



**START**

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COURT OF GENERAL SESSIONS OF THE PEACE  
IN AND FOR THE COUNTY OF NEW YORK

PART III

-----X  
THE PEOPLE OF THE STATE OF NEW YORK :

vs. :

WILLIAM DELANEY, alias MONK EASTMAN :  
-----X

Indictment filed February 8, 1904.

Charge: Attempted Murder in the First Degree, Assault  
in the First and Second Degrees.

Tried Before Hon. JOHN W. GOFF, Recorder, and a Jury.

New York, April 12, et seq., 1904

A p p e a r a n c e s :

WILLIAM RAND, JR., and NATHAN A. SMYTH, Esqs., for the People;  
GEORGE W. HURLBUT, Esq., with CANTWELL & MOORE, Esqs., for the  
Defense.

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George F. Flack,

Official Stenographer.

A jury is duly impanelled and sworn, after each thereof has been specially examined by counsel on both sides.

PEOPLE'S COUNSEL'S OPENING ADDRESS.



MR RAND: May it please the Court, Mr Foreman and Gentlemen: The function of an opening is simply to apprise you in a general way of the nature of the case that you are about to try, and that function can be performed without going into any very great details as to the evidence. I simply desire to explain to you now just what the crime is that this man is charged with, and in a general way acquaint you with the nature of the evidence in support of that charge, leaving it to you to follow the evidence as it is presented to you with more intelligence than you could without this preliminary statement, and leaving it to myself at a later stage to make such comments on the evidence as seem to be required of me by my duty.

The Grand Jury of the County of New York have charged this man, Monk Eastman, with the crime of a grade known as an attempt, that is to say, they concede that the full measure of the crime was not accomplished--but not, as we claim, through any fault of his. He performed an act

intending to commit a crime, and an act which tended to commit the crime, but which failed, without any fault of his, to effect its commission; and a man who does such an act is, according to the law of this State, guilty of an attempt to commit that crime, no matter what the crime is.

There may be an attempt--there may be some exceptions; I cannot think of any now--there may be an attempt to commit any crime, just as there may be any crime itself.

If I smear your barn with kerosene, and go there in the night time and pile some shavings against it and ignite them with a match and leave, and in about half an hour--I am afraid the barn would be gone then--in, say, five minutes after I had done that, a passerby notices the *blaze* and goes and puts it out, he saves me from myself; he saves me from committing the crime of arson.

But I have committed the crime of an attempt to commit the crime of arson. I did everything that I could to burn your barn, and I am entitled to get no credit from the fact that your barn was not burned.

So here, the Grand Jury presents for your consideration the charge that this man (indicating defendant) attempted to commit the crime of murder in the first degree.

Now murder in the first degree, of course, as you are aware, is the highest grade of homicide, and it can be com-

mitted in several ways, but for the purposes of this case two of the definitions are sufficient.

A man is guilty of murder in the first degree, <sup>who,</sup> with intent, with premeditation and design, as the statute says, kills another human being; and I will ask you to remember that premeditation and design do not imply any long course of thought upon the subject. To premeditate is to think before hand, that is all; and if there is time enough, when your finger is on the trigger, for you to decide, "Shall I kill or shall I not?" and you decide in the affirmative, then you have premeditated the act within the meaning of the law, although the operation of your mind may have been as swift as lightning. If there is time for thought there is time for premeditation.

Of course, gentlemen, I realize that I am not conducting a law school, and that I have no right to speak to you with any authority as to these definitions of law; understand that. At the conclusion of the case the Recorder will give you the law, and if it should be my misfortune to conflict with what he will say to you, in anything that I say, you will of course discard what I say. But my propositions so far have been so extremely simple and elementary, that even my learned opponent has seen nothing in them to object to.

Murder in the first degree can also be committed without any design to kill by a person who is engaged at the time in the commission of a felony. That is to say, the statute very properly says to any man who is engaged in the commission of a felony, "Now, you take your chances and whether you intend to kill or not, if you do an act by which a human being loses his life, <sup>and</sup> you are engaged in the commission of that crime, you must pay exactly the same penalty that the law would exact of you if you had intended to effect the death of the person killed."

Now, gentlemen, I beg that you will bear those definitions in mind: what an attempt is--an act done with intent to commit a crime and tending towards its commission but failing to succeed.

Murder in the first degree is the killing of a human being with premeditation and design; premeditation being simply the choice between to kill and not to kill.

Murder in the first degree is also the killing of a human being, even though the deed be not intended, when the person who kills is engaged in the commission of a felony.

Now, if you will kindly bear those definitions in mind, I can tell you in a very few minutes what this case is all about.

This is a tale, gentlemen of the jury, of the Tenderloin and of the powers that prey therein at a time of night when honest folks are abed.

MR HURLBUT: If the Court please, I object to the remark of the District Attorney, and ask for an exception.

THE COURT: I sustain the objection, and, Mr District Attorney, abstain from making any observations that are not directly applicable to the case.

MR RAND: I am very sorry to have offended counsel for the defense by my observation, nor can I conceive, even in the light of his Honor's ruling, what there is wrong with that. I will say, gentlemen, this is a story in which a part of the city of New York, lying between 23rd and West 44th Streets along Broadway and Sixth Avenue, is involved. There is no objection to that, is there, Mr Hurlbut?

MR HURLBUT: No.

MR RAND: That the acts about which I am going to speak were committed in the early hours of the morning of February 2nd last when most honest people are abed. There is no objection to that?

MR HURLBUT: No.

MR RAND: (Resuming) At half-past two o'clock on the early morning of the 2nd of February last, a young man,

very much under the influence of liquor, staggered out of Jack's all-night restaurant on the west side of Sixth Avenue, just above 42nd Street, lurched around the corner of 42nd Street, and going into the door of a restaurant, one of Childs's restaurants there, just a few doors west of Sixth Avenue on the north side of 14th Street, and there proceeded to count his money, taking it out of his trousers' pocket and going over it. At that moment a gang of toughs, eight or ten in number---

MR HULRBUT: To that remark, if the Court please, I object.

THE COURT: Strike it out.

MR RAND: I beg your pardon; I beg the Court's pardon. At that moment a number of gentlemen, some eight or ten in number, came out of Sig. Cohen's saloon, which immediately adjoins Childs's restaurant on the east. They passed this drunken young man, and as they passed him, two of the number, a man named Christopher Wallace and this man, Monk Eastman or William Delaney (indicating defendant), looked back over their shoulders at this drunken boy, and having looked back, halted a moment, let their companions go ahead and they returned to where this helpless man was still foolishly fingering his bills. Wallace went up to him and struck him in the face with his left fist, knock-

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ing him back and knocking his hat off, and at the same moment grabbed for the money with his right hand, Eastman being close by.

And it is pretty certain that this young man would have lost his money, possibly his life, had he been in a condition to offer any resistance, but for that benign providence which it is well known watches over sailors and drunken men.

This was not only a benign providence, but a benign father, for this young man, who shall be nameless here, so far as I am concerned, is the son of a man distinguished in public life in the United States. He was so drunk that we should not be justified in offering him here as a witness to tell you what occurred, and that being so, I am very glad that for my part I shall not have occasion to cause his father or family any sorrow by bringing him into this case. His name is absolutely immaterial on the facts in this case.

But his father had employed two men, knowing him to be wayward, to look out for him. He had gone so far that he could not look out for himself; and at the very moment that Eastman and Wallace went back to rob him, not forty feet away, and standing in the light of--what do you call it? What they have at the elevated station there?--a

pagoda--no, not a pagoda; more like a bungalow--standing in the light there was a man named Bryan, a Pinkerton detective, and a fellow detective, an Assistant Superintendent of the Pinkerton Agency, I believe, named Rogers; both of those men being employed by the young man's father to look out for him when he got loose at night.

Bryan shouted to Rogers, "They are robbing the kid!" and they jumped for Wallace and Eastman. Wallace ran, Bryan running after him; and as Bryan passed Eastman, Eastman put out his foot to trip him, but Bryan jumped over his foot and passed, the rest of the gang still going eastward. Several of them also tried to trip him, but he continued to chase the man, Wallace west on 42nd Street on the north side. About the middle of the block Wallace cut across the street, where he was caught by Bryan, directly in front of Lewis & Conger's shop, which you probably all know, and which is just about in the middle of that block.

Rogers, in the meantime, at the first alarm--it was a bitter cold night--at the first alarm Rogers had turned aside and was, I believe, cutting off a chew of tobacco, so that he did not see the entire occurrence, but he did see Bryant jump for these men. He did see Bryant

start in pursuit of Wallace, and he started after to help him.

When he got across the street Bryan had hold of Wallace and was holding him in front of him; the two struggling by Lewis & Conger's window. Then the fusillade began. Just how many shots were fired or who fired all of them I don't pretend to be able to show. As ~~it~~ is very common in such cases, where the whole thing happens in a very few minutes, and where all the persons engaged were laboring under very great excitement, it is impossible to tell or to get the witnesses to agree to all the shooting that was done. I recall very well the case where a man was shot on this very floor in this building, and within the hearing of this very court. We all heard the shots, and yet no two of us could agree afterwards as to the number of shots that were fired. That is a very common thing in shooting scrapes. You have something else to think about besides addition.

As Rogers crossed the street there were two shots fired--by whom we have no idea. When he got across the street, or nearly across the street, he saw Bryan, the first Pinkerton man holding this man Wallace in front of him as a shield, and turning him from left to right to avoid Eastman, who was dodging on the outside with a re-

volver in his hand trying to get a good aim at Bryan. The Eastman shouted, "Let him go, you God damned son-of-a-bitch, or I will kill you!" and with that tried to close in on Bryan so as to shoot him without injuring his pal, Wallace.

At first he went around to Bryan's left--to his own right--and, standing about eight or ten feet away, fired two shots at Bryan, but without effect. Then he went over to the other side and again Bryan wheeled Wallace around to the front. He fired again twice, within a distance of ten feet, at Bryan; his shots having no other effect than to crash the glass in Lewis & Conger's window.

Then he turned and pointed his revolver at Rogers, who, being unarmed, to save his life, started back again across 42nd Street. He was fired at as he went back, but whether by Eastman or not, we do not know, but we presume by Eastman, as he was levelling his pistol, and bullets biffed the street on either side of him.

I think I am wrong, perhaps, now; at all events, the testimony will show. My impression is now that the shots at Rogers were fired before the shots at Bryan. How is that?

MR SMYTH: Yes, that is so.

MR RAND: Then you will amend my story, gentlemen in that particular. Rogers shouted to Bryan to let go, and Bryan, taking one hand away from Wallace, put his hand in his pocket and drew his own revolver.

At that time Eastman took the revolver which he had emptied and threw it at Bryan's head. Bryan ducked and the revolver went crashing through Lewis & Conger's window, where it fell into a tea set where it was fished out.

Meantime Wallace had broken away and he and Eastman started to run west. After that Bryan fired his revolver twice in order to attract attention, while Eastman and Wallace had gotten to the bridge which covers the sidewalk there. Then the police made their appearance and they were all promptly taken into custody, and the police marched Eastman, Wallace, Bryan and Rogers off to the station house, where, if I recollect aright, Eastman was locked up and Wallace was held as a suspicious person until the story could be investigated and a proper charge made in the police court.

Now, that is all there is to it, gentlemen. If this man, Monk Eastman, intended to kill Bryan, and shot at him with that intent, he is guilty of the crime of an attempt to commit the crime of murder; and, as evidence that he

did intend to kill him, we offer you his own statement, "Let go of him, you God damned son-of-a-bitch, or I will kill you!".

But even if he did not intend to kill him, Wallace had committed a felony in robbing this drunken kid. Any citizen has a right to arrest when a felony is committed in his presence; and Bryan--as a matter of fact, Bryan was a special officer, but whether or not he was a special officer does not make any difference. Bryan had arrested Wallace and had him in lawful custody, and if Eastman shot at Bryan in an attempt to rescue a man in lawful custody for a felony, then he himself was guilty of a felony in attempting that rescue; and if he had killed a man in that attempt he would be guilty of murder in the first degree; but, so long as he did not succeed, he would be guilty simply of an attempt at murder in the first degree.

Now, I beg you gentlemen to remember that this prosecution is here entirely as a matter of public duty, without any prejudice, without any feeling against this defendant. I want you to give this man just as fair a trial as you know how, to scrutinize carefully all the evidence on both sides, ours as well as his, and to remember that I perform no service here except that of assisting you.

I am your servant, you are the inquisitors. I simply ask questions, because I am supposed to know how. I have had some experience.

Don't let anything go by that you do not understand; don't leave anything doubtful in the case, but let us clear it up as we go along, so that we will all understand it when we get through.

If you try the case in that spirit, I have no doubt The People of the State or the defendant at the bar will have no cause to complain of your conduct.

THE COURT: Gentlemen of the jury, the law requires me to admonish you not to talk about the case among yourselves, or allow any person to speak with you concerning it, and not to form or express any opinions upon the guilt or innocence of the defendant until the case is finally submitted to you.

We will take a recess until <sup>a</sup>quarter after two o'clock.

RECESS UNTIL 2 P. M.

## AFTER RECESS.

MR RAND: I offer in evidence a photograph of the block on West 42nd Street which is contained between Sixth Avenue and Broadway.

THE COURT: Is there any objection?

MR HURLBUT: No objection, if the Court please.

The said photograph is admitted in evidence and marked People's Exhibit No. 1.

CHARLES BAXTER, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR RAND:

Q Officer Baxter, you are a member of the Police Force of the City of New York? A Yes, sir.

Q Of what rank? A Patrolman.

Q How long have you been a policeman? A Going on 14 years-13 years and about 6 months.

Q Speak a little louder? A Over 13 years, sir.

Q To what precinct are you attached? A Fourth Inspection District now.

Q And does the Fourth Inspection District include the block on West 42nd Street between Sixth Avenue and Broadway?

A Yes, sir.

Q Are you familiar with that block? A Yes, sir.

Q Have you been familiar with it for the last three months? A Yes, sir.

Q Were you familiar with it and its general appearance on the 2nd of February last? A Yes, sir.

Q Were you familiar with it and its general appearance on the 21st day of February last? A Yes, sir.

Q Now, I want to know if, outside of snow and ice, and whether conditions, the general appearance of that block and the relative situations of the different stores and buildings changed in it between the 2nd of February and the 21st of February last? A No change, only a new building on the corner of Broadway and 42nd Street.

Q The new hotel got a little further along? A Yes, sir.

Q But with that exception there has been no change?

A No.

MR RAND: That is all for the present, Officer.

Any questions?

MR HURLBUT: No.

(No cross examination.)

MR RAND: I will have to recall you.

H A R O L D C O E , called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR RAND:

Q Please speak up, Mr Coe. Where do you live?

A 681 Broadway.

Q What is your occupation? A Photographer.

Q At the request of the District Attorney of this County, and on the 21st day of February, 1904, did you make certain photographs on West 42nd Street in the City of New York?

A I did.

Q I show you a certain photograph and ask you if that is a correct representation of the eastern end of 42nd Street adjoining Sixth Avenue, as of the date named?

MR HURLBUT: If the Court please, I object to the question.

MR RAND: I have not offered it yet.

THE COURT: He objects to the question. On what grounds?

MR HURLBUT: That it is incompetent, and that the question refers to an entirely different time than the time alleged in the indictment.

THE COURT: The District Attorney says that by the evidence of the preceding witness, it has been shown that no change took place in that place between certain dates

except the change of progress in a building then in the course of construction. Now, does the taking of the photograph which you claim to have been taken--does it refer to the time testified to by the last witness?

MR RAND: Yes, sir. He said this photograph was taken on the 21st day of February, and the last witness said that there was no change between the 2nd and the 21st day of February, except that the hotel got a little further along.

MR HURLBUT: If the Court please, I understood the officer to state that there had been no change as to general appearance. My objection goes further than that. I insist that any photograph taken must show the precise appearance at the time of taking, that it was the time of the alleged commission of the crime.

MR RAND: Oh, the officer said more than that. He said that with the exception of weather conditions, such as snow and ice, and that including the general appearance of the street and ~~of~~ the different places of business to each, there had been no change.

THE COURT: I overrule the objection.

MR HURLBUT: Exception, if your Honor please.

A It is.

BY MR RAND:

Q That is a correct representation--- A It is.

Q --of that part of 42nd Street as of the date of February 21st, this year? A Yes, sir.

Q And that is the end of the north side of 42nd Street adjoining Sixth Avenue? A Yes, sir.

MR RAND: I offer it in evidence.

MR HURLBUT: I object upon the same grounds.

THE COURT: You may recall the preceding witness and ask him whether or not the photograph is a true and correct representation of the premises.

MR RAND: You are right, Sir, but this witness, I assume, is allowed to testify that this is the correct representation as of the date named.

THE COURT: Of the date named; and now you may recall the preceding officer.

MR RAND: (To the stenographer) Will you mark that Exhibit 2 For Identification.?

The said photograph is marked "For Identification, Exhibit No. 2".

Q (Handing another photograph to witness) Did you also take this picture which I now show you? A I did.

Q On February 21st? A Yes, sir.

Q And is that a correct representation of the north side

--- A No, the south side.

Q --of the south side of West 42nd Street, called the new hotel, at the corner of Broadway and 42nd Street, and the store of Lewis & Conger, as of the date named? A It is.

MR RAND: Mark that.

The stenographer marks the said photograph, "For Identification, People's Exhibit No. 3."

Q (Handing another photograph to witness) I show you still another picture and ask you if you took that on February 21st? A I did.

Q And is that a correct representation of the southeast corner of Broadway and West 42nd Street in this City and County? A Yes, sir. It is looking along 42nd Street.

Q And shows the new hotel at close view? A It does.

MR RAND: I will ask to have that also marked.

the stenographer marks the said photograph, "For Identification, People's Exhibit No. 4."

Q (Handing another photograph to witness) I show you still another picture and ask you if you took that on February 21st this year? A I did.

Q And I ask you if that is a correct representation of the right-hand show window of Lewis & Conger's crockery and house furnishing store on the south side of West 42nd Street?

A Yes, sir.

Q As of that date? A It is.

MR RAND: (To the stenographer) Mark that.

The stenographer marks the said photograph, "For Identification People's Exhibit No. 5".

(No cross examination.)

CHARLES BAXTER, being recalled by the People,  
testified as follows:

DIRECT EXAMINATION BY MR RAND:

Q Officer, I show you People's Exhibit No. 2 for Identification, and I ask you if that is a correct representation of the north side of 42nd Street between Sixth Avenue and Broadway as of February 2nd, 1904?

MR HURLBUT: Objected to as incompetent, and that the witness is incompetent to state.

THE COURT: I overrule your objection.

MR HURLBUT: Exception.

A What number do you call this?

BY MR RAND:

Q I say, is that a correct picture of the north side of 42nd Street, between Sixth Avenue and Broadway? A Yes, sir.

Q As of the 2nd day of February? A Yes, sir.

Q That is the way the north side of the street looked on that date? A Yes, sir.

Q And the shops and buildings had the same relation to each other on that date as they have in that picture?

A Yes, sir.

MR HURLBUT: Objected to as leading.

THE COURT: Yes; do not lead.

MR RAND: Well, that is all right. I offer that in evidence.

PRELIMINARY CROSS EXAMINATION BY MR HURLBUT:

Q Have you ever had any experience in photography?

A None whatever.

Q Officer, can you say whether or not there is anything represented in that picture that was not there on the morning of the 2nd of February? A All I can see is the picture of the building, of the Murray Hill Baths. It is the picture of that building.

MR HURLBUT: Will the stenographer read the question?

THE STENOGRAPHER: (Reading) "Officer, can you say whether or not there is anything represented in that picture that was not there on the morning of the 2nd of February?"

Q Do you understand the question, Officer? A Yes, sir, I understand the question.

Q Will you answer it? A I answered that it looks like a picture of the Murray Hill Baths building.

MR RAND: That does not answer the question.

BY THE COURT:

Q Yes or no. A No, I couldn't answer that question.

BY MR HULRBUT:

Q Then how can you swear that is a correct representation of that particular place on the morning of the 2nd of February? A I say the picture represents the place.

Q Isn't it a fact that the most you can swear to is that that resembles that street? A That is right.

Q On that morning? A Yes, sir.

Q You don't pretend to say that it is absolutely correct, do you? A No, I could not testify to that.

DIRECT EXAMINATION RESUMED BY MR RAND:

Q How long have you been in that precinct? A Well, I have been connected with that precinct since January 8th or 9th.

Q You know where the Murray Hill Baths are, do you?

A Very well.

Q You know Childs's restaurant? A Yes, sir.

Q You know where Sig. Cohen's saloon is? A Yes, sir.

Q You know where the elevated station is? A Yes, sir.

Q And you know where the stairs come down from the elevated station, do you not? A Yes, sir.

Q Now, I want to know whether this picture which I have just shown you, correctly shows the situations of those various places which I have named as of the 2nd day of February, 1904? I don't care whether there is a newspaper or an ash can on the street that was not there. I want to know if the buildings and the street bore the same relations to each other on February 2nd as are shown in this picture?

MR HURLBUT: Objected to as incompetent, and I make the further objection that the witness has already shown himself to be incompetent.

Objection overruled. Exception.

A As a picture, I believe it looks like the buildings.

BY MR RAND:

Q What? A As a picture this looks exactly like the buildings that are there.

Q And the buildings are the same in relation to each other and to the street? A Yes, sir.

MR RAND: I offer it in evidence.

Objected to. Objection overruled. Exception.

Admitted in evidence and marked "People's Exhibit No. 2".

Q Officer, are you also familiar with the south side of 42nd Street on that block? A Yes, sir.

Q Do you know where Pease's piano company's place is?

A Yes, sir.

Q And Lewis & Conger's? A Yes, sir.

Q And the new hotel on the southeast corner of Broadway and 42nd Street? A Yes, sir.

Q I show you People's Exhibit No. 3 for Identification, and ask you if that shows, barring ice and snow and weather conditions, the south side of 42nd Street, from Pease's Piano Company up to the southwest corner of 42nd Street as it was on the 2nd day of February, 1904? A Yes; there is a new building on 42nd Street.

Q Yes; does it or does it not? A Yes, it does, to my recollection.

MR RAND: I offer it in evidence.

MR HURLBUT: To that I object on the same ground as before, if your Honor please, that it is incompetent, and that the witness is incompetent to testify to it.

Objection overruled. Exception.

The said photograph is marked in evidence "People's Exhibit No. 3".

BY MR RAND:

Q Now I show you still another picture, People's Exhibit No. 4 for Identification, and ask you whether it shows the new hotel and wooden bridge in front of it there in course of construction as existing on the south side of 42nd Street as

they existed on the 2nd of February, 1904? A Yes, sir; the picture resembles the place just as it was at that time.

MR HURLBUT: I make the same objection.

THE COURT: The same ruling.

MR HURLBUT: Exception.

The said photograph is marked in evidence "People's Exhibit No. 4."

BY MR RAND:

Q I show you still another picture, being People's Exhibit No. 5 for identification, and I ask you if that is a correct representation of the eastern side of the snow window of Lewis & Conger's as it existed on the 2nd of February, 1904 before it was busted. I don't mean that the crockery is necessarily arranged in the same way, but so far as the building and window go. I mean west of the door, to the right hand facing south? A This is before the brick?

Q Yes. A Yes, sir, that is a picture of the building.

Q A picture of the show window? A Yes, sir.

Q And that is correct as of the 2nd of February, 1904?

A Yes, sir.

MR RAND: I offer it in evidence.

MR HURLBUT: Before it is admitted I would like to ask a question.

MR RAND: All right.

**CROSS EXAMINATION BY MR HURLBUT:**

Q Officer, did you make any particular examination of that show window either before or on the morning of February 2nd? A On the morning of February 2nd, I did.

Q And do you say that that show window as represented in that picture is precisely as it was on the morning of the 2nd of February? A It looks to me that it is the same.

Q Do you say that it is precisely the same as it was on that morning? A I wouldn't say precisely, but it looks like it.

Q Like the window? A Yes.

MR RAND: That is all, we want.

MR HURLBUT: I object to it as incompetent and not proven to be in the precise situation as it was on the 2nd of February.

Objection overruled. Exception.

The said photograph is marked in evidence "People's Exhibit No. 5".

THE COURT: These several photographs, of course, having been identified by the photographer, who testified that they were accurate representations by the process of photography which he took of the different subjects presented, and then the testimony of this witness as to his personal experience and knowledge of the places purporting

to be described in those photographs, in my opinion warrant the admission of these photographs in evidence.

BY MR HURLBUT:

Q Do you remember, Officer, whether there was any snow or ice upon the street on the morning of the 2nd of February last? A I remember there was ice on the sidewalks.

Q On the street? A On the street--it was a cold morning, a very frosty, cold morning.

Q How much snow or ice would you say there was on 42nd Street between Broadway and Sixth Avenue? A Oh, I couldn't say how much. There was not much snow. It was a dry, cold morning, freezing.

Q Do you say, from the examination that you have made here of these pictures, that they represent snow and ice upon the street?

MR RAND: Objected to. He has already said he did not. That was barred out of the question.

A I didn't say anything about that at all.

THE COURT: Well, he has answered the question.

BY MR HURLBUT:

Q I didn't catch the answer. A I say I wouldn't say how much snow and ice was on the sidewalk. I can't remember that exactly.

Q Can you say from these pictures, was my question,

whether there was any on the sidewalk or street on the 21st day of February? A No, sir.

Q You cannot? A No, sir.

G E O R G E F . B R Y A N , called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR RAND:

Q Mr Bryan, where do you live? A 2214 Eighth Avenue.

Q How long have you lived there? A Going on four years.

Q What is your occupation? A Special officer.

Q By whom are you now employed? A Charles Frohman.

Q In what capacity? A Special officer.

Q Where? A At the Empire Theatre.

Q You are the Empire Theatre detective? A Special officer.

Q What do you mean by special officer? A Watchman and special officer.

Q You mean that you have a permit from the Police Department to act as special officer there? A Yes, sir.

Q All right. How long have you been in Mr Frohman's employ at the Empire Theatre? A Since the 8th of February.

Q And before the 8th of February, in whose employ were you? A The Pinkerton Detective Agency's.

Q How long had you been in the employ of Pinkerton's? A Since the latter part of July.

Q And what had you been before that? A Special officer at Brokaw Brothers.

Q At their clothing place at Cooper Union? A Yes, sir.

Q And before that? A I was employed by Charles Frohman.

Q In what capacity? A Special officer at the Savoy Theatre.

Q In other words, your occupation for many years has been that of a special detective officer, has it? A Yes, sir.

Q Now, on the 2nd of February last, were you in the employ of the Pinkerton Agency? A Yes, sir.

Q And at half-past two o'clock on the morning of February 2nd, 1904, where were you? A On the north side of 42nd Street west of Sixth Avenue.

Q In this city and county? A In the City and County of New York.

Q Was any one else with you? A Yes, sir.

Q Who? A My Assistant Superintendent, John W. Rogers.

Q Is he in court? A Yes.

Q Stand up, Mr Rogers. (A man arises) Is that the man? A Yes, sir.

Q What were you doing there? A Watching a young man.

Q A young man? A Yes, sir.

Q Where did you see this young man first? A On Broadway between 26th and 27th Streets.

Q That was earlier in the evening? A Yes.

Q Well, after this time, where had you seen him; had you been following him all the evening? A Yes.

MR HURLBUT: To that last question I object, and ask that the answer be stricken out.

MR RAND: All right.

THE COURT: Strike it out.

BY MR RAND:

Q Now, where did you first see the young man? A Saw him coming out of Jack's restaurant on Sixth Avenue.

Q Where is that? A Between 43rd and 44th Streets.

Q What sort of a restaurant is it? A Dining and drinking.

Q I meant to say, what sort of a place is it; it is a restaurant? A Yes, sir.

Q An all night restaurant? A I suppose so. I seen him come out of it about 25 minutes past two.

Q Did you follow him? A Yes.

Q Where did the young man go? A Walked down the west side of Sixth Avenue to 42nd Street, and turned west on the north side of 42nd Street.

Q And were you and Rogers following him together?  
A Yes.

Q And after he had turned on to the north side of 42nd

Street, where did he go, the young man? A He walked along three or four doors down from the corner, stopping in front of Childs's restaurant, on the west side of Childs's restaurant---on the east side of Childs's restaurant.

Q Let me ask you, what was the condition of this young man; how was he walking, steadily or unsteadily? A He was staggering.

Q In other words, he was drunk? A It seemed to me he was intoxicated.

Q And you say that he stopped at the easterly end of Childs's restaurant? A Yes, sir.

Q Which you see upon this map, People's Exhibit No. 2?

THE COURT: Photograph.

MR RAND: Photograph, I mean.

A Yes, sir, right there (indicating on photograph).

Q And what did he do when he stopped there? A Before he got into the doorway he was in the center of the sidewalk, and he put his hand into his pocket, and close up to the window, in the doorway, he pulled out a roll which seemed to be money, to me.

MR HURLBUT: I object to that and move to strike it out.

THE COURT: The words "which seemed to be money, to me" may be stricken out.

BY MR RAND:

Q He pulled out what? A A roll of money.

Q Was this place lighted there? A Yes, sir.

Q Was there an electric light there? A One in the window and one on the sidewalk.

Q What kind? A A round globe.

Q A big round globe, seven or eight inches? A About that big around (indicating).

MR HURLBUT: Don't lead him.

MR RAND: All right.

Q And you say he had money in his hand, do you?

MR HURLBUT: I object to that.

THE COURT: Objection sustained.

BY MR RAND:

Q Did you see what he had in his hand? A It seemed to me it was money.

MR HURLBUT: I object to that.

(No ruling.)

BY MR RAND:

Q What color was it?

THE COURT: Wait; strike out the previous answer.

MR RAND: I concede it.

Q What was the material of the article he had in his hand, steel, or what?

MR HURLBUT: Objected to as incompetent in the first place, and secondly, as leading.

THE COURT: I sustain the objection on the latter ground.

BY MR RAND:

Q What did he have in his hand, what material? A Money.

Q Wait a minute. Did you see that it was money? A It seemed to me that it was money.

Q Now, don't say what it seemed to you to be.

MR HURLBUT: I ask that that go out again.

THE COURT: Yes; strike it out.

BY MR RAND:

Q Did he have lead in his hand? A No.

Q What material did he have in his hand--what material? I am not asking whether it was money or promissory notes or love letters. I am asking you what material he held in his hand? A A bundle.

Q A bundle of what? A I couldn't tell what it was.

Q Was it wood or paper, for instance? A It seemed to me as though it was paper.

MR HURLBUT: I object to it and ask that it be stricken out.

THE COURT: Yes.

BY MR RAND:

Q What did it look like to you? A Looked like money.

MR HURLBUT: I object to that.

THE COURT: Wait, wait; I sustain the objection.

BY MR RAND:

Q So far as you could see, what was it he held in his hand?

MR HURLBUT: I object to that.

MR RAND: That is a fair question.

Objection overruled. Exception.

A Money.

BY MR RAND:

Q What color was it? A Greenish.

Q Which hand did he hold it in? A In his left hand.

Q And what did he proceed to do with this green material that he held in his left hand? A He was turning over the ends of it with his right hand.

Q Then what happened? A We was standing there when there might have been ten or might have been eight young fellows came out of a saloon right next door.

Q Which saloon was that? A Sig. Cohen's.

Q Next door on which side, east or west? A East of Childs's restaurant.

Q They came out of there? A Yes.

Q What did they do? A Five or six--maybe three--passed along, until the tallest one in the crowd looked; then he went down to the back, the end of the restaurant.

MR RAND: Bring in Wallace; bring him up to the bar.

Q The tallest one in the crowd---

MR HURLBUT: I object to the question on the ground that it does not appear thus far that the defendant formed any one of the party.

MR RAND: But you don't give us time.

THE COURT: I overrule the objection.

MR HURLBUT: Exception.

BY MR RAND:

Q You say that the tallest one of the crowd did something. What did he do? A He walked down in front of the restaurant, and one was in front of him. He touched him on the shoulder and the two of them came back.

Q I don't get that. A When he got down in front of the restaurant he touched the shoulder of one that was in front of him.

MR RAND: Strike that out.

THE COURT: Strike it out.

BY MR RAND:

Q Would you recognize this man to whom you referred as the tallest one of the crowd if you saw him again? A Yes.

Q Do you see him now? A Yes; there he is (indicating).

MR RAND: (To man indicated who has just been brought into court) Come up here where we can see you.

Q This was the man whom you referred to as the tallest one in the crowd, was it? A Yes, sir.

Q Just what did he do to some one else? A He touched the young man, the man that was in front of him, and the two came back.

Q Would you recognize the other man of the two that came back if you saw him? A I would recognize the back of him. I couldn't recognize the face of him, I think.

BY THE COURT:

Q What? I cannot hear every word you say. You must raise your voice. (No answer.)

BY MR RAND:

Q We have got to hear you; you must raise your voice. The two came back towards you? A Yes, sir.

Q Did you see the faces of both of them? A No, sir.

Q What did the tall youngman whom you have identified do? A I saw him strike the man that was counting the money with his left hand, and I seen the man's head go back, and his hat go off, and I seen him make a grab.

Q Who made a grab? A The tall man.

MR HURLBUT: I object to the answer of the witness

and I move to have it stricken out, wherein he says that the man was counting money.

MR RAND: What is the objection to that.

MR HURLBUT: On the ground that the witness has already stated that he could not tell what he had in his hand.

MR RAND: Oh, yes, the man that was counting the green--counting the green stuff. We will make that amendment.

Q Do not use the word "money" here. Say "green"--the "long green" is what he knows it by (indicating defendant's counsel).

MR HURLBUT: If the Court please, I except to the District Attorney's remark.

THE COURT: Yes.

BY MR RAND:

Q Who was it that, after hitting the young man and knocking him back so that his hat fell off, made a grab with his right hand? A The tall young man.

Q Who has just left the room? A Yes.

THE COURT: Mr District Attorney, I think you should have identified that tall person who was brought to the bar.

MR RAND: Well, we don't know his name.

THE COURT: Did the stenographer note that there was a man brought into the court room whom the witness identified?

THE STENOGRAPHER: Yes, sir; I have got just the verbiage used, your Honor.

BY MR RAND:

Q Then what did you do? A As soon as I saw him strike the blow and make the grab I ran towards him.

Q What did you say? A I says, "Stop, stop; I am an officer!" He kept on running and the short man that was back ran out and put his foot in front of me, which I afterwards---

Q When you refer to the short man you mean one of the two that separated from the crowd and came back? A Yes, sir.

Q All right. What did he do to you? A Put out his foot to trip me, and I jumped over it.

Q Do you know who that man was yet? A Yes, sir.

Q Who was it? A Eastman.

Q This defendant at the bar? A Yes, sir.

Q After you jumped over Eastman's outstretched foot what did you do? A I kept on running.

Q Did any one else do anything? A Yes, tow or three more tried to trip me.

MR HURLBUT: I object to that.

(No ruling.)

BY MR RAND:

Q Well, two or three did what, that is all? A They tried to throw---

Q Don't say what they tried to do or tried to accomplish. What did they do? A Interferred with me.

MR HURLBUT: I move to strike that out.

THE COURT: Strike it out.

BY MR RAND:

Q That is a conclusion. State what they did? A One put out his foot.

Q And others put out their feet, did they? A Yes, one other.

Q What did any one else do in the crowd? A One of them made a crack at me with his hand, made a punch.

Q Did it get you? A No.

Q Now, you continued to pursue this man Wallace, did you? A Yes, sir.

Q This unknown man? (To defendant's counsel) I beg your pardon, the tall man? A Yes, sir.

Q Did you catch him? A Yes.

Q Where did you catch him? A About half a nlock away from Childs's restaurant on the south side of 42nd Street in front of Lewis & Conger's.

Q He crossed the street, did he, after he got along there? A Yes, sir.

Q And when you caught him, what did you tell him? A I told him that I was an officer and that he was under arrest; that he had killed a man and that he had got his money. I says, "Come on back." He wrestled with me--when I got to him first he put his hand to his hip pocket, first, and as he did, I made a grab for his hand.

Q Yes. A And he punched me in the neck, and I punched him back, and we commenced to wrestle; and I had a special officer's shield in my hand and showed it to him.

As I was wrestling with him I heard a lot of hollering behind me, and all of a sudden a couple of shots went off.

Q From what direction did the shots come? A From behind me.

Q I know, but whereabouts in the street? A East of me.

Q East of you? A Yes.

Q You don't know who fired those shots, do you? A No, sir.

Q You just heard a couple of reports? A Yes, sir.

Q Go on. A And I pulled Wallace to me and put my back to Lewis & Conger's window and faced around to see who was hollering; and Eastman--the man who I afterwards recognized as Eastman; I didn't know him at the time---

BY MR HURLBUT:

Q What is that? I didn't hear you. A (No answer.)

BY MR RAND:

Q This defendant, you mean? A Yes.

Q What did he do? A He came out from the crowd that had stood off from us.

Q How far off was the crowd? A Oh, fifteen or twenty feet.

Q On the same sidewalk? A Yes, sir.

Q On the south sidewalk? A On the south sidewalk.

Q What did this defendant do? A He said, "Let him go, you son-of-a-bitch, or I will kill you; let him go, God damn you!"

Q Then what did he do? A He ran to the west of me.

Q You were facing the window, were you not? A Yes.

Q And he ran to the west? A Yes.

Q Go on? A And he fired two shots. I had Wallace to that side of me. Then he ran to the east of me.

Q What did you do with Wallace? A I pulled him around to the front of me.

Q And what did this defendant do? A He fired two more shots at me.

Q What happened when he fired those shots? A After he fired them?

Q Did you hear anything about the time of the shots?

A I heard a noise up against the window as if somebody was throwing something, or something was going off.

MR HURLBUT: I object to that.

(No ruling.)

BY MR RAND:

Q Did you hear any noise? A Yes, sir.

THE COURT: Wait, strike out: "as though somebody was throwing something, or something was going off".

BY MR RAND:

Q Where? A I heard the report from his revolver.

Q Where? A Right alongside of me at the window.

Q What sort of a noise? A "Poof!" like that.

Q Now, the window you say you were backed up against when you were holding the man Wallace in front of you?

A Yes, sir, right there (indicating).

Q That is the window? A Yes, sir---looks like that.

MR HURLBUT: What exhibit is that?

MR RAND: Exhibit No. 5.

Q And does this, People's Exhibit No. 3, show another view of the same window that you were backed up against?

A Yes, sir (indicating on photograph).

MR RAND: (To the jury) There (indicating) is another view of the same thing.

Q Now, when Delaney said to you, "Let go of him," and so forth, I don't care to repeat it--did he have anything in his hand? A Yes.

Q What? A A revolver.

Q And what was he doing with the revolver? A Shooting at me.

Q Was he pointing it at you? A Yes, sir.

Q On both occasions? A Yes, sir.

Q Once to the left of you? A Yes, sir.

Q And once to the right? A Yes.

Q And on each occasion he fired two shots? A Yes.

Q And you heard the shots crack behind you? A Yes, sir.

Q What did you do? A After he fired the last shots I let go of Wallace with my right hand and kept hold of him with my left, and I had my overcoat on that night--it was very cold--and I had to hold my overcoat up and pull out my revolver.

Q And what did you do with your revolver? A And as he was throwing his revolver at me---

MR HURLBUT: I object to that.

(No ruling.)

BY MR RAND:

Q You pulled your revolver, did you? A Yes, sir.

Q Now, what happened then? A After I pulled my revolver I fired two shots.

Q You did? A Yes, sir.

Q At whom? A At the defendant.

Q What had he done before that? A He just threw his empty empty revolver at me.

Q He threw the revolver, did he? A Yes, sir.

Q And what happened when he threw the revolver; did you duck? A I ducked, I put my head down, and it went over my head through the window.

MR HURLBUT: May it please your Honor, I don't like to object, but all these are leading questions.

THE COURT: Yes.

BY MR RAND:

Q What happened? A I put my down.

Q And what happened to the revolver? A It went through the plate glass window behind me.

Q The plate glass window that you have already indicated in this picture? A Yes, sir.

Q Then what did you do? A I fired two shots.

Q At whom? A At Delaney's feet.

Q And where was Delaney then? A About eight feet away from me, or ten feet, about.

Q Going in which direction? A He started to run west.

Q Fast or slow; was he running or walking? A He started to run.

Q And how about Wallace; had A During all this time Wallace broke away from me and started to run at the same time.

Q Was he ahead or behind Delaney when you fired the two shots at Delaney's feet or don't you remember?

A I can't--he was about four or five feet away from me when I fired the two shots.

Q Wallace was still nearer to you? A Yes, sir.

Q And then the officers came and you were put under arrest with the rest of the gang?

A Yes.

MR RAND: You may examine the witness.

## CROSS EXAMINATION BY MR. HURLBUT:

Q How old are you, Mr. Bryan? A Thirty-nine years old.

MR. RAND: Will you allow me one moment?

MR. HURLBUT: Certainly.

BY MR. RAND:

Q As you held the tall man, whom you have identified, in front of you, were you standing upright and holding him, or how were you standing; in what position? A I was standing upright. I had to stand and hold him because he was taller than me.

MR. RAND: I see.

BY MR. HURLBUT:

Q What other business have you been engaged in except the employment which you have stated in your direct examination? A All my lifetime?

Q Yes; go back and tell me some of the other businesses you have been in? A The plumbing business, and working for contractors.

Q Then it is only within the last few years that you have taken up the business of a private detective? A I have been working for the Pinkerton Detective Agency going on ten years-- nine years-- on and off.

Q Was that the first of your detective work? A No, sir.

Q Where did you start in that night to watch this young man? A On Broadway.

Q Well, Broadway is a long street, sir. A Between 26th and 27th streets.

Q Would you know that young man if you saw him again? A I think I would.

Q Do you know whether you would know him again or not? A I guess I would; yes, sir.

Q How old was he? A I couldn't tell you.

Q How close were you to him at the time when you were the closest to him? A Oh, I should judge from twenty to twenty-five feet.

Q Where was that? A Oh, excuse me. You say the closest?

Q Yes. A I was-- the closest I was ever to him?

Q Yes, sir. A Oh, I was two feet away from him. He passed me a couple of times.

Q He passed you? A Yes, sir.

Q Where was that? A On Broadway between 26th and 27th streets.

Q Now he went ought of your sight, didn't he? A For about ten minutes or fifteen minutes.

Q Had you ever seen him before that night? A No, sir.

Q Was he pointed out to you by any one? A Yes, sir.

Q By whom? A By my assistant superintendent, John W. Rogers.

Q Is that the man that you testified was your friend--

A Yes, sir.

Q --when you were sworn before the Magistrate?

A Yes, sir.

Q And did you testify that you were standing in 42nd Street talking with your friend when you saw these young men come out of Cohen's saloon? A Yes, sir.

Q That is on Broadway too, isn't it? A Yes, sir.

Q Then you accidentally met Mr. Rogers there, did you not? A No, sir.

Q Did you have an appointment with him? A No, sir.

Q Did he go there with you? A Yes, sir.

Q And did he walk with you all the way to that point in 42nd Street? A From where?

Q From where you started. A From Broadway and 26th Street?

Q Yes, sir. A No, sir.

Q Then you and he were not together all the time?

A Yes, sir.

Q Well, how is that? A Well, we rode up from 27th Street to 42nd Street and Broadway.

Q And then when you were riding you were together?

A Yes, sir.

Q And when you walked you were together? A Yes, sir.

Q Did he tell you who the young man was? A No, sir.

Q When you got to 42nd Street what position did you take up, standing there? A We both stood together.

Q I didn't ask you that. Where did you go to stand on 42nd Street? A I stood just a little way down from the elevated stairway.

Q How many feet? A Oh, about a door or two.

Q Now-- A About two doors.

Q Mr. Bryan, can't you give me-- A About two doors from--

Q How many feet would that be? A Maybe 60 or 70 feet.

Q What? A Well, maybe 75 feet.

Q How many feet from there to the point where the young man stood in the doorway? A Might be 50 feet.

Q 50 feet? A Yes, sir.

Q Did you swear before the Magistrate that he stood up in the doorway and that when the man stepped back you saw him push up his arm? A Yes; but I had--

Q Did you swear to that? A Yes, sir.

Q And did he push up his arm? A He didn't push up his arm. He put up his arm. I swore--

Q He put up his arm? A The tall man--

Q. You have answered my question. Now just stop right there. Did you swear before the Magistrate that when the tall man stepped into that doorway you saw him put up his arm?

A Yes.

Q Now did you also swear before the Magistrate that you saw him grasp for something? A Yes, sir.

Q Now you didn't see him grasp anything, did you?

A No; I couldn't swear to that; no, sir.

Q You did not? A No, sir.

Q He did not grasp the young man even, did he?

A No, sir.

Q You had not seen, up to that time, Mr. Eastman, had you? A No, sir.

Q There were some twelve or fifteen persons there together, weren't there? A Well, must have been eight to twelve. I couldn't exactly say how many.

Q Yes, eight to twelve? A There was a body of them.

Q And they came out of the saloon together; that is, all came out in a bunch? A Well, no; they came out about in single file.

Q Well, I suppose there would not be more than one pass through the door at the same time, but they came out substantially together, didn't they? A Yes, sir.

Q And when they came out onto the sidewalk they were to-

gether in a bunch of young men walking along? A Well, they kind of went in single file as they passed Child's restaurant.

Q Do you swear positively-- A Yes, sir.

Q Wait until you hear me-- that those eight or twelve youngmen came out of that saloon and passed along in single file until after they had passed this young man? A Yes, sir.

Q Did they all pass him before anything happened?

A I couldn't tell whether they all passed.

Q Did you not swear before the Magistrate that two or three had passed him? A There was more than two or three.

Q Didn't you swear to that before the Magistrate?

A Not to two or three, I don't think.

Q You don't remember, do you? A No, sir-- there was half a dozen passed him.

Q Now, do you remember what kind of a night it was?

A Yes, sir.

Q Well, what kind of a night was it? A A very clear night.

Q Do you remember with respect to whether the moon or stars were shining? A No, sir.

Q Don't remember that? A No, sir.

Q You don't know whether it was cloudy or not, do you?

A No, sir.

Q Well, isn't it a fact that the only lights that you had there to see what was going on by was the street light?

A I had the light in front of Child's.

Q Well, the street light and the lights in front of Child's? A Yes, sir; there is a big electric light there.

Q An electric light? A Yes, sir.

Q Now do you remember being asked some questions before the Magistrate in relation to the beard of Eastman? A Yes, sir.

Q And did you testify on that occasion that he had a beard of a day or so's growth? A The counsellor asked--

Q Did you testify to that? A I said he might have had a half day's growth of beard, like that; that he looked as though he wanted a shave.

Q Did you also testify to what he wore? A Dark clothes.

Q What kind of a shirt did he have on? A Part of it was white; I couldn't tell if it was all white or not. I didn't go to examine whether it had a stripe on it or not.

Q That part that you saw was what? A White.

Q Light or white? A White.

Q A white shirt; you will swear to that positively, will you? A It looked like that to me.

Q Do you swear positively that it was a white shirt?

A I couldn't tell whether it was all white. It might have

been striped.

Q No, no; now Mr. Bryan, do you swear that that portion of his shirt that you saw was white? A Yes, I will swear that it looked white to me.

MR. HURLBUT: I won't take that answer.

MR. RAND: And I submit that that is the only thing the witness can say, that it looked white to him.

THE COURT: I think the answer is about as clear as the witness can make it, Mr. Hurlbut.

MR. HURLBUT: It would be, if the Court please, if he had not sworn differently, positively, at the Magistrate's Court. That is the point I am coming to.

BY MR. HURLBUT:

Q Didn't you testify before the Magistrate that he wore upon that occasion a white shirt? A I don't remember.

Q Do you know who this tall man is? A I heard his name was Christopher Wallace.

Q Christopher Wallace; now can you describe, Mr. Bryan, any of the other men that were there? I withdraw that, Mr. Stenographer. Do you know any other man that was there besides Christopher Wallace and Mr. Eastman? A No, sir.

Q Had you ever seen Mr. Eastman before? A Not as I remember.

Q And had you ever seen Wallace before? A Not as I remember.

Q Did you make any attempt to seize any of the other men?

A No, sir; I went after Wallace.

Q What? A No, sir; I kept running after Wallace.

Q You ran after Wallace? A Yes, sir.

Q How many persons fired a revolver or pistol while you were running after Wallace, if any? A I couldn't swear to that because I didn't see anybody.

Q Did you hear any? A Not while I was running, no, sir.

Q Did you hear the report of any revolver until you had seized Wallace? A Not until I had seized Wallace.

Q How many reports did you hear then? A I couldn't swear to that.

Q Well, give this jury an idea? A I heard a report of a couple of shots.

Q You heard then a couple of reports; is that what you mean? A Yes, sir.

Q And do you know whether one person or two persons caused those reports or fired them? A No, sir.

Q You don't know anything about that? A No, sir; I had my back turned.

Q Do you know who it was? A No, sir.

Q Did you testify that several persons fired shots from the crowd and that you couldn't tell the number, there were so many, before the Magistrate? A Well, it sounded to me that night that there was a lot, but I couldn't tell. I can swear there was two.

Q And you think there were more, do you not? A There might have been more; I couldn't positively swear to more.

Q Did you not swear that they fired so many shots that you thought that they had emptied their revolvers? A Not as I remember.

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

Q Is your memory good? A Pretty fair.  
how

Q Now, <sup>^</sup> how far was Eastman from you when he fired his revolver at you? A About seven or eight feet.

Q And that would be about the distance from you to the District Attorney, wouldn't it? A About that distance, yes, sir.

Q Won't you show this jury just how Eastman held his revolver when he fired at you? A I will have to stand up.

Q Yes, sir; stand up, please. A (Standing and illustrating) "Let go of him, you son of abitch, or I will kill you).

Q I didn't ask you, sir, to repeat what he said.

MR. RAND: I think that is a fair answer. He

asked him to illustrate.

THE COURT: Yes, I think the witness is within his rights.

THE WITNESS (Repeating illustration): "Let go of him, you son of a bitch; let go of him, or I will kill you).

MR. HURLBUT: Am I to understand that he (Indicating witness) may orate?

THE COURT: What is your question?

MR. HURLBUT: My question to him was to show what he did when he pointed the revolver at him.

BY THE COURT:

Q Well then, confine yourself to the question. A He went this way (Repeating former illustration).

BY MR. HURLBUT:

Q Was he looking right at you? A Yes, sir.

Q Were you looking right at him? A I was looking at the revolver.

Q You were looking at the revolver? A And him also.

Q And when he did that he fired you say four shots?

A Two shots.

Q Well, two then? A He went to the other side of me.

Q So he would be facing your side, wouldn't he? A Facing me all the time he was.

Q Well, you had the man in front of you, did you not?

A Yes. I could look over the side of him.

Q Then did he go around behind you or behind the man you held? A Behind the man.

Q And then you twisted the man again, did you? A Yes, sir.

Q And did he hold the revolver in about the same position the next time? A That way (illustrating).

Q Yes, that is very nice. How many shots did he fire in that position? A Two shots.

Q And you say he was not over seven feet from you?

A Well, he might have been from here to the end of that table where the District Attorney is.

Q That is right. Were you or the man you held hit with anything? A No, sir, not as I know of. I don't know whether--

Q You didn't get a mark, did you, of any kind?

A No, sir.

Q Your clothes were not even cut in any part?

A No, sir.

Q Did you have your hat on? A Yes, sir.

Q Was that knocked off? A No, sir.

Q Did you see the color of his eyes at that time?

THE COURT: The defendant's, he means.

MR. HURLBUT: Yes, the defendant's. I beg the Court's pardon.

BY MR. HURLBUT:

Q Did you notice the color of the defendant's eyes?

A No, sir.

Q Was any one, so far as you know or could learn, hit with any instrument or thing that was there that morning?

A No, sir.

Q Had you ever heard the voice of Eastman before that morning? A No, sir, not as I remember; no.

Q You don't know his voice now; you wouldn't know his voice now, would you? A Yes, sir, I would.

Q You think you would? A Yes, sir.

MR. RAND: You mean his metallic voice or his natural voice?

MR. HURLBUT: His natural voice, the voice he uses upon all occasions.

BY MR. HURLBUT:

Q What became of this young man during this performance?

A I don't know.

Q You don't know where he was? A No, sir.

Q Did you make any attempt to find him? A I was taken to the station house.

Q What, sir? A I was taken to the station house.

Q I know, but you were not kept there; what did you do if anything towards ascertaining who the young man was or finding him? A I was brought to the station house, and about an hour afterwards--

Q You understand me, Mr. Bryan. Have you done anything since that time to ascertain who that young man was? A I have not found out his name; no, sir.

Q Did you search for him at any time? A At any time, yes, sir.

Q Well now, that is what I am getting at. When and where? A Around the same neighborhood.

Q And how long? A Three or four nights after that, and in the day time.

Q Did he appear to you to be very drunk? A Yes, sir.

Q Yet he got away without your observing him?

MR. RAND: I object to that. This man was taken to the station house.

(No ruling.)

MR. HURLBUT: That is perhaps a matter of argument.

I withdraw it.

BY MR. HURLBUT:

Q Now, when you got over there to the station house did you prefer a charge against this man (Indicating defendant)?

THE COURT: Which man?

MR. HURLBUT: I beg the Court's pardon.

THE COURT: Because, you see, there are so many men here that we are likely to become confused.

BY MR. HURLBUT:

Q When you got over to the station house did you prefer a charge against Eastman? A I stated the case to the sergeant.

Q Did you prefer a charge against him of disorderly conduct? A No, sir.

Q Did you prefer any charge? A I stated the case to the sergeant, about him attempting to shoot me.

Q You did? A Yes, sir.

Q You swear to that positively? A Yes, sir.

Q Now Mr. Bryan, I read from your testimony as I understand it taken before the Magistrate and ask you--

MR. RAND: What page?

MR. HURLBUT: Page 8; top of the page.

MR. RAND: Yes.

BY MR. HURLBUT:

Q Were you asked this question and did you make this answer: "Q. How many men were near that doorway where this young man stood; four or five young men? A. Eight or ten of them came up together, and as this defendant grabbed"-- I will not read any further. "Eight or ten of them came up together"-- I will stop there. Did you swear to that?

A Yes, sir.

Q You did? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. RAND:

Q What light was there in front of Lewis & Genger's that night? A There was a street electric light.

Q Do you see it in this picture People's Exhibit No. 3?

A Yes, sir, there it is (indicating on People's Exhibit No. 3).

Q And by this light did you recognize the face of this defendant as he was pointing at you with the revolver and firing? A Yes, sir.

Q You say you don't know whether he had on a white shirt or not? A No, sir.

Q How many studs did he have in his shirt? A I couldn't say.

Q How many stripes on his socks? A I couldn't say.

Q Any gold filing in his teeth?

THE COURT: No; do not continue that.

MR. RAND: All right.

RE-CROSS EXAMINATION BY MR. HURLBUT:

Q Do you know the father of this young man that was there whom you were watching that night? A No, sir.

Q Have you learned since that morning, that 2nd of February, the name of that young man? A No, sir.

Q Have you learned anything about where he lives or what his business is? A No, sir.

Q Do you know anything about whether he is in existence or not? A No, sir.

Q Have you made any attempt to find out? A No, sir, not since a couple of nights after the occurrence happened-- two or three nights.

J O H N W. R O G E R S, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAND:

Q Where do you live, please, Mr. Rogers? A - 350 East 13th Street.

Q And what is your business or occupation? A Assistant superintendent of the Pinkerton National detective Agency.

Q And how long have you been such? You will have to speak louder. What was your answer to that other question? A Assistant superintendent of the Pinkerton National Detective Agency.

Q And how long have you been assistant superintendent of the Pinkerton detective Agency? A Five years.

Q Do you know the last witness? A Yes, sir.

Q Who was he? A George F. Bryan.

Q And on the 2nd of February was he one of your employees?

A Yes, sir.

Q Did you meet him on the early morning of the 2nd of February? A Yes, sir.

Q Were you in his company at half past two o'clock on Sixth Avenue near 42nd Street in this city? A Yes, sir.

Q Just where were you? A On the northeast corner.

Q And what were he and you doing-- the northeast or the northwest corner? A Northwest corner.

Q What were you and he doing on the northwest corner there? A Keeping a young man under surveillance.

Q At whose request? A At the request of Mr. Robert Pinkerton.

MR. HURLBUT: Who?

MR. RAND: Mr. Robert Pinkerton.

THE WITNESS: Mr. Robert Pinkerton.

BY MR. RAND:

Q He is the head of your agency, is he? A Principal of our agency.

MR. HURLBUT: I object to that.

MR. RAND: I want to identify the man, that is all.

THE COURT: I do not see that it can possibly harm your client, Mr. Hurlbut.

MR. HURLBUT: I object, with due respect to the Court, nevertheless, on the ground that it is incompetent for him to state any conclusion or anything that has passed between him and Robert Pinkerton.

THE COURT: I sustain your objection.

MR. RAND: All right. Let us strike it out, by all means.

BY MR. RAND:

Q At all events, in the course of your employment you were keeping surveillance on this young man? A Yes, sir.

MR. HURLBUT: I object to that as leading.

MR. RAND: He has already said that. That is only to get a start. He has already said it.

MR. HURLBUT: Then it is not necessary to say it again.

BY MR. RAND:

Q Well, whereabouts on Sixth Avenue did you see the young man? A Well, we had been keeping surveillance of him all evening.

Q But early in the morning? A Early in the morning we were standing in the doorway of Childs' restaurant.

Q Had you seen him shortly before that? A Yes.

Q Where had he come from? A Jack's restaurant.

Q Where is that? A Between 43rd and 44th streets on Sixth Avenue.

Q And where did he go from there? A He walked down and turned into 42nd Street after walking down there.

Q Did you follow him? A Yes, sir.

Q And did Bryan follow him? A Yes.

MR. HURLBUT: To that I object. I don't like the term "follow him".

THE COURT: Yes. Ask the witness what took place.

BY MR. RAND:

Q What did you and Bryan do when you and he walked down the avenue? A We followed the young man.

Q How did the young man walk? A He staggered.

Q You have seen drunken men? A Yes, sir.

Q A great many? A Yes, sir.

Q Was this young man drunk? A Very drunk.

Q And as he turned the corner of 42nd Street where did he go? A Into the doorway of Childs' restaurant?

Q And what did he do there? A Put his hands in his pocket.

Q And what did he take out? A Paper.

Q What colored paper? A Green paper.

Q What did he do with the green paper that he took out of his pocket? A Started in to count it.

Q What hand did he put it in? A He had it in his left hand.

Q What hand was he counting it with; what happened then?  
A (The witness indicates).

Q In the right hand? He (indicating the stenographer) can't take that down? A Yes, sir.

Q Then what happened? A Eight or ten men came out of Sig Cohen's saloon.

Q Where is that? A Adjoining this restaurant.

Q Where is that? A On the north side of 42nd Street.

Q But which side of Childs' restaurant, east or west?  
A East of Childs'.

Q What did these eight to ten young men do? A Walked up the street.

Q What did they do next? A I saw two of them turn around and look towards the young man.

Q Do you know which two they were? A Yes, sir.

Q Did you see the young man that was brought in here from the back a while ago? A Yes, sir.

Q Was that one of them? A Yes, sir.

Q Do you know the other one? A Yes.

Q Who was he? A The defendant.

Q The defendant at the bar? A Yes, sir.

Q What did they do? A They walked up a little further, kept on going up the street probably six or seven feet from where they stood, and they looked towards this young man.

Q What happened after they got up to the young man?

A Well, I turned around and retreated back. It was a very cold morning. I retreated back to the elevated steps, a little behind that sign, and started to take a chew of tobacco, when Bryan hollered.

MR. HURLBUT: I object to Bryan's hollering.

MR. RAND: Oh, it is part of the res gestae.

MR. HURLBUT: No. Incompetent.

THE COURT: I overrule the objection.

MR. HURLBUT: Exception.

BY MR. RAND:

Q Well, Bryan hollered? A Yes.

Q What did he holler?

MR. HURLBUT: Objected to.

THE COURT: I will allow it to stand at that.

MR. RAND: All right. He hollered.

BY MR. RAND:

Q Then what did you do? A Do you want me to answer what he hollered?

Q No; Bryan hollered? A Yes.

Q Then what did you do? A I turned around and saw Bryan running up the street.

Q What street? A Up 42nd Street towards Broadway.

Q On which side of the street? A On the north side.

Q And as he ran up what happened? A The defendant made a motion to trip him.

Q Made a motion with what to trip him? A With his foot.

Q What happened then? A Several others attempted to do the same. They were further up the street.

Q But he got through them? A He got through them.

Q What did you see next? A Bryan crossing the street, and in front of Lewis & Conger's shop he grabbed the young man that was brought in here a while ago.

Q The man we have referred to as the tall young man?

A Yes, sir.

Q And what did you do? A I crossed the street on the south side and the defendant here pointed a revolver towards me.

Q What did you do? A I, being unarmed--

Q Don't apologize. A --turned around and ran to the other side of the way.

MR. HURLBUT: I object to the testimony.

THE COURT: Yes; strike out the words "being unarmed" and retain the witness's statement that he turned and ran to the other side of the street.

MR. RAND: All right.

MR. HURLBUT: Just a moment; if the Court will give me an exception to its denial of my motion to strike out where he said the defendant pointed the revolver at him.

THE COURT: I did not hear the motion made.

MR. HURLBUT: I object to that part of his testimony and now move to strike it out.

THE COURT: I deny the motion.

MR. HURLBUT: Exception.

BY MR. RAND:

Q You say you turned around and ran to the north side of the street? A Yes, sir.

Q Then what did you hear? A Two shots.

Q Did anything else happen? A The earth was dug up in front of me by the dust.

Q And what happened next? A When I reached the other

side of the way I turned around and I saw the defendant in an easterly position towards Bryan, with his back towards me.

Q What was the defendant doing? A He was in a crouching position.

Q And where was Bryan at this time? A Bryan was along side of Lewis & Conger's window, wrestling with Wallace.

Q And you say this defendant you saw in a crouching position? A Yes, sir, in a crouching position.

Q What did he have in his hands? A I couldn't see. His back was turned to me.

Q Did you hear anything? A Didn't hear anything then.

Q Did you hear anything later? A Yes; I heard two shots later.

Q Whose shots were they; do you know? A They were Bryan's.

Q Those were the shots that Bryan fired after Wallace had gotten away? A Yes, sir.

Q Did you see the defendant do anything? A Yes, sir.

Q As you looked back at him? A Yes, sir.

Q What did he do? A He made a motion as if throwing something, and I heard a terrible crash. I saw Wallace break away and saw them all start up towards the street.

Q Did you-- A When Bryan started to follow them and had got several feet I hollered to him to come back, and he ran

towards me to the opposite side of the way.

Q But in the meantime Eastman and Wallace had gotten up towards 42nd Street, had they? A They ran up towards Broadway.

Q Then the officers arrived? A Then the officers arrived and surrounded us and we were brought to the station house.

Q Before Eastman pointed his revolver at you had you heard any shots at all? A Not until I was running.

Q Yes? A They were practically the first two shots I heard. Then there might have been four or five more after that.

Q Did you hear other shots after these shots were fired at you? A Four or five.

Q You don't know whether Eastman fired them or not? A I couldn't tell anything about it.

Q But after he pointed his revolver at you and as you were going north you heard four or five more shots?

A Yes, sir.

Q And after that you saw Eastman hurling something?

A Yes, sir.

Q Which you heard crash through the window? A Yes, sir.

MR. HURLBUT: He didn't say "hurling".

MR. RAND: Well, "throwing".

CROSS EXAMINATION BY MR. HURLBUT:

Q Now, Mr. Rogers-- A Yes, sir.

Q --how far were you from the young man when you saw him standing in the doorway? A Oh, 75 feet, sir.

BY THE COURT:

Q You must raise your voice? A Approximately.

BY MR. HURLBUT:

Q Sir? A Approximately 75 feet.

Q And how far were you from the doorway of the saloon when the youngmen came out? A 65 feet.

Q And you did not change your position until after you saw Bryan running after the man Wallace, did you? A Nothing more than to turn around and go back to the elevated stairs.

Q Then you were still further away, were you not?

A Probably five feet further away.

Q When the young men came out on the sidewalk were they apparently in a bunch or all together? A Oh, they came out straggling, sir.

Q Straggling out? A Yes.

Q They appeared to be all of one party, didn't they?

A Yes, sir.

Q Did you observe whether any of them were intoxicated?

A I don't think so, sir.

Q You don't think they were? A No, sir.

Q When Bryan had Wallace, had seized him, did this party of young men come down around and about him or near him?

A West, near the stores of the new building that was in course of erection.

Q How near did they go to him, the party I mean?

A Probably 25 or 30 feet.

Q Now while they were at that distance from him did you hear any shots? A No, sir.

Q Did you hear any shots until after the defendant postman had stepped out from the crowd towards Mr. Bryna? A No, sir.

Q Did you notice whether any reports or shots came from this crowd or young men? A I couldn't tell, sir.

Q How many shots did you hear before Bryan shot?

A Possibly seven.

Q Did you see any dirt fly up when Bryan shot?

A No, sir.

Q Did you look? A I was too far away.

Q How far away were you then? A On the opposite side of the way.

Q How? A I couldn't judge the distance. They were on the north side of 42nd Street and 42nd Street is a very side

street.

Q And you had heard no shots until Bryan made those two shots? A Oh, yes; I had heard seven shots prior to Bryan's firing those two.

Q You had heard seven? A I won't swear to the exact number. I had heard about seven.

Q Did you notice any difference in the sound of the shots? A No, sir.

Q Did they all seem to be of the same sound? A Yes, sir.

Q And did they come from the same direction? A That I couldn't say.

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

Q So that with the two shots Bryan fired you heard nine shots altogether? A Possibly.

Q Possibly? A Well, about nine shots; yes, sir.

Q Where were those other young men when Eastman the defendant started to run away? A I couldn't say. I lost track of them entirely.

Q Weren't there a large number of people there in the street? A There was not a soul in sight outside of the gang that came out of the saloon.

Q Outside of the gang? A No, sir.

Q Not a soul in the street? A No.

Q Was there anybody in the street after that? A Oh, yes, sir.

Q And before they were arrested? A Yes, a number of people.

Q How many? A Oh, I couldn't tell you.

Q Two or three hundred? A No, sir.

Q How long did it take people to gather? A Less than five minutes.

Q Was it five minutes after Eastman ran away before he was arrested? A From the time that Bryan started to run after this Wallace--

Q Yes. A --it was about five minutes until the thing was all over, until we were on our way to the station house.

Q Then it all happened-- A Within a period of five minutes.

Q And when you were on your way going to the station house a large number of people had congregated, citizens? A Oh, yes, sir.

Q How many? A I should judge 50, to the best of my knowledge and belief.

Q Now, you never had seen Eastman before? A No, sir.

Q Or any of the rest of them? A No, sir.

Q Who was the young man that stood in the doorway that

you were watching, as you say?

MR. RAND: Wait a moment. What is the question?

MR. HURLBUT: Who was the young man that stood in the doorway that he was watching.

MR. RAND: As to that I concede of course that, if defendant's counsel considers that pertinent to his case, that he has a right to ask the question; but I submit to him whether it is worth while, whether any good object can be served by bringing the name of this young man into such disrepute as would come to him from the fact of his name being made public in connection with this case. If you insist upon it I concede that you are entitled to the information. But what good can come of it?

MR. HURLBUT: I take this position, if the Court please: The defendant is charged with a very serious crime, and for I do not care to stand here and defend him if there is a young man within the limits of this city of respectability who can take that witness chair and throw light upon this subject.

MR. RAND. But the difficulty with that is that we concede that the young man has lost his respectability; that he was so drunk that night that his testimony would not be of the slightest value.

THE COURT: Gentlemen, the only question before me is, Does the counsel for the defendant insist upon his question being answered?

MR. HURLBUT: I do.

THE COURT: Read the question.

THE STENOGRAPHER (Reading): "Q. Who was the young man that stood in the doorway that you were watching, as you say?"

MR. HURLBUT: If the Court please, I believe that my duty to my client compels me to insist upon it.

MR. RAND: Not for the reason that you named, that the young man can throw any light upon this question.

THE COURT: Gentlemen, we will not have any more of this.

MR. RAND: I am not quarreling with him about it. I simply want to make my position as plain as I can to Mr. Hurlbut.

MR. HURLBUT: I think I understand it.

MR. RAND: The young man can throw no light upon the situation, because he was so drunk.

MR. HURLBUT: While I regard the District Attorney's statement as being actuated by a spirit of the

utmost fairness--

THE COURT: That is not evidence.

MR. RAND: All right; you are entitled to get it.

A The son of a prominent gentleman.

BY MR. HURLBUT:

Q I didn't ask you that, sit; what is the name?

A Whetmore.

Q What is his first name? A That I don't know.

Q Have you seen him since that morning? A Yes, sir.

Q Is he in the city now? A I couldn't tell you, sir.

Q When did you last see him? A About five weeks ago.

Q Did you talk with him on this subject? A I did, sir.

Q Did he or did he not state to you that he recollected  
the occasion of his being there?

MR. RAND: This I object to.

THE COURT: I sustain the objection.

BY MR. HURLBUT:

Q Do you know, sir, whether a subpoena has been issued  
for him?

MR. RAND: That I object to.

A Yes, sir.

MR. RAND: Don't answer when I object. I object  
to the question.

THE COURT: I sustain the objection.

D E N N I S R Y A N, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAND:

Q Where do you live, please? A 355 West 45th Street.

Q Will you please speak up five times as loud as that?

A (Repeating) 355 West 45th Street.

Q And what is your occupation? A I am a special officer.

Q Employed by whom? A The Holmes Protective Company.

Q Their business is taking care of vacant premises and patrolling premises as a protection against theft, isn't it?

A Yes.

Q And your beat was a patrol beat, wasn't it?

A Yes, sir.

Q And what was it; what premises did you have to look out for; what street? A 42nd, 43rd, 44th and 45th streets.

Q Were you on the north side of 42nd Street between Broadway and Sixth avenue about half past two on the morning of February 2nd? A Yes, sir.

Q Now tell the jury in your own way what you saw of this

shooting? A. As I was on the north side of 42nd Street I heard a crowd up in front of Sig Cohen's saloon. I was down near Broadway at that time and I came running up and just as I came up to them the crowd went running across the street, diagonally across the street, east on the street, the other side of me. I came up to this young man and caught hold of him by the coat and asked what happened to him.

MR. HURLBUT: Wait a moment; I object to that.

BY THE COURT:

Q Do not state what you said to him and what he said to you. A This young man told me--

MR. RAND: No; you don't want to state what you or the young man said to each other.

THE COURT: I told you not to state what you said to him or what he said to you.

BY MR. RAND:

Q What did he have in his hand, this young man? A He had a ten dollar bill.

Q What did you do? A I left him standing there. I heard several shots fired right behind me, the opposite direction, and I asked another man there--

Q Never mind what was said. What did you do? A I turned around and I ran back. There those fellows was. Bryan and

Wallace was wrestling in front of Lewis & Conger's store, and I ran down to them on the north side, and just as I got near them the crowd ran away; and there was several shots after being fired at that time; and I seen one young man making an effort to pelt something and I heard the window break.

Q Where was the young man standing who you say made an effort to pelt something? A He was standing on the curb.

Q And in which direction did he pelt it? A Right where they were standing.

Q But in which direction did he throw? A South.

Q And was it directly afterwards that you heard the crash? A Directly afterwards.

Q Did you recognize the tall young man? A Yes, sir.

Q Was that one of the young men? A That was the man that was wrestling with Bryan.

Q Did you recognize the man that threw something at the window? A No, sir.

Q You would not know whether it was this defendant or not?  
A No, sir.

MR. RAND: You may examine the witness.

MR. HURLBUT: I move to strike out the testimony of the witness where it refers to a ten dollar bill on the ground that there is no evidence to show that it

was the same young man that stood in the doorway.

MR. RAND: Thank you very much.

BY MR. RAND:

Q Where was this man standing? A Right in front of the Murray Hill Baths.

THE COURT: There are so many young men referred to that it is very difficult to determine who is the particular young man that is referred to.

MR. RAND: I am trying to identify this one in answer to my friend's objection.

BY MR. RAND:

Q Was this young man drunk? A Yes.

MR. HURLBUT: I think I am entitled to a ruling.

THE COURT: I will permit the District Attorney to repeat the question.

BY MR. RAND:

Q This young man that had the ten dollar bill was drunk?

A Yes.

MR. HURLBUT: I object.

THE COURT: Objection sustained.

MR. RAND: He has already said that he was drunk.

MR. HURLBUT: Then it is not necessary to repeat

it.

BY MR. RAND:

Q Was he drunk or sober? A He was drunk.

Q And whereabouts was it you met him? A Right in front of the Murray Hill Baths.

Q And in which direction was he walking? A He was standing. He was up against the railing or fence.

MR. HURLBUT: I move to strike out--

MR. RAND: That is the young man you were so keen about.

MR. HURLBUT: You say so.

THE COURT: Now gentlemen!

MR. HURLBUT: I move to strike out the witness's testimony on the ground that the evidence does not show that it was the same young man referred to by Bryan and Rogers.

THE COURT: Where is the connection, Mr. Rand?

MR. RAND: I don't care whether there is any or not. I am perfectly willing to have it stricken out if it does the defendant any good.

THE COURT: Strike it out.

CHARLES BAXTER, being recalled by the People,  
testified as follows:

DIRECT EXAMINATION BY MR. RAND:

Q You have already told us who you are. Now on the early morning of the 2nd of February were you on post? A No, I was not on post. I was in 41st Street. I was on special duty there, in plain clothes.

Q In citizens clothes? A Yes, sir.

Q Did you hear any shooting? A Yes.

Q From what direction? A I was in 41st Street and Sixth Avenue and Broadway, and it sounded to me around Sixth Avenue, around 42nd Street.

Q Did you run up there? A I ran towards 42nd Street and Sixth Avenue.

Q And where did you go? A I ran down on Sixth Avenue to 42nd Street, to No. 132 West 42nd Street.

Q And what place is that? A Lewis & Conger's store.

Q And what did you find? A Found this watchman there that has just left the stand.

Q Was he the only person there? A There were several other persons.

Q Was this defendant there? A No.

Q He had gone? A Yes, sir.

Q Bryan and the others had all gone? A Yes, sir.

Q What was the condition of Lewis & Conger's window?

A The window was broken.

Q Did you and Ryan look for anything back in the window?

A I looked in and saw a revolver lying in the back of the window.

Q Did you fish it out? A Yes, sir.

Q Have you got it with you? A Yes.

Q Let us see it? A (Witness hands revolver to counsel).

Q Is that the revolver that you found? A Yes, sir.

MR. RAND: I offer that revolver in evidence.

MR. HURLBUT: I object to the introduction of the revolver in evidence on the ground that it is incompetent, immaterial, and not identified as belonging to the defendant or as having ever been in his possession.

THE COURT: I overrule your objection. Leave it to the jury.

MR. HURLBUT: Exception.

The said revolver is admitted in evidence and marked "People's Exhibit No. 6".

BY MR. RAND:

Q In this revolver were there any cartridges? A Four empty shells.

Q And are these (Showing four empty cartridges from revolver in court) the four shells that you have brought here in the

revolver, that you got there at that time? A They has the same appearance as the shells.

Q What did you do with the revolver? A Left it in charge of the sergeant at the desk.

Q And it has been in charge of the sergeant ever since, hasn't it? A It has been in charge of Mr. Smyth for some time.

MR. HURLBUT: I move to strike out the testimony if it has been in the possession of other people.

THE COURT: Yes.

BY MR. RAND:

Q In charge of whom, do you say? A Mr. Smyth.

Q Who brought it down? A I did not. One of the officers brought it down.

Q You sent it down? A Yes, sir.

Q Now you say these four empty cartridges that you produce here were in the revolver when you found it? A Four empty cartridges, yes, sir.

MR. RAND: I offer them in evidence.

MR. HURLBUT: I object to the introduction of the cartridges on the ground that it is incompetent and not shown to be in any way belonging to the defendant Eastman or as ever having been in his possession, and on the

further ground that they have not been in this witness's possession continually since he found them in the building.

MR. RAND: It is not necessary that they should be.

THE COURT: Well, gentlemen, the question dissolves itself into this, whether or not this witness can swear with any degree of certainty that that revolver and cartridges contained therein are the revolver and cartridges which he found in the window.

BY MR. RAND:

Q What do you say as to that?

THE COURT (Continuing): Now you may examine him on the voirdire as to that.

MR. HURIBUT: He merely testified that he found a revolver and four empty cartridges.

THE COURT: You may examine him upon that question of identification.

PRELIMINARY CROSS EXAMINATION BY MR. HURIBUT:

Q Mr. Officer, as I understand, you found a revolver there? A Yes, sir.

Q Now, it has not been in your possession ever since?

A No, but there was four empty cartridges in it at the time.

MR. RAND: No one asked you that. Pay attention to the questions.

BY MR. HURLBUT:

Q Did you put any mark upon that revolver? A There was a mark upon it.

Q When you found it? A When I turned it over to the sergeant at the station house.

Q After you found it you delivered it to somebody, did you not? A It was marked right there.

Q You marked it and delivered it to somebody?

A Yes, sir.

Q Now where is the mark you made? A On the butt of the revolver, a piece knocked out of it.

Q You did not make the mark, did you? A That mark was on the revolver and I noticed that mark and identify it by that mark.

Q You identify this revolver by that mark? A Yes, and other scratches that was on it.

Q And is that the way you identify this revolver?

A Yes, sir.

Q And that is the only way you identify it, isn't it?

A That is the way I identify it.

MR. RAND: Is that all you want to examine him on the question of the revolver?

MR. HURLBUT: Yes. Now about the cartridges.

BY MR. HURLBUT:

Q How about the cartridges which you found? A There were four empty cartridges in it.

Q I didn't ask that. Do you know whether those are the same cartridges which you found? A I couldn't testify to that.

MR. RAND: I withdraw the offer of the cartridges.

The said four empty cartridges are placed in an envelope which is marked "For Identification People's Exhibit No. 7".

DIRECT EXAMINATION RESUMED BY MR. RAND:

Q Did you hand the revolver containing the four empty cartridges to any person? A Yes, sir.

Q What person was that? A Sergeant O'Brien.

Q He is the sergeant at the station house, is he?

A Yes, sir.

Q What station house is that? A 22nd Precinct.

MR. RAND: That is all. Sergeant O'Brien?

THE COURT: Wait. Have you any questions, Mr. Hurlbut?

MR. HURLBUT: Only just one question.

## CROSS EXAMINATION BY MR. HURLBUT:

Q Do you know what make of revolver that is? A I didn't look at the mark.

Q Do you know? A No; I didn't look.

MR. RAND: Look and tell him, if he wants to know.

MR. HURLBUT: Well, I won't take the time of the Court.

THE COURT: Never mind.

## RE-DIRECT EXAMINATION BY MR. RAND:

Q I suppose it shows for itself, doesn't it? A It is all marked up-- scratched up.

JOHN O'BRIEN, called as a witness on behalf of the People, being duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. RAND:

Q Are you a member of the Police Force of this city?

A I am.

Q What is your rank? A Sergeant.

Q How long have you been a sergeant? A Since the 16th of last September.

Q Were you on desk duty at the 42nd Street-- is that it?

A 22nd.

Q 22nd Precinct station house? A Yes, sir.

BY THE COURT:

Q Where is your shield? A (The witness exhibits shield on left breast.)

BY MR. RAND:

Q The 22nd Precinct station house in 42nd Street?

A Yes, sir.

Q You were on desk duty there on the morning of February 2nd, 1904? A Yes, sir.

Q And were you on duty when the officers came in with Monk Eastman, Christopher Wallace, George F. Bryan and John W. Rogers? A I was.

Q And shortly after that did Officer Baxter of your command come in? A He did.

Q And did he hand you a revolver? A He did.

Q And did that revolver contain four empty cartridges?

A Yes, sir.

THE COURT: Do not lead him.

MR. RAND: All right.

BY MR. RAND:

Q What was in the revolver? A Empty cartridges.

Q How many? A Four, the officer counted out to me.

Q Did you put them back in the revolver? A I did.

Q And did you keep the revolver? A I put it in an envelope.

Q I don't mean, did you keep it in your pocket. Did you keep it in the station house? A Yes, and it was there when I left there in the morning at eight o'clock, when I was relieved.

Q And where did you put the envelope? A Right in front of me on the desk, where we keep such things.

Q And when did you last see that revolver and the cartridges? A I last saw the envelope containing it.

Q Well, that is good enough for me. The envelope containing the revolver and cartridges, when did you last see that? A Just before I left the desk, around about eight o'clock.

Q And you haven't seen it since? A No, I have not.

Q Who relieved you there? A I forget. If you will let me refer to the blotter I will tell you.

Q Well, refer to anything you want. Who relieved you there? A Sergeant James McCann.

Q Is he here? A No, sir, he is not.

Q How many sergeants were on duty there, day by day?

A There were five sergeants there at that time.

Q You have them all here to-morrow, every one of them; get word to Mr. McAdoo that we want all five of them here to-morrow, will you? A Yes, sir.

Q All right. During the time this revolver and these cartridges were in your custody did you make any change in the cartridges? A No, sir.

MR. RAND: That is all for you.

CROSS EXAMINATION BY MR. HURLBUT:

Q Officer, as I understand you, these people that you have mentioned-- Eastman, Wallace, Bryan and Rogers, were brought into your quarters there? A Yes, sir.

Q Now they were taken from there, weren't they, in a patrol wagon? A When?

Q That morning; they were taken to the police station that morning? A They were in the police station when I saw them. They were taken to court the next morning in a patrol wagon.

Q To the police court? A Yes.

Q Now were they taken to the police court the following morning or that morning? A There was two of them.

Q Yes; I mean Eastman and Wallace? A Yes.

Q When they were taken it was about seven o'clock, was it?  
A About that time.

Q And the revolver was taken also at that time, wasn't it?  
A No, sir.

Q What? A No, sir; the officer who had that case was Officer Healy. He is present. He didn't call for the revolver at that time, not until after eight o'clock I believe-- at least, I didn't give him the revolver.

Q One moment, Officer. I want to see if you remember that the revolver was taken to the police court at the time that Eastman and Wallace were taken? A No, sir, it was not.

Q It was not? A Not at the time they were taken out of the station house.

J O H N V. H E A L Y, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAND:

Q You are an officer of the Police Force of this city?

A Yes, sir.

Q Attached now to the 5th Precinct? A Yes, sir.

Q And were you attached to the 22nd Precinct on the early morning of February 2nd, 1904? A Yes, sir.

Q And where was your post? A I had a special post in front of 161, standing, at the time, in 44th Street.

Q Did you hear any sounds of shooting come from the direction of 42nd Street? A Yes, sir, I heard several shots.

Q What did you do? A They attracted my attention. As soon as I heard the shots I ran down Broadway and looked through 43rd Street. It was not there. Then I got to 42nd Street and there was two men running through 42nd Street going west. They were on the platform where a new hotel is getting built.

Q Do you see that platform in People's Exhibit No. 4?

A Right here (indicating).

THE COURT: Do you mean the photograph?

MR. RAND: The photograph.

THE COURT: Handing the witness a photograph.

MR. RAND: Handing the witness photograph,

People's Exhibit No. 4.

BY MR. RAND:

Q Was one of those young men the tall young man who was brought in here early in the trial? A Yes, sir.

Q What then? A He was running, first Wallace, and I was right at the head of the stairs and I grabbed Wallace. Meantime Eastman was there in the back, behind.

Q That is, this defendant? A The defendant was in the back, behind, five feet or so. Officer Sheehan was right behind me. The two of us were alone together. He heard the shots the same as I did. He was about I should judge from here over to that railing behind me.

He grabbed that other fellow, too. Sheehan gets Eastman. We held them there and other officers got around, and we started to bring them back to where the shooting was done.

In the meantime they said, "What are you holding us for?"

Q Who said that? A Both started saying, "What are you holding us for? Why don't you go back where the shooting is?"

I says, "Well, we will take the pair of youse back"; and we started to bring them back, and we brought them back as far as Lewis & Conger's in 42nd Street, No. 132; and in the meantime Officer Sheehan left Eastman-- I believe somebody told him--

MR. HURLBUT: No; I object.

BY THE COURT:

Q Do not state what somebody told him. A Officer Sheehan left Eastman; and the first I see is Bryan and Rogers. We took them all to the station house then, imagining they were some of the crowd; we didn't know who they was.

BY MR. RAND:

Q Never mind what you imagined. The first is that you and the other officers took all four back to the station house? A Back to the station house, brought them to the station house, and started to explain to the sergeant what was going on. I didn't know that Rogers and Bryan were Pinkerton men.

MR. HURLBUT: Never mind what you didn't know.

MR. RAND: Yes; that is right; it should go out.

BY MR. RAND:

Q Never mind what you did or did not know. What happened?

A We was going to make a complaint against the four of them and lock them up as suspicious persons.

Q What did Delaney say at the station house; did he say anything about Bryan? A Yes; he said, "That is Doc Owens, the card sharp; he is an ex-convict".

Q Delaney said that, referring to Bryan? A Yes, sir.

Q Did you see a revolver that night? A Yes, sir; Officer Baxter brought it in.

Q Did you see when Officer Baxter brought it in?

A Yes, sir.

Q And is this revolver, People's Exhibit No. 6, the one that he brought in? A Yes, sir; and I also opened it and found there was five empty chambers, and one empty chamber dropped out and rolled under the desk.

Q Empty cartridges? A Yes, sir.

Q And one of them you lost? A Yes; it rolled under the desk.

Q And what did you do with the revolver and four remaining cartridges? A Left it on the desk and it was put in a sealed envelope.

Q Who did that? A The sergeant.

Q When did you next see it? A In the morning when I went to the police court I took the gun with me.

Q And after you used it in the police court was it put back in the envelope? A Yes, sir.

Q And where has the envelope been since that time, if you know? A I brought it back and handed it to the sergeant and it was left at the station house.

Q Was it re-sealed? A Yes, sir.

Q And after that what happened to it? A A couple of days after that I believe District Attorney Smythe had it in his office, and I showed it to him.

Q Wait a minute now; a couple of days after that did you take it down to Mr. Smythe? A Yes, sir.

Q Where did you get it from? A From the police station.

Q It was still in this sealed envelope, was it?

A Yes, sir.

Q And you took it down in the sealed envelope containing the cartridges that you had found that night with the exception of the one that you had lost, and gave it to Assistant District Attorney Smythe? A Yes, sir.

Q That was two days after this occurrence? A A couple of days after. I don't remember exactly the time.

## CROSS EXAMINATION BY MR. HURLBUT:

Q Officer, where did you first meet Wallace when you got down to 42nd Street? A I was right at the platform, at the stairway, and Wallace was the first.

Q Did you go down Broadway? A I ran down Broadway, yes. I was at 44th Street at the time.

Q When you got to 42nd Street you met Wallace, did you not? A Wallace, yes, sir.

Q That was near Broadway? A Yes.

Q Now you suspected him, I suppose? A Yes, sir; he was running at the time.

Q He was running? A Yes.

Q I understood you after that to say that the defendant Eastman came along? A He was right behind him, yes.

Q Behind whom? A Behind Wallace.

Q He was further down 42nd Street on that side of the street? A He was on the platform I should judge about ten or fifteen feet maybe back of Wallace, the two of them running to get away.

Q How long is that platform in your opinion? A Well, I should judge it is about 50 feet, anyhow, if it is not more. It is more than that.

Q They<sup>had</sup> gotten pretty near the other end of it; that is, Wallace had? A Coming towards me, yes. I guess the platform

is more than 50 feet. They were on the platform when I noticed them first.

Q You paid your whole attention to the man Wallace, did you not, and the other officer looked after the defendant Eastman? A The two of them were coming right towards me.

Q Officer, you have told me that twice. A All right.

Q I say, you gave your attention to Wallace and the other officer-- what is his name? A Officer Sheehan.

Q He gave his attention to Eastman, didn't he?

A Yes, sir.

Q Did Wallace say anything to you? A Wallace?

Q Yes. A He was telling me to go back where the shooting was. "Wouldn't you run if a gun was stuck up to your belly?" he says.

Q But Eastman did not talk to you at all? A I could hear his conversation.

Q I say, he did not talk to you at all? A He would talk to anybody that was there, I suppose.

Q Did he talk to you? A No, he didn't talk to me specially.

Q Was he talking to the officer that had him in charge? A He was talking all the time and said, "Why don't you go back to where the shooting is?"

Q I didn't ask you that. Now be kind enough to answer

my questions. A All right.

Q Was he talking to the officer that had him in charge?

MR. RAND: How can he tell whom he was talking to?

He could only hear him.

MR. HURLBUT: Then let him say so.

A I heard what he said.

BY MR. HURLBUT:

Q I didn't ask you that. Was he talking to you? A I couldn't say he was talking to me.

Q Now were there quite a number of people there? A Well, no. There was officers-- there was about--

Q How many officers were there there? A After we got there there was about five or six different officers came there.

Q How many were in this party of young men? A That I couldn't tell you.

Q You can't tell? A No.

Q How many people all told were there in your judgment?  
A Right along this platform at the stairway?

Q Yes, right where you met these men? A I should judge eight or ten, counting ourselves and the two prisoners.

Q Did others come there after that? A Citizens?

Q Other people? A I shouldn't wonder. I couldn't tell you.

Q Did you see other people there? A I didn't pay much attention to them.

Q You paid your whole attention to the man you had in charge? A Yes, sir.

Q And didn't he struggle to get away from you? A He tried to.

Q Yes; and you gave your attention to him? A Yes.

F R E D E R I C K L. K I N S E Y, called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAND:

Q Where do you live, please, Mr. Kinsey? A 236 West 121st Street.

Q And what is your business? A Salesman.

Q For whom? A Lewis & Conger.

Q That is at 132 West 42nd Street in this city?

A That is right.

Q Were you a salesman for them on the night of February 1st, 1904? A Yes, sir.

Q Did you leave the store that night? A I did.

Q What time? A About twenty minutes after six.

Q Did you lock up? A I did.

Q I ask you whether that sign board (showing), with "132-- Crockery" on it was there at the time you locked up?

A Yes.

Q On People's Exhibit No. 5? A Yes, sir.

Q And was there any scar or defacement on that sign at the time you locked up? A Nothing whatever.

Q What time did you come back to the shop the next morning February 2nd? A Between ten minutes after seven to a quarter past.

Q And at that time, when you saw this sign at 132 West 42nd Street, was there any scar or defacement on it?

A Yes, sir.

Q Where? A About opposite where the glass was broken.

Q And on what part of the sign? A At the "132" part.

Q And is this the identical piece of sign that you found there the next morning? A Yes.

Q And that you left there the night before? A Yes, sir.

Q And is this hole in the figure 3 the hole you found there the next morning? A That is the identical mark.

Q And you say that was not there the night before?

A No.

Q And the glass was intact the night before? A Yes, sir.

Q And it was all broken in the morning? A Yes, sir.

MR. RAND: I offer it in evidence.

MR. HURLBUT: Objected to as incompetent and immaterial and on the ground that there is no evidence to show that the sign was not in the same condition-- no competent evidence.

THE COURT: This witness says that the night before it was not in that condition when he left there, but that on the next morning he found the sign in the changed condition that it is now. I think it is a question for the jury, and will therefore overrule the objection.

MR. HURLBUT: Exception.

MR. RAND: You can still see pieces of the glass that were blown in there.

CROSS EXAMINATION BY MR. HURLBUT:

Q What time did you close your store on the night of February 1st? A From ten to twenty minutes past six.

Q Twenty minutes past six? A About twenty minutes past six; yes, sir.

Q What time did you open it the next morning? A About

ten minutes after seven.

Q Who was with you when you left the store, if anyone, on the night of February 1st? A I think I was the last one out.

Q When did you make an examination before closing your store on the night of February 1st?

THE COURT: Just a moment.

Q (Continuing) An examination of the sign?

THE COURT: Wait a moment, Mr. Hurlbut. Mr.

District Attorney, on a reconsideration of this matter I am inclined to think that the objection of counsel for the defendant should be sustained to the admission of the sign in evidence.

MR. RAND: May it please the Court, let me show you the exhibit. The officers have testified-- or at least, all the witnesses have testified-- that immediately following the shooting there was a sound of breaking glass, and here is some of the glass still here, blown into the sign.

THE COURT: That is a matter of inference.

MR. RAND: Does your Honor mean to say that the connection is not complete?

THE COURT: Yes.

MR. RAND (Continuing): That some one might have

come along between half past two and a quarter past seven and kicked it?

THE COURT: We cannot tell. There is evidence here that there were some eight or nine shots fired, and there is no evidence whatever to show that any one particular shot fired by any particular person was the thing that perforated that sign.

MR. RAND: But we have evidence to show that one man was standing wrestling with another man in front of Lewis & Conger's window, and that four shots were fired directly at him.

THE COURT: I think it is too remote.

MR. RAND: All right, sir. I won't press it.

THE COURT: I will reconsider the ruling and sustain the objection to the admission of the sign in evidence, direct that it be stricken out and direct that the jury disregard it.

MR. HURLBUT: May I ask your Honor at this time to direct the jury to disregard the evidence in relation to the sign?

THE COURT: I have done so.

MR. RAND: All right; gentlemen, we will out out the sign.

THE COURT (To witness): That will do, sir.

You are excused.

MR. RAND: Officer Sheehan!

THE COURT: I think we will suspend here, Mr. District Attorney.

MR. RAND: Very well, sir.

THE COURT: Gentlemen of the jury, you remember the caution that I administered to you today at recess, and consider the same to be repeated to you now.

Adjourn court until tomorrow morning at halfpast ten o'clock.

Adjourned to Wednesday, April 13th, 1904, at 10:30

A. M.

Wednesday, April 13, 1904,

10:30 A. M.

TRIAL RESUMED.

MR. RAND: Mr. Hurlbut, will you concede that from the time these four cartridges came into the possession of my associate, Assistant District Attorney Mr. Smyth, that they have not been changed; or shall I put Mr. Smyth upon the stand?

MR. HURLBUT: No, sir; I concede that.

MR. RAND: With that concession, I now offer the cartridges in evidence. It has been proved that the cartridges and the revolver were given to the sergeant at the desk on the morning of the assault, and were there placed in a sealed envelope; that this sealed enveloped, a few days afterwards, was given, still sealed, to Mr. Smyth; and Mr. Hurlbut now concedes that, from the time they came into Mr. Smyth's possession until the present moment, they have not been changed.

MR. HURLBUT: I object to the reception of the cartridges in evidence, on the ground that they are incompetent and that there is no evidence in the case connecting the defendant with the possession at any time of these cartridges; and I ask, if it is understood that that re-

volver is now in evidence, that the revolver be stricken from the evidence, for the same reasons.

MR. RAND: I understand that your objection to the revolver and the cartridges is made on the same ground?

MR. HURLBUT: On the same ground, that there is no connection shown between the defendant and the revolver that is produced here, as well as the cartridges.

THE COURT: Is there any question about the integrity of the envelope from the time that it left the policeman's hands and while it rested in the sergeant's possession up to the time that Mr. Smyth received it?

MR. HURLBUT: Yes, sir. If the Court please, my objection will cover all of that; in fact all of the period except the time that Assistant District Attorney Mr. Smyth had the articles in his possession.

THE COURT: I sustain the objection in so far as it goes to the cartridges or the cartridge shells.

MR. HURLBUT: Then do I understand your Honor to hold that the revolver may be received?

THE COURT: That already is in evidence, I understand.

MR. HURLBUT: My motion is to strike that from the record as evidence, for the same reasons that I have stated.

THE COURT: I deny that motion.

MR. HURLBUT: And an exception, please.

J A M E S E. S H E E H A N , called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAND:

Q You are a member of the New York Police Force, Officer?

A Yes, sir.

Q Attached to the 24th Precinct? A Yes, sir, now.

Q On the 2nd day of February were you attached to the 22nd Precinct of this city? A Yes, sir.

Q Were you on duty at half-past two o'clock on that morning? A I was; yes, sir.

Q Where was your post? A I was at 161 West 44th Street.

Q Did you arrest Eastman that morning? A Yes, sir.

Q Where did you meet him? A When I placed Eastman under arrest, it was at the top of the platform or bridge in front of the new building on the south side of 42nd Street extending from Broadway about 100 feet back, and he was about six feet from the edge of the bridge when I arrested him.

Q What did he say? A He said, "What do you want to stop me for? I am running away from the shooting," or words to that effect.

MR. HURLBUT: I object to it, unless those are the exact words --

THE COURT: Yes.

MR. HURLBUT: -- and ask that they be stricken out.

THE COURT: Yes; I grant the motion.

BY MR. RAND:

Q What did he say in substance? Never mind the exact words? A That he was running away from the shooting.

Q And what did you say to that? A I said, "I want you".

Q And what did you do with him? A I struggled with him --

MR. HURLBUT: I object to that and ask that it be stricken out.

THE COURT: I sustain the objection and grant the motion.

BY MR. RAND:

Q What did he do? A He attempted to get away.

MR. HURLBUT: I object to that.

THE COURT: Objection sustained. Strike it out.

BY MR. RAND: THE COURT: I sustain the objection and grant the motion.

Q What did he do? A He struggled .

MR. HURLBUT: I object to that, and ask that it be stricken out.

THE COURT: No; I deny the motion.

BY MR. RAND:

Q How did you have him? A Well, I held him by the hands.

Q Yes? A And while we were struggling, Officer Terhune came up and assisted me to hold him.

Q And where did you take him? A Then somebody said to me --

Q I didn't ask you that; now, you listen to my questions. Where did you take him? A I didn't take him anywhere. I turned him over to Mr. Terhune.

Q And were you present at the station house when the four persons were brought in? A Yes.

Q Bryan, Rogers, Eastman and Wallace? A Yes, sir.

Q Did you hear what Eastman said there? A He said that Bryan was an ex-convict.

Q He said that to the sergeant? A Yes.

Q He wanted Bryan held?

Objected to; objection sustained.

Q What did he say? A He says, "Place that man under arrest; he won't appear in the morning."

MR. RAND: You may examine the witness.

CROSS-EXAMINATION BY MR. HURLBUT:

Q Did you hear the defendant Eastman say, "That is Doc Owens"? A I don't recollect hearing him say that, n o. .

Q Did you hear the defendant Eastman say, "He is a card sharp"? A I don't recollect hearing him say that, either.

Q Were you present when the defendant and the others

were brought in at the station house? A Yes, sir.

Q And did you remain there until they weretaken away from the station house? A Well, I was there up to the time they were taken back to the cells.

Q And you were present with them all the time? A I was on the floor, yes.

Q And was there any other conversation carried on aside ~~from~~ by any of these men that had been brought in that you did not understand? A Yes, there was.

Q And who was carrying on that conversation? A Well, my mind is not clear on that point just now.

Q Then you don't know who it was, or what it was about? A No.

Q But you do recollect distinctly that Eastman said, "Arrest that man, for he won't be here in the morning"?

A Those were his words, including "ex-convict". He said he was an ex-convict.

Q In referring to Bryan? A Yes, sir.

Q Did you know Bryan? A No.

Q Did you know Eastman? A No.

Q Or any of the four? A No, sir.

C H A R L E S H. T E R H U N E , called as a witness on behalf of the People, being duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR. RAND:

Q You are a member of the New York police force?

A Yes, sir.

Q Attached now to the 33rd Precinct? A Yes, sir.

Q Were you attached to the 22nd Precinct on the morning of February 2nd? A Yes, sir.

Q On that morning, at about half-past two or a little later, did you help arrest this defendant Eastman? A Yes, sir.

Q Tell the jury the circumstances? A About 2:30 Officer Duane and I stood in front of 230 West 43rd Street. We heard some shooting, and we stood there for a few minutes and then started to run to 42nd Street and Broadway. As we got there I saw Eastman struggling in the hands of Officer Sheehan. I went up to help him, and at the same time there was another party that came and said, "Sheehan" --

Q Never mind; you can't say what anybody else said. Just say what was done. A Sheehan left me and went back to get the other man that had the gun, which was Bryan. I took Delaney in charge.

Q You mean this defendant? A The defendant; and I started west with him over toward the walk.

Q Did you take him to the station house? A No. I went as far as 45th Street with him.

Q Did you see him at the station house? A No, I did not get in in time.

Q You don't know what occurred there? A No.

CROSS-EXAMINATION BY MR. HURLBUT:

Q Were you there at the station house subsequently -- afterwards? A I was there afterwards, yes, sir.

Q Did you hear any conversation there? A No, sir.

Q Did you hear -- let me refresh your memory. Did you see Sergeant O'Brien? A I did.

Q Did you hear him say anything to the officers, as to why they had brought the defendant and the others there?

A No, sir.

RE-DIRECT EXAMINATION BY MR. RAND:

Q He did not bring them there; Sergeant O'Brien; he was the sergeant at the desk, was he not -- the desk sergeant?

A Mr. O'Brien was at the desk.

Q He didn't bring anybody there, did he? A No, sir.

Q What time did you get to the station house? A About 3:10 or 3:25.

Q They were all locked up when you got there, were they? A Yes.

Q And it was all over? A Yes, sir.

J O H N V. H E A L Y , recalled by the People, testified as follows:

## DIRECT EXAMINATION BY MR. RAND:

Q About this revolver and cartridges, now, Healy; let us get that straight. As I understand it, this revolver and cartridges in it, brought in by Officer Baxter, you took from the sergeant's desk and put in a sealed envelope, didn't you?

MR. HURLBUT: I object.

THE COURT: I sustain the objection.

MR. RAND: He has said that already. It is just merely introductory.

THE WITNESS: The sergeant put the gun in the envelope with the empty cartridges.

Q With the four empty cartridges? A Yes, sir.

Q And that was sealed? A Yes, sir; there were five there but I dropped one on the floor, and it rolled under the desk.

Q Four went in? A Yes, sir.

Q The next morning did you go to the Magistrates' Court?

A Yes, sir.

Q Did you take this sealed envelope with you? A Yes, sir.

Q What did you do with it at the Magistrates' Court?

A I opened it up and showed the Magistrate the revolver.

Q And the cartridges? A Yes, sir.

Q After showing the Magistrate the revolver and the cartridges, what did you do then? A I brought the revolver and cartridges back to the station house.

Q And what did you do with them? A I gave them to the sergeant.

Q What did he do with them? A My nose is bleeding a little.

Q Well, we won't detain you very long. A I had it already in the envelope and I handed it to the sergeant.

Q The old envelope that you had already ripped open?  
A Yes.

Q What did you do with it when you gave him the ripped-open envelope? A Left it behind the desk. If I ain't mistaken, I had some envelope with my own writing on it, and I put it into that.

Q (Handing envelope to witness) Is that your writing?  
A Yes.

Q That is what I am asking you about. Did you put it in any other envelope? A Not outside of that.

Q Is this the one (Showing) that you took to the Magistrates' Court? A No, sir; it is not.

Q That is what I am asking you. A That one was torn out.

Q After you got back to the station house, after being to the Magistrates' Court with the revolver and cartridges, did you put them in anything else? A I put them in that envelope (Indicating).

Q That is what I am asking you. And did you seal that

envelope? A Yes, sir.

Q And you gave it to the sergeant? A Yes, sir.

Q Now, you say that a few days ago you came down to see Assistant District Attorney Smyth? A Yes, sir.

Q And did you have that sealed envelope with you?

A Yes, sir.

Q Did you get that at the sergeant's desk? A I did.

Q And was that the envelope which I now show you?

A Yes, sir.

Q With your handwriting on it? A Yes, sir.

Q And had the seal been broken? A No, sir.

Q And where did you break the seal? A When I brought it down to Assistant District Attorney Smyth.

Q In his presence? A Yes, sir.

Q When you turned over the revolver and the cartridges to him? A Yes.

Q Is that correct? A Yes, sir.

MR. RAND: That is all, except that I offer this torn envelope in evidence.

MR. HURLBUT: I object to it on the ground that it is incompetent and immaterial.

MR. RAND: It is a step in tracing their possession and custody.

THE COURT: I overrule the objection.

MR. HURLBUT: Exception.

MR. RAND: Mark that, please.

The said envelope is marked "People's Exhibit No. 9".

BY THE COURT:

Q I understand you to say that when you delivered the envelope containing the revolver and cartridges to the sergeant, that you then sealed that envelope? A The sergeant had the first envelope, and I brought--

Q I am speaking of the time when you say that you returned from the Magistrates' Court and when you delivered the revolver and the cartridges to the sergeant; you say that you put them into an envelope? A Yes, sir.

Q On which you made some writing? A Yes, sir.

Q Did you seal the envelope at that time? A Yes, sir.

BY MR. RAND:

Q And this (Exhibiting People's Exhibit No. 9) is the envelope? A That is my writing on it.

Q That is the envelope you are speaking of? A Yes, sir.

BY THE COURT:

Q Did you deliver the envelope, so sealed and written upon into the possession of the sergeant? A Yes, sir.

Q Was that envelope in the same condition when you received it from the sergeant as it was two days later?

A Well, it was sealed, the envelope was.

BY MR. RAND:

Q Was it sealed as you left it? A Yes, sir.

## CROSS-EXAMINATION BY MR. HURLBUT:

Q Now, were you at the station house, officer, at the time that the defendant and the other three men were brought in? A Yes, sir; I came in with them.

Q Who was the sergeant there? A Sergeant O'Brien.

Q Did the sergeant say to you, or any person that went with you and these four men, "What have you brought these men in for?" or that in substance? A He did; and we explained it to him, what we did bring them in for.

Q And what did he say on that line in asking you?

A "Who is going to make the complaint?"

Q And did you make answer to that inquiry? A That I was going to take the case, at least, as far as that goes, and to put me on the case.

Q Did you make then and there a complaint? A I did. I was going to lock him up as a suspicious person.

Q Not what you were going to do. A (No answer.)

BY MR. RAND:

Q What did you say? A Made a complaint against him as a suspicious person.

BY MR. HURLBUT:

Q Officer, understand my question: Did you make a complaint to the sergeant that the defendant and the other three men were disorderly persons? A No, sir; I did not.

Q Did you say to the sergeant that you wanted to complain of them for being suspicious persons? A I locked them up as suspicious persons, yes.

BY MR. RAND:

Q What did you say to the sergeant, he asked you?

A That I would make a complaint as suspicious persons against the four of them.

BY MR. HURLBUT:

Q Now, you saw Bryan there, of course? A Yes, sir.

Q And Rogers? A Yes.

Q Did you see any badge upon Bryan's clothes?

MR. RAND: I object to that as immaterial. No one said he had a badge on his clothes.

MR. HURLBUT: I propose to show --

THE COURT: I will allow the question.

A No, sir; I did not.

BY MR. HURLBUT:

Q Did you see Rogers hand him a badge? A No, sir; I did not.

Q Did you see Bryan have a badge there at any time in the station house? A There was a special officer's shield there, but I can't tell you which one owned it, whether Rogers or Bryan.

Q And this was a special officer's shield? A Yes, sir.

Q And do you now recall which of the men had that?

A No, sir; I do not.

Q But you know that one or the other of those two men had that shield? A Yes, sir.

Q Did you see Rogers hand to Bryan anything while in the station house? A No, sir; I didnot.

Q Now, how long after you had brought the envelope of which you had broken the seal to the Magistrates' Court -- how long was it after you had brought it back to the station house before you took it again and delivered it to Assistant District Attorney Smyth? A I don't quite understand your question.

Q How much time elapsed from the time that you brought the revolver and four cartridges which you have testified to from the Magistrates' Court -- A Until the time I returned it again?

Q -- until the time you delivered it to Mr. Smyth?

A I believe I took it about nine o'clock from the sergeant behind the desk, and it must have been to my knowledge about 11:30 when I returned it, or eleven o'clock.

MR. RAND: You don't pay the slightest attention to questions. Now, sit up and listen.

MR. HURLBUT: You don't understand me, officer. Perhaps I am to blame.

MR. RAND: No, you are not.

BY MR. HURLBUT:

Q You have testified that you took this revolver and cartridges to the Magistrates' Court? A Yes, sir.

Q Now, you have also testified that you went from the Magistrates' Court back to the station house, as I understand you, with that same revolver and cartridges and envelope?

A Yes, sir.

Q And placed it behind the desk? A Yes, sir.

Q Now, from the time that you placed it behind the desk, how much time elapsed before you delivered it to Assistant District Attorney Smyth? A Oh, it was a couple of days after.

Q A couple of days after? A Yes, sir.

Q You had not been in the station all of the time, had you? A No, sir.

Q I understood you to testify, in answer to the District Attorney, that it was sealed just as you left it; is that so? A It was to my knowledge, as far as looks were concerned.

Q You did not examine that envelope to see whether it was sealed the same, did you? A The envelope was sealed.

Q But you did not examine it to see whether it had been opened, or anything of that kind? A No, sir; I couldn't tell.

Q You picked it up and carried it to Mr. Smyth, did you

not? A Yes, sir.

Q You did not know who had it in charge, or where it had been during that two days, did you? A No, sir.

Q What did you write on the envelope?

MR. RAND: It speaks for itself.

MR. HURIBUT: I know, but I am testing his recollection, Mr. District Attorney.

Q Do you remember what you wrote on the envelope?

A No, sir; I couldn't tell now; but that is my writing. I don't remember.

RE-DIRECT EXAMINATION BY MR. RAND:

Q You say you don't know whether anyone had used warm water in thawing it out and had sealed it up again.

MR. HURLBUT: I object to the question.

MR. RAND: Wait a minute.

THE COURT: (To the stenographer) Repeat the question.

MR. RAND: Withdrawn.

Q When you put the revolver in the envelope and left it at the station house, did you wet the gummy part of the flap and turn it over and stick it together? A Yes, sir.

Q And when you took it to Mr. Smyth two days later, was it still secured by the gummy flap, and was it, so far as all appearances went, exactly as you left it? A Yes, sir.

MR. RAND: Now, on the testimony of the officer, and on Mr. Hurlbut's concession, I again offer the cartridges in evidence.

MR. HURLBUT: I object to the introduction of the cartridges in evidence, on the ground that they are incompetent, and that no connection has been shown between the defendant and the cartridges.

THE COURT: I will overrule the objection.

MR. HURLBUT: Exception.

The envelope containing the said cartridges is marked in evidence "People's Exhibit No. 7."

J O H N H. H E W E S , called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. RAND:

Q Mr. Hewes, where do you live, please? A 41 Seventh Avenue, Brooklyn.

Q And what is your occupation? A Salesman.

Q For whom? A M. Hartley & Co.

Q They are on Broadway down here? A Yes, sir.

Q What is their number? A 313 to 315.

Q They are the successors of Hartley & Graham? A Yes, sir.

Q Engaged in the manufacture and sale of firearms and ammunition? A Yes, sir.

Q And have been for a very long time? A Twelve years.

Q How long have you been with them? A Twelve years.

Q Before that you were with whom? A With the B. Kit-tredge Arms Co., Cincinnati, Ohio.

Q Have you during that time been constantly engaged in the sale of cartridges? A Yes, sir.

Q And have you also exploded during that time many cartridges? A Yes, sir.

Q And examined cartridges both before and after their explosion? A Yes, sir.

Q Are you familiar with the cartridges manufactured by the Union Metallic Cartridge Company? A Yes, sir.

Q I show you such a cartridge, which I take from People's Exhibit No. 7, and I ask you, yes or no, are you able to tell the jury whether that is an exploded or an unexploded cartridge?

MR. HURLBUT: I object to the question, on the ground that it is incompetent, particularly as to form.

THE COURT: I sustain the objection.

BY MR. RAND:

Q Are you able to tell the jury whether that cartridge has been exploded or not?

MR. HURLBUT: I object to the question.

THE COURT: I sustain the objection.

MR. RAND: On the ground of form?

THE COURT: I do not think the question is competent, Mr. District Attorney.

MR. RAND: You mean to say that it is not a proper subject of expert testimony?

THE COURT: I mean to say that this witness can only give testimony as an opinion.

MR. RAND: Yes, sir; I am offering it as opinion evidence.

THE COURT: And the question propounded to this witness is not a proper question to elicit an opinion.

BY MR. RAND:

Q In your opinion, can you state whether or not -- in your opinion -- that is an exploded or unexploded cartridge shell?

MR. HURLBUT: I object to it.

THE COURT: I sustain the objection.

MR. RAND: I certainly asked for his opinion then; at least I asked him if he could give it.

THE COURT: You did.

MR. RAND: I only ask him for yes or no.

Q Are you able to give an opinion -- are you able from your experience of many years in the sale and use of metallic cartridges, to state your opinion as to whether or not

that is an exploded or unexploded cartridge shell?

MR. HURIBUT: I object to it.

THE COURT: He may answer yes or no. I overrule the objection to that question.

MR. HURLBUT: I object, that the witness is not competent to testify.

MR. RAND: Do you wish to examine him upon that point of competency?

BY THE COURT:

Q You may answer yes or no. A Yes, sir.

BY MR. RAND:

Q Now I ask you, is it your opinion that that cartridge shell which I now show you, is exploded or unexploded?

MR. HURLBUT: I object to it.

THE COURT: I do not think that the proper foundation has been laid; I sustain the objection.

BY MR. RAND:

Q Are you able to tell -- certainly this is a right cartridge; I took it from the envelope People's Exhibit No. 7; there is no question about that; I took it out of the envelope.

MR. HURLBUT: I except to the remarks of the District Attorney.

THE COURT: I sustain the objection, and strike out the District Attorney's observation.

MR. RAND: You do not object on that ground, do you?

that that cartridge did not come out of that exhibit?

MR. HURLBUT: I have stated my objection, Mr. District Attorney.

MR. RAND: Any way you can get it.

MR. HURLBUT: On all the grounds of objection that I can take to serve the interests of my client.

MR. RAND: That is a very frank attitude on your part.

Q Having stated that you are able to give such an opinion I now ask you, what is your opinion?

MR. HURLBUT: I object to it.

MR. RAND: Hold on; you don't want to object till I have asked my question, do you?

Q I ask you whether or not in your opinion that cartridge shell has been exploded or not?

MR. HURLBUT: Objected to as incompetent.

THE COURT: I sustain the objection.

MR. RAND: Well, I will allow that to go. I will leave that to the jury.

Q I ask you whether you are able, from your experience of many years in the sale of metallic cartridges, and in the use and explosion of metallic cartridges, whether you can give an opinion as to whether an exploded cartridge was loaded with ball or with powder only?

MR. HURLBUT: I object.

THE COURT: Exploded from what or by what? There are many cartridges.

MR. RAND: I don't know that that would make any difference with regard to the contents of the cartridge.

THE COURT: It might be a dynamite cartridge, put in rock or clay.

BY MR. RAND:

Q. (Continuing) A metallic gun cartridge or revolver cartridge?

MR. HURLBUT: I object to the amendment.

THE COURT: I will overrule your objection.

MR. HURLBUT: I would like to have it appear that I specifically object on the ground that the witness is not shown to be competent.

THE COURT: I will allow him to answer the question yes or no.

A Yes, sir.

BY MR. RAND:

Q Now, have you examined this cartridge which I have just shown you? A Yes, sir.

Q And have you examined it before to-day? A Yes, sir.

Q And also these three other cartridges which I took from People's Exhibit No. 7? A Yes, sir.

Q Have you examined all those cartridges? A Yes, sir.

Q And, as a result of your examination, have you formed any opinion as to whether or not those cartridge shells were loaded with ball or not?

MR. HURLBUT: I object on the ground that it is incompetent and immaterial.

THE COURT: I will overrule the objection.

MR. HURLBUT: Exception.

BY THE COURT:

Q Answer yes or no? A Yes.

BY MR. RAND:

Q In your opinion were those four cartridge shells loaded with ball or not?

MR. HURLBUT: I object to that.

A They were loaded with ball.

THE COURT: Wait. I am of opinion, Mr. District Attorney, that you should lay a better and a broader foundation with regard to the evidence that is already in before the jury.

MR. RAND: I take your Honor's point .

THE COURT: And further, I believe this witness should, if he can, be called upon to state to the jury the distinguishing marks, if any, which characterize the exploded cartridge in contradistinction from a non-exploded cartridge, and the result of any mechanical appliance upon a loaded cartridge.

MR. RAND: Very well, sir. I will begin back now.

Q Let me have those cartridges a minute. A (The witness returns said cartridges to People's Counsel).

Q Mr. Hewes, what is a cartridge? A A cartridge?

Q Yes. A Well, a cartridge --

MR. HURLBUT: To that I object, if the Court please, that it is incompetent and immaterial.

THE COURT: I think you should specify the kind of cartridge to him.

MR. RAND: I was coming to that. I thought I had better begin at the beginning, so as to exclude dynamite cartridges.

THE COURT: I will overrule the objection.

MR. HURLBUT: Exception.

BY MR. RAND:

Q What is a revolver cartridge or gun cartridge? A A revolver cartridge is made from metal which is drawn to the shape and size and primer, as we call it, inserted at the head, filled with powder and ball inserted in the end, and a shell crimped onto the ball.

Q Take these cartridges which I took from People's Exhibit No. 7 --

THE COURT: Not cartridges.

BY MR. RAND:

Q Shells, I mean -- which I took from People's Exhibit

No. 7, and say whether or not they are the shells of cartridges?

MR. HURLBUT: I object.

A They are the shells of Smith & Wesson 38 cartridge.

MR. HURLBUT: I object.

THE COURT: I assume that your objection was in time, Mr. Hurlbut, and will overrule it and give you an exception.

BY MR. RAND:

Q Will you explain to the jury, taking one of these shells, the different parts of it; that is, the head and primer and various parts of the cartridge? A Well, this part (indicating the body) indicates the shell. The head is the only part with the flange on, and in the head is the primer.

Q Now, will you tell the jury how a cartridge, constructed as you have described, is exploded in a revolver?

A The hammer strikes the primer --

BY THE COURT:

Q The hammer of what, Mr. Witness? A The hammer of the revolver striking the primer explodes the primer, and that ignites the powder.

BY MR. RAND:

Q And is there left on the primer, after the explosion, any mark to show that it has been so exploded? A Yes, sir; it is indented.

Q Do you find the primer on each of these four shells that I have shown you to be indented? A Yes, sir.

THE COURT: Mr. District Attorney, can a cartridge be exploded without indentation?

BY MR. RAND:

Q Can such a cartridge be exploded without indentation by the primer? A No, sir; it cannot.

Q Now, after a cartridge has been exploded, are there any distinguishing marks or features or appearances of the shell to indicate whether or not it is loaded with ball?

A Or a Blank?

Q Yes? Whether it is loaded with ball or only with powder? A Yes, sir.

Q What are those?

MR. HURLBUT: I object to it on the ground that it is incompetent and that the witness is not shown to be competent.

THE COURT: Objection overruled.

MR. HURLBUT: Exception.

A In a ball cartridge, the crimp which is placed around the bullet to hold it in place.

Q The crimp, you say? A Yes, we call it the crimp. That is almost all drawn out by the ball passing out. Now, where it is loaded with powder only, we simply have a soft wad to hold the powder in, and we crimp a great deal more.

Q Raise your voice. A I say, in a ball cartridge, when the cartridge is fired, the ball fired out draws most of the crimp out of the shell. In a blank cartridge there is a small wad put over the powder, of that shape (indicating), and the shell is crimped a great deal more, so as to hold the wad in position; and when that is fired, very little of that crimp is turned out, the wad being too soft to force it out.

BY MR. RAND:

Q Now, I ask you whether or not, in your opinion, assuming that those four cartridges on the early morning of February 2nd, 1904, were exploded by the hammer of this revolver, People's Exhibit No. 6, whether or not in your opinion these four cartridge shells were at the time of their explosion loaded with ball?

MR. HURLBUT: I object to that as incompetent, irrelevant and immaterial, that the witness is not shown competent.

THE COURT: On the latter ground of your objection I overrule it. On the first ground, I will observe that, inasmuch as the witness has testified to distinguishing marks of an exploded cartridge, and that those are physical marks -- is that true, Mr. Hewes?-- physical marks that are observable?

THE WITNESS: Yes, sir.

THE COURT: -- that it becomes then a question of fact for the jury to determine from the shells themselves. I sustain the objection.

MR. RAND: Very well.

BY MR. RAND:

Q Let me have that cartridge back. A (Witness returns said cartridge to People's Counsel).

Q Now I show you a cartridge shell which I will call People's Exhibit No. 10 for identification.

MR. HURLBUT: May I see it?

MR. RAND: Yes, I will show it to you.

Q ((Continuing)) That is an exploded cartridge shell, which we will call People's Exhibit No. 10 for identification. I ask you whether or not that has the distinguishing marks on the rim or crimp which you say characterize an exploded cartridge -- A What we designate a blank cartridge.

Q Wait a minute -- an exploded cartridge commonly blank or loaded without ball. Just say whether it does or not.

MR. HURLBUT: Objected to, that it is incompetent.

THE COURT: This shell is not in evidence?

MR. HURLBUT: No, sir; and it is being a subject of <sup>made</sup> comparison.

MR. RAND: It is marked for identification, and I ask him whether or not it exhibits the peculiarities

which he has described as belonging to an exploded cartridge shell which was loaded without ball.

THE COURT: I sustain the objection.

MR. RAND: Can't I have the witness illustrate what he says about a crimp?

(No response.)

Q You have stated, Mr. Witness, that where a cartridge has been exploded which was not loaded with ball, the crimp of that cartridge shell has a certain distinguishing appearance different from that of a cartridge shell through which a ball had passed?

MR. HURLBUT: I object to the question.

Q (Continuing) You have so stated, have you not?

MR. HURLBUT: I object to that question on the ground that it is a repetition.

THE COURT: I overrule the objection.

MR. HURLBUT: Exception.

A Yes, sir.

BY MR. RAND:

Q Now I ask you whether or not you hold in your hand a cartridge shell illustrating and showing the distinguishing marks which you have described to this jury, showing a cartridge shell exploded and where the charge was blank?

MR. HURLBUT: Objected to as incompetent.

THE COURT: I sustain the objection.

MR. RAND: Very well, sir.

THE COURT The witness's description is addressed to the intelligence and judgment of the jury.

MR. RAND: I take it that the witness would be allowed to illustrate. A handwriting witness can write on a blackboard.

THE COURT: They are standards of comparison there.

MR. RAND: That is just what I am offering this for, as an illustration of the witness's story.

THE COURT: There is a special statute applicable to handwriting.

MR. RAND: So can any expert witness, if he has the materials in his possession, illustrate what he means. However, it is not worth while to make a point of it. You may examine this witness.

CROSS-EXAMINATION BY MR. HURLBUT:

Q Have you ever engaged in the manufacture of ammunition?

A No, sir.

Q Have you ever engaged in the manufacture of firearms?

A No, sir.

Q Have you had any experience with ammunition except as a salesman? A As a salesman handling it constantly and selling it and testing it.

Q That is what I mean; of course that would depend largely upon the amount of business which you did as to the amount

of handling. A Yes, sir.

Q Now, have you had any experience with the handling of firearms? A Yes, sir.

Q Other than the sale of them, and exhibiting them?

A And testing them.

Q That is, you would shoot them occasionally? A Yes, sir, to test them for their accuracy.

Q Now, the examination which you have testified to here has been to look at these with your eyes here in court; you have made no examination with any strong instrument to magnify and bring out the characteristics, have you?

A No, sir.

Q All cartridges are not alike, are they? A Well, that question I don't understand, what you mean by that.

Q Do you understand that all cartridges made for revolvers are exactly alike except as to size? A No, sir; there are some rim fire and some central fire.

Q Is this rim fire or central fire? A That is what is known as central fire cartridge.

Q You are not able to state the amount of powder that that shell contained when it was loaded, are you? A Yes, sir.

Q Have you ever engaged in the manufacture of that particular shell or kind? A No, sir.

Q Have you ever seen any of those shells loaded?

A Yes, sir.

Q Manufactured and loaded? A Yes, sir.

Q Of that particular make? A Yes.

Q Now, you say that you are able to tell just how much powder that exploded shell contained. Would you tell the jury how much it contained? A I couldn't without having my list. We have a list of it.

Q Then you don't know except that you refer to some memorandum, somewhere? A We know that the machine loads them all the same.

Q Just a moment. I didn't ask you that. Then you don't know as a matter of knowledge, except that you refer to some memorandum somewhere? A No, sir.

Q Correct. Do you say that, in exploding a shell that contains a leaden bullet, in all instances it leaves the crimp exactly the same? A No, sir.

Q Do you say that in exploding a shell loaded with powder only, that it leaves the crimp exactly the same?

A No, sir.

Q That is all? A Not exactly.

MR. HURLBUT: That is all, sir.

MR. RAND: The prosecution rests.

MR. HURLBUT: Before you close your testimony, Mr. Rand, I would like to have your two witnesses, Mr. Bryan and Mr. Rogers, recalled for a little further

cross-examination.

RE-DIRECT EXAMINATION BY MR. RAND:

Q A Juror wants to know if that is a central fire revolver? A Yes.

BY THE COURT:

Q Well, what do you mean? Explain what you mean by a central fire? A By a central fire is meant that the shell is loaded with a primer -- is fired with a primer, which is in the center of the head. In a rim fire the fulminate that explodes the cartridge is run around in the rim.

BY MR. RAND:

Q Makes a little dent in the rim? A Yes, sir.

J O H N W. R O G E R S , a witness for the People, being recalled for further cross-examination, testified as follows:

BY MR. HURLBUT:

while were.

Q Mr. Rogers, ~~where~~ you in the station house on the morning of February 2nd, did you have a shield? A No, sir.

Q Did you hand one to Mr. Bryan? A No, sir.

Q Did you see him receive one there in the station house?

A No, sir.

Q An officer's shield, special shield? A No, sir.

Q Do you remember the sergeant asking, when you four men were brought in, what you were brought there for?

A Yes, sir.

Q And did one of the officers say, "For being disorderly persons"? A No, sir.

Q You swear to that positively? A Yes, sir.

Q Did the sergeant say to the policemen "What are you bringing those men in for?" A Yes, sir.

Q What else did he say to the officers? A Well, there was apparently no one that wanted to--

Q No, not apparently. State what he said. A He wanted to know who was going to make the charge.

Q Anything else? A That is all that I can recall.

Q Did the officer answer? A I sent Bryan forward to make the complaint.

Q Sent Bryan who?

MR. RAND: Forward.

A Sent him forward.

BY MR. HURLBUT:

Q What did you say? A I told him to go on and make the charge against the prisoners.

Q Did he make a charge? A Yes, sir.

Q Was that charge disorderly conduct? A No, sir. He explained his case -- he explained the case as it transpired.

Q Well, now, I didn't ask you that. Did he say anything about disorderly conduct? A No, sir.

Q Not a word? A Not a word.

Q Did he say anything about attempted murder? A No, sir.

Q Didn't he simply say that they were arrested as suspicious persons? A No, sir -- you are referring to Bryan now, are you?

Q I am referring to what was said there about you four persons, and the charge; do you now swear that the sergeant, when he asked the officer what he was bringing them in for, that the officer did not say that he was bringing them in as disorderly persons? A I have no recollection of any such conversation.

Q No recollection? A No.

Q Is that as strong as you are able to put it? A That is as strong as I can put it, sir.

Q Will you also swear that he did not say that they also were charged with attempted robbery? A There was no such charge.

Q By Bryan or anyone else? A No, sir.

(No further direct examination.)

MR. RAND: Do you also want Mr. Bryan?

THE COURT: No; do not suggest.

MR. RAND: Mr. Hurlbut wanted me also to recall Mr. Bryan for further cross-examination. Is Mr. Bryan in court?

A COURT OFFICER: He don't answer.

MR. RAND: He seems to have gone away. If Mr. Bryan comes in at any stage of the case, I will consent to your reopening to that extent, Mr. Hurlbut.

THE PEOPLE REST.

THE DEFENCE.

DEFENDANT'S COUNSEL'S OPENING ADDRESS.

MR. HURLBUT: May it please the Court, and Gentlemen of the Jury: It is unfortunate, perhaps, gentlemen, under all the circumstances surrounding this case, that the defendant has not been permitted to have his choice in the selection of counsel to defend him. Nevertheless you will perhaps, in dealing with the defendant, be particular to scrutinize carefully the evidence, not only of the prosecution, but of the defence, to supply, if possible, that deficiency which may appear in the conduct of the defence, so long as he has not had the opportunity to select counsel or have his choice in the matter.

Gentlemen, all we ask, in reviewing this case, is that you will keep your minds entirely close to the evidence adduced.

You observed the care which the prosecution and the defence used in the selection of you gentlemen to try this question, and I know that in that care which was taken, you must have had your minds impressed with the

importance, not only of this case to the community, but its importance to the defendant.

Strip this case, gentlemen, entirely bare of everything, of newspaper suggestions and the suggestions of counsel. If you do that, gentlemen, we will be entirely satisfied.

Now, gentlemen, the defence will be very brief. I won't stop now to comment upon the evidence so far adduced, at this time. I say the evidence on the part of the defence will be brief.

My client, gentlemen, in some senses of the word, is an unfortunate man. He may have gained too much notoriety, but that is not evidence against him in this case. The witnesses that we will produce I know nothing about so far as their characters are concerned, or what their past lives may have been, or what they are now. I do know this, and I frankly admit it: They were with the defendant on the evening and the morning in question. There were others that were in the party also, men that we do not know and are unable to get.

On the evening of the 1st of February, this defendant with others, young men similar in looks, similar in size and weight, were at a place kept by Mr. McDermott, a saloon keeper, and there was an opening there that

evening. Most of us know what it means when saloon-keepers have an opening. People congregate there, and they were among the people that congregated at McDermott's on that evening.

After perhaps -- I don't know just what hour in the evening; it was quite late, however -- they came out of there. Others had joined them at the opening. They did not go there together with the others. It was an accidental meeting. They had some beer and they left McDermott's place and came up into the locality that has been described and as indicated by this map of the People's.

They then went to this man Sig. Cohen's saloon, where they had more beer. They came out of there about the hour that has been stated.

Now, right there, gentlemen, is where the People's case differs with the facts, as we claim them. We have never seen, and we are unable to see to-day, as we were yesterday, any young man such as has been referred to in this case. We would like to know where this straw man is, this "young man", this "drunken kid".

The defence will claim and will give evidence that no such person was there. If you believe the evidence that I shall produce upon that subject, it will help to solve this question.

There will be no pretence, gentlemen, on the part of the defendant but what there were some pistol shots, if you please -- put it in that form -- in that locality. It is true there were.

There was a large bunch of young men who came out of that saloon, as the evidence shows and as you must know by this time, together, and there were some pistol shots as a result of the action of this man Bryan in interfering with one of the party who had not done anything to any young man, because there was not any young man there.

The witnesses will explain to you how it was that <sup>Wallace</sup> this man ~~was~~ left their party and went diagonally across the street and encountered there this distinguished detective Bryan.

Mr. Eastman -- I will call him Eastman, for his name is Edward Eastman, he tells me, his right name; I don't know who has given him the name of Monk Eastman or William Delaney -- was not down beyond the point where these young men were after there was the first shot heard. These witnesses will tell you that Eastman went away and went toward Broadway. They knew Eastman; they knew his face and they heard whatever remark was made by one of the party to Bryan when he was asked to let that man go, and they will testify, if I am correctly

informed, that it was not the voice of Edward Eastman that made the remark.

Now, on that point I shall ask you to scrutinize carefully the evidence, because that evidence that is in this case showing that Delaney -- not Delaney but Wallace-- after breaking away or getting away or having been let go, as the case may be, went toward Broadway, and at a time seemed to appear in front of Delaney or Eastman, and that is explained by the fact that Wallace, when he did get his liberty or was given it, ran rapidly toward Broadway and passed Eastman, who had gone to a safe place at a safe distance from the disturbance.

Now, you will want to know, gentlemen, why Eastman did leave this party to go away. The answer is this; He had had some experience; every conceivable offence that happened in a locality where he was or was liable to be, was immediately charged to him, and he wanted no trouble; therefore he went away. The others stayed. Now, gentlemen, that will be substantially the story of the defence; and after you hear it from the lips of the witnesses, I believe you will have a reasonable doubt as to whether the defendant was armed that night and was intending to kill.

If the Court please, before the introduction of

any testimony -- perhaps I should have made the motion before in the case, but I make it now -- I move to dismiss the first count in the indictment, and request your Honor to direct an acquittal upon that count. That is the count charging an attempt to commit the crime of murder, and what I have to say is very brief upon that point.

I claim that there is no evidence adduced by the prosecution to show a premeditated and deliberate design to effect death; that there is no legal proof before the Court to show that the defendant Eastman was connected with the shooting of a firearm that was loaded with gunpowder and leaden bullet, as charged in the indictment, and therefore that the People have failed to establish by legal proof the charge in the first count.

THE COURT: Mr. District Attorney, on what theory does the prosecution claim that the evidence here justifies a conviction of an attempt at murder in the first degree?

MR. RAND: In the first count?

THE COURT: In the first count, yes.

MR. RAND: The prosecution claims that a man who fires four shots in succession at another man, as this evidence shows, has plenty of time to premeditate the ef-

fect of those shots, even if it were not true that he said to his intended victim, "Let go of this man, or I will kill you!"

THE COURT: Well, eliminate that.

MR. RAND: Eliminate the premeditation?

THE COURT: Eliminate the deliberation and premeditation; but is there such a crime as intended murder?

MR. RAND: I so find it in the Code.

THE COURT: What section?

MR. RAND: Section 34.

THE COURT: Assuming that your contention is right under Section 34 of the Code, and that an accused may be convicted of that crime, what punishment could be inflicted upon the man under the law, which says that a conviction of an attempt can only be punished with one-half the maximum punishment for the full completion of the crime?

MR. RAND: I prefer not to answer orally upon that point, because I do not think it is a question proper to be discussed in the presence of the jury, but I will refer your Honor to the Section of the Code.

THE COURT: I think it should be stated orally. I instruct the jury now that this matter of discussion of law between Court and counsel they have no interest in as jurors. Gentlemen, you have nothing at all to do

with it, and you will therefore disregard it.

MR. RAND: If I understand, your Honor's point is that the Statute providing for the punishment of an attempt at one-half what the punishment would be for the completed crime, does not apply here; that is, that you mean to ask how a man can receive half the punishment of death?

THE COURT: I cannot see that he can be electrocuted to the extent of one-half.

MR. RAND: No, that is not it. Section 686, taking effect September 1st, 1902, after the attempted assassination of President McKinley, provides that "A person who unsuccessfully attempts to commit a crime" --

THE COURT: You may stop there. The law defines an attempt to commit a crime as an act done with intent to commit the crime.

MR. RAND: Yes.

THE COURT: Under that definition of law, I would like to hear you define what is an unsuccessful attempt?

MR. RAND: To commit the crime of murder?

THE COURT: To commit any crime. What is an unsuccessful attempt, since the law before that enactment was very clear in its definition as to what constituted an attempt? Now a crime consisted either in the completed act constituting the crime, or an attempt to commit

that crime.

MR. RAND: Yes, sir.

THE COURT: Now I would like to hear you as to what is a non-successful attempt.

MR. RAND: Well, that simply obliges me to *say* that the legislators who passed this section 686 were not very precise in their use of English, but I think the meaning of Section 686 is perfectly plain. The word "unsuccessful" might have been just as well left out. As it stands here, it is redundant, an attempt itself being defined by section 34 as an act done with an intent to commit a crime, and tending to but failing to accomplish it. The word "failing" there is exactly the same as "unsuccessful" is in section 686, and the phraseology there is precisely the same as the phraseology under which your Honor has been sentencing prisoners here for a good many years, so far as that is concerned; even before the amendment in 1902, it provided that a person who <sup>was</sup> successfully attempted to commit a crime is indictable and punishable as follows - and then went on and provided for one-half of the punishment for ~~the~~ completed crime. So that difficulty must have arisen in your Honor's mind before.

THE COURT: No; it arises because of the phraseology of this statute which was passed by the Legislature under

a great condition of public excitement.

MR. RAND: But that part of it was not passed then.

THE COURT: (Continuing) For the purpose of meeting a special case; and it always has resulted seriously whenever the Legislature has entered into an enactment of general laws to meet a special case; it rarely results in either clearness of expression or force in comprehension.

MR. RAND: Well, but --

THE COURT: In the language that the Legislature used up to the time I should say that this section was enacted, there was no such crime known to our law, so far as statute enactment was concerned, as an attempted murder. I know of no case in the State where a man had been indicted and convicted for an attempted murder. The nearest approach to that was contained in the section defining assault in the first degree, where the element was an intent to kill, and that was always construed by the courts as the nearest approach to this action now called an attempt at murder.

But the Legislature enacted this law, as I say, under conditions which we are all fairly familiar with, and in no doubt in their hurry, they certainly have not been happy in the language they selected.

MR. RAND: Pardon me for interrupting your Honor, but the language to which you take exception has been in the Penal Code ever since the Penal Code was passed. It was not passed under conditions of great excitement.

THE COURT: Where is that language?

MR. RAND: In Section 686. The only difference is in the term of years permitted to the discretion of the presiding Judge to which he may sentence an offender.

THE COURT: You see, Mr. District Attorney, therein lies the difficulty. The section provides the punishment, and I have never known of a conviction being had for an unsuccessful attempt at murder. I doubt if any case can be found, in this State or any other State, where a conviction for an unsuccessful attempt at crime can be found.

MR. RAND: May I be so bold as to ask your Honor under what authority you have ever sentenced a prisoner for an attempt to commit a crime? The Code contains no provision for the punishment of such a crime, then.

THE COURT: No; the authority contained in the Code which says that a person convicted of an attempt at crime may be punished for one-half of the maximum term of punishment which the law provides for the full crime.

MR. RAND: But, your Honor, the Code does not say any

such thing. The Code says, "an unsuccessful attempt to commit a crime;" and has always said that.

THE COURT: Oh, no; I beg your pardon. The Code says, "A person convicted of an attempt at crime may be punished for one-half the maximum prescribed for the commission of that crime".

MR. RAND: Will your Honor refer me to that section of the Code?

THE COURT: Oh, yes; the subdivision of the section that you refer to: "In any other case" -- that is, in any other case but murder -- "he is punished by imprisonment for not more than half the longest term."

MR. RAND: But if your Honor will look at the section, you will see that the provision is for the punishment of a person who unsuccessfully attempts to commit a crime.

THE COURT: Yes.

MR. RAND: In other words, there is nothing new in that. It has always been in the Penal Code.

THE COURT: How about subdivision 1; if there be nothing new in that language, how about subdivision 1?

MR. RAND: Subdivision 1 of that section I admit was amended in September, 1902, by a change in the term of years, but that is not a part of the statute to which your Honor has taken exception. Your Honor raises

the point that there can be no such thing as an unsuccessful attempt to commit a crime. Strictly speaking, we will concede that it is so as far as concerns the precise use of English; but as a matter of practice, your Honor has repeatedly sentenced persons under Section 686, which is in the same language, and says, "a person who unsuccessfully attempts to commit a crime" is punishable in a certain way. Now, the meaning of the Legislature, in spite of the fogginess of its language, is perfectly plain. The use of the word "unsuccessful" is redundant; it might have been just as well left out, without any alteration in the meaning of the statute at all; and I cannot see any difference in the application of that section to the crime of an attempt at murder from its application to an attempt at the commission of any other crime.

THE COURT: Mr. Hurlbut, do you wish to say anything?

MR. HURLBUT: I think not, your Honor. I am perfectly confident that your Honor has struck the point exactly that I was going to raise.

MR. RAND: Just what you were going to say?

MR. HURLBUT: No, not what I was going to say, because the Court has said it very much better than I possibly could. I contend that there is no premeditation or deliberation shown, and I believe that there

is no punishment that could be inflicted under that statute. I claim that the most that a man can do in attempting to commit a crime upon the body of another would be to violate that section of the Code 217 which defines assault in the first degree.

THE COURT: I will deny your motion for the present. You may renew it at the close of the case.

MR. HURLBUT: Exception. And I desire also to make the same motion as to the second count of the indictment.

THE COURT: I deny your motion.

MR. HURLBUT: Exception. Now, a further motion, if the Court please: That the prosecution has failed to establish an assault in the first degree. Therefore I ask that the third count of the indictment be dismissed.

THE COURT: I deny the motion.

MR. HURLBUT: Exception. Harry Bonner!

MR. RAND: May I ask that the witnesses who are to testify for the defence be admitted to the room one at a time?

THE COURT: Well, the defendant did not make that request with regard to the witnesses for the prosecution.

MR. RAND: He might have, and I would have been glad to have complied with it.

THE COURT: I will give the witnesses for the defence the same privileges that were accorded to the witnesses for the prosecution.

HARRY BONNER, called as a witness on behalf of the defence, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HURLBUT:

Q Mr. Bonner, where do you reside? A 240 East 9th Street.

Q How old are you? A 24.

Q Do you know the defendant Edward Eastman? A Yes, sir.

Q How long have you known him? A Since boyhood.

Q Did you see him on the evening of February 1st?

A Yes, sir.

Q Do you know where McDermott's saloon is? A Yes, sir.

Q Where is it? A On the Bowery, near Stanton Street.

Q What McDermott is it; what is his first name, his Christian name? A McDermott, that is all I know.

BY THE COURT:

Q You must speak louder, Witness? A I don't know his first name.

BY MR. HURLBUT:

Q Was there anything unusual going on at his place of business on that evening? A An opening.

Q An opening? A Yes.

Q What you call an opening of a saloon? A An opening made after the saloon was opened.

Q Did you go to that opening? A Yes, sir.

Q Was there quite a large number of people there?

A Yes, sir.

Q Any music? A No, sir -- yes, sir; --yes, sir.

Q Where did you see the defendant that evening?

A At McDermott's.

Q You met him there, did you? A Yes, sir.

Q Did any other person go to the place with you?

A Yes, sir.

Q Who? A One boy; he is not here.

Q Who? A One of the boys, a friend of mine.

Q What is his name? A He is not here.

Q I know, but what is his name? A Harrison.

Q Now, how late did you remain there at McDermott's place? A Until about eleven o'clock, I presume; about that.

Q Did anyone leave the place there with you? A Yes.

Q Do you know Edward Farrell? A Yes, sir.

Q And Abraham Levy? A Yes, sir.

Q And Joseph Hirsch? A Yes, sir.

Q And Harry Harris? A Yes, sir.

Q Did they with Eastman go away from McDermott's at the same time you did? A Yes, sir.

Q Were there others that went with you? A Oh, yes.

Q How many, if you can tell, or about how many, left there at the same time and went in your party somewhere?

A Seven or nine.

Q What? A Between seven and nine.

Q Where did you go from McDermott's? A To 42nd Street.

Q How did you go to 42nd Street? A By car.

Q On what street? A Third Avenue car, with transfer at 42nd Street.

Q Where did you go; to what place, I mean, on 42nd Street? A To a saloon.

Q Do you remember to whose saloon it was? A Yes, sir.

Q To whose? A Sig Cohens.

Q Was there any music or dancing at the saloon while you were there? A Piano playing.

Q Do you remember what time it was when you arrived there, or about what time? A About half-past eleven -- between that and twelve.

Q Did your whole party go into the saloon? A Yes, sir.

Q Now, while there did any of the boys treat to beer?

A Yes, sir.

Q Do you remember who? A Can't think of that.

Q Can't tell? A No.

Q About what time was it when you left the saloon to go away? A Between one and two, I guess.

Q When you left the saloon to go away, how did you leave; that is, how did the party leave? A Well, we all went out about together; some scattered a little.

BY THE COURT:

Q Scattered? A Well, scattered -- within twelve or fifteen feet.

BY MR. HURLBUT:

Q You mean by that that you were separated only a short distance from each other? A Yes, a short distance, almost together.

Q But you still continued to form a party? A Yes, sir.

Q Which way did you start to go? A Towards Broadway.

Q Do you remember on which side of 42nd Street this saloon is located? A Yes, sir.

Q Which side? A The right-hand.

Q Is it the uptown side or downtown side? A Uptown.

Q The north side? A Yes, sir.

Q When you came out of the saloon did you see, or was your attention in any way called to a young man standing in a doorway nearby? A No, sir.

Q Won't you tell the jury just what occurred, and all that occurred, after your party came out of the saloon, until the time that the defendant Eastman and one Wallace were ar-

rested and taken away? A Some of the boys --

Q Now, a little louder, so that every juror can hear you. Some of the boys were fooling with one another; in particular--

BY THE COURT:

Q You must speak louder. A Some of the boys were fooling with one another; in particular I noticed Wallace tripping one of the boys up with his foot that was in our company at that time. Thinking he was going to be tripped in return, he ran towards the other side on a slant. When he was about over there, we heard some remark passed, "Let go of me!" or something like that. I couldn't catch it. Some of the boys went over there.

I was a little too far behind to reach there in time, so I stayed back.

I noticed Eastman near me, and I was about halfway over when I saw a crowd getting around; the first thing I heard was a pistol shot.

Q Now, right there; at the time that you heard that pistol shot, can you tell this jury where Eastman was?

A He must have been behind me.

MR. RAND: No; I object to where he must have been.

THE COURT: Strike out the answer, following where he was.

BY MR. HURLBUT:

Q If you know now, at the time that you heard the first

pistol shot,-- if you know, tell the jury where Eastman was?

A Behind me.

Q Now, go on. A When I heard the pistol shot, it kind of scared me for a moment, and I ran back. I heard Eastman remark, "No trouble for mine!"

BY THE COURT:

Q Wait a moment. (To the Court Crier) Take this witness outside and have him remove from his mouth the obstruction he has in it.

(The officer conducts the witness from the room.)

BY THE COURT:

Q Have you ejected the article from your mouth?

A Yes, sir. Pardon me, your Honor.

THE COURT: Now proceed.

THE WITNESS: With that he stayed on the same side of the street and walked towards Broadway.

BY MR. HURLBUT:

Q Now, which side was that? A The other side from where the shooting was going on. The shooting was going on at the sidewalk on the other side of the street.

Q Now, the other side -- I don't quite understand you.

A That would be the south side.

Q Go on. A Well, everything occurred so fast after that that the first thing I knew was when I got to the corner and I seen the crowd collect together, and Eastman was stand-

ing there with an officer.

Q Now, can you tell this jury about how many shots you heard? A Three or four or five; I can't remember.

Q Did you see this man Bryan anywhere? A A short man with a beard.

Q State what he was doing, if anything? A When I was halfway from the other side, or halfway in the middle of the street, I saw the flash of a pistol coming from his direction. The reason I noticed that was because he stood near a store.

BY THE COURT:

Q Do not state your reasons. A I saw that because he stood near a store pointing or looking in my direction.

BY MR. HURLBUT:

Q Was any other person there with him at that time? A Yes.

Q Who was that person? A Wallace.

Q Did you at any time observe Wallace break away or get away from Bryan? A I didn't see that.

Q Do I understand you to say that Eastman, the defendant, was farther towards Broadway from this occurrence than you were; in other words, that you would be behind him, and--

A He was behind me.

Q Well, behind you; would that be towards Broadway?

A Yes, sir.

Q So that you were between Eastman -- A And the crowd.

Q A- and the occurrence that was going on there with Bryan and Wallace? A Yes, sir.

Q Now, at any time did Eastman step out from your party and go toward Bryan? A No, sir.

Q Did he use or have a revolver at any time there that you saw in that party? A No, sir.

Q At any time that you saw him? A No, sir.

Q Did he fire any revolver or pistol at any time there that evening? A No, sir.

Q Do you know who did the firing, other than the shots that you have spoken of that came from Bryan? A No, sir; I do not.

Q Was it in that party that was with you, some of them? A I don't know everybody that was in the party.

Q I know, but were the shots that you did hear, other than the pistol shot, somewhere in that party? A I don't know.

Q Did you have any revolver? A No, sir.

Q Did you go to the station house? A I walked as far as the station house, followed behind.

Q Did you hear the crash of any glass? A Yes, sir.

Q Now, at the time that you heard the crash of glass, where was Eastman? A Eastman must have been on the corner.

MR. RAND: No; I object to where he must have been.

THE WITNESS: I don't know where he was, then.

BY MR. HURLBUT:

Q Was that crash of the glass after you had seen Eastman going toward Broadway? A Yes, sir.

Q How long as it after the first shot was fired before a crowd collected there in the street? A At the same instant.

Q Right off? A Almost at the same instant.

Q How many people do you say got there in that crowd within a short time? A From what I have seen, 50 or 75 in all.

Q Was that up to the time or before the time of the arrest -- before Eastman was taken into the custody of the officer? A Before and up to the time.

MR. HURLBUT: You may examine, Mr. Rand.

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## CROSS EXAMINATION BY MR RAND:

Q You were on 42nd Street on the morning of February 2, when this shooting occurred? A Yes, sir.

Q Bonner, is that your name? A Yes, sir.

Q But is that your real name? A Yes, sir.

Q What is your first name? A Harry.

Q Harry Bonner? A Yes, sir.

Q You were in a crowd with Eastman and some others?

A Yes, sir.

Q Now, Eastman had nothing to do with the shooting?

A No, sir.

Q You knew that, did you not? A Yes, sir.

Q You saw Eastman placed under arrest? A Yes, sir.

Q You saw him taken to the station house? A Yes, sir.

Q You followed down behind him? A Yes, sir.

Q And you went in and explained, of course that your friend was entirely innocent and had nothing to do with the shooting? A I did not go in.

Q What? A I did not go in.

Q Didn't you say that Eastman was a friend of yours?

A Yes, sir.

Q Hadn't he been your friend since boyhood? A Yes, sir.

Q One of your dearest friends? A Yes, sir.

Q And you are one of his dearest friends? A He is my

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friend.

Q But you won't allow him to outdo you in friendship; you are as good a friend of his as he is of yours? A Yes, sir.

Q And when you saw him arrested, after the scrape you say that you did not go in to lift a finger for him? A I couldn't do anything for him.

Q I didn't ask whether you could do anything for him, but you did not go in? A No, sir.

Q You did not go into the station house? A No, sir.

Q Why? A I didn't think why at the moment, but I didn't want to go in.

Q But you had some reason? A I had no reason for it.

Q You just didn't want to? A No.

Q On general principles? A General principles on what?

Q I am asking you for your reasons. You say you did not want to go into the station house, but say you don't know why you did not want to go in?

MR HURLBUT: I object to that. He don't say that.

(No ruling.)

A I had no reason for going in.

Q No reason for going in; is that it? A I didn't see why I should go in.

Q Let me see if I can suggest to you. Didn't you have a reason for going in when the dearest friend you had on earth

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was placed under arrest? Wouldn't that be a reason? A I didn't think I could help him any.

Q You are trying to help him to-day, aren't you?

A Yes.

Q Why couldn't you help him at the first jump when he was first arrested? A Because I am sure it would not have done me any good.

Q Why wouldn't it have done you any good? What is the matter with you and station houses, anyway?

MR HURLBUT: I object to that.

THE COURT: I sustain the objection.

(To the Court Captain) If any persons indulge in laughter or show any signs of levity here, just call my attention to it. This is not a place for laughter or indulgence in expressions.

BY MR RAND:

Q Where do you live? A 240 East 9th Street.

Q How old are you? A Twenty-four.

Q What is your occupation? A Manager.

Q Of what? A Hotel.

Q Where? A 125 and 127 Third Avenue.

Q Is that the Bowery? A Third Avenue.

Q Between what streets? A 14th and 15th.

Q How long have you been manager of that hotel? A Two

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weeks this Friday.

Q What were you before that? A A clerk.

Q Who owns the hotel? A Klausner & Fishandler.

Q What sort of a hotel is it? A Hotel and saloon.

Q Which is it mainly, a hotel or a saloon? A Both hotel and saloon.

Q But mainly which is it; a Raines Law hotel, isn't it?

A No, sir; a bone fide hotel.

Q Let us see; how big a building is it? A Thirty rooms, a double building.

Q Fifty feet on the street? A It is a double lot. I never measured it.

Q And what is on the ground floor? A Saloon and restaurant.

Q And how many stories are there above that? A Three.

Q How many bedrooms are there there? A Thirty.

Q Does it do a large transient trade?

THE COURT: Mr Rand, I would not go into that.

MR RAND: All right, sir.

Q How long have you been manager of that hotel? A Two weeks.

Q What were you before that? A Clerk.

Q Where? A Across the street at the Royal Hotel.

Q Another hotel? A Yes.

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Q And what is the name of it? A The Royal Hotel.

Q Where; near what street? A Between 14th and 15th.

Q How long were you manager of the Royal? A I was not manager of the Royal Hotel.

Q How long were you clerk? A A year and a few months.

Q And before that? A In the portrait business, crayons and pastels.

Q Are you an artist? A No.

Q How were you employed? A Proof passer.

Q How were you employed? A Working for my cousin, Rosenberg.

Q Where is he? A In Chicago.

Q Did you use to live in Chicago? A No.

Q On the night of February 2nd last, where were you employed? A At the Royal Hotel.

Q Off duty that night? A My night off.

Q You went down to McDermott's saloon to attend his opening? A Through an invitation.

Q Had he just opened his saloon? A No.

Q How long has McDermott's saloon been going? A I don't know; two or three weeks.

Q What do you mean by an opening then? A Well, a sort of feast for his friends.

Q A sort of a celebration? A Yes.

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Q To celebrate the fact that he had opened the saloon there three weeks before? A Yes, sir, and it had changed hands.

Q And you were one of the friends that went down?

A Yes, sir.

Q What time did you go down? A About nine o'clock.

Q And was the liquor all free? A (Continuing) Between eight and nine.

Q Was the liquor all free? A No, sir.

Q Didn't McDermott--wasn't he the host? A Yes, sir.

Q He didn't ask you to celebrate his opening at your expense, did he? A He gave a feast.

Q You mean that to include or exclude liquor? A To exclude liquor.

Q He provided the food and you paid for your own drinks; is that it? A Yes, sir.

Q And you stayed there until eleven o'clock? A Between 11 and 11:30; about 11.

Q You didn't drink anything? A Well, a few glasses of beer.

Q And was Eastman there when you got there? A I met him while I was sitting there; I don't know whether he was there or not.

Q And the rest of this crowd that afterwards went up

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with you to 42nd Street, were they there? A They were there while I was sitting there; I don't know whether they came there before me; I met a lot of people there.

Q What I am trying to get at is, at 11:30, when you left this place to go to 42nd Street, you were absolutely sober?

A Yes, sir.

Q And so you were all the rest of the evening? A Yes, sir.

Q In other words your faculties were in a condition to know just exactly what took place all the time? A Yes, sir.

Q So we need not get befogged on that score. Well, between 11:30 and 12, having gone up Third Avenue and crossed to 42nd Street, did you go anywhere else?than to McDermott's?

A No, sir, only in 42nd Street.

Q Do you know Frisch's saloon? A Saloon?

Q Hotel, of course; Frisch's cafe? A Yes, sir.

Q Where is that? A On Second Avenue, corner of First Street.

Q Have you ever been in it? A Several times.

Q Were you there that night? A No, sir.

Q You understand that you are under oath, do you not, Bonner? A Yes, sir.

Q Was Eastman there that night so far as you know?

A I don't know.

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Q Well, was Eastman at Frisch's saloon between half-past eight that evening and 2:30 o'clock the next morning? A I don't know.

Q You don't know? A I don't know.

Q Wasn't Eastman in your company all the time between 8:30 and 2:30? A That was in McDermott's.

Q I don't care whether it was in McDermott's or not. Wasn't Eastman in your company between 8:30 and 2:30 that night? A About nine o'clock, between nine and ten.

Q You say that you went down there between eight and nine, do you not? A To McDermott's.

Q And you found Eastman there, did you not? A I don't know whether he was there when I first came.

Q When did you first meet Eastman? A I may have been there thirty minutes.

Q How long had you been there? A Perhaps about 30 minutes.

Q Fix the time; about nine o'clock? A About that. I didn't keep track of the time.

Q All right. Now I want to know whether Eastman was in your company all that evening and morning between nine o'clock and 2:30? A Yes, sir.

Q Do you know whether he was during that time at Frisch's saloon or not? A No, sir.

Q You don't know? A No, sir.

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Q Well, you were not in Frisch's saloon? A No, sir.

Q And he was in your company, wasn't he? A Yes, sir.

Q Then do you know whether or not Eastman was in Frisch's saloon? A I don't know.

Q Well, all right. You went up to 42nd Street and you all trooped into Sig. Cohen's; is that right; you and your friends? A Yes, sir.

Q Now, tell us those friends again? A Well, Edward Farrell, Abraham Levy--I don't know all the boys that were up there.

Q Tell us all you do know? A Ed. Farrell--

Q Abraham Levy--wait a minute; let us see how many are here. Is Ed. Farrell here? A I don't know; I guess he is.

Q Yes. A Abraham Levy? A Yes.

Q Who else? A Harris.

Q Harry Harris? A Yes, sir.

Q That is the same man that you referred to as Harrison?

A No, sir.

Q Who else? A Edward Eastman.

Q Yes. A And Wallace.

Q What Wallace? A Christopher Wallace.

Q Is he here? A No; he is in jail.

Q You know him, do you not? A I know him from coming up to our place.

Q How long have you known Wallace? A A bout six months or so.

Q And he was with you that night? A Yes; we met him there.

Q Just take a careful look and see if you see Wallace in the room? A I couldn't see him unless he was near me.

Q Unless what? A He was near me.

Q Are you nearsighted? A Yes, my eyes are bad--not very good.

Q Where was it that you saw Abe Levy? A When?

Q Just to-day when I asked you if he was here? A When I came in.

MR RAND: Who was the first man?

MR SMYTH: Ed. Farrell.

BY MR RAND:

Q Where was it that you saw Ed. Farrell just now?

A When I came in.

Q But you just looked down the room and said he was here?

A He must be here when he was here when I came in.

Q Didn't I ask you just now if you saw Ed. Farrell here? A Yes, sir.

Q And didn't you say that he was here? A Yes, but not by seeing him but because he was here when I came in.

Q Now, how far can you see, Bonner, readily; you dis-

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tinguish me as I stand here? A Yes, yes.

Q Can you see the last juror? A Yes, sir.

Q Can you see as far as that officer with the imperial there (indicating)? A Yes, sir.

Q Can you see as far as the officer standing out by the door? A I can see him as a person, but couldn't make out his features.well.

Q But you can make out this officer's features (indicating)? A Yes, sir.

Q And this gentleman sitting at the end of the table; you can make out his features? A Yes; if a man sits singly I can make him out.

Q I want you to make out the features of this gentleman sitting at the end of the table? A Which table?

Q This man who has got his finger up to his cheek?

MR HURLBUT: What is the question?

MR RAND: You have not got it yet.

Q I want you to look at that distance ffrom yourself so as todistinguish and say if you see Crhristopher Wallace?

MR HURLBUT: Well, I object to it.

THE COURT: I sustain the objection.

BY MR RAND:

Q See if within the range of your vision---

MR HURLBUT: I object to it.

Q (Continuing) --you can see Christopher Wallace?

MR HURLBUT: I object to the question as incompetent.

THE COURT: I overrule your objection.

MR HURLBUT: Exception.

A Yes, there (indicating) he is.

BY MR RAND:

Q Stand up, Mr Wallace. (A man arises, being in the custody of an officer.) That is Wallace, is it? A Yes.

Q And there was music and feasting at Sig. Cohen's, was there? A No, sir; piano playing.

Q Well, drinking? A Yes.

Q (Continuing) A s distinguished from feasting. Noth-  
to eat there? A I didn't have anything to eat. I didn't see  
anything to eat.

Q Did you have anything more to drink? A Yes.

Q Just a few more beers, I suppose? A Three or four;  
perhaps five.

Q Just beer? A Yes.

Q You don't drink anything stronger than beer?

A Very seldom.

Q And about what time had you come out from Cohen's; you  
said between one and two, I think? A I wouldn't be sure.

Q Why wouldn't you be sure? A Because it may have been

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half-past one.

Q Couldn't it have been later than that? A It might have been.

Q Might have been half-past two, might it not? A I don't think so. It couldn't have been that late.

Q You are quite sure about that? A Well almost positive.

Q What do you mean by almost positive? Did you have a watch with you that night when you started out? A No.

Q Did you have a watch when you got home? A No, sir.

MR HURLBUT: I object to that and ask that it be stricken out. I think it unfair.

THE COURT: Yes.

MR RAND: The witness has undertaken to tell the time. I asked if he had a watch.

MR HURLBUT: He asked him if he had a watch when he went out and when the witness said no, he asked if he had one when he got home.

MR RAND: The witness has undertaken to fix the time.

THE COURT: It is unnecessary. Strike it out.

BY MR RAND:

Q Did you undertake to tell the time by any timepiece that night? A By a clock.

Q In Sig. Cohen's? A Yes.

Q And you looked at it just when you went out? A No.

Q When did you look at it? A When I came in--well, I was there about ten or fifteen minutes.

Q Where? A In Sig. Cohen's.

Q Were you only in Sig. Cohen's about ten or fifteen minutes? A Well, around there.

Q Call it twenty minutes? A Well, you can call it half an hour.

Q Give us the outside limits of the time you were in Sig. Cohen's? A Of what?

Q The time; make it as large as you like to give it. How long were you and your friends in Sig. Cohen's? A About an hour or an hour and a half.

Q Then why was it that you started to say that you were there for about fifteen minutes? A In Sig. Cohen's?

Q Yes; now which was it, fifteen minutes or an hour that you were in Sig. Cohen's? A It must have been over an hour.

Q Where was it that you were for fifteen minutes? A I don't know what your question is.

Q What did you mean when you said you were in there about fifteen minutes? A You asked if I looked at the clock, and I say it may have been fifteen or twenty minutes after I was in there when I looked at the clock.

Q And what time was it when you were in there fifteen minutes? A I don't remember whether or not it was around one o'clock, but I know I wanted to be home by 2:30.

Q Were you home by 2:30, A No; I didn't get home until about three or four o'clock.

Q You say the clock showed about a quarter past one when you looked at the clock? A Something like that.

Q How long after you looked at the clock was it when you left? A I don't know.

Q Have you any idea? A Well, as I said, about an hour or so.

Q Well, you came out of the saloon--there is a small door there at Cohen's, isn't there; the front door is <sup>not</sup> a double door, it is a single door, isn't it? A I didn't take notice. It was the first time I was up there.

Q The first time you had ever been at Cohen's? A Yes.

Q As you came out were you with Eastman? A Yes, sir.

Q You and he were alongside of each other? A Almost alongside.

Q Which came out first, you or Eastman? A I don't remember that. I know that we came almost together.

Q You did not come out abreast, did you? A Certainly not.

Q Who went out first? A The crowd went out.

Q The crowd? A There was a whole crowd went out.

Q Do you mean the rest of your crowd went out before you and Eastman? A Of my crowd?

Q Yes; I am not speaking about any other crowd; you understand that, do you not? A I saw twelve or fifteen people going out, and women with them.

Q And a lot of people went in and more people went in the next day, but I am speaking ~~about~~ to you about your crowd. Do you understand that? A Yes, sir.

Q Now, the rest of the crowd came out before you and Eastman; where you the last to come out? A Not quite the last, no. There were two or three in back of us.

Q Two? A About two.

Q Who were the two that were back of you? A I don't know.

Q In what order did you go out? A I don't know.

Q Who was the first or second to go out? A I don't know.

Q Who was the last man out? A I don't know.

Q Where was Wallace; behind you? A I don't know; I don't think he was behind me.

Q What first attracted your attention to Wallace after you came out of Sig. Cohen's? A Some of the boys that I know were fooling with one another.

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Q Which boys? A Boys that I know.

Q You knew them all, did you not? A I knew three or four or five.

Q They were fooling? A Yes, fooling with one another.

Q Go on. A And Harrison--I believe it was Harrison, I am not sure---

Q Why aren't you sure? A He was tripped by Wallace.

Q Wallace tripped Harrison up?

MR HURLBUT: Not Harrison; Harris.

MR RAND: There were two of them, one named Harrison and the other Harris.

MR HURLBUT: Not two.

THE WITNESS: Harrison.

BY MR RAND:

Q Wasn't there a Harris, too? A Yes, there was a Harris with us.

MR RAND: Yes, I told you there were two, Harris and Harrison.

Q Now, did Wallace trip Harris or Harrison? A I think Harrison.

Q Don't you know? A I seen them all folling with each other.

Q Do Harris and Harrison look alike? A No; one is dark and one is light.

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Q Which was it that Harris was tripping? A Harrison.

Q And which is he, the dark or the light one? A The dark.

Q What did Harrison do when Wallace tripped him? A He tried to trip him back, I guess.

Q Don't guess about it; what did you see him do?

A He ran after hom.

Q He chased Wallace? A Not a hard run.

Q A sort of a trot? A Yes, sir.

Q And how was Wallace going? A On a trot.

Q Trotting along? A Yes, along the sidewalk.

Q What? A Along the sidewalk; and then he ran over---

Q Now, wait a minute; don't get ahead of me. I can't trot so fast. And did Harrison succeed in catching Wallace on this trot? A No, he didn't catch him.

Q How far did they run before he gave up the pursuit?

A At a slant; almost to the other side of the street.

Q Harrison all the time after Wallace? A I don't remember that.

Q That is what I ask you. Now, Harrison stopped running after Wallace? A I didn't take notice.

Q You did not notice? A The first I heard---

Q Now, just wait and answer the question. There were no stops up to this time? A No, sir.

Q And then the first thing you knew you saw Wallace and Bryan struggling at Lewis & Conger's window? A I heard Wallace holler something, as, "What have you got me for? Let go!" I couldn't remember it now to speak of it.

Q Then I wouldn't speak of it if you can't remember it. Just cut out everything you don't remember. I want what you do remember. I want to do know if the next thing you saw was Wallace struggling in the grasp of Bryan in front of Lewis & Conger's window? A What I would take for a struggle--I don't know.

Q All right. A At first I---

Q As far as you have got, this man Wallace tried to trip Harrison and then ran in front of Lewis & Conger's window?

A What was that <sup>the</sup> question?

Q I say, as far as you have got, this man Wallace tried to trip, or did trip Harrison, and then ran across in front of Lewis & Conger's window; is that right?

MR HURLBUT: I object.

Objection overruled. Exception.

A After Wallace tripped Harrison?

BY MR RAND:

Q You remember about that trip? A Yes, I remember when Wallace was tripped.

Q What? A I remember well when Wallace was tripped.

Q Who tripped Wallace? A Well, fooling around.

Q Stop, stop. Who tripped Wallace? A I don't know. They were fooling around with one another.

Q Did somebody trip Wallace before Wallace tripped somebody else? A Yes--at first fooling around each other; we were all fooling.

Q Didn't you just tell me that the first thing that attracted your attention to Wallace was when Wallace tripped Harrison; didn't you say that a minute ago? A Wallace did trip Harrison.

Q Was that the first thing you noticed of Wallace after you got out of the saloon? A I don't remember of anything else.

Q What did you say it was for?

MR HURLBUT: Objected to. He didn't say so.

MR RAND: I beg your pardon. The minutes will show that he did.

THE COURT: If he did not he can say so.

BY MR RAND:

Q Do you mean to say now, that before Wallace tripped Harrison, somebody else tripped Wallace? A I only remember when Wallace tripped Harrison.

Q You don't remember anybody else tripping Wallace?  
A No. I misunderstood you.

Q I thought somebody else tripped Wallace? A No; Wallace tripped Harrison.

Q But didn't you say that somebody else tripped Wallace not two minutes ago? A I couldn't say he tripped him because I did not see Wallace get tripped.

Q You don't know anything about anybody tripping Wallace, do you? A No.

Q You didn't say anything about it, did you?

MR HURLBUT: I object to that question. The jury has heard what he said.

THE COURT: Yes; the jury did hear what he said.

THE WITNESS: It is something that no one would remember.

BY MR RAND:

Q Why wouldn't anybody remember it? A (No answer).

MR RAND: Well, I won't pursue that; but I would like to get him across the street.

Q Now, whether somebody tripped Wallace or Wallace tripped Harrison, Wallace did run across the street in front of Lewis & Conger's window? A Yes--well, I don't know the name of the place.

Q The crockerty store? A I don't know what kind of a creckery store it is.

Q Would you know the store if you saw it again? A I

don't think so.

Q Big electric light in front of it? A I didn't take notice.

Q Couldn't you take notice of an arc electric light that night? A I didn't see why I should take notice of it.

Q Couldn't you see, when these people were over there, what kind of a shop they were in front of? A I don't know.

Q Did the place have a show window in front of it? A All the stores have show windows.

Q All the stores? A Most of the stores.

Q Yes, I know. Did this one? A Yes, it had a big plate glass window.

Q You saw that? A Yes.

Q And you saw Wallace in front of that big plate glass window? A What do you call in front of?

Q On the street side of it? A On the side?

Q On the side, yes. A Yes, yes.

Q I did not mean in the showcase. I mean in front of it on the sidewalk; you saw him there? A Yes, sir.

Q And there was some one with him? A Yes.

Q And that was Bryan? A Yes.

Q And was that the first time you had seen Bryan?

A Yes.

Q The first glimpse you had of Bryan was when he and Wal-

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lace were struggling? A When I was in the middle of the street.

Q I didn't ask you where you were. You didn't see Bryan until you saw him and Wallace struggling in front of that window? A Yes.

Q Now, you did hear somebody say, "Let go of him"?  
A No, sir.

Q What? A No, sir.

Q Didn't you tell Mr Hurlbut that you heard some one say, "Let go of him"? A I don't remember.

Q You don't remember that anyway, do you; what? A No, sir.

Q If you did say that that was not so, was it?

MR HURLBUT: I object to that as incompetent.

Objection overruled. Exception.

BY MR RAND:

Q If you did say that it was not so, was it? A I don't understand you.

Q What don't you understand; what is the difficulty about that question?

THE COURT: He may not understand what you are referring to.

BY MR RAND:

Q Did you hear anybody call out that night, "Let go of

him?" A At what time?

Q While you were in 42nd Street and while Bryan and Wallace were struggling in front of that window? Do you understand that question? A Do you mean an outsider?

Q Oh, never mind whom I mean. Now, I ask you a plain question: Did you hear anybody call out, "Let go of him"?

A I heard some remark, but I don't know exactly what it was.

Q What was the remark that you heard? A I heard, "Let go; what are you doing?" or "What are you holding on for?" or something like that.

Q Then you did hear some one say something to the effect, "Let go of him; what are you holding on to him for?"

A Something like that.

Q You did hear that? A I wouldn't swear to the words.

Q But the substance of them; that is what the words meant; that was the effect of them? A The effect--something on that order.

Q You did hear that? A Yes, sir.

Q And you heard that while Wallace and Bryan were struggling in front of the window, did you not? A I didn't see much struggling.

Q I will cut out the struggle for you. While Wallace and Bryan were in front of the window, you heard that, did you not? A Well, it must--yes.

Q Then what did you mean, Bonner, by telling this jury, within two seconds, that you did not hear anybody say, "Let go of him"? A I didn't hear it in them words.

MR HURLBUT: I object to it on the ground that the witness has explained just what he did hear and how he understood it. He has explained it twice.

MR RAND: Well, all right, all right.

Q Now, you also heard a lot of pistol shots, did you not?

A Not a lot.

Q What do you call a lot? We might differ. One might be enough for some of us.

MR HURLBUT: I object to that.

THE COURT: Do not argue with the witness.

MR RAND: No, sir.

A You mean if I heard three or four or five?

Q Or six or seven or eight? A No; there couldn't be that many.

Q Now, why not six or seven or eight, what is the difference between three or four or five and six or seven or eight? You make the distinction? A Well, you could remember eight.

Q All right; yes, you could remember eight? A Yes, it would last longer.

Q Did you pay attention to the number of shots that were

fired? A No, sir; I was too scared.

Q Did you pay as much attention to the shots that were fired as you did to the arc light and to Lewis & Conger's window? A You could hear the shots.

Q You saw Bryan fire one of those shots, did you not?  
A I saw the flash coming from his direction, because he was facing me.

Q You say he and Wallace were not struggling?

MR HURLBUT: I object to that question.

MR RAND: He did say that.

A I didn't say they were not.

MR HURLBUT: Wait a moment, witness.

BY MR RAND:

Q What were Wallace and Bryan doing in front of that window? A Well--I thought it was Bryan holding on to Wallace.

Q And what were they doing? You don't mean he was embracing him? A I couldn't get near enough at first to find out what they were doing.

Q At last what did you find out? A I seen Bryan holding Wallace.

Q Bryan was holding Wallace? A Yes, sir.

Q Was Wallace struggling? A Well, I don't know how hard he struggled.

Q I didn't ask you how hard he struggled. Was he strug-

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gling? A A little bit.

Q And was Bryan struggling a little bit to hold him?

A I was not there long enough to see all that.

Q Well, you saw Wallace struggling a little bit, did you not? A From the first moment.

Q I don't ask you when. You did see Wallace struggling a little bit, did you not? A Yes, sir.

Q And finally his little bit of a struggle was successful in freeing him, wasn't it? A I don't know.

Q He got away, didn't he? A I don't know.

Q Don't you know whether he got away or not? A No.

Q Where was Wallace when you saw the flash from Bryan's pistol? A Bryan was holding him.

Q Still holding him? A Yes.

Q Could you tell where he fired? A In the crowd opposite to him.

Q He didn't fire at Wallace then? A Well, he couldn't have fired at Wallace.

Q I didn't ask you whether he could have fired at him. He did not? A No.

Q You are sure of that? A Yes.

Q And all this time Delaney or Eastman was on what side of the street? A He was behind me.

Q On the north side of the street? A On the other side.

Q The north side? A The same side as the saloon, the north side.

Q That is what I say, the north side? A Yes, sir.

Q He was behind you on the north side of the street until after it was all over, wasn't he? A No.

Q When did he cross over?

MR HULRBUT: I object to that question. It assumes that he did cross over.

Objection overruled. Exception.

A He couldn't have crossed over.

BY MR RAND:

Q I don't ask what he could have done; did he? During the whole period of this excitement, after you came out of Sig. Cohen's saloon, did Delaney or Eastman here, cross over to the north side of the street? A No, sir--not at the crowd there. When I see---

Q That is just a plain answer.

MR HURLBUT: Let him answer.

MR RAND: No, I want a plain answer to that question.

A I don't understand you.

Q After you came out of Sig. Cohen's that night until you went into your bed, did you see Delaney cross 42nd Street from the north to the south? A I didn't see him cross.

Q And he was not across, was he? A When do you mean?

Q I mean just what I say. You didn't see him across and you did not see him cross the street, did you? A I see him across the street.

Q When? A When the officer had him on the corner.

Q Where was he arrested? A On the corner of Broadway.

Q Which side of the street, south, or north? A I am not positive whether it was on any side.

Q You are not positive about that? A No.

Q What is the difficulty? A There was an awful crowd there. One was shoving the other.

Q But the crowd was not interfering with the points of the compass, was it? A You could hardly tell where you were.

Q You know the difference between north and south, do you not? A Yes, sir.

Q You know that Sig. Cohen's saloon, for instance, was on the north side of 42nd Street, do you not? A Yes, sir.

Q And you know that the old reservoir is on the south side, do you not? A I don't know.

Q Which side is the Grand Central Station on?

THE COURT: Oh, I do not think it is necessary.

BY MR RAND:

Q Do you mean to say you do not understand my question well enough to tell the jury whether Delaney was arrested on the north or south side of 42nd Street? Is that what you mean to

have them believe? A I couldn't swear to it. I was too excited.

THE COURT: It does not matter what he means them to believe. The question is the fact, if he knows it.

MR RAND: He said he could not understand what I meant.

Q Was Delaney arrested on the north or south side of 42nd Street?

THE COURT: Let him answer that question.

BY THE COURT:

Q Can you answer the question? A No, sir, I could not positively.

BY MR RAND:

Q Why could you not?

MR HURLBUT: I object.

A Because I am under oath, and I would not swear false.

MR HURLBUT: Wait a minute.

THE COURT: He gives a reason; that he is under oath and would not swear falsely.

BY MR RAND:

Q Did you not see him when he was arrested? A Yes, sir.

Q Where was he when you saw him? A On the corner.

Q Which corner? A On the corner of Broadway.

Q Which corner of Broadway? A Which corner?

Q Yes, on 42nd Street.

MR HURLBUT: If the Court please---

MR RAND: No; I have got to have this question answered.

MR HURLBUT: He has explained that he was arrested on the corner of the street next to Broadway, but just which corner he don't remember. Isn't that plain enough?

BY MR RAND:

Q Is that what you mean, that you don't remember? A No, sir; because I was too excited. There was a large crowd of people there.

Q What became of Wallace? A I didn't see Wallace in the crowd there until we were walking a few blocks towards the station house.

Q Then you saw him in the crowd, did you? A Yes, sir, saw him with the officers.

THE COURT: We will suspend here.

MR RAND: I will let this witness go with one more question.

Q You did hear the crash of glass after some of these shots were fired, did you not? A Yes, sir.

Q Where did that glass crash? A Where Bryan was.

MR RAND: That is all.

THE COURT: Have you any questions to ask on the re-

direct?

MR HURLBUT: I think I have no further questions to ask.

MR RAND: Will your Honor kindly direct this witness to remain? I may have further use for him.

MR HURLBUT: Do you mean by that that you will probably examine him further?

MR RAND: I may, yes.

MR HURLBUT: I insist upon his examination being completed now.

THE COURT: That question I will determine when it comes up.

MR RAND: I simply want his attendance required; that is all.

MR HURLBUT: The insinuating remark of the District Attorney, in my judgment, is entirely out of place.

THE COURT: I attach no importance to that at all,

MR. RAND: There was no insinuation whatever.

THE COURT: Simply the District Attorney may desire to call him. Mr Hurlbut, can you intimate to me the number of witnesses that you desire to call?

MR HURLBUT: I have, if the Court please, four at the outside, perhaps, besides the defendant. I think the others will be shorter than this one.

THE COURT: Mr District Attorney, have you any witnesses to call in rebuttal?

MR RAND: I may have one witness in rebuttal, that is all.

THE COURT: I think under the circumstances it is not probable that any other case can be reached to-day.

MR RAND: Oh, no, sir, I think not.

THE COURT: (To the Court Clerk) You may excuse all jurors not impanelled until to-morrow morning.

The Court admonished the jury according to Section 415 of the Code of Criminal Procedure.

RECESS UNTIL 2 P. M.

AFTER RECESS

EDWARD FARRELL, called as a witness on behalf of the ~~Defense~~ <sup>Defense</sup>, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR HURLBUT:

Q Mr Farrell, where do you reside? A No. 423 West 17th Street.

Q In the City of New York? A City of New York.

Q How old are you, Mr Farrell? A I will be 23 years old next birthday.

Q Do you know the defendant? A Yes, sir.

Q Edward Eastman? A Yes, sir.

Q How long have you known him? A Well, for the past eight years at least.

Q Do you know the McDermott place? A Yes, sir, I know the place.

Q Were you there on the evening of the first of February?

A Yes, sir.

Q What time did you go there? A Well, in around nine o'clock--sometime around nine o'clock; a little later or a little before; I don't know which.

Q Did you see the defendant there that evening? A Yes, sir.

Q Later in the evening did you leave that place with him or with others to go to 42nd Street or uptown? A Yes, sir.

Q Who were the persons that went on that occasion that you not recollect? A That I met uptown?

Q That went with you uptown? A There were quite a few that went uptown.

Q How many would you say went? A Well, at the very least there must have been a dozen.

Q Of that number, give me the names of those you knew?

A Well, I knew this defendant here and I knew Wallace to a

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certain extent, and Mr Bonner, a short while, and Mr Harris, and of course the names of lots of people that is not present in court at present.

Q Do I understand you to say that you knew some others that were along? A Yes; I knew a few others. I didn't know them all.

Q Where did you go on 42nd Street? A Went to a saloon on 42nd Street, near Sixth Avenue.

Q Do you know whose saloon it was? A A man run it by the name of Sig. Cohen.

Q What time did you get there? A Well, it must have been somewheres around half-past eleven. I can't exactly recollect the exact, positive time.

Q I only ask you about what time? A Around half-past eleven.

Q Now, before you left McDermott's, did you first have any beer to drink? A Yes; there was quite a few rounds of beer there.

Q And after you arrived at Sig Cohen's place in 42nd Street was there any treating by your party? A Yes, there was.

Q What time did you leave Cohen's to go home? A Well, it was after two o'clock; what time after, how long after, I can't say.

Q You think it was after two? A It was after two, yes.

Q Now, explain to the jury how you left the place to go down to the sidewalk; in what manner, I mean, your party left the place? A Well, the place is on the first floor. It is overhead of the saloon. We started out of there and walked downstairs and I was the first one out of the door so far as I can remember. I am almost positive I was the first one out of the door; and after me came the rest of them. I can't mention, of course, who was after me, but as I walked out, I was of course ahead. So I turned around several times to see if the rest were coming, and I noticed that there was fooling going on among the crowd.

Finally, I know I seen some one step across the gutter, not at a very lively pace, as if getting out of the way, and I recognized the man as the tallest one of the crowd, which was Wallace; and the first thing I knew again then, I saw some man running after him, with whiskers, and he got hold of him.

Well, he walked him back through 42nd Street a few doors at least, and then Wallace, he held him there; and then, to the best of my remembrance--of course I stood on this side of the street (indicating).

Q When you say this side you mean the same side that the saloon was on? A Yes, sir.

Q Go on. A I stood on this side of the street, and I noticed a few of them keeping on walking down ahead of us, ahead

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of the people that stood there to watch what was going on; and I am positively sure that Mr Eastman walked ahead of us.

He was the man--I didn't hear no remark made from him; if there was a remark made I didn't hear him, but he walked on ahead of us, I am positively sure, and he was not there as soon as the trouble began.

As soon as that man was holding Wallace he was not there.

Q Eastman was not there? A No, sir; Eastman was not there, I am positive.

Q Which way did he go? A He walked on towards Broadway. We were going that way to take a car to go home.

Q I see. Now, did you hear any shots fired? A Yes, sir, I heard shots fired.

Q Now, with respect to the very first one that you heard, where was it that shot was fired from, if you know? A Well, that shot seemed to be fired from--of course, standing around, I don't know exactly where it was fired from. In what direction do you mean?

Q No; from what source did it come; what point? I mean, was it down toward Bryan or was it around your party? A Well, it seemed to come from towards Broadway.

Q Yes. A Yes, sir.

Q Well, that would be---well, explain, I won't lead you?

MR RAND: No, do not.

MR HURLBUT: Not at all.

Q Now, at that time---

MR RAND: Aint you going to let him answer the question?

MR HURLBUT: It seems he has answered.

Q At that time, Mr Farrell, did you know where Eastman was? A That I can't exactly state, where he was, but one thing I can positively state: He was not in that crowd. He walked ahead. After he walked ahead, of course I didn't look around to see how far away he was; but he was not in that crowd.

Q At the time you--- A I heard the shots fired.

Q What else occurred after hearing the first shot?

A Well, I heard a few more shots.

Q And what direction did they come from? A Well, they come from different directions. To tell the truth, I was so excited at hearing the shots that, of course I couldn't tell you. I wanted to get away from there.

Q Now, did your party go any distance toward Bryan and Wallace, after Bryan had seized Wallace? A Well, a few of them went across the gutter.

Q State what you observed that occurred after Bryan seized Wallace, or this man that had the whiskers? A Well, the two of them seemed---we walked up first and then they came up around the store on 42nd Street with the big plate glass

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windows in front of it, and he stood there, and of course I don't know exactly if they wrestled or anything. I didn't see no scuffle between them exactly, but the next thing I knew I heard shots fired that seemed to come from the direction where Bryan was standing. I saw the flash of the light, the fire, from the gun, and the next thing I know--I don't know whether Bryan let Wallace go, or how he got away, but I see Wallace walking down towards Broadway.

Q On the southerly side? A On the southerly side, yes, sir.

Q Now, when you saw Eastman leave the crowd and start for Broadway, which side of the street was it that he started on? A On the north side.

Q Did the defendant, Eastman, at any time, while Bryan had Wallace there in the street, step out from your party, or crowd, and fire four shots at him? A He was not there to fire any shots.

Q Did he fire them? A No, sir.

Q He did not? A No, sir.

Q After you came out of the Cohen saloon, or when you came out, did you observe, or was your attention in any manner called, to a young man standing in the doorway on the north side of the street? A Well, I will tell you, sir. I was the first one out of that saloon, and naturally I did not walk very

far.

I stood to see the rest come, and I didn't observe any young man of any kind standing there at all, and I am lamost positive, because I looked around.

Q Did you see any of your party do into a doorway and make a motion as though he was striking at some object?

A No, sir, I did not.

Q Did you hear Bryan say anything to Wallace, and if so, what?

A I didn't hear him make no remark at all.

Q After Wallace had started down Broadway, and after he had been held by Bryan, where did your crowd or party go, that was left, I mean, there?

A In the first place, Wallace did not start down Broadway. He walked down 42nd Street towards Broadway.

Q I mean towards Broadway?

A Yes, sir.

Q After he started towards Broadway, and after he had been held by Bryan, what did your party do; where did they go?

A After he got away from Bryan, or Bryan left him go, whichever he did†††-

Q Yes?

A Well, he went toward Broadway and naturally enough we kept on walking.

Q Not naturally, bur did you?

A I did, yes.

Q Well, did your party? A As much as I seen of them, they did, yes.

Q Did the defendant, Eastman, at any time there that night or morning say to Bryan, or any one else: "You God damned son-of-a-bitch, I will kill you?"

A I heard no such remarks by anybody.

Q You heard no such remark by any one?

A No, sir.

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## GROSS EXAMINATION BY MR RAND:

Q What is your name? A Edward Farrell.

Q Is that the only name you have? A That is the only name I have, sir.

Q Is that the only name you ever did have? A Yes, sir, unless I lost one.

Q You don't remember losing any? A No, sir, I do not.

Q You omitted to state your business; what is it?

A I am a salesman.

Q For whom? A Max S. Glasser.

Q What is his business? A He is a representative of a whiskey firm.

Q Where? A He is a representative here in New York. The whiskey firm is in Cincinnati, Ohio.

Q Where is his place of business in New York? A 60 East 11th Street is his office.

Q Does he have warerooms there? A He has an office there.

Q Has he any warerooms there? A No, sir, not that I know of.

Q In what capacity do you work for this whiskey agent in? A Well, salesman--doing everything at all, of course, he asks me to do, that I can do.

Q What does he ask you to do? A Well, different things.

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I go around advertising for him.

Q You go around soliciting orders for whiskey for him, do you not? A Yes, sir.

Q In what sort of places do you solicit orders?

A Well, any place I can get an order in, soliciting, of course--different kinds of places.

Q Do you know this place, McDermott's? A Yes, sir.

Q Did you sell any whiskey to McDermott? A No; I have tried it.

Q Do you know Frisch's saloon in First Street? A I don't know any place, any saloon in First Street except Hirschhorn's.

Q Well, cafe? A Yes, sir.

Q I beg your pardon. Will you pardon me? A Yes.

Q Where is it? A At First Street and Second Avenue.

Q Now we have it, Frisch's cafe at First Street and Second Avenue? A Yes, sir.

Q You know it, do you? A Yes.

Q Did you sell your wet goods there? A No, sir; don't use that kind of brand.

Q How about Sig. Cohen's? A Never attempted to sell him any.

Q Had you ever been there before that night? A That was the first time I was ever there, that night.

Q Who took you there? A I went there with the rest of

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the boys.

Q Who suggested it? A Myself--the suggestion was made by who, I don't know.

Q You were at McDermott's earlier in the evening?

A Earlier?

Q Yes. A Before I went to Sig. Cohen's, yes.

Q Yes, earlier in the evening? A Yes, sir.

Q And you say you know this man Eastman well? A Yes, sir.

Q You have known him for eight years? A Yes, sir.

Q He is an intimate friend of yours? A Well, yes, pretty intimate.

Q And you are an intimate friend of his? A Well, to a certain extent, yes.

Q Now, were you not in Frisch's cafe that night between nine o'clock and half-past two? A No, sir, I was not.

Q And your friend Eastman was not there? A Eastman was with me, sir.

Q Was he with you all the time? A Yes, sir, he was with me all the time.

Q Answer my question; was Eastman in Frisch's saloon that night? A Not between nine and half-past two, sir, he was not.

Q That is what I asked you. How long was he at McDermott's? A How long was he at McDermott's?

Q Does it help you to repeat the question every time because it takes time, you know? A Well, I want to make sure.

Q How long was Eastman in McDermott's saloon that night?

A For at least two hours, as well as I can remember.

Q Is there anything the matter with your memory? A No, I don't think so.

Q It is in as good condition as ever? A I think so.

Q You didn't have anything to drink that night except beer, did you? A I don't drink, sir.

Q I beg pardon? A I don't drink no intoxicating liquers.

Q Not even beer? A No, sir.

Q Then your mind was in an absolutely clear condition the entire evening? A I suppose so.

Q May I ask how you amused yourself for those six hours from the time that you went to McDermott's opening till you went to Sig. Cohen's saloon; what were you doing?

MR HURLBUT: I object to the question.

MR RAND: I have not finished.

THE COURT: Well, I sustain the objection as far as it has gone.

MR RAND: I might make it competent if I completed it.

THE COURT: Then recast it.

BY MR RAND:

Q You were at McDermott's? A Yes.

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Q That was the opening of the saloon? A Yes, sir.

Q He was setting it up to his friends? A He was what?

Q Setting it up. Do I puzzle you? A No; you don't puzzle me.

Q Well, setting it up; do you understand that? A Yes, sir.

Q That is what he was doing? A Yes, sir.

Q You were there between nine and eleven? A Yes, sir.

Q And you had nothing oto drink? A I had soda.

Q How many sodas? A That I couldn't tell; I didn't count them.

Q About how many? A Well, five or six.

Q Plain soda or sarsaparilla? A Birch beer and plain soda.

Q Six plain sodas? A Yes, sir.

Q And along about eleven o'clock you were pretty hungry?

A No, I don't think so.

Q Were you feeling all right with those six sodas in you?

A Yes.

Q That you had up to Sig. Cohen's? A Yes, sir.

Q Did you have some more plain sodas? A Yes.

Q How many did you have up there? A I can't tell.

Q You were in Sig. Cohen's for about two hours? A Yes.

Say three or four.

Q Were you still feeling comfortable with those sodas?

A Those sodas had no effect.

Q They had no effect upon you? A No, I don't think so.

Q And at half-past two, you left, did you? A Well, in around that time.

Q You had no watch, did you? A No, I had no watch.

Q You didn't look at any watch or clock? A Well, I looked at it a few times, of course.

Q When did you look at it last? A When did I look at it last?

Q Does that help you, to repeat the questions? because it does take time. A Well, I am looking at a clock now, if that is what you mean.

Q I mean the clock in Sig. Cohen's? A Oh, well!

Q Yes, I mean that clock; you didn't understand me, did you? A That night.

Q What time that night? A I can't say.

Q What is the matter with saying? A I don't exactly remember.

Q About what time did you look at it? A I can't say that either.

Q Well, within two hours? A Within two hours?

Q Yes. A I don't quite understand what you mean.

Q Well, if you don't understand what I mean we will pass

on to something else. Now, you say there was an overhead place at Sig. Cohen's? A I said that the place we went to was overhead of the saloon. There is a parlow upstairs.

Q A what? A A parlor, where there was a piano and singing goinon.

Q This was not Sig. Cohen's opening, was it? A No, sir.

Q Was liquor served up there in the parlor? A Yes.

Q Dancing? A No dancing.

Q Ladies present? A There was ladies present, yes.

Q About how many ladies were present? A Well, to the best of my knowledge, ten.

Q Were you acquainted with any of the ladies? A No, sir.

Q They were all strangers to you? A All strangers to me.

Q Did you do any dancing? A There was no dancing in the place.

Q This was a sort of a concert? A Well, yes, if you will call it that.

Q I will call it anything you choose to name. A concert, what you might call a piano recital? A If you say it was a piano recital, all right.

Q That was all the music there was? A Yes, and singing. Of course singing is not music.

Q Was it a professor playing? A I didn't ask him.

Q Well, a man? A There was a man.

Q And who was singing? A Another man.

Q One man was singing? A At one time only one man was singing.

Q But during the whole evening did one man do all the singing? A I think there was another man.

Q You didn't do any of the singing? A No.

Q In other words, there was no general ~~XXXXX~~ chorus?

A No.

Q Did any of the ladies sing? A No, not that I heard.

Q They sat around and listened to the singing? A Sat around and listened.

Q And drinks were served? A Yes, sir.

Q Soda? A What is that?

Q Soda drinks were served? A Soda---drinks of all kinds, in fact.

Q But you shunned them all except soda? A Yes, I took only soda.

Q So, with a perfectly clear head and easy conscience you came out of Sig. Cohen's at 2:30, is that right?

A Yes, sir.

Q And you were the first man out? A I was the first man out of the place.

Q Whereabouts did Eastman pass you? A Whereabouts?

Q Now, don't repeat my questions? A How far from Sig.

Cohen's do you mean?

Q Whereabouts? You can describe it whatever way you want to; I mean what place? A One door past Sig. Cohen's, because I---

Q I don't want your reasons. Eastman passed you one door east of Sig. Cohen's? A One door west of Sig. Cohen's.

Q And did any one pass you before Eastman passed you? A No, sir, I don't think so--well, that I can't exactly state.

Q Don't state anything that you can't state exactly? A Well, I am not stating it.

Q You don't know whether any one passed you before Eastman did? A No, I don't know. What is that?

Q Your counsel--I beg your pardon; the counsel for the defense insists that you did not say that you did not know. Isn't that what you are saying?

MR HURLBUT: I beg your pardon. I say that you repeat things that he does not speak in answer to your questions, and you assume that he said it.

BY MR RAND:

Q Didn't you tell me that you didn't know that Eastman was the first one that passed you? A No, sir, I didn't tell you anything of the kind--at least, I don't think so.

Q Now, tell us, was Eastman the first man that passed you? A Well, to the best of my recollection, going from

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there I said Eastman was the first man that passed me.

Q That is what I am trying to get at. Didn't you just tell this jury two seconds ago that you didn't know whether any one passed you before Eastman? A Didn't I---well, yes; I know he was the only one that passed me.

Q Now, wait a minute; not so far; let us understand each other. Is it or is it not the fact that Eastman was the first one of your crowd that passed you? A Well, yes, sir, he was.

Q Now, I want to know, didn't you say two minutes ago that you didn't know whether he was or not? A I beg your pardon.

MR HURLBUT: It is a matter of recollection of the jury.

MR RAND: This is cross examination.

THE COURT: I overrule the objection.

MR HURLBUT: Exception.

BY MR RAND:

Q Didn't you say that two minutes ago? A I don't know whether I did or not, to tell the truth.

Q Have you been drinking soda to-day?

MR HURLBUT: I object to that question.

(No ruling.)

Q Is your memory good? A Yes, my memory is good.

Q Didn't you two minutes ago tell this jury that you

didn't know whether Eastman was the first man that passed you or not? A Well, I will tell you why, if I did make that remark why so; because there was more than him that came along, that all seemed to go along together.

Q Now, we are getting at it; in other words, the crowd passed you together? A As soon as they came along and Eastman went ahead I went with them. I didn't wait for any one.

Q You went along with Eastman? A Right along with the rest of them, no one in particular.

Q Then you continued along toward Broadway? A Well, yes, as far as we got.

Q And how far along did you get toward Broadway before you stopped again? A We didn't get as far as Broadway.

Q I say, how long toward Broadway did you get before you stopped again? A Well, I only seemed to get a door or two farther before I seen---

Q A door or two farther? A Yes, sir.

Q And then what did you see? A Before I seen this man run across and grab this Wallace.

Q That was the first thing that attracted your attention after you came out of the saloon? A Well, yes, that is the first thing that attracted my attention.

Q Now, you understand that question? A The first thing that attracted my attention in that line, of course it was.

Q What was the first thing that attracted your attention after you came out of the saloon in any line? A Well, in the line of persons, do you mean?

Q In any line, what was the first thing that attracted your attention after you came out of that saloon? A The first thing that attracted my attention after I came out of the saloon was that we were all walking out.

Q And the next thing? A Well, the next thing I saw a little fooling among the crowd.

Q Who was the man that was fooling? A I know Wallace was one of them.

Q You had known Wallace about six months? A Yes, maybe known him a little longer, but never to speak to him for more than six months.

Q Do you see him now? A Yes, sir, see him sitting over there in the corner next to the court officer.

Q With whom was he scuffling? A That I can't tell you.

Q Didn't you know the rest of this crowd? A Well, I didn't know them all, to tell you the truth.

Q And you say Wallace was in front of the plate glass window on the other side of the street when you saw him?

A He was down a little further when this man brought him back towards the plate glass window.

Q And this man was chasing him, was he? A Well, yes;

he seemed---

Q Just answer yes or no? A Yes, sir.

Q This man with the beard? A Yes, sir.

Q You have been here during this trial? A Yes, sir.

Q You were here yesterday? A Not for very long.

Q I didn't ask you how long. You were here, were you?

A Part of the time.

Q All right. Have you seen the man with the beard here in the court room? A Yes, sir.

Q You saw him on the stand? A Yes, sir, saw him on the stand.

Q Bryan. A Bryan.

Q That is the man? A That is the man.

Q All right; then we will call him that instead of the man with the beard. Now where did you first see Bryan that night? A I first saw Bryan that night when he went over after Wallace.

Q Where did you see him start after Wallace? A Well, I didn't see him start from no place.

Q Where was he when you first saw him? A Going across the gutter after Wallace.

Q Which gutter, the north gutter or south gutter?

A He started from the north gutter and went over to the south.

Q Did you see him start? A No, I didn't see him start.

Q Where did you see him first? A I saw him first at the car tracks on the north side.

Q Just after leaving the north gutter? A Well, it seems to me he must have left it unless he was standing in the gutter.

Q And how far away was Wallace? A Wallace was going over slow on the other side of the street.

Q Wallace wasn't running away at all? A No, he wasn't running away.

Q Just walking away? A Not exactly walking, sort of tripping along.

Q Tripping? That is it. Tripping along? A Yes, sir.

Q And was Bryan tripping along following him? A Bryan seemed to be going at a pretty quick pace.

Q Who else did any tripping there? A I don't know; I didn't see any tripping.

Q Didn't you see any tripping; didn't you see any one tripping Wallace? A No, sir.

Q Did you see Wallace trip anybody else? A No, sir.

Q This man Bryan, was he engaged in this scuffling or fooling? A Not in our crowd he was not.

Q The first that you saw he was tripping after Wallace?

A Yes, sir.

Q Out of a clear sky Bryan appeared? A Well, it seemed that way, yes.

Q And when he got him across the street and pulled him in front of this show window, what happened? A Well, he stood there with him and---

Q Wait a minute. Is that all that happened that he stood there with him? A That is all I saw he stood there with him.

Q He didn't have hold of him, did he? A He had.

Q He was holding on to him? A Yes, he was.

Q What was Wallace doing? A He stood there; I suppose he might have been talking to him, but I couldn't hear the conversation.

Q Wallace was not resisting? A He didn't seem to be.

Q He was perfectly willing to stand there? A It seemed that way.

MR HURLBUT: I object to that.

THE COURT: I sustain the objection.

BY MR RAND:

Q Did Wallace have hold of Bryan? A No, sir.

Q What was Wallace doing with his hands? A Well, the first I see of his hands from where I was he was doing nothing with them. He had them naturally, the way you or I would. He was standing in that position (indicating).

Q What is that position? A Standing upright.

Q And what do you consider it to hold your hands naturally when you stand upright? A Might be in your pocket.

Q Where were Wallace's? A In his pocket, might be.

Q Is that what you mean? A To tell you the truth, as I told you before, from where I was standing I couldn't exactly observe where they were.

Q Then why did you tell the jury he was holding them in a natural position if you could not observe them? A Why, he was holding them in a natural position?

Q Does it help you so much to repeat my questions? because it makes the examination twice as long. A Well, I want to understand you.

Q The question is, why did you tell the jury that Wallace was holding his hands in a natural position for a man standing that way (indicating) when you could not observe how he was holding his hands? A From my point of view I seen that he was; that is what I said

Q From what you could see, how was he holding his hands? A It seems to me he had one hand in his pocket and the other hand dropping down.

Q You had no difficulty to see? A Not exactly.

Q Then why tell the jury that you don't know how he held his hands?

MR HURLBUT: Objected to.

Objection overruled. Exception.

BY MR RAND:

Q Why did you tell the jury that? A I told the jury from my point of view.

Q Didn't you tell the jury that you didn't know how he held his hands a minute ago? A Well, I don't know whether I did.

Q Is your memory improving or deteriorating this afternoon? A I don't know which, sir.

Q Well, how long did they stand there that morning, he having one hand in his pocket and the other along his side, and Bryan holding on to him? A Well, to the best of my recollection about two minutes, if that long; I don't know.

Q Then what happened? A Then of course I heard shots.

Q Where did the shots that you heard come from? A I can't tell exactly where they came from.

Q I don't ask you exactly. Where did they appear to come from? A Well, I don't know.

Q You have no idea where the shots came from? A No, sir, I have not.

Q That is true, is it? A That is true.

Q How many shots did you hear? A Well, I tell you---

Q That is what I want you to do, tell me? A That is

what I am going to do, sir.

Q Yes. A I didn't count them. In the excitement I didn't take account of them. I couldn't count them, to tell the truth.

Q Well, about how many? A Well, a few.

Q What do you mean by a few? A Well, I heard no more than six or seven shots at the very most, if I heard that many, I don't know.

Q And you have no idea where any of these shots came from? A I have no idea except as to two.

Q These shots which Bryan fired? A Yes, sir; from the flash of the revolver I seen them.

Q What was Bryan doing at the time of firing those shots? A Well, he was holding on to Wallace.

Q And at whom did he fire them? A Straight in front of him; at whom, I don't know.

Q Were you in front of him? A No.

Q Eastman was well down towards Broadway at this time?

A Eastman was down towards Broadway, yes.

Q Did you see Eastman under arrest that night? A Yes, sir.

Q Did you follow down towards the station house? A Yes.

Q You knew Eastman was under arrest? A Yes, sir.

Q You knew he had not done anything? A Certainly.

Q Did you go into the station house to explain it?

A No, sir.

Q Why didn't you? A Because I would not be let in.

Q Why? A Because I would not be allowed in.

Q You don't mean to say that they would shut a station house on you? A If they had me inside they might.

Q Did you ever have any difficulty in a station house?

A No.

Q Then what do you mean by saying that they would not let you in? A They wouldn't allow no one in.

Q How do you know? A Because people tried to get in.

Q Who tried to? A I did.

Q Have you ever tried to get into a station house?

A Yes; I have often tried to get near the door, and I would see the whole crowd get chased away with clubs.

Q Did you try to get in this night? A Yes, sir.

Q And did you go in? A No, sir.

Q Now, tell us just what you did? A I walked to the door and that is the farthest I got.

Q And whom did you see? A Police officers.

Q How many? A Can't state.

Q Which ones? A I can't pick them out.

Q Which ones? A I wanted to go in, and they said, "Get out of here; get out of here!" and I walked away.

Q Did you say, "I am a witness"? A No.

Q Didn't you say, "You have got the wrong man under arrest"? A Well, I didn't have the presence of mind to say that.

Q That is it you didn't have the presence of mind?

A No, sir.

Q What time did you get home that night? A I didn't get home that night.

Q You didn't get home that night? A No, sir.

MR RAND: Well, I won't ask you where you went. That is all.

MR HURLBUT: Well, I will.

RE-DIRECT EXAMINATION BY MR HURLBUT:

Q Where did you go that night? A It was too late that night, so I took a walk for myself.

Q Do you now recall where you went? A I recall where I went, yes, sir.

Q Where? Tell the jury? A I went to a few different places, went around to a place on Seventh Avenue and stayed until it was quite late, then I went over and got a shave in the morning and ate breakfast, and I went up to the police court.

## RE-CROSS EXAMINATION BY MR RAND:

Q You did not sleep that night at all? A No, sir, I didn't sleep.

H A R R Y H A R R I S , called as a witness on behalf of the defendant, being duly sworn, testified as follows:

## DIRECT EXAMINATION BY MR HURLBUT:

Q Where do you reside? A 229 East 11th Street.

Q How old are you? A Twenty-five years.

Q What is your business? A Photographer.

Q Do you know the defendant, Eastman? A Yes, sir.

Q Do you know the last witness, Edward Farrell? A Yes, sir.

Q And Harry Bonner? A Yes, sir.

Q Were you at McDermott's opening on the night of February last--the first of February last? A I was, for about twenty minutes.

Q What time did you get there? A Well, I must have got there about seven o'clock, I guess.

Q And you stayed there about how long? A About twenty minutes.

Q Then where did you go? A Well, I had some personal business to attend to which occupied me for about four hours of my time.

Q Now, after that, did you meet the defendant anywhere that night? A Yes, sir.

Q Where did you see him? A Up in Sig. Cohen's saloon, on 42nd Street.

Q And did you see the last witness, Farrell there and Bonner there? A Yes, sir.

Q Were any others in the party? A Well, there were several in the party.

Q Yes; now where were you in Sig. Cohen's place, upstairs or downstairs? A Upstairs in the sitting room.

Q Was there a piano there? A Yes, sir.

Q Any music? A Yes.

Q Do you know who played the piano? A No, sir, I do not; it was the first time I was ever in the place.

Q Well, when did you leave there? A Well, I left there when all the boys started to leave.

Q What? A We all left together.

Q And how many were there of you? A Well, there was quite a large party; I guess there was about fifteen, in my estimation; probably more.

Q Yes, sir; now what time, in the morning was that?

A That was close on to two o'clock, I guess, or a little later.

Q Now, when you came out on to the street in which direction did you start to go? A Well, we all started to go in

the direction of Broadway.

Q Did you observe, or was your attention called by anything--any person or any circumstance--to a young man standing in a doorway after you left Sig. Cohen's place and started towards Broadway? A No, sir; I saw no such young man in no doorway.

Q Now, what occurred shortly after you came out on to the street? A Well, the boys started a little skylarking among themselves, and tripping one another, and I seen Mr Wallace running across the street.

Q Now, do you know who tripped Wallace? A Well, they were tripping amongst themselves, I couldn't exactly tell you the names.

Q And following that you saw Wallace do what? A Running across the street, and laughing--he was laughing as he was running across.

Q Now, did he run square across the street or diagonally? A Well, he ran in a kind of a slant towards Broadway.

Q Well, that is what I mean; in a kind of a slant?  
A Yes, sir.

Q What else did you see? A Well, I saw a man there talking with another man with a beard; they said something to one another, and then this man with the beard ran across the street after Wallace, and when he got across there he grabbed

hold of Wallace and he held on to him.

Wallace made some kind of a remark to him; I don't know what it was; I was too far away to hear him.

The next thing I saw, a whole crowd started to go across the street toward Wallace, and this Mr Bryan as you call him, and I seen Bryan pull a pistol from his pocket and shoot it; whether he shot at the ground or at the crowd, I don't know; but he shot anyhow; and then I heard several shots fired.

Q Now, how many times did Wallace fire? A Wallace ?

Q Not Wallace, but Bryan? A Well, I have seen him fire two or three shots, I think.

Q How many shots were fired besides what he fired that you now remember hearing? A I guess there was about seven or eight shots fired.

Q Altogether? A Yes, sir, altogether.

Q Including Bryan's? A I might not be right, but about that many, I guess.

Q Do you include Bryan's two shots in that? A I do.

Q Now, Mr Harris, when you and your party came out of Cohen's was Eastman with the party? A Well, I will tell you the truth. When I heard the first shot fired---

MR RAND: No; wait a minute.

MR HURLBUT: I am going back a piece.

MR RAND: Don't you want him to tell?

BY MR HURLBUT:

Q When you came out of Cohen's, understand, was Eastman with the party? A Yes, sir; he came out with us.

Q Very well; where did he go and what did you see him do? A Well, he seemed to be walking along with us until this thing happened of Wallace running across the street, and afterwards several people running over after Bryan and Wallace the shot was fired, as I explained to you, and I took particular notice to Eastman because I know he has been in lots of trouble before.

MR HURLBUT: I don't want that and move to strike it out.

MR RAND: Oh, surely. (To the Stenographer) Will you please strike that out?

BY MR HURLBUT:

Q Go on. A I seen Eastman walking toward Broadway.

Q Now, was that before Wallace got away from Bryan?

A Yes; it must have been before--yes, it was before.

Q At any time there that evening, did Eastman step out from among the boys or your party and step up within six or seven feet of Bryan, and fire four shots at him? A No, sir.

Q In a crouching position? A No, sir.

Q Did he at any time during during the time that you were in 42nd Street or 42nd Street? A 42nd Street.

Q Yes; did he at any time there say to Bryan, "You God damped son-of-a-bitch, I will kill you!", or that in substance?

A He was not there to make the remark.

Q Did he say anyt such thing? A No, sir.

Q Do you know his voice when you heard it? A Yes, sir.

Q Did you hear any such remark as that? A I did not, no, sir.

Q Do you know where Eastman was when he was arrested by the officer? A Yes, sir.

Q Where? A He was right near Broadway--almost at the corner--at 42nd Street and Broadway.

Q And on which side of the street, north or south?

A Well, the downtown side; I don't know which side they call it; the south, I guess.

MR HURLBUT: Very well; that is sufficient for my purpose. You may cross examine.

CROSS EXAMINATION BY MR RAND:

Q How did he get over there? He started on the north side of the street? A Well, I suppose he crossed over.

Q Did you see him cross? A I seen him go towards Broadway.

Q Did you see him cross over the street? A I was not watching him all the way.

Q Didn't you take particular notice of Eastman? A I

was taking notice of him when he started.

Q How did he get across the street then? A I suppose he crossed over.

Q Did you see him cross over? A No, I did not.

Q How did that happen to escape you, if you were taking particular notice of him? A I took particular notice of his walking away. I know he was not in the crowd when the shots were fired.

Q That is what you took particular notice of? A Yes, sir.

Q But nothing else did you take particular notice of?

A I took particular notice of his getting arrested afterwards.

Q You took particular notice of his getting arrested?

A Yes, sir.

Q Where was he when he was arrested? A At the corner of 42nd Street and Broadway.

Q On that raised platform? A Yes, sir.

Q You were surprised at the time, were you not? A Yes.

Q Because you thought he was on the north side of the street? A I was not surprised to see him on the bridge. I was surprised to see him arrested.

Q Because you knew he had done nothing? A That is it.

Q And you went along to help him out? A No, not to help him out. I didn't think he was arrested or would be. Why should anybody help him out?

Q I thought you said you were surprised to see him arrested? A That is it, I was surprised, because why should they arrest him?

Q But you say they had arrested him? A Yes.

Q And you know that seven shots had been fired in the street? A Yes.

Q And did you think he was arrested for that shooting?

A I supposed he was arrested for the shooting.

Q But you knew he didn't do any of the shooting?

A Yes.

Q I want to know if you didn't go right down to the station house and say, "This man wasn't there at all"? A I will tell you the remark I did make if you would like to listen to something.

Q Answer my question? A Well, leave me to answer. I want to answer now.

Q I want to know if you went down to the station house and said that? A I followed the crowd down to the station house. There was an officer in the crowd that took his club and hit Eastman in the face.

Q Which officer was that? A I couldn't tell you.

Q Pick him out; we want to know. A I couldn't tell you. The streets were very dark that night.

Q Stand up all of you officers. A I seen about twenty

officers, in my estimation.

Q Couldn't you pick him out? A No; I wouldn't know him if I seen him. It was dark.

Q Wait; don't let us go along so fast.

MR HURLBUT: Let him answer.

MR RAND: No, let him answer my questions.

A Well, I want to tell you the truth.

Q It was very dark, wasn't it? A Yes, sir.

Q How far were you from the station house? A Right alongside the station, right in front of the door.

Q You were not so far away but what you could see Eastman well? A Eastman was--well, probably it was twelve blocks before we came to the station house.

Q Twelve blocks before you got there? A Maybe eight blocks; I aint very well acquainted around there.

Q This night was dark there? A Yes, it was dark where he was hit.

Q Where was he hit? A It must have been in the vicinity of 42nd Street near Eighth Avenue.

Q Where were you at the time? A I was right in back of him; in fact there was lots of people walking along there.

Q You were within a few feet of him? A Probably two feet.

Q It was not so dark but what you could see Eastman?

A I see Eastman for sure.

Q And you saw the officer? A I saw the officer strike him.

Q And you saw the officer hit him? A Yes; he had a heavy ulster on; he was a tall officer with a beard.

Q Did he have Eastman in custody? A He was one of the men on the righthand side of Eastman.

Q A tall officer with a beard? A A tall officer with a beard. He might have been an officer, and he might have been a special, but I know he pulled out a club.

Q Was he in citizen's clothes? A Yes. He hit Eastman, and I said, "You had better not hit that man or I will prefer charges against you"; and then he pulled away.

Q Oh, he stopped when you threatened to prefer charges against him? A Yes, sir.

Q Did you prefer charges against him? A If I was allowed to go to the station house, I would.

Q You didn't go to the station house to prefer charges? A How would I find out who the officer was?

Q In Police Headquarters. Can you tell an officer in citizen's clothes? <sup>#</sup> Q Was he an officer? A He must have been when he had a hold of Eastman.

Q And he had Eastman in custody? A He must have been one of them.

Q Did you ever prefer the charges against the officer?

A No, sir, I did not.

Q Why not? A Because I wouldn't know him if I saw the officer. How would I---

Q Don't ask me questions. Do you think you have to know an officer's name in order to make a complaint against him?

A An officer in citizen's clothes you would have to.

MR HURLBUT: That is objected to.

THE COURT: He has answered. He has said he was in citizen's clothes.

BY MR RAND:

Q And that was the reason you did not go into the station house? A No.

Q Because you were afraid of getting clubbed? A No, sir; I was going in there when they said, "Everybody get away from there!" and they started to drive us away; so we all walked away.

Q When you came out of this saloon, who came out first?

A Well, I didn't recognize who came out first.

Q Out of Sig. Cohen's--he was one of the men you did not know who came out first? A Who is that?

Q I am asking you questions. The man who came out first was one of the men you did not know in the crowd? A I didn't take notice who came out first.

Q Who came out last? A I didn't take notice of him either.

Q Where did Eastman come out? A A little in front of me. I was in the group in about the middle, I guess.

Q And where did you see the scuffling take place? A  
A Alongside of me.

Q Bryan was not in that crowd at all? A No, sir.

Q He had nothing to do with this scuffling? A No, sir.

Q And you say you saw Wallace going straight across the street? A Yes, sir.

Q On the dead run? A No, sir.

Q Tripping? A In a little trot. He was laughing while he was running.

Q And you say that after he started across the street this bear~~ed~~ man, Bryan said something to some one else?

A Yes, right in back of me; I heard him whisper something.

Q What did he whisper? A He whispered something; I couldn't exactly hear it.

Q To whom did he whisper it? A To some other man that I seen on the stand here.

Q To Mr Rogers? A I suppose so.

Q In other words, before he whispered to Rogers, Wallace had already started across the street? A Yes.

Q How far did he get before Bryan started after him?

A He was across the street and was standing there already.

Q Before Bryan started across at all? A Bryan was after him.

Q Now, wait a minute. Had Wallace got across to the south side before Bryan started across? A Had Wallace got across the street? do you ask me?

Q That is what I asked you? A Yes.

Q Was the whole width of the street between them?

A No; Bryan was after him while he was running. He started when Wallace was half way across.

Q Half way? A About half way.

Q Then he waited for him? A He did not wait for no one, I suppose, in particular.

Q Did he stop when he got across? A Yes, he stood still.

Q And then Bryan caught up to him? A Yes, sir.

Q And then they stood in front of the show window?

A Yes, sir.

Q Did they do anything else besides standing together?

A I seen Bryan shooting.

Q Before Bryan shot did you see them doing anything?

A I saw Wallace standing there with one hand in his pocket trying to drag himself away.

Q Struggling to get away from Bryan? A No, not strug-

gling to get away from Bryan, but as much as to say, "What are you holding me for?"

Q That is, just protesting? A Just protesting.

Q That is the word we are looking after/ And finally his protest succeeded? A What is that?

Q He got away? A Yes; he kind of succeeded.

Q Didn't he succeed altogether? A He let him go, I suppose.

Q What do you mean by "kind of succeeded"? A Bryan just let go his hold, I suppose.

Q Don't tell us what you guess or suppose? A He walked away.

Q And then Bryan fired? A No; Bryan fired while he was holding Wallace. He fired at the crowd that was going over after him.

Q And did Bryan hold Wallace with one hand? A He held Wallace in one hand and the revolver in the other.

Q How hard did Wallace struggle to get away while Bryan was hlding him? A Not very hard, I guess. He was afraid of the revolver that Bryan had in his hand; so he didn't struggle very much.

Q That is what you guess is the explanation of the situation. You think he thought he was safer close to the revolver than away from it? A I suppose he thought, if he didn't try

to break away he wouldn't get shot.

Q And he didn't try very hard, as a matter of fact, did he? A No.

Q Where did ~~they~~ <sup>the police</sup> catch Wallace? A As I walked up towards Broadway, the whole crowd of us, we see Wallace and Eastman, both of them, in the custody of the police.

Q On which side of the street? A The same side of the street that Eastman was.

Q That is on the south side of the street? A In fact, on the same bridge.

Q What was the personal business that you were engaged in that night? A That is a personal matter.

Q You know I hate to probe into personal matters, but where did you go on what that was, that personal business, of yours, from seven o'clock on? A I don't know; if I am compelled to answer that question I will do so.

Q Suppose you ask the Court?

MR HURLBUT: Answer his question, witness.

BY MR RAND:

Q What was the personal business with which you were occupied from seven o'clock on? A My wife was sick in bed, and I had to go up to see her.

Q Did you have any objection to making that answer?

A There is something more to that.

Q What is it? A She had a miscarriage.

Q Is that why you objected to answering? A Yes, sir.

Q Did you think there was anything objectionable in answering that? A I didn't know if I had to tell my personal affairs.

Q Wait a moment. Did you have any objection to answering that question? A I had no objection, but I didn't know if I was compelled to tell about my personal affairs.

Q This was the night of February 1st that your wife had the miscarriage? A Must have been.

Q I didn't ask you what must have been. Was it?

A Yes, sir.

Q She was not very sick, was she? A Well, no, not exactly.

Q Did she suffer any? A Not much.

MR HURLBUT: I object to this.

MR RAND: I withdraw it.

Q How long was the doctor there?

MR HURLBUT: I object to it.

THE COURT: Objection overruled.

MR RAND: I have got a point in it.

MR HURLBUT: Exception.

BY MR RAND:

Q How long was she sick? A She was not sick very long.

Q Well, about how long? A Well, not very long.

Q About how long? A Say a day, that is all.

Q She had been sick all that day? A Just all that day.

Q A miscarriage naturally came that night between seven and eleven o'clock? A Well, I guess about that.

Q When were you married? A I was married about--let us see--January--about four years ago.

Q Where were you married? A In the City Hall.

Q By whom?

MR HURLBUT: Now, if the court please, I think that is a personal matter.

THE COURT: Yes; I think you had better stop there.

MR RAND: I beg your pardon.

THE COURT: You have gone far enough.

BY MR RAND:

Q I want you to tell this jury, if, after your wife had been ill all day, and in the evening between seven and eleven o'clock had suffered a miscarriage, if you went to Sig. Cohen's upstairs parlor and drank and sang and listened to a lot of other people singing and generally enjoyed yourself?

MR HURLBUT: I object to the question, because it assumes something that has not been proven.

THE COURT: I think the latter part of the question is objectionable, that he drank and sang, et.cetera.

BY MR RAND:

Q Did you go up to Sig. Cohen's parlor at half-past eleven to enjoy yourself?

MR HURLBUT: I object to that, because he has been all over it, and that it is improper.

THE COURT: I overrule the objection as to the question being improper. I think, however, that the question of enjoyment is improperly joined to the question.

MR RAND: Then I will reframe the question.

THE COURT: The facts speak for themselves.

MR RAND: All right. You may go ahead.

RE-DIRECT EXAMINATION BY MR HURLBUT:

Q Witness, when you came out on the street there from Cohen's place did you observe, or did any one call your attention to a young man---

MR RAND: Oh, you asked him that.

MR HURLBUT: I beg your pardon. I thought I had not--my client thought I had not asked him.

RE-CROSS EXAMINATION BY MR RAND:

Q Did you see the defendant when the officer arrested him?

A While the officer was arresting him?

Q Did you see him when the officer stopped him?

A No, sir, I did not.

MR HURLBUT: That was a juror's question.

W I L L I A M D E L A N E Y , alias Monk Eastman, who states that his right name is Edward Eastman, defendant, called as a witness upon his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. HURBUT:

Q Mr. Eastman, you are the defendant in this action?

A Yes, sir.

Q How old are you, Mr. Eastman? A Thirty years old.

Q Are you married? A No, sir.

Q Where do you reside? A Richmond Hill.

Q Where? A Out in Richmond Hill; Ward Street, Richmond Hill.

Q On the evening of the 1st of last February did you go to a place kept by McDermott? A Yes.

Q What is McDermott's Christian name, or first name?

A I only know him by McDermott; "Mac", that is what I call him.

Q You call him "Mac"? A Yes, sir.

Q What kind of a place did he keep there?

A A gin mill; liquors.

Q About what time did you go to his place on that evening?

A About between seven and eight o'clock.

Q Do you now recall the names of any of the persons there?

A What; in the place?

Q Yes, when you arrived? A Yes; there was a hundred

people there, I guess, but I don't know them all.

Q A little louder, Mr. Eastman. A There was about a hundred people there.

Q Quite a large place? A Yes, sir.

Q What was the occasion? A Well, they had an opening.

Q Do you know Edward Farrell? A Yes, sir.

Q And Bonner? A Yes, sir.

Q And Harris? A Yes, sir.

Q And Wallace? A Yes.

Q Did you see them there? A Yes, sir; they were there.

Q What did you do while you remained there at McDermott's?

A Drank and ate -- drank beer and ate roast pig, pork and such.

Q What kind of drinks did you take? A Lager beer.

BY THE COURT CRIER:

Q Raise your voice. A I got a cold, I can't.

BY MR. HURLBUT:

Q About what time did you leave McDermott's place?

A I couldn't exactly say the right time. I know it was between half-past ten and eleven; I think it was between half-past ten and eleven; yes, sir; I am pretty sure.

Q Do you now remember who left the place with you?

A I don't remember all.

Q Well, some of them? A Yes, sir.

Q Name them, please? A Levy and Farrell and Wallace,

and a couple more, I can't remember them all. There was a lot of them, people that I didn't know, were there.

Q And they went also? A Yes.

Q Where did your party go to from McDermott's?

A To 42nd Street.

Q And how did you go to 42nd Street, Mr. Eastman?

A We went in the Third Avenue car.

Q And then what place did you go to on reaching 42nd Street? A Well, we got off at 42nd Street and transferred and went over to Sixth Avenue.

Q Now, after you arrived at Sixth Avenue, did you go into any place? A Yes, sir.

Q And where was that place? A The place they call Sig Cohen's.

Q And that on 42nd Street? A Yes, sir.

Q Between Sixth Avenue and Broadway? A Yes, sir.

Q On which side of the street is it? A On the uptown side.

Q Well, you mean the left-hand side going from Broadway? A On the uptown side of the street.

Q Very well; now, state to the jury who of your party went into Cohen's place, and where you went in the place?

A There was Bonner and Farrell and Levy -- there was a lot of boys that I don't know their names, in fact there was a lot of strangers among us, people that we met in the sa-

loon.

Q How many altogether? A I should judge fifteen or sixteen people-- a lot of people that I don't know.

Q And where did you go in Sig Cohen's place? A We started out to have a good time. We went up to Sig Cohen's place and heard the girls sing -- not girls, but men singing; a big Jew with curly hair was singing, and they was all singing, one at a time, and when one would get down another would get up and sing.

Q Was that upstairs, do you mean? A Yes.

Q Were there drinks served upstairs? A Yes, sir.

Q Can you state whether any of your party were intoxicated or not? A I didn't see no one.

Q How was it with you? A I was not drunk.

Q What time did you leave Cohen's to come away?

A I guess it was about two o'clock; I ain't sure; two or half-past two; I ain't sure what time it was. Of course I had a watch, but it was broke; I have it in my pocket now; it was broke up there.

Q Explain to the jury how you came to go away from Cohen's place out onto the sidewalk? A How I came to go out?

Q Yes. A Well, gentlemen, we started to go home; we started downstairs, and when we got downstairs, we all of

us separated, and all of a sudden there was a little scuffle, and I saw that, and I kept going; I says, "I am going to go away;" I says, "There will be some trouble;" so I kept a-going and a-going; and when I got up a little ways I looked up and saw a crowd gather and heard two shots fired; and I goes over to this stand; there was a stand there; and I goes over to this stand; I thought it was a sidewalk; and I had to climb up.

I started to walk on this stand towards Broadway. I was going right towards Broadway, and Wallace came running past me, and I ran too. I wanted to get away in the excitement; and when I went to run down, I slipped downstairs, and an officer was after me and picked me up, and I says, "What is the matter?"

And there was a lot of them there, and a lot of citizens, and they started to hit me there.

Q Now you can sit down and tell the rest of your story.  
A I says, "What do you want with me?" So Baxter, the man that testified, he knows me from downtown, and he says, "You got Monk Eastman"; and I have been wrote in the paper for two years back for nothing at all.

Q I don't want that; you need not make any complaints.  
A Well!

Q I want just what occurred there at that time when you were taken into custody. A Well, they took me to the

station house.

Q Very well; I will get at that; that was the point where you were taken into custody? A Yes, just as I was going downstairs.

Q Near Broadway? A Yes, sir.

Q Now, Mr. Eastman, when you came out and came down onto the sidewalk, in which direction did you start to go, or to what street did you start to go along after you came out of Cohen's? A Started to go over towards Broadway.

Q On the same side of the street that Cohen's is on? A Yes, sir.

Q Did you observe or was your attention attracted to any young man standing in any doorway after you came out of Cohen's? A No, sir; I didn't see no man.

Q Did anyone call your attention to any man there? A No, sir. When I came out I walked --

Q Never mind; you have told us that. Was there any young man standing in the doorway as you passed along from Cohen's place beyond the Murray Hill Baths? A I don't know where the Murray Hill Baths is.

Q Well, we will say for two or three doors. A I didn't take notice; I didn't see nobody; I didn't look that way.

Q Did you see at any time any of your party, or any other person, go up to a doorway and make a motion -- A No, sir.

Q With his hand? A No, sir; nobody at all.

Q Did you observe any of your party scuffling or fooling after you came out onto the sidewalk? A Well, there was a lot of them there. They started to rumble around.

Q What became of Wallace and what did he do? A He was fooling; he always fools when he goes out; he was fooling and running around.

Q What did he do after he came out? A They all started to fool, and he ran towards the other side.

Q Now, after he started and went across to the other side,-- or first tell us whether he went straight across or on a slant? A He went just like over this way (Indicating).

Q You mean in a slanting direction? A Kind of a slant over this way (Indicating).

Q Now tell the jury what you observed this man Bryan do at that time, and all that was done from that time on? A What, in the station house, what was done?

Q No, right there in the street? A Well, Bryan took Wallace, and while I was walking up, he took his gun and put it under Wallace's arm and held Wallace in front of him and kept shooting in the crowd.

Q And at that time were you going towards Broadway ? A Yes, I was going up, and I crossed over to get on the south side, and I couldn't because of there being no sidewalk

there, just that stand.

Q Yes; you have told us that. Now, how many shots did you hear that evening? A About six or seven. I don't know how many; I couldn't tell how many. I was excited myself.

Q Did you at any time step out of the crowd and step up towards Wallace and Bryan? A No, sir; no, sir.

Q Did you go within six or seven or more feet towards them? A No, sir; I kept coming away.

Q Did you have any revolver with you that night? A No, sir.

Q Did you offer, or try to shoot off a pistol -- A No, sir.

Q -- at any person that night? A No, sir.

Q Or at Mr. Bryan? A No, sir.

Q Did you say <sup>to</sup> Bryan, "Let him go, you God damned son of a bitch, or I will kill you"? or that in substance?

A No, sir; I said nothing of the sort.

Q Did you hear any such thing? A No, sir.

Q Did you run around on one side of him and try to shoot, and then go around to the left side? A No, sir.

Q Or the right side? A No, sir.

Q Look at that revolver (Indicating People's Exhibit No. 6), and tell the jury whether that is your revolver?

A No, sir.

Q Or whether you ever saw it? A No, sir.

Q Did you on that occasion throw or attempt to throw anything at Bryan? A No, sir; I wasn't near Bryan.

Q How near was the nearest that you were to Bryan that night -- in feet, say? A In feet?

Q Yes. A Well, I was on this side of the street (Indicating), and I was up about 25 feet that way (Indicating). I kept walking, and I wanted to cross over on the other side; I wanted to get up on the sidewalk, and I found a big stand there.

Q You have told us that, but tell the jury in ~~hundreds~~ feet or rods or blocks or part of a block how close you were to him when you were the closest? A Well, about from here to that clock there (Indicating).

Q At the other end of this courtroom? A Yes, sir.

MR. RAND: We will call that 60 feet, for the sake of the record?

MR. HURLBUT: I presume it is all of that, if not more.

Q Mr. Eastman, what colored shirt did you have on that night? A A mourning shirt -- black shirt.

Q Is this (Showing) the hat that you wore on that occasion? A Yes, sir.

Q With this mourning band on it? A Yes, sir.

Q You were wearing a black shirt because of the death of your mother? A Yes, sir; I buried her the day before

Thanksgiving.

Q On your way to the station house did any person strike you? A Yes, sir.

Q With a club? A Yes, sir.

Q Will you tell the jury whether it was an officer, or how he was dressed? A I don't know whether he was an officer. He had on a big woolen coat; it was a long one, and he had a kind of a black beard.

He was on one side of me and he had hold of me, and another officer had hold of me on the other side, and I was talking, and he said, "Shut up!" and hit me in the mouth and loosened my teeth.

Q Is that the incident or incidents that the last witness here speaks of? A Yes, sir.

Q Now, when you arrived at the station house, was any charge made against you, and if so what was it?

A Well, they made a charge -- a charge and complaint against me.

Q Just state what was said? A What was said?

Q Yes. A The sergeant was standing there, and they were all looking at one another, and the sergeant said, "What is the charge?" and no one would answer; there were about eight men there, and the sergeant said, "What is the matter with you'se men? You bring prisoners in here and don't know what you are bringing them in for." And he said, "Who has got

this case?" And Healy, the officer, said, "I will take the case;" so he makes a charge of disorderly conduct. I am pretty sure it was a charge of disorderly conduct; he makes the charge and locked us down.

BY MR. RAND:

Q Locked you down or locked you up?

MR. HURLBUT: That is all right.

A I guess we went down -- down the cellar.

MR. RAND: All right.

BY MR. HURLBUT:

Q Now, while you were in that station house did you see this man Rogers? A Yes, -- which one is Rogers?

Q Well, you distinguish him from Bryan -- not Bryan, I don't mean; the other man? A There was two of them that were there; one man with a red beard.

Q I don't mean the man with the beard; I mean the other one? A Yes, sir; he was there.

Q And was the man there with the beard, that you speak of? A Yes, sir; he was there -- the four of us.

Q Did Rogers give anything to Bryan there in your presence? A Yes, sir.

Q And what was it? A He took a badge out of here (Indicating), when the sergeant was making the complaint against this man for ~~saying~~ carrying a gun, and was putting it down, and this man Rogers took a badge out of here, like, a star,

and handed it to him like that (Illustrating), and I says, "Sergeant, see what he is handing him;" and he wouldn't pay no attention, but pushed me aside and said, "Get over there;" and he showed it to the sergeant and said, "I am a Pinkerton detective"; and the sergeant looked at it and handed it back.

And I said, "Sergeant, he is just after handing him that badge."

A little while after he slipped some papers to the fellow with the whiskers -- he slipped him some papers too.

Q Now, on that occasion, didn't you say to the sergeant, "This man here with the beard is a card sharp and is Doc Owens"? A Yes; and I told the sergeant to hold him. I says, "That man won't appear in the morning." I says, "You lock him up with us". I explained it to the sergeant about his handing him a badge, but they wouldn't listen to me; they knew who I was, and that is why they were willing to lock me down too.

Q Now I want you to tell this jury just why it was that you left this party just as soon as you saw there was trouble there that night?

MR. RAND: I object to that question as entirely immaterial.

THE COURT: I sustain the objection.

MR. HURLBUT: Cross-examine.

## CROSS-EXAMINATION BY MR. RAND:

Q So you did tell the sergeant that this man Bryan was Doc Owens, did you? A Yes, sir.

Q A well known card-sharp? A Yes, sir.

Q Is he Doc Owens? A Well, I don't know who he is.

Q Did you know he was Doc Owens when you said that to the sergeant? A He looks like Doc Owens, and I was pretty sure he was.

Q Have you changed your mind since? A I was so nearly sure--

Q Have you changed your mind since? A Sure I have changed my mind since he has been here; yes, sir.

Q But you thought at the time he was Doc Owens? A Oh, yes.

Q You knew Doc Owens? A Yes.

Q Where did you know him? A I have seen him uptown and downtown too.

Q You saw him up and down town? A Yes, and I seen him around; he was pointed out to me and I seen him on a chowder already.

Q On a chowder party? A Yes.

Q Of course you had no intention of deceiving the officers there, or getting them to hold Bryan and let you go by telling them he was Doc Owens, had you?

MR. HURLBUT: I object to that.

(No ruling).

A I didn't ask them to let me go.

Q I say you had no intention of deceiving the officers and inducing them to hold Bryan while they let you off?

A I didn't think that man was a Pinkerton detective when I seen this man hand him a badge.

Q I didn't ask that. Pay attention. When you told the policemen that night that this man was Doc Owens, a well known card sharp, you had no intention of causing them to hold him while you got away, did you? A No, sir. How --

Q That is an answer. Now, what is your name?

A My name is Edward Eastman.

Q And have you any other name? A No, sir.

Q Have you ever had any other name? A Yes, sir.

Q For instance, what other names? A Well, the police named me by William Delaney.

Q The police named you that? A Sure. I gave my name Edward Eastman when I was arrested, and the officer jumped up and said, "I know him, his name is William Delaney".

Q Where was that? A In Police Headquarters.

Q You say the police gave you that name? A I says, "Well, if my name is William Delaney, put it down William Delaney".

Q When was that? A In 1892.

Q That is a long time ago? A Yes.

Q That is the only time you ever gave the name of William Delaney? A I gave it that after that.

Q You sort of adopted the name? A Well, certainly.

Q And when you were arrested on the morning of the 2nd of February, 1904, and were taken to the station house, you gave your name as William Delaney, did you not?

A I need not have given any name.

Q I didn't ask that. You gave the name of William Delaney, didn't you? A I did.

MR. HULRBUT: I object to it. He says he gave no name.

THE COURT: No, he did not say he gave no name. He said he need not have given any name.

BY MR. RAND:

Q Did you give any name there? A Yes.

Q What name did you give? A William Delaney.

Q That was not your name? A No.

Q What address did you give? A 2060 Second Avenue.

Q Did you live there? A Well --

Q Did you live there? A I did live there, yes.

Q When did you move down to Richmond Hill? A I live up there still, and I live with private people and they sent me a letter since I have moved to Third Avenue, asking me not to disgrace them. That is why I didn't want to give that number any more.

Q What number? A 2060 Second Avenue, near 106th Street.

Q But you did give it in the police station? A Yes, sir.

Q And you said you lived in Richmond Hill, too?

A Yes, sir.

Q That was not true? A Yes; well, my sister lived there

Q I didn't ask if your sister lived there; don't let us drag your sister into this. Do you live there? A Not exactly live there. I go over there.

Q Is that your residence? A Any time I want to go there, I can, and live there.

Q Oh, I hope your sister is glad to see you. But where do you live? A In New York.

Q Whereabouts? I don't know whether you live in New York or Pekin. Where do you live; what is the address?

A Where I am living now?

Q I know where you are living now. A I am living over in the Tombs.

Q Yes, I know where you are living now. Where were you living when you were arrested, before you were put in the Tombs? A I was living in 13th Street -- or 10th Street.

Q What number in 10th Street? A I don't know the number.

Q When did you move from 10th Street to 2060 Second

Avenue? A About a couple or a few days before I got arrested.

Q Did you ever live at Richmond Hill? A Yes, sir.

Q Where? A I lived there last summer.

Q How long? A I raised my pigeons out there.

Q I didn't ask that. How long did you live there?

A I go over there and sleep there.

Q Off and on? A Yes.

Q Visit your sister? A Yes.

Q When did you stop living there last summer? A Well, I stopped -- I didn't stop living there; I go over there, and when I go over there, I sleep there.

Q Let us be frank about this. Has Richmond Hill ever been your residence? A Not mine exactly, no.

Q All right; not yours exactly. A No, sir.

Q And if I understand you correctly, you tell the jury to-day that you said that you lived at Richmond Hill so as to save the reputation of the people that you lived with on Second Avenue; is that what I understand you to say?

A Yes, sir.

Q All right; we won't go any farther than that. You say you are not married? A No, sir.

Q Are you a widower or bachelor? A I guess I am a bachelor.

Q You never have been married? A No, sir; I was never married.

Q You seem to hesitate about that; you haven't any doubt about that?

MR. HURLBUT: I object to the remark of the District Attorney.

(No ruling).

BY MR. RAND:

Q Why do you laugh about that?

MR. HURLBUT: I object to that.

THE COURT: I do not think it is necessary.

MR. RAND: If your Honor will just bear with me a moment, I think I can make this very material.

Q Were you ever married? A No, sir; never married.

Q You have ben a witness before, have you not?

A A witness?

Q A witness. Do you know what a witness is? A Yes, sir.

Q You are a witness now, testifying in court; you have been a witness before, have you not? A My own witness.

Q I don't care whose witness you were. You have been on the witness-stand before, under oath? A I was, yes, sir.

Q And you were on the witness-stand at Freehold, N. J., on the 14th of October, 1903, were you not?

MR. HURLBUT: I object to that as incompetent and

immaterial.

THE COURT: I do not see that it is very material to this case to inquire into that.

MR. RAND: To inquire as to what, sir?

THE COURT: As to whether he was on the witness-stand in Freehold, N. J.

MR. RAND: I propose to contradict his statements, and in order to contradict his statements, as I understand the law, I have to call his attention to the time and place of making them.

MR. HURLBUT: I object to that upon the ground that it is incompetent. He may have been a witness a hundred times.

THE COURT: Well, the District Attorney says he is going to direct his attention to a particular place and circumstance. He has, therefore, a right to do it.

MR. HURLBUT: Exception, please.

BY MR. RAND:

Q Now, were you not a witness in the court of Oyer and Terminer of Monmouth County, New Jersey, last October?

A Yes, sir.

Q In the case of the State of New Jersey against David Lamar, Bernard Smith, Monk Eastman and others?

MR. HURLBUT: I object to it as incompetent and that it is spreading before this jury another case that

has been on trial, which is entirely improper.

THE COURT: I sustain the objection.

BY MR. RAND:

Q Well, you were sworn, were you not, to tell the truth there?

MR. HURLBUT: I object to that question.

THE COURT: I think if you propose to contradict any statements that this witness has made, you had better call his attention to it directly.

MR. RAND: In other words, ask my questions all at once?

THE COURT: Yes.

MR. RAND: All right, sir.

Q Did you not -- now, just pay attention to this question, Eastman. Did you, not, while a witness in the Court of Oyer and Terminer of Monmouth County, New Jersey, on the 14th of October, 1903, state, in answer to the question of Mr. Wilson, your own counsel, "Are you a married man?" did you not answer "Yes"?

MR. HURLBUT: I object to it on the ground that it is incompetent and immaterial, and that it is only another way to spread before this jury the fact that his man has been upon trial for an offence which cannot be proven in this case to contradict him. The only fact that can be

proven is that he had been convicted of a crime, and that might go to his credibility.

THE COURT: I have heard sufficient. I sustain the objection.

MR. RAND: Am I not allowed to show a contradictory statement made under oath at another time and place?

THE COURT: I do not think it is material to this question, whether this man is married or single.

MR. RAND: No, sir; it is not, but I conceive it to be very material to this issue whether he is a truthful witness or not, and I submit that I have a right to impugn his credibility by showing that at another time he has made different statements under oath.

THE COURT: Ask him the general question.

BY MR. RAND:

Q Have you at any time when under oath made a statement to this effect, "Are you a married man?" and did you answer, "Yes, sir"?

MR. HURLBUT: I object to the question on the ground that it is incompetent and immaterial, and further that it is an improper way to impeach the witness; and furthermore that it is a privileged question.

THE COURT: Well, if it be a privileged question, the witness himself can take advantage of his privilege.

MR. HURLBUT: Very well.

THE COURT: And I will listen to any claim he makes upon his privilege, if he does make it.

MR. HURLBUT: But I desire particularly, if the Court will bear with me upon this point, to urge that it is entirely contrary to all of the rules to impeach a witness in this manner? He can only be impeached by the production of witnesses who would not believe him under oath, and who will swear so, or by having him testify to certain facts which are entirely contradictory to what he has testified to here.

THE COURT: I think the question is permissible on the ground of its affecting his credibility.

MR. HURLBUT: Exception.

BY MR. RAND:

Q The answer to that question, Eastman? A (No answer).

Q Did you ever swear under oath in a court of justice that you were a married man? A I don't know whether I did or not.

Q Don't you remember whether you did or not? A No, sir.

Q Don't you remember testifying that you were a married man down in Freehold, New Jersey? A No, sir.

Q Will you say that you did not so testify? A I won't swear that I did, and I won't swear that I did not.

Q All right; we will let that go. Now, what is your business? A I deal in pigeons; buy and sell them.

Q And pluck them? A I buy and sell them.

Q Anything else besides buying and selling them?

(No answer.)

Q Where is your pigeon farm? A I have got a pigeon farm, and I can prove it.

Q Where is it? A Down at Richmond Hill.

Q At your sister's? A Yes, sir.

Q Where is your place of business in this city?

A I ain't got no place of business in the city. I buy pigeons and sell them.

Q Are you in business for yourself? A Yes, sir.

Q Have you got an office? A No, sir.

Q Got no office? A I ain't got no office.

Q To whom do you sell them? A Private people and bird stores.

Q To whom did you sell the last pigeon you sold?

A The last pigeon?

Q Yes, to whom? A To Shillings, on Fourth Avenue.

Q Did he come down to buy it? A He sent over to my house to get them, and a young fellow brought them over.

Q How long have you been in this pigeon business?

A Since a boy.

Q How many years, about? A Since about fifteen or seventeen years.

Q Have you carried that on without interruption?

A Yes, sir.

Q Did you carry on the pigeon business in the year 1897?

A Yes, sir.

Q Did you carry on the pigeon business in the year 1898? A Yes, sir.

Q All of that year? A Not all of 1898.

Q Whatpart of that year? A Well, I can't remember; three months of that year I did not.

Q Where were you during that time?

MR. HURLBUT: I object to it as incompetent and immaterial, and seeking to show by innuendo -- by a skillful process of questioning, however -- a thing which it is not possible to show by this witness, contradicting him or impugning his veracity in any way by showing perhaps that he had been arrested or locked up.

THE COURT: I cannot tell the motive of the District Attorney, Mr. Hurlbut, but I think the question is permissible.

MR. HURLBUT: Exception.

BY MR. RAND:

Q Where were you during three months of 1898 that you did not engage in pigeon selling business? A Over on the Island.

Q You were convicted of a crime, were you not?

A I was.

Q Convicted of an attempt to commit burglary? A Yes, sir.

Q In this court? A Yes, sir.

Q And sentenced by Judge Cowing to three months in the Penitentiary? A Yes, sir.

Q Is that right? A Yes, sir.

Q Have you ever sworn on the witness-stand that you had never been convicted of a crime? A Well, I didn't know that was a crime.

Q What? A I didn't know that was a crime.

Q You didn't know burglary was a crime? A I didn't know it was a felony, on account of getting three months.

Q I didn't ask you about a felony. Will you say that you did not know burglary is a crime? A Sure I know burglary is a crime, certainly.

Q Did you know that an attempt at burglary was a crime? A Certainly a crime, but I didn't know it was a felony.

Q I am not asking you a word about felony; you are the first man who has said anything about felonies. Did you or did you not swear at the trial in New Jersey to which I have already referred, when you were under oath, that you had never been convicted of a crime? A Yes, sir.

Q That wasn't true, was it? A What was not true?

Q That you had never been convicted of a crime? A No, it was not true.

Q Well, now, Eastman, when you came out of Sig. Cohen's saloon, as I understand you, you were cold sober? A What say?

Q You were sober? A Well, I had about twenty glasses of lager in me.

Q You had nothing but lager? A No, sir.

Q You drank nothing stronger? A No, sir.

Q And with twenty glasses of lager beer your head was clear, I understand you to tell your counsel? A Yes.

Q I don't want to do you any injustice. Whatever you did that night you did with a clear head? A I did; yes, sir.

Q Who came out first from Sig. Cohen's? A I didn't pay no attention to who came out first.

Q Who came out last? A I didn't pay no attention to who came out last.

Q When did you first see Bryan? A Bryan?

Q Yes. A Seen him on the other side.

Q You didn't see him, then, until you saw him on the other side? A Holding onto Wallace.

Q That was the first you saw of him? A Yes, sir.

Q Where were you then? A I was walking up still.

Q Why did you cross the street? A Cross the street?

Q Yes? A I walked up a ways and heard a couple of shots and crossed the street to go on the other side, and had to go up on the grand stand to go over to get to Seventh Avenue.

Q I concede that you crossed the street to get over

on the other side. A Certainly.

Q Why? A I didn't want to get into that trouble.

Q But the trouble was on that side of the street?

A Yes, sir.

Q Is that the reason? A But it was near Sixth Avenue.

Q You were on the other side of the street, well down towards Broadway, were you not, when this shooting happened; you were on the other side of the street well down toward Broadway? A I was near Broadway, about 25 feet from Broadway.

Q 25 feet from Broadway; that is good enough for me. All right. You were within 25 feet of the corner on the north side of the street when this shooting took place?

A I was on the stand near the corner.

Q Before you crossed the street --

MR. HURLBUT: Now you are repeating it wrong. I object.

MR. RAND: I am not repeating anything. I am asking him the question.

MR. HURLBUT: I object to that form of question.

THE COURT: Put your question.

BY MR. RAND:

Q How far down the north side of 42nd Street toward Broadway did you get before you crossed the street? A What do you mean, down towards Seventh Avenue?

Q Yes. A Well, I can't exactly -- I don't know how far it was.

Q Well, about how far was it? A Well, I went about from here to that window pole to the corner.

Q Now, understand me; it was before you crossed the street, wasn't it? A No, when I was on the other side; I crossed the street.

Q Now, listen; pay attention. Before you crossed the street, how far down towards Broadway did you get? A I don't know exactly how far.

Q Well, about how far? A Well, I don't know how far; I can't exactly say.

Q Why not? A Because I can't.

Q Why not? A Because I can't judge how far.

Q I don't ask you in inches or feet. How many doors down from Childs's? A Where is Childs's?

Q Cohen's, if you like. A Cohen's?

Q Yes. A How many doors down?

Q Yes. A I don't know; about ten doors.

Q All right; 250 feet; and this shooting was all on the other side of the street, wasn't it? A Yes.

Q In front of the crockery store? A I don't know.

Q Well, a store with plate glass windows? A Oh, yes.

Q And you tell the jury that you crossed the street in order to get away from the shooting; is that correct?

A Yes, sir.

Q Now, you didn't see -- did you see Wallace running across the street? A Well, they were all rumbling, and I seen Wallace going across the street.

Q Where were you when you saw Wallace going across the street? A I was walking up to get away from them.

Q How far from Sig. Cohen's had you got when you saw Wallace running across the street? A Not very far.

Q How long have you known Wallace? A I only know him about a year.

Q Know him pretty well, don't you? A Well, no, not exactly pretty well. I know him to talk to and say "Hello!"

Q Yes; just a bowing acquaintance? A Yes.

Q You would know him if you saw him? A Yes, sir.

Q Stand up, Wallace, and see if you identify your friend.

MR. HURLBUT: I ask that that be stricken out.

THE COURT: Yes; I sustain the objection, and direct the observation to be stricken out.

BY MR. RAND:

Q Wasn't he a friend of yours?

MR. HURLBUT: Wait a moment. I most respectfully ask the Court to direct the Counsellor not to repeat those remarks in that way. I think I should do so at this time.

THE COURT: I so direct, unless he puts his remarks in the form of an interrogation.

BY MR. RAND:

Q Is Wallace your friend? A I don't think he is; I don't know.

Q Was he your friend? A He never showed he was my friend. He never did nothing to show it.

Q He used to go around with you, didn't he? A No, sir.

Q Is he an acquaintance of yours? A I know him. He goes around with people that I know.

Q If you know him, will you tell us if he is here?

A Why, certainly he is here.

Q Where is he? A The man over in the corner.

Q The man who just stood up? A There he is against the window.

Q Do you know why Wallace ran across the street?

A No.

Q What happened before he ran across the street; do you know that? A Yes, sir; they were wrestling.

Q Who? A All the boys.

Q You were not wrestling? A No, sir. I was walking away from him.

Q And Bryan wasn't there? A I didn't see Bryan.

Q You didn't see Rogers at all, either? A No, sir.

Q And did anyone besides Bryan chase Wallace across

the street? A I only seen Wallace and a couple of young fellows run across.

Q Did you see Wallace running across? A Yes.

Q And a couple of young fellows? A Yes, sir.

Q Who were they? A I don't know who they were.

Q It was not Bryan and Rogers? A I couldn't tell a man when his back is turned.

Q You know Bryan and Rogers now? A Yes, sir.

Q They were not the two young fellows that you refer to? A No, sir.

Q So Wallace <sup>was</sup> running across the street with two or three young fellows who have not appeared here yet, and whose names you don't know? A What do you mean, I don't know?

Q You don't know who they were? A No, sir.

Q They have not appeared, anyhow, in this trial, at all? A No; I don't know who they were. They had their backs turned to me.

Q All right. Now we have Wallace and two young fellows running across the street; were they chasing after Wallace?

A They were running after him.

Q What doing? A Skipping and jumping.

Q And he was after them? A Yes.

Q Now, Bryan came across the street? A What Bryan?

Q There is only one Bryan, but I mean this Bryan here; the Bryan that we have had on this case, is the Bryan I mean?

A I don't know Bryan from Rogers.

Q You do not? A No.

Q Didn't you hear your counsel explain it to you?

A (No answer.)

Q Bryan is the man with the beard; Rogers has a mustache only. Now, Bryan went after this witness? A Bryan was on the other side.

Q Listen; Wallace was running across the street pursued by two young fellows that you didn't know.

MR. HURLBUT: I object. He has not testified to any such thing, and I insist that he must not repeat evidence that has not been given.

(No ruling.)

BY MR. RAND:

Q Didn't you see Wallace running across, and two young fellows, whom you didn't know, running after him? A I don't know who they were.

Q You can't tell who they were. A I don't know them.

Q That is what I say. You saw Wallace running across pursued by those two young fellows that you don't know?

A Yes, sir.

Q Did you afterwards see Bryan go across the street after the three of them? A No. I seen Bryan have hold of

Wallace on the other side.

Q If anyone was following Wallace when he ran across the street -- now listen to this question. If anyone was following Wallace when he was running across the street, besides Bryan, they were between Bryan and Wallace, weren't they? Now, just think of that a minute. A What do you mean?

Q What is the difficulty with that? A I can't tell--

Q Was there any person between these two young fellows and Wallace when he ran across the street? A I don't know. I don't know because I didn't see anybody else.

Q You saw Wallace? A Yes.

Q And you saw the other two? A Yes, sir.

Q How far from Wallace were they? A The other two?

Q Yes, the other two? A About from here to the window. (Indicating).

Q Now, between them in that short space, was there any other person? A No, I didn't see any other person.

Q Bryan was not between them? A Not between them, no, sir.

Q These two fellows were nearer to Wallace than anyone else, weren't they? A From this side of the street, sure (Indicating).

Q Well, did you see Bryan catch Wallace? A Yes.

Q Where did he catch him? A Over by the window.

Q All this time, as I understand you, you were walking west on 42nd Street looking over your shoulder? A Yes, looking back.

Q Looking back with your head turned? A Yes, sir.

Q Walking away? A Yes, sir.

Q And when he caught him, what happened? A They were talking; they were roughing, well, wrestling around.

Q Wrestling around in front of the window? A Yes, sir.

Q And what happened? A Then I watched and seen a crowd go over and seen Bryan, the man with the whiskers, take a gun and put it under Wallace's arm, and he kept shooting at the crowd.

Q The crowd closed around them? A Yes, sir.

Q Now, you are sure that the crowd closed around them?

A I don't know; they were standing on the street and he was shooting, and they all scattered.

Q Did the crowd go onto the sidewalk? A I didn't take notice; I kept going.

Q Where was the crowd? A The crowd was on this side (Indicating).

Q The north or the south side? A On the downtown side of the street.

Q On the sidewalk? A No, on the street.

Q And how big a crowd was it? A About 25 or 30 people, I guess.

Q And all this time you were walking west on 42nd Street with your head over your shoulder (Illustrating)? A Well, I wasn't walking like that (Illustrating).

Q That is what I thought. If I didn't give a correct imitation, I am sorry. And you were walking fast or slow? A I was walking pretty fast.

Q So by this time you had got a considerable ways down towards the corner? A Well, I can't walk fast anyhow.

Q You are a slow walker? A Well, I am.

Q Well, you were walking as fast as you could?

A My stomach don't allow me to walk fast.

Q Your stomach? A I can't walk fast on account of my stomach.

Q I am sorry. You were walking as fast as you could?

A Yes.

Q And how far down had you got when Bryan caught Wallace? A I was ab out thirty-five or forty feet away from them.

Q From where? A From Wallace and Bryan.

Q Just across the street? A No; crossing the bridge; I was crossing over on the other side about 40 feet away.

Q How, this is new to me. You were, as I understand it, at the time that Bryan caught Wallace, in front of this window, you were only about 40 feet away; is that correct? A I was not 40 feet then.

Q How far away were you from Bryan when he caught Wallace? A Well, I was about fifteen feet.

Q You never were at the northeast corner of Broadway and 42nd Street, were you, that night? A I don't know where that is.

Q Don't you know the points of the compass? A No, sir.

Q Don't you know what north is? A No, sir.

Q Do you know in which direction the Battery is from here? A No, sir.

Q Is that true? A Yes, sir.

Q Well, you know this bridge where you say you tried to climb up ; you know that bridge, don't you? A Yes, sir.

Q That was on the corner of Broadway, wasn't it?

A Yes -- not on the corner; it is running down to the corner of 42nd Street.

Q It ran to the corner? A Yes, sir.

Q Now, I want to know, if you were ever directly across the street from that bridge that night? A Yes; I was on the other side.

Q When? A When I was walking up crossing over to get onto it.

Q Didn't you just tell me that you were within fifteen feet -- A Well, I don't know.

Q Listen. How far were you from Wallace when Bryan caught him? A I don't know.

Q Indicate something in this room to show. A How far?

Q Yes; indicate something? A About from here over to them three lights, ~~about~~ (Indicating), I guess.

A

MR. RAND: Shall we say forty feet? If the clock is 60 feet distant, I think that is about 40.

Q You think about that distance? A About that.

Q Didn't you just say about 15 feet? A Well, I don't know how far 15 feet is.

Q Where were you? A I was on the sidewalk.

Q Which sidewalk? A On the uptown side.

Q And just across the street, then? A No, sir; the bridge is on this side (Indicating).

Q You were not on the bridge when he caught him?

A No.

Q The time I am speaking of is the time that Bryan caught Wallace? Now, at the time that Bryan caught Wallace, where were you? A On the uptown side of the way.

Q On the north side of the street? A On the uptown side.

Q And you say about as far away as those three lights?

A Yes, sir.

Q And you were directly across the street? A Yes, sir.

Q And the street is as wide as from here to those three lights? A Not just then I was not. They were down that way (Indicating), and I was up this way from them (Indicating).

Q How far away were you from them? A They were down here (Indicating), on the other side, and I was on this side about like this up from them (Indicating).

Q Did you at once cross over? A Yes, sir.

Q And did you go straight across? A Yes; they were down there.

Q Did you go straight across? A I came right over<sup>v</sup>.

Q That is what I said. Now, pay attention to my questions. A What do you mean? I am paying attention.

Q Did you go across? A On a slant.

Q And you struck the other side of the street right at this bridge? A Yes, sir.

Q Who fired some of these shots; do you know? A Bryan fired them.

Q Did he fire all seven? A No, sir.

Q Who fired the others? A I don't know.

Q Do you mean to tell this jury that, while walking down 42nd Street on the north side of the street, with the crowd between you and Bryan, that you could see Bryan put his gun under Wallace's arm and shoot? A Well, there was a big light there.

Q But how many people were between you and Bryan?

A There was a hundred people between; they were all standing in the middle of the street, like this (Indicating), and I could look right down; the sidewalk was clear and there was

a big light there.

Q The sidewalk was clear? A Yes, sir.

Q But you were on the other side of the sidewalk, were you not? A Well, I was crossing over when they were shooting, when I heard more shots. I don't know how many shots were fired.

Q But you know you did not fire them? A I am sure I did not fire them.

Q And you did not <sup>hear</sup> ~~see~~ anybody say, "Let go"? A I couldn't hear it.

Q I don't ask that. You didn't hear anybody say anything of the kind? A No, sir.

Q By the way, how about William Murray? A That was the name I was convicted under.

Q You were convicted under the name of William Murray? A Yes, sir; that was the name. If you had asked me about that, I would have told you. Yes, sir; that was the name.

RE-DIRECT EXAMINATION BY MR. HURLBUT:

Q When you arrived at the police station, did the officers or any of them search you?

MR. RAND: I object to that as reopening. Nothing of that kind has been gone into on the cross.

THE COURT: How does it become material?

MR. HURLBUT: I want to show by this witness that

he was searched after he was arrested, and that no firearms were found on him.

THE COURT: I will allow you to show that.

MR. RAND: We will concede that there were no firearms found on him. We don't claim there was.

MR. HURLBUT:

~~THE COURT~~: You have introduced proof in this case to show that firearms were found on Monk Eastman.

MR. RAND: Not at all.

THE COURT: The question is, gentlemen, were there firearms or any weapon found on the person of the defendant when he was searched in the station house?

As I understand, the District Attorney concedes that there was not? ~~no~~

MR. RAND: Yes, sir.

THE COURT: So that that obviates the necessity of the question.

MR. HURLBUT: That is the defence, if the Court please.

THE DEFENCE RESTS.

MR. RAND: The People rest.

MR. HURLBUT: Now, if it please the Court, I renew my motion for a direction of the Court to the jury to acquit upon the first count of the indictment, or that the first count of the indictment be dismissed on the grounds stated before.

THE COURT: I deny the motion.

MR. HURLBUT: Exception. I also make the same motion as to the second count.

THE COURT: I make the same ruling on that motion.

MR. HURLBUT: Exception. Shall I go to the jury to-night?

THE COURT: How long do you think you will require?

MR. HURLBUT: I think I ought to have at least an hour in this case.

THE COURT: Then I will not require you to go to the jury this evening. If you prefer to rest and prepare yourself for the summing-up and go to the jury in the morning, I will permit you to do so.

MR. HURLBUT: Thank you very much.

THE COURT: Gentlemen of the Jury, you will remember the caution that I administered to you, and consider the same as administered to you now.

Adjourn court until to-morrow morning at half-past ten.

Adjourned to Thursday, April 14, 1904, at 10:30 A.M., when the jury found the defendant guilty of assault in the first degree.