

START

630

CASE

1692

CASE 630

COURT OF GENERAL SESSIONS OF THE PRACE,

City and County of New York, Part III

-----X
: THE PEOPLE :
:

-vs- :

B e f o r e :

: Hon. Otto A. Rosalsky, J.

: And a Jury.
:

GABRIELE MAGGIORE, impleaded with:
James O'Brien :
-----X

Tried, New York, February 19th, 1907.

Indicted for Assault in the First Degree.

Indictment filed December 14th, 1907.

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

Assistant District Attorney, Keyran J. O'Connor, for
the People.

Charles E. Le Barbier, Esq., for the Defense.

Frank S. Beard,
Official Stenographer.

CASE # 630

THE PEOPLE'S TESTIMONY.

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

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Mr. Weinberg, if you don't understand me, say so, please. What is your business? A Candy store.

Q A candy store? A Yes sir.

Q And where is your place of business, or where was your place of business, on the 6th of December, 1906?

A 2091 Second Avenue.

Q Speak a little louder please. Where was your place of business on December 6th, 1906? A 2091 Second Avenue.

Q In the County of New York? A Yes sir.

Q What business did you conduct there? A Candy, soda water, stationery.

Q And who lived with you there? A Nobody; my wife.

Q Your wife? A Yes sir.

Q And did you have your candy store in the front of the

-- A In front, in Second Avenue.

Q And did you live at the rear? A Yes sir.

CASE # 630

Q Say yes or no? A Yes.

Q Now, did you see the defendant, on the 6th of December, 1906? A Yes sir.

Q What time of the day or night did you see him?

A About ten o'clock.

Q At night? A Yes sir.

Q Where did you see him? A In the store.

He bought some goods.

Q Well was he in your store? A Yes sir.

Q Now did he say anything to you, while he was in the store? A He said to my wife -- he hit my wife before.

Q Were you present there when your wife was in the store with him? A Yes; I was in the back.

Q You were in the back? A Yes sir.

Q Now did you hear anything that he said to your wife? A Yes.

Q Now what did you hear the defendant say to your wife? Now, before that, did he buy anything? A He bought cigarettes.

Q He bought cigarettes? A Yes sir.

Q And after he bought the cigarettes, what did he do? A He wants to go out, and my wife asked him for the money, and he give her a punch right in her heart, and she faint right on the floor, and she holler, and I went in, and

CASE # 630

4

I say, "What for you hit my wife?" And he pushed me right outside in the street, and hit me.

Q Where were you when he struck you? A Me?

Q Yes? A I was running inside in the store.

Q And what did you do when you got into the store?

A I asked him what for he hit my wife, and he said, "You God damn Sheeney, I kill you, tonight."

Q He said, "You God damn Sheeney, I kill you tonight."

A Yes sir.

Q And what did you do then? A What can I do? He's too strong for me. He hit me, and I run inside and closed the store.

Q Did you get out into the street at all? A He pushed me outside, right near the door of my store.

Q One moment. Now, if you don't understand the English language, you can get an interpreter here who can speak your own language. Do you understand? A Yes sir.

Q Now you got into the store? A He pushed me outside in my store; he pushed me to the door.

Q And you say that the defendant pushed you?

A I asked him what for he hit my wife, and he hit me inside, and he pushed me outside, and hit me hard, right near my door.

CASE # 630

Q Did you fall down? A Sure I fall down.
And I run in the station house, too.

Q Now, you fell down? A Yes sir. And the people
take me in the store, and help me to close up.

Q When you got in, what did you do? A I closed the
store up.

Q Did you stand inside of the door? A Yes sir.

Q Well, what kind of a door is it? A A wooden door,
with glass in it.

Q And where was your wife at the time, when you got
inside the store? A She was inside the store.

Q And what else occurred there? And, about half
past eleven o'clock at night, I hear knocking at the door,
and O'Brien knocked with his hand on the door-window, and I
see him, and I shall holler "Police", "Police", and ~~the~~ run
inside the undertaker's place.

Q Who did? A O'Brien. He comes back, about 12
o'clock. I see him when he lifts up the two stones (il-
lustrating).

MR. LE BARBIER: I object to what he claims
to have seen O'Brien doing then.

THE COURT: Objection sustained.

MR. LE BARBIER: I move to strike out that
portion of the answer.

CASE # 630

THE COURT: Motion granted.

THE ELEVENTH JUROR: We can't understand him, at all, your Honor.

MR. O'CONNOR: Yes sir. I don't think this man understands the English language, your Honor.

THE COURT: Then, Mr. Interpreter, please interpret.

(The last question of the District Attorney is repeated through the official interpreter, Mr. Fisher.)

A At 12 o'clock at night.

Twelve o'clock at night, when the window was broken by O'Brien, I saw Maggiore, the defendant, and he was shooting four times with a revolver.

BY MR. O'CONNOR:

Q And what happened to you then? A Afterwards, the police detectives arrived, and he was arrested.

Q Well, now, one moment. You say that O'Brien broke the window.

MR. LE BARBIER: Now I move that that be stricken out.

MR. O'CONNOR: I will make the connection, may it please your Honor.

MR. LE BARBIER: No; we don't want any connec-

CASE # 630

tion made here in that respect, and I object, and I move now that anything referring to O'Brien be stricken out.

THE COURT: Objection overruled. Motion denied.

MR. LE BARBIER: Exception.

BY MR. O'CONNOR:

Q Now where was the defendant at the time you saw O'Brien throw the stone, as you claim? A He stood outside, with the pistol in his hand.

Q And how near was he to O'Brien? A I couldn't tell exactly. He wasn't very far from him.

Q Well, about how far? A About two feet. He had a sweater on and a coat.

Q And what did O'Brien do at the time? A He threw the stone through the window, then ran away.

Q And what did Maggiore do, when O'Brien threw the stone at the window? A After the window was broken, Maggiore shot four times into the window.

Q And where did he shoot at? A He shot inside, on the fountain, which was standing there, and the fountain fell down.

Q Now, did you see the pistol in Maggiore's hand?
A Yes sir.

Q How many shots did he discharge from that pistol?

CASE # 630

A Four shots.

Q And where were you and your wife, at the time?

A I was on the other side of the window. As soon as I hear the shots, I ran back into the hall, and started to shout.

Q Now where was your wife? A She was with me.

Q Where did she go to? A She also ran out in the hall, and took my child along, took the child out of the bed.

Q Where did you and your wife go to then? A We stood outside. People came. There was quite some shouting.

Q And where was the defendant? A I don't know where he was then. He was in the undertaker's store. The police detectives found him in the undertaker's store.

Q Where is the undertaker's store? A Two stores away from mine.

Q Had you known Maggiore before this night? A Yes; he always bothered my wife. Whenever I left the store, he always bothered her.

Q Now how wide is your store?

MR. LE BARBIER: I object, and I move that that be stricken out, that he always bothered his wife.

THE COURT: Strike it out. Motion granted.

A It isn't a large store; about four or five feet wide.

BY MR. O'CONNOR:

Q About four or five feet wide? A Yes; from where I am sitting to the wall. (indicating the side wall of the court room.)

Q Well, that is about 12 feet? A A very long store.

Q And where is the soda water fountain? A By the window.

Q And have you a counter there? A Yes sir.

Q And shelves in the back? A Yes sir.

Q And what have you on the shelves? A Cigarettes, stationery.

Q Now, have you anything on your counter? A A showcase, just now, on it, which has been broken by the shots.

Q Now, there is a door leading to your store?

A Yes sir.

Q And that door is made of wood, with glass? A Yes sir.

Q And was there a plate glass window in your show window -- plate glass in your show window? A Yes.

Q And which window was broken? A The large show window.

Q And then where were you standing at the time the

1291

CASE # 630

shots were fired? A I was standing on the side, where the door is, where the window of the door is, and I saw when he was firing the shots, and I ran in the back.

Q Where was he standing when he exploded the pistol, which caused the bullets to come from it? A He stood outside, about four feet away from the door -- from the window in the door.

Q And you saw these bullets strike the soda fountain?
A Yes sir.

Q Was he arrested, the same night? A Yes sir.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Were you behind the soda water fountain when the shots were fired, as you claim? A Yes; I stood on the other side of the counter, near the door with the glass in it .

Q Isn't it a fact that, about two weeks after this alleged occurrence, the same thing happened to you again?

A Somebody broke a window again. I was all alone in the store at the time.

Q And did somebody fire any shots? A No.

Q Not then? A No.

Q On this occurrence, some two weeks afterwards, did you see how many people were outside of your store?

A There wasn't many people. It was a quarter after 12 in the night time.

Q Well how many? A dozen? A Only the people from my own house, five or six.

Q Now, on the night in question, December 6th, when you say O'Brien came up there, and hurled some stones through that window, how many people were with O'Brien? A Nobody was with O'Brien at the time.

Q How many stones did O'Brien fire through that window? A Those two stones which I have in my hand (indicating). They were in the station house.

Q When the defendant came into your store, in the early part of the evening, was O'Brien with him? A He was not. Some one was with him, some one else, a boy.

Q How long after O'Brien fired the shots -- fired the stones through the window -- was it that you saw the defendant, Maggiore? A As soon as the window was broken by O'Brien, I immediately saw the defendant, and he was starting to shoot.

Q If I understood you correctly, I thought you said you had gone back into your rooms, and that you were awakened by some one firing stones through the window; is that so?

A No; I was awake; I wasn't asleep.

1203

CASE # 630

Q Well, but where were you, if you were awake?

A I was inside of the store. I was afraid to go to sleep, as there was some knocking on the door by O'Brien, previous to that.

Q Where were you at the time when the stone came through the window? A I was standing by the door, looking through the window of the door, and saw O'Brien throw the stone.

Q And were you looking out into the street?

A Yes sir.

Q When looking out in the street, did you see anybody with O'Brien? A There was some one there, but I couldn't see him.

Q How many people? A Only one.

Q How far from the window was O'Brien? A About four or five feet.

Q Could you look at O'Brien? Could you identify him?

A Yes.

Q Was this other person right near O'Brien? A I saw the other one in the distance.

Q How far distant? A He was on the sidewalk.

Q On the other side of the street, or what?

A He was on the same side where my store is.

Q Well, probably not exceeding six feet; was he?

CASE # 630

A I can't remember exactly.

Q It is very necessary, I submit, that you should remember? A About two or three feet.

Q From you? A No, from O'Brien.

Q And how far from you then was this other person? Indicate here by the gentlemen of the jury? A He was near the curb (indicating).

Q Will you kindly illustrate the distance to us? A From where I am sitting to the window there (indicating the side window.)

MR. LE BARBIER: Indicating about ten or 12 feet?

MR. O'CONNOR: Yes; about ten or twelve feet.

BY MR. LE BARBIER:

Q While this other person was about ten or twelve feet away, was it then that O'Brien threw the stones through the window? A Yes; I saw him do it.

Q Now, while he threw the stone through the window, what did this other man do? A Nothing, he ran away.

Q The other man ran away? A I didn't see the other man any more.

Q I understood you -- I may be wrong -- say that there were only two men there, ~~an~~ O'Brien and this defendant, and now you say the other man ran away. What do you mean? A The third man also has been arrested.

Q Well, now, you have a third man. Where was the third man? A He was with O'Brien.

Q And how far from you was this third man? A He was on the sidewalk, not far away from O'Brien.

Q (Repeated). A From where I am sitting to the window, (indicating the side window).

Q Estimating ten or twelve feet. Then this third man was with the other man that ran away; is that so?

A Yes.

Q And these ^{two} men, some ten or twelve feet away from you, run away when O'Brien threw the stones through the window? A Who says two men? There was only one.

Q I asked you, a moment ago, didn't you say there was another man? A I meant the same man whom I testified about before.

Q I asked you very carefully and very slowly, and I asked you, when O'Brien threw the stone through the window, you said there was another man, about ten or twelve feet

away, who ran away when O'Brien threw the stones through the window? A Yes; that's true.

Q I asked you then, if there was anybody else there, and, if I understood you correctly, you said there was another man. I asked you where, and you said about the same distance, estimating ten or twelve feet. And you also said that he was with this other man? A It was the same man. I meant this one man.

Q Well, did you see this one man double? A I don't know the man.

Q At what stone did this other man run away; was it at the first stone that O'Brien threw, or the second stone? A I can't tell that; I can't remember.

Q Why not? A All I know is that I didn't see him again.

Q Why not? A I can't remember.

Q Why not? A When O'Brien run away, the other man run away, and he was found, later.

Q I understood you to say that the moment O'Brien -- Question withdrawn. How long a time was there between the throwing in of the two stones? A One after the other.

Q And did O'Brien have a stone in his hand? A Yes.

Q Each hand? A Yes.

Q So he took up one with the right hand, and one

CASE # 630

with the left hand, and threw one with the right, and one with the left? A Threw the first stone with the right hand, and then changed the other one from his left to his right, and threw it again.

Q And they both came into the shop, one right after the other? A Yes, sir.

Q And you stood behind the door in your shop?
A Yes. Then I ran away.

Q Where did you run? A Into the rear.

Q How long did you remain in the rear? A We immediately ran to the hall.

Q The hall outside of your store? A Yes, sir.

Q Who ran into the hall? A Myself, my wife and the baby.

Q How far back in the hall did you run? A Near to the window -- to the door; and was shouting.

Q Well, the door leading into the street? A Yes.

Q Then there was a partition between the store and the hall, was there not? A Yes.

Q And at this time you were outside of your shop, in the hall, on the other side of the partition; is that correct? A Yes, sir.

Q Now, is that all that happened? A That's all.

CASE # 630

4

Then detectives came.

Q Did you see O'Brien run away? A Yes.

Q Did you see him run away with anybody? A The man that I testified about.

Q That is, the one who was on the other side of the street? A Yes.

Q Why don't you look at me, and let me see your eyes? You stated to the learned Assistant, if I have you correctly, that, at the time O'Brien threw the stones, the defendant was outside, with his pistol, and fired in at the fountain; is that correct? A Yes, sir.

Q And that's correct, notwithstanding that, when the stones were thrown, and immediately when they were thrown, you and your wife and baby rushed back, and rushed out into the hall? A We ran away when the shooting started.

Q The shooting was fired, as I understand you to say, at the soda water foundatin? A Yes, sir.

as soon

Q Just as the stones were thrown, I understood you to say that you ran back, and ran out into the hall, with your wife and baby? A No; after the shooting, then I ran out.

Q Well, you didn't say that, a moment ago, Mr. Witness. A I did say so.

CASE # 630

5

Q You said, a minute ago, and I was very careful to ask you that, when the two stones were thrown into the window, you immediately ran back with your wife and baby, and ran out into the hall. Now, which is correct?

A I testified that, as soon as the shooting began, when we saw the fire, then I ran in the back and started to shout.

Q When you saw the fire? A Yes, sir.

Q Was the fire of the shot the first thing that attracted your attention? A Yes, sir.

Q That is to say, you saw the flash? A Yes, sir.

Q Everything else was black, but the flash?

A Yes, sir.

Q And if I -- Question withdrawn. How many flashes did you see? A I saw the four of them.

Q You saw what? A The four of them.

Q Flashing towards the soda fountain? A Yes, sir. He hit the fountain and the show case.

Q Was it very dark outside? A Yes; it was at night.

Q Why do you speak of a flash of a shot? Why do you say flash?

CASE # 630

MR. O'CONNOR: I object to that. Mr. LeBarbier put the word into his mouth. He said he saw the fire, and Mr. LeBarbier asked him if it was a flash, and the interpreter put the interpretation on that of "boom, boom", to him.

BY MR. LeBARBIER:

Q Now, which is it? Did you see the flash of the pistol shot? A Yes, sir; I saw the fire.

Q You mean by that the light, the flash? A Yes; I saw the burning of the powder.

Q Now, just this moment, when you saw -- how long was it after the throwing in of these stones that you saw this burning of powder? A Immediately the window was broken, the shooting started.

Q Immediately the window was broken, you ran back, did you not? A Sure.

Q Immediately the window -- How long between the breaking of the window and the burning of the powder?

A How can I remember? It is over three months ago.

Q Why not? A I can't remember how long it took.

Q You mean after this occurrence, your window was broken again, you stated. Why can't you remember two

weeks before? A It was broken, but I don't know who broke it then.

Q Were you standing at the window, when it was broken the second time? A No, I was asleep. It was two o'clock in the morning. I heard knocking.

Q How far were you down your little store, after the immediate breaking of the window from the stones, when you saw the flashes from the burning of the powder?

A Not far away; near the door.

Q How far away from the window in feet? Estimate it? A About two feet.

Q Did you turn back then and run? A When I saw the fire, I ran.

Q And how many burnings of powder, or fire, did you see? A Four.

Q Aimed at the fountain? A Yes.

Q On the other side of the place from where you were? A Yes, sir.

A N N I E W E I N B E R G, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. LeBARBIER: May it please your Honor, I respectfully move to strike out all of the testimony

CASE # 630

of the last witness, on the ground that it is incompetent, immaterial and irrelevant, and not under the subject matter of the indictment. It is distinctly sworn to by the witness that he was on one side of the room, and the shots were discharged at the fountain, which was on the other side of the room. He has repeated and reiterated that, and it strikes me at this stage, that --

THE COURT: Of course, I observed and remarked to Recorder McAvoy, who was sitting with me at the time, that the attention of the witness should have been directed to this testimony by the District Attorney. He did testify that the shots were fired at the soda water fountain, I think.

MR. O'CONNOR: But he testified that he was within two feet of the fountain, and, if the defendant was fortunate enough to hit the soda water fountain, instead of the complainant, that's not his fault, but his luck.

THE COURT: But he must shoot at somebody, some human being, to sustain the allegation in the indictment.

MR. O'CONNOR: I have to assume, your Honor --

THE COURT: You should have shown in what condition the complaining witness was in regard to the soda fountain. Now, assuming, for instance, the revolver

was discharged only for the purpose of attracting attention, what offence would be committed?

MR. O'CONNER: The soda water fountain is back of the counter, and that is close to the door, and the complainant was a few feet from the counter, at the time of the firing, and the defendant, earlier in the evening had said, "You God damn sheeny, I will kill you, tonight," and he comes back about an hour afterwards, and fires four shots in the direction of where the complainant was.

THE COURT: I do not recollect any testimony to that effect, but you may call the complaining witness, if you desire.

MR. O'CONNER: I will recall him.

MR. LeBARBIER: Shall I renew my cross-examination first, if your Honor please?

THE COURT: Yes, if you wish to do so, you may continue your cross examination.

ABRAHAM WEINBERG, being recalled:

CROSS EXAMINATION CONTINUED BY MR. LeBARBIER:

Q I understand you to say, that, when the stones came through the window, you were by the door, in your shop? A When I heard the stones fall, I ran to the door.

CASE # 630

Q You ran to what? A I ran to the door.

Q Did you get behind the door? A By the door.

Q Did you get behind the door? A There is no way to go behind the door. The door was closed.

Q Now, we will assume a position.

MR. O'CONNOR: I object to the assumption of a position.

MR. LeBARBIER: On the statement of facts.

MR. O'CONNOR: I think the proper way is to ask the complainant where he was standing, and to describe the situation, and where the defendant was standing.

MR. LeBARBIER: I have no objection. I will accept the suggestion.

BY MR. LeBARBIER:

Q How far from you was the soda water fountain?

A About two feet.

Q Which side of you was it? A The right side.

Q When the stones were thrown through the window, how far were you from the soda water fountain? A Very near to the fountain.

Q How far? Give us the distance? A About one foot.

Q About one foot? A Yes, sir.

Q One foot sideways from the fountain? A Yes, sir.

CASE # 630

Q Did the stones come in your direction? A Not far away from me; on to the show case.

Q The stones go between you and the soda water fountain? A Yes; into the store.

Q Then, if I understood you, you said you went to the door? A It isn't far from the fountain to the door.

Q How far? A Well, about one foot.

Q And you got right up behind the door? A Yes.

Q Did you get up close to the door, touching it?
A About two feet away I was from the door.

Q The door was the other side of the window, away from the window, wasn't it? A Yes, sir; about two feet away.

Q Were you behind the door? Now wait. Were you? Yes or no? A Yes.

Q Were you behind the door at that time, because of the fire you had -- No. Not because of the fire you had--
Question withdrawn. But were you behind the door because of the stones having been thrown through the window?

A Yes; I was afraid.

Q Afraid of what? A I was afraid that the stones

might kill me.

Q You said, a moment ago, that the first and second stones was thrown, and that immediately one O'Brien and another ran away. Now, is that true or false? A Yes; that's true.

Q And why do you now say to the Court and jury that you were afraid the stones were going to kill you? A Because I have been asked now. I wasn't asked before.

Q Well, is that what you mean to say? A Yes, sir.

Q Now, see the situation. A man is outside your window, and has thrown two stones through the window, and you see this man and the other man run away; and now you say that you were afraid you would be killed by the stones. Who else out there was there who had any stone in his hand? A Nobody.

Q Then what do you mean? A I meant, at the time stones were coming in, I went to the window.

Q And you ran behind the door, because you were afraid of the stones? A Yes, sir.

Q And while you were behind the door, you saw these shots go over towards the fountain? A Yes, sir.

Q Yes or no? A Yes.

Q In an entirely different direction from where you

were? Yes or no. A Not far away from where I was.

Q In an entirely different direction from where you were? A It was alongside of the window, where I was standing.

THE COURT: Is it your contention, Mr. LeBarbier, that the defendant did discharge a loaded revolver at that time, but, because he was not an expert shot, and did not hit the complainant, that that relieves him from responsibility here?

MR. LE BARBIER: Oh, no, sir; not at all. I contend that he didn't shoot at all, and that he was not there to shoot, at all, at that time.

BY THE COURT:

Q Was there any one else in the store, at the time the shots were fired, besides yourself? A Yes, sir; my wife and child.

Q And had the defendant said anything to you before, on that night, or earlier on that evening? A He said, "this night, I will kill you."

MR. LeBARBIER: I object to that, and I move to strike out the testimony of this witness. I renew my motion to strike out his testimony.

THE COURT: Motion denied.

MR. LeBARBIER: Exception.

A N N I E W E I N B E R G, being recalled to the stand
by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live, Mrs. Weinberg? A 2091 Second
Avenue.

Q You lived on the 6th of December, 1906, at 2091
Second Avenue? A Yes, sir.

Q In the County of New York? A Yes, sir.

Q And with whom did you live there? A With all
Italian people.

Q No, what was your family there? A I was living
with my husband there.

Q And did you have a child there? A Yes, sir.

Q How long did you keep the candy store there?

A For a couple of months.

Q For a couple of months? A Yes, sir.

Q Did you know Maggiore, the defendant? A Yes.

Q Now, how long had you known him? A Since I am
living there.

Q Now, on the 6th of December, 1906, did the defen-
dant come into your store? A Yes, sir.

CASE # 630

Q About what time of the day and night did he come in there? A He came in about -- I couldn't tell you exactly the time; if it was ten or half past ten.

Q Between ten and half past ten at night? A Yes, sir. He came in and asked for a package of cigarettes, and he took the package of cigarettes, and asked me for a glass of water, and then he took what I give him, and he want to go out, and I said, "Why don't you pay me?" And he said, "Yes, I pay you this and this." I am ashamed to tell you that. I can't tell you that.

Q Yes; you must tell us. A And he said, "Yes, I will pay you. You can fuck yourself, you Sheeny bastard, I kill you tonight." And, of course, I was hollering to my husband. He grabbed me by my breast, (indicating). He thought my husband wasn't in. He always bothered me.

MR. LeBARBIER: I object to that, if your Honor please, that he thought her husband wasn't in, and that he always bothered her, and I ask to have that stricken out.

THE COURT: Objection sustained. Motion granted.

A (Answer continued) And my husband came out from the back, and he said, "I told you many times that you

CASE # 630

should stay out of here," and he got excited and punched me in the stomach.

Q He punched you in the stomach? A Yes, sir; and I fainted. I fell back by the fountain, where I was standing behind the counter, I fell back and fainted, and people came in from the street, and they picked me up, whatever they did.

Q And where were you taken to then? A I was sitting in the front of the store, on the other side; I was behind the counter; and then they took me, you know, just like here, right next, and they wake me up; and, after that, I had the chills; I was feeling awful bad, and my child was right next to me. And they told me I should close up the store, and we did close the store; and my husband went with me in the back, to make anything warm for me, because I had terrible chills after that. And it didn't took but a quarter of an hour, and we heard one knock after the other. And I didn't want my husband to go out, because they are awful excited people. If I had been with my people, I could have had help.

MR. Le BARBIER: I object to that, and I move to strike that out, if your Honor please.

THE COURT: Objection sustained. Motion granted.

CASE # 630

THE WITNESS: And we heard some knocks on the window.

BY MR. O'CONNOR:

Q What did you and your husband do, if anything?

A I didn't want to leave my husband go out.

Q Well did he go out? A Listen. I didn't let him go. He shouldn't get excited, because them people is awful excited people. But he did went, he went to the show window.

2
A No, sir; on this side (indicating). He went by the door, and Mr. O'Brien and that fellow (indicating the defendant), and another fellow was outside, and that gentleman sitting right there (indicating) --

Q The defendant? A Yes, sir; that gentleman was there. And he said, he holler in, "I must kill you, Sheeney, to-night. I have to kill you Sheenies to-night", and we didn't answer, of course, and I held my husband, because I got frightened that they would kill him.

And one knock after the other came in, stones; and, then, of course, I started to holler, and my husband went right there.

We had a partition from the store, and he was standing by the door, like this (illustrating), and looked into the

CASE # 630

window, and he saw that fellow standing there (indicating the defendant).

Q Did you see him? A I saw him before, but, that time, I didn't see him. I was very excited.

He insulted me a couple of times before this. He took even a knife to me. He said, "I stick your belly with that knife."

He always did insult me. And my child was sick for three months. I just took my child out from the hospital.

THE COURT: Strike out the alleged threats made by the defendant against this witness. You did not object, Mr. LeBarbier. And strike out, also, the alleged attempt, on one occasion, to commit an assault upon her.

MR. O'CONNOR: Yes, sir; I consent.

BY MR. O'CONNOR:

Q Now, Mrs. Weinberg, I appreciate the condition you are in, and, therefore, I don't want to excite you. Did you see the defendant shoot a pistol? A I couldn't say that. I heard the shot, and I got excited, and I fainted, because I am a woman in a mother's condition, and detectives and everybody could prove it, which they find me, in what kind of condition.

CASE # 630

CROSS EXAMINATION BY MR. LeBARBIER:

Q How do you feel, to-day, Mrs. Weinberg? A Thank God, I feel better what I did.

Q Well, you feel better? A Yes, sir.

Q Did you walk down, or come down in the subway, to-day?
A I come down in the car. I couldn't walk down so far.

Q Did you come down in the surface car; did you?
A What do you mean, surface car?

Q In the street car? A In the car, like everybody is going.

BY MR. O'CONNOR:

Q She means elevated or -- A No; I take the car.

BY MR. LeBARBIER:

Q Tell me, Mrs. Weinberg, how large is the store?
A The store?

Q Yes? A Well, I couldn't tell you how large it is. It's a big store.

Q It's a big store? A Yes, sir.

Q Now listen. I mean, how wide is it? A It is only a single store. How broad? I couldn't tell you that either. I didn't measure it.

Q I know, of course not. But six or seven feet?

A I couldn't tell you that. I'm not so smart on that. I

CASE # 630

know it is a single store; that's all.

Q Ten or twelve feet broad? A I couldn't tell you.

Q Or fifteen feet broad? A I couldn't tell you that.

Q Or twenty feet broad? A I couldn't tell you that; because I never was in court, and I never know so much as this before.

Q Well, now, please don't talk so much. If you can't say whether it was 10 or 12 or 15 or 20 feet broad --

A No, sir.

Q And you had a soda water fountain there, didn't you?

A Yes, sir.

Q A nice fountain? A Certainly, it is a nice fountain.

Q With little figures on it? A Yes, sir.

Q Like statues on it? A With looking glass on it. It is a nice, big fountain.

Q A big fountain? A Yes, sir.

Q And then there is a window, and you can look in the window and see the fountain; can't you? A Yes.

Q And on the other side of the store is a door; is there not? A Yes, sir.

Q Do you know how far that door is from the fountain?

A How far? It is right next to the fountain. I couldn't tell whether it is a yard or what. It's right next.

CASE # 630

Q Well, it is the other side of the window; isn't it?

A Yes.

Q Did you see the stones thrown through the window?

A Certainly we did.

Q Did you see them thrown through? A Mr. O'Brien did it.

Q (Question repeated) A Yes.

Q Where were you? Back in the store? A No; when we heard the knocks, we went in the store.

Q Now, Mrs. Weinberg, will you kindly listen? Where were you at the time -- A When we --

Q Now kindly wait. At the time the stones were thrown through the window? A Where I was?

Q Yes? A Inside in the store.

Q In the store? A Yes, sir.

Q Forward or back? A I was behind the door, and that came through the window.

Q Away from the fountain, on the other side? A Yes; I was on this side, and the fountain was on the other side.
(Illustrating)

Q And you have a little baby? A Yes, sir.

Q And the little baby was with you? A Yes.

Q So that nobody was on the side of the fountain? A No,

CASE 630

sir.

Q Your husband wasn't there? A My husband, I couldn't tell you where he was, because I was excited.

Q Now, Mrs. Weinberg, Mrs. Weinberg, will you kindly listen? Where was your husband -- A I couldn't tell you.

Q At the time -- won't you kindly wait until I get through my question? At the time the stones were thrown through the window, where was your husband? A I couldn't tell you which place he was; I don't remember that. I was too much excited.

Q But the stones hadn't yet been thrown? A Well, the stones came through the window. I had a very big damage. Everything was destroyed.

Q That's not the question. At the time the stones were thrown through the window, where was your husband? A He was in the store; he ran in the store.

Q Where? A I couldn't tell you which place he was, because I was excited.

Q Was he near you? A I couldn't tell you that. I was too much excited.

Q How far away from you was he? A I couldn't tell you, because I was too much excited. I fell in a faint there.

Q Was he within a few inches away from you? A Maybe he was more. I couldn't tell you that. As soon as the

1727
CASE # 630

stones were coming, we started to holler.

Q Did you feel faint? A We run inside through the back, out. We heard the first shot, and we ran, you know; and then I fell back, and I was fainting, whichever it was. I couldn't tell you the rest.

Q Well, when you say you were fainting, what do you mean? Did you fall down? A Yes; I fall down.

Q Where were you when you fell down? A We were in the store, when we heard the shots.

Q But, you have told me that a dozen times.

Question repeated.

A In the store.

Q Where? A We were behind the door.

Q Behind what door? A The front door. People came down to go out in the hall. Next, we run in the back hall, and heard people coming down.

Q Now Mrs. Weinberg was your husband standing by the soda water fountain when the stones were thrown in the window?

A No, sir.

Q Now, that's an answer. A No, sir.

Q Now wait. A He was standing behind the counter, back.

Q He was away from there? A Yes, sir.

Q Was your husband standing in front of the window,

CASE # 630

when the stones were thrown in? A No, sir; he couldn't stay there.

Q Was your husband standing by the soda water fountain, when the shots were fired? Yes or no? A I couldn't tell you. I don't know that. I was too much excited. I couldn't tell you. I was feeling awful bad.

Q Was your husband standing in front of the window, when the shots were fired? A When he would be standing in front of the window, he would be killed.

Q Now listen to me, Mrs. Weinberg. Was -- where was he standing? A I couldn't tell you. I was too much excited.

Q Now did you see him standing in front of the window, when the shots were fired? A Who? My husband?

Q Yes, Abraham? A No, he wasn't.

Q Now, that's an answer. Steady there. That's an answer. A No, sir.

RE-DIRECT EXAMINATION BY MR. O'CONNOR:

Q Now, Mrs. Weinberg, we will get a description of that store. Now, here is the wall (indicating)? A Yes, sir.

Q And what was up against the wall? A My soda fountain.

Q And was the soda fountain as wide as that table?

(Indicating the stenographer's table.) A It may be so,

CASE # 630

or it may be a little wider.

Q And then there was a space from the fountain to the counter? A Yes, sir.

Q How wide? A About that wide (illustrating).

Q And then there was a counter in front of that?

A No, sir.

Q Then you could walk right from the fountain here to the door? (Illustrating) A Yes.

Q Nothing could stop you from walking to the door?

A No, sir.

Q You had to pass the window? A Yes.

Q And you say about there was the door? (Indicating)

A Yes.

Q And that door is about as wide as from here to where the foreman's chair is?

MR. LeBARBIER: Objected to. She says that she couldn't say whether it was 10 or 20 feet away.

BY MR. O'CONNOR:

Q How many stores are there in that house? A Two stores.

Q And there is a main entrance to the building, between the stores? A Yes, sir.

Q And it is a five or four story building? A Two or

CASE # 630

three; I don't know. I never was upstairs.

J O H N F L A N A G A N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are an officer of the Police Department of the City of New York? A Yes, sir.

Q Attached to the 29th Precinct? A Yes, sir.

Q Now, on the early morning of December 6th, 1906, where was your post? A From 101st to 106th Streets, and Second Avenue.

Q And was your attention attracted to these premises in question, 2091 Second Avenue? A Yes, sir.

Q And what attracted your attention to the premises?

A I heard four pistol shots.

were

Q And where were you standing at the time, or walking, when you heard the report of four pistol shots? A I was standing at the southwest corner of 106th Street and Second avenue.

Q And how far is that from the house in question?

A A block and a half.

Q And where is that number located? A It is on the

1231

CASE # 630

west side of Second avenue between 107th and 108th streets.

Q That wasn't on your post; was it? A No, sir.

Q And you were standing at the southwest corner of 106th street and Second avenue? A Yes, sir.

Q Now, what did you do, when you heard the report of the four pistol shots? A I went on --

MR. LeBARBIER: Objected to.

THE COURT: Overruled.

MR. LeBARBIER: Exception.

A (Answer continued) I went on up to where it was, and, when I was going up, there was a man --

Q No. When you got up to the store, did you see anybody? A Yes, sir; I saw Mr. Weinberg and his wife.

Q And did you talk to them? A I talked to Mr. Weinberg.

Q Where was Mr. Weinberg, at that time? A He was standing in the doorway leading from the store into the room behind the store.

Q And, after you had a talk with him, then, did you go into the store? A Yes; I went into the store.

Q Now did you examine the windows there? A I seen the window was broken.

Q Which window? A The window that was opposite the counter; the light of glass.

CASE # 630

Q And how wide is that house, about? A About 9 feet.

Q The store, you mean? A Yes, 9 or 10 feet wide.

Q And did you see where the soda fountain was?

A Yes. It was inside of the plate glass window, inside of the counter.

Q Near the wall? A Yes; standing up on the stand there.

Q Now where was Mrs. Weinberg? Did you see her? A Yes.

Q Where was she? A She was laying on the floor.

Q Lying on the floor? A Yes.

Q Of the store? A Yes; right alongside of the door in the partition.

Q And what did you do then? A Well, I came right out, and there is a man next door, a shoe store, next door, and he said the fellows --

MR. LeBARBIER: Objected to.

THE COURT: Sustained.

BY MR. O'CONNOR:

Q Never mind what he said. Was the defendant there?

A Not then.

Q Well, the man talked to you in the shoe store?

A Yes, sir.

Q Now, after talking with the man in the shoe store,

CASE # 630

what did you do? A I went in search of the prisoner . I went upto the roof; next door, thinking he had gone up the stairway.

MR. LeBARBIER: I object to that, if your Honor please, and move to strike it out.

THE COURT: Objection sustained. Motion granted.

A (Answer continued) And I come back down again, and he said, "He has gone in back of the undertaker's shop."

MR. LeBARBIER: I object to that, if your Honor please, to what some one said, and move to strike it out.

THE COURT: Objection sustained. Motion granted.

BY MR. O'CONNOR:

Q And where did you go after the man in the shoe store spoke to you? A I went up to the roof again.

Q And you came down again, and you went to the shoe man again? A Yes.

Q And he talked to you again? A Yes.

Q And what did you do then? A I went to the undertaking shop.

CASE # 630

Q And how far is that from where Mrs. Weinberg's candy store is? A In the next building.

Q In the next building? A Yes, sir.

Q And how did you get into the undertaker's shop?

A The front door was open.

Q And what did you do when you got into the undertaker's shop? A There were three men in the rear room, and Mr. Weinberg identified them as being the three men that were in his store.

MR. O'CONNOR: I move that that be stricken out, that Mr. Weinberg identified some one.

THE COURT: Yes. Strike it out.

BY MR. O'CONNOR:

Q Now you had Weinberg with you? A Yes, sir.

Q And you and he went into the undertaker's shop?

A Yes, sir.

Q And who was in the rear room? A The defendant, and O'Brien and another man .

Q Now what did Weinberg say, in their presence? A He said, "There is the three men that were in my store, and assaulted me," and I arrested the three men.

Q And what was the name of the third man? A I forget now, sir.

CASE # 630

Q And then you placed the defendant under arrest?

A Yes, sir.

Q Does he speak English? A Yes, sir.

Q And what did he say, when Weinberg said he was one of the men? A He said that he didn't do it.

Q And did you take him to the station house? A Yes.

Q And was Mrs. Weinberg brought to the station house or court, next morning? A She came to the station house also.

Q Now was the defendant confronted with Mrs. Weinberg in the station house? A Yes, sir.

Q And did she there tell what happened? A Yes.

Q In the presence of the defendant? A Yes.

Q Was there any other officer with you? A Yes, sir.

Q What's the name? A Officer Coster.

CROSS EXAMINATION: None.

RE-DIRECT EXAMINATION BY MR. O'CONNOR:

Q Did you make a search of him at the time? A Yes.

Q Did you find anything on him? A No, sir.

Q Oh, Officer, what time did you make this arrest?

A Ten minutes after twelve, in the night time.

Q Had you just come out on post? A No, sir. It was just before I went in. I was just waiting for my relief.

CASE # 630

H E N R Y C. C O S T E R, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are an officer of the Police Department of the City of New York and attached to what precinct? A 29th.

Q Where was your post on the night of December 6th, 1906?

A From 96th to 101st Streets and Second Avenue.

Q Did you go to the premises 2091 Second avenue, on that night or early morning? A Yes, sir.

Q How did you come to go there? A I was walking in from my relieving point, and I met Officer Flanagan, and went up to 106th Street and Second avenue; and we were talking **together**, and we heard the report of four shots fired from a pistol, as I believed; and we went up there to investigate, and we were informed--

Q Never mind what you were informed, Officer. Now 2091 was a candy store; wasn't it? A Yes.

Q And did you see the complaining witness, Weinberg, there? A Yes.

Q And did you have any talk with him? A No, sir, I didn't.

Q Officer Flanagan had the complainant with him?

CASE # 630

A Yes, sir.

Q And did you go into the store? A No, sir; I stood on the outside.

Q And did you look in the window, the store window?

A Yes.

Q And what was the condition? A Broken.

Q And did you then go with Officer Flanagan in the place? A Yes.

Q Where did you go to? A We went into the undertaker's establishment, next door.

Q Did Mr. Weinberg go with you two officers? A Yes, sir.

Q And you saw the defendant in the rear of the store?

A Yes, sir.

Q And you arrested him? A Yes, sir.

Q And took them all to the station house? A Yes, sir.

Q And have you any idea of the name of the undertaker?

A John Rumore.

Q And between what streets is that place? A Between 107th and 108th Streets.

CROSS EXAMINATION BY MR. LeBARBIER:

Q Well, you found him with a number of other people, in the back of the undertaking establishment? A Yes, sir;

CASE # 630

him and two others.

Q Sitting down? A Well, the defendant was lying down on the floor, and O'Brien was standing up, and the other young man there was standing up.

Q In the back of the undertaker's establishment?

A Yes, sir.

RE-DIRECT EXAMINATION BY MR. O'CONNOR:

Q How was he dressed, Officer? A He had on a blue sweater and his trousers off and his coat off.

Q And in your presence, **what** did Weinberg say? A H e said, "Here is a man back here that left my place just now; that shoot in my store."

MR. O'CONNOR: The People rest ,if your Honor please.

MR. LeBARBIER: I respectfully move, if your Honor please, to withdraw the charge of **assault** in the first degree.

THE COURT: Motion denied.

MR. LeBARBIER: Exception. On the ground that there is no evidence to substantiate the charge of assault in the first degree.

THE COURT: Motion denied.

CASE # 630

MR. LeBARBIER: Exception. And I make the same motion as to assault in the second degree.

MR. O'CONNOR: There is only one count in the indictment.

THE COURT: There is only one count in the indictment.

MR. LeBARBIER: Then I ask your Honor to advise the jury to acquit, on the ground that no facts have been adduced here sufficient to establish any crime, as laid in the indictment.

THE COURT: Motion denied.

MR. LeBARBIER: Exception.

CASE # 630

THE DEFENSE.

J O S E P H R O S S E L L, a witness called on behalf
of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q On the 6th day of December, 1906 -- A I can't talk
English.

Q Oh, I guess you can get along. How old are you?

A 37 years.

Q Where do you live? A 109th street.

Q What's your business? A Driver.

Q Do you know Gabriele Maggiore? A Yes.

Q How long have you known him? A Three or four years.

Q Do you know other people that know him? A Yes.

Q Do you know what his reputation is? Is he a good
or man bad?

THE COURT: Reputation for what?

MR. LeBARBIER: For peace and quiet.

BY MR. LeBARBIER:

Q Do you know what his reputation is for peace and
quiet? A I don't understand.

CASE # 630

Q Were you with Maggiore on the 6th of December?

A I don't understand.

MR. O'CONNOR: I think you had better wait for the interpreter. He has been sent for.

MR. LeBARBIER: Very well. At this stage, if your Honor please, I offer in evidence the conviction of the co-defendant, O'Brien.

MR. O'CONNOR: Objected to.

THE COURT: Objection sustained.

MR. LeBARBIER: Exception.

(John E. Guidetti is sworn to act as interpreter, by consent.)

BY MR. LeBARBIER:

Q Now do you remember the night the defendant, Maggiore, was arrested? A Yes, sir.

Q Will you kindly state to the court and jury what you observed, on that night, December 6th, 1906? A I was passing through Second avenue, about five minutes after twelve, midnight. There was a crowd of people in front of the cigar store, on Second avenue. I stopped there, and tried to find out what was the trouble, and I didn't understand what they were talking about, because they were speaking English. Then I went away.

CASE # 630

Q Did you see Maggiore there, that night?

MR. O'CONNOR: I object. The question was this,
if your Honor please --

THE COURT: Do you object to it, as leading?

MR. O'CONNOR: Yes.

THE COURT: Objection sustained. Ask the
witness whom he saw there, that night.

MR. LeBARBIER: An exception.

Q Whom did you see there that night? A I didn't see
any Italian men there, at all.

Q Were there a number of English speaking people in
front of the complainant's store? A Yes; they were all
speaking English.

Q Did you see anything happen to a window there?
A No, sir.

Q Did you see any firing done, that night? A No, sir.

Q Where were you when the defendant, Maggiore, was
arrested? Question withdrawn. I want to shorten this,
and get through this quickly. Where were you when the
defendant was arrested? A I wasn't there.

Q Do you know anything about what happened there, that
night? A No, no.

CROSS EXAMINATION: None.

CASE # 630

Q Did you see Maggiore there, that night?

MR. O'CONNOR: I object. The question was this,
if your Honor please --

THE COURT: Do you object to it, as leading?

MR. O'CONNOR: Yes.

THE COURT: Objection sustained. Ask the
witness whom he saw there, that night.

MR. LeBARBIER: An exception.

Q Whom did you see there that night? A I didn't see
any Italian men there, at all.

Q Were there a number of English speaking people in
front of the complainant's store? A Yes; they were all
speaking English.

Q Did you see anything happen to a window there?
A No, sir.

Q Did you see any firing done, that night? A No, sir.

Q Where were you when the defendant, Maggiore, was
arrested? Question withdrawn. I want to shorten this,
and get through this quickly. Where were you when the
defendant was arrested? A I wasn't there.

Q Do you know anything about what happened there, that
night? A No, no.

CROSS EXAMINATION: None.

CASE # 630

MR. O'CONNOR: I will move to strike out the witness's entire testimony. It has nothing to do with the case.

MR. LeBARBIER: No; I will ask him whether he knows his reputation for peace and quiet. He says that he knows him, and if he says he knows others who know him, I will ask him if he knows his reputation for peace and quiet.

BY MR. LeBARBIER:

Q Now, on the question of peace and quiet, what is the defendant's reputation? A He always was a good man.

MR. LeBARBIER: Now I consent that the balance of his testimony be stricken out, all his testimony except as to character, Mr. O'Connor.

MR. O'CONNOR: Yes; very well.

G I A C O M O L E O N E, a witness called on behalf of the defense, being duly sworn, and examined through the same interpreter, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Do you remember the night when the defendant was arrested? A Yes, sir.

CASE # 630

Q Were you also arrested? A Yes; I was arrested, too.

Q Did Weinberg say that you were one of the men, too?

A Yes, sir.

Q Now, you were taken to the police court, the next morning; were you not? A Yes, sir.

Q And you were discharged; were you? A Yes.

Q Kindly state to the court and jury what you saw, that night. Did you see any firing, or windows broken, or what? A The night of the firing, Gabriele Maggiore and myself were asleep in bed, and the policemen come up, and knocked at the door, and then the policemen broke into the door, and they told us to get up, and they locked us up.

Q Were you with the defendant, that evening? A We were sleeping together.

Q Well, were you with him at ten o'clock, say? A Yes.

Q Did you go into Weinberg's place of business, a little candy shop, with the defendant, that evening? A On that night, I went into Mr. Weinberg's place, and bought a pack of cigarettes, and paid for it, and walked out.

Q Did the defendant go in with you? A Yes.

Q While he was in there, did he say at any time, "You God damn Sheeney, I must kill you, to-night", or words to that effect? A No, sir.

CASE # 630

Q Did he insult either Mr. or Mrs. Weinberg? A No, sir.

Q When you left that candy shop, at about ten o'clock, as you say, where did you and the defendant go? A We went over to have a drink on the corner, and then we went home to sleep.

Q Did the defendant leave you between that hour, and, say, a quarter after twelve, or five minutes after twelve, midnight? A No, sir.

Q Did he have a revolver in his pocket, that night and discharge it? A No, sir.

Q Were you with the defendant, that night, outside of the store of Weinberg, and did he fire four shots in through the window? A No, sir; he didn't fire any shots at all. We were in bed and we heard four shots fired, and the policemen came up, and broke open the door.

Q Now isn't this the same story that you told in the Police Court? A Yes.

Q Was Mr. Weinberg in the Police Court? A Yes.

Q And he said you were one of the threemen? A He said I didn't do anything, and that's why he had me discharged.

CROSS EXAMINATION: None.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

CASE # 630

AFTER RECESS.

J O H N R U M O R E, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q Do you speak English? A Yes, sir.

Q What is your business, Mr. Rumore? A My business is an undertaker.

Q Undertaker? A Yes, sir.

Q Where? A 2089 Second avenue.

Q Do you know Gabriele Maggiore? A Yes.

Q Do you know other people that know him? A Yes, sir.

Q Do you know what his reputation is for peace and quiet? Good or bad? A Good.

Q Is your undertaking establishment at that place?

A Yes, sir.

Q 91st Street and Second avenue? A Yes, sir.

Q Do you know what the defendant worked at? A

Q (Question repeated.) A Yes; he worked.

Q Who did he work for? A He worked for me.

CASE # 630

Q In the undertaking business? A Yes, sir.

Q Who stayed in that undertaking business, at night?

A Him and the other fellow.

Q What other fellow? A Giacomo Leone.

Q The last witness? A Yes; in the night time.

CROSS EXAMINATION BY MR. O'CONNOR:

Q Your undertaking establishment is right alongside of Mrs. Weinberg's candy store, right next door to it? A Yes.

Q And Maggiore is a driver? A Yes; and an officer; he attends to the office too.

Q Well, if he is out driving funerals, he doesn't attend to the office? A Then I attend to the office.

Q Where does he sleep? On the floor? A In a bed, in the back.

Q He sleeps on the floor? A No; he sleeps on a bed, in the back.

Q Well, the police officer says he found him sleeping on the floor? A I don't know that.

Q You were not there? A No, sir. He got a bed.

RE-DIRECT EXAMINATION BY MR. LeBARBIER:

Q Well, he don't drive funerals at night; does he?

A No.

CASE # 630

ANTONIO FRISCIA, a witness called on behalf
of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q What is your business? A Undertaker.

Q Where? A 126 Elizabeth Street.

Q Do you know the defendant Gabriele Maggiore? A
Gabriele Maggiore I know.

Q Yes, Gabriele Maggiore; how long have you known him?

A Oh, several years.

Q Do you know others who know him? A Yes.

Q Do you know what his reputation is for peace and
quiet? A Yes; keeps good all the time.

CROSS EXAMINATION: None.

GABRIELE MAGGIORE, the defendant, being duly
sworn and examined through the **same** interpreter,
testified as follows:

DIRECT EXAMINATION BY MR. LeBARBIER:

Q What is your name? A Gabriele Maggiore.

Q How old are you? A 25.

Q How long have you been in this country? A Six years
and a half.

CASE 77 630

Q And do you know Mr. Rumore, who has testified here?

A Yes.

Q What were you working at in December, 1906? A In the day time, I used to drive, and, in the night I used to sleep in the undertaking of Mr. Rumore.

Q Well drive where? A Drive in a carriage for Mr. Rumore.

Q For what? Funerals? A Yes; funerals.

Q Now, on the 6th of December -- do you know one Leone? A Yes.

Q On December 6th, 1906, were you in the undertaking establishment? A Yes, sir.

Q Did you and Leone go out together? A Yes, sir.

Q Had you ever been arrested before? A No, sir.

Q Did you go into Weinberg's place? A Yes, sir.

Q Did you go in there to buy a package of cigarettes, and wouldn't pay for it? A No, sir.

Q Well did you pay for it or not pay for it? A Yes; I paid for it.

Q Did you say to Mrs. Weinberg a whole lot of insulting things? A No, sir.

Q Did you have a revolver, that night, or any knife?

A I never brought in my pocket anything.

CASE # 630

Q It is charged here by one witness, at least, I think the complainant, who says that you were on the street, and, when the window was broken by the stones, you fired four shots into a soda water fountain. Is that true? A It isn't true.

Q Have you been in jail ever since December 6th?
A Yes, sir.

CROSS EXAMINATION BY MR. O'CONNOR:

Q You had some trouble with Mr. and Mrs. Weinberg?
A Never.

Q Never had any trouble with them? A Never.

Q Now, the store in which you worked is the next house to their store? A First comes the undertaker, and then a shoemaker shop, and then the store, the candy store.

Q Your undertaking establishment is at 2089 Second avenue? A Yes, sir.

Q And Weinberg's was at 2091 Second avenue? A Yes, sir.

Q Well, that's the next house? A There is two stores, the same number.

Q There are two stores between the candy store and the undertaking establishment? Is that you mean? A Only one; the shoemaker's.

CASE # 630

Q That is, between? A Yes, sir.

Q And it is the next house? A Yes, sir.

Q Now you say that you never had any trouble with Mr. or Mrs. Weinberg? A Never, never.

Q Do you know of any reason they should come here, to-day and swear against you? A I am surprised that they made such a complaint against me.

Q Now, where did you sleep, the night that you were arrested, on the 6th of December, 1906? A In the undertaking establishment.

Q In what part of the undertaking establishment?

A In back of the undertaker's.

Q On the floor? A No; in the bed.

Q The police officer swore that he found you sleeping on the floor, or, at least, lying on the floor? A It is true.

Q What time did you leave the undertaking establishment, that night, to go into Mrs. Weinberg's store?

A About ten or half past ten.

Q And you bought a package of cigarettes? A Yes, sir.

Q Now, you had a talk with Mrs. Weinberg, while you were in there? A No; there was only Mr. Weinberg in there.

Q Who sold you the cigarettes? A Mr. Weinberg.

CASE # 630

Q Now who sold the cigarettes to your friend, Giacomo Leone? A The same man.

Q Where did you go to , after you bought the cigarettes?
A We went over to have a glass of beer, on the corner, and then we went to sleep.

Q And how long did you remain in the saloon on the corner? A About fifteen or twenty minutes.

Q And who did you meet in the saloon? A There were a lot of people in the saloon. They were all Americans, and we didn't know them.

Q Now, the American fellow, who met you there was O'Brien, wasn't it? A No, sir.

Q Where did you meet O'Brien? A I didn't speak to him at all.

Q You didn't see O'Brien when the windows were broken?
A No.

Q Now, when you went into that saloon, didn't you tell O'Brien that you were after having trouble with the Jew, and asked him to come down and help you out? A No, sir.

Q And then wasn't it that O'Brien went down and broke the windows, and you pulled out your pistol, and began to shoot? A I didn't see anybody break the glass, or fire any shots.

CASE # 630

Q Well, then, explain to this Judge and the jury how O'Brien happened to be arrested with you in the undertaking establishment? A I was asleep with Leone in bed, and I don't if the door was closed or open. Then somebody -- Mr. O'Brien come into the undertaker's establishment.

Q Why, you lock the door, when you go to bed, at night, in that undertaking establishment, don't you? A Oh, I close it sometimes, and Mr. Leone closes it sometimes.

Q Well, when you went to bed, that night, who locked it, you or Leone? A I don't know. Maybe Mr. Leone must have left it open.

Q Oh, he may have left it open? A Yes.

Q And how then did O'Brien come to go into your undertaker's establishment, if you never knew him? A I didn't know Mr. O'Brien at all.

Q Well how did he know how to get into your undertaking establishment, where you were sleeping? A I don't know.

Q Well you were arrested there with O'Brien and Leone?
A Yes.

Q Now Leone wasn't -- Leone was dressed, wasn't he, with his clothes on? A Yes.

Q Well, then, Leone was sleeping in bed with you, at the time? A No, sir.

CASE # 630

Q And then it isn't true that Leone --

MR. LeBARBIER: Let him finish the answer.

MR. O'CONNOR: I think he had.

BY MR. O'CONNOR:

Q Go on and finish your answer. A Leone slept in the other room, on the floor, on top of blankets.

Q And then you and Leone didn't go to bed together, that night? A Not in the same bed; at the same time, but not in the same bed;

Q And, if you went out of that place, that night, you didn't tell Leone you were going out; did you?

MR. LeBARBIER: Objected to, as assuming a state of facts not in existence here.

MR. O'CONNOR: Question withdrawn.

BY MR. O'CONNOR:

Q Were you sleeping on a blanket also? A No, sir.

Q Did you have your shoes on? A Nothing on; only the undershirt and underdrawers.

Q Didn't you have a sweater on, a blue sweater?

A (No answer.)

Q Do you know what I mean? A sweater, an overshirt?

A Only an undershirt on.

Q And O'Brien was dressed, wasn't he? A Yes.

CASE # 630

Q Had you ever seen O'Brien before that night in your undertaking establishment? A No, sir.

Q Now, when you work up, or were taken by the police officers, did you say anything about O'Brien being there?

A They didn't take me from off the floor, but I was in bed, and they woke me up.

Q Well, the police officer says he found you on the floor, and took you off the floor, where you were lying on a blanket? A No; I was sleeping in the bed, and Leone was lying on a blanket on the floor.

Q Well, the officer says that you were sleeping or lying on a blanket on the floor, and the other two men, Leone and O'Brien were standing up? A No, sir; it isn't true.

Q How long did it take you to go from your undertaking establishment to Weinberg's store, to walk there? A About two minutes.

Q Two minutes? A Yes, sir.

Q And you had been in Mrs. Weinberg's store several times, during the three months before December, 1906?

A Two or three times a day, to buy cigarettes.

Q So that Mr. and Mrs. Weinberg knew you very well?

A They know me because I was working in the undertaker's

CASE # 630

establishment.

Q Yes. Seeing you two or three times a day, for a period of three months? A Since they had their business there, they used to see me two or three times a day.

Q How did the police officers get into your store?

A I don't know.

MR. LeBARBER: The defendant rests.

BY THE COURT:

Q One moment. Did you ever have any trouble with Mr. and Mrs. Weinberg? A No, sir.

Q Do you know James O'Brien? A Sometimes I used to see him pass up and down by the store, but I don't him to speak to.

Q Did you ever speak to him? A No, sir.

Q Or he to you? A Never.

Q What time did you go to bed, that night? A About a quarter of eleven, or eleven o'clock.

Q What time did the policemen come into the establishment? A It was about a quarter after twelve, or twenty minutes after twelve.

Q And in what condition did the policemen find you?

A I was sleeping in bed. I had only on my undershirt and underdrawers.

CASE # 630

Q And did the policemen wake you up? A The policemen said, "Get up, get up."

Q Did you hear the firing of any revolver, that night?

A Yes.

Q Where were you when you heard the report of the pistol? A Sleeping.

Q Did the firing of the pistol awaken you? A Yes.

Q What did you do, after being awakened? A I still was sleeping.

Q But you said that the pistol shots woke you. Where did you go then? A I stayed in the bed.

Q What time was that? A It must have been twelve, or a quarter past twelve, or half past twelve.

Q How soon after you heard the firing of a revolver, did the policemen come into your place? A About five minutes.

Q Well, you said that you were asleep at the time? A I woke up as soon as I heard the shots.

Q Now, when the policemen came into the place, were you asleep at that time, or were you awake? A I was getting up as soon as I seen him coming in.

Q Saw who? A The policeman.

Q Now, at that time, was anybody in your room, besides the police? A O'Brien, Leone and myself.

CASE # 630

Q Was O'Brien in the room? A Yes, sir.

Q In your room? A Yes; in my room.

Q Was O'Brien asleep, or was he awake? A O'Brien was standing up.

Q Now then you and Leone and O'Brien were arrested?

A Yes, sir.

Q Did the officers take you into Weinberg's place of business? A No, sir.

Q Did you see the condition of the pane of glass?

A No, sir.

Q You say you ~~had~~ been a customer of Weinberg's for two or three months? A Since they ~~had~~ the business, two or three times a day, I used to buy cigarettes.

Q And you went into that place, that night? A Yes.

Q And you paid for your cigarettes? A Yes.

Q Now, when you heard the report of the pistol shots, were you not eager to go and make inquiry as to what had happened? A No; because the policeman come right in my place.

MR. LeBARBIER: The defendants rest, if your Honor please. I move, your Honor, that the charge of assault in the first degree be withdrawn from the consideration of the jury, on the ground that

CASE # 630

no facts sufficient to substantiate the crime charged have been adduced on the trial.

THE COURT: Motion denied.

MR. LeBARBIER: Exception. I respectfully move that the charge of assault in any degree be withdrawn from the consideration of the jury, on the same ground.

THE COURT: Motion denied.

MR. LeBARBIER: Exception. I respectfully move that your Honor advise the jury to acquit, on the ground that the people have not proven the facts by evidence sufficient to establish a crime under the indictment.

THE COURT: Motion denied.

MR. LeBARBIER: Exception.

CASE # 630

THE COURT'S CHARGE.

Gentlemen of the Jury:

In every country where true civilization reigns supreme, justice must prevail. This is a government of law, and law can be enforced and order maintained only where the rights of the individuals are safeguarded and protected. The rights guaranteed by the law are of a dual character, the rights of the accused and the rights of the People.

The law does not seek a victim; the law is blind to the individual. The greatest benefactor of the community, or its lowest inhabitant, when arraigned at the Bar of Justice, is entitled to the benefit of a fair and impartial consideration of the case.

I assume, gentlemen, that we live in a country where racial prejudice is not tolerated or sanctioned. In view of the statements made by the learned counsel for the defense, I deem it my duty to specifically call your attention to the fact that the defendant is entitled to the benefit of a fair and impartial consideration of

CASE # 630

this case, and that you must not permit sympathy or prejudice to swerve you from a fair, honest and impartial consideration of this case. I hope that we have been emancipated from the blindness of bigotry, and the cruelties of intolerance; so that, when an individual is arraigned at the Bar of Criminal Justice, in this great Metropolitan City of New York, jurors will determine the guilt or innocence of the accused simply upon the legal evidence in the case.

On the other hand, a Judge would be unfit to sit upon the bench, and would soil the judicial ermine, if he failed to impress upon a jury that they must not permit racial feelings to interfere in the slightest degree with the determination of the question of the guilt or innocence of a defendant. Justice is cold and impartial; justice is blindfolded. Justice, in its cold and dispassionate administration of the law, should look neither at the race, nor the color, nor the creed of the defendant on trial. And the moment that a Judge does not sacredly follow, and carefully impress upon a jury, the principles upon which government exists, and order is maintained, he is unfit to be trusted with the administration of the business of a

CASE # 630

criminal court in a great city like New York.

So, in this case, I charge you that you must not permit anything extraneous to the evidence to withdraw your attention from a fair and honest and impartial consideration of the testimony in the case.

You, gentlemen, have an important function to perform. By authority of law, you are compelled, having certain qualifications, to serve as jurors. When you are taken into the jury-box, and the oath is administered to you, you become a part of the machinery for the administration of criminal justice. Your power is tremendous, and it should be jealously guarded, and exercised with great discrimination. You have a duty to perform under your oath, and, after you have performed that function, your duty ceases, in a particular case.

In the exercise of that function, you are the sole, absolute and exclusive judges of all questions of fact. Even if the Judge holds or entertains unintentionally any impression of the evidence, and, in this case, I can say to you that the Court holds no opinion or impression whatever, one way or the other, as to the evidence in the case, it is your sworn duty to utterly disregard any such impression that you may believe

CASE # 630

that the Court may entertain.

As exclusive judges of all questions of fact, you are to determine upon the state of facts presented here, in accordance with the law as the Court will charge you, whether or not the People have established the charge contained in the indictment against the defendant, beyond a reasonable doubt; or whether, the People, having failed to establish their case against the defendant, he is entitled to an acquittal.

The magnitude of the offence charged here must not be underestimated by you. The defendant is charged with the crime of assault in the first degree, and it is for you, upon the evidence presented on both sides, to determine the guilt or innocence of the defendant of that charge.

The People claim that, on December 6th, 1906, in the Borough of Manhattan, County of New York, as charged in the indictment, this defendant did wilfully, feloniously and wrongfully make an assault upon one Abraham Weinberg with a certain pistol, which was then loaded as **alleged** with gun powder and leaden bullets; and that that pistol was discharged by this defendant, aimed, as it is claimed by the People, at the person of

CASE # 630

the complaining witness, Mr. Weinberg, with intent to take his life, in violation of law.

The defendant denies that he discharged a pistol at the person of the complaining witness; he denies that he did this act.

Therefore, the question of fact arises for your determination: Did he do it? And if he did, and the People have satisfied you, beyond a reasonable doubt, as to his guilt, it is your duty to render a verdict accordingly; and otherwise to acquit.

I shall not refer further to the facts in the case, since the testimony in the case has been carefully discussed before you by the learned counsel on both sides.

Statements made by counsel on either side, not borne out by the evidence, should be disregarded by you. The testimony being fresh in your recollection, and since you are the exclusive judges of the facts, it lies with you, and it is your duty to give such interpretation to the facts of the case as your best judgment and conscience dictate.

" A person who, with intent to kill a human being, assaults another with a loaded firearm, or any

CASE # 630

other deadly weapon, or by any other means or force likely to produce death, is guilty of assault in the first degree."

"A person who, under circumstances not amounting to the crime specified in the last section," which is assault in the first degree, "wilfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon; or, wilfully and wrongfully assaults another by the use of a weapon, or other instrument or thing likely to produce grievous bodily harm, is guilty of assault in the second degree."

"A person who commits an assault, or an assault and battery, not such as is specified in the foregoing section of this chapter, is guilty of assault in the second degree."

The law requires a Judge to charge every grade of the offence laid in the indictment. But a jury must not capriciously find a verdict of a lower degree of the crime charged, but should find a verdict consistent with the evidence in the case. But it is within your power, if you believe the defendant is guilty of any offence whatever, to find him guilty of any one of the degrees

CASE # 630

of crime embraced in the crime charged in the indictment.

But, as I have said, a jury should find, under their oath, a verdict that is consistent with the evidence.

The defendant has taken the witness-stand in his own behalf. The law, at one time, inhibited a person charged with crime from taking the witness-stand. But the Legislature removed this inhibition; and so, to-day, a person charged with crime may **take** the witness-stand in his own behalf; and, when he does so, he subjects himself to every test ~~that~~ any other witness does who is called by either side. What faith should be given to the testimony of the defendant or any other witness in the case rests entirely with you, gentlemen.

If you believe that any witness has wilfully testified falsely as to any material fact, you are authorized, but not bound to disregard all or any part of that testimony.

The defendant is presumed to be innocent, until the contrary is established by your verdict. The burden is upon the People to prove the defendant's guilt, beyond a reasonable doubt.

A **reasonable** doubt is such a doubt as reasonable men may entertain, after a careful and honest review

CASE # 630

of the testimony. But it is not a speculative doubt, nor is it a whim, nor a guess, nor a surmise. It is, as the words themselves imply, a reasonable doubt, for which a reason may be given.

The defendant in this case has testified that he knows of no reason why the complainant, Mr. Weinberg, should accuse him of being the person who discharged this loaded firearm. It is for you to determine in this case who is telling the truth; who has a greater interest in the outcome of the case; who is to be benefited by the disposition of the case, one way or the other.

The defendant testified that he was surprised that this charge should be lodged against him by the Weinbergs, husband and wife. Both of the Weinbergs, testified that they knew this defendant for some time before the night in question, and that he had been a frequenter of their store.

What object, you may ask yourselves have the Weinbergs, or Mr. or Mrs. Weinberg, to testify that he discharged a loaded firearm.

The law says that every sane person is responsible for the consequences of his own acts.

Now, what was the intention of the defendant,

CASE # 630

if you believe that the defendant did fire off this loaded firearm? Do you believe that the defendant merely discharged a loaded firearm at the soda water fountain, and did not intend to take the life of the complaining witness? If you so find on the evidence, of course, the case of the People must fail, because you must find from the evidence that the defendant did intend to take a human life, the life of the complaining witness in the case, Mr. Weinberg, before you can convict the defendant.

The complaining witness testified that he had a small store on the avenue, and that he was in his store on the evening in question; and that, in the early part of that evening, the defendant made a statement, "I will kill you, to night," or words to that effect; and that, about an hour thereafter, the defendant discharged a loaded firearm into the store, at or near where the complaining witness was standing.

Now, was it the intention of this defendant merely to shoot at the soda water fountain, or did he intend to take human life? It is for you to determine upon the evidence.

It is difficult to ascertain the intention of a human being. The intention of an individual may be

CASE # 630

known only to himself; it is the silent, secret operation of his mind. But often the intention of the individual is disclosed by his act. If a person takes a firearm, loaded with gunpowder and leaden bullets, and, aiming the revolver, discharges the bullet at a human being, what is the reasonable and natural inference to be drawn as to the intent of that person? If a bullet from the pistol which the defendant is alleged to have discharged had penetrated into the body of the complaining witness, it is for you to say whether or not the defendant's intent was to destroy human life. What was the intent of this defendant? You are to ascertain from all the evidence in this case.

The distinction between assault in the first degree and assault in the second degree is that, in assault in the first degree, there must be an intention to take human life; while, in assault in the second degree, the intention to take human life is not an element of the crime. If a person assaults another with a weapon or thing likely to produce grievously bodily harm, or wilfully and wrongfully wounds or inflicts grievously bodily harm upon another, either with or without a weapon, he is guilty of assault in the second degree.

CASE # 630

The defendant has offered some evidence of good character. Good character is absolutely no justification or excuse for the commission of crime, but the law says that good character should be considered by a jury as any other probative fact in the case. Good character will, of itself, create a reasonable doubt where, without it, none would exist; and so you should carefully consider the evidence presented by the defendant, and give it such weight as you think it is entitled to.

As I have said, the law does not seek a victim; and it is your bounden duty, under your oath, to determine this case solely on the evidence, and in accordance with your own common sense and judgment.

In this case, therefore, your verdict will be, guilty of assault in the first degree, or assault in the second degree, or assault in the third degree, or not guilty.

MR. LE BARBIER: I respectfully ask your Honor to charge the jury that, if the jury is satisfied that the loaded firearm was not pointed and discharged at the complainant, the defendant must be acquitted.

THE COURT: I have so said in my charge, Mr. Le Barbier; and I so charge again. That is the law.

MR. LE BARBIER: All right, sir. That's satisfactory.

CASE # 630

THE COURT: The case is with you, gentlemen.

(The jury found the defendant guilty of assault in the second degree.)

127

CASE # 630

THE SENTENCE.

New York, February 25th, 1907.

OFFICER JOHN FLANAGAN, being duly and sworn and examined by the Court, testified as follows:

BY THE COURT:

Q Are you a member of the Municipal Police Force of the City of New York? A Yes, sir.

Q And how long have you been such? A Since April 5th, 1905.

Q What precinct are you attached to? A Twenty-ninth.

Q How long have you been attached to that precinct?

A Since the 14th of October of last year.

Q Do you know this defendant? A No, sir.

Q Where was your post? A From 101 to 106th street and Second avenue.

Q Where did the defendant work at the time you arrested him? A He worked for the undertaker, the man that kept the undertaking shop, where I made the arrest.

CASE # 630

Q Where? A 2089 Second avenue.

Q Between what streets? A Between 107th and 108th Streets.

Q Was that on your post? A No, sir.

Q Did you go off post to make this arrest? A Yes, sir.

Q Do you do any citizen's clothes duty in that precinct?
A No, sir.

Q The complaining witness said that this defendant had been arrested five times, for fighting? A Well, I don't know one thing about it, your Honor.

Q Is it not your duty to make an investigation of the record of this man, or any other man that is arrested for a criminal offence? A Well, I don't know anything about it.

Q Well, do you know whether he has been arrested five times for assaulting people, in that neighborhood? A No, sir.

Q And your post has been continually there, between 101st and 106th streets? A No, sir.

Q Have you ever had the post where this defendant was working? A Well, yes, sir; possibly twenty or thirty times.

Q Did you ever see the defendant, on any of those occasions? A No, sir; I never knew the man before.

CASE # 630

Q Do you pass by this undertaker's shop? A Yes, sir.

Q Ever stop in there? A No, sir.

Q Did you ever pass by the candy store? A Yes, sir.

Q Did you ever stop in there? A No, sir.

Q Did you ever know the complainant before? A No,
sir.

Q Or the defendant before? A No, sir.

Q Is your precinct detective here in court? A No,
sir.

Q Anybody from the 29th Precinct that ever did
detective duty there? A Not that I know of; no, sir.

OFFICER HENRY C. COSTER, being
duly sworn and examined by the Court, testified as
follows:

BY THE COURT:

Q Did you ever do detective duty in that precinct?

A No, sir.

Q You are one of the officers who made the arrest in
this case? A Yes, sir.

Q You never knew him, the defendant, before? A No,
sir.

Q Or the complaining witness? A No, sir.

CASE # 630

THE COURT: The complaining witness says that this defendant has been arrested several times for fighting and assaulting people in the neighborhood.

MR. LE BARBIER: In this case, may it please your Honor, the defendant respectfully moves for a new trial, on the ground that the verdict was against the evidence and against the weight of evidence, and against the law; and for errors made by the learned Court throughout the trial, to which objection was made and exception was taken.

And the defendant moves further upon all the grounds in the Code of Criminal Procedure.

THE COURT: Motion denied.

MR. LE BARBIER: Exception. The defendant moves in arrest of judgment, on the ground that no crime has been made out; particularly on the ground that no facts, as produced on the part of the Prosecution, substantiated in any way, and made out the crime as charged in the indictment of assault in the first degree, or assault in the second degree, or assault and battery.

On the further ground that, by reason of the absence of the facts in such respect, the Court became ousted of jurisdiction.

CASE # 630

THE COURT: Motion denied.

MR. LE BARBIER: Exception. We have nothing to say, your Honor.

THE COURT: Swear the defendant.

(The defendant is sworn.)

BY THE COURT:

Q Have you ever been arrested and charged with fighting, or assault?

MR. LE BARBIER: May it please the Court, we respectfully object to any question addressed by the Court to the prisoner, on the ground that it is incompetent, immaterial and irrelevant, and in no way the duty of the Court, as against the objection of the defendant, to in any wise request information that may be granted by the defendant by answering.

THE COURT: The law distinctly provides that the Court, on the question of sentence, may interrogate the defendant, and may administer an oath. There is an express provision of the statute, a recent enactment.

MR. LE BARBIER: But not if the defendant has nothing to say.

THE COURT: Does the defendant refuse to make the statement by advice of counsel?

CASE # 630

MR. LE BARBIER: The defendant declines to make any statement.

THE COURT: In view of the enormity of this man's act, the Court believes that severe punishment should be administered to this defendant. In a great city like New York, there is no necessity for a citizen to go about armed with a deadly weapon, and ready to use it unlawfully at a moment's notice.

In this case, this defendant enters this complaining witness' store, and purchases cigarettes, and has some trouble with the wife of the complaining witness about payment for the cigarettes; and, in leaving the place, made a threat to kill; and then, later that night, went back, and discharged a loaded firearm, aiming it at the person or persons in the store. His motive was certainly to do violence or serious harm, or to take human life; and the courts should not encourage men who will use deadly weapons, and aim them at persons, with a view of destroying human life. In all probability, if a bullet from that pistol had found lodgement in any person's body, a jury would unhesitatingly have convicted ^{of} murder in the first degree.

There was no reason for the act, and no extenuating circumstance was shown, except the bare

1279

CASE # 630

denial of the defendant. He was found by the police under circumstances which indicated that he was the individual who committed the crime.

The complaining witness in this case exonerated one of the persons arrested for this crime, and a co-defendant pleaded guilty, and was sentenced to a nominal punishment, due to the fact that the Judge who presided in that part of the court where he was sentenced was not familiar with the facts of the case.

This case was presented before me in Part IV, last term, and I discovered that the case was not properly prepared; and I directed a juror be withdrawn, and that there should be proper preparation made, and another trial had.

MR. LE BARBIER: Not with the present counsel, your Honor.

THE COURT: No; you were not the defendant's counsel then.

I sentence you, Maggiore, to State Prison for not less than three years and six months, and not more than four years and six months.

CASE # 630