

SEIZED IN FIREMAN DEATH

Ex-Convict Booked After Long Questioning

A 26-year-old ex-convict, identified by three witnesses as the gunman who shot and killed Fireman Thomas J. Hitter in a payroll hold-up last October, was formally booked on a charge of homicide at the Liberty Avenue police station, Brooklyn, early today after being held since yesterday afternoon for questioning. He was Frank Davino, known also as "Big Boy," of 910 East Fifty-fourth Street, Brooklyn. Detectives Harry States and Frank Gray arrested him yesterday afternoon, when he reported at the office of the Parole Board, 8 Center Street, Manhattan.

Fireman Hitter was killed near his firehouse at 480 Sheffield Avenue, Brooklyn, as he was returning with about \$3,400 from checks he had cashed for his comrades. The witnesses who identified Davino, the police said, were three firemen who pursued the killer, but could not overtake the automobile used in the robbery. Davino denied guilt. The Uniformed Firemen's Association had offered a \$5,000 reward for the slayer.

SLAYER OF FIREMAN IN HOLD-UP CONVICTED

New York Times (1857-Current file); Apr 14, 1940;

ProQuest Historical Newspapers The New York Times (1851 - 2006)

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SLAYER OF FIREMAN IN HOLD-UP CONVICTED

First-Degree Verdict Found in Brooklyn Shooting

A blue ribbon jury before County Judge Franklin Taylor in Brooklyn yesterday found Frank Davino, 26 years old, of 910 East Fifty-fourth Street, Brooklyn, guilty of the murder of Fireman Thomas J. Hitter, who was shot Oct. 31, 1938, in front of a Brooklyn firehouse. Davino heard the verdict of first-degree murder without betraying any emotion.

Fireman Hitter was killed during a hold-up in front of his firehouse at 480 Sheffield Avenue, in full view of housewives and school children. Returning from a bank with \$3,000 after cashing his and fellow-firemen's pay checks, he was

murdered and robbed of the money. Davino was accused of both crimes.

Although Judge Taylor's charge to the jury explained that "guilty, with recommendation for clemency" was among the possible verdicts, the jury made no such recommendation. The jury began its deliberation at 1:40 P. M. and returned its verdict shortly before 5 o'clock.

Davino was remanded to Brooklyn City Prison to await sentence.

Sentenced as Slayer of Fireman

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Sentenced as Slayer of Fireman

Frank Davino, 28 years old, of 910 East Fifty-fourth Street, Brooklyn, was sentenced yesterday by Kings County Judge Franklin Taylor to die in the electric chair. Davino was found guilty of first-degree murder in connection with the death of Thomas J. Hitter, a city fireman, on Oct. 31, 1938. The fireman was shot and killed after returning from a bank with \$3,778 in cash which he had obtained by cashing the pay checks of himself and fellow-firemen.

DAVINO CONVICTED AGAIN

Jury in Second Trial Finds He Killed Fireman in Hold-Up

Frank (Big Boy) Davino was convicted by a jury in Kings County Court last night in his second trial for the hold-up slaying of Fireman Thomas J. Hitter in front of his engine house at Sheffield and Livonia Avenues, Brooklyn, on Oct. 31, 1938. Hitter was returning from a bank with \$3,300 he had cashed in payroll checks for his fellow firemen.

Three convicts, former friends and cellmates of Davino, were surprise witnesses at the second trial, naming Davino as the admitted killer of Hitter and giving the lie to Davino's alibi defense at the first trial. The Court of Appeals reversed the conviction in the first trial for lack of evidence.

SENTENCED FOR SLAYING

Davino Shouts He Is Innocent— To Die Week of Jan. 11

Frank (Big Boy) Davino, 29 years old, was sentenced yesterday by Kings County Judge Samuel S. Leibowitz to die in the electric chair at Sing Sing Prison during the week of Jan. 11, for the slaying of Fireman Thomas J. Hitter on Oct. 31, 1938. As sentence was imposed Davino shouted: "I am innocent of this crime. The District Attorney has used false witnesses and perjured testimony against me."

The conviction was the second returned against Davino for the crime. The verdict in the first trial was reversed by the Court of Appeals for insufficient evidence. At the second trial three former companions of Davino testified against him. Hitter was returning to the engine company headquarters at Sheffiel dand Livonia Avenues, Brooklyn, with \$3,300 in payroll checks cashed at a near-by bank when he was shot down.

KOCH GETS LIE TEST

Questioned in Hold-Up Slaying in 1938 of Fireman Hitter

Frank Koch, the former city fireman who is under investigation by the Kings County District Attorney's office in connection with the hold-up murder of Fireman Thomas J. Hitter on Oct. 30, 1938, submitted yesterday to lie-detector tests in the prosecutor's office. The nature of the findings was not disclosed and it was announced that another test would be given Koch tomorrow, after which the results will be made public.

The tests were given by Professor Joseph F. Kubis of the Psychology Department of Fordham University in the presence of Acting District Attorney Thomas Cradock Hughes and newspaper reporters. Professor Kubis also had a brief talk alone with Koch. Hitter was shot and killed as he returned to his Brooklyn firehouse with \$3,000 cashed from payroll checks for his fellow-firemen. Frank (Big Boy) Davino was convicted twice of the crime, but each time won a reversal from the Court of Appeals. Koch was taken into custody last month in Salt Lake City on a charge of abandoning his wife and children. He denied any knowledge of the crime.

LIE DETECTOR IS USED

Fails to Indicate Koch Falsified in Denying Murder

Acting District Attorney Thomas Cradock Hughes of Brooklyn announced yesterday that the results of two lie-detector tests given to Frank Koch, former city fireman, failed to indicate that Koch "was telling a lie when he denied being an accomplice or participant in the 1938 hold-up murder of Fireman Thomas J. Hitter or that he knew who committed the crime."

Mr. Hughes added that his office would continue its efforts to uncover "new and credible evidence, if such exists." The Kings County Court has indicated that unless additional evidence to support a new trial is found by Nov. 10 a first-degree murder indictment charging Frank (Big Boy) Davino with the Hitter slaying would be dismissed. Davino was convicted twice of the crime but each time won a reversal from the Court of Appeals.

Koch submitted to the lie-detector tests on Wednesday and yesterday under the supervision of Professor Joseph F. Kubis of the Psychology Department of Fordham University, who reported the results to Mr. Hughes a few hours after the second test. Koch was taken into custody last month in Salt Lake City on a charge of abandoning his wife and child, for which he is being held in \$50,000 bail in Queens County. Hitter was shot and killed as he returned to his Brooklyn firehouse with \$3,000 cashed from payroll checks for his fellow-firemen.

Davino to Avoid Third Trial

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Davino to Avoid Third Trial

Acting District Attorney Thomas Cradock Hughes of Brooklyn announced yesterday that, barring unforeseen developments, he would move in Kings County Court on Monday for dismissal of the first-degree murder indictment against Frank (Big Boy) Davino in the payroll hold-up slaying of Fireman Thomas J. Hitter in Brooklyn on Oct. 31, 1938. Davino twice has been convicted of the murder and on both occasions the verdicts have been reversed by the Court of Appeals and a new trial ordered.

Davino Freed in Payroll Murder After 17 Months in Death House

Says He Will Never Rest Till He Finds Slayers of Fireman—May Write to the President in Attempt to Enlist

Frank (Big Boy) Davino, who spent seventeen months in the death house at Sing Sing Prison and said farewell to twenty-one fellow-inmates as they went to the electric chair, was cleared yesterday in Kings County Court of first-degree murder in the payroll hold-up slaying of Fireman Thomas J. Hitter in Brooklyn on Oct. 31, 1938. Davino twice had been convicted of the crime.

The 30-year-old defendant, who was discharged after the Court of Appeals had reversed both convictions and the Kings County District Attorney's office had informed the trial court that no additional evidence had been uncovered to support the indictment, declared later in the day, in an interview in the offices of his attorneys, that he would now "make every effort possible to get into the Army, even if I have to write to the President."

In the interview Davino said that his immediate plans called "for a few weeks to get out and get some sunshine and take care of my side." He explained that he had a torn ligament before his arrest. He said he held no malice for the witnesses that testified against him, adding, "they perjured themselves and I know they'll suffer enough thinking of the wrong they have done."

Davino expressed deep gratitude for the fight put up by his attorneys, Harry G. Anderson and Samuel Bader. "All I can say is that if my own father had been in their place, he could have done no better for me than they did," he said, adding that while he was in the death house he always believed "that I could not die for a crime I did not commit." With emotion, Davino declared, "I will never rest until the murderers of Fireman Hitter are arrested and convicted, because not till then will I feel that the public in general really understands that I am innocent."

Wearing a dark blue suit with

pencil stripes, a white shirt and figured tie, the tall, curly haired defendant appeared nervous as the attorneys for both sides discussed the dismissal motion before Judge Peter J. Brancato. Davino has lost about thirty of the 198 pounds he weighed when first arrested. He frequently ran his hands through his hair and looked out over the courtroom where his parents and two sisters sat awaiting the ruling.

The motion to discharge was made by Assistant District Attorney Charles N. Cohen, who cited the Court of Appeals decision that the evidence was insufficient and related the case of Frank Koch, former City fireman recently returned here from Salt Lake City on abandonment charges, who was questioned about the Hitter killing by District Attorney Thomas Cradock Hughes of Brooklyn and received two lie detector tests that indicated that his statements he knew nothing about the crime were truthful.

Judge Brancato dismissed the indictment and Davino strode to the counsel table and with tear-filled eyes shook the hands of his attorneys and thanked them. Davino was returned to the Brooklyn City Prison to await disposition of his case by the Parole Commission, as he was on parole from Elmira Reformatory where he had served a term for a robbery in Manhattan. Later in the day he appeared in his attorneys' offices for the interview, and it was explained that although he was still under parole he would be permitted to go home.

Fireman Hitter was shot down in midday as he was returning with a \$3,000 payroll in front of his firehouse at Livonia and Sheffield Avenues in Brooklyn. Davino first was convicted on April 22, 1940, received a new trial and again was convicted on Dec. 9, 1941, again winning a reversal.