you saw him? A. I was in front of the kitchen door; I was between the door from the kitchen into the sitting room when I saw him first; the door that leads from the kitchen and the sitting room; I was in the sitting room.

Q. How far from the door sill of the door that leads from the kitchen into the sitting room? A. I couldn't say how many feet it was.

Q. How far do you think you would have to be from that door sill before you could see diagonally across? A. I could see him way across the room.

1 Q. If you stood at right angles? A. Yes, sir.

2 Q. But you came out of the bedroom? A. I don't know if

3 I did or not.

4 Q. You don't know whether you went into the bedroom?

5 A. I couldn't say, no, sir.

6 Q. Didn't you say yesterday on your examination that

7 you fired the shot into the bedroom through the door that

8 entered the bedroom? A. I don't remember that I did. I

9 said I didn't know whether I was in the bedroom or not.

10 Q. And you didn't swear yesterday that you shot through

11 the door that entered the bedroom? A. I shot the bullet

12 through the door.

13 Q. You said that? A. Yes, sir.

14 Q. You say so now? A. Yes, sir.

15 Q. And one through the chimney? A. Yes, sir.

16 Q. That door was open, was it not? A. Yes, sir.

17 Q. Then you had to enter ~~the~~ <sup>that</sup> door to shoot into that

18 room? A. No, sir; I don't think I did.

19 Q. You don't think you entered that room? A. I don't

20 think I did; I will not say I did or didn't; I don't think

21 I did.

22 Q. How could you shoot into that door without going in

23 the bedroom? A. I could be on the door sill; I could

24 shoot from the dining room through the door.

25 Q. Assuming that the only bullet hole in that door

passed through the door and lodged in the wall immediately

behind it, could you then have made that bullet hole by a

shot from your pistol without going into the room? A. I

think I could.

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Q. How could you do it? A. Standing near the doorway, threshold of the door.

Q. Which side of the door sill? A. In the sitting room.

Q. You think that that door, standing nearly open, substantially against the wall at the right, that you could stand in the dining room and fire a bullet through that door substantially at right angles to it? A. If I stood near the doorway.

Q. If you didn't go into the bedroom how could you see Mrs Hallenbeck going up the stairs? A. Through the door.

Q. Now, I will go back to your return and will you tell me how near you had reached the door sill of the door leading from the kitchen into the dining room when you first saw Peter A. Hallenbeck again? A. I couldn't say how near I was to the door.

Q. What is your best judgment about it? A. I couldn't give you the number of feet.

Q. You saw him plainly? A. I saw him, yes, sir.

Q. Did you continue to see him as you approached the doorway and went into the kitchen? A. Yes, sir; until I went out on the stoop.

Q. Where was he standing? A. On the platform. He had his gun. He was coming towards the door on the platform.

Q. Which way was he faced? A. He was faced towards us; towards me.

Q. In which hand did he have the gun? A. He had it this way (ind.); in both hands.

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Q. How long did you continue to look at him? A. A very short while.

Q. Didn't you keep your eye on him? A. Until I got out on the stoop.

Q. Then you watched him by going through the kitchen?  
A. It was a very short while I was watching him.

Q. As long as going through the kitchen? A. Yes, sir.

Q. You kept your eyes on him? A. Yes, sir.

Q. At any time did you see his right arm limped by his side? A. I did not.

Q. On the contrary you say at all times you were passing from the dining room into the kitchen to the outer door, going out into the rear entry, you kept your eyes on him and the gun; now I want to ask you if he kept both hands on the gun during all that time? A. I think he did; I couldn't say.

Q. When you reached near the kitchen door where were your two brothers? A. They were gone, I think.

Q. After you reached the kitchen door did you hear any shots? A. I heard shots before I reached the door.

Q. Answer my question? A. No, sir; I did not.

Q. All of the shots that you heard there in that house, there that night, had been fired before you reached the kitchen door in going out? A. Yes, sir.

Q. And now, having said that, you continue to say that after watching Peter A. Hallenbeck closely, passing from the dining room door into the kitchen, and through the kitchen exit, or door into the entry, that he had both hands on the gun all the time? A. I think he did.

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Q. And that during none of that time you saw his right arm hanging limp by his side? A. No, sir; I did not.

Q. Or straight ~~up~~ down by his side? A. No, sir.

Q. Or by side in any way? A. No, sir.

Q. While you were passing from the dining room door through the kitchen, did you hear shots fired then? A. Yes, sir.

Q. Where were the persons standing who fired them?

A. They looked as though they was fired from the door.

Q. Who was at the door? A. I couldn't say who was at the door.

Q. Why couldn't you say? A. I couldn't say.

Q. Why couldn't you say? A. Their clothes were turned inside out and their faces were masked.

Q. You couldn't tell each other apart that night? A. No sir.

Q. You mean that? A. Yes, sir, I do.

Q. You testify to that on your oath? A. Yes, sir, I do.

Q. You couldn't tell which was Bruce? A. No, sir.

Q. Or which was Frederick? A. No, sir.

Q. Or which was Willis? A. No, sir.

Q. You were perfectly familiar with the size of these men? A. I was.

Q. Perfectly familiar with their masks? A. No, sir; I was not; I saw them.

Q. You saw them with their masks on? A. Yes, sir.

Q. You talked with them by name? A. Yes, sir.

1 Q. Talked to Bruce? A. Yes, sir.

2 Q. You did know him from the others when you talked to

3 him? A. Oh, I knew his voice; I didn't know his looks.

4 Q. But you couldn't tell Frederick from Willis? A. No,

5 sir.

6 Q. Or Willis from Bruce? A. No, sir; their faces were

7 nearly alike.

8 Q. Bruce didn't go out of that kitchen ahead of you?

9 A. Not that I know of.

10 Q. Don't you know he didn't? A. I do not.

11 Q. Didn't you testify yesterday that you heard him follow

12 -ing you behind? A. I said I heard some one following.

13 Q. Didn't you hear that same person follow you towards

14 the barn? A. I did not; no sir.

15 Q. A person did follow you toward the barn? A. Yes,

16 sir; a person came up to me at the barn.

17 Q. Which barn? A. The barn north of the house.

18 Q. You were running? A. Yes, sir.

19 Q. Pretty rapidly? A. Yes, sir.

20 Q. And he overtook you? A. Yes, sir; at the gate.

21 Q. When you came out of the door you didn't see either

22 Frederick---A. (Int'g.) I didn't see any one.

23 Q. Or Willis? A. I didn't see no one.

24 Q. You testified yesterday, did you not, that you heard

25 some one walking across the floor behind you as you went

out? A. I don't think I did.

Q. What do you say as to it now? A. I don't remember

hearing anybody walking behind me.

1 Q. How rapidly were you moving? A. I came out of there  
2 in a hurry.

3 Q. Walking or running? A. I think I was running.

4 Q. You didn't hear any one following behind you? A. No,  
5 sir; I said yesterday that I passed a person in the  
6 kitchen.

7 Q. Where did you pass him? A. Near a table there.

8 Q. In the kitchen? A. Yes, sir.

9 Q. Did you go near the table yourself? A. I passed  
10 by it, in front of it.

11 Q. Where did the table stand with referance to the  
12 range? A. Back to the right of the door, the entry door.

13 Q. That is where the range was? A. No, the range stood  
14 between the two doors leading into the dining room.

15 Q. Where did the dining table stand? A. I am not talk-  
16 ing about the dining table---there was another door that  
17 opened back of the place where I saw this person; between  
18 the door that goes into the sitting room---

19 Q. (Int'g.) On your left hand side as you come out?  
20 A. Yes, sir.

21 Q. How close did you pass to that person? A. Quite  
22 close.

23 Q. You couldn't tell who that was? A. No, sir; I  
24 didn't stop to look to see who it was.

25 Q. You didn't speak to him? A. No, sir. I warned them  
all before I came out to run.

Q. You saw others over near the door? A. Yes, sir.

Q. How many were near the door? A. Two.

Q. You could see to distinguish there were two there?

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A. Yes, sir.

Q. And the third person---- A. (Int'g.) Was to the right of them by this table.

Q. Was there a cupboard behind that kitchen door? A. I couldn't say as to that.

Q. Haven't you been in the house enough to remember it? A. I didn't take notice.

Q. You don't remember that a large cupboard stood behind the kitchen door? A. There is something there, but I don't know what it is.

Q. Against which the door swings? A. Yes, sir, but I can't remember what it is.

Q. This person stood between that cupboard door and the dining room door? A. Yes, sir.

Q. What was that person doing? A. He stood there; that is all I saw.

Q. Was he firing? A. I didn't see him.

Q. Will you swear that that was not Bruce? A. I will not; I didn't know who it was.

Q. I don't ask that. This room was not so affected by smoke but what you could see from the kitchen door, or rather the dining room door into the kitchen, and even before you reached it, across that kitchen diagonally to the stairway where you say you saw Peter A. Hallenbeck? A. At that time I could see.

Q. The shots were being fired then? A. There had been some fired.

Q. There were some shots fired while you were crossing



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the kitchen? A. No sir; I have not said so.

Q. You have not said a few moments ago there were shots being fired from near the kitchen door? A. Before I got to the kitchen door I said there was shots fired.

Q. If you had reached near enough to the kitchen door to see--near the outer door, hadn't you? A. I could see from the dining room; I could see the kitchen door from the living room.

Q. In what part of that dining room did you go? A. Right in from the door.

Q. Into what part of the dining room? A. The first part you would come to going through that door.

Q. How far from a direct line from the center of the doorway to the left in that room did you go at any time? A. I couldn't say.

Q. How far from that line did you stand, or were you, when you say you could see the kitchen door, the outer kitchen door? A. I was in front of the door so I could look through; I was in the dining room.

Q. You were near the door sill? A. I wouldn't say that. I was in the dining room so I could see the kitchen door.

Q. Near the door sill? A. I couldn't say.

Q. Then you saw shots fired near the door? A. Yes, sir I saw shots fired.

Q. And heard them? A. Yes, sir.

Q. About how many? A. I couldn't say.

Q. Then you saw shots fired near the door? A. Yes, I saw shots fired.

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Q. You said yesterday that all of you men had your  
revolvers in your hands when the door opened? A. I did.

Q. Didn't you see others have them? A. I did not.

Q. Bruce and Frederick were right by you? A. They  
were to the left of me.

Q. Close to you? A. They were very close; yes, sir.

Q. Before you rapped didn't you notice and see that they  
had their revolvers? A. No, sir.

Q. You entered that room with the intention of firing,  
did you not? A. I did, yes, sir.

Q. You knew that the others were to fire? A. Yes, sir.

Q. You had your revolver ready to fire? A. I had it  
in my left hand.

Q. When did you put it in your right? A. When I dis-  
charged the four shots.

Q. When you left Peter A. Hallenbeck, as you say, in the  
kitchen where was he? A. He was coming from the platform  
in the stairs.

Q. When you left to go into the other room? A. Oh, he  
was right about in front of the kitchen door, to the right  
of it a little; between that and the stove.

Q. That is quite a distance? A. Not very far.

Q. Which was he nearest to, the kitchen stove or the  
outer door? A. Nearest the stove.

Q. When you left him where was Frederick? A. I could-  
n't say.

Q. Where was Willis? A. I couldn't say as to that.

Q. Where was Bruce? A. I couldn't say as to that.

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Q. Where were any of the other three men who went in there with you? A. Two in the door and one behind me.

Q. What were either of those men doing when you left? A. I heard some shots; I couldn't say who fired them.

Q. How many shots did you hear? A. I couldn't say as to that. I heard a number of shots.

Q. From what direction did you hear the shots? A. From behind me.

Q. Before you left the room, the kitchen, that night, and went into the dining room had either of the other three men that went into that room passed by you toward the place where Hallenbeck stood? A. Not that I remember.

Q. You saw neither of the three men who were in that room with you on either side or behind Hallenbeck before you went into the dining room? A. I did not.

Q. And didn't you stand between Hallenbeck and the door? A. I stood between Hallenbeck and the boys behind me.

Q. And from where they stood, before you left Hallenbeck and went into the other room, they could not have fired into him very well without hitting you? A. They could not; no, sir.

Q. And you had heard several shots before you left? A. Yes, sir; I heard some shots.

Q. And heard quite a number, didn't you? A. I couldn't say how many.

Q. What is your best recollection as to how many? A. I couldn't tell you.

Q. Ten? A. I couldn't give you any idea.

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Q. There were several? A. Yes, sir; there was a number of shots fired.

Q. None of them hit you? A. No sir; they did not.

Q. Were not the shots that were fired in the kitchen that night fired rapidly? A. Why, there was a number of shots fired, yes, sir.

Q. Were not all the shots you heard in that room fired rapidly and quickly? A. They followed one another but I couldn't say how rapidly.

Q. How long, do you think, you were in that house?  
A. A very short time.

Q. Give some idea? A. I couldn't give you no idea.

Q. A minute? A. I couldn't say.

Q. Two minutes? A. I couldn't say how long. We were there but a very short time.

Q. Well, all of the revolvers were emptied there, were they not? A. I don't know.

Q. Do you know of any that were not? A. I don't know. I didn't ask about them.

Q. Did either of these dogs come upon the stoop? A. They did.

Q. Which one? A. Both of them.

Q. What did you do with reference to them? A. Kicked them away once.

Q. Who kicked them? A. I couldn't say who did that. They were kicked away I know.

Q. You said you couldn't tell these three men apart?  
A. I could not.

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Q. How did you know when you were testifying under Judge Gady's examination that Willis stood down on the ground about six feet away from the stoop? A. Because he was behind us all.

Q. How do you know it was Willis? A. I know it was him.

Q. And how? A. Because I heard them say---Bruce says "I am behind you and Fred is behind me".

Q. Who said that? A. Bruce.

Q. Hadn't you told Bruce to walk behind you? A. No, sir, I had not.

Q. Hadn't you told Fred to walk behind him? A. No, sir.

Q. And Willis behind him? A. No, sir.

Q. You think either Bruce or Fred could tell which Willis was? A. I couldn't say whether they could or not.

Q. You say one of them told you that Willis was on the ground? A. Yes, sir, they did.

Q. And that is the only way you knew it was Willis? A. Yes, sir; that is the only way I knew.

Q. How long before the rap was made on the door was it that that dog <sup>was</sup> kicked out? A. I couldn't say.

Q. How big a dog was that? A. They were two good sized dogs.

Q. When the dog was kicked what did he do? A. I guess they got off the stoop.

Q. Did Willis try to prevent the dogs going up on the stoop? A. I don't know.

Q. Which side of you did Bruce stand on the stoop? A. To the left.

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Q. That would be towards the dogs, towards the entrance? A. He stood at the left of me---towards the entrance.

Q. Where did Fred stand? A. I think he stood at the left of Bruce.

Q. How did you know that it was Fred and not Willis? A. I couldn't say only what they told me.

Q. Who told you? A. Bruce says "I am next to you and Fred is next to me".

Q. How loud a voice did he says that in? A. Why, ordinary voice.

Q. Now, do you know Orville Kellerhouse? A. I know him to see him.

Q. Who did he work for that summer? A. Mr. Best.

Q. Did you have an acquaintance there? A. No, sir; I never knew him any more than to see him.

Q. Did you have any acquaintance living at Best's? A. Why, I knew Mr. Best, yes, sir.

Q. Son of the older man, or was he the proprietor? A. He was the proprietor.

Q. How old a man was he? A. Fifty, I should think.

Q. Did he have any other hired men except Kellerhouse? A. He had a number of hired men.

Q. Did you go there on one occasion and take a wagon and take a person from there anywhere? A. Not that I remember; no, sir.

Q. You don't remember of seeing Kellerhouse and talking with him? A. No sir; I never did.

1 Q. That you are positive ~~sure~~ of? A. Yes, sir, I am.

2 Q. What man worked for Best that you knew? A. I knew  
3 them all by sight.

4 Q. What one of them did you associate with, if any?  
5 A. There was a boy there by the name of Shook.

6 Q. Didn't you go there some day or early evening and  
7 call for Shook? A. No sir, I did not.

8 Q. Has not Shook gone out with you? A. Yes, sir; he  
9 has been out with me a number of times.

10 Q. Where would you find him when you wanted him? A. He  
11 came to the house sometimes, and sometimes I met him at  
12 the post-office and blacksmith shop.

13 Q. But you can't recollect driving there at any time  
14 last summer? A. I cannot; no, sir.

15 Q. Do you swear you didn't? A. I don't think I did.

16 Q. That is the most you will say; that you don't think  
17 you did? A. I don't think I did.

18 Q. Now, you know Annie Altheizer? A. Yes, sir, I do.

19 Q. How long have you known her? A. A short time.

20 Q. What do you call a short time? A. A month or two.

21 Q. Month or two from when? A. Last summer.

22 Q. How early last summer did you know her? A. It was  
23 late, I should think.

24 Q. How late? A. July or August, or sometime about  
25 there, or September; I couldn't say which.

26 Q. Where was she at work then? A. At my uncle's.

27 Q. You saw her frequently? A. Well, not frequently; I  
28 saw her at different times.

29 Q. Had conversation with her? A. Nothing to amount to  
30 anything.

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Q. You had conversation with her? A. Always in front of somebody; I have passed the time of day and talked to her.

Q. Ever been in company with her? A. Not alone.

Q. Have you ever been in company with her when others were present? A. Yes, sir.

Q. You acting as her escort? A. No, sir.

Q. Who was? A. Why, no one; she came to our house.

Q. Did you tell Schumacher of Kinderhook on the evening of December 24<sup>th</sup> that you would call and take that suit of clothing on your return that night? A. I did not, not ~~that~~ that way.

Q. You didn't tell him that? A. Not in those words, no, sir.

Q. In substance that? A. He came to me and asked me.

Q. Did you tell that in substance? A. No, sir; I didn't tell him that.

Q. Didn't you inform him in any way after your return home that night you would call and take that suit of clothes? A. I didn't tell him I was going away.

Q. That is not answering my question? A. I did not tell him so.

Q. Didn't he tell you that the express office would be shut up at that time? A. No, sir; he did not.

Q. Didn't he ask you what time you were going to get back? A. Not that I remember.

Q. Didn't you tell him about 11 o'clock? A. No, sir.

Q. Didn't you tell about 10 o'clock? A. No, sir.

Q. Didn't you name the hour? A. I didn't name no hour at all.



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Q. Didn't you ask him if he couldn't arrange it with the express office so you could get it Christmas morning?

A. I did; I told him---

Q. (Int'g.) Did he tell you he would make that arrangement for you? A. He said he would see the agent.

Q. If you believed, while you were crossing the kitchen from the dining room to the outer entrance, that your uncle Peter had not been injured, or seriously injured, and that he stood on the platform with his gun in his hands, why didn't you pull off your masks and disclose yourselves to him and tell him you were only there to have some fun with him.

Objected to as immaterial, irrelevant and illegal.

Objection sustained.

Q. When , as you say, you found your uncle Peter trying to resist the entering of these masked men into his house, you did not disclose your identity to him in any way or try to stop him, did you? A. I don't understand that question.

(Question repeated). A. I didn't understand the question.

Objected to as assuming a fact not proved; that the question embraces the proposition that he didn't try to stop him.

The Court: The question is a compound question and involves two propositions and ought to be divided, I think.

(First part of question repeated).

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The Court: Do you understand the meaning of the word "identity"?

The witness: Yes, sir. No, we didn't make ourselves known.

Q. You didn't try to make yourself known? A. No, sir.

Q. You didn't try to prevent his further resistance in any way except by force as you have described, did you?

A. I don't understand that.

(Question repeated.)

Objected to as improper in form and as not correctly stating the testimony, and as illegal and incompetent.

The Court: The witness is entitled to know what time you have reference to in this question. I don't think the question fairly informs him of the time.

Q. At any time after your entrance into the kitchen and while struggling with Peter Hallenbeck, as you have described, did you attempt in any way to stop the struggle except by the force you were using?

Objected to upon the same grounds and upon the specific ground which the Court himself interposed, as not fairly stating the proposition sought to be testified to.

The Court: This question covers the entire time. I think it is a proper question.

Defendant, except.

A. I tried to get away from him.

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Q. By struggling with him? A. Yes, sir; I tried to break my hold with him.

RE-DIRECT EXAMINATION by Mr. Gady:

Q. The shots which you heard at the kitchen door, and saw at the kitchen door when you were looking across the room, were fired by some of your party, were they not? A. Yes, sir.

Q. You didn't mean to deny that they were not? A. No, sir.

Q. What you meant to say, I assume, was that you didn't know which one fired them? A. I did not.

Q. Have you correctly described to Mr. Chace and to me all that you remember that occurred in the room after you got in there? A. I think I have.

Q. Nothing else occurs to you? A. Not at present.

Q. Do you mean to testify positively or not that you did not go into the bedroom or that you don't remember whether you went into the bedroom or not? A. I don't remember.

Q. Do you say you did or did not? A. I couldn't say either one.

Q. That is the way you desire to be understood? A. Yes, sir; I might have been in it and I might not.

Q. When you went for the horse with Bruce at five o'clock on the evening of the 24th or thereabouts did you see Mr. Brown? A. No, sir.

Q. You didn't see him at any time while you were there? A. No, sir.

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Q. Or while you were going away? A. No, sir.

RE-CROSS EXAMINATION by Mr. A. F. B. Chace:

Q. When you left Peter A. Hallenbeck in the kitchen and went into the dining room you left no person near him, did you? A. I didn't see anybody near him.

Q. You say you then believed that he was then unhurt? A. I thought he was, yes, sir.

Q. You knew he had this shot gun? A. Yes, sir, I did.

Q. You knew where he kept it? A. I did.

Q. And still you left him and went into the dining room instead of going out of doors? A. I was frightened; I run away from him; I broke my hold and run away.

Q. The outer door was not the <sup>easy</sup> way of escape for you?

A. I didn't think about it.

Q. You say you were frightened and instead of making your easiest escape backwards out of the kitchen door where you came in you went into the other room and went to firing shots? A. Yes, sir.

Q. After you were frightened? A. Yes, sir; I run away from him then.

Q. What were you afraid of? A. I wanted to get away from him.

Q. What were you afraid of? A. I couldn't say; I was excited.

Q. You were excited? A. Yes, sir, I was.

Q. When you left Hallenbeck and went into the dining

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room there was nothing to prevent your turning around and going to the outer door where you came in, was there?

A. If I could have thought of it.

Mr. Chace: That is not an answer and I move to strike it out.

The Court: Strike it out.

(Question repeated.) A. Not that I seen.

Q. So far as you were personally concerned then there was nothing to restrain or prevent Mr. Hallenbeck from going and getting his gun? A. Not that I know of.

Q. And yet you went into the sitting room? A. Yes, sir.

Q. And into the bedroom? A. I don't know whether I was in the bedroom or not.

Q. And as you say, emptied your revolver in there? A. I discharged it four times.

Q. When you got back into the kitchen after having been in the sitting room, or wherever you went there, you were entirely defenseless so far as firearms were concerned against Mr. Hallenbeck? A. I was.

Q. You could have gone out of the other door too, could you not? A. What other door?

Q. Front door? A. Probably it was locked; it was always kept locked.

Q. It would be locked from the inside? A. I wouldn't know whether there was a key or not there.

Q. There were two windows easily shovable in the room? A. I don't know whether they are or not; I have never tried them.

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Q. You never have worked there in the summer season?

A. Yes, sir, but I never saw the windows raised.

Q. You chose rather to pass across the kitchen right under the eye of Mr. Hallenbeck and with his gun, as you say, in both hands?

Objected to as improper cross-examination.

(Question waived.)

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WILLIS VAN WORMER, sworn for the defendant, testified:  
Examined by Mr. Cady:

Q. Van Wormer, you are one of the defendants in this indictment? A. Yes, sir.

Q. How old are you? A. 26.

Q. When were you 26 years old? A. Last November, the 17th.

Q. Where were you born? A. Greenport.

Q. You are a brother of the last witness, Burton Van Wormer? A. Yes, sir.

Q. You heard his descriptions of your family, the death of your father and mother? A. Yes, sir.

Q. Are those correctly stated? A. Yes, sir.

Q. Did you live with the family in Albany? A. Yes, sir.

Q. And at Castleton? A. Yes, sir.

Q. And in Greenport? A. Yes, sir.

Q. Where else while your father was living? A. In Hudson.

Q. How long did you live in Hudson? A. I think two or three years.

Q. What have you been employed at, if anything, what work? A. United States Government, carrying the mail.

Q. Whereabouts? A. Catskill station to Greendale.

Q. For how long were you in the employ of the government there? A. Between five and six years.

Q. What else has been your employment, if anything?  
A. As a musician.

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Q. Any other employment? A. I worked for my uncle Peter on the farm two months.

Q. Did you ever work for him more than once? A. Yes, sir.

Q. How many times? A. Two or three different times.

Q. In different years? A. Yes, sir.

Q. Always worked for him at one season of the year or different seasons? A. Different seasons.

Q. Can you say whether you worked for him for more than during two or three years? A. No, sir.

Q. What is your best recollection about it; just think of it? A. I cannot tell how many.

Q. Your best recollection is that it was two or three years? A. Yes, sir.

Q. How long ago was it that you worked for him last? A. Three or four years ago.

Q. When did you stop carrying the mails? A. About four years ago.

Q. When did you go to Kinderhook to live? A. I went to Kinderhook the first of August.

Q. About the first of August last year? A. Yes, sir.

Q. Your whole family moved there? A. I went up to Kinderhook before any of them was up there.

Q. How long did you go up to Kinderhook before your family moved up there? A. About seven weeks.

Q. Why did that occur? A. I went visiting.

Q. Whom did you visit there? A. My cousin.

Q. Who? A. Mrs Isaac Van Slyke.



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Q. Later on your family moved up? A. Yes, sir.

Q. Consisting of your mother and your two brothers, Burton and Frederick M.? A. Yes, sir.

Q. When did they go to Kinderhook? A. That I cannot say because I was up to Castleton while they was moving up there.

Q. Then you came back from Castleton to Kinderhook? A. Yes, sir.

Q. Were they there when you arrived? A. No, sir.

Q. How long before you got there did they came up to Kinderhook? A. About a week, I think.

Q. Was it sometime last September? A. I think it was.

Q. And you continued to live there until the time of your arrest? A. Yes, sir.

Q. How long had Harvey Bruce been visting at your house? before you were arrested? A. I think about six weeks.

Q. Were you on friendly terms with him? A. Yes, sir.

Q. What were his relations with your other two brothers as to being friendly or not? A. They was friendly.

Q. Were those relations maintained during the time of his stay? A. Yes, sir.

Q. With whom did he sleep? A. Part of the time with me and part of the time with Burton.

Q. What part of the time did he sleep with you? A. The latter part that he was there.

Q. For how long a time? A. I cannot tell.

Q. What is your best recollection? A. Probably two or

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three weeks.

Q. But you can't say positively? A. No, sir.

Q. Did any trouble of any kind arise between Bruce and you three brothers while he was there? A. Not as I know of.

Q. Where did he spend his days? A. He spent the days around in the house and in the evening he spent it with either Hurt. or Fred.

Q. Did he spend his days part of the time in your company? A. Part of the time, yes, sir.

Q. He didn't spend so much time evening with you as the others? A. No, sir; because I wasn't home.

Q. Where were you then? A. Down to my friend's house.

Q. You were visiting, calling? A. Yes, sir.

Q. Did you go into Imond Vener's to buy a mask? A. No, sir; I went in with Harvey; he was getting some underwear. I went with Harvey Bruce when he bought some underwear.

Q. You went into Vener's with him when he bought the underwear? A. Yes, sir.

Q. State what was done in there while you two were there? A. He called my attention to a box of masks on the floor.

Q. What did he say; state his words as near as you can? A. He says "Here Will is some masks."

Q. What did you say? A. I says "Is that so"? He says "Yes". Then we looked at some of them.

Q. Where was that box? A. On the floor.

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Q. Where was it with relation to the counter, in front of it or behind it? A. In front of it.

Q. How large was the box? A. About two or three feet long and about a foot wide.

Q. How deep? A. About that deep. (Ind.)

Q. How many masks were there in it? A. There might have been a couple of dozen in it.

Q. Did you see any other masks about the store? A. Only in the box.

Q. Only in that box? A. Yes, sir.

Q. Where was Mr. Vener when Bruce spoke about the masks? A. He was waiting upon a couple of other customers in the store.

Q. Do you know who they were? A. No, sir.

Q. Were there any clerks in the store? A. I think his wife was in there.

Q. Did his wife assist him? A. She did sometimes.

Q. Had you ever been in that store before? A. Yes, sir.

Q. How frequently? A. Sometimes once a week and sometimes twice a week.

Q. On different errands? A. Yes, sir.

Q. How many sets of underwear or under-drawers did Bruce look or see before he found one that satisfied him?

A. That I couldn't say; I didn't take any notice of it.

Q. How long were you in there with him? A. About 10 or 15 minutes.

Q. All together? A. Yes, sir.

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Q. After Bruce called your attention to the masks what was done, if anything, about taking any masks out of the box and who did it? A. Bruce took one out of the box and put it on his face and I also took one and put it on my face.

Q. You both put them on your faces in the store? A. Yes, sir.

Q. Which put the mask on first? A. I think Harvey did.

Q. Did you or did you not fasten them on there in the store? A. No, sir.

Q. Just put them on your faces? A. Just put them on our faces.

Q. After you had done that what was done with relation to the masks and what was said by you or Bruce to Vener about them, and what did Vener say? A. We asked him how much the masks was and he said they was five cents a piece and Harvey bought one and I bought one.

Q. What was done with them when you bought them? A. He put them up in a paper and I carried them down to the house.

Q. Who put them up? A. Mr. Vener.

Q. What day of the week was that? A. Monday.

Q. About what time on Monday? A. Between two and three o'clock in the afternoon.

Q. Had you had your dinner yet? A. No, sir.

Q. When did you have your dinner that day, if you remember? A. Between three and four.

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Q. In the afternoon? A. Yes, sir.

Q. Now, where had you been on the morning of the day on which you bought the masks? A. <sup>I was</sup> ~~at~~ home.

Q. Where did you spend the rest of the afternoon after you had bought the masks? A. At home.

Q. With whom? A. With Harvey Bruce and my two brothers, Fred and Burton.

Q. Had anybody else bought any masks at that time in your family as far as you know? A. No, sir.

Q. Were you doing anything in particular that you can remember at your home that day? A. I played the piano in the afternoon after I had eaten my dinner.

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

Q. Do you remember that distinctly, or do you say it because it was a matter of practice for you to do it?

A. I remember it.

Q. Was anything said on that day about taking any trip?

A. Yes, sir.

Q. Who were present when it was said and what was said?

A. Harvey Bruce and myself and my two brothers was talking about taking a ride to Chatham to see some girls.

Q. What was said about it? A. They were going up there to have some fun with the girls in North Chatham.

Q. I don't ask for their names, but did he mention their names? A. No, sir.

Q. Did you know them? A. No, sir.

Q. Go on and tell what, if anything else, was said in the course of that conversation about your trip? A. Well, they had two places they was going.

Q. What was said? A. They were talking about going

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down to my uncle's to have some fun and they were talking about going to North Chatham and have some fun.

Q. Who spoke about that? A. That I don't know.

Q. Do you know who spoke first about going to North Chatham? A. No, sir.

Q. You know Bruce mentioned the fact that there was some girls up there? A. Yes, sir.

Q. Can you tell who first mentioned your going to your uncle's? A. No, sir, I cannot.

Q. What was said about that? A. All that was said they thought about going down to have some fun with my uncle Pete.

Q. Did you reach any decision that afternoon? A. No, sir.

Q. How much time was spent in talking about that trip that afternoon? A. About 10 or 15 minutes.

Q. All four of you were present? A. Yes, sir.

Q. About what time in the day did that conversation occur? A. I couldn't say, but it was towards evening.

Q. Can you remember whether it was before or after dinner? A. It was after dinner.

Q. Do you remember whether or not anybody else was present? but you four boys? A. No, sir.

Q. You don't remember about that? A. No, sir, I do not.

Q. Can you remember what occurred during that evening of the 24th; what did you do that night? A. I got in the wagon with the best of the boys.

Q. I meant the evening of the 23rd and not the 24th?

A. I went down to Mr. Edward Risendorff's.

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Q. You made a call there upon your friend whom you mentioned a while ago? A. Yes, sir.

Q. You spent the evening there? A. Yes, sir.

Q. What time did you go home; do you remember? A. About 12 o'clock.

Q. You spent the night at home? A. Yes, sir, the rest part of the night.

Q. Who slept with you that night there at home? A. Harvey Bruce.

Q. That brings us down to the morning of the 24th, the day before Christmas? A. Yes, sir.

Q. What did you do in the afternoon of that day? A. I was getting up steam in the furnace down stairs; I was getting up steam on the heater downstairs.

Q. In your house? A. Yes, sir.

Q. The house was heated by steam? A. Yes, sir.

Q. And you worked around the furnace? A. Yes, sir.

Q. How long did that take you that morning? A. About half an hour.

Q. What did you do, clean it; was there anything out of order with it? A. I filled the boiler with water and put coal on.

Q. And started the fire? A. Yes, sir.

Q. Do you remember anything else you did that morning? A. I went down to where my friend was and she came with me to my house.

Q. That is during the morning of the 24th? A. Yes, sir. No, the morning of the 25th.

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Q. I am talking about the morning of the 24th? A. No, sir; that is all I done that morning.

Q. Where was Bruce that day as far as you know?

A. Around the house and out in the street.

Q. Were you with him while he was out in the street?

A. No, sir.

Q. You didn't go to Brown's after the horse? A. No, sir.

Q. On either occasion? A. No, sir.

Q. Nor have any talk with Brown about the horse?

A. No, sir; did not.

Q. Or with Coons? A. No, sir.

Q. Tell me, Willis, when you first knew that the horse has been hired? A. The afternoon of the 24th; it was about a quarter after 12 when my brother and Harvey Bruce came back from Mr. Brown's.

Q. What did they do? A. They said they had hired a horse

Q. That was the first you knew of it? A. Yes, sir.

Q. Were you present when any arrangement was made, if any arrangement was made, for Harvey Bruce and your brother Burton to go to Brown's to hire a horse? A. Yes, sir.

Q. You knew that? A. Yes, sir, I knew they were going down there to hire a horse.

Q. But you didn't know that they had been there until about a quarter past 12? A. No, sir, I did not.

Q. Tell all that was said that you can think of that day, the 24th, about the trip that you boys proposed



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taking? A. I know they hadn't decided on which way they was going until about five o'clock; they were going after the horse.

Q. What did you do in the afternoon? A. I was at home.

Q. What were you doing? A. Setting in the house.

Q. Not engaged in anything in particular? A. I was reading some books in there.

Q. Where were the other boys during that afternoon?

A. They was out in Kinderhook somewhere; I couldn't tell where they was.

Q. Did you meet a man by the name of Bauer at any time that day? A. No, sir.

Q. You heard the man who described himself on the witness stand as a "tonorial artist", didn't you---you heard him testify? A. Yes, sir.

Q. Did you have any talk with him that day? A. No, sir.

Q. When did you have a talk with him about any clothing or anything that you ever did? A. I think it was on Monday.

Q. He says you talked with him about four suits of clothes? A. No such thing.

Q. On Monday did you know that your brother Burton already had a suit of clothes at the express office?

A. Yes, sir.

Q. Did you ask the tonorial atrist to communicate with a friend in Albany and keep the clothing store open on your account the next day? A. No, sir, I did not.

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Q. Or words to that effect? A. No, sir.

Q. What, if any conversation did you have with this man?

A. I asked him if there would be any store open on Christmas morning and he said he didn't think there would. He asked me what I wanted to get and I told him I wanted to get a suit of clothes. That is all I said to him.

Q. You did want to get a suit of clothes? A. Yes, sir.

Q. You said so to him? A. Yes, sir.

Q. You didn't speak about getting four suits of clothes?

A. No, sir, I didn't.

Q. Did you know then how long Burton's suit of clothes had been at the express office? A. I think they had been there about two weeks or more.

Q. Do you remember about what time on Monday that conversation with Bauer took place? A. I think in the afternoon.

Q. Were you in his shop? A. Yes, sir.

Q. Getting shaved? A. Yes, sir.

Q. Anybody else there? A. Harvey Bruce.

Q. Anybody else? A. Not as I remember of any one else.

Q. He keeps a barber shop, what ordinary people call a barber shop, in Kinderhook? A. Yes, sir.

Q. And that was the place you were in the habit of getting shaved? A. Yes, sir.

Q. Now, about what time on the 24th did you boys arrive at a final conclusion as to where you were going?

A. I think about five o'clock.

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Q. Where were you when that conclusion was reached?

A. In the kitchen.

Q. Who were there? A. Myself, Harvey Bruce, Burton and Fred.

Q. Tell me whether or not Bruce was present during all of <sup>the</sup> talk you had about that trip? A. Yes, sir, he was.

Q. On good terms with you at that time? A. Yes, sir.

Q. Friendly with all of you as far as you know? A. Yes, sir.

Q. What time did you have dinner on that day? A. About between three and four.

Q. Tell me what, if anything, you know about your brother Fred having a mask, or getting a mask? A. I didn't know anything about it until I saw it in the house that he had one.

Q. Were you with him when he purchased any mask? A. No, sir.

Q. Were you in company with Burton when he purchased a mask, if he ever did? A. I was not.

Q. Did you know that Burton had any mask? A. No, sir.

Q. Do you know about this cloth mask that he has described? A. No, sir.

Q. When did you find out that Fred had a mask? A. When we was getting ready to go out of the house.

Q. Do you know whether he got his before or after you and Bruce got yours? A. That I couldn't say.

Q. Tell the jury all that you can remember was said on that day in the afternoon after your decision as to where

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you would go on that trip? A. Finally at five o'clock they decided to go down-~~to~~-----

Q. (Int'g.) What was said about it as near as you can state it? A. That is all I know about it.

Q. Who said it? A. That I couldn't say.

Q. Can you state what was said? A. All that was said they decided to go down to Greenport.

Q. Was anything said that afternoon about going to North Chatham? A. Yes, sir.

Q. What was said about that? A. They talked about going up to North Chatham.

Q. What was said about it? A. To have some fun with the girls.

Q. What reason was given why you didn't go to North Chatham? A. Not any.

Q. Except that after talking you concluded to go to Greenport? A. Yes, sir.

Q. What time did you leave? A. I think about half-past five.

Q. You had a revolver, did you? A. In the house at that time.

Q. I mean when you started did you take a revolver with you? A. Yes, sir.

Q. And all of the others had revolvers? A. I think they did.

Q. If you don't know whether they did or not then say so? A. I don't know if they did or not.

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Q. What, if anything, was said about revolvers that afternoon in your presence? A. Not anything.

Q. But you had your revolver with you? A. Yes, sir.

Q. You carried a revolver? A. I carried it nights.

Q. And you put it in your pocket that night? A. Yes, sir.

Q. What was done with the masks? A. They were put in the wagon.

Q. You drove on down to Greenport? A. I didn't drive.

Q. The team was driven down there? A. Yes, sir.

Q. You four in the wagon? A. Yes, sir.

Q. Did Harvey Bruce, on the way down, ask where you were going? A. No, sir.

Q. Did anybody of the party reply to him "Down the line"? A. No, sir.

Q. That didn't take place once or several times? A. Not at all.

Q. You stopped at Stockport? A. Yes, sir.

Q. How long a stop was made there? A. About four minutes.

Q. You drove through the village of Stuyvesant Falls? A. Yes, sir.

Q. Through Rossmore? A. Yes, sir.

Q. Through Stockport Center? A. Yes, sir.

Q. Through the village of Stockport? A. Yes, sir.

Q. And a part of Stottville? A. Yes, sir.

Q. And down into the city of Hudson? A. Yes, sir.

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Q. What have you to say about there being snow on the ground that night? A. There was snow on the ground.

Q. The night was moon light? A. Yes, sir.

Q. You made a stop at the Greenport church? A. Yes, sir.

Q. Do you know what was done there? A. Yes, sir.

Q. Go on and tell? A. Fred got out and went up towards the church and we went down below the shed and turned around and came back up in front of the church and stopped there and Harvey took a buffalo robe and I think Burt took a whip out of a wagon and I took one out.

Q. Which whip did you take? A. I think it was the one with the lash on.

Q. That is the light colored one? A. Yes, sir.

Q. Did Fred take anything there? A. No, sir.

Q. Was Fred with you three boys when you took a robe and the whips? A. No, sir, he was up towards the church.

Q. How did you come to drive up to the church at all? A. Fred seen the lights up there and he wanted to go up and see what was going on to the church.

Q. What did you do after Fred came back from the church to the wagon? A. We all got in and drove down towards Catskill station.

Q. Down towards your uncle's house? A. Yes, sir.

Q. What, if anything, was done when you got near the orchard? A. I and Harvey Bruce got out of the wagon and the other two drove down the road.

Q. You walked behind the wagon? A. About a hundred

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yards back of the wagon.

Q. Walked in the highway? A. Yes, sir.

Q. Go on and tell what happened down there? A. We walked behind the wagon down to the barn and I tied the horse and Harvey put the robe on---I think it was a robe-- and then we turned our coats inside out and put on our masks and went out to the highway again.

Q. When you walked behind the wagon down the highway did you notice any light in the house? A. Yes, sir.

Q. In what room? A. In the living room.

Q. Did you see whether the shades were up or not?

A. They was half-way up.

Q. Did you see any persons in the house? A. I saw some persons in there, but I didn't recognize who they was.

Q. You put your masks on down by the wagon shed?

A. Yes, sir.

Q. When did you take the revolvers out? A. I didn't take mine out until I got up to the house where the dogs were.

Q. Do you know whether any of the others did or not?

A. That I couldn't say.

Q. When you got up to the house and approached this entry what did you do; you or any of you? A. I think there was three of them went up on the stoop.

Q. Which three? A. Harvey and Burton and Frederick.

Q. Did you go on the stoop? A. Not then.

Q. Where did you remain? A. I remained there about 8 or 10 feet from the steps.

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Q. From the steps leading into the entry? A. Yes, sir.

Q. And about 3 or 10 feet from the entry itself?

A. Yes, sir.

Q. How near the house? A. It is about 10 feet from the corner of the house.

Q. You say the other three went into the entry? A. I seen them going up the steps.

Q. You didn't go up the steps at that time? A. No, sir; I did not.

Q. Now, after they got up to the steps what happened?  
A. I heard somebody rap on the door and the door was opened.

Q. How did you know the door was opened? A. I seen the light shining out through there.

Q. You could see the light from where you stood? A. Yes, sir.

Q. Were you in a position to look into the kitchen at that time? A. No, sir, only just to the door there.

Q. You say the door opened and the light shone out into the entry? A. Yes, sir.

Q. You knew that locality, did you? A. Yes, sir.

Q. You knew that the rap was at the kitchen door?  
A. Yes, sir.

Q. Go on and state what else took place? A. I heard somebody scuffling in the house and then I heard a shot fired.

Q. Did you hear any voices? A. No, sir.

Q. What did you do? A. About a minute after that I



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walked up on the stoop by the door.

Q. Do you mean a minute, or less than a minute?

A. About a minute.

Q. Do you mean a short time? A. About a minute.

Q. Did you have your revolver in your hand then?

A. Yes, sir.

Q. Go on and state what took place? A. I went up to the floor and I heard more shots fired and there was quite a lot of smoke in there and I fired a couple of shots.

Q. Do you know whether you hit Peter A. Hallenbeck or not? A. I do not.

Q. You may have hit him? A. I may, but I don't think I did.

Q. How many shots did you fire at that time? A. Two.

Q. How many shots did you fire in the course of the evening there? A. Four.

Q. When were the other two shots fired by you? A. When somebody hollered he had the gun.

Q. Where were you when that exclamation was heard by you? A. Right by the door, by the kitchen door on that stoop.

Q. Had you seen Mr. Hallenbeck up to that time? A. No, sir; I had not.

Q. Now, I want to know where you were when you fired those first two shots, where you stood with reference to the door leading from the entry into the kitchen? A. As the door was facing me I stood in front of the door on the stoop.

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Q. Can you tell how many pistol shots you heard fired up to that time? A. I cannot.

Q. More than one? A. There was more than one.

Q. You heard one shot first? A. Yes, sir; kind of muffled shot.

Q. Then you heard other shots? A. Yes, sir, but I can't tell how many there was.

Q. The other shots you heard were louder than the first one? A. Yes, sir.

Q. You stood right in front of the kitchen door when you fired? A. Yes, sir.

Q. In what direction did you fire--if you fired into the kitchen tell me so? A. About across the room.

Q. Do you know whether you hit anybody with any of your shots that night or not? A. No, sir, I do not.

Q. You will not swear either way? A. No, sir.

Q. You may have hit Peter A. Hallenbeck? A. I may and I may have not.

Q. Do you know who cried out that he had the gun and he would shoot you, or words to that effect? A. No, sir; I couldn't tell you who it was.

Q. You heard a voice? A. Yes, sir.

Q. After that you fired twice again? A. Yes, sir, and run.

Q. Who was near you when you fired those two last shots? A. There was two persons; one on the outside alongside of me and one inside of the door to the right.

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Q. Two persons with their coats turned inside out and masks on? A. Yes, sir.

Q. Two of your party? A. Yes, sir.

Q. What do you say as to whether you know which ones?  
A. One was my brother Fred and the other was Harvey Bruce.

Q. Where was Fred? A. He was standing to my right.

Q. How far from you? A. About a foot.

Q. Did he fire? A. I think he did.

Q. How many times? A. That I can't say.

Q. Do you recollect whether you observed at the time that he fired more than once or not? A. I think he did.

Q. That is your best recollection? A. Yes, sir.

Q. Where was Harvey Bruce? A. He was standing between the kitchen and dining room door; there is a closet back of that.

Q. Do you know where Burton Wan Wormer was at that time?  
A. No sir; I do not.

Q. Did you see either him or Mr. Hallenbeck at that time? A. No, sir.

Q. Did you see any struggle between Burton and your uncle Peter? A. I heard noise in there.

Q. I didn't ask you that; I ask you if you saw any struggle between your brother Burton and your uncle Peter? A. No, sir; I did not.

Q. But you heard a noise in there as of scuffling before you went up on the steps? A. Yes, sir.

Q. How long did you remain there by the door, or up in

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the entry after you first went there? A. About three minutes.

Q. Do you think it was as long as that? Do you know how long a minute is? A. Why, I should think it was three minutes.

Q. That is the best estimate you can make of it now? A. Yes, sir.

Q. Then you ran away? A. Yes, sir.

Q. How many shots did you hear fired after you had fired your last two? A. Several; I couldn't tell just how many there was.

Q. Can you tell how many shots you heard in all? A. No, sir; I cannot.

Q. There was a good deal of shooting, was there not? A. Yes, sir; it was so rapid you couldn't keep track of them.

Q. Did you intend to shoot Peter Hallenbeck at any time that night? A. No, sir, I did not.

Q. What were your relations with him at that time? A. Friendly.

Q. How long had they been so? A. As long as I can remember.

Q. With what intent did you go to that house that night? A. Just to have some fun.

Q. By shooting off revolvers? A. Yes, sir.

Q. In what way? A. Shooting the revolvers up in the air.

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Q. And putting on these masks? A. Yes, sir.

Q. And turning your coats inside out? A. Yes, sir.

Q. And that was what <sup>you</sup> proposed when you say you meant to have some fun by scaring him? A. Yes, sir.

Q. Did you go there with the intention of injuring him?  
A. No, sir, I did not.

Q. Do you know whether any of your brothers did or not? A. I don't think they did.

Objected to and motion to strike out the answer.

The Court: He may state if he knows; he can't swear to their intent, of course.

A. No, sir.

The Court: He has answered no now so that the answer may as well stand in that way.

Q. Have you kept secret from this jury anything you know about that night that you can now think of? A. No, sir; I have not.

Q. Can you tell me anything more than you have already told me about the conduct of your brothers and of Harvey Bruce and yourself there that night? A. No, sir.

Q. If there is I want you to tell me? A. There is not.

Q. If there is anything you can think of I want you to tell it? A. I don't know of anything more.

Q. Do you mean to say that you saw Harvey Bruce fire any shots that night? A. No, sir; I don't mean to say so.

Q. You don't now remember that you observed him fire any? A. No, sir.

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Q. When you ran away---started to run away after having been told that he had the gun, that your uncle had the gun, you say your brother and Bruce were in sight of you? A. Yes, sir, and Fred was out on the right hand side of me on the stoop and Bruce was in the door.

Q. At that time you say you didn't see either your brother Burton or Mr. Whalenback? A. No, sir.

Q. Did you run? A. Yes, sir.

Q. Do you know in what order the others run after you? A. No, sir, I do not.

Q. Do you know who ran down the entry way first? A. No sir.

Q. Did you see anybody go ahead of you down the entry way? A. I saw somebody down the road when I got there.

Q. I mean down the entry way out into the outer air; did you see anybody go ahead of you? A. Yes, sir.

Q. When you ran down there? A. When I was on the ground.

Q. Somebody ran by you when you were on the ground? A. Yes, sir.

Q. In which direction? A. Across the lawn and down in the road.

Q. Which direction did you run in? A. The same direction.

Q. So you ran with this person? A. Yes, sir.

Q. Where did you see the others next? A. I seen the others coming across the lot when I was standing by the wagon.

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Q. Who ran down across the lawn with you? A. Fred.

Q. And did you get to the wagon about the same time, you and Fred? A. Yes, sir.

Q. You got there ahead of the other two? A. Yes, sir.

Q. Before the other two got there you saw them running across the field? A. I saw two men; I didn't know who they were.

Q. You didn't have any doubt who they were? A. No, sir.

Q. And when they first got up to you you saw who they were? A. Yes, sir.

Q. Who were they? A. Harvey Bruce and Burton Van Wormer.

Q. What was done next that you remember? A. I put on my overcoat and untied the horse.

Q. You didn't change your coat from inside to outside at that time? A. No, sir; not then.

Q. Do you say you took the robe off? A. No, sir.

Q. Who took the robe off? A. Harvey Bruce.

Q. Then you drove away; you all got in and drove away? A. Yes, sir.

Q. Where did you make your first stop? A. About two miles from there.

Q. State at what rate of speed you drove from the time you left the shed until you stopped about two miles away? A. About 10 miles an hour.

Q. You kept the horse going at that rate all of the time until you came to the stop? A. Yes, sir.

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Q. Up to that time did you know whether Peter A. Hallenbeck had been hit by any balls or not? A. No, sir; I did not.

Q. Had you heard any exclamation of pain or any other exclamation in the room that night while you were there? A. No, sir.

Q. You know now that he had been shot? A. Not until the 25th.

Q. I say you know now that he had been shot? A. Yes, sir.

Q. When did you first hear that he had been shot and killed? A. On Christmas about 10 o'clock.

Q. Now, when you stopped, or did you stop in the woods-- I don't know that you have stated that---whereabouts did you stop when you reached a point about two miles away and stopped? A. On Mr. Church's private road.

Q. You drove through Mr. Church's private road? A. Yes, sir.

Q. You came up from the Catskill road that runs north and south? A. Yes, sir.

Q. And drove up through the woods? A. Yes, sir.

Q. And in those woods you stopped, is that so? A. On the other side of the farm house.

Q. On the north side of Mr. Church's farm house, or on the south side? A. North side.

Q. Between Mr. Church's farm house and Hudson? A. Yes, sir.

Q. How far this side of Mr. Church's farm house did you



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stop? A. About three hundred or four hundred yards.

Q. What was done there? A. The rest of the boys got out and changed their clothes.

Q. What did you do? A. I got out and took my overcoat off and changed my undercoat and put it back again the same way it was when we started from the house.

Q. Had your masks been taken off up to that time? A. No sir; not until we got over there.

Q. They were taken off there? A. Yes, sir.

Q. While you were there did any of <sup>your</sup> party, Burton or any of the others, say to Bruce "I gave him", meaning Peter A. Hallenbeck "a Czolgoscz shot"? A. No, sir.

Q. Did anybody say that he had fired at Mrs Hallenbeck? A. No, sir.

Q. Did you see Mrs Hallenbeck that night? A. No, sir; I did not.

Q. Did you say that you had emptied your revolver into him, or words to that effect? A. No, sir; I did not.

Q. While you were down there that night at the house did you strike Bruce on the wrist or on the arm and take his revolver away from him? A. No, sir.

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

Q. Did you see Bruce's revolver lying on the steps as you went down? A. No, sir, I didn't.

Q. Or any other revolver? A. No, sir.

Q. Did Bruce ask any of you that night why his revolver had been knocked out of his hand and taken away from him? A. No, sir, he did not.

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Q. Nothing was said upon the subject? A. No, sir.

Q. Why did you drive so far before you stopped in the woods.

Mr. Chace: I submit that is not proper.

(Question waived)

Q. After you boys had taken off your masks and changed your overcoat you got into the wagon and drove back to Kinderhook? A. Yes, sir.

Q. Drove up through Hudson? A. Yes, sir.

Q. And through various streets of the city of Hudson?  
A. Yes, sir.

Q. What road did you take from Hudson north to Kinderhook? A. By way of the Underhill pond.

Q. And back up through over the same route you had taken? A. Yes, sir.

Q. Did you go back over the post road? A. We came out by the Park hotel.

Q. That is, you mean after you left Hudson after going by Underhill pond you came out by the Park hotel near Stockport? A. Near Stottville.

Q. You drove from Hudson, from Underhill pond on what is called the lower road? A. Yes, sir.

Q. That is the most westerly of the two roads that run from here to Stottville? A. Yes, sir.

Q. After you reached the Park hotel what route did you take? A. The same route we came down.

Q. Over the direct road to Stuyvesant Falls? A. Yes, sir

Q. And from Stuyvesant Falls over the post road? A. Up

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the back road.

Q. Pass the old Van Buren place? A. Yes, sir.

Q. And across the two bridges into the village of Kinderhook? A. Yes, sir.

Q. About what time did you get there? A. 9:30.

Q. What did you do after you got home that night?

A. I went into the house and my stepmother was there and Miss Pearl Van Buren, and Fred came in next to me and then Burton and Harvey was attending to the horse outside.

Q. What occurred at the house? A. I was there awhile and Harvey and Burton went out to take a ride somewhere else; I don't know where they went to; I went down home with her.

Q. What became of Fred as far as you know? A. He stayed in the house.

Q. You stayed in the house? A. Yes, sir.

Q. And Miss Van Buren and your stepmother? A. I stayed until about quarter past ten.

Q. I mean before you escorted her home? A. Yes, sir.

Q. Then you took Miss Van Buren to her home and came back to the house? A. About two hours afterwards.

Q. You stayed at your home that night? A. Yes, sir.

Q. And you slept with Harvey Bruce that night? A. Yes, sir.

Q. Did Harvey Bruce ask you at any time that night why his revolver had been taken away from him? A. No, sir.

Q. Anything said upon that subject by him? A. No, sir.

Q. Did you ever hear anything said upon that subject?

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by him until you heard it on the witness stand here yesterday or the day before? A. No, sir.

Q. What did you do next morning, Christmas morning?

A. Went down to the bottling works and got my friend and fetched her up to the house.

Q. By your "friend" you mean Miss Van Buren? A. Yes, sir.

Q. And had you heard then of the result of your visit down to your uncle's? A. No, sir.

Q. When did you first hear of it that day? A. After I came back home.

Q. About what time? A. A little after ten.

Q. Did you hear then that he was dead? A. Yes, sir.

Q. Where did you remain then the rest of the day?

A. At the house.

Q. You didn't leave Kinderhook? A. No, sir.

Q. You remained there until you were arrested that night by the officers? A. Yes, sir.

Q. And brought to the Hudson Jail where you have been ever since? A. Yes, sir.

Q. Now, Van Wormer, do you know anything else about this matter than what you have told me? A. No sir.

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CROSS-EXAMINATION by Mr. A. F. B. Chace:

1 Q. Willis, what do you say your age is? A. 26.

2 Q. What business, if anything, were you engaged in  
3 prior to December 24<sup>th</sup> last? A. Nothing in particular.

4 Q. How long since you have been engaged in any business?  
5 A. Two or three years.

6 Q. You had been out of employment for about two or three  
7 years? A. Yes, sir; I had other employment though; I  
8 had other business.

9 Q. What business? A. Playing; musician.

10 Q. What character of musician, or kind? A. Playing  
11 violin and piano.

12 Q. Where did you play the violin and piano? A. Wherever  
13 I was hired to go.

14 Q. Who with you? A. Why, I had men from Hudson to play  
15 with me.

16 Q. You were with Bruce on the Monday preceding Christ-  
17 mas and bought masks? A. Yes, sir.

18 Q. Each of you? A. Yes, sir.

19 Q. What did you do with them? A. Took them home.

20 Q. Were they wrapped up when you took them home?  
21 A. Yes, sir.

22 Q. Where were the wrappers opened? A. On the street.

23 Q. And the masks taken out of the wrapping on the street?  
24 A. Yes, sir.

25 Q. Where? A. In front of Steitz's jewelry store.

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Q. You remember that? A. Yes, sir.

Q. Particularly? A. Yes, sir.

Q. Who were present? A. Harvey Bruce.

Q. Who else? A. Burton Van Wormer.

Q. Who else? A. That is all.

Q. You took them out there and showed them to Burton?

A. Yes, sir.

Q. Where did you take them then? A. Took them home.

Q. What did you do with them when you got home? A. Put them in a closet.

Q. Where? A. In the dining room.

Q. After you had showed them to Burton did you restore the wrapping about them? A. Yes, sir.

Q. When did you next see those two masks? A. The day of the 24th.

Q. Where? A. In the dining room.

Q. Who got them out of the closet? A. I did.

Q. What time was it? A. About a quarter to five o'clock

Q. Who were present? A. I couldn't say if there was any one there or not.

Q. After you got them out what did you do with them?  
A. Took the one that I bought out from the two.

Q. What did you do with the other one? A. Left it in the closet.

Q. What did you do with yours? A. Laid it on the table.

Q. When you bought these masks were there any straps or

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strings on them to hold them on the face? A. No, sir.

Q. Did you prepare any for yours? A. That night I tied a cord across the face.

Q. When did you tie the cord across the face? A. Down by the wagon.

Q. Where did you get the cord? A. It was around the false face when I bought them; it was around the package.

Q. When you bought it? A. Yes, sir.

Q. What kind of a cord was it? A. White cord.

Q. A slight wrapping cord? A. Yes, sir.

Q. What part of it did you tie it about? A. Across the forehead part of it, across here (ind.)

Q. How many thicknesses of cord did you use? A. One.

Q. After you took your mask out that night and put it on the table, how long did it remain on the table? A. About half an hour.

Q. What then became of it? A. Put in in a drawer; put it in the sideboard.

Q. When did you next see it? A. When I went after it.

Q. When did you go after it? A. When Harvey Bruce came in the house and said they had the horse and wagon.

Q. When did you see the other mask which you say you left in the closet when you took yours out and laid it on the table? A. When Harvey Bruce came in he got his own mask.

Q. Where was Frederick when you took the mask out of the cupboard and laid it on the table and afterwards put it in the closet? A. In the kitchen.

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Q. Did he have any mask about there? A. I didn't see any.

Q. When did you first see him have the mask? A. Down by the wagon.

Q. You hadn't seen it before? A. No, sir.

Q. You didn't know that he had one? A. No, sir.

Q. You took your mask along? A. Yes, sir.

Q. You didn't think it was necessary to the success of your expedition that all of the party should be masked?

A. I can't tell as to that.

Q. You took no pains to see whether or not anybody but you and Bruce had masks, did you? A. By the wagon I did.

Q. Whereabouts by the wagon? A. By the back part of the wagon.

Q. Where was the wagon then? A. Down by the barn.

Q. Which barn? A. My uncle's barn.

Q. Before you left to go from Kinderhook did you take any means to ascertain whether more than two masks were carried down by the party? A. No, sir.

Q. You neither asked of Burton or of Frederick whether they had masks or not? A. No, sir; I did not.

Q. And you made no examination to see whether masks of any but you and Bruce were put in the wagon? A. No, sir.

Q. Nothing was said between the party before you started on that expedition that night from Kinderhook as to who should wear masks? A. No, sir.

Q. Nothing said by either of the four as to whether



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masks were to be used or not? A. No, sir.

Q. Well, you drove out of Kinderhook by way of the road that crosses the two covered bridges? A. Yes, sir.

Q. Down the post road and then over to the Stuyvesant road? A. To Stuyvesant Falls.

Q. You struck the Stuyvesant road where? A. At Stuyvesant Falls.

Q. In passing to and across the covered bridges out of Kinderhook you soon pass out of the populated part of it, do you not? A. No, sir.

Q. How far is it to the covered bridges? A. That I couldn't say.

Q. About how far? A. I never measured how far it was.

Q. You have been over it many times---from your house to the covered bridges---the first covered bridge I will say? A. It might be a thousand feet.

Q. It might be more--what do you think it is? A. I can't judge how much more it is.

Q. After you pass that bridge the thickly populated part of Kinderhook is left? A. There is quite a good many houses.

Q. There are houses all the way down here and there and I ask you if the thickly populated part of Kinderhook is left when you cross the first of those covered bridges? A. Yes, sir.

Q. Then you come to same lands, don't you? A. Yes, sir.

Q. And the houses that you pass after that are substantially same houses? A. Not all of them.

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Q. Most of them? A. No, sir.

Q. What other houses? A. There is six or eight houses that ain't farming houses.

Q. Where? A. On the east side of the bridges.

Q. How near to the bridge is the last one of those?  
A. About 100 yards.

Q. Then the rest of the way is farm houses? A. After you pass those other houses.

Q. Where does the Stuyvesant road leave Kinderhook; what part of the village? A. I never heard of any such road as that.

Q. What do you call the road that leaves Kinderhook near the hotel and runs southerly towards Hudson by way of Stuyvesant Falls? A. I don't know.

Q. You have traveled it? A. Yes, sir.

Q. That is the direct road to Hudson, is it not?  
A. No, sir.

Q. Sir? A. No, sir.

Q. It is not the usually traveled road? A. It is traveled that way, but there are other roads that they travel.

Q. That go to Hudson? A. Yes, sir.

Q. Other than the one you followed? A. Yes, sir.

Q. Which? A. To the east.

Q. To the east still further? A. Yes, sir.

Q. That would be by the way of the post road down by the brick tavern and then into Hudson? A. I think the road goes off toward Claverack.

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Q. Is not that known as the post road? A. That I couldn't say.

Q. Where was there anything first said with reference to what you would do when you got down to Peter A. Hallenbeck's in the execution of your plan for fun?

A. I don't remember any place.

Q. Nothing said as to what should be done when you got down there? A. Not to my recollection.

Q. Nowhere on the way? A. Not as I know of.

Q. Nowhere after you left Kinderhook? A. No, sir.

Q. Who was in command of your battalion? A. Not any one directly.

Q. Who gave any orders anywhere on the way, or directions as to what should be done? A. That I don't know; I didn't hear of any.

Q. You didn't hear any? A. I wasn't with them all of the time.

Q. Weren't you with them all of the time from the time you left Kinderhook until you reached Tinkers store?

A. Yes, sir.

Q. Weren't you with them all of the time from the time you left Tinkers store until you reached Greendale church?

A. Yes, sir.

Q. Weren't you with them all of the time after you left Greendale until you got out to walk down the hill in front of Peter A. Hallenbeck's house? A. Until that, that is

all. Then we walked down the road from the top of the hill.

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Question repeated) A. Yes, sir.

Q. Weren't you along with the three other of your armed party when you got down to the horse barn or wagon house where the horse was tied? A. Yes, sir.

Q. Weren't you with them all of the time from that point until you reached the rear entry of Peter A. Hallenbeck's house? A. Not all of them.

Q. Who were not with the party at any time? A. I and Harvey Bruce was together.

Q. Where was Burton and Fred? A. I think they were ahead.

Q. How much ahead? A. Probably 15 or 20 feet.

Q. That was being practically together, was it not? A. I don't call it so.

Q. Nothing was said by either of the party at the barn or on the way to the back entry of Peter A. Hallenbeck's house as to what should be done after you got into the house? A. Not as I remember.

Q. Nothing was said by either of the party as to what order you were to enter the house? A. I didn't hear of any.

Q. Nothing was said by either of the party as to any shooting being done in the house? A. Not to my recollection.

Q. Nothing was said by either of the party as to where or at what objects the shooting should be done in the house? A. No, sir.

Q. Nothing was said by either of the party by way of

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caution in the shooting? A. I didn't hear any one.

Q. Well, how did you prepare yourselves for the trip to the house when you reached the wagon house? A. Turned our coats inside out and put on the false faces and walked up the road.

Q. Who first turned his coat? A. That I can't tell.

Q. Who made any suggestion as to turning the coats inside out? A. I don't know.

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

Q. Anywhere? A. No, sir.

Q. How many masks were produced when you got there? A. Three masks.

Q. The other man went without any mask on? A. There was a cloth.

Q. What do you call that? A. Piece of black cloth. That wasn't no mask.

Q. It covered his face? A. Yes, sir.

Q. That is what a mask will do? A. Yes, sir, but there was a difference between the mask and the cloth.

Q. Was yours a mask? A. Yes, sir.

Q. It was not a false face? A. Yes, sir. You can call it a mask or a false face.

Q. You don't know what a mask is then? A. They call it that any way.

Q. Who wore this piece of black cloth over the face? A. Burton.

Q. What kind of mask or false face did you use?

A. It was paper.

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Q. What was the character of its outer surface? A. It had black spots on it.

Q. To represent what? A. That I couldn't say.

Q. What was the character of Frederick's false face? A. I don't know.

Q. What was the character of Bruce's false face? A. It had whiskers on the chin and side and had a mustache.

Q. After disguising yourself as you have described at the horse barn you then went up the hill past the house of Peter A. Hallenbeck, did you not? A. Yes, sir.

Q. Where did you pass through the fence there? A. It is a sort of picket fence.

Q. How did you get over it? A. Crawled through where there was a broken picket.

Q. Where did you go from there? A. Went north through the orchard.

Q. To what point in the orchard before you changed your direction? A. That I can't say.

Q. Do you know of a couple of rows of grape arbors east-erly of the house and just northerly of it? A. I have seen them, but I didn't see them that night.

Q. You knew they were there? A. Yes, sir.

Q. You went far enough north before you turned to go west to leave those on the south side of you, didn't you? A. That I don't know.

Q. You didn't pass through them? A. No, sir.

Q. You would have had to if you didn't go far enough north to leave them on your left hand as you went down to

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the house, would you not? A. No, sir.

Q. They don't run down to the house? A. No, sir.

Q. Well, on that route from the <sup>horse</sup> barn to the rear of the house of Peter A. Hallenbeck was any plan announced by either of the party to the others for entering the house? A. I heard some talking but I couldn't understand what it was.

Q. Anything said on the route as to where firing was to be done in the house? A. I didn't hear any.

Q. When you got to the back entry what plan was announced there? A. I heard somebody talking on the stoop, but I wasn't near enough to hear what it was.

Q. No plan made for storming the house? A. No, sir.

Q. None announced to you? A. No, sir.

Q. And you announced none? A. No, sir.

Q. You were not the commander? A. No, sir.

Q. You didn't ~~act~~ as such? A. No, sir.

Q. Who did? A. Burton was ahead, but I don't know if he was the commander or not.

Q. Do you know of any other person than Burton that did the commanding or directing.

Objected to as assuming a fact not proved.

The Court: You are assuming that there was some one in command. I think that has not been proven yet except it may be inferred by some evidence.

I don't think the specific question can be put.

The objection is sustained to that form of question

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Q. How did the party go up the steps? A. There was one tall one ahead and two smaller ones back of him.

Q. Who was the man ahead? A. Burton.

Q. Who next? A. Harvey Bruce.

Q. Who next? A. Fred.

Q. You could tell them? A. I was acquainted with them.

Q. You, knowing them as well as you did, you could tell them that night, could you? A. Yes, sir.

Q. You had no trouble in telling them apart? A. Not close up, I didn't.

Q. You say you stayed down yourself on the ground near the steps. A. Not near the steps.

Q. How near? A. Eight or ten feet.

Q. How long did you stay there? A. That I can't say.

Q. Where were you when you heard any rap on the door?  
A. On the ground.

Q. Where were you when the dogs barked? A. On the ground.

Q. How near did the dogs come to you? A. They came on the back of me, they came behind me.

Q. What did you do with reference to the dogs? A. Nothing.

Q. Did you make any effort to keep them from getting on the stoop? A. No, sir.

Q. Did anybody else? A. That I can't say.

Q. Did the dogs go on the stoop? A. Yes, sir.

Q. How long were they up there? A. I do not know.



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Q. Did they come back off the steps? A. I didn't see them.

Q. After the dogs went on the steps did you see anything of the dogs again before you heard the rap on the door? A. Yes, sir.

Q. Where? A. Making a noise at the foot of the steps, barking at the foot of the steps.

Q. Was that after you had seen them go up on the steps? A. Yes, sir.

Q. Then you did see them after that, off the steps? A. Yes, sir, below the steps.

Q. Before ~~the~~ rap was made? A. That I can't say.

Q. Before you heard the rap? A. That I can't say.

Q. How soon after you heard the rap did you hear the shots fired, the first shot? A. That I cannot tell.

Q. After you heard the first shot fired you told Judge Cady you heard other shots fired, did you not? A. Yes, sir.

Q. Several? A. I don't know how many were shot.

Q. Weren't they fired quite rapidly? A. Yes, sir.

Q. One after the other, or some of them, or together? A. That I can't tell.

Q. You heard sounds following each other very quickly, didn't you? A. Yes, sir.

Q. Right after the first shot was fired, was it not? A. No sir.

Q. Soon after? A. No, sir.

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Q. Half an hour after? A. No, sir.

Q. How long? A. A minute or so.

Q. Where were you when you heard several shots fired?  
A. On the ground.

Q. From what direction did the sounds of the shots come to you, from the room? A. That I can't tell.

Q. You can't tell whether the shots you heard were from the direction of the kitchen or from out of doors? A. It sounded that way.

Q. It sounded as from the direction of the kitchen?  
A. Yes, sir.

Q. After this firing commenced how long did you remain down on the ground? A. That I can't tell.

Q. What were you doing down there? A. Standing.

Q. Did you go up the steps? A. Yes, sir.

Q. Did you go to the kitchen door? A. This side of the door.

Q. Was it open? A. Yes, sir.

Q. Who were in the kitchen? A. I didn't see anybody in the kitchen when I first went up there.

Q. At any time did you see anybody in the kitchen?  
A. I saw Harvey Bruce to the right.

Q. Who else? A. Fred was standing on the outside of the door on the stoop.

Q. Who else did you see in the kitchen? A. No one.

Q. You didn't see Mr. Hallenbeck? A. No, sir.

Q. Lights burning in the room? A. Yes, sir.

Q. A light with strength enough, or brilliancy enough to show out on the stoop when you stood down on the

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ground, was there not? A. When the door first opened.

Q. You saw no change in the light while you were there, did you? A. I didn't notice.

Q. When did you first see Mr. Hallenbeck? A. I didn't see him.

Q. You didn't see him at all that night? A. No, sir.

Q. You didn't see Burton anywhere near him? A. No, sir.

Q. You didn't see Frederick anywhere near him? A. No, sir.

Q. Nor Bruce? A. No, sir.

Q. You didn't see either of them firing shots anywhere near him? A. No, sir.

Q. Won't you tell me whether you fired any shots into that room? A. I did.

Q. In what direction did you fire them? A. From the stoop.

Q. In what direction did you fire them? A. That I can't tell.

Q. You don't know which way you pointed your pistol? A. No, sir.

Q. Was it pointed into the room? A. It was pointed up.

Q. There was a roof over your head, was there not? A. Yes sir.

Q. Did you point it up into the kitchen? A. That I couldn't tell.

Q. At what did you point it? A. Toward the ceiling.

Q. Toward the ceiling? A. ~~of~~ of the kitchen.

Q. How many bullets did you fire toward the ceiling in the kitchen? A. Two.

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Q. When again did you fire into the kitchen? A. When somebody hollered that he had the gun.

Q. How many shots did you fire then? A. Two.

Q. In what direction in the kitchen did you fire those shots? A. About like that (ind.).

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

Q. Pointed across the room? A. No, about like that (ind.) it was not pointed across the room.

Q. Was the pistol pointed in the door and across ~~the~~ toward the other wall? A. Pointed right to the floor like that (ind.). It was not across the room.

Q. You pointed to the floor? A. About like that (ind.).

Q. You shot those two bullets in the floor? A. That I couldn't say whether they went into the floor.

Q. You shot toward the floor? A. Yes, sir.

Q. Were these the only shots you fired? A. Yes, sir.

Q. The two first shots you say you fired at the ceiling of the kitchen? A. Yes, sir.

Q. Those could not have hit Mr. Hallenbeck, could they? A. No, sir.

Q. When you fired the other two shots was Mr. Hallenbeck anywhere in front of your pistol? A. No, sir.

Q. Those two shots could not possibly have hit Mr. Hallenbeck? A. Not as I know of.

Q. The light was plain in that kitchen, was it not? A. There was smoke in there.

Q. Couldn't you see the light? A. Not very good.

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Q. You could see it? A. Not very good

Q. Pistols had already been fired in the kitchen enough to make it dark with smoke? A. Yes, sir.

Q. Could you see the dining room door? A. No, sir.

Q. Could you see the range? A. No, sir; I did not.

Q. Could you see Bruce? A. He was standing to the right.

Q. You could see Bruce? A. He wasn't very far from me.

Q. You could see Bruce? A. Yes.

Q. Where was he standing? A. To the right.

Q. To the right of what? A. Of the door.

Q. He was in the kitchen, wasn't he? A. Just inside the door.

Q. The door swung around to the cupboard? A. Yes, sir, and he was around on this side (ind.).

Q. Near the door? A. Yes, sir.

Q. Against the door? A. No, sir.

Q. In front of the door as it stood open? A. Yes, sir.

Q. How long did he stay there? A. That I can't tell.

Q. Was he there when you first got up there? A. That I won't say.

Q. When did you first see him there in front of that door as it stood open? A. When I first went on the stoop I saw him.

Q. Where did you see him then? A. Standing in there.

Q. Did he leave that point so far as you know before you fired all of the shots you have described and left the door? A. I couldn't say as to that.

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Q. Will you swear that he roved? A No, sir.

Q. What is your best recollection as to whether he did move or not? A. I can't say.

Q. Don't you think he didn't rove from that position? A. I won't say.

Q. When you were firing your shots did he fire? A. I heard other shots, but I don't know if he fired or not, or who it was.

Q. Where was Frederick standing while you were firing your shots? A. Alongside of me.

Q. Which side of you? A. The right side.

Q. Did you see him fire into the room? A. I can't say as I did, or I can't say he didn't.

Q. Did you hear shots? A. Yes, sir.

Q. Did you hear shots fired from near your right hand? A. I heard some loud shots.

Q. Did you hear shots fired from near your right hand where you say Frederick stood? A. Yes, sir.

Q. How many? A. That I can't say.

Q. Did you notice in which direction Frederick held his pistol when he fired? A. No, sir.

Q. Where were you standing when you heard somebody cry out or shout out "he has got his gun"? A. On the stoop.

Q. Where ~~did~~ you did this firing? A. Yes, sir.

Q. Did you do that firing of the four shots before or after you heard that rerark? A. I fired two before and two after.

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Q. What persons did you see in the room after hearing that remark and while you were firing the last two shots?

A. I didn't see any; I run.

Q. You stayed long enough to fire two shots after you heard that---while you were firing the last two shots did you say---that was after you heard this remark "Run, he has got his gun"? A. I pulled on the hammer I believe twice and run. I didn't pay any attention who was alongside of me or who was in the house.

Q. You didn't look to see whether you were going to hit anybody or not? A. No, sir.

Q. You didn't care, did you? A. Yes, sir.

Q. Why didn't you look then? A. I was scared.

Q. You were scared? A. Yes, sir.

Q. The road was amply open behind you? ~~A. I behind~~  
~~you?~~ A. I had to run off the stoop.

Q. You had ample time to do that? A. I don't know if I did or not.

Q. But you wanted to stay and deliver two shots and then run? A. I didn't stand still when I shot.

Q. What did you do when you delivered the two shots? A. I pulled the hammer of the revolver when I was running.

Q. Down the steps? A. ~~xxxxxxx~~ Just as I was running from the door.

Q. Towards the steps? A. Yes, sir.

Q. Where were you running? A. On that back stoop.

Q. How could you fire into the kitchen when you were running? A. Why, easy.

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Q. Which way would your face be when you were running on that rear entry floor? A. To the west.

Q. That would be across the width of the stoop, would it not? A. The stoop is, I don't know how long it is.

Q. The entry to the stoop stands to the north as you stood in the door? A. You can call it the north; I call it the west.

Q. You were running towards the steps? A. Yes, sir.

Q. And your face was towards the steps? A. I think I did.

Q. You shot those two last shots while you were thus running? A. Yes, sir.

Q. And not into the kitchen and across the kitchen as you described a short time ago? A. I was right in front of the kitchen door.

Q. How could you be in front of the kitchen door if you were in the act of running toward the steps that go off from the rear entry? A. I hadn't got to the steps yet.

Q. But you were running? A. Yes, sir.

Q. How far is it from the kitchen door to the steps? A. Five or six feet, I should think.

Q. How many steps would that take while you were running? A. Two or three.

Q. Your brother stood at the right entrance to the door? A. I don't know if he did then or not. I don't say he did or didn't.

Q. Didn't you tell me a short time ago that while you were shooting your last shot your brother stood near the



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door and Harvey Bruce in front of the door? A. No, sir.

Q. You didn't? A. No, sir.

Q. You didn't tell me that Harvey Bruce stood at that door, in front of the kitchen door, as it stood open?

A. The first two shots.

Q. Where was he when you were firing the second two shots? A. I think he was standing in there; I won't say he was.

Q. Where was Fred when you were firing the last two shots? A. I think he was on the ground.

Q. You fired the last two shots while running toward the steps of the entry? A. Yes, sir.

Q. How could you fire without firing in the direction of those two men, your brother Frederick and Harvey Bruce? A. That I can't tell.

Q. You didn't take occasion to try and see where your uncle Peter Hallenbeck was in that room when you fired the four shots, did you? A. No, sir.

Q. Nor where Burton was? A. No, sir.

Q. You heard the doctors testify on the stand here, didn't you, that six bullets were taken by them out of the body of Peter A. Hallenbeck and that two others were left in the body and one in the clothing? A. Yes, sir.

Q. Making nine bullets fired into the person of Peter A. Hallenbeck that night---now, how can you account for that number, or for any bullets being in the body of Peter

A. Hallenbeck? A. I cannot account.

Q. You cannot account for them? A. No, sir.

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Q. You can't account for any one of them, can you?  
 A. No, sir.

Q. You cannot name a shot that you fired, or saw fired, or heard fired? A. No, sir.

Q. That could have reached Mr. Hallenbeck? A. No, sir.

Q. Did you see Mrs Margaret Hallenbeck that night?  
 A. No, sir.

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

Q. Did you hear any remarks made by Peter A. Halenbeck that night? A. No, sir.

Q. Did you hear him make any sound? A. No, sir.

Q. Any sound with his voice that night? A. No, sir.

Q. You carried away one cartridge in your pistol that night? A. Yes, sir.

Q. Where did you put in more? A. After I got home, next day.

Q. You are accustomed to carrying a revolver? A. Not generally; I only carried it about two months while I was up in Kinderhook.

Q. When did you purchase the revolver that you carry now? A. I purchased it of Harvey Bruce.

Q. When? A. After election; about a week, I think.

Q. Didn't you carry it nightly after that? A. Not every night.

Q. Didn't you carry it whenever you went away? A. Not generally.

Q. Accustomed to the use of revolvers ? A. Yes, sir.

Q. You have shot it frequently, haven't you? A. No, sir.

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Q. Practiced with it? A. No, sir.

Q. Shot at targets with it? A. No, sir.

Q. Nor with any other pistol? A. No, sir.

Q. Never fired it off while you owned it? A. Twice.

Q. Before the evening of the killing of Peter A. Hallenbeck? A. Once or twice.

Q. Where? A. Out on the country roads.

Q. What do you mean by twice, two cartridges? A. Yes, sir.

Q. And that is all? A. Yes, sir.

Q. When did you put any fresh cartridges in the chambers that had been discharged on that occasion?

A. When I got home.

Q. How long was that before the 24th? A. About a month.

Q. How long had the cartridges which you discharged in the house of Peter A. Hallenbeck been in the chambers of that revolver before that night? A. About a month.

Q. When had it last been cleaned? A. I never cleaned it.

Q. Did you clean it on Christmas day? A. No, sir.

Q. It never has been cleaned since you owned it?

A. No, sir.

~~Very cautioned.~~

R e c e s s   t o   2   P .   M .

A f t e r n o o n S e s s i o n .

Witness resumed:

By Mr. A. F. B. Chace:

Neither of your brothers or Bruce ever cleaned it for you? A. No, sir.

Q. Why didn't you use blank cartridges? A. Because I didn't have any.

Q. Did you try to obtain any? A. No, sir.

Q. You have seen such an article, have you not? A. I have heard of them but I haven't seen them.

Q. All the charges fired by you from your pistol that night were charges with bullets? A. Yes, sir.

Q. Who went out of that room first that night? A. That I couldn't say.

Q. Anybody pass the door or steps or the place where you stood near the steps before you went into the house, before you went out of the house? A. No, sir.

Q. Who followed you out of the house, if anybody? A. That I can't say.

Q. Who did you see first after getting out of the house? A. Fred.

Q. Where did you first see him after you got out of the house? A. Down in the road.

Q. Was he in the road when you got there? A. Yes, sir.

Q. Where did he pass? A. That I can't say.

Q. You have just told me a moment ago that you saw nobody come out of that house after the three men went up on the stoop either while you were on the ground or on the

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stoop or at the doorway? A. You asked me on the stoop.

Q. I asked you all three---did you see anybody pass you? A. I don't remember.

Q. I will change it. Did you see anybody come out of that house after Burton and Bruce and Frederick went up on the steps? A. No, sir.

Q. You swore this morning that, when you fired the last two shots running from the doorway, Frederick was standing at the right jamb of the doorway, did you not?

A. Outside the door.

Q. Then you passed off the steps before Frederick did?

A. Yes, sir.

Q. Now you say you first saw him after you got out down on the road? A. Yes, sir.

Q. You told me that he was in the road when you got there? A. Yes, sir.

Q. Where did he pass you? A. That I can't say.

Q. Why can't you? A. Because I didn't notice if I met one of my brothers or not.

Q. It was a light night, wasn't it? A. Yes, sir.

Q. What direction did you run from the rear door of the kitchen to the road? A. Kind of southwest.

Q. Across what? A. Across the lawn.

Q. What rate of speed did you make that distance?  
A. As fast as I could.

Q. The first you saw of Frederick was down in the road?

A. Yes, sir.

Q. He must have passed you then? A. He must have; I

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don't remember if he did or not.

Q. What shoes did you wear that night? A. I think it was enamel shoes.

Q. You have seen shoes here in court? A. Yes, sir.

Q. The shoes you wore that night were the same shoes you had on when you were arrested, were they not? A. I think they was.

Q. You have seen the revolvers here in court? A. Yes, sir.

Q. Did you recognize the one you carried that night? A. Yes, sir.

Q. It is one of the four that have been introduced in evidence? A. Yes, sir.

Q. Did you see the other shoes here in court? A. Yes, sir.

Q. Did you recognise any of them? A. Yes, sir.

Q. Which ones? A. A pair something like mine.

Q. What other pair did you recognize, belonging to who? A. Fred.

Q. What other pair? A. Belonging to Burt, but those wasn't what he had on; I saw them when he wore them around the house.

Q. Where are the shoes that you claim Burton wore that night? A. They was in the house the last I saw of them.

Q. When did you see them there? A. The 23rd.

Q. Where were they---the 23rd? A. Yes, sir.

Q. You didn't see them there after that? A. Yes, sir.

Q. When? A. Christmas.

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Q. Where were they then? A. They was under the stove in the kitchen.

Q. What stove? A. Kitchen stove.

Q. What time Christmas did you see them there? A. In the afternoon.

Q. How long before the sheriff arrived did you see Burton's shoes under the stove? A. After dinner; in the afternoon.

Q. Did he change his shoes that day? A. Yes, sir.

Q. What other shoes did he wear other than the silver buttoned shoes that are here in court? A.. A pair of tan shoes.

Q. When did he take these off, if at all? A. After dinner.

Q. Wore them in the morning? A. Yes, sir.

Q. Where was he during the morning? A. Out to the barn.

Q. Anywhere else? A. Around the mill there.

Q. When did he take those shoes off? A. In the afternoon.

Q. What time? A. I couldn't say as to what time it was; it was after dinner.

Q. And placed them under the stove? A. He did.

Q. What kind of a stove was it? A. A cook stove.

Q. How far under were they? A. Only just set under the edge of the stove.

Q. Most of the shoes was outside of the stove, were they not? A. No, sir, just the back part of the heel was out

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Q. Did you afterwards see those shoes? A. No, sir.

Q. That is the last you saw of them? A. Yes, sir.

That was Christmas afternoon.

Q. Were you there all the afternoon after you saw the shoes under the stove until the sheriff came? A. I was in different rooms in the house.

Q. You were in the house? A. Yes, sir.

Q. You were in the kitchen? A. Not all of the while.

Q. Part of the time? A. Part of the time.

Q. In the afternoon? A. Yes, sir.

Q. After you saw Burton's shoes under the stove, was any meal partaken of in the house? A. Yes, sir.

Q. Where was that eaten? A. In the dining-room.

Q. Where is the dining-room with reference to the kitchen? A. To the north; north of the kitchen.

Q. Adjoining it? A. There is a little hallway.

Q. Do you pass ~~th~~ through the kitchen to go to the dining-room? A. Yes, sir, you can.

Q. Did you, when you went? A. Yes, sir.

Q. Did you when you returned from dinner, or from your meal? A. Went from the sitting-room in their room.

Q. Did you pass through the kitchen? A. No, sir.

Q. What is your height? A. That I couldn't tell.

Q. Never been measured? A. Not as I know of.

Q. Which is the taller, you or Burton?

Objected to as competent only for the jury to determine.

The Court: He may state the height of either.

A. That I can't tell.



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BURTON VAN WORMER, recalled:

Examined by Mr. A. F. B. Chace:

Q. What is your height? A. Five feet, ten and a half.

Q. You have been measured? A. Yes, sir.

Q. Do you know the height of your brother Willis?

A. I do not.

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FREDERICK VAN WORMER, sworn for the defendants, testified:  
Examined by Mr. Cady:

Q. Frederick, you are one of the defendants named in this indictment? A. Yes, sir.

Q. And one of the defendants now on trial? A. Yes, sir.

Q. You are a brother of the two defendants, Burton and Willis? A. Yes, sir.

Q. Who have been witnesses on the stand? A. Yes, sir.

Q. And who are named in the indictment with you?  
A. Yes, sir.

Q. And on trial with you? A. Yes, sir.

Q. What is your age? A. 20.

Q. When were you 20? A. Last October.

Q. What day in October? A. Eighth day of October.

Q. Where were you born? A. Castleton, Rensselaer County.

Q. How long did you live in Castleton? A. I think something like one year.

Q. Then where do you know that you lived next?  
A. Hudson.

Q. Where else? A. Greenport.

Q. Any other places? A. No, sir.

Q. What has been your occupation? A. Well, nothing in particular, nothing more than a laborer.

Q. All your lifetime? A. Yes, sir.

Q. Were you in the service of the New York Central & Hudson River Railroad Company? A. Yes, sir.

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Q. For how long? A. One year.

Q. In what line of duty? A. Tower service.

Q. By that, you mean the signal service of the road?

A. Yes, sir.

Q. Where were you stationed? A. Garrison and North Gerrantown.

Q. When did you go into the service of the road?

A. One year ago last October, the second.

Q. When did you leave it? A. October 2nd, 1901.

Q. I think your brother said yesterday to Mr. Chace that you were discharged, were you? A. Yes, sir.

Q. Where were you stationed at the time of your discharge? A. North Gerrantown.

Q. I think your brother said there was a charge of neglect of duty against you; was there? A. Yes, sir, sleeping.

Q. Sleeping on post? A. Yes, sir.

Q. And for that you lost your place? A. Yes, sir.

Q. Whereabouts were your family living when you lost your position on the charge of sleeping on duty? A. Kinderhook, New York.

Q. What did your family consist of? A. Two brothers and a step-mother and myself.

Q. None of you was married? A. No, sir.

Q. About when did you go to Kinderhook to live with your step-mother and your two brothers? A. Somewheres near about September ninth or tenth; I couldn't just say when.

Q. Do you remember the date of the death of your mother?

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A. No, sir, I do not.

Q. Where were you educated? A. Swamp school-house, Greenport.

Q. District school called the Swamp school-house?

A. Yes, sir.

Q. While you were at school there, Frederick, where were you living? A. Greenport.

Q. How far from the house of your uncle, Peter A. Hallenbeck? A. Not quite a quarter of a mile.

Q. How many years did you live there? A. About ~~18~~<sup>18</sup> years, I think.

Q. What work did you do? A. I worked on a farm and worked on the railroad and tending bar for the Long Branch Steamboat Company.

Q. How long were you on the Long Branch Steamboat Company? A. About two months and a half.

Q. Which boat? A. *Mary* Patton.

Q. When you worked on a farm, for whom did you work? A. My uncle, Peter Hallenbeck, Edward Coons and George Hilderbrandt, and Herbert Proper.

Q. In what town did these gentlemen reside? A. Greenport.

Q. All in the town of Greenport? A. Yes, sir.

Q. Did you work as a laborer by the day, or month, or year? A. By the day for the rest of the gentlemen except my uncle, and I worked there by the month.

Q. During how many years did you work for your uncle, Peter A. Hallenbeck? A. I think about 5 or 6 different years.

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Q. When you worked for him, you were hired from the first of April? A. Not always; I was at one time.

Q. In that year, how many months were you hired for? A. Eight months.

Q. Now just when did you go to Kinderhook to reside with your step-mother and brothers? A. Somewheres near the tenth last.

Q. Tenth of September or October? A. September I think it was.

Q. You lived there up to the time of your arrest? A. Yes, sir.

Q. In the house which was described by Mrs Herrick and Mrs Hoag when they were on the stand? A. Yes, sir.

Q. You know Harvey Bruce? A. Yes, sir.

Q. He is your cousin? A. Yes, sir.

Q. When did he come to your house? A. Somewheres about the 28th of August, something like that; I couldn't just say when; September it was; I couldn't just say.

Q. What has been the nature of your relations with your cousin, Harvey Bruce, as to being friendly or unfriendly? A. Friendly.

Q. Always? A. Yes, sir.

Q. And are now? A. Yes, sir.

Q. Whom did Harvey sleep with when he first came to the house? A. My brother, Burton.

Q. Did he ever occupy the room with you? A. Yes, sir.

Q. For how long? A. He occupied the room where I slept all the while he was there; there was two beds in one ~~bed~~

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room.

Q. So that, while he did not sleep with in the bed with you, still he occupied the same room with you?

A. Yes, sir.

Q. Coming down to the time nearer this tragedy, Frederick, when did you buy a mask? A. The night of the 23rd of December.

Q. Whereabouts? A. Ironed Vener's.

Q. In the village of Kinderhook? A. Yes, sir.

Q. At what time? A. About between 6 and 7 o'clock, I think it was.

Q. Were you alone when you bought it? A. Yes, sir.

Q. That was on the 23rd? A. Yes, sir.

Q. That was Monday? A. Yes, sir.

Q. Now, you have been in court, of course, during all of the trial? A. Yes, sir.

Q. And have heard testimony as to a contemplated trip to be taken by you boys? A. Yes, sir.

Q. When according to your recollection was that first spoken of and where? A. It was spoken of on the afternoon of the 23rd, in our kitchen at Kinderhook.

Q. State what was said about it? A. One of us mentioned about having some fun, and going down to have some fun with our uncle, and Harvey Bruce spoke up and he says, "I know a couple of young ladies at North Chatham, we will go up there and have some fun". I think we discussed the question about ten minutes. It was not decided where we would go, which one of the places, until the afternoon of the 24th

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about five o'clock.

Q. What was said about it then? A. I asked if they had made up their mind where they were going and they all said yes, they were going down to Uncle Peter's.

Q. Was Harvey Bruce present upon each occasion?  
A. Yes, sir.

Q. Where did you spend the day of Monday, the 23rd?  
A. At home or around Kinderhook.

Q. Where were you? A. Up at Bauer's store I spent part of the time and part of the time at my cousin's up near the Kinderhook depot, Mrs Eliza Van Slyke.

Q. Do you remember any particular incident of that day at all that is in your mind now? A. Yes, sir.

Q. What was it? A. About noon-time, I was up at Mr. Bauer's practicing with a rifle. There was my brother Bert, and a young man named Earl and two colored boys, and Bauer and myself and Bruce.

Q. Did you go to George Brown's? A. No, sir.

Q. You didn't go there to hire a horse, or after a horse? A. No, sir.

Q. Do you know when a horse was hired at Brown's?  
A. No, sir.

Q. When did you first hear of it? A. I heard of it first about 5 o'clock the afternoon of the 24th.

Q. Was that after your dinner? A. Yes, sir.

Q. Were you present at Mr. Vener's when any of the other boys bought masks? A. No, sir.

Q. When did you first see any masks that the other

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boys bought? A. I think I saw one the afternoon of the 23rd. I think my brother Willis was in the back yard, just off the back stoop, with one on his face!

Q. Do you mean the 23rd or 24th? A. 24th, it was.

Q. That you first saw it? A. Yes, sir.

Q. When you bought the mask on Monday, the 23rd, at Vener's store, do you think it was about 6 or 7 o'clock?

A. It was between 6 and 7 o'clock.

Q. Can you tell anybody who was in the store at that time besides Mr. Vener? A. I think I can tell of two ladies that was in there, Edna Stolliker and Miss Eva Potts.

Q. How about the clerks in the store? A. Mrs Vener was present when I was in there.

Q. Do you know what clerks Mr. Vener employed? A. Generally his wife and himself was in the store.

Q. How long had you known Mr. Vener? A. Since I lived at Kinderhook.

Q. Had you ever made purchases there before? A. Yes, sir.

Q. About how frequently, if you can tell the jury? A. I think I had been in his store about three times.

Q. Did you know Mrs Vener by sight? A. Yes, sir.

Q. Had you ever had any conversation with her that you remember now? A. Nothing only when I went in to buy something.

Q. Where was this mask when you first saw it in the store? A. On the floor in a box.



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Q. Did you hear a description of that box by your brother Willis this morning on the stand? A. Yes, sir.

Q. What do you say about it being accurate or not.

Objected to.

Question waived.

Q. Were there other masks in the box A. Yes, sir, it was full. It was about two feet in length and about 6 or 8 inches wide: paste-board box.

Q. Was there any other boy there with you when you bought your mask? A. No, sir.

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

Q. Have you seen any other boys with masks around Kinderhook? A. I saw a couple of young girls about 12 or 13 years old with a couple of them.

Q. What time did you have your dinner on Tuesday, the 24th? A. I think it was something like 4 o'clock.

Q. Now, you had a pistol at that time, didn't you? A. Yes, sir.

Q. How long had you been in the habit of carrying a pistol, Frederick? A. I had been in the habit of carrying a pistol since I was about 16 years old.

Q. When did you procure the pistol that you had that day? A. Election day; I couldn't say, it was in November, about the 6th or 7th.

Q. Whom did you buy it of? A. The hardware man, Mr. Palmer; I don't know his first name.

Q. Where does he live? A. In the village of Kinderhook.

Q. You say you were, for a time on the 24th, in the

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store of Mr. Bauer? A. Yes, sir.

Q. Who were in there? A. Harvey Bruce, my brother Bert and two colored fellers and a young man named Earl.

Q. Do you know the names of the colored men?  
A. Nothing only the nick-names of them.

Q. You don't know their family names? A. No, sir.

Q. How long were you in there? A. Something like half an hour or three quarters.

Q. Then you went home? A. Yes, sir.

Q. During the afternoon the subject of your trip was talked over again? A. Yes, sir.

Q. You reached the decision of which you have already spoken about going to Mr. Hallenbeck's? A. Yes, sir.

Q. Now well did you know Mrs Margaret Hallenbeck, the wife of your uncle? A. Very well.

Q. She was your mother's sister? A. Yes, sir.

Q. When had you seen her last? A. I couldn't say; it was only a short time; she was up at our house at Kinderhook.

Q. About how long before this expedition was decided upon? A. I couldn't just tell exactly; something like two weeks.

Q. You had seen her then? A. Yes, sir.

Q. And visited with her? A. Yes, sir.

Q. You left the house about what time that night with the team? A. Something like half past 5 I think it was as near as I can recollect.

Q. You four? A. Yes, sir.

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Q. Where was your mask? A. In my pocket when I went out of the house.

Q. How did you sit in the wagon? A. I and Willis sat on the seat and Bruce sat on my lap and Bert sat on Willis' lap.

Q. You went over the covered bridges? A. Yes, sir.

Q. And down the post-road as it is called? A. Yes, sir.

Q. State what route you went? A. We went about a quarter of a mile east and then turned to our right and down the post-road and passed through the village of Stuyvesant Falls and from there to Rossman and from there to Stockport Center and past Stockport Center to Stottville, to Hudson and over the Academy Hill and so down to the Greenport Church, and so to my uncle's.

Q. Snow on the ground when you left home? A. Yes, sir.

Q. Bright moonlight night? A. Yes, sir.

Q. After you left your house and going to the bridge, did Harvey Bruce ask where you were going? A. No, sir.

Q. Did he at any time on the trip? A. No, sir.

Q. Did anybody, as far as you heard on the trip going down, tell Bruce, in answer to any such a question, that they were "going down the line"? A. No, sir.

Q. Or was he told on Rossman Hill for the first time that you were going to Hallenbeck's? A. No, sir.

Q. You made a stop at Stockport Center? A. Yes, sir.

Q. At whose store? A. Tinker's store, I think the gentleman's name is.

Q. The stop described by Bruce and the others? A. Yes, sir.

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Q. Who got out there? A. Bruce; he purchased a paper of tobacco for me.

Q. Describe the rest of your trip down to the Church, if there is anything to describe, and, if not, state what happened at the Church when you got in sight of it?

A. When we came over McKinserry's Flats I looked up through orchard and I saw the lights burning up in the church and I made the suggestion that we go up to the church. I says, "Let's drive up to the church and see the Christmas tree and see who all is there that we know". We drove up there and I got out of the wagon and walked around to the west side of the church and looked in three windows on the west side of the church. I saw a lot of people there that I knew.

Q. Who did you see there that you knew? A. I saw Charles Hallenbeck, my uncle's brother, and Miss Annie Altheizer, and Margaret Flass and quite a number of people that I knew.

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

Q. Did you take anything from any wagon or vehicle there that night? A. No, sir.

Q. Tell me whether you knew anything had been taken at that time? A. I did not.

Q. When did you first find that out? A. While I was here in jail at Hudson.

Q. Where were the other boys when you came down and got into the wagon? A. They were all in the wagon.

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Q. About how long was the stop that was made at the Greenport Church? A. I couldn't say; something like 5 or 6 minutes; no longer than that.

Q. You didn't look at any time-piece? A. I had a watch with me but my watch stopped at 7 o'clock; it run down.

Q. Did you look at it at all? A. Yes, sir, did just before we got in Hudson, right at the tower-house I took out my watch and I saw it was 7 o'clock and the watch was stopped.

Q. You didn't look at it or any other time piece than that before you got home? A. No, sir.

Q. After you all four got in the wagon at Greenport Church what did you do? A. We drove down to my uncle's lower place, known as the carriage house near the highway and tied the horse.

Q. What happened before you got there as to anybody getting out of the wagon? A. Just abote the house, I think about 25 or 30 yards, Bruce and my brother Willis got out of the wagon and me and Burton stayed in the wagon and drove down to the lower place.

Q. Did you observe any lights in the house as you went by? A. Yes, sir.

Q. State what you saw, about what you saw, in the house, if anything? A. I saw my uncle and aunt and my uncle's mother sitting in the front room. The light was burning bright and the shades were half way up.

Q. About as they were described by Mrs Edwin H.

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Hallerbeck, when she was on the stand? A. Yes, sir.

Q. When you got down to the wagon house or barn, what was done? A. The horse was tied, and blanketed and we took the false faces--we took our undercoats off and changed them, put them inside out and put them on and put our masks on down by the barn.

Q. Who first spoke about your changing your coats in that way? A. We spoke about that subject while we were going down the road past the house. I think I was the one that said about changing our coats? I said, "Let's change our coats inside out and they won't know who we are".

Q. That was done down at the barn? A. Yes, sir.

Q. After you changed your coats, what was done?  
A. After we had our coats changed and had our false faces fixed on, we went up past the house and I saw my aunt and uncle standing looking out of the window, the window to the south. We went up past the house about 25 or 30 yards I couldn't say just how far it was and there was a picket off the fence and we went through the fence and through the orchard; I couldn't say just how far we went north in the orchard; we went some distance and we turned to the west then and came down back of the house.

Q. Do you remember anything about the order in which you were at that time, who went ahead? A. Burton and I was ahead after we left the wagon. After we went through the fence Bruce and Burton was ahead and me and Willis walked on behind them.

Q. Have you any recollection how far apart you were

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when you walked over that ~~road~~<sup>route</sup>? A. We were quite close together as we passed the house but after we went through the fence, Bruce and Burton was about 25 or 30 feet ahead of us going through the orchard.

Q. When you say 35 or 40 feet, what do you mean as compared with the width of this room? A. It was not as far as that.

Q. How much of the room? A. About the width between three windows.

Q. About the width between the windows on that (ind.) side? A. Yes, sir.

Q. The outside frame of those windows? A. Yes, sir.

Q. You think that is about the distance you were apart? A. Yes, sir.

Q. That is, the distance apart between you and Willis? A. No, sir, between Willis and I, and Bruce and Burt.

Q. You were in couples at that time? A. Yes, sir.

Q. When did you take out your revolvers? A. When I first jumped over; I think one or two wires, I will not say which, run around the east side of the house that is fastened on a post and the dog came out around the corner of the house and I took my revolver out then.

Q. You all had revolvers? A. Yes, sir.

Q. You had talked about shooting them? A. Yes, sir.

Q. That was the first time you had taken them out?  
A. Yes, sir.

Q. What, if anything, had been said upon the subject of

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shooting revolvers? A. My brother Burton, after we got our coats turned and our false faces on down by the barn, says, "Now be careful where you shoot, and don't shoot anyone". He made the same remark when we were about to enter the back door near the steps. He said be careful and not shoot anybody.

Q. Do you know when Willis took out his revolver?

A. No, sir, I do not.

Q. Or when Bruce took out his? A. No, sir, I do not.

Q. Or when Burton took out his? A. No, sir, I do not.

Q. All you assume to know is when you took out yours?

A. Yes, sir.

Q. And you have told, as near as you can recollect?

A. Yes, sir.

Q. Now, as you approached the entry-door---that is on the west side of the house? A. Yes, sir.

Q. What order were you in? A. Burton first, Bruce next, and then myself.

Q. Had the dogs barked? A. Yes, sir.

Q. Anybody speak to the dogs? A. I did. I called both of them by name and they kept on barking. The little brown dog's name was Ben and the other's name was Shep. The shepherd dog's name was Shep.

Q. The shepherd dog was named Shep? A. Yes, sir.

Q. You spoke to them both by name? A. Yes, sir.

Q. Where were you when you did that? A. On the north side of the house; there is a cistern there.

Q. Did you speak to them more than once? A. Yes, sir.



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Q. What effect did it have upon the dogs? A. It didn't have any.

Q. They still barked? A. Yes, sir.

Q. Well, now, who went up the steps in the entry?  
A. Burton was first and Bruce next and then me.

Q. Where was Willis? A. I think the last I saw of him he was about 6 or 8 feet west of the stone at the foot of the stairs.

Q. There is a stone there? A. Yes, sir.

Q. Your recollection is that he was 6 or 8 feet west of that stone? A. Yes, sir.

Q. Did you see Willis go up the steps that night?  
A. I did not.

Q. You three, Burton, Harvey Bruce and yourself went up the steps into the entry? A. Yes, sir.

Q. What took place there? A. Before anyone rapped on the door, the two dogs came up to the steps barking and I took my foot, it was the shepherd dog, and I took my foot and pushed him off the step.

Q. What did the dogs do then? A. I didn't see the dogs after that; they both went off; the one I pushed off the steps and the other one run.

Q. They went away? A. Yes, sir.

Q. What happened next? A. Burton rapped on the door and the door was opened. I couldn't say just how long before it was opened. The first I heard anything my uncle uttered an oath and he said, "get out of here", then he hit my brother under this (ind.) eye, I think it was, and

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my brother Burt took and pushed him back into the room.

Q. Where were you when this happened? A. Just on the landing on the top of the steps.

Q. You could see into the kitchen? A. Part way; I had a kind of view, the same as like that (ind.). I couldn't see very plain in the kitchen; I could see off towards the dining room.

Q. Did you see anybody else in the kitchen at that time? A. No, sir, I did not.

Q. Where was Bruce? A. He was right ahead of me, to the right of me.

Q. At your right? A. Yes, sir.

Q. You were on the left of the three? A. Yes, sir.

Q. Did you see Mrs Hallenbeck that night? A. Not after I came up the road.

Q. I mean after you got at the house, did you see Mrs Margaret Hallenbeck? A. No, sir.

Q. You saw your uncle? A. Yes, sir.

Q. And you saw the beginning of an encounter between him and Burton? A. Yes, sir.

Q. What took place after you saw what you have already described? A. After he struck my brother Burton he took and pushed him back in the room like that (ind.). I think I saw his revolver in his left hand. They had some scuffling there.

Q. Describe that scuffling when you saw it? A. I saw part of it, I didn't see all of it.

Q. Describe what you saw? A. I saw, after the door

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was opened, he hit my brother under the eye and my brother took and pushed him back in the room and he grabbed my brother somewhere around the throat and near the shoulder and then there was only a short time when I heard-----

Q. (Int'g.) Up to that time, had any pistol been discharged? A. No, sir.

Q. How long after the struggle between your uncle and your brother Burton did you hear a pistol shot? A. Just a few seconds.

Q. Short time? A. Yes, sir.

Q. Did you see the flash of that pistol? A. I did not.

Q. But you heard the report? A. Yes, sir.

Q. When you heard the report, where were you standing? A. Standing leaning up against the left side of the door casing outside of the door.

Q. Where was Bruce? A. I couldn't say where Bruce was then.

Q. Had you fired any pistol shot up to that time? A. No, sir.

Q. Did you fire any pistol shot that night? A. Yes, sir.

Q. How many? A. I shot four times. I shot twice after I heard the first report, and then I heard two louder ones, and then I shot a couple of times.

Q. How many pistol shots did you hear, if you can tell? A. I couldn't say. I heard three before I shot my

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first two.

Q. Now, Frederick, where was your uncle standing when you shot first? A. When I shot, his back was near the reservoir of the stove. My brother was pushing him back, trying to get away from him.

Mr. Chace: I object to his saying "Trying to get away from him". That is a matter of opinion.

The Court: State what you saw.

Q. State what you saw? What do you mean by "trying to get away from him"? A. He had Burton around the coat here somewheres near the shoulder. He had taken his hand off of his throat and he had hold of him, pushing him like that (ind.) That is all I saw of him.

Q. Where were they then? A. Right near the reservoir of the stove; at the west end of the stove.

Q. Where was Bruce? A. I couldn't say.

Q. Where was Willis then? A. He was on the ground; I hadn't saw anything of Willis since I left to come upon the stoop.

Q. You fired four shots, you say? A. Yes, sir.

Q. Didn't you fire more than four ~~times~~ times? A. No, sir.

Q. How do you know? A. There was one cartridge in my revolver the next morning.

Q. What was your revolver, a five shooter? A. Yes, sir.

Q. You say there was one there next morning? A. Yes, sir.

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Q. Is that the only way you know how many times you shot? A. It is not. I shot twice after I heard three shots, and then when somebody hollered about the gun, I took and shot twice more and run.

Q. Do you know which, if any, of your bullets hit your uncle? A. I do not.

Q. Do you know whether they hit him or not? A. I do not.

Q. 'You don't say they didn't? A. No, sir.

Q. And you don't say they did? A. No, sir.

Q. Do you know or don't you know? A. I do not know.

Q. What was your condition of mind while this affair was going on? A. I was somewhat excited.

Q. When was anything said about the gun? A. I heard some revolver shots, I couldn't say how many there was, and the sound came from the right of me and something was said, "For God's sake run, boys, he has got the gun; he will shoot the head off of you".

Q. When you heard that, whereabouts was your uncle, if you know? A. I don't know.

Q. Where was your brother Burton? A. I couldn't say.

Q. Did you see him at that time? A. No, sir.

Q. When did you last see your brother Burton, before your firing these shots? A. Him and my uncle was having a struggle there in the kitchen.

Q. Now Frederick, can you tell how many shots had been fired up to that time---that is, all that you had heard? A. Until I shot?

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Q. Up to the time when you saw your brother and your uncle struggle near the stove, can you tell how many shots had been fired? A. I couldn't.

Q. More than one? A. Yes, sir.

Q. Several? A. There was more than one; I couldn't say how many was fired.

Q. -What was the condition of the room, as to being smoky or not? A. There was quite a great deal of smoke in the room.

Q. After you saw your brother Burton and your uncle struggle near the reservoir of the stove, when did you next see your brother Burton so as to recognize him? A. Down at the barn where we got into the wagon.

Q. Can you tell where Bruce was when you saw them struggling near the stove? A. I could not.

Q. Or where Willis was? A. No, sir, I could not.

Q. Did you go into the kitchen yourself that night? A. No, sir.

Q. Or into the sitting room? A. No, sir.

Q. Or the bed-room? A. No, sir.

Q. Do you mean to have the jury understand that you didn't cross the threshold of the kitchen that night? A. Yes, sir.

Q. Do you say you are sure you didn't go into the kitchen? A. Yes, sir.

Q. There is a shot through the kitchen door that has been testified to; do you know who shot that shot? A. I do not.

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Q. There is a shot in the ceiling of the sitting-room that has been testified to; do you know who fired that?

A. I do not.

Q. Or the one by the corner near where the gun-rack stood? A. No, sir, I do not.

Q. How long did this affair continue? A. I couldn't say; it was but a short time.

Q. How long an interval elapsed between your first two shots and your last shots? A. I couldn't say; it was but a short time.

Q. Do you know whether the shots <sup>you</sup> fired were a part of the shots that killed your uncle? A. I do not.

Q. You can't tell? A. No, sir.

Q. Did you shoot at your uncle that night? A. I did not.

Q. Did you ever intend to? A. No, sir.

Q. And yet your shots may have killed him? A. Yes, sir, they might; I couldn't say.

Q. Had you had any trouble with your uncle? A. No, sir.

Q. With what intent did you go to that house? A. Just to have some fun.

Q. Putting on your masks? A. Yes, sir.

Q. Go on and tell about it? A. Putting on our masks and changing our coats inside out and shooting revolvers a couple of times; that was all.

Q. When did you last see your uncle that night, Frederick, that you can now remember and tell to the jury? A. My brother had hold of him.

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Q. Did you see him go to get a gun? A. No, sir, I did not.

Q. Did you see a gun in his hand? A. I didn't.

Q. When you saw him he had no gun in his hand? A. No, sir.

Q. When did you first ascertain that your uncle had been injured? A. I think it was something between 10 and 11 o'clock Christmas morning.

Q. Next day? A. Yes, sir.

Q. Can you tell who left the house first that night?  
A. I did.

Q. Do you know where Willis was when you left? A. No, sir, I do not.

Q. If you don't know where Willis was when you left, how do you know you left first? A. There wasn't anyone off the stoop when I went down; I was the first one down in the road---I just run down the road with my arm over my head like that (ind.) and I got 25 or 30 feet west of the lane that comes into the lower barn.

Q. What did you put your arm over your head for? A. I expected to get shot.

M. Chace: I object to that.

The Court: It may stand.

Q. Where was Willis then? A. Willis the first I saw him I turned around in the road and he was just getting up from where he had fallen in the snow.

Q. When did you next see Burton and Bruce after you were leaving the house? A. At the wagon.



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Q. Then you took off the robe from the mare and untied her and went away? A. Yes, sir.

Q. Whereabouts did you stop? A. Somewheres north of Mr. Church's farmhouse.

Q. That is about how far from Mr. Hallerbeck's residence? A. I should judge about two miles.

Q. What took place there? A. We got out of the wagon and changed our coats and took our rasks off and put our hats on.

Q. Did Burton say, at that place or any other place on the return home that night, that he had fired the Gzolgosz shot at Mr. Hallerbeck? A. No, sir.

Q. Or at his uncle? A. No, sir.

Q. Or words to that effect? A. No, sir.

Q. Did Willis say he had emptied his revolver into his uncle, or words to that effect? A. No, sir.

Q. What, if anything, did you say upon the subject of having shot your uncle at that time? A. I didn't say anything.

Q. You made no remark upon that subject? A. No, sir.

Q. Did you then know that you had done it? A. No, sir.

Q. At any time that night, did you strike the arm of Bruce? A. No, sir.

Q. At any time that night, did you take away his revolver? A. No, sir.

Q. At any time that night, did Bruce say anything to any of you upon the subject of his revolver having been taken away from him? A. No, sir.

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Q. Or his having been struck on the arr? A. No, sir.

Q. When did you first hear of that from him? A. While I was in court here the other day.

Q. Where was he? A. On the witness stand.

Q. What route did you take home? A. We came over the Bay Road, up Third Street Hill and I think we went up Allen Street and turned here at the right up Allen Street and crossed over to Union and so over Fourth Street and up State and across Underhill Pond.

Q. You crossed in front of the court-house here?  
A. Yes, sir.

Q. And so across to Warren Street? A. Yes, sir.

Q. What route did you take after you left Hudson?  
A. After we got out to the Park Hotel, we took the same route as when we came down.

Q. You got home about half past nine? A. Yes, sir.

Q. Where did you go then? A. I set in a chair until, I think it was, ten minutes after ten and I went upstairs to bed.

Q. Where were the other boys when you went to bed?

A. Willis and his lady friend had gone out of the house and Burton and Bruce had gone out of the house; I didn't know where they had went.

Q. You didn't go with ther? A. No, sir.

Q. Where did you spend the next day? A. The next day after, I heard ry uncle was shot, I went down to Mr. Scully's and asked him if he had heard anything about it and he said he had. He said he heard there was some chicken

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thieves----

Mr. Chace: Objected to.

Q. You heard that your uncle had been shot? A. Yes, sir.

Q. Where did you go then? A. I came back up to the house and told the rest of the people that was in the house, my mother and Miss Pearl Van Buren and Isaac Van Slyke was in the house and my two brothers and Harvey Bruce.

Q. You told them all? A. Yes, sir.

Q. Where did you stay during the rest of the day? A. I went down on the pond just below the house, southeast of the house, and was down there, and gave out some cards that I had printed for a dance for New Year's. I was skating on the ice for a short time and then came back to the house.

Q. You didn't leave Kinderhook? A. No, sir.

Q. You were arrested there that night? A. Yes, sir.

Q. You have been in jail in Hudson ever since? A. Yes, sir.

Q. Frederick, how near were you to your uncle at any time that night, as you remember now? A. The nearest I was to him was about 6 or 7 feet; I couldn't say just how near he was there.

Q. Did you, at any time that night, hold your revolver to his back and fire? A. No, sir, I wasn't anywheres near his back.

Q. Did you ever tell Bruce or anybody else that you did

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so? A. No, sir.

Q. You say the fact is that you didn't? A. Yes, sir, I didn't.

CROSS-EXAMINATION.

By Mr. A. F. B. Chace.

Q. What did you say was your age? A. 20.

Q. Are you not mistaken about your age? A. No, sir.

Q. When did you first vote? A. I voted last fall.

Q. At the general election last fall? A. Yes, sir.

Q. When, do you say, that arrangement was made between yourself and your two brothers and Harvey Bruce to go to the house of Peter A. Hallenbeck on the night of December 24th last? A. It was decided on the afternoon of the 24th about 5 o'clock.

Q. What was said at that time, if anything, with reference to the manner of dress that you were to wear that night? A. There was not anything.

Q. Anything said at that time upon the subject of whether or not masks should be worn? A. No, sir.

Q. When did you first hear anything said about masks being worn that night? A. When we got down to the wagon after we had tied the horse.

Q. Nothing said about masks or who should carry them down there? A. No, sir.

Q. How many false faces were taken down there? A. I

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couldn't say; I think there were three I saw down at the wagon.

Q. What other disguise did you see down there? A. Piece black of cloth.

Q. What was the character of the mask you bought to use? A. They were to represent an Indian, I think.

Q. Where did you take the mask you say you bought at Vener's store? A. Home.

Q. What did you do with it when you got home? A. Put it in my room.

Q. Who was at home when you reached there with the mask? A. I think my step-mother and Willis and Harvey Bruce.

Q. Where was Burton? A. I couldn't say; I didn't see him.

Q. These parties that you have named saw the mask? A. No, sir.

Q. Who took your mask out of the wagon? A. I did.

Q. Did you see any other mask taken out? A. I did.

Q. When Bruce and Burtor came there with the horse and carriage that night, where were you and Willis? A. I couldn't say where Willis was; I was sitting in the kitchen with my feet on the stove.

Q. You were then told that the horse and carriage was there ready? A. Yes, sir.

Q. What did you or anybody first do with reference to getting ready to go? A. I put on my shoes, and coat, under-coat and overcoat, and hat.

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Q. What else? A. That's all. I went up in my room and got my false face.

Q. Did you take any pistol with you? A. I had the pistol in my pocket.

Q. What pocket did you carry it? A. In my right hand hip pocket.

Q. Of your trousers? A. Yes, sir.

Q. How long did you carry a pistol? A. About four years.

Q. How many different ones have you owned? A. Something like 7 or 8.

Q. How long have you had the one that you carried on the night of that tragedy? A. Since election last fall.

Q. How regularly had you carried it? A. I generally carried it nights with me. Sometimes I have had it in my pocket during the day-time.

Q. In the course of this four years or more that you have owned revolvers, how much have you practiced with them? A. Not very much.

Q. Any? A. I don't think that I have with a revolver, no, sir.

Q. Have you shot at anything? A. Nothing only at a dog or anything like that. I never practiced at a target.

Q. How as to cats? A. I never shot a cat.

Q. Who do you say took out any other rasks and put in that wagon that night? A. I couldn't say. I think Willis was the one that took them out of the back of the wagon.

Q. Did you see either of the other men, either Burton

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or Harvey, take out any rasks? A. I did not.

Q. Or false faces? A. No, sir.

Q. You think Willis carried out from the house the other false faces? A. I couldn't say who took them out of the house.

Q. As you approached the Greenport Church, you suggested driving up to the church? A. Yes, sir.

Q. You went to certain windows in the church? A. Yes, sir.

Q. On which side of the church? A. West side.

Q. How many windows did you look into? A. Three, I think.

Q. Who did you find there that you knew? A. I saw Charles Hallenbeck and Mrs Theodore Plass and Miss Annie Altheizer and a number of people I knew.

Q. Did you see Mrs Charles Hallenbeck? A. No, sir, I did not.

Q. Did you see Mr. Lawrence? A. No, sir.

Q. You know them both well? A. Yes, sir.

Q. You know the pew that Charles Hallenbeck usually occupied in that church? A. I do not.

Q. During any time that you lived in Greenport, have you been to that church and seen Charles in the church? A. Yes, sir.

Q. Didn't he occupy a particular pew? A. They hired a pew, I think about the third or fourth seat from the pulpit in the Greenport Church but they very seldom occupied it.

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Q. Where did you see Charles that night in the church?

A. I think it was the second seat from the stove in the south-west corner of the church.

Q. How many windows did you look into before you saw Charles? A. Three.

Q. That was the last window you looked into? A. Yes, sir.

Q. I understood you to say you looked into three windows? A. Yes, sir, I did.

Q. You say you looked in three before you saw Charles? A. I saw Charles in the first window I looked in.

Q. You didn't testify to that before? A. I would like to correct that.

Q. You didn't testify a moment ago in the hearing of this jury that you looked in three windows before you saw Charles? A. Yes, sir, I did.

Q. Isn't that correct then? A. No, sir, it is not.

Q. Now, you want to change it? A. Yes, sir, I would like to.

Q. Which window did you look into first, the one nearest the pulpit or most remote from it? A. The one furthest away from the pulpit; the first or second window, I forget just which one it was.

Q. You say when you got back the other three of your party were in the wagon? A. Yes, sir.

Q. Did you say either of them get out of the wagon at any time there at the church? A. I did not.

Q. During the way from Kinderhook to Greenport Church,



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was there any talk in the party with reference to how you should be clothed or what you should do when you went into Peter A. Hallenbeck's house? A. After we left the Greenport Church, there was.

Question repeated. A. No, sir.

Q. Was anything said at any time when planning this trip to Peter A. Hallenbeck's or before you got to Greenport Church with reference to shooting being done in the house that night? A. No, sir, there was not.

Q. On the way from the church to Peter A. Hallenbeck's didn't you tell your party, the rest of your party, that you had seen Charles Hallenbeck in the church? A. Yes, sir.

Q. On the way from the church down to where Willis and Bruce got out of the wagon was there anything said by any of you four men with reference to how you should enter the house, how you should be clothed or disguised or how you should shoot? A. Yes, sir.

Q. Where was that said? A. I couldn't say; it was between the Greerport Church and my uncle's house.

Q. Who said it? A. I did.

Q. What was said? A. I said, "Let's turn our undercoats inside out".

Q. What else? A. That's all.

Q. Nothing further said upon the subject as to how you should prepare yourselves or what you should do after you got to the house, between the church and where you and Bruce got out of the wagon? A. No, sir, there was not.

Q. Burton drove the horse and wagon on down the hill

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past Peter A. Hallerbeck's house with you in it? A. Yes, sir.

Q. And Willis and Bruce were behind the wagon? A. Yes, sir.

Q. And came down to where you tied the horse? A. Yes, sir.

Q. Who tied the horse? A. I think Willis did.

Q. Who put the robe on? A. Harvey.

Q. What did you do while they were doing that? A. I took my overcoat off and turned my undercoat inside out and put my false face on.

Q. What next occurred down there at the barn? A. The other three took their overcoats off and changed their undercoats and put their false faces on.

Q. While you were taking off your undercoat and turning your coat inside out and putting it on and putting on the mask, what was Burton doing? A. I couldn't say: I think he was taking his overcoat off or the coat he had on; changing it.

Q. What did he do with reference to any disguise of his face? A. He put the cloth over his face.

Q. Before you had each taken off your overcoats and changed your undercoats inside out and put on your masks, had anything further been said than what you said about turning coats inside out as to the manner of your dress or disguise or how you would go into the house? A. Yes, sir.

Q. What? A. First he told us to be careful how we shot.

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Q. Who did? A. Burton.

Q. That is all he said? A. Yes, sir.  
Q. He didn't tell you where to shoot?  
A. No, sir, he told me to be careful.  
Q. Or how to shoot? A. No, sir, he told me to be careful.

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

Q. You went down there, you say, for fun? A. Yes, sir.

Q. You had it, didn't you? A. We did, yes, sir.

Q. Now, you could tell these three men that were with you after they had on their disguise, could you not?

A. No, sir.

Q. You could not? A. No, sir.

Q. You told Judge Cady in what order they went up and who remained down on the ground? A. Yes, sir.

Q. And you knew them, didn't you? A. Yes, sir.

Q. How did you know them? A. By their pants.

Q. Then you say you could know them, didn't you? A. You could by their pants, but not by their faces.

Q. You knew them, notwithstanding their disguise?

A. I did when I was close by them.

Q. You were close by them, were you not? A. Yes, sir, when I went up in the house, quite close.

Q. You could tell each of those men from the other, could you not? A. I could by the back of them.

Q. You could by the side of them, could you not?

A. No, sir.

Q. You could not stand by the side of your brother Burton and see what you could see of the side of his head and the back of his head and his person and recognize him?

A. No, sir, not unless I was close by him.

Q. I assure you were close by him? A. I could then.

Q. And the same is true with reference to your brother Willis? A. No, sir.

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Q. Why not? A. Because I think his false face and Bruce's false face were quite alike.

Q. They didn't cover the back of the head at all, did they? A. No, sir.

Q. Nor the ears? A. They came somewheres around the ears.

Q. They wouldn't cover the ears? A. No, sir.

Q. All the rest of your brother's head would be exposed to you? A. Yes, sir.

Q. And his eyes would be exposed to you? A. Yes, sir.

Q. And you could tell him? A. No, sir, him and Bruce----

Q. (Int'g.) You did recognize him as being the person that remained down at the foot of the stairs? A. Yes, sir.

Q. And you swear positively that he was down there, don't you? A. Yes, sir.

Q. You have no doubt as between the three persons, other than yourself, as to who was down on the ground? A. No, sir.

Q. You know in what order the other three went up the steps, don't you? A. Yes, sir.

Q. What was it? A. Burton first and Bruce next, and then myself.

Q. You recognized Burton? A. I did.

Q. And Bruce? A. Yes, sir.

Q. And knew them from each other? A. Yes, sir.

Q. Near which side of the door did Burton stand? A. To the right.

Q. Where was Bruce? A. Bruce on the left of Burton and

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I was on the left of Bruce.

Q. How close? A. I couldn't say how close Bruce and Burton were together but there was something like a foot or so between Bruce and I.

Q. Who rapped on the door? A. I think Burton did.

Q. Who opened it? A. My uncle.

Q. How far did the door go open? A. I should think about near all of the way.

Q. As far as it would open? A. No, sir, I don't think so.

Q. There is a cupboard behind that door? A. Yes, sir.

Q. You have been familiar with that door for years?  
A. Yes, sir.

Q. A cupboard stood behind it for years, did there not?  
A. No, sir.

Q. For how long a time? A. I think something like a year and a half or two years.

Q. You have known it to be there? A. Yes, sir.

Q. If that door is opened about a foot beyond straight it strikes the cupboard, does it not? A. I think about a foot and a half between the door and cupboard when the door is opened straight.

Q. When the door was opened, did it strike that cupboard and swing back? A. No, sir, I don't think it did.

Q. When the door was opened, who went into the room immediately? A. Burton.

Q. Where was you standing when Burton went in? A. To the left of Bruce.

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Q. Could you see into the room plainly? A. No, sir.

Q. Why not? A. Because I was not close enough in front of the door to look in.

Q. How soon did you go in front of the door? A. I don't know just how long ; short time.

Q. You did stand where you could see Mr. Hallenbeck? A. Yes, sir.

Q. And you stood, as you say, where you saw Mr. Hallenbeck strike at your brother? A. Yes, sir.

Q. And you saw his fist go in the cheek as you say? A. Yes, sir.

Q. And you did see your brother push Mr. Hallenbeck away from him? A. Yes, sir.

Q. Then you must have stood where you could see into the room? A. Yes, sir, I stood so I could see part of the room.

Q. What part of the room couldn't you see? A. I couldn't see in the east part.

Q. That would be beyond the range, over where the kitchen table stands? A. Yes, sir.

Q. There was nothing there to attract your attention, was there? A. I couldn't see it, if there was.

Q. You could see from where you stood, and see Mr. Hallenbeck and your brother Burton---you could see from there the door that enters into the sitting-room? A. Not clearly.

Q. You could see it? A. Some parts of it, yes, sir.

Q. Didn't Burton and Mr. Hallenbeck, when you say

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Burton pushed him back, stand further to the north than the entrance to the dining-room? A. I don't understand that.

Question repeated. A. No, sir.

Q. Where did they stand? A. They were right near the west end of the stove, near the reservoir.

Q. In order to peek in, if you choose to call it so, or to look in that door and see the reservoir, would you not have to see past the door that goes into the sitting room?

A. Yes, sir.

Q. Would not the door of the sitting-room be in plain sight to you? A. No, sir.

Q. Why not? A. Because the kitchen door was not opened far enough to see the dining-room door.

Q. When you stood up by the other side of the door? A. Yes, sir.

Q. And you think the door went nearly open? A. Yes, sir, it did.

Q. You didn't see Mrs Hallenbeck in that room? A. No, sir.

Q. There was a brilliant light there, was there not? A. Yes, sir, there was; quite light.

Q. You were standing where you could see Burton? A. Yes, sir.

Q. From the time he first entered the room until he went out of it? A. No, sir, I did not.

Q. Where did you go? A. I stood by the door.

Q. Did you go away from there at all? A. No, sir.

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Q. What would prevent you from seeing Burton during all that time? A. Because he said he was in the other room.

Q. Never mind what he said---before he went into the other room and while he was in the kitchen, you could see him all the time? A. Yes, sir, as soon as he was where I could look.

Q. As soon as he was in the kitchen, you could see him? A. No, sir.

Q. When and where was he in the kitchen when you think you could not see him? A. If he was to the left of the door, I couldn't see him at all.

Q. To the left of what door? A. Kitchen door.

Q. Well, were you not where you could see Mr. Hallenbeck as long as Burton had hold of him? A. Yes, sir.

Q. During any of that time, did you see Mrs Hallenbeck? A. I did not.

Q. She is the sister of your mother? A. Yes, sir.

Q. And of your step-mother? A. Yes, sir.

Q. Has your step-mother children? A. No, sir.

Q. Had she been married before she married your father? A. No, sir.

Q. And you knew Margaret Hallenbeck, the sister of your mother and step-mother, intimately well, didn't you?

A. Yes, sir.

Q. She is a large woman, is she not? A. Yes, sir.

Q. And yet you didn't see her at all that night? A. I did not.

Q. Will you swear that she was not in there? A. I will



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swear I didn't see her.

Q. That is all you will say? A. Yes, sir.

Q. How many shots did you ~~max~~ see fired in the kitchen? A. I couldn't say how many was fired.

Q. How many shots did you hear fired in the kitchen? A. Well, I heard several, I couldn't say how many there was fired.

Q. How many shots did you fire into the kitchen? A. Four.

Q. How did you hold your pistol when you made those four shots? A. The first two landed something in that (ind.) direction.

Q. How did you hold it, up on a line with your eye? A. No, sir.

Q. Took no aim? A. No, sir.

Q. Didn't you hold it up and aim at anything? A. No, sir.

Q. You shot at random into that room? A. Yes, sir.

Q. With your brother in it? A. I didn't see him then.

Q. Was Mr. Hallenbeck in it? A. I couldn't say whether he was in it or not.

Q. And you didn't care? A. Yes, sir.

Q. You shot without taking aim at anything? A. Yes, sir.

Q. You knew that you had last seen, a few moments before that, your own brother and Peter Hallenbeck in that room? A. Yes, sir.

Q. And yet you shot into that room deliberately with-

1 out air? A. Yes, sir.

2 Q. What did you direct your pistol toward? A. I  
3 couldn't say where the bullets went.

4 Q. What direction did you hold your pistol when you  
5 discharged the first two bullets? A. To the right.

6 Q. To the right of what? A. To the right of me, where  
7 I stood.

8 Q. What would be located in that direction from where  
9 you held your pistol?

10 Objection interposed ~~after~~ what would be located  
11 there.

12 The Court: He may state what was there, if he  
13 knows.

14 Q. What was there in the room? A. I think there was  
15 coats hanging there on the wall; there was some hooks there.

16 Q. Where were those coat hooks? A. There is a kind  
17 of partition comes out from the dining room and comes out  
18 something like four feet and then goes east back of the  
19 stove.

20 Q. In the dining room? A. In the kitchen. The thresh-  
21 hold comes out from the dining-room door and comes out a-  
22 bout four feet north and then to the east.

23 Q. You shot those two bullets in that direction?  
24 A. Yes, sir.

25 Q. You didn't aim at the ceiling? A. No, sir.

Q. Nor at the floor? A. No, sir.

Q. That place where you say those coat hooks were is on  
the southerly wall of the kitchen? A. It forms a part of

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the easterly wall, I should think.

Q. That is beyond where the table was? A. Near the kitchen door.

Q. Near the other door that goes from the kitchen into the dining-room? A. Yes, sir.

Q. Before reaching that point, the first two bullets you fired would then cross the whole length of the kitchen?

Objected to as immaterial and irrelevant; the jury should judge of that.

Objection sustained.

Q. When you fired those two shots, did you see Peter A. Hallenbeck? A. No, sir.

Q. Did you see him after that? A. No, sir.

Q. Did you see anybody in the room after that? A. No, sir, I did not.

Q. Did you see your brother Burton leave the kitchen? A. No, sir, I did not.

Q. Did you see him return to the kitchen? A. I did not.

Q. Then, so far as you personally knew, you are unable to say that your brother was in the kitchen when you fired those two shots? A. I am.

Q. Am what? A. I am not certain whether he was in the kitchen or where he was; I didn't see him.

Q. In what direction did you fire the next two shots? A. That I couldn't say: they must have went inside the door, but I couldn't say in what direction they went.

Q. Did you take air, then? A. No, sir.

Q. You say, that down at the barn, you were told to be

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careful in shooting in the room? A. Yes, sir.

Q. And yet you shot all four without taking aim at any particular point? A. Yes, sir.

Q. Do you call that being careful in shooting in the---  
Objected to.

The Court: That is a matter of argument.

Q. Tell us, as near as you can, in what direction and toward what part of the# room you held that pistol when you fired the last two shots? A. Well, I couldn't say as to that.

Q. Tell, as near as you can? A. That I couldn't say.

Q. You had a 32 calibre? A. Yes, sir.

Q. Long or short? A. Short.

Q. Burton used a 32 calibre? A. I don't know what he had.

Q. You have seen the pistol? A. Yes, sir.

Q. You know Bauer's pistol? A. Yes, sir.

Q. You know what it shoots don't you? A. Yes, sir.

Q. What is it? A. I don't know whether it shoots a 32 long or 32 short.

Q. A .32 long will shoot a .32 short cartridge? A. Yes, sir.

Q. It was loaded that night with a .32 short cartridge? A. I couldn't say what it was loaded with.

Q. Willis carried a .32 short? A. I couldn't say.

Q. You have seen his pistol? A. I have seen four pistols.

Q. Haven't you seen Willis' pistol again and again?

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A. Yes, sir.

Q. That is a .32 short calibre? Is it not? A. I don't think it is. It is a .32 long, I think.

Q. Willis' is .32 long? A. Yes, sir.

Q. What do you say was the nearest point that Mr. Hallenbeck stood to you at any time during that tragedy?

A. Something like 6 or 7 feet.

Q. Where did Willis stand with reference to him, how far away from him? A. That I couldn't say.

Q. Did you see him, at any time, away from the door where you say you stood? A. I didn't see Willis after we came up on the stoop. I don't remember seeing him.

Q. You stood there in the doorway all of the time?

A. Yes, sir.

Q. Willis hadn't come up there when you placed yourself there? A. I couldn't say.

Q. You remained there until you ran away? A. Yes, sir.

Q. You didn't see Willis? A. Not that I know of.

Q. Will you swear you didn't see him? A. Yes, sir.

Q. He didn't come up to that door and fire into the room while you stood there? A. Not as I know of.

Q. He wasn't down on the ground when you went out there?

A. I didn't see him.

Q. You have just told Judge Cady you were the first man that went out of that house? A. I was.

Q. And you didn't see Willis pass into the house?

A. No, sir.

Q. And you didn't see him stand in the doorway at any

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time? A. No, sir.

Q. You didn't see him stand in the doorway and fire?

A. No, sir.

Q. And he didn't pass you or go into the room while you were there? A. No, sir.

Q. Did you fire any pistol that night near enough to Mr. Hallenbeck's body to set his clothing afire?

Objected to as being a question of opinion evidence.

The Court: Let him state how close he was.

A. I didn't see Mr. Hallenbeck when I fired at any time.

Q. You didn't see him go from near the range and come right toward you and go into the corner where the gun stood? A. No, sir, I did not.

Q. What were you doing? A. I couldn't say. I think I was standing there.

Q. Why couldn't you see him?

Objected to as calling for a conclusion of the witness and for a conclusion that is to be reached by the jury after the witness shall have described the situation of physical objects in that locality to the best of his ability.

The Court: I don't think it is important for him to give his reasons. He may state the facts and let the jury draw the conclusions.

Q. While you stood there, did you do anything else but stand and look into the room except fire into it? A. I couldn't say. I don't think I did.

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Q. And yet you swear positively before this jury that you did not see Peter Hallenbeck pass from the centre of the room?

Objected to as a mere assertion on the part of counsel.

Q. Or from near the range to the place where the gun stood?

Objected to as a mere assertion on the part of counsel.

The Court: You may ask the witness for any fact.

Q. I will strike out "yet"---I repeat the question with the word "yet" out.

Objected to on the same ground; that it is not an ~~interrogatory~~ or an ~~interrogatory~~, but an assertion and the jury are the only competent judges of what the witness has sworn to. The question is and is intended to be argurentative.

The Court: I think it is argurentative even with the word out.

Q. Which direction did you run when you went out of the house? A. North off the stoop and then to the south-west down over the lawn.

Q. Before you ran, you say you heard someone in the kitchen or in the house say, "He has got his gun"?

A. Yes, sir.

Q. "Run" &c.? A. Yes, sir.

Q. Did you recognize the voice that made that cry?

A. I did, somewhat.

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Q. Who was it? A. Burton, I should think.

Q. Did you see him? A. No, sir, I did not.

Q. Did you see Bruce? A. I did not.

Q. Did you see Bruce go into the room? A. I did not.

Q. He was standing right near your right side when Burton went into the room? A. Yes, sir, but you can't see sideways with a false face on.

Q. After he got into the room, when he got to any extent in the room, you could see him?

Objected to.

Q. You swear positively before this jury that, at no time while you stood in the kitchen-door you saw Harvey Bruce in the room? A. I did not.

Q. You swear to that? A. Yes, sir.

Q. Who of you four was the man you saw standing nearest to Peter A. Hallenbeck at any time while you stood in the doorway? A. My brother.

Q. Which one? A. Burton.

Q. How many shots were fired while he was thus near him? A. I think one.

Q. That is the only one? A. There was two louder ones after they got apart.

Q. And you don't know who fired these? A. No, I do not.

Q. The cartridges that you fired that night were with bullets? A. Yes, sir.

Q. You didn't use blank cartridges? A. No, sir.

Q. You didn't extract the bullets from the cartridges



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that you used, before you fired? A. No, sir.

Q. Now when you left that house did you believe that Peter A. Hallenbeck had not been hit? A. I did.

Q. How far up the Catskill road did you drive after reaching it before leaving it? A. Why, I should think about a quarter of a mile.

Q. Then you took the road known as Church's private road? A. Yes, sir.

Q. For how long a distance does that road run before it returns to the Catskill road? A. I think a little over a mile.

Q. And on the line of that road, there are no dwelling houses near the road? A. Yes, sir.

Q. Where? A. Mr. Church's farmhouse.

Q. That is some little distance from the road, is it not? A. Yes, sir. I think it is something like 20 or 25 feet.

Q. From the regular road? A. Yes, sir.

Q. Without turning off from the regular road? A. Yes, sir.

Q. That is the only house? A. Yes, sir.

Q. On the other road, there are several houses, are there---on the main Catskill road between those two points? A. I think something like two or three near the road.

Q. In going that road, that you went, you had to go up and over a considerable hill, did you not? A. No, sir.

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

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Q. Level road? A. There is a small grade near a place known as Mr. Church's gravel bank; that is all there is; there is just the least bit of grade through the woods.

Q. You told the court and jury here that when you went out to get into the wagon up at Kinderhook you put this false face you had in your pocket? A. Yes, sir.

Q. Which pocket? A. In my left hand overcoat pocket.

Q. Was that rask a hard or soft one? A. It was what I would call hard; you could push it together without breaking it. I just cracked it a little by pushing it together.

Q. You had to push it together in order to put it into your pocket? A. Yes, sir.

Q. Made of paper? A. Yes, sir, thick paper.

Q. Now you spoke ,on your direct examination, of first seeing Willis after he came out of the house getting up from where he fell? A. Yes, sir.

Q. Where did he fall? A. Just at the lower end of the lawn, near where the lower driveway comes up from the barn.

Q. You had gone down over that same route, hadn't you? A. Yes, sir.

Q. That is diagonally across the lawn from the rear of the kitchen entrance? A. Somewhat, yes, sir.

Q. And Willis, you say, followed you down near the same lire? A. He followed me.

Q. Near where you had gone? A. Yes, sir.

Q. And on that steepest part of the bank he fell?  
A. No, sir.

1 Q. Where was it? A. Right at the bottor of it.

2 Q. Right at the foot of the steep part of the bank?

3 A. Yes, sir.

4 Q. Did you go to bed that night before Burton and  
5 Bruce returned here from their trip around the village?

6 A. Yes, sir.

7 Q. Did you go to bed before or after Willis left with  
8 his Pearl? A. After.

9 Q. Then you didn't see either Bruce or Burton after you  
10 entered the Van Worrer house after <sup>they</sup> ~~you~~ went ~~out~~ to ride?

11 A. I did not, no, sir.

12 Q. Neither of them asked you to go with Bruce and help  
13 to put out the horse? A. No, sir.

14 Q. No such conversation tookplace? A. Not as I know  
15 of, no, sir.

16 Q. Now you say that on Christmas day you heard of the  
17 death of your uncle Peter?

18 Objected to as assuring a fact not proved.

19 Q. When did you first hear that Peter A. Hallenbeck was  
20 dead? A. About half past eleven o'clock.

21 Q. I think you told Judge Cady that sfter hearing that,  
22 you reported it at the house to your rother, Pearl Van  
23 Buren and Mr. Van Slyke? A. After I went down to Mr.  
24 Scully's ard back.

25 Q. Soon after you heard of it? A. Yes, sir.

Q. Did you <sup>then</sup> tell them or either of them that you had  
been down to your Uncle Peter's the night before?

A. No, sir.

Q. Or that you and your two b~~ro~~thers and Bruce had been

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shooting in the house? A. No, sir.

Q. When you got out at the Van Wormer's house on your return from this trip how were the boys sitting just before you got out? A. I think Burton and I sat on the seat and Willis sat on Burton's lap and Harvey Bruce sat on mine.

Q. Who drove back? A. Willis.

Q. All of the way? A. I think he did, yes, sir.

Q. Did you sit in the seat with one of those men on your lap all of the way up? A. Yes, sir.

Q. You didn't make any charge? A. No, sir.

Q. When you got out at your home that night, who tied the horse? A. That I couldn't say.

Q. Who blanketed it? A. I couldn't say.

Q. Who took anything out of the wagon? A. I took a false face out.

Q. What else? A. That is all.

Q. Who else took anything? A. I couldn't say.

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

Q. Did you boys go into the house together? A. I was the first one out of the wagon.

Q. Did you four young men go into the house together? A. I think not.

Q. Who went first? A. I did.

Q. Into what room did you go? A. Kitchen.

Q. What did you do when you got in there? A. I set down by the stove.

Q. Did you remain there until the others came in?

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A. Yes, sir.

Q. Was there a light in the room? A. Yes, sir.

Q. When the others came in, what did they have in their possession? A. Nothing as I saw.

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

Q. They didn't bring any in? A. No, sir.

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

Q. They didn't bring any in? A. No, sir.

By Mr. Cady:

Q. That is, you say they didn't bring any robe or whips into the kitchen? A. No, sir, that I saw.

Q. Or any <sup>thing</sup> that you saw? A. No, sir.

Mr. Cady: The defendants rest.

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HENRY J. BEST recalled by the People.

Direct Examination by Mr. A.F.B.Chace.

I made the arrest of these defendants. I first saw Bur-  
ton that night in the sitting room or living room; first room  
as we went in after the hall. The room was well lighted. He  
had no black or blue mark on his cheek or under his eye.

No cross examination.

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ORVILLE DRUMM, recalled by People.

Direct Examination by Mr. Chace:-

I first saw Burton Van Wormer on the night of his arrest, before he was arrested, when he came in the sitting room. He had no hat on. That room was fairly well lighted. At one time I was right up against him, I brought him down. I sat with him in the seat coming down. I saw him in the face. The car was well lighted with electricity. I never saw any black or blue mark under either eye or on the cheek. I saw him regularly in the jail after that. I looked after all these different defendants in different parts of the jail and I went with the sheriff when he got the shoes, and I was in the jail the next morning and I was in the jail every day. I never at any time saw any discoloration on his cheek or under his eye. These defendants remained separate in the jail until after the coroner's inquest. Then they were put together. and they have been together ever since; upper tier of the men's corridor.

CROSS EXAMINATION by Mr. CADY:-

At first Bruce was put down stairs in the regular men's corridor, and Frederick was put back in what we call the "cage" and Burton was put up stairs in the upper men's corridor, where they all are now, and Willis was put over in the

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boy's corridor. Burton was put in the upper men's corridor. That is lighted from the east side of a building with a heavy row of steel bars, going around two sides of it; the steel bars were there but they were not light. They got the light from the windows yet the men were inside of the bars. Burton was. There are no windows on the west side; no windows on the south side; and no windows on the north side., none.



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FREDERICK M. VAN WORMER, recalled for further examination:

Examined by Mr. A. F. B. Chace:

Q. (Presenting same) I show you the four pistols in evidence and ask you to select yours from them? (.Witness so did.)

Q. What is engraved on the top of the barrel? A. "Young America, double action."

Q. That is the pistol you used that night? A. Yes, sir.

Q. What kind of shoes did you wear that night? A. Patent leather shoes.

Q. Have you seen those in court here? A. Yes, sir.

Q. Those are the same ones you wore that night?  
A. Yes, sir.

Q. Can you select Willis' revolver? (Witness so did.)

Q. What engraving is on that pistol? A. "American Bull Dog".

Q. Is that the one he carried that night? A. I couldn't say.

Q. That is the only one you know of his owning? A. Yes, sir.

Q. Or having at the house? A. Yes, sir.

Q. That shoots the same size bullet as yours? A. Yes, sir.

Q. Do you know the Bauer pistol? A. Yes, sir.

Q. Select it? (Witness so did.)

Q. What is the number marked on the handle? A. 15684.

Q. That shoots the same size bullet as yours? A. Yes, sir, I think it does; yes, it does.

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Q. But a longer cartridge can be used in that than in yours? A. I don't think so.

Q. Do you think they are all .32 short? A. Yes, sir.

Q. Those two (ind.) are? A. That (ind.) is a .32 ~~short~~ <sup>long</sup>.

Q. Which one is the .32 long? A. Willis'.

Q. Willis. pistol is a .32 long? A. Yes, sir.

Q. But a .32 short can be used in it? A. Yes, sir.

Q. And the remaining pistol is Bruce's pistol? A. Yes, sir.

Mr. Chace: That is our case.

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1 Mr. Cady: I desire to renew, at the close of the  
2 entire testimony, the motions in all their several parts  
3 and phases which were made yesterday for an instruction to  
4 the jury to acquit. Shall I be compelled to read them?

5 The Court: No. I think that covers it.

6 Mr. Cady: Yes, sir.

7 The Court: I make the same ruling as then.

8 Defendants excepted.

9 Mr. Cady: Also the same motion as to the with-  
10 drawal of the charge of murder in the first degree from  
11 the consideration of the jury and ask the stenographer to  
12 insert the grounds in the same form at this point as made  
13 at that time.

14 The Court: Yes, that may be done. Same ruling.

15 Defendants excepted.

16 The following are the grounds referred to upon the  
17 motion to advise the jury to acquit the defendants:

18 1st. That the evidence is insufficient to warrant  
19 a conviction of the crime alleged in the indictment.

20 2nd. That there is no evidence for the jury and  
21 that the evidence on the part of the People is not suffi-  
22 cient on which to base a conviction of the crime alleged in  
23 the indictment.

24 3rd. That the People have failed to prove beyond  
25 a reasonable doubt that all of the defendants, or either of  
said defendants, is guilty of the crime charged in the  
indictment.

4th. That the People have failed to prove beyond

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a reasonable doubt each and every element of the crime of murder in the first degree as alleged in the indictment.

5th. That the evidence against each and all of the defendants is insufficient to warrant a conviction either of the crime charged in the indictment against all or any of the defendants, or to warrant a conviction of any crime against all or any of the defendants of which a jury is authorized to convict a defendant under the indictment for murder in the first degree.

6th. That there is no evidence for the jury and that the evidence on the part of the People is not sufficient on which to base a conviction of any crime of which a jury is authorized to convict all or any of the defendants under the indictment for murder in the first degree in this action.

7th. That the People have failed to prove beyond a reasonable doubt that the defendants, or any of them, are guilty of any crime of which a jury is authorized to convict a defendant under the indictment for murder in the first degree in this action.

The following are the grounds of the motion upon the withdrawal from the consideration of the jury of the question of murder in the first degree.

1st. That there is no proof in the case of a deliberate and premeditated design on the part of all of the defendants, or either of them, to effect the death of the person killed.

2nd. That the evidence in the case is insufficient

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to sustain the charge of murder in the first degree against the defendants, or either of them.

3rd. That the evidence fails to show any deliberate and premeditated design on the part of the defendants, or either of them, to effect the death of Peter A. Hallenbeck, or of any other person.

4th. That the jury would not be justified upon the evidence and the proof in finding a verdict of murder in the first degree upon the evidence in this case against the defendants, or either of them.

5th. That there is no evidence in this case which would justify the jury, under the definition of murder in the first degree as contained in section 183 of the Penal Code, or any other statute of this state, which was in effect at the day of the killing of Peter A. Hallenbeck, in finding a verdict of guilty in the first degree against all of the defendants, or either of them.

6th. That the evidence fails to establish a case against the defendants, or either of them, by the evidence for the crime of murder in the first degree.

Mr. Cady: I also move that before this case shall be submitted to the jury a disposition be made of the defendant Bruce who is jointly indicted with these several defendants as to the dismissal of the indictment against him or such other action as shall be taken by the court upon the subject.

Mr. A. F. B. Chace: I object to that.

The Court: Bruce is not now on trial. It rests

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with the District Attorney as to when he shall <sup>be</sup> ~~move~~ <sub>have</sub> his trial.

Defendants excepted.

Jury cautioned.

R e c e s s t o 9:30 A. M.

The Jury, at each adjournment of the Court, were admonished by the Court that it was their duty not to converse among themselves on any subject connected with the trial, or to form or express any opinion thereon until the cause was finally submitted to them

Hudson, N. Y., April 17, 1902, 9:30 A.M.

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MORNING SESSION.

Messrs Farrar and Cady addressed the jury.

AFTERNOON SESSION.

Mr. A. F. B. Chace addressed the jury.

~~Charge to the jury.~~

The Court charged the jury as follows:

Gentlemen of the Jury:-You have given careful attention to this case now for many days. You have heard the testimony given by witnesses in the witness' chair, and listened to it with great care. You have heard this testimony commented upon by counsel representing these defendants and representing the people, speaking through the district attorney and counsel chosen to represent the people in this case.

I shall not assure to discuss the evidence in this case, or make any extended reference to the facts shown by this testimony. My duty shall have been done when I

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call your attention to the rules of law that should govern/ you in the discharge of your duties as jurors.

Four young men were indicted together, charged with the crime of murder in the first degree in killing Peter A. Hallenbeck on Christmas eve last in this county. When the district attorney moved the trial of this indictment against all four of these defendants, counsel representing Harvey Bruce, one of the defendants, demanded a separate trial for that defendant, as he had a right to do under the law, and there was no discretion in the Court in respect to that matter, because the law gives a defendant jointly charged with a crime of this character an absolute right, upon his demand, to a separate trial. This trial was then moved as against the other three defendants---three brothers by the name of Van Worrer. You should bear in mind that Harvey Bruce is not being tried upon this trial, but that the other three defendants are.

Now, upon this trial you are the sole judges of the facts, and I desire you to approach the discharge of your duty in determining those facts uninfluenced by any statement that may be made by me concerning the facts. The responsibility is yours alone, to determine the guilt of these defendants, or their innocence, and to determine the degree of guilt, if you find they are guilty, and not mine. This responsibility is wholly upon you, and as I say, I desire you to discharge that duty uninfluenced by any expression by me concerning the facts in this case and because of that fact I shall make but a brief allusion to



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any of the facts, for, as I said a moment ago, you have heard the facts discussed by counsel representing both sides, and you have heard their respective theories concerning these facts.

Now, in this trial these defendants, and all defendants charged with crime in this State, are presumed under the law to be innocent until they are proven guilty. And the law casts the burden upon the people, represented by the district attorney, to prove their guilt to the satisfaction of a jury beyond a reasonable doubt before a conviction can be had. That rule of law applied to all criminal cases, and it applies to this case.

Counsel for the defendants in their addresses to you in summing up this case have conceded that these defendants are not guiltless; that in the acts of that Christmas eve, committed by them, they are guilty of some crime.

Now because the law in this State permits, under certain circumstances, a person indicted for one degree of crime to be convicted under the same indictment of the crime charged, or of a lesser degree of the same crime, it is essential that I should state to you the law relating to the different degrees of murder and of manslaughter.

The law defines homicide as the killing of one human being by the act, procurement or omission of another. It also classifies homicide as of four different kinds--- first, murder; second, manslaughter; third, excusable homicide; and, fourth, justifiable homicide. And the law separates murder into two degrees. That is, murder in the

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first degree, and murder in the second degree. It likewise classifies manslaughter into two degrees---manslaughter in the first degree, and manslaughter in the second degree. And it is essential that I should call your attention to these different degrees of murder and of manslaughter.

The statute provides that the killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed from a deliberate and premeditated design to effect the death of the person killed or of another. The statute also provides several other definitions of the crime of murder in the first degree, but from my view of the evidence upon this case I am of the opinion that it is not pertinent for me to read to you any other of the definitions of murder in the first degree than the one I have called your attention to, because if the crime charged here comes under the definition of murder in the first degree it must come under the definition that I have read; that is, the killing must be from a deliberate and premeditated design to effect the death of the person killed. Under the law in this State the punishment of a defendant convicted of murder in the first degree is death.

The law also provides that the killing of a human being, unless it is excusable or justifiable, is murder in the second degree, when committed with a design to effect the death of the person killed or of another, but without deliberation and premeditation. Murder in the second degree is punishable by imprisonment of the offenders during the terms of their natural life.

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In a case other than one for murder in the first or second degree, the homicide not being justifiable or excusable, is manslaughter under the law, and "such homicide is manslaughter in the first degree, when committed without a design to effect death, in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon"

Manslaughter in the first degree is punishable under the law by imprisonment for a term not exceeding twenty years in the State's prison.

"Such homicide is manslaughter in the second degree when committed without a design to effect death, by any act, procurement or culpable negligence of any person, which, according to the provision of law to which I have called your attention, "does not constitute the crime of murder in the first or second degree, nor manslaughter in the first degree".

Manslaughter in the second degree is punishable by imprisonment for a term not exceeding fifteen years, or by a fine of not more than one thousand dollars, or by both.

Now, as I said before commencing this recital of the definitions of the different degrees of murder and manslaughter, the law provides that upon an indictment for a crime consisting of different degrees the jury may find the defendant not guilty of the degree charged in the indictment and guilty of any degree inferior thereto. But of course their finding must in every case be based upon the evidence and the evidence must be brought clearly within

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one of the definitions that I have called to your attention of either of the crimes mentioned.

Counsel for the defendants stated in his surring up before you that it was not claimed that the killing charged in the indictment under which these defendants are being tried, was justifiable or excusable. While the law clearly defines what killing is justifiable and what is excusable, because of that statement made by counsel I deem it unnecessary to call your attention to the statutory definition of excusable homicide and justifiable homicide. Nor need I take any time in discussing in your hearing the doctrine of self-defense as applied to criminal trials.

To be a little more concise as to the distinctions between murder, and the degrees of murder and manslaughter, you should bear in mind that to constitute murder in the first degree under the part of the statute defining that crime that I read to you, there must be a deliberate and premeditated design to effect the death of the person killed.

To constitute murder in the second degree there must be a design to effect the death of the person killed, but there need be no premeditation and deliberation shown. That is the essential distinction between the two degrees. You should bear that clearly in mind in your consideration of this case. To constitute manslaughter in either of the degrees it is not essential to show a design to effect death. It is essential in coming to a correct determination between the two degrees of murder that you should have a

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correct understanding of what is meant by the terms "deliberation" and "premeditation" as used in the statute. The ordinary meaning of the word "deliberation" is to weigh in the mind, to reflect, to consider the probable consequences of an act. The ordinary meaning of the word "premeditate" is to think on and revolve in the mind beforehand, to contrive and design previously.

The Court of Appeals of this State, which is the highest tribunal in the State, in the courts of this state, has very clearly defined in many cases what is meant by this language. In one case that court said; "In order to establish the crime of murder in the first degree there must be deliberation and premeditation. No time is prescribed within which these operations of the mind must occur. It is sufficient if their exercise was accomplished when the deed was done resulting in the death. It is enough if there was time for the mind to think upon----to consider the act of killing, to meditate upon it, to weigh it, and then determine to do it."

And in another case that court said; "Such design must precede the killing by some appreciable space of time. It need not be long, but it must be sufficient for some reflection upon the matter; for choice to kill or not to kill; and for the formation of the definite purpose to kill. And when the time is sufficient for this purpose it does not matter how brief it is. The human mind acts with celerity which it is sometimes impossible to measure, and whether a deliberate and premeditated design to kill was

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formed must be determined from all the circumstances of the case".

Now, in this case, it is claimed on the part of the defendants that they and Harvey Bruce started out from Kinderhook to drive to the residence of Peter A. Hallenbeck for the purpose of scaring him or having some fun with him. It is not necessary for the determination of this case for you to determine, if you determine it at all, that this premeditation and deliberation, if it existed, took place before they started or was formed in their mind after they started. It is for you to say whether or not it was formed at any time prior to the commission of the act, even after arriving at the house and coming in the presence of Hallenbeck. But before a conviction of murder in the first degree can be had you must determine from the evidence that these defendants deliberately and with premeditation, and with the design to effect the death, committed this act.

The law, as I said a moment ago, requires that the people shall establish the guilt of the defendants beyond a reasonable doubt, and that the defendants are entitled under the law to the benefit of every reasonable doubt arising from the evidence. Because of this provision of law it is essential that I should say something to you upon the meaning of that term. The term "reasonable doubt" as used in the statute and as applied to criminal trials has often been misunderstood by other than lawyers, but its meaning has been so often discussed by the Court of Appeals that it has become to be well settled in the law. That

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Court has held that a reasonable doubt is not a mere guess or surmise that a man may not be guilty. It is such a doubt as a reasonable man may entertain after a fair review and consideration of the evidence; <sup>or</sup> a ~~d~~out for which some good reason arising from the evidence can be given.

That court has also said "Reasonable doubt exists in a case where after an entire comparison and consideration of all the evidence the minds of the jury are left in a condition that they cannot say that they feel an abiding conviction to a moral certainty of guilt. Proof beyond a reasonable doubt does not mean beyond all possible or imaginary doubt, but such proof as precludes every reasonable hypothesis but that of guilt; it is proof to a moral certainty as distinguished from an absolute certainty; such proof as will satisfy the judgments and consciences of the jury as reasonable men in applying their minds honestly to the evidence in the case that the crime has been committed by the defendant, and so satisfies them as to leave no other reasonable conclusion possible.

The law requires, as was stated by counsel in summing up, that every element which goes to make out the crime must be proven beyond a reasonable doubt.

Now, as I said in the opening, these three defendants are charged with the crime of murder in the first degree; and upon this trial I admitted testimony of acts of some one or more of these defendants early in the trial which were not committed, or of statements made of one or more of these defendants which were not stated in the

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presence of other of the defendants. Afterward when I  
came to the conclusion that there was sufficient to justify  
me in submitting that testimony to your consideration upon  
the question as to whether or not these three young men  
were acting with a common purpose and design in respect  
to the matters charged against them, I received this testi-  
mony generally in the case so that you might have it for  
consideration upon this question as to whether or not they  
were acting from a common purpose and design. If you find  
on all the proof in this case that these three young men  
were so acting, then the acts and declarations of each from  
the commencement to the consummation of the offence are  
evidence against all the others. If you find they were act-  
ing from a common purpose and design in this matter then,  
of course, they are equally guilty of whatever offence you  
find they are guilty of in this case. If, on the other hand,  
you find that they went to that house that night, as they  
say for the purpose of having fun or scaring or surprising  
Peter Hallenbeck, and that they were not up to the moment  
of getting to that house, actuated by any common purpose or  
design to cause his death, then you may find these young  
men guilty of a different degree of crime. That, is, you  
may find one guilty of one degree, and another guilty of  
another degree, and the rule of law regarding men charged  
with a common purpose and design would not apply, but each  
would stand responsible for his own acts.

If, on the other hand, you find they were inspired  
by a common purpose and design, then each is responsible



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for the acts of all the others. If you find they were not so acting, then, of course, the testimony that I permitted to be received as against one should be considered by you as against that one only and not as against the others, and the acts and declarations of that one should not be received by you as against the others. It is only in the event that you find upon the proof that they were actuated by a common purpose and design that you can take the testimony relating to the conduct and statements of one to be binding against the others.

Now in this case the people put upon the stand Harvey Bruce, who is charged under this indictment with the same crime. And I should say to you that it is your province to judge of the amount of credit that is to be attached to his statements; it is for you to weigh the testimony given by him, and in weighing his testimony you may consider and take into account the fact that he is charged with this same crime and that he is testifying in the hope on his part that he may receive some immunity from punishment for his own offense.

These defendants have all been sworn here in their own behalf, and in weighing their testimony you have a right to consider the fact that they are charged with this crime; that they are the parties on trial here, parties having a deep and abiding interest in the result of this trial. You must consider these facts in weighing their testimony and in determining whether or not they are entitled to credit, and if you believe that either of these persons who have made

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themselves witnesses have wilfully and deliberately sworn  
falsely as to any material fact in this case you have a right  
to disregard their entire evidence upon this trial. But you  
are not bound to do that. You may take part of it as true  
and determine other parts of it to be false.

In this case the prosecution is not obliged, if  
you believe that the criminal agency of these defenants is  
shown beyond a reasonable doubt, to show any proof of motive.  
Some evidence has been furnished upon that subject. I need  
not review it, but under the circumstances stated by me, it  
is not incumbent upon the district attorney to show a motive  
for the crime, and the jury have the right to find the intent  
from the act itself of the accused, the conduct at the time  
and the circumstances of the case appearing from the evidence

The responsibility is upon you, gentlemen, by your  
verdict in this case to say whether the evidence satisfies  
you beyond a reasonable doubt that there was not only a de-  
sign to kill but whether there was a deliberate and premedi-  
tated design on the part of these defendants. If you are  
satisfied from the evidence beyond a reasonable doubt that  
there was a deliberate and premeditated design on their part  
to kill Peter A. Hallenbeck, then the crime would be murder  
in the first degree. But if there is a reasonable doubt in  
your mind arising from the evidence as to whether the de-  
gree proven is the first or second the defendants would be  
entitled to the benefit of that doubt and you may find them  
guilty of the lesser degree.

It is peculiarly your province and your duty as

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jurors to determine the degree of guilt in this case. And with three defendants charged, if you find they were not acting from a common purpose and design, then you may find them, as I stated before, guilty of different degrees. You may find one guilty of one degree, and others guilty of other degrees, and you should state by your verdict what you find them guilty of, what degree of murder or manslaughter you find each of the defendants guilty of, because it has been conceded by their counsel that they are guilty, under this indictment, of some crime.

You have no right in your consideration of this case to be influenced in any sense by public clamor upon the one hand, nor by sympathy for these defendants upon the other. Neither have you any right to be influenced in any degree by what punishment the law metes out to offenders. I have thought it wise in this case to define to you the punishment of the different degrees of murder and manslaughter, but you are not to be influenced by the punishment. The law takes care of that and the jury is not charged with any responsibility in that respect. You should be guided solely in the discharge of your duties, which are solemn indeed, and of great responsibility, by a desire to uphold the law, to administer justice fairly and honestly not only to the people but to these defendants as well, and you should be influenced by a desire on your part to satisfy the obligations of the oath you have taken as jurors. If you do that, your duty will have been well done in this case.

Are there any requests?

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Mr. Cady: I have but a single request, and that is to draw your honor's attention to section 390 of the Code of Criminal Procedure which provides that when it appears that a defendant has committed a crime, and there is reasonable ground of doubt to which of two or more degrees he is guilty, he can be convicted of the lowest of those degrees only.

The Court: I thought I had called their attention to that provision of law, but I have not. That is the law, and I so charge it. Any further request?

Mr. A. F. B. Chace: I think not, your honor.

The jury hereupon retired for deliberation at 4:30 P. M. and the court stood in recess to April 18th, 1902 at 9:30 A. M.

Hudson, N. Y., April 18, 1902.

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The Court reconvened at 9:30 A. M.

The Court interrogated the jury as to whether they had agreed upon a verdict, and upon stating they had, and being asked how they found stated through their foreman, "We find the three prisoners at the bar guilty of murder in the first degree", whereupon at the request of Mr. Cady the jury was polled, and the verdict was recorded as rendered.

Mr. Cady: Now, if the court please, on behalf of all of the defendants jointly, and each of them severally, I move for a new trial upon the following grounds:

First: Because the verdict is contrary to law.

Second: Because the verdict is clearly against the evidence.

Third: Because the verdict is against the weight of evidence.

Fourth: Because the court erred in denying the defendants' motions to advise the jury to acquit.

Fifth: Because the court erred in denying the defendants' motion to withdraw the question of murder in the first degree from the consideration of the jury.

Sixth: Because the court at the trial admitted illegal and improper evidence against the defendants' objection and excluded legal evidence offered by them jointly and severally, and the defendants jointly and severally at the trial excepted to such admissions and exclusions.

The Court: I deny the motions made.

Mr. Cady: We except upon each ground.

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Mr. Cady: The defendants jointly and severally  
move in arrest of judgment.

First: Because the facts stated in the indictment  
did not constitute a crime.

Second: Because it does not appear from the record  
of the verdict of what crime the defendants have jointly  
and severally been found guilty.

Third: Upon errors apparent upon the face of the  
record.

The Court: That motion is also denied.

Mr. Cady: We respectfully except. On behalf of  
each of the defendants we waive any delay in the pro-  
nouncing of judgment.

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By direction of the court the clerk then administered the oath to each of the defendants.

Willis Van Wormer, being duly sworn, was interrogated by the clerk as follows:

- Q. What is your name? A. Willis Van Wormer.
- Q. What is your age? A. 26.
- Q. Where were you born? A. Greenport.
- Q. Where do you reside? A. Kinderhook, N.Y.
- Q. What is your occupation? A. Musician.
- Q. Are you single or married? A. Single.
- Q. What is your degree of education? A. Common school education.
- Q. What religious instruction have you had? A. Protestant.
- Q. Are your parents living or dead? A. Dead.
- Q. How are your habits temperate or intemperate? A. Temperate.
- Q. Have you ever been convicted for any former offence before? A. No, sir.
- Q. Have you any legal cause to show why judgment should not be pronounced against you? A. No, sir.

Burton Van Wormer, being duly sworn, was interrogated by the clerk as follows:

- Q. Your full name? A. Burton M. Van Wormer.
- Q. You age? A. 22.

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- Q. Where were you born? A. Greenport.
- Q. Your residence? A. Kinderhook, N.Y.
- Q. Your occupation? A. Marine and electrical engineer.
- Q. Married or single? A. Single.
- Q. Degree of education? A. Common school.
- Q. Religious instruction? A. Protestant.
- Q. Parents living or dead? A. Dead.
- Q. Habits temperate or intemperate? A. Temperate.
- Q. Have you ever been convicted for a former offence<sup>A.</sup>, I have not.
- Q. Have you any legal cause to show why judgment should not be pronounced against you? A. I have not.

✕

Frederick M. Van Wormer, being duly sworn was interrogated by the clerk as follows:

- Q. Your full name? A. Frederick M. Van Wormer.
- Q. Your age? A. 20.
- Q. Where were you born? A. Castle ton, Rensselaer County.
- Q. Residence? A. Kinderhook, N.Y.
- Q. Occupation? A. Tower man.
- Q. Married or single? A. Single.
- Q. Degree of education? A. Common school.
- Q. Religious instruction? A. Protestant.



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- Q. Parents living or dead? A. Dead.
- Q. Habits temperate or intemperate? A. Temperate.
- Q. Have you ever been convicted for a former offence? A. No, sir.
- Q. Have you any legal cause to show why judgment should not be pronounced against you? A. No, sir.

THE COURT: You may stand up -- the three of you. This is one of the saddest acts of my judicial career, to be compelled to sentence three young men and three brothers under the verdict of conviction that has been rendered against you by this jury. The law of this State is very jealous of the rights of defendants charged with gross crimes, such as you have been, and it has provided you with able counsel to speak for you upon this trial, and they have been jealous in protecting all your interests and in seeing that every right which the law can confer has been observed in your behalf.

The District Attorney and counsel associated with him have simply performed their sworn duty under the law in bringing you to trial and in prosecuting this case to judgment. The expense incurred by counsel selected by the court to try this case in your behalf is a charge upon the county, and is paid for by the people, and all

1 the reasonable expenses of your trial in your behalf  
 2 are required by law to be provided for you. Under a con-  
 3 viction of this character the law leaves no discretion to  
 4 the court in fixing the punishment to be imposed upon  
 5 defendants convicted of the crime of murder in the first  
 6 degree; nevertheless it is a solemn and sad duty. The  
 7 sentence of the Court, therefore, is that you each be  
 8 taken from the place of your present confinement to the  
 9 the State Prison at Dannemora and be there imprisoned,  
 10 and that on some day within the week beginning the 30th  
 11 day of May, 1902, to be determined by the agent and warden  
 12 of that prison, you be each there put to death in the  
 13 manner and by the means provided and required by law.  
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16 The foregoing case, ~~is here~~ which contains  
 17 all of the evidence taken upon the  
 18 trial of this action, is hereby settled  
 19 and allowed by me and ordered  
 20 to be filed in the office of the Clerk  
 21 of the County of Columbia and annexed  
 22 to the judgment roll herein.

23 Dated October 11<sup>th</sup> 1902

24 *Adm. Justice*

25 Justice<sup>of the</sup> Supreme Court.

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