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I N D E X.

WITNESSES.	DIR.	CR.	RE-DIR.	RE-CR.
Joseph Casey,	2-	5-		
" recalled,	67-			
Daniel J. Reilly,	11-	14-		
Joseph A. Bennin,	16-	22-	42-	42-
" recalled,	68-			
William Eiffe,	42-	46-	52-	
Katherine Dougherty	52-	55-		
John Casey,	57-	59-		

CASE # 1358

COURT OF GENERAL SESSIONS OF THE PEACE

IN AND FOR THE COUNTY OF NEW YORK

PART II.

THE PEOPLE OF THE STATE OF NEW YORK	Before
- against -	HON. THOMAS C. O'SULLIVAN,
J O S E P H A. B E N N I S	Justice

New York, Monday, April 24th, 1911.

THE DEFENDANT IS INDICTED FOR ASSAULT IN THE FIRST AND SECOND DEGREES.

INDICTMENT FILED MARCH 20th, 1911.

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

ISIDOR WASSERVOGEL, Esq., Assistant Dist. Attorney,
For The People.

MAX FRANKLIN, Esq.,
For the Defendant.

(A Jury is duly impaneled and sworn.)

Amos G. Russell,
Official Stenographer.

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MR. FRANKLIN: I move to dismiss this indictment, on the ground if the defendant went to trial he would be placed twice in jeopardy for the same offense. He has been tried before Special Sessions for carrying a weapon, and has been punished by receiving a suspended sentence..

THE COURT: Motion denied.

MR. FRANKLIN: Exception.

THE PEOPLE'S CASE

(Mr. Wasservogel opens the case to the Jury on behalf of The People.)

JOSEPH CASEY, called as a witness on behalf of The People, being first duly sworn, testified as follows:

Direct Examination BY MR. WASSERVOGEL.

Q What is your name ? A Joseph Casey.

Q Where do you live ? A 504 West Thirty-ninth Street.

Q What is your business ? Tile layer's helper.

Q And where are you employed ? A At Fifty-sixth Street off Third Avenue.

Q Do you know Joseph C. Bennis, the defendant ?

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A Yes, sir.

Q How long have you known him? A About two years or so.

Q Did you meet him on the twelfth of March, of this year? A Yes, sir.

Q Where? A Thirty ninth Street, between Tenth and Eleventh Avenues.

Q That is in the County of New York? A Yes, sir.

Q Did you talk to him? A Yes, sir.

Q What did you say, and what did he say? A I asked him why he pointed a gun to my brother, and he said,"I will do the same to you".

BY THE COURT:

Q At a brother? A At my brother, and he says,"I will do the same to you", and he pulled out the gun, and fired at me.

Q Fired it at you? A Yes, sir.

BY MR. WASSERVOGEL:

Q Which part did he aim at? Which part of your body? A He aimed at the lower part, right above the knee-cap. The bullet went through.

Q And did you at that time wear these trousers? (handing trousers to witness) A Yes, sir.

Q Are these the trousers? A Yes, sir.

Q Did the bullet enter any part of your body, or any part of your clothing you wore? A The clothing, yes, sir.

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Q Just indicate to the Jury, on these trousers, which part the bullet went through. A It went through the left leg.

Q Find the holes there made by the bullets, and show it to the Jury. A It went through the left leg(indicating).

Q These holes here(indicating on trousers)? A Yes, sir.

BY THE COURT:

Q Put your hand in the trousers, and put your finger in the holes, if you can. A (The witness illustrates by placing his hand in the trousers leg and putting his finger through holes therein.)

MR. WASSERVOGEL: The trousers are offered in evidence.

(Received in evidence and marked People's Exhibit No. 1 of this date)

BY MR. WASSERVOGEL:

Q The bullet did not enter your body? A No, sir.

Q Just grazed your knee? A Yes, sir.

Q What happened then? A He ran over the roof of 540 .

Q What did you do? A I went to the Station House.

Q Which Station House? A Twenty Second Precinct.

Q And you made a report there? A Yes, sir.

Q When did you next see the defendant, Bennis? A After that I seen him, about an hour or so after.

Q What did you do? A He was in the saloon, and I went in the saloon and told him to come outside. As he come out-

side , the detective had him arrested.

Q Were you present when the detective placed him under arrest? A Yes, sir.

Q Did you see what happened at that time? A No, sir; I walked right ahead.

Q You walked ahead? A Yes, sir.

MR. WASSERVOGEL: Cross examine.

CROSS EXAMINATION BY MR. FRANKLIN:

Q How long do you say you know this defendant? A About two years.

Q Is it a fact that you went to school with him when you were a little boy? A No, sir.

Q You never attended the Thirty Fifth Street school? A No, sir.

Q Where did you first get acquainted with him? A I met him in Thirty ninth Street.

Q Did you see this gun ? A Yes, sir.

Q To whom does the gun belong? A I don't know. Joseph Bennis it belong to.

Q Don't you know it belongs to your brother? A No, sir, it does not.

Q Did you ever see your brother with the gun? A No, sir; he never carried a gun.

Q When did you find out that he wanted to shoot your brother? A Saturday night, March 11th.

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Q What time at night did you ascertain that fact?

A That was about twelve o'clock. I was in bed.

Q Where? A I was in bed, and my brother told me.

Q On the following day, you met Mr. Bennis? A Yes, sir.

Q Did you meet him accidentally, or did you go there purposely? A Accidentally.

Q Where did you meet him? A Between Tenth and Eleventh Avenues.

Q In front of his house? A No, sir; about five thirty seven.

Q Where does he live? A I could not say where he lives.

Q What were you doing down there? A I lived in Thirty ninth Street between Tenth and Eleventh Avenues.

Q What were you doing on Thirty Seventh Street? A I was not in Thirty Seventh Street.

Q On Thirty Ninth Street? A Thirty ninth Street?

MR. WASSERVOGEL: He lives there.

Q Who spoke first? You, or he ? A I did. I said, "Hello, Dodo". That is the name he goes under.

Q What does Dodo stand for? A That is a nick name he has got.

Q How long have you known him by that name? A Two years.

Q What else did you say? A He said, "Hello, Jo", and I says why he pointed the gun at my brother, and he said, "I will do the same to you ", and he pulled out that gun

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and fired at me.

Q What did you do after that? A I went to the Thirty seventh Street Station House, and reported it.

Q Did you put your hand in your hind pocket at the same time you said to him, "Why did you shoot at my brother?" A No, sir. When he fired the shot at me, I threw up my hands.

Q After he fired it, or before? A When he was pulling out that gun, I threw up my hands, and said, "Don't shoot".

BY THE COURT:

Q Did you put your hand in your pocket? A No, sir, I did not.

BY MR. FRANKLIN:

Q After he shot, where did he go? A He ran over 540, the roof.

Q Do you know where he went? A No, sir.

Q Did you follow him? A No, sir.

Q How long did it take you to go from there to the Station House? A About twenty minutes.

Q And to come back? A About ten minutes.

Q Did you find him there at 540 then? A No, sir, I did not.

Q Where did you find him? A I found him in a saloon on Thirty ninth Str-eet, McCormick's saloon.

Q How did you know he went in there? A I was told by

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a couple of boys.

Q And when you went in the saloon to call him, what did you say to him? A I told him my brother wanted to see him outside.

Q Is that all? A Yes, sir.

Q Is it not a fact you told him he shou ld give that gun back to your brother, and you apologized? A No, sir, the gun did not belong to my brother.

Q How do you know? A Because I know he never carries a gun.

Q Did he come right out with you? A Yes, sir.

Q You wasn't afraid them he was going to shoot you, were you? A Yes, sir, I was.

Q Were you? A Yes, sir, I was, because he had--

Q You walked out with him? A Yes, sir.

Q How far did you and he walk before he was arrested? A About five doors. He was arrested at 539.

Q He walked peaceably with you? A Yes, sir.

Q And he walked with you with the intention of going to see your brother? A Yes, sir.

Q And where was your brother suppoe ed to be at that time? A He was supposed to be at 504, where I live.

Q And he willingly went with you, did he? A Yes, sir.

Q For what purpose did he go to see your brother?

A I could not say.

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Q Didn't you go and invite him to go and see your brother? A Yes, sir.

Q Now, for what purpose was he to see your brother? A Well, I suppose to make up friends; we wanted to make up friends with the brother.

Q Isn't it a fact, when you went in the saloon, you said to him, "Let us go down and apologize to my brother?" A Yes, sir.

Q Why did you deny that before? A I didn't deny that, did I?

Q Didn't I ask you if he was not to go down and see your brother to apologize and give him back the gun? A The gun did not belong to my brother.

Q Outside of that, he was to go with you, to apologize? A Yes, sir.

Q Did your brother tell you why he wanted to shoot him the night before? A Yes, sir.

Q What did your brother say? A Because -- My brother come in the saloon there, and asked Dodo to have a drink. Dodo was with another fellow, and the other fellow was a tough fellow, and my brother did not like him, did not like his looks, and he says to my brother -- or my brother says to Dodo, "Have a drink"; and he turns around to his friend, and says, "Come on, we will have a drink". My brother says, "No, I aint blowing your friend, I am only blowing you", and with

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that he pulls out the gun and points it at my brother.

Q Did he discharge it at that time? A No, sir, he did not.

Q You went around to meet him to revenge for that act on your brother? A No, sir, I did not. I wanted to ask him what was the quarrel?

Q You had already known ; your brother had told you. A I wanted to find from him too.

Q Isn't it a fact that you went around to get revenge on him for what he did to your brother the night before? A No, sir, I didn't want to get revenge.

Q Did your brother go to school with him? A No, sir, he did not.

Q You know you are under oath? A Yes, sir, I do.

Q How long has your brother known him? A I couldn't say how long the brother knows him.

Q Is your brother younger than you? A No, sir; older.

Q How many battles and fights have you nad your brother had with this young man? A None.

Q Never fought with him? A No, sir.

Q When he went on the roof, you knew he was going up the roof where the pigeons are? A Yes, that is where he was going.

Q You knew that? A Yes, sir.

Q He didn't run away, did he? A Yes, he did run away.

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Q You knew where he was going? A Yes, sir.

Q How close were you to him when he shot that pistol? A We were about two feet apart.

Q And he aimed on the sidewalk? A No, sir; he shot at my knee cap.

Q Didn't he shoot down? A No, sir, he did not.

Q Your knee is below you? A It was even with the knee cap.

Q But he shot below? He shot down? A Yes, sir.

Q With the muzzle of the revolver pointing to the ground? A It was pointing towards my knee cap.

Q After he shot first, did he make any attempt to shoot again? A No, sir, he did not.

Q He did not? A No, sir.

MR. FRANKLIN: That is all.

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

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your full name? A Daniel J. Reilly.

Q Where do you live? A 231 East Fifth Street, New York City.

Q Did you make the arrest in this case, Officer? A Yes, sir.

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Q When and where? A I go out in Thirty ninth Street, between Tenth and Eleventh Avenues, about Four P. M. on March 10th, 1911.

Q Tell us the circumstances? A The complaining witness Joseph Casey, came to the Station House.

Q And made a report? A And made a report.

Q After he made a report, what happened? A I asked him did he know the man. He said,"Yes". I says,"Do you know where we can locate him"? He says,"I don't know, but I will look for him." I says,"All right, go ahead". I says,"I will go out with you about it, or I will wait here." He says, "We better wait here." I says,"All right"; and I gave him the number to call up, Spring 3100, call up the Twenty Second Precinct, and say you want to speak to Detective Reilly. He says,"All right." So he went out, and some time afterwards, I aint sure whether it was half an hour or an hour, he came back and said,"He is in the saloon at Thirty ninth Street and Eleventh Avenue". I says,"All right." I says to the Lieutenant, "I am going out with this complaining witness on a shooting case."

MR. FRANKLIN: I object to that.

MR. WASSERVOGEL: Never mind what you told the Lieutenant.

THE WITNESS: I asked him to send a Policeman down with me, and he did. The policeman went from Thirty

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Seventh Street to Eleventh Avenue. I went through Thirty-seventh Street to Tenth Avenue, and down to Thirty-ninth Street. I stood opposite the piano factory, on Thirty-ninth Street, Jacobs, I think it is, and I told the complaining witness in the station house, when he gets him outside--

MR. FRANKLYN: Objected to.

THE COURT: Objection sustained.

Q What happened? A When he gets the right fellow, to take his handkerchief out, that I know he has got the man, and he done it, to blow his nose, and as he did he walked up Thirty-ninth Street, and I was standing on the opposite side, and when he got up about twenty or thirty feet past me, I walked over quick, walked behind him, and grabbed his arm and hand, and he had the revolver in his right hip pocket.

Q Is this the revolver (Exhibiting revolver to witness) A Yes, sir.

MR. WASSERVOGEL: I offer it in evidence.

THE COURT: Admitted.

(Received in evidence and marked People's Exhibit No. 1 of this date)

THE WITNESS: He tried to pull it out of his pocket. I wrestled with him. He shoved it into his pocket, and we went into a cellar, about 530 West; we wrestled into the

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cellar, and then the policeman came, and we took him to the station house.

BY THE COURT:

Q In what condition were the chambers of the revolver? A Fully loaded.

MR. WASSERVOGEL: That is all.

CROSS EXAMINATION BY MR. FRANKLIN:

Q At the time you told the complaining witness when he located him to drop his handkerchief, did you have in mind that the complaining witness would be able to bring a desperate man as this defendant was charged to be to you, so he could do so? A I don't know.

Q How did you know that he could bring him in such a position that he could drop a handkerchief?

A I knew they would not let him in the saloon on Sunday. If it had been a week day, I would have gone in after him.

Q How did you know the complaining witness was able to bring a desperado like that out? A I told him to see if he was in the saloon, and if he was in the saloon, to talk to him, and try to get him outside.

Q Did you tell him on what pretext? A No, sir.

Q You had made up with him, when he got outside, to drop his handkerchief? A To take his handkerchief out and blow his nose.

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Q You, as a police officer, know that a man who will deliberately, in daylight, shoot a man, will not come out with a complaining witness?

MR. WASSERVOGEL: Objected to as argumentative.

THE COURT: Yes, objection sustained.

MR. FRANKLIN: Exception.

Q Well, when he came out with this defendant, did they walk peaceably together? A They walked up; I don't know what they were talking about; they walked up quietly.

Q There was no row of any kind between them?

A Not as I know of.

Q There were no gestures to indicate that there was?

A Not as I could see.

MR. FRANKLIN: That is all.

THE PEOPLE REST.

T H E D E F E N D A N T ' S C A S E.

(Mr. Franklin opens the case to the jury on behalf of the defendant.)

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J O S E P H A. B E N N I S, the defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRANKLIN:

Q What is your full name? A Joseph A. Bennis.

Q Where do you live? A 341 East 81st Street.

Q What is your business? A Sheet metal worker.

Q I want you to speak loud enough so this twelfth gentleman can hear you; speak up. A Yes, sir.

Q Where do you live? A 341 East 81st Street.

Q What is your nationality? A German.

Q Were you born in that neighborhood? A Yes, sir.

Q Do you know the complaining witness who was on the stand? A Yes, sir.

THE COURT: What neighborhood do you mean? Germany, or Hell's Kitchen?

MR. FRANKLIN: Thirty Ninth Street.

Q Do you know the complaining witness, who was on the stand? A Yes, sir.

Q How long have you known him? A Ever since boyhood. I went to school with that fellow.

Q What school did you go to with him? A I couldn't just recollect. I remember going to Thirty Fifth Street and Forty Fourth Street School.

Q Did you go to school with his brother? A Yes, sir.

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Q How long have you known him? A Oh, I have known him as long also.

Q Now, I want you to remember carefully, and speak truthfully as to what occurred on Saturday, March 11th, how you came into possession of that pistol, and what occurred the next day, when you had that altercation with the complaining witness. Now, speak loud enough so these twelve men can hear you.

MR. WASSERVOGEL: I object to the form of that question. The witness should be confined to what occurred on the day when this assault is alleged to have taken place, not any other time.

THE COURT: Exactly so.

Q Well, you tell this jury exactly occurred on Sunday, March 12th, when you met the complaining witness. Where did you meet him at first? A About at the piano factory, West Thirty Ninth Street, Jacoby Brothers.

Q What were you doing there? A I was on my way home.

Q Where do you live? A 341 East 81st Street.

Q Where did you sleep that night? A In my sister-in-law's house.

Q Where does she live? A 522 West Thirty Ninth Street

Q Now, tell this jury what occurred at the time you met this complaining witness. A On my way home, about two thirty, from my sister-in-law's house, I met Casey about the piano

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factory, Jacoby Brothers, and Casey asked me what did I have a row with his brother for, and what I have done with the revolver I took away from him. I told Casey, "Let me explain to you". He was intoxicated, and I was not far from it, and, to settle arguments, he wouldn't stand for any -- he wouldn't let me tellHim what the row was about. He said,"Aint there no way of squaring this thing?" like that , to me. I says,"No, let me tell you about the row , how it happened." So we walked down the street,about five twenty seven--five forty seven, and Casey said,"No, I ain't going to walk much further with you. Tell me all about it, and what did you take this revolver away from him for?" I said,"He pulled it on me,so I took it away from him,and my intentions were to give it back to him again." Just then , when I told Casey those words, he put his hand in his back pocket, and I seen the impression of a revolver through his pants, and I fired the shot at the ground, to scare him more than anything else. I have known Casey for the last fifteen years. I have went to school with the fellow. Being as I was German and Casey and his brother were Irish Americans --

MR. WASSERVOGEL: One moment.

MR. FRANKLIN: Well, I will ask the question.--

THE COURT: You cannot cumber the record with this irrelevant matter.

Q How long have you known this complaining witness?

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A About fifteen years.

Q How old are you? A Nineteen years of age.

Q Well, after you fired that shot on the sidewalk, or at the sidewalk, what did you do? A I went across the street.

Q Did you run, or walk? A I walked across the street.

Q Now, the complaining witness exhibits a pair of pants here, and shows two little holes , claiming that the bullet from the revolver you discharged at him penetrated through his trousers. Is that so? A That I doubt. The bullet might have grazed from the ground.

Q Just show the jury how you stood, in what direction you shot, when you did shoot? A Casey was standing on the west side of the street, and I was towards the east side, like that(illustrating), talking to Casey, about eighteen inches or two foot apart, and as we had the argument I discharged the revolver on the ground, like that, took it from this pocket, and discharged it on the ground. Most likely the bullet grazed from the ground.

MR. WASSERVOGEL: I object to what most likely happened.

THE COURT: Yes.

MR. FRANKLIN: Question withdrawn.

Q Did Casey make any attempt to put his hand in his pocket? A He certainly did.

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Q Just show the jury how ? A I was standing there (illustrating), and Casey put his hand up to me, like that, (illustrating) and gave me a slight shove, and put his hand in his back pocket. He was standing off at an angle, and I seen the impression of the revolver in Casey's pocket, and I discharged mine on the ground.

Q And what did Casey say to you when he met you in the saloon, or did he meet you in that saloon? A He did not.

Q Where did he meet you? A On the street.

Q I mean after the shot was fired? A He met me on the street, by an empty store.

Q What conversation did he have with you at that time? A Casey apologized to me.

Q Just tell us what he said. A He says, "Dodo, that is a nickname they have for me -- he says, "There is no hard feelings between you and I", he says, "You always were a better man than I were", for we used to have arguments when we were small, and he says, "My brother wishes to apologize to you". I walked with him up, to apologize to his brother, and dispose of the revolver by giving it to him, until I was arrested, up the street, about six or seven doors.

Q And you accepted the invitation to go to his brother? A Yes, sir.

Q You were willing to return the revolver? A I was willing to return the revolver.

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Q Did he tell you where he would find his brother? A Yes, sir.

Q Where? A By the door of his house, 504 .

Q And you willingly went with him? A I willingly went with him. .

Q You have been in Elmira Reformatory, have you not? A Yes, sir.

Q You were complained against by your father and mother? A My father and mother wished to see me reformed, to be a better boy, and I suppose they interceded with the District Attorney, or some one.

MR. WASSERVOGEL: Is that the reason they sent him to Elmira?

MR. FRANKLIN: I object to the District Attorney --

BY THE COURT:

Q What offense were you convicted of? A Attempt at grand larceny.

Q What were you indicted for? Who sent you there? A I think Judge Malone.

Q Who? A Judge Malone.

BY MR. FRANKLIN:

Q On September 7th larceny was committed in your Aunt's house; is that so? A Yes, sir, where my aunt worked.

Q And you pleaded guilty to having that gun in your possession, in Special Session, and sentence is now suspended on

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you? A Yes, sir.

MR FRANKLIN: You may cross examine.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Where do you work? A I work for George Hayes, and Company, 71 Eighth Avenue, the last position I had.

Q Do you work there now? A No.

Q Where did you work before? A For Mr. Stephen A. Kepp.

Q What is his business? A He is a plumber for the Pennsylvania Rail Road.

Q And where is his place of business? A He has no business. I am supposed to have that business.

Q Where do you meet him? A Every Saturday; he is experi menting.

Q You only work on Saturdays? A Every day in the week, he only comes to see the work on Saturday.

Q Where did you work yesterday? A Yesterday I did not work.

Q Where did you work the day before? A 341 East 81st Stfeet.

Q That is your own home? A Yes, sir.Down in the cellar, we hire the rooms.

Q You live there? A We live upstairs, on the top floor.

Q What rooms do you hire in the basement of that build-

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ing? A We hire the room to use it as a shop.

Q Who hires that room? A The brother and Mr. Kepp.

Q Whose brother? A My brother.

Q Where did you work on the twelfth of March? A Was that on Sunday?

Q The day before? The 12th of March? A I worked for Mr. McCormick.

Q What is his business? A He keeps a saloon. I was over hauling the saloon.

Q What were you doing in the saloon? A Patching the metal ceiling.

Q How long did you work there? A Ever since I worked for Hayes and Company.

Q Isn't it a fact you have not had regular employment for the last three or four years? A Yes, sir.

Q Where were you working? A Charlo Brothers.

Q Where was that? A 442 West 42nd Street.

Q How long were you there? A About four years.

Q From when to when were you employed at Charlo Brothers? when did you enter their employ? A About 1905 until 1909.

Q From 1905 to 1909? A Yes, sir.

Q Where were you working in March 1909? A 1909, March?

Q Yes. A I believe I worked for a small firm in 9th Avenue, between 51st and 50th Street.

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Q You were working there in April also, and May?

A I don't remember.

Q Where were you working in April and May? You say you were working in this place in March, 1909, now, I ask you where you were working in April and May of that year? A April and May?

Q Yes. A I was not working at all.

Q 1909? A I was not working then.

Q That was the time you were in Elmira Reformatory?

A I believe so.

Q And you were in the Elmira Reformatory in March, 1909, when you said you were working for some one else? A Well, I couldn't just recollect.

Q You know when you were in Elmira. When were you sent to the Elmira Reformatory? A Around March, sometime, February or March.

Q And you were sent there for stealing a watch worth a thousand dollars, weren't you? A No, sir, not a thousand dollars.

Q Well, how much was it worth? if it was not worth a thousand?

MR. FRANKLIN: Objected to. I object to the District Attorney going into that other crime, on the ground that it tends to prejudice the minds of the jury.

THE COURT: They opened the doors. I will allow

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the question.

MR. FRANKLIN: Exception.

Q How much was it worth, did the complaining witness say, in the Court? A About one hundred and sixty dollars.

Q And you pleaded guilty to grand larceny in the second degree? A Yes, sir.

Q And you were not sent there because your father and mother wanted to make a better boy of you? "Yes" or "no"? A No.

Q Why did you say you were sent to Elmira because your father and mother wanted to make a better boy of you? A My father went to Mr. Livermore, to try and have me sent away light, so that it would not disfranchise me.

Q It was not because your father wanted you to go away simply to make a good boy out of you ? A Well, I tried to be a good boy.

Q You say you went to school with Casey at one time? A Yes, sir.

Q When did you go to school with Casey? A To school with Casey?

Q Yes. A About 1904 or 5, somewhere around there.

Q 1904 and 5? A About that.

Q What school did you go to with Casey in 1904 and 5? A Thirty Fifth Street School or Forty Fourth Street School.

Q Which was it? A Thirty Fifth Street School.

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Q What is the Number of that school? A Thirty two-- I can't remember.

Q Where is it in Thirty Fifth Street? A Off Ninth Avenue.

Q Can you name any class you were in with Casey? A I was not in any class with him?

Q What do you mean by saying you went to school with him? A I went to school and from school.

Q What class were you in? A What class?

Q Yes. A About the third of the Grammar.

Q Which was it, you know? A We will say the Third Grammar.

Q Was that correct ? A It is, approximately.

Q Which class was he in? A About the same.

Q What was the name of your teacher? A I can't remember.

Q What was the name of his teacher? A I don't know that either.

Q All that you know is that you went home with him? A I used to go to school and from school.

Q How long did that cover, what period. A What do you mean?

Q How long did you go home with him from school, for how long a time? A I went for quite some time.

Q How long? A About two years.

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Q Two years. A Yes.

Q When was it you went to the Forty Fourth Street school with him? A About a year after that.

Q After that? A Yes.

Q Were you in the same class with him there? A No, sir, I was not.

Q Did you know where he lived at that time? A I did.

Q Now, you told your Counsel, on Direct Examination that you have known Casey for fifteen years? A About fifteen years.

Q Where did you first make his acquaintance? A I was a little boy.

Q Where? A When we moved to Thirty Ninth Street.

Q When was that? A A good many years ago.

THE COURT: Gentlemen of the jury you are admonished that you are not to discuss any matter connected with this trial, not form nor express any opinion about it, until it is finally submitted to you. We will take a recess until two o'clock.

(The Court accordingly took a recess until two P. M.)

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AFTER RECESS.

JOSEPH A. BENNIS, the defendant, resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. WASSERVOGEL:

Q I believe you told us this morning that you attended a school in Thirty Fifth Street, where you made the acquaintance of the complaining witness; that is correct, isn't it? A Yes, sir.

Q And that was in 1905? A About that time; 1904 or 5, I ain't sure.

Q And you could not tell us this morning the name of any one of the teachers who taught school there. Can you tell us now? A Mrs. Skelly.

Q Was she your teacher, or his teacher? A My teacher.

Q What hours did you attend that school? A From eight o'clock until twelve o'clock in the morning -- from nine until twelve.

Q And what were the afternoon hours? A From one o'clock until three o'clock.

Q And you are positve that Casey attended the same school? A I am pretty sure of it.

Q You say you met Casey there; that is what you told us this morning. A I met him.

Q You would go to school with him and go home with him? A Yes, sir.

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Q And after that you attended the Forty Fourth Street School; is that correct? A I went to the Forty Fourth Street School.

Q After the Thirty Fifth Street School? A Not that same day.

Q No, no. A After that, yes.

Q After leaving the Thirty Fifth Street School you attended school in Forty Fourth Street, and there also you met the complaining witness, Casey? A I did.

Q The witness who was on the stand this morning? A Yes, sir.

Q And the hours of that school were also between nine in the morning and three in the afternoon? A Yes, sir.

Q And you are positive of everything that you have stated with respect to that? A Yes, sir.

Q Now, come down to the twelfth of March, the night before you were drinking in a saloon, were you not?

A Of this year?

Q That is what you told us this morning? A Yes, sir.

Q Where is that saloon, or where was it? A Saturday night?

Q Yes. A Thirty ninth Street corner of Eleventh Avenue.

Q You reside at 341 East 81st Street? A Yes, sir.

Q That is between First Avenue and Second Avenue? A Yes, sir.

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Q What were you doing in a saloon at Eleventh Avenue and Thirty ninth Street? A I came down to see my brother.

Q Your brother ? A Yes, sir.

Q Does he live there? A He livees at 526 West Thirty ninth Street.

Q Was he in the saloon with you? A No, sir.

Q Then you did not go to see your brother in the saloon? A No, sir.

Q For what purpose did you go in that saloon that Saturday night? A To see if I could get some more work from Mr. McCormick.

Q And how long did you remain there? A About an hour.

Q And what were you doing there an hour, drinking all the time? A Drinking.

Q Not trying to get work, but drinking? A I was drinking there.

Q Who did you speak to about getting work in that saloon? A I asked the bartender when was Mr. McCormick coming around?

Q Who was Mr. McCormick? A The proprietor of the saloon.

Q Did you see Mr. McCormick that night? A No, sir, he told me he would be back in a little while .

Q You staid there over an hour. Did he come back during that hour? A He did not come back.

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Q What was the name of the bar tender, do you know that? A Mr. Hughes, if I am not mistaken.

Q Is Mr. Hughes in Court now? A No, sir.

Q Did you notify Mr. Hughes to be here? A No, sir.

Q You remained in that saloon until what time? A Until about half past eleven or a quarter to twelve.

Q And you arrived there when? A About ten o'clock, something around there.

Q Ten O'clock? A Half past ten.

Q So you were there longer than an hour? A I am saying approximately.

Q Where did you go when you left the saloon? A Where did I go when I left the saloon? Up to sleep in my brother's house.

Q Did he expect you that night? A No, sir.

Q Is your brother in court? A No, sir.

Q Is your sister-in-law in Court? A No, sir.

Q Did you notify any of them to be here to-day? That your trial was coming on? A They are aware of it.

Q They are aware of it, and they are not here. Now, when did you first see Casey's brother on the night of the 11th of March? A Jo Casey, or John Casey?

Q The other brother? A The older brother?

Q The older brother? A He come in the saloon about a quarter after eleven or half past eleven, and I can't re-

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member what time it was.

Q And you have known him for how long? A John Casey?

Q Yes. Is John Casey in Court. That is the one, isn't it (Indicating) A Yes, sir.

Q You had known him how long? A Almost as long as his brother.

Q Did he also attend school with you? A I believe so, yes, sir.

Q Well, did he, or did he not? A He did, yes.

Q The same school? A Yes, he attended the Forty-fourth Street School, to my knowledge.

Q He attended the Forty-fourth Street School as late as 1905 and 1906, did he? A (No answer)

Q Now, did he, or did he not? A I can't remember.

Q When did he attend the Forty-fourth Street school? A I can't remember when he attended; he attended about 1905.

Q 1905? A About 1905.

Q And what talk did you have with him?

A That night?

Q Yes. A He came in the saloon there, in the back, and he was intoxicated. He came in the saloon, and he said, "drink up". He called me dodo, as a nick name. He said, "drink up, dodo, and have a drink on me". I says, "All right, Hohn". I accepted his drink, and the bar

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tender was getting the drink, and John Casey said, "I aint treating this other fellow".

Q He said he was not treating the other fellow?

A " I aint going to treat that fellow".

Q Who was the other fellow ? A Jack McGlinn.

Q Was he your friend? A He was my friend.

Q Is Jack McGlinn in Court? A No, sir.

Q Have you notified him to be here to-day?

A I have notified him.

Q Have you subpoenaed him to be here?

A I can't find McGlinn.

Q You have not notifiedhim if you can't find him?

A I met him about aweek ago, and told him not to forget.

Q What happened then? A I said, "Casey, aint you going to treat my friend?" That was McGlinn. I said, "He is going to blow him", like that, and he says, "No, I will blow him with one of these, " and he pulled forth a cartridge from a thirty-two calibre revolver.

Q Which did he pull, the cartridge, or the revolver?

A Just a cartridge.

Q And which pocket did he take the cartridge from?

A His coat pocket, and he said, "I will blow him with one of these". I said, "You don't have to do that; that aint going to do you any bood"; and he says, "Well, you don't have to get fresh about it, I will blow you too" ;

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and just then he pulled forth that revolver, and he pulled forth the revolver, and I sat down; I didn't say nothing to him, and just as he was putting it in his pocket I grappled with him and took the revolver away from him.

Q You waited until he put the revolver in his pocket? A He was about to put it in his pocket

Q He was about to put it in his back pocket when you took it away from him? A Yes, sir.

Q Why did you take it away from him, if he was about to put it in his back pocket? A To take it away from him.

Q He was not going to shoot you? A He pulled it out and pointed it at me and said, "I will blow you too", and just then he turned it around about half ways in his pocket, just about to touch his pocket, the muzzle ot it, and he says -- he didn't say nothing; and I sat down; and John sat down, and I give John a shove over the chair, and took the revolver away from him. He pleaded with me to give the revolver back to him. I said, "No, I will see you when you are sober and give you the revolver".

Q Isn't it a fact you pulled the revolver and threatened to shoot John Casey, the young man sitting in the back there? A It is not.

Q Isn't it a fact you punched him? A I pushed him and took the revolver away from him. I shoved him, that is all.

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Q Isn't it a fact that this is your gun? A No, sir.

Q Did you ever carry a gun ? A No, sir.

Q Never in your life? A No, sir.

Q Sure about that? A Positive.

Q Didn't you try to shoot a man named Mike Grace? A No, sir.

Q Sometime ago, about a year ago? A No, sir.

Q Do you know anybody named Mike Grace? A A year ago?

Q Any time. A No, sir.

Q Do you know anybody named Mike Grace? A I do; he is a cattle butcher.

Q Are you a member of a social club known as the Banyar Social Club? A No, sir.

Q Did you ever attend any of the meetings of that Social Club? A No, sir.

Q Were you ever there? A No, sir/

Q Do you know where the Banyar Social Club is? A No, sir.

Q Didn't you commit an assault by means of a gun on a man named Tom Michael, about a year ago? A No, sir.

Q Do you know a man named Tom Michael? A I do, yes, sir.

Q How long have you known him? A Oh, a short while; about five months.

Q After having taken the revolver from Casey, as you have just told us, where did you go? A I went --I pleaded with John --

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Q Where did you go? A I went up to my brother's house, walked up the street with John Casey.

Q You went out with John Casey? A I went out with John Casey.

Q And where did you go? A John Casey didn't want--

Q Where did you go? A Up to my brother's house.

Q Where did he go? A John Casey went home.

Q Did you tell your brother that you had this gun in your possession? A No, sir.

Q Say anything to your sister-in-law about this gun? A No, sir.

Q Say anything to any one about this gun? A No, sir.

Q Did you help Casey to go to his home? A No, sir, I walked up the street a ways with him.

Q Did you go upstairs to Casey's apartment and tell his people you had his gun in your possession? A No, sir.

Q Not a word about that? A No, sir.

Q And the next day you left your sister's home at about what time? A About two o'clock, or half past two.

Q And you, upon going down stairs, you met this other Casey, Joseph Casey? A Yes, sir.

Q Right away. You had just reached the street when you met him? A I walked about a hundred yards when I met him, on the other side of the street.

Q And the first thing he said was, "What was the row about

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which you had with my brother?" A Yes, sir.

Q And what did you say? A I tried to explain to him, and he wouldn't listen to me.

Q Why is it that you took this gun from your pocket? A When?

Q Why? A That day?

Q Yes, that was on Sunday morning? A To scare him.

Q And you carried it in which pocket? A This here pants pocket(illustrating).

Q In your pants pocket, this way(illustrating), or in the rear pocket? A In the front pocket.

Q And how did you fire the gun? A How?

Q Yes? A Down at the ground.

Q Down at the ground? A Yes, sir.

Q Will ypu explain to his Honor and these gentlemen how it is, if you fired this gun at the ground that the bullet entered in the way these trousers indicate? A I couldn't tell you that. I know I fired it at the ground.

Q And after you fired the load upon the ground, what did you do? A I walked across the street.

Q And where did you go? A Went up on the roof.

Q And what did you do on the roof? A Nothing. I came down about half an hour after that.

Q Why did you go up on the roof after discharging this gun if it was to frighten this man? A I thought Casey would

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come back again with some more fellows after me.

Q And how long did you remain on the roof? A About half an hour.

Q And this gun contains six chambers does it not? A I guess so.

Q Well, look at it. Six is right, isn't it? A Yes, (examining pistol).

Q Will you explain to his Honor and these gentlemen, how it is that, when the officer arrested you, all of the chambers were loaded, or filled? A I took a cartridge.

Q You took a cartridge? A Yes, sir, from Casey.

Q When? A When he pulled forth the cartridge and told McGlinn he would blow him with this.

Q Now, let us understand this. When did you take a cartridge from Casey? A Casey had a cartridge in his hand.

Q When did you take a cartridge from Casey? A Saturday night.

Q And, immediately after discharging this gun once, you ran up to a roof, and then filled the gun, or filled this chamber that had been emptied? A Yes, sir.

Q Why did you do that if this was not your gun? A I was going to give it back to him.

Q What? A I was going to give the gun back to Casey.

Q Why didn't you give the gun back to him without this last chamber filled? A I didn't want the cartridge.

Q What? A I didn't want the cartridge.

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Q You could have given him the cartridge without putting it in the chamber.

MR. FRANKLIN: Objected to.

THE COURT: Objection overruled.

MR. FRANKLIN: Exception.

Q That did not occur to at all, did it? A No, sir.

Q And you thought it would be better to reload the gun? A I didn't want --

MR. FRANKLIN: One moment. I object to the form of that question, what he thought.

THE COURT: Objection overruled.

Q Answer, please. A I didn't want the cartridge in my possession loose, hanging around like that. I was afraid it would go off.

Q You had no difficulty in loading this gun with this extra cartridge that you had in your pocket? A No, sir.

Q You understood how to load it? A I lost the cartridge first, in the hall.

Q What hall? A A dark hall, the hall I ran up.

Q You lost the cartridge? A Yes. I opened it up and I didn't think they would spring out like that.

Q Opened what up? A The revolver.

Q The cartridge you put into the revolver didn't fall out of the revolver when you opened it up? A No, the ones that were in there fell out.

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Q Those that were in there fell out? A Yes, sir.

Q What was the occasion of opening the revolver? A I don't quite--

Q Why did you open the revolver? A To put this other cartridge in.

Q And where was that? A In the hall.

Q Isn't it a fact you reloaded this gun in order to shoot this boy if he came into that hallway? A No, sir.

Q You say your intention was to return this gun to Casey? A Yes, sir.

Q Or Casey's brother? A Casey's brother.

Q Did you go to Casey's home after going up to the roof? A I was on my way to go to Casey's home.

Q But you did not go to Casey's home? A No, sir.

Q What is the number of the house upon the roof of which you went? A About 550.

Q 550; and Casey resides at 504? A Yes, sir.

Q Now, instead of going to 504 you went to a saloon? A No, sir.

Q Weren't you arrested as you were coming out of a saloon? A No, sir.

Q Where were you arrested? A I was afrested walking up the street with Casey.

Q And where did Casey meet you? A Outside an empty store.

Q You were not in a saloon? A No, sir.

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Q Where is the empty store? A Next to the saloon.

Q And where is the empty store? You heard me ask you that? A About 551.

Q That is across the street? A Or Fifty two.

Q 551, is that directly across the street from the building upon the roof of which you were? A No, it is right next to it.

Q Well, if you went upon the roof of 550, 551 would be across the street, would it not? A I ain't sure the way the way the numbers runs.

Q You have been living in New York all your life? A Mostly.

Q And you know how the numbers run in New York, don't you? A Most of the numbers.

Q You do know 551 is opposite 550 ? A The hall was 552.

Q What was the occasion of your going into an empty store? A I didn't go into the empty store. I stood outside the store. The store was locked; I couldn't go in.

Q And did you go to Casey's brother with the purpose of returning this gun? A I did not.

Q You did not? A No.

MR. WASSERVOGEL: I think that is all.

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REDIRECT EXAMINATION BY MR. FRANKLIN:

Q The last time you were here you asked me for a subpoena for McGlinn, did you not? A Yes, sir.

Q And each time I gave you one? A Yes, sir.

MR. FRANKLIN: That is all.

RECROSS EXAMINATION BY MR. WASSERVOGEL:

Q When was the last time? A Oh, last week sometime; I can't remember.

Q And this was before you met McGlinn on the street? A Before I met McGlinn?

Q Yes. You told me before that the last time you saw McGlinn you told him to be in Court . A I told him to be in Court.

Q Did you hand him a subpoena? A No, I did not. I was going to--

MR. WASSERVOGEL: That is all.

W I L L I A M E I F F E, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRANKLIN:

Q What is your name? A William Eiffe.

Q Where do you live? A 414 West Forty First Street.

Q I would like you to speak loud enough so this last

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gentleman can hear you. What is your business? A Cornetist.

Q How old are you? A Eighteen years.

Q Where do you live? A 414 West Forty First Street.

Q Do you know the defendant? A Yes, sir.

Q Do you know the Casey boy? A Not very well.

Q How long have you known him? A About two months.

Q About two months? A Yes.

Q Do you recollect the 12th day of March, when that gun was fired? A Yes, sir.

Q Where was it fired? A In front of 457 West Thirty ninth Street.

Q Were you present at the time? A I was opposite.

Q Opposite? A Yes, sir.

Q Did you hear any conversation going on between the complaining witness and the defendant? A No, sir.

Q After the gun was fired, what did you see this defendant do? A Walk across the street, to 542.

Q Were you with the defendant on the night previous? A Yes, sir.

Q Where? A In McCormick's saloon.

Q Did you see one of these Casey boys there? A Yes, sir.

Q Were you close enough to hear any conversation between Casey and this defendant? A Yes, sir.

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Q State what the conversation was. A Casey come in and told us to drink up, and he told us he would blow us. We drank up. He wouldn't blow this man's friend.

Q Who was his friend? A McGlinn, I think the man's name is.

Q What was the language he used? A I understood him to say -- He asked him if he would blow him? He said,"I won't blow him". He says,"If you don't blow him, you won't blow me" He says he would blow him with something. With that I went in the toilet, and I sat down in the toilet, and about three or four minutes after I heard a struggling match. I went out, and I seen him and the other boy, they were struggling-- the two were struggling with each other.

Q Did you see this defendant take this gun away from Casey? A It dropped on the floor.

Q Did you hear what happened after that? A No, sir, I didn't hear anything that happened. Casey went home and he went home.

Q Were you present at the time this defendant was arrested? A Yes, sir, I was by 450.

Q Did you see him before he was arrested, or just at the time he was arrested? A Before , I seen him, when the shot was fired.

Q When was the next time , after the shot was fired, that you saw this defendant? A I seen him about three quarters of an hour afterwards.

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Q Where? A Coming out of 542.

Q What sort of a place is 542? A A house, a tenement house.

Q Was he alone? A Yes, sir.

Q What did he do when he came out of that house? A Stood there, and I went over and spoke to him. I asked him what was the argument about. He told me about that Saturday night before.

Q Were you present when this complaining witness , Casey, came over to him? A Yes, sir.

Q Where was he standing then, in front of an empty store, or in a saloon? A When he come over the first time, or after the shot was fired?

Q After the shot was fired. A After the shot was fired, he was standing right along side of the empty store.

Q Right along side of the empty store? A Yes, sir.

Q Now, do you recollect what Casey said to this defendant, and what this defendant said to Casey? A Casey told him he wanted him to square things up, and he wanted to bring him up to his brother. He made up with him, and he wanted to bring him to his brother.

Q For what purpose? A To square things up.

Q Did he use that language? A Yes, sir.

Q Sure of that? A Yes, sir.

Q You have been in the House of Refuge since your own trial?

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A Yes, sir.

Q You have had no conversation with anybody about this, have you? A No, sir.

MR. FRANKLIN: That is all.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q What is your business? A Cornetist.

Q Where were you employed in the month of March?

A In March I was working in Sixtieth Street.

Q For whom? A In the Sunset laundry at the time.

Q What? A I was working in a laundry at the time.

Q You were working in a laundry? A I was playing evenings. I was working in the New York Dancing Academy, between Sixth and Seventh Avenues.

Q How long were you employed in this laundry? A January 3rd --

BY THE COURT:

Q Where did you learn to play the cornet? A In the House of Refuge.

BY MR. WASSERVOGEL:

Q When were you sent to the House of Refuge the first time? A 1907.

Q And upon what conviction were you sent there? A Stealing.

Q Stealing what? A Stealing a bicycle.

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Q And how long were you there then? A I was there about two years and some odd months.

Q And you were released from the House of Refuge when? A July 6th, 1910.

Q And you were returned to the House of Refuge? A For a violation of parole.

Q When? A I can't exactly remember.

Q A few weeks ago, wasn't it? A Yes, sir.

Q And in what respect did you violate your parole ? what did you do then? A I changed my garb without sending word.

Q Weren't you convicted on another charge of some kind? A No, sir.

Q You are now in the House of Refuge , and were brought from the House of Refuge this morning? A Yes, sir.

Q How long have you known this defendant, Bennis? A About four months -- five months.

Q Where did you make his acquaintance? A At a party, a house party.

Q You lived where? A 414 West Forty First Street.

Q You don't live near East 81st Street? A No, sir.

Q You never lived in that neighborhood, did you? A No, sir.

Q And the party you attended, was that west of Tenth Avenue, or east of Tenth Avenue? A 533.

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Q West? A Yes, sir.

Q Thirty ninth Street? A Yes, sir.

Q That is known as the Hell's Kitchen section of the City, is it not?

MR. FRANKLIN: I object to that, if your Honor pleases. This is prejudicial to this jury.

THE COURT: Objection overruled.

MR. FRANKLIN: Exception.

Q And how often after that did you meet this defendant? A Met him pretty near every night.

Q Every night? A Pretty near.

Q And would you meet him at different saloons every night? A No, sir.

Q Where would you meet him? A Probably on the street.

Q You played the cornet at night, didn't you ? A Yes, sir. I didn't play every night.

Q Every night that you did not play the cornet you would meet him on the street? A No, I don't say every night.

Q Well, almost every night? A Well, almost .

Q And where would you meet him? A On Thirty Ninth Street.

Q Always around Thirty night Street and Eleventh Avenue? A No, sir.

Q What avenue? A Probably other places; I would see him conner of Tenth Avenue.

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Q And on the night of the eleventh of March, did you have an appointment to meet Bennis in this saloon? A No, sir.

Q Who was in the saloon first, you, or Bennis? A The two of us walked in at the same time.

Q You met on the street and walked in together? A Yes, sir.

Q How long were you in that saloon? A We were in there about three quarters of an hour, I guess, altogether.

Q Did you hear the defendant say anything to anybody in that saloon? A No, sir.

Q Did he tell you on the street what he was going to the saloon for? A No, sir.

Q Simply met you on the street, and said,"come in, lets have a drink." A No, sir. I was around with him, we were intending to take in a show this night, went over to Thirty Eight Street and Eighth Avenue, and we went back again, went to see a five cent show, and went down again. That was about half past ten.

Q And how long did you remain in the saloon before Casey came in? A About five or ten minutes, when Casey came in.

Q And when Casey came in you were drinking at the bar with this defendant and McGlinn? A No, sir, only Bennis and myself was drinking.

Q Where was McGlinn ? A I didn't see him there at the time. When we first went in there, I didn't see him then.

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Q How long after you went into the saloon did McGlinn come in? A It was about five minutes afterwards. He come in in right just before Casey.

Q There was a time when you and Bennis and McGlinn were at the bar; is that correct? A While the four of us was sitting down.

Q You were all sitting down? A We were all sitting down, yes, sir.

Q And was it while you were sittng down that Casey came in and said,"Drink up". A No, he come in while we were standing outside, Bennis and I was standing outside.

Q Outside of the saloon? A No, outside, at the bar. Then Casey came in and said,"Drink up". We went in the back room, and McGlinn came in, and he told us he was going to blow us, and he would not blow McGlinn, and that was all there was to it, for about five or ten minutes, probably. I went in the toilet, then I heard a struggle, and I went out and seen a gun laying on the floor.

Q How far was the toilet from where they were sitting? A About six foot, or five foot.

Q And that toilet has a door which was closed? A Yes, sir.

Q And you say when you were in the toilet you heard some scuffle? A Yes, sir.

Q When you were in the toilet, you didn't know what was

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going on outside, did you? A I heard them shoving around in there.

Q There were other people in the saloon? A No, sir.

Q You were the only ones? A Only ones in the saloon.

Q Well, you came out of the toilet? A Yes, sir.

Q And what did you see? A I seen a revolver laying right on the floor .

Q You saw a revolver lying on the floor? A I seen that revolver laying on the floor, and I seen Casey and him shoving each other, struggling.

Q Did you see this revolver in the hand of any person? A Bennis stoops over and picked it off the floor.

Q You saw Bennis pick it from the floor? A Yes, sir, after it had dropped.

Q You didn,t see Casey put this gun in his pocket, did you, or take it out of his pocket? A No, sir.

Q You didn't see Bennis go over to Casey and wrench this gun out of his pocket, did you? A No, sir.

Q You saw Bennis pick this gun from the floor ? A Yes, sir.

Q And after he picked it from the floor what , if anything, did he do? A He kept it, and walked outside , and Casey followed him, and the two of them went home.

Q And where did you go ? A I went home too.

Q And the Casey that you saw at that time was not the

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complaining witness in this case, was he? A No, sir.

Q That was a brother of his? A Yes, sir.

Q You carry a gun yourself, don't you? A No, sir.

Q Aren't you known as "Cannister Bill" ? A No, sir.

Q Did you ever go by that nickname? A No, sir.

Q Sure about that? A Yes, sir.

MR. WASSERVOGEL: That is all.

REDIRECT EXAMINATION BY MR. FRANKLIN:

Q You are in the House of Refuge now for the original crime, just put back there on account of failing to report; is that so? A Yes, sir.

MR. FRANKLIN: That is all.

K A T H E R I N E D O U G H E R T Y, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FRANKLIN:

Q What is your name? A Katherine Dougherty.

Q Where do you live? A 522 West Thirty Ninth Street.

Q You are a married woman Mrs.. Dougherty? A Yes, sir.

Q You have grown up children? A Yes, sir.

Q You live with your husband? A Yes, sir.

Q You live on Thirty Ninth Street? A Yes, sir.

Q How long have you lived on Thirty Ninth Street? A All

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my life.

Q How old a woman are you? A I am thirty seven years past.

Q Do you know the defendant? A Yes, sir.

Q How long have you known him? A Twelve years.

Q Do you know the complaining witness? A Both of them.

Q Do you know his brother? A Both Jo and John.

Q How long have you known them? A Well, since they were four or five or six years old.

Q Have you, during the time you have known them, seen the defendant and the Casey boys play together?

A Yes, your Honor, I have.

Q How many years ago, if you remember?

A Well, seven or eight years ago.

Q Have you seen them go to school together?

A Yes, sir, I seen and know them to go to school, to the one school.

Q Had you heard on the 12th day of March, in the morning, that Casey was around looking for to kill him?

A Your Honor,-- yes, sir, a lot of boys came to my door and asked me was Jo. Bennis there.

MR. WASSERVOGEL: Objected to.

THE COURT: Objection sustained.

Q Are you positive you have seen this defendant and

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the two Casey boys, the one on the stand, and the other one, going to school? A Yes, sir, I have.

Q On how many occasions? A On several occasions.

Q Was it a dozen times? A Yes, and twenty-five times.

Q Have you seen them play there together? A Yes, and know them to fight together, and know them to a terrible fight on a Sunday night, and have the street crowded, both of them fighting over a pair of boxing gloves.

Q And how many times have you seen them fight?
A Well, I saw them fight one time, and it was a severe fight.

Q How long ago was that? A Well, it is about three years ago.

Q Where did that fight occur, if you recollect?
A From 532 to about 520. Joseph Casey lived at 522,, and Joseph Dennis lived at 524 at that time.

Q And you lived where? A I live at 5 -- where did I live at that time. I lived at 545, in one of Mr. Fanning's houses.

Q Do you know of any other insidence that you can recall where the Casey boys and this defendant ~~xxx~~ have had any connection, whether pleasant or unpleasant?
A Well, at times they were pleasant, and at times they were unpleasant.

Q Do you know any specific or particular occasion

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when they were pleasant, or unpleasant? A Yes, I saw them play ball together. I know them to go to a place where they call the dump, to play ball together, the boys named McPartland, Robert Holmes and hundreds of boys around there that I know.

Q And some of these occasions were as far back as seven years ago? A Yes, sir.

MR. FRANKLIN: You may examine.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Have you ever been a witness in this case before, Madam? A No, sir.

Q You were not a witness in the Magistrates' Court, were you? A No, sir.

Q Or at any other time? A No, sir, never in my life on a bench before.

Q You are a married woman? A Yes, sir.

Q Have children of your own? A Yes, sir.

Q Your time is taken up with your children and your house work? A Yes, sir.

Q You haven't any time to see what the neighbors do? A Well, not at all times.

Q You say you saw these boys going to play ball? A Well, on a Sunday afternoon I would see them.

Q And where would they go? A Down to the foot of

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the street, Thirty-ninth Street and Thirty-seventh Street.

Q You understand what the nature of an oath is?

A Yes, sir.

Q You understand you are under oath now? A Yes, sir.

Q Do you say positively that you know of your own knowledge that Casey and Dennis went to the same school?

A Yes, sir, I am sure they--

Q What school was that? A Public School No. 51.

Q Where is that? A It is located on Forty-fourth Street between Tenth and Eleventh Avenues.

Q And when did they go to that school? A Well, my nephew went with them to that school.

Q When did they go to that school together?

A Well, I guess it was about 1905, or 1904.

Q And you say you saw them day after day go to that school? A Yes, and know of them. I didn't see them day after day.

Q Which one of the Caseys went to that school?

A I am sure I saw both of them.

Q Both of them? A Yes, sir.

MR. WASSERVOGEL: That is all, Madam.

THE DEFENDANT RESTS.

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REBUTTAL TESTIMONY.

JOHN CASEY, called as a witness on behalf of the people, on rebuttal, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q What is your name? A John Casey.

Q Where do you live? A 504 West Thirty-ninth Street.

Q What is your business? A Cigarette operator.

Q And where are you employed? A Kinney Brothers.

Q Where are they? A Twenty-second Street, Tenth and Eleventh Avenues.

Q And how old are you? A Twenty-four-- twenty-five.

Q The defendant has testified that , on the night of the 11th of March, he met you in a saloon; that is correct, is it not? A Correct.

Q And upon that occasion you had this gun in your pocket, in the rear pocket of your trousers. "Yes" or "No"? A I never carried a gun.

Q That you drew this gun, and threatened to shoot him. Is that so? A No.

Q Is this your gun? A No, sir, it is not.

Q Did you ever carry a gun? A Never.

Q And the defendant says that you were about to put this gun

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back into your pocket when he took it away from you. Is that so? A I didn't have my hands on the gun, or use the gun.

Q Did you at any time own a gun? A Never.

Q The last witness , the lady who was on the stand, says that she knew of her own knowledge that you and Bennis went to the same school. Did you ever go to the same school with Bennis? A Not that I know of. I can't say whether I did, or not.

Q How much older are you than Bennis? A Twenty four.

Q You are twenty four, and he is eighteen? A Yes, sir.

Q And how long ago was it that you went to school?

A I left school ten years ago.

Q Did you go to school in 1905, 1904, or 1906? A I left school ten years ago, I said.

Q Did you go to school in 1904, 5, or 6 , any school?

A I guess I did.

Q Where? A Thirty five and Thirty Four.

Q That is a night school? A Thirty Fifth Street is a day school.

Q Did you meet the defendant there? Did he go to that school? A I may have met him; I don't recollect.

Q In 1905, was that? A Yes.

Q Did the defendant go to the same school with you then?

A I don't know whether he ever did, or not.

Q Did you ever go home with him? A No.

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Q So far as you know, he did not go to that school then? A No.

Q Did you go to the Forty Fourth Street School in 1904 or 1905? A I don't know the year.

Q You say you left school ten years ago? A Yes, sir.

Q And you have been working ever since? A Yes, sir.

Q So that you did not go to school in 1905? You know what year this is?

MR. FRANKLIN: Objected to.

BY THE COURT:

Q What year is this? A 1911.

Q And ten years ago was what year? A 1901.

Q So, did you go to school in 1904 and 5? A No, I left in 1901.

MR WASSERVOGEL) That is all.

CROSS EXAMINATION BY MR. FRANKLIN:

Q Did you, on that Saturday night, go into McCormick's saloon? A Yes, sir.

Q For what purpose? A For the purpose that anybody goes in a saloon.

Q What purpose? A To get a drink.

Q What kind of a drink? A Beer.

Q How many beers did you have before you went into that saloon? A Three .

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Q Where did you have those? A In Jersey.

Q Jersey? A Yes, sir.

Q Did you have anything after you arrived in New York at the West Shore Hotel? A Nothing, no.

Q Went direct from Forty Second Street Ferry to McCormick's saloon? A I did.

Q When you went into that saloon, who did you see in there? A I seen Dodo Bennis, Joseph Bennis.

Q And who else? A Another young man over there.

Q Was McGlinn there too? A McGlinn, I don't know who he is.

Q Never seen McGlinn ? A I might have seen him and not know his name.

Q You are positive that you don't know McGlinn by the name of McGlinn? A No, I don't.

Q Well, when you came in there, was there anybody else besides the defendant and Willie Kiffe , the last witness? A There was another man in there, a short stout man.

Q Did they address him at any time to your knowledge as McGlinn? A Not that I know of.

Q Did you know that short stout man? A I know him by sight.

Q How long have you known him by sight? A Maybe three or four years.

Q Have you ever heard him addressed by any name in those three or four years? A No.

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Q How often have you seen him during the three or four years? Twice a day? A No, maybe not once a week.

Q Where would you usually see him? A Around Eleventh Avenue corner there.

Q In the saloon? A No, on the corner.

Q Well, was that same man in company with the defendant and the last witness when you entered that saloon, McCormick's saloon? A Was who there?

Q That man whom you have seen? A Yes, sir.

Q The three of them were together? A The three of them.

Q When you entered in there, did you invite Dodo to a drink? A I did.

Q How long have you known Dodo? A Well, I have known about him ~~for~~ the last ten years.

Q The last ten years? A By sight.

Q You have played ball with him? A I may have played ball with him.

Q You have been on good terms with him, haven't you? always? A Well, never on bad terms.

Q You have had a couple of fights together, though, haven't you? A Not that I remember.

Q Have you had so many that you can't remember? A Well, I never remember fighting with him.

Q Whenever you got whipped, your brother came and took your part, did he not?

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MR. WASSERVOGEL: Objected to. He never said he was whipped.

Q Whenever you were in any of those fights --

MR. WASSERVOGEL: He didn't say he was in any of those fights. Objected to.

THE COURT: Objection sustained.

Q When you entered that saloon, did you invite Dodo, the defendant here, to have a drink ? A I did.

Q And his friends? A I asked him, and he said,"I got a friend here," and the way he said it, I didn't like the way he said it. I said,"I didn't ask your friend. I asked you."

Q What did Dodo answer to that? A He hit me, and I stood up, and as I stood up he pointed a gun at my face, and held the gun with his left hand, and hit me with his right.

Q He did? A He did.

Q Did you make any outcry? A I didn,t say nothing. I told him to put his gun away, he didn,t need it.

Q How long after that was pulled did you remain in that saloon? A About five minutes.

Q Did you have any more drinks ? A I had the same drink that was there, the first drink I got in the saloon.

Q After he pulled that gun and put it away, you took a drink? A I took my drink, and walked out, yes.

Q Did he walk out with you? A He come out after me.

Q How far did the two of you walk before you separated?

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A Half way up the block.

Q Did you have any conversation along the road? A He had a conversation with me.

Q What did he say to you? A He told me if there was any come back coming, he said,"I will finish you now".

Q What did you say to that? A I said,"There won't be no come back".

Q What do you mean by a come back? A I don't know. He will tell you that.

Q You answered him, "There will be no come back". You understood that? A It means I would come after him again, or look for fight off him.

Q Was there anything said there that indicated a fight, except asking him to have a drink? Was there something else that occurred ? A Well, the way he said it, I didn't like the way he talked.

Q Tell us the way he said it? What did he say? A He said,"I got a friend here," and the way he said it I didn't like it.

Q What way did he say it? A I can't tell you no different.

Q What was there about it that you didn't like? A The way he said it, the way he spoke the words.

Q Did you put your hand in your pocket and say, you will blow him with one of these, and pull out a bullet? A No, I did not.

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Q Well, when he said that -- "I have got a friend here, " what did you answer? A I said I didn't ask his friend; I asked him.

Q What did he say in response to that? A He got up and said, "Don't make a cheap skate out of me", and he hit me, and I got up, and as I got up, I looked into a gun. He had a gun in his left hand, and he hit me with his right.

Q You cannot remember whether or not you went to school with this man? A No.

Q But you do recollect playing ball with him?

A I may have.

Q You recollect you know him about ten years?

A Yes, sir.

Q You were little boys together, lived on the same block? A Well, there is a difference in our ages.

Q How long have you been going with him as a companion?

A I never went with him as a companion.

Q How long have you been going with him, to play ball with him? A I say I may have played with him once or twice; I don't recollect.

Q You played so often that you can't recollect?

A I don't play at all, much.

Q You don't play at all? A Not much.

Q How often have you played within the last two years? A Maybe about five times.

Q In the last five times, have you played with this

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defendant? A Never.

Q How long have you played three years prior to the last two years? A Maybe five times.

Q When would this happen? On Sundays?

A Generally.

Q Did you play then? A I may have; I can't remember five years ago.

Q Have you spoken with him in the lastthree or four years on the corner? A Yes, sir, I have.

Q How often have you spoken to him on the corner?

A Well, I never kept account, how many times.

Q Well, a hundred times? A Yes.

Q Your brother knows him as well as you do, does he not? A I guess he does, yes, sir.

Q Now, when your brother gets on that stand and states that he only knows his two years, is he telling the truth?

A Yes, he must be telling the truth.

Q You say you know him for ten, and you think your brother knows him as long as you do? A Well, I am only thinking.

Q Aren't you living in the same house with your brother? A Yes, sir.

Q In the same block? A Yes, sir.

Q And he used to play there too, the same as you?

A I don't know whether he would meet him as often.

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Q Your brother is younger than you are?

A Yes, sir.

Q Have you ever seen this defendant and your brother play ball together? A Not that I remember, no.

Q You will admit your brotherknows him as long as you do? A I don't admit.

Q You just atated that a moment ago?

MR. WASSERVOGEL: He says he did not know.

MR. FRANKLIN: But before that he said.

Q You never owned a gun in all your life? A No.

Q Was a gun ever pointed to you before?

A Not before that occasinn, no.

Q And then you stood along side of the bar and drank a glass of beer? A No, sitting at a table.

Q Sitting at a table, without going out?

A Without going out.

Q You was not afraid of being shot, or killed?

MR. WASSERVOGEL: Objected to.

THE COURT: Objection sustained.

MR. FRANKLIN: That is all.

BY THE COURT:

Q Were you ever convicted of anything in your life?

A No, I was not.

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JOSEPH CASEY, being recalled on behalf of the people, in rebuttal, testified as follows:-

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Casey, how old are you? A Twenty-one past; twenty-two. The 10th of March, I was twenty-two.

Q Did you ever attend the same school with this defendant? A No, sir, I did not.

Q Did you ever go to the Thirtyffifth Street School? A Yes, evening, night time.

Q Night school? A Night school.

Q Did you ever go to the thirty-fifth Street school in the day time, between nine and three? A No, sir.

Q What school did you go to? A Thirty-seventh Street, and St. Michael's?

Q That is a Parochial School? A Yes, sir.

Q And the Thirty-seventh Street school, how long is it since you went there? A When I first started to go there.

Q How long ago was it? A When I was about seven years old.

Q Now, you are ~~thirty~~ twenty-two? A Yes, sir.

Q That is about fifteen years ago? A Yes, sir.

Q In 1904, 1905 and 1906, did you go to the same school with this defendant? A No, sir, I did not.

Q The defendant has testified that, when he met you,

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he merely discharged this gun upon the ground. Is that so? A No, sir, it is not so.

MR. WASSERVOGEL: Cross examine.

MR. FRANKLIN: That is all.

BY THE COURT:

Q Were you ever convicted of anything? A No, sir, I was not.

MR. WASSERVOGEL May I recall the defendant, for one question?

THE COURT: Yes.

MR. FRANKLIN: Do I understand you are making him your own witness?

MR. WASSERVOGEL: I am cross examining him.

J O S E P H C. B E N N I S, the defendant, herein, being recalled, testified as follows:-

MR. FRANKLIN: I want to know, from the District Attorney, now, that he recalls this witness, if he intends to use him as his own witness?

MR. WASSERVOGEL: I am calling him for further cross examination, by permission of the Court.

THE COURT: Continue.

BY MR. WASSERVOGEL:

Q You were charged in the Court of Special Sessions

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with carrying this gun? A Yes, sir.

Q And you were arraigned before three judges of that Court? A Yes, sir.

Q And when you were arraigned did you tell the judges that this is not your gun, that it belongs to some one else? A Yes, sir.

Q Were you tried down there? Was there a trial? A I was tried.

Q Was there a trial? A Yes, sir.

Q Do you know what a trial is? That is, the calling of witnesses, just as we are doing here? A No, sir.

Q There was no trial? A No, sir.

Q But when you were arraigned before the Bar of that Court, you immediately pleaded guilty, you told the three Judges down there, "I am guilty", is that correct? A Carrying concealed weapons.

MR. FRANKLIN: Objected to.

THE COURT: Objection overruled.

MR. FRANKLIN: Exception.

Q That is correct, is it not? A Of carrying concealed weapons.

MR. WASSERVOGEL: That is all.

MR. FRANKLIN: That is all.

TESTIMONY CLOSED.

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MR. FRANKLIN: I move for a direction of acquittal, on the ground that any conviction would be against the weight of evidence in this case. There has been no intent shown to do any bodily harm. Secondly assault in the first or second degree has not been shown here.

THE COURT: Motion denied.

MR. FRANKLIN: I move to eliminate from the indictment the counts of assault in the first and second degrees.

THE COURT: Motion denied.

MR. FRANKLIN: Exception.

(Mr. Franklin sums up the case to the jury on behalf of the defendant)

(Mr. Wasservogel sums up the case to the jury on behalf of the people)

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