

come out to take my property I was referring to Irvine, because I mentioned his name specially. When I went out of the house to get Irvine I didn't want to kill anybody else; I always felt friendly to everybody but Irvine. Coming to Salt Lake on the sheriff's car on April 15th was ~~Mr~~ a man who asked me "Why did you kill ~~Stuart~~ Irvine?" He may have been Mr Keating, a newspaper report, but I didn't know him, and I replied that he forced me to do it; he didn't say "Why did you kill Stuart?" nor "How did he force you to do it" that I know of, and I didn't answer "He forced me to the wall." He said something like "You don't look like he used any violence upon you; did he strike you?" and I answered no; he asked "Did he threaten you?" but I didn't answer. I didn't hear him say "Did he pull his gun on you?" He didn't ask me "Then why did you shoot him?" and I didn't answer "It was a case of a big man against a little man," nor did he ask me "Did you have your shotgun in your hand?" nor "Did Stuart pull a gun on you?" I had heard that Stuart was at my place in December 1921, but I didn't see him and didn't know him. Mr Morgan had told me that Stuart had signed the complaint against me.

ON RE-DIRECT: It was about 45 minutes from the time I first observed these parties in my yard until I opened the rear door.

THE DEFENSE RESTS

HERBERT LEICHTER called by the state testified in substance: I have been chief criminal deputy sheriff of Salt Lake County since January 1921; on April 15th 1922 I rode in an automobile from Welby to Salt Lake City with Mr Keating, Carl Reedheim and the defendant, when I heard a conversation between Keating and the defendant relative to the shooting of Gordon Stuart; Keating asked Gardner "Why did you kill Stuart?" and Gardner replied "He forced me to do it?" but I didn't hear the answer; Keating then asked the defendant "Did he strike you?" and defendant said no; Keating asked "Did he threaten you?" to which defendant answered no; Keating asked "Did he pull his gun on you?" and defendant answered no. Defendant also stated then that he knew Gordon Stuart and knew he was a deputy sheriff.

CARL REEDHEIM called by the State testified in substance: I have been a deputy sheriff of Salt Lake County since January 1921; on April 15th 1922 I rode in an automobile from Welby to Salt Lake City with the defendant and others, when I heard a conversation between defendant and Mr Keating as to the killing of Gordon Stuart; Keating asked defendant "Why did you kill Stuart?" and defendant answered "He forced me to do it;" Keating asked in substance "How did he force you to do it?" and defendant answered "He forced me to the wall;" Keating asked "Did he strike you?" and defendant answered no; Keating also asked "Did he threaten you?" and defendant answered no; Keating asked "Did he pull his gun on you?" and defendant answered no; Keating asked "Why did you shoot him?" and defendant answered "It was a case of a big man against a little man." Defendant said in the car then that he knew Gordon Stuart and he was out there on a liquor raid before.

On cross-examination: The automobile was moving when I heard this conversation; they also talked about Mr Irvine, and then Keating asked defendant why he killed Stuart; nobody else was killed on that day at the Gardner place; Irvine was shot then, but not killed.

BOTH SIDES REST.