

Indiana State Sentinel.

WEEKLY EDITION. STERNAL VIGILANCE IS THE PRICE OF LIBERTY.

INDIANAPOLIS, AUGUST 14, 1845.

MARION CIRCUIT COURT.

Criminal Cases.

Reported for the State Sentinel.

The State of Indiana vs. Edward Davis—Indictment for murder in the second degree, upon the body of John Tucker, a negro, at Indianapolis, on the 4th day of July last.

WEDNESDAY MORNING, 9 o'clock. Court met pursuant to adjournment.

JOHN RIDER—States, that on the fourth of July last, near the Palmer House, saw the negro Tucker, on Washington street. Saw Wood strike the negro, Tucker, on the nose, and pass into a grocery. The blood streamed from the nose of Tucker. Tucker said "if you want to have blood, we will have blood for blood." Tucker was advised to go and procure Wood for striking him. Tucker started towards the Justice's office. Wood crossed the street, and afterwards followed Tucker, with a piece of board or plank in his hand, in the direction of the Justice's office. Wood overtook him near the middle of Illinois street. Tucker turned to defend himself, a scuffle ensued. Saw Wood strike Tucker with a club, near the alley, on the east side of Illinois street. Witness saw Davis hit Tucker with a large brick-bat, after Wood and Tucker were parted. Tucker was not looking at Davis when Davis hit him on the head. The lick could have been heard fifty yards. Witness, and others, advised Tucker to leave, as such licks would kill him; and Tucker retreated up Illinois street, and was followed by the crowd. Tucker got into a carriage shop, and procured a shaved stick similar to a single-tree, and pursued Tucker. Wood was stopped by persons in the crowd, and informed of the consequences if he struck and killed Tucker. Heard several persons in the crowd say, "Kill the negro." Saw some persons, supposed to be Ballinger, and others, with clubs and the negro fell; then suppose (as he could not see fairly for the crowd) Wood struck Tucker three or four blows with his shaved single-tree or neck-yoke. Did not see Wood give the blows.

Cross-examined—States that he was within 8 or 10 feet of the negro, on Washington street, when the negro was first struck by Wood. Negro was going in an easterly direction. Wood met the negro and cursed him, then struck him. Did not hear the negro speak before he was struck. After Wood struck, negro asked "what does this mean?" said, after Wood went into the grocery, "if you want to have blood, come out here." Negro struck at Wood, and missed him; Wood then ran across the street towards Harlin's grocery. Saw the scuffle near the pump near west side Illinois street. Saw the blood on Wood's head after the scuffle. Saw Davis strike Tucker with the brick bat. Saw Davis after he had been struck. Did not see Ballinger strike Davis. Saw blood gushing out of his head; he was standing on his feet. Did not see the negro strike Davis. Saw Wood rush up after Ballinger had struck the negro; believes that Wood struck him about the head and shoulders; could not see distinctly. Thinks Wood was intoxicated. Does not remember whether Wood was laughing at the time he first struck the negro. Laughed when he left the negro, as he crossed the street.

Direct Examination resumed—At the time Wood struck the negro first, he (Wood) cursed him and called him a nigger.

JOHN F. RAMSEY—States, on 4th July, afternoon, saw Wood on the south side of Washington street, near Michael's or Etnie's grocery. Wood struck him on the nose, and went into the grocery. Negro said if you want blood come out here. Wood came out. Negro struck at him. Wood then crossed the street to Harlin's. Wood shortly afterwards came out, and followed the negro Davis. Wood was heard to utter words of abuse in a noisy and profane manner in pursuit of advice given by witness. Saw the scuffle near the pump. Heard cries of "kill the negro." Saw brick bats thrown. Could not tell who threw them. Did not see Davis and the negro in the fight. Saw Wood go to Gaston's shop and come out with a club. Wood struck the negro with the club. The scene of the first attack was east of and near the Palmer House in Indianapolis.

Cross-examined—Was eight or ten steps from the negro, about the distance from where he stood to look case, in Court House, when Wood struck him. Does not think the negro spoke before Wood struck. It might be possible that he spoke, but not likely. Nick Wood came down the street from the east meeting the negro. Wood wore a kind of smile when he struck the negro, and jumped into the grocery. Heard the negro say that if Wood wanted blood, to come out and he would have blood for blood. Considered Wood partially intoxicated. He did not stagger. Supposed Wood was drunk.

JACOB VANDEBILT—States, was sitting at Wiley's steeple house. Saw the negro strike the negro. Afterwards saw Wood and negro fighting at corner of Illinois and Washington streets, near northwest corner. Saw Tucker throw a brick and strike Tucker on the head. Tucker's back was struck by Davis. Davis threw a brick severely, near a whole brick. Saw Wood afterwards come into the crowd with a club in his hand; had a large shaved club; said he would kill the damned negro. Witness heard Wood. Wood tried to hit witness on the head; did not hit witness. Wood then started in a direction from the negro. Several voices exclaimed "kill the negro." Did not see Ballinger. Davis was three or four paces from the negro when Davis threw the brick. Saw Wood come from Gaston's shop with a club. Saw Wood's brother and Joseph Levy take hold of Nicholas Wood.

Cross-examined—Wood stayed three or four minutes at Gaston's shop. The negro still remained until the negro returned. Wood was somewhat intemperate from the crowd. Wood was somewhat intemperate. When witness arrived at the pump, where the fight was going on between Wood and the negro, the fight was about getting clear from Wood. Wood's head and face were bloody; did not see the wound on Wood's head. Negro was backing out. Wood was bleeding. Did not see the negro strike Wood. Wood said he would kill the negro; assigned no reason for saying so; Wood was excited. The fight was four or five feet from the pump. The brick was a hard burnt brick. The negro was standing with his side partly towards witness. Saw the brick in Davis's hand. Knew the brick by a melted lump on the brick. The brick was afterwards produced in court and identified.

WILLIAM MARQUET—States, came up near the commencement of the last affray. Saw Wood come up with a stick. Negro had a stone or brick in each hand. Davis threw a brick or stone at negro and hit him on the head, back part. Negro then threw a stone or brick at Davis and knocked him down. The affray was within 20 or 30 feet of the pump. When Davis threw at the negro it was near the same place. Davis was in advance of the crowd. Came out of the crowd and was in front of it. Davis threw twice before the negro threw and hit Davis. Davis hit the negro in the side with a brick or stone. Did not hear Davis speak. Witness saw negro after he was dead. Negro laid upon the side walk and in the lot two or three hours. The negro crossed from near Armstrong's tavern or Dr. Hunt's office to the east side of the street. When witness first saw Davis throw it was near the middle of the street. Davis hit the negro once or twice before the negro threw and knocked him down.

Cross-examined—Saw the last attack when the negro was opposite Dr. Hunt's shop. Witness went on to the west side of Illinois street. The negro was then but a few steps from witness. Witness stood near the south corner of the pump. Divers persons were in the crowd. Davis was in the crowd. In front of the crowd. The negro was facing the crowd, and had a rock or brick bat in each hand. Saw the negro strike a man in the back with a stone or brick and the man's hat fall off. Then turned round and threw at Davis and knocked him down. Negro threw other bricks at stones, and other persons were being hit, particularly a child on the side walk. Saw the blood run down Wood's hair. Thinks that one rock was thrown before the negro turned round. Thinks the negro had turned round before Davis hit him in the side.

Direct Examination resumed—Hunt's house is close to Armstrong's tavern. The negro's face was turned towards the pump. Negro turned round when Wood approached him with the stick in his hand.

After Wood had been taken away, the negro again retreated, and the crowd followed him and continued to throw at him when he again turned round.

Cross-examined—The negro faced Wood, and then stopped to pick up things to throw and continued to throw until Ballinger came up and struck him.

HONORABLE B. McDOWELL—States, first saw Wood crossing Washington street. He went into Harlin's grocery hunting an axe handle, swearing that he wanted something to kill the damned negro. Then saw the negro pass down the street towards the Justice's office. Wood then followed in the course towards the negro, and had in his hand a slab of piece of wood. Afterwards saw the negro and Wood near the pump engaged in a scuffle. David Buchart told the negro to go away or he would be killed. Shortly afterwards Davis hauled away and struck the negro with a brick. This was shortly after the scuffle. Witness was close to Davis. The negro appeared to be harmless at the time he was hit by Davis. The brick thrown by Davis drew blood from the head of the negro, and was thrown with considerable force. The negro retreated north, and his back was towards Davis and could not possibly have seen Davis. The crowd followed the negro northward. Voices cried "kill the damned negro." Knew the negro; his name was John Tucker. Davis and James Rhodes had a difficulty. Witness did not press into the crowd. Saw the negro lying dead on the side walk but a few minutes after the affray with Davis. Saw Wood with a club in his hand. Did not hear Davis say anything.

Cross-examined—Thought Wood was angry—did not hear him say that he would take a barrel to kill the negro. Davis did not hear James Rhodes.

Direct Examination resumed—The place where Wood was when he had hold of the salt barrel was at James Kirlin's grocery.

JOHN COHEN—States, saw Wood as he stepped into the grocery. Saw the blood running from Negro's nose. Saw Wood as he came out of the grocery. Saw Wood strike at the negro, and Wood either struck the blow or was about to strike the blow. Wood then went to Harlin's grocery. Negro then started to Magistrate's office, as the negro said. Wood followed after the negro, picked up a piece of a board and struck the negro over the head, near the pump at the corner of Washington and Illinois street. Witness was in the crowd. The crowd followed the negro's face bleeding. Saw Davis throw a brick and strike the negro near or upon the head; saw the brick fall to the ground; was about 10 feet from Davis; did not hear Davis speak. Negro walked up north towards Armstrong's tavern, and the mob followed. Witness then got out of the crowd and went over towards the east side of Illinois street, near the mouth of the alley, where he was afterwards killed. The mob continued to rush on towards the negro, and brick-bats were thrown by the mob. Saw Ballinger come across from Armstrong's, and took hold of the negro with the left hand, and hit the negro with a large club several blows, which fell the negro to the ground with his face in the gutter and in the negro's pavement. Wood then came up and hit the negro several heavy blows with his stick, as many as three or four blows. Watson was in front of the mob, and cried "kill the damned negro." The negro, when advised to go away, said that he had distributed nobody, and had done nothing to make him go. Wood then struck the negro with the club, as the arm of the witness, and three feet or more in length. Ballinger was a strong man. He struck the negro twice with the club in one hand, and once or twice with both hands. Nicholas Wood is generally considered a stout man.

Cross-examined—Witness arrived at the scene of the fight about the time the scuffle was ended at the pump. Saw Wood come out of Harlin's, and saw him pick up the board in the street. Does not know whether Wood stopped at Kirlin's grocery. Saw negro stoop down when Wood was about a rod from him. After the scuffle, saw the blood running from the negro's face. A wagon and team were in front of Wood's face. An hundred men collected from two to five minutes. Davis threw the brick in a short time after the scuffle with Wood and the negro near the pump; it might have been 1, 2 or more minutes. Buchart advised the negro to go away. The crowd followed the negro north. Witness was on the west side of the street, near the mouth of the alley, and a crowd were around it, near the east side of the street. Witness crossed the street towards the wagon. The negro had crossed over towards the east side of the street. Several brickbats came from the mob. Saw the negro throw the club, and the witness saw Wood strike the negro with the club. Watson was near the middle of the street. After Davis was knocked down, Watson came out in front of the mob and cried out "kill the damned negro." Wood came with his stick before Davis was knocked down. Ballinger came just after Davis was knocked down. Some thought that Davis was killed. Davis attempted to rise and he was helped up by the crowd. The witness saw Ballinger hit the face in the gutter; he fell as dead. Wood immediately came through the crowd and struck the negro when he was lying in that position. When Wood came to the negro there was but few persons between the witness and the negro, and witness saw Wood hit the negro with the club, and the witness saw Wood strike the negro. He did not see the neck or shoulder of the negro. Witness saw the negro strike Y. C. HANNA—States, first saw negro nearly opposite Armstrong's tavern. Saw Wood advancing upon the negro and advised him to desist. Wood swore he would kill the damned negro. Others also advised Wood not to strike him. Witness advised Wood to wait until some other day, but could not influence Wood to be peaceable. As Wood advanced upon the negro, witness turned round and told Wood not to strike. Wood stood off. At this time Ballinger threw a brick at the negro, and the negro retreated towards the northeast. Ballinger followed up the negro. Witness heard the blows but could not see for the crowd. Heard Watson say "kill the damned negro." Witness saw the negro fall by the neck and back. Saw him on the sidewalk after he was killed. The stick carried by Wood appeared to be a new single-tree.

Cross-examined—The crowd was not very dense. The last witness saw of the negro was near the gutter on the east side of Illinois street. Ballinger had thrown a brickbat and followed to where the negro was.

ABRAHAM BIRD—States, the first witness saw Wood coming out of a grocery on the south side of Washington street. Wood made fun of the negro's nose because it was bleeding. The negro struck at Wood with an axe handle, and Wood was wounded. Wood picked up a board, and pursued the negro down the street. When he came near the negro, the negro picked up a brick and hit Wood on the head. A scuffle ensued. After which scuffle witness saw Davis strike the negro on the back of the head with a brick or stone which Davis threw at him. It struck the negro and the blow beat the negro forward. The back of the negro's head was towards Davis. The negro threw and retreated towards the north up Illinois street. Saw the negro throw brickbats towards the crowd, but not until bricks had been thrown at the negro. The crowd still followed up the street. Davis threw a brickbat and hit the negro in the side. The negro then threw at Davis, hit him on the head and knocked him down. Several persons then threw at the negro, and several cried "kill him." Wood appeared with a stick following towards the negro. The negro told Wood not to strike, and Wood did not then strike. Davis was in advance of the crowd. Witness saw the negro throw a brick at Ballinger standing near the sign post at Armstrong's, and crying out "kill the negro." After the negro had knocked Davis down, Ballinger followed the negro and caught him by the collar, and taking a club in one hand struck at the negro, which blows the negro headed off. He then took the club in both hands and struck the negro with the stick, and the crowd followed him down. The club was a common sized hand-spike about four feet long. About the time Davis was knocked down Ballinger stepped up to some person having the club, and said give me the stick, "I'll soon fix him." Witness was acquainted with the negro; his name was John Tucker. Wood then came to the negro and was lying, and struck him twice over the head or shoulders. Witness could not see for the crowd the precise place where he hit the negro. Some persons then caught the stick of Wood, and prevented further blows.

Cross-examined—Witness was the first man who got to the negro after he was wounded by the crowd or the brick with the negro's shirt. Davis was about eight feet from the negro. Afterwards thinks he saw Davis with his head bleeding, and some persons had hold of him. Could not see who it was that gave the blow that knocked the negro down. Passed

round the crowd and went to the negro; Davis came round to the left of Wood and threw and struck the negro on the head or back with a stick. Witness came directly to the spot where the negro was killed. Heard much noise out in the street. Did not think he was much agitated. Was South of where the negro lay—Davis was north thereof.

JAMES RHODES—Says, he was near Ramsey's shop on Washington street, South side, on the 4th July. Saw the negro coming up the street, and Wood coming down the street. Saw Wood strike the negro on the nose and knock his hat off, and jump into Meikel's grocery. The blood run from the negro's nose. Wood came out and took hold of the negro's head. The negro attempted to strike Wood, and Wood jumped out of the way, and went across to Harlin's grocery. Saw Wood come down the street, with a piece of plank or board, where he runs towards the negro, and the negro struck his hat off, and the negro hit Wood on the back part of the head. Shortly afterwards saw Davis throw a brick and strike the negro on the back part of the head. Davis took hold of witness. Witness tried to prevail on the negro to leave, and the negro did retreat up the street towards Armstrong's. The negro was holding a stick with a new shaving in his hand, and heard him say that he would kill the negro.

Cross-examined—Witness was ten or 15 yards from the negro when Wood met him first on the pavement near Ramsey's shop. Did not see where Wood came from. Wood came swaggering along and hallooing the negro. Witness was intoxicated; did not hear the negro speak. Wood was walking towards the street, had his hand upon a salt barrel. Wood was about 12 feet from the negro when he first threw the brick at Wood; the blow knocked Wood's hat off, and staggered him. Wood dropped his club. The negro advanced towards Wood, and Wood advanced until they met, and the scuffle commenced. The crowd was about eight feet from witness, and walked up to within four to six feet of the negro before he threw. The negro fell to his hands, and raised pretty quick. Davis took hold of witness. Woods came from the West with his stick. Don't know where he got the stick.

Examined—Negro had nothing in his hand when Davis threw the first brick. The negro seemed to be watching some one and was excited.

DR. NEBLEY—States, saw Wood come out of the grocery with his head bleeding, with a stick in his hand. Witness saw the stick in the hand of Wood, and stop him from following the negro. Wood approached the negro, and the negro turned each time for battle. The boys cried out, "there is the negro." The crowd and the negro then both threw brick-bats. Ballinger then advanced towards the negro, throwing at him, and when he came to him, took him by the collar and struck him twice or three times with the stick with one hand, and then with both hands, and knocked the negro down. Heard the blows, but could not see well for the crowd. Saw Mr. Stretcher beside the negro working with him. The negro seemed dead except pulsation. The negro retreated at all times when the crowd did not press upon him, then he would turn and throw at the crowd, and they throw at him.

Cross-examined—The negro was knocked down about eight or ten feet from the alley. Witness was 20 or 30 feet from the negro. Saw no other persons throw except Ballinger, as Ballinger advanced towards the negro. Ballinger advanced rapidly, and witness did not know whether Ballinger had the club or not. Witness knows that Ballinger did throw more than once. Did not see the stick until Ballinger struck with it.

JEREMIAH DAY—States, saw a crowd near Meikel's grocery, on 4th July. Saw Wood cross over to Kirlin's grocery and pick up a board. The crowd followed by several boys, took up a piece of plank and went on to Illinois street, where he overtook John Tucker, and as Wood advanced Tucker stooped down and picked up two bricks or stones. Tucker then hit Wood on the head. They then elbowed and Wood fell on top of the negro. The crowd cried, "Give it to him Nick." The negro then got up and hit his head and found the blood running, and said he would not take that from a negro, and he would kill the damned negro. About this time, several stones were thrown and struck the negro, and the negro was thrown and struck by the crowd. Tucker then threw a brick which hit the negro on the head. The negro fell to his hands and raised with a brick in his hand. The crowd was shouting, and the witness saw the young man did not throw the brick at him, he did not attempt to strike the young man. Davis immediately threw. The negro said he had not insulted or struck the crowd, and he was a strong man, and would leave, as Mr. Davis had ordered him. Nick Wood then appeared with a stick and witness took hold of Wood, and told him not to strike the negro, asking him if he would strike a brick, or if he would strike a stone, or if he would strike a stick, and witness told him he would kill the damned negro. Witness held close to Wood, and told him to stand still. The crowd said he was not going to run off. Did not see any thing in the hands of the negro, until he saw him knock Davis down with a brick. Cross-examined—Witness did not see Wood until he came out of the grocery, when the negro struck twice at Wood. Wood was standing at the pump. The crowd drew the grocery door, and said there was a man who had drawn blood from him, and if he would come out he would draw blood from him. Witness saw the negro and Wood go down the street, saw Wood pick up the board and follow the negro. Did not see Davis at the time Wood was knocked down.

WILLIAM HINERLEY—States, saw negro strike Wood with a brick near the pump; saw them clinch; the negro seemed to advance after the brick was thrown. Saw Wood afterwards approach the negro with a stick. The negro told him that he was not going to run off. Did not see any thing in the hands of the negro, until he saw him knock Davis down with a brick. Cross-examined—Witness did not see Wood until he came out of the grocery, when the negro struck twice at Wood. Wood was standing at the pump. The crowd drew the grocery door, and said there was a man who had drawn blood from him, and if he would come out he would draw blood from him. Witness saw the negro and Wood go down the street, saw Wood pick up the board and follow the negro. Did not see Davis at the time Wood was knocked down.

DR. JOHN L. RICHMOND—States, he is acquainted with Nicholas Wood. When Wood was intoxicated he becomes partially insane. He frequently says when he is hurt, and the result is that he is prone to quarrel and fight when he has been drinking.

Cross-examined—Some men have their mental faculties as well as ever when they are drunk. All men are not affected alike by drunkenness. Thinks a small quantity will intoxicate Wood. He is near about as strong when he is drunk as when he is sober. When witness saw Wood shortly previous to the murder, he thought him excited, and this excitement he calls the first stage of intoxication. Thinks Wood was capable of knowing right from wrong. Never saw Wood drunk as not to be conscious of the consequences of high crimes.

Re-examined—Thinks Wood when intoxicated reckless and regardless of consequences.

Mrs. MARY ELLIS—States, she saw the negro pick up a brick bat and throw it and hit Wood on the head. Saw Wood pick up a board or slab and go towards the negro, who was in company with John Smock.

Cross-examined—Saw the negro pick up the brick bat and throw it and hit Wood on the head. (Witness was evidently mistaken in her former statement as to locality.)

WILLIAM PETERS—States, saw Wood approach the negro with a stick, opposite Armstrong's. The negro turned and told Wood to stop or he would kill him. Wood stopped, and the crowd continued to retreat towards the mouth of the alley. Brickbats were thrown at the negro, and the negro turned, and hit Davis and knocked him down. Saw Ballinger have hold of the negro, strike and knock him down. Saw Wood come up and strike at the negro after he was down; some persons caught the blow of Wood and his stick seemed to hit the ground. The blow which Davis received was severe. Saw him afterwards, with his head bleeding, near the face.

Cross-examined—Thinks the crowd first commenced throwing at the negro when he was hit on the head by Wood. The negro was hit once or twice before he threw at Davis. He retreated after he was hit before he threw at Davis, and yet retreated. The next he saw was the contest between Ballinger and the negro.

Court adjourned until to-morrow, 9 o'clock.

FRIDAY, July 8. Court met pursuant to adjournment.

HUMPHRY SMAY—First saw Wood going down the street after the negro with a stick in his hand. Saw the negro throw at Wood and hit him on the head. The crowd started and he was struck. The crowd parted them. Saw the negro strike with one rock near the pump, but did not know who it was. The negro was standing up when he was hit on the side of the head. The blow was not very hard.

Cross-examined—First saw the negro going west, then saw Wood follow him. Wood picked up the stick first, and afterwards the negro picked up the rock or brick. The negro met Wood more than half way. Afterwards saw Wood with a new club or single-tree. Saw the brickbat flying.

JOSEPH BALT—States, first saw the mob after Wood and the negro were parted at the pump. Heard Buchart say, "G—d, I used to be a negro driver, and you had better leave or you will be killed." Saw Davis strike the negro; afterwards saw the negro hit Davis, and he believed. Saw Ballinger hit a brick in his hand when Davis threw. The negro hit and fell the negro. Saw Wood

fight when Wood came up to him. One of the brick bats which the negro threw came near witness. Wood was thrown with much force. The club was a good stout cudgel probably 4 or 5 feet long. Saw B. snatch it from the crowd. The crowd was east of where witness stood.

Cross-examined—Was at the State House when he first heard of the fact, or when the crowd commenced, distant probably 250 yards, a full square, the width of a street and half the width of the State House square. Went to the scene of the murder. First saw the negro bleeding. Ballinger was standing near the corner of the fence when witness first came to him, they both came from the State House near the same time. Saw Wood running and saying he would kill the negro. Saw Davis strike one blow. Did not hear any thing said by Ballinger. Did not see any brick bats, clubs or other things thrown by any persons towards the negro. Saw the negro throw three bricks. Did not see Wood knock him down. The negro was bearing across the street towards the north going backwards. When Wood approached the negro the negro told him to stand back, but he would kill him. Did not see Wood throw all the time. Believes that Ballinger was near witness from the corner until B. ran and caught the negro. The negro was close enough to Davis when Ballinger caught him, to have struck him, but he did not. Davis was west of the negro when he fell. The negro did not see the club and hit the gutter. Did not see Levy or Day take hold of Wood. The crowd came up, witness gave back and only saw Ballinger strike one blow. Did not see Ballinger knock down Davis' hurt until after the negro was knocked down by Ballinger. If Ballinger had a club when he ran across the street, witness did not see it.

DR. LOUIS BROWN—States, saw Davis knocked down; passed by him after he was hit, and went up to the negro, and remained by him until he was removed into the yard. Thinks it was impossible for Davis to have struck the negro, as he was knocked down by Wood. Ballinger. Davis seemed badly hurt, and persons seemed to be supporting him, or conversing with him.

Cross-examined—Was among the first who approached the negro after he fell. Davis was west of the negro when he fell. The crowd was near where he was. Davis was knocked down. Witness is certain that the negro had no club in his hand when Ballinger took hold of him, but saw Ballinger take the stick from the hands of another person, and he felt the stick in his hand. The negro did not make any attempt to strike Davis after he fell. Witness does not think that the negro did strike Ballinger as he took the stick from the man, remarked, "give me the stick, I'll fix him." Did not see Ballinger throw at the negro.

JOHN SMOCK—States, saw negro coming down Washington street—then saw Wood fall on him, and pick up a piece of board; saw Wood stoop and pick up a brick bat and throw it and strike Wood on the head and strike off his hat, which staggered Wood. Then saw them clinch, and walked up street—saw nothing more of the fight. Thinks Wood was drunk. The negro was near ten feet from Wood when he ran and clinched him.

Cross-examined—Witness was on the south side of Washington street opposite Gaston's shop in company with two females, going to hear an oration by Wm. Wallace. Saw Wood pick up the board and follow the negro. The negro was in the crowd, and witness was in the crowd. Gaston's fence on the side walk, when Wood approached him. Wood was on the plank which crosses the gutter, when he struck, or near them. Has frequently visited Wood in jail—say four or five times. When witness arrived at the church where the oration was delivered the negro was in the crowd, and witness saw the negro that he was at the church when the fight was going on, or when the negro was killed.

JAMES WILSON—States, saw Wood first at Ennis' grocery. Wood went west and slaved the negro on the shoulder and said "old fellow I did not mean to hurt you—was just in fun." Afterwards heard Wood say to the negro, with a board or stick in his hand, if you do not behave I will slap you." Then the negro threw at Wood and hit him on the head, and knocked off his hat. Wood struck his hat on the ground, and he could not stand it. Saw the brick bat flying every way. Saw Ballinger catch and strike the negro and knock him down. Saw Wood strike the negro on the shoulders after Ballinger had knocked him down. Previously saw a brick strike the negro on the head, and the crowd was shouting. Suppose it would weigh about 4 pounds. Saw Wood cross the street after the first attack, in an angular direction, towards the negro. The negro advanced towards Wood, as Wood came near him with the board, near the pump. Did not see Ballinger at all until he had the negro by the collar. Thinks Wood was intoxicated.

Cross-examined—First saw the negro before Ennis' grocery. Wood came into the grocery—crossed the street to Harlin's grocery. Saw the negro start down street, and saw Wood also start down street after the negro. The negro was west of the pump when he picked up the rock. Wood approached as if he intended to strike the negro, or to slap his posterior—he said he would slap him. Saw rocks flying both ways, but could not say which side began. Did not see the crowd. The crowd was in a uproar, and was near to Wood as witness was.

Examination resumed—Was about 20 or 30 yards from Wood in the street, when Wood was talking of hitting the negro. Did not see Davis at the time Wood was knocked down.

WILLIAM HINERLEY—States, saw negro strike Wood with a brick near the pump; saw them clinch; the negro seemed to advance after the brick was thrown. Saw Wood afterwards approach the negro with a stick. The negro told him that he was not going to run off. Did not see any thing in the hands of the negro, until he saw him knock Davis down with a brick. Cross-examined—Witness did not see Wood until he came out of the grocery, when the negro struck twice at Wood. Wood was standing at the pump. The crowd drew the grocery door, and said there was a man who had drawn blood from him, and if he would come out he would draw blood from him. Witness saw the negro and Wood go down the street, saw Wood pick up the board and follow the negro. Did not see Davis at the time Wood was knocked down.

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Re-examined—Thinks Wood when intoxicated reckless and regardless of consequences.

Mrs. MARY ELLIS—States, she saw the negro pick up a brick bat and throw it and hit Wood on the head. Saw Wood pick up a board or slab and go towards the negro, who was in company with John Smock.

Cross-examined—Saw the negro pick up the brick bat and throw it and hit Wood on the head. (Witness was evidently mistaken in her former statement as to locality.)

WILLIAM PETERS—States, saw Wood approach the negro with a stick, opposite Armstrong's. The negro turned and told Wood to stop or he would kill him. Wood stopped, and the crowd continued to retreat towards the mouth of the alley. Brickbats were thrown at the negro, and the negro turned, and hit Davis and knocked him down. Saw Ballinger have hold of the negro, strike and knock him down. Saw Wood come up and strike at the negro after he was down; some persons caught the blow of Wood and his stick seemed to hit the ground. The blow which Davis received was severe. Saw him afterwards, with his head bleeding, near the face.

Cross-examined—Thinks the crowd first commenced throwing at the negro when he was hit on the head by Wood. The negro was hit once or twice before he threw at Davis. He retreated after he was hit before he threw at Davis, and yet retreated. The next he saw was the contest between Ballinger and the negro.

Court adjourned until to-morrow, 9 o'clock.

strike the negro after he was downed by Ballinger. Did not see Davis strike him.

Cross-examined—Saw Wood with his single-tree, saying "let me alone, I'll kill him." Persons heard Wood. Heard negro tell Wood to stand back, or he would hit him. First brick he saw thrown was by Davis, at the negro, about a half minute before the negro threw. During the time after the negro left the pump, he continued to go north, unless he was stopped by persons talking to him, and he then again continued to go north.

WILLIAM POLAND—Says, first saw Wood at a grocery near Meyer's. Saw the negro's nose bleeding, and heard Wood say "let me alone, I'll kill him." The negro replied, "you know, and I'll make you pay for it. If I don't, I'll have the last drop of your blood, if it is blood you are after. Saw the negro strike at Wood after Wood came out of the grocery. Saw Wood cross the street and get up, and follow the negro down towards the pump. Saw Wood come towards the negro, saw the negro pick up a brick and hit Wood on the head. Davis was in the crowd. During the time after the negro left the pump, he continued to go north, unless he was stopped by persons talking to him, and he then again continued to go north.

Cross-examined—Wood did not say to the negro, "I did not mean to hurt you." The negro was quarreling across Washington street and came to the pavement near Norwood's corner. Wood had the stick before he came to the corner; had the plank or stick raised. Wood was not near enough to hit the negro with the plank when the negro hit Wood with the brick. Saw Wood fall and the negro jump on him. Wood fell on his back, and some persons pulled Wood on to the top of the negro. The crowd pressed in and witness could not see afterwards only through or among their legs.

BENJAMIN NEWMAN—States, saw the negro standing in front of the grocery. The negro was holding a stick. The matter with him. Negro said Wood had struck him. Negro told Wood that he would make him pay for it. Saw them again at the pump. Saw them down, and Wood on top of the negro. Afterwards saw bricks being thrown. Davis knocked down. Did not know who threw the bricks. Saw Wood with the plank in his hand.

Cross-examined—Wood took hold of the negro's hat and asked him, "what is the matter, old fellow?" Then went into the grocery. Wood came out of the grocery, and the second time, and again took hold of the negro's hat. Then the negro struck at him. Wood picked up the piece of plank or board, about 4 feet long, 6 or 8 inches wide, before he got to Illinois street. After the scuffle at the pump Wood went and got another club, and followed the negro up the street. Wood was in the crowd. Thinks some persons told the negro to stand his ground; others told him to leave.

ROBERT WALLS—States, first saw Wood near Heeder's near a nail shop lifting at it. Saw the negro coming across Washington street, and witness saw the negro, and will see him directly. The negro passed down the street. Wood followed until the negro hit him with the brick. The negro had a brick bat in his hand as he crossed Washington street.

Cross-examined—At the time that Wood was lifting at the barrel, the negro made the remark, "you reach the north pavement he went angling westward. The negro was east of Wood when Wood was at the barrel. Did not see the negro pick up the brick which witness saw in his hand.

DR. EVANS—States, that the blows given on the front and side of the skull, (by Ballinger), with a stick, produced a concussion of the brain, and the effect is concussion, by extrusion or internal rupture. Thinks the effects, in this instance, was concussion. The effects of the blow on the back of the head would probably not have proved fatal. The back part of the skull being the strongest.

Cross-examined—Thinks the blow on the back of the head would have contributed to his death; a repetition of blows would more easily produce death they being equally hard, the continuation being injurious. A blow on the back of the head would produce a concussion of the brain.

JAMES KERLIN—States, saw Wood and the negro in the street. Wood came into witness's grocery and inquired for an axe handle, and said he wanted to kill the negro. Took hold of a barrel of salt and said he would strike the negro with it. Heard the negro say that if Wood did not let him alone, he would hurt him. He shook his fist at Wood. This was near Preston's, adjoining Farmer House. Was about 15 feet from the negro, when hit. The blow was severe.

Cross-examined—Was running to get out of the way of the bricks which were being thrown. Had run about five feet when he was struck, and he was during that day had he run North towards Lister's street. Did see some person get hit who was running in that direction. Saw Davis knocked down; does not know who did it. Saw Wood with a stick in his hand. Saw negro pick up stones. Heard voices cry "kill him."

BENJAMIN LEVY—States, the first thing he saw was the scuffle near the pump, and got there about the time that Wood and the negro were parted. Witness advised negro to go away. Others said that Wood was to be taken, and he ought to be whipped, or that the negro could whip Wood. The negro said he would hit him, and that he could whip any white man. Saw the negro struck by a brick. Afterwards saw Wood with a stick and took hold of him.

Cross-examined—The negro was about to go away when two white men told the negro that he should have a fair play, or that he could whip Wood. The negro faintly use the words "whip" and "white man." Understood him to say that he could whip any white man. Witness was holding Wood, and Wood was trying to get loose, after Wood struck the negro with a stick. When Wood got loose, he pursued the negro, and witness told the negro to stand off or he should hit him. Wood stood off. The negro kept trying to get off; witness stopped Wood the second time. Saw the brick-bat flying; heard the cry in the crowd "kill the negro." Saw Mr. Davis come up to the pump about half a minute before the negro was hit. Saw Ballinger strike the negro. Saw Wood come up and strike the negro after he was down.

WILLIAM POLAND, JR.—States, saw Wood and negro at the grocery on Washington street, where the negro was first struck. Saw them clinch. The negro was on top of the negro cross the street. Does not think any thing passed between Wood and the negro as they crossed the street. The negro came on to the North pavement between Kirlin's and Preston's.

JOSEPH BALT—Saw Edward Davis about an hour and a half before the affray. Thinks he was somewhat intoxicated. Witness told him he was drunk.

DANIEL McNEBB—States, saw the fight at the pump at a distance—then went over. Heard the negro say "I'll fix him." Bookhart told him to stay and that he should have a fair fight. The negro then picked up some bricks, and said he could whip any white man. He started away, and some person hit him on the shoulder, when he turned round, and when Wood approached him, he told Wood to stand back or he would throw a brick at him. It was after he had been struck on the head by Davis, that the negro was encouraged to stay, as his head was then bleeding. When he said that he could whip any white man, witness saw him start away.