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COURT OF GENERAL SESSIONS OF THE PEACE.

CITY AND COUNTY OF NEW YORK. PART V.

-----x
The People
-against-
William Stern.
-----x

: Before:

: HON. ALFRED J. TALLEY
: and a Jury.
:

New York, June 13th, etc., 1921.

Indicted for Murder in the First Degree.

Indictment filed October 18th, 1920.

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

ASSISTANT DISTRICT ATTORNEY GEORGE N. BROTHERS,
For the People.

MESSRS. FALLON & GILBERT,
For the Defense.

-Transcript of Stenographer's Minutes-

Frank S. Beard
Official Stenographer.

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(A Jury was empaneled and sworn.)

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(Assistant District Attorney Brothers opened the case for the People, as follows:)

If it please the Court, and Gentlemen of the Jury:

The law requires that the District Attorney, at this time, state to the jury the charge against the defendant, and what evidence he expects to produce here in support of that charge. As you already know, the indictment, which was found on the 18th day of August, 1920, accuses William Stern of murder in the first degree. The proof will show that the killing of Paul Boittano, which occurred at 5.30 in the afternoon of October 12th, 1920, is the basis of this indictment.

The evidence will also show that William Stern, who was ostensibly in the jewelry business, together with Paul Boittano and a witness who will be called in this case, Pasquale Melli, was about to engage in some liquor business, there was to be the sale or purchase of some liquor, and that was the reason for the disagreement which led up to the death of the deceased.

It will appear that, in 39th Street, between Broadway and Sixth Avenue, there was on the south side of that street, a saloon called the Pre Catalan, which is now a restaurant, and on the west side of that saloon there is a hallway, and it was near the entrance to that hallway that

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the first shot was fired. There were a number of people in the street, and a number of automobiles at the curb, when this shooting occurred.

The shooting was done with an automatic pistol. There were two wounds, as I recall the evidence, inflicted upon the deceased. One penetrated the upper part of the chest, and the other went through the leg, and death occurred very soon after receiving the wounds.

The witness Pasquale Melli is an important witness in this case. He was prosecuted by me some years ago, for homicide, and was convicted of manslaughter, and served a term in prison, as the result of that conviction. He is now living in Farmingdale, Long Island, with his family. He will tell us the relations between himself and Boittano and the defendant Stern.

I do not want, at this time, to narrate any conversations which, later, will be testified to by the witnesses, because it may be that some of them would not be proper to be received, and I do not want to anticipate the Court's ruling. But, as I say, the evidence will show, to some extent, that these three men were about to engage in what is commonly known as a bootlegging transaction. That is a well known phrase, a well known slang phrase, which perhaps should not be used in court, but it conveys to your minds, I think, the clear meaning of the transaction that was about to be indulged in.

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Now, as I recall the evidence, the defendant and Melli and Boittano had an altercation there that afternoon, and Melli left them and went down the block to Sixth Avenue, to a place where there is a soda fountain, and there he was seen with several other people, he was seen by different witnesses at this soda fountain, which is two or three doors from the place where the shooting began, where that first shot was fired.

These witnesses say that Melli was down at this soda fountain with them, and therefore, had no part in the shooting, or at least, in the first part of the shooting.

The witnesses say that they heard the shots, and saw Boittano lying on the sidewalk, and saw Melli running up, apparently to see what was the matter, and when Stern saw Melli approaching he began to shoot at him, and he ran around the automobiles there, to escape, but one of the shots struck his coat.

The police arrived, and grabbed hold of the defendant and he had the gun then in his hand. / ^{To} One of the officers he said that he didn't do any shooting, and that he did not know anything about it, and did not know any of the men. But when the witnesses began to talk it over, when everything was comparatively quiet, then the defendant said that he was a jewelry salesman, and that he had quite a good deal of jewelry in his possession, and that Melli and Boittano got

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him into the hallway, and tried to stick him up, and rob him
of the jewelry.

The fact is that the defendant did have quite a quantity
of jewelry in his possession, and he had a permit to carry a
gun, from a Justice of the Peace, on Long Island. Well,
that is what the defendant said at that time.

Now, where Melli was at the time of the first shot is
important, because these witnesses say that Melli was down
at the soda fountain, when they heard the shooting, several
hundred feet away, and that he was not engaged in sticking
up anybody in the hallway.

I think the evidence will show that Melli was unarmed;--
he had no dangerous weapons in his possession -- and that
the deceased was entirely unarmed; that he had no gun or
knife, or anything with which to perpetrate any serious
assault.

Thus, in a very brief way, this is the statement of
what occurred at that time. Of course as the witnesses
testify the truth will come out, and you will get more in
detail.

We are going to call a draughtsman who drew a plan of
that street, showing the buildings, and the width of them,
and the dimensions of the street; and he will produce, either
today or tomorrow, some pictures that will give you a better
idea of the neighborhood.

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Doctor Schwartz, who saw the body, a little while after the shooting, will testify to the wounds that he found, and what wounds caused the death of this man.

That, I think, is all that I need state to you at this time.

I am told that I made an error in saying that the indictment was filed in August, 1920. It was filed in October, six days after the shooting.

MR. BROTHERS: Did your Honor make an order that the witnesses remain outside?

THE COURT: I did not. I was not requested to.

MR. BROTHERS: I request it now, if your Honor please.

THE COURT: All the witnesses on both sides will step outside, and remain out of the court room until they are called.

THE PEOPLE'S TESTIMONY.

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

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your profession, Mr. O'Donnell? A I am a civil engineer.

Q How long have you been a civil engineer? A Four years.

Q Are you employed by the District Attorney of New York County? A I am.

Q Did you prepare a plan of West 39th Street, in the City and County of New York, between Sixth Avenue and Broadway? A Yes.

Q Is this the plan (indicating)? A It is.

Q What scale is that drawn to? A The diagram of the street is drawn to a scale of one inch equal to ten feet. The diagram of the hall, a quarter of an inch equal to one foot.

Q You have, in addition to the street plan, prepared a floor plan of one of the buildings in that block, is that right? A Yes, sir.

Q What building is it? A That is a diagram of the hall of 108 West 39th Street.

Q Occupied as what, at this time? What kind of business is carried on there now? A A restaurant.

Q Now, which building is east or west of this restaurant? It does not appear here on the plan. A I think it is a hotel.

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Q Can you refresh your recollection by looking at that photograph (indicating)? A Why, there is a cafe next to the restaurant, further west.

Q Was that the Pre Catalan Cafe? A Yes, sir.

MR. BROTHERS: Have you any objection to this diagram going in?

MR. FALLON: None at all.

MR. BROTHERS: We offer it, by consent.

THE COURT: Received.

(It is marked People's Exhibit 1).

BY MR. BROTHERS:

Q The street plan, Mr. O'Donnell, does not contain any reference to the soda fountain or confectionery store. You know where that is, do you not? A Yes, I can draw that in.

Q Can you put that in for us? A Yes.

Q Please do so. A (the witness does so).

Q Now how far is the entrance -- how far is the candy store, which you have just drawn on People's Exhibit 1, from the entrance to the hallway of 108? Can you give us that distance, from the door of the candy store that you have just drawn, to the hallway at the east side of 108 West 39th Street? A Seventy feet and four inches.

Q Is that correct? A Yes, sir.

Q Now, the candy store -- you will tomorrow have a photograph of it for us, will you not? A Yes, sir.

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Q It has an open front like a booth, has it not? A It is a small room, with a counter in the front of the store, and a small door, the door being about two feet three inches wide. The counter is five feet ten inches long, west of the door.

Q Well, ~~it~~ do the customers who are served there go inside, or were they served over the counter, while they were standing on the sidewalk? A They are served both ways, both inside and outside.

Q Now, you have placed on the plan, on the sidewalk, on the south side of 39th Street, in front of what is designated the Princess Theatre, some steps, or a stairway. A There is a stairway leading to the basement, and the entrance leading to the theatre, and west of the entrance, is a stairway leading up to the office of the theatre.

Q And what is the width of the sidewalk there? A Fourteen feet nine inches.

Q And in front of the Princess Theatre the stairways which are in front of the theatre take up part of the sidewalk? A Yes.

Q That is, they encroach upon the sidewalk? A They do.

Q And the width of the pavement on 39th Street is designated as 29 feet 10 inches, from curb to curb? A Yes, sir.

Q Now, the other plan on this diagram, which shows the hallway and restaurant of 108, when you go into the hallway, do you have to go up a step, or is it all on a level with the street? A You go up one step.

Q It has an open front like a booth, has it not? A It is a small room, with a counter in the front of the store, and a small door, the door being about two feet three inches wide. The counter is five feet ten inches long, west of the door.

Q Well, ~~ix~~ do the customers who are served there go inside, or were they served over the counter, while they were standing on the sidewalk? A They are served both ways, both inside and outside.

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Q And what is the width of the sidewalk there? A Fourteen feet nine inches.

Q And in front of the Princess Theatre the stairways which are in front of the theatre take up part of the sidewalk? A Yes.

Q That is, they encroach upon the sidewalk? A They do.

Q And the width of the pavement on 39th Street is designated as 39 feet 10 inches, from curb to curb? A Yes, sir.

Q Now, the other plan on this diagram, which shows the hallway and restaurant of 108, when you go into the hallway, do you have to go up a step, or is it all on a level with the street? A You go up one step.

Q Is there a vestibule there? A There is.

Q And an outer door and an inner door? A Yes.

Q And a space in the inside, and between the doors, is designated as 6 feet $4\frac{1}{2}$ inches? A Yes, sir.

Q And the width of the hallway is four feet, is that right?
A Yes, sir.

Q Now, did you find, on going through that doorway of 108, whether there was any door leading from the hallway to the premises occupied by the restaurant? A Yes, there are two.

Q And where are they? A In the rear.

Q Back of what is mentioned here as "staircase"? A Yes.

Q Away in the back? A Let me see the plan. I will fix that.

Q Now did you notice whether or not between the vestibule of that hallway and the stairway, there was any doorway or opening into the restaurant from the ~~rear~~ hall? A No, sir.

Q Did you see any place where there would be a doorway, which might have been closed up? A I don't recall one now.

Q Now, there is one more thing I want, if you will come down here, Mr. O'Donnell. I would like you to give the distance from the outer building line of 108 to the first door in that hallway. A 5 feet $\frac{1}{2}$ inch.

Q In other words you would have to walk 5 feet and $\frac{1}{2}$ an inch before you got to the first door in that vestibule? A Yes, sir.

Q Now I show you a photograph and ask you whether that is one you took? A Yes, sir, it is.

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Q And what street does that show, and what portion of it?

A 39th Street, looking west from Sixth Avenue.

Qx Is that a fairly correct representation of that part of the street? A It is.

Q And when was this done? A Saturday morning.

MR. BROTHERS: We offer it in evidence.

THE COURT: Received.

(It is marked People's Exhibit 3).

BY MR. BROTHERS:

Q This is looking west? A Yes, sir.

Q Southwest? A Yes, sir.

Q It doesn't take in the soda fountain, does it? A No, sir.

Q But you will have that picture for us tomorrow? A Yes, sir.

Q I show you another photograph, and ask you whether you took that? A I did.

Q At the same time you took the first one -- I mean on the same occasion? A Yes, sir.

Q And is this a fairly correct picture of the scene? A Yes, sir.

Q Now, what does that show? A That shows the entrance of the hall of 108, and the restaurant in the same building.

Q Yes. Taking in a portion of the Princess Theatre, and also a portion of the restaurant, is that right? A Yes, sir.

Q Looking through that doorway, there is a light, a ~~glare,~~ glare, or something there, about the height of a man's head over the door? A That is the light, the jet.

Q You mean the chandelier hung from the ceiling, with glass in it? A Yes.

MR. BROTHERS: We offer that in evidence.

MR. FALLON: No objection.

THE COURT:)Received.

(It is marked People's Exhibit 3).

BY MR. BROTHERS:

Q Is this a little railing, Mr. O'Donnell, that is at the left of the entrance to 108 (indicating)? A Yes, sir, it is, a handrail.

Q How far does that extend out on the sidewalk? A 5 feet 6 inches.

Q It is shown there on the plan, is it not? A Yes, sir.

Q What time of day did you take that picture? A About 11 o'clock.

Q In the morning? A Yes, sir.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. FALLON:

Q Now, you indicated on People's Exhibit 3, something that shows within the door, and you said that that was the gaslight.

A I think so.

Q Now, you said -- I believe you said -- that you took this picture about eleven o'clock in the morning? A Yes, sir.

Q And at eleven o'clock in the morning the light was burning

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in that hall? A No, sir.

Q Well, is it your recollection now that the light was not burning at eleven o'clock that morning? A That is my recollection

Q Well have you a recollection, or are you just guessing about that, because that is important to us. A No, sir, the light was not lit.

Q Now, as you were making your investigation there, or your examination of these premises, did you go within that hallway, and close the door behind you? A When I took the photographs? No, sir.

Q Well, did you, at any time, when you took the photograph, or after that, when you were up and before that house, close the front door, and step into the hallway? A When I made the survey--

Q Did you or did you not? That is all I want to know. At any time did you stand in that hallway, with all the doors leading into that doorway closed? A No, sir.

Q Well, can you tell us from your observation, or are you unable to testify to that, with all the doors closed in that hallway, the place is not absolutely in darkness -- not in absolute darkness, at all hours, even of the day? A Yes, sir.

Q It was absolutely dark? A Yes.

Q The outside door is a heavy wooden door? That is the first door as you come from the sidewalk into the hallway? A Yes.

Q And the second door is also a heavy wooden door, with

small glass panels? A Yes.

Q With glass in the panels? A Yes.

Q And when the door is not opened at the other end of the hallway, that is, leading out into the alley way beyond, you are satisfied the place is in absolute darkness? A It is very dark.

Q Now the door leading from the hallway into the adjoining premises leads into the back room of that which was formerly a saloon? A Yes, sir.

Q So that this hall represents the ordinary hall leading past a saloon front, and then into the back room of a saloon? A Yes.

Q And, without going into it more in detail, how far is it from the door opening on the sidewalk to the back door leading into the saloon? A I didn't just get that question.

Q Now, from this inner door to the door which leads into the saloon, which is behind the stairs, as you say, about how far is that? A 35 feet 5 $\frac{1}{2}$ inches.

Q Now, what is the entire length of the hall from the second door to the end of the hall, out into the yard beyond? A That is 68 feet.

Q Now, then, when you were up there, did you go into the yard behind, or beyond that alleyway? A I opened the door and measured to the building line.

Q But I mean, did you look out to see what kind of premises were beyond at that time, at that place? A I did, but I can't recall now.

Q Well, didn't it lead into an open yard, from which there are various ways for one to get out? A It opens into the yard, but I don't know about getting out. I have forgotten about that.

Q Don't you recall that there was an additional entrance to the saloon, next door? A I think there was.

Q And do you recall that to the west of the saloon, there is still another alleyway that goes out into the street again, and upstairs into those houses? A No, sir.

Q That is, you don't recall one way or the other? A And also between the two houses?

Q Yes. A I don't recall that.

Q And do you remember an iron stairway leading upstairs in the adjoining house? A No, sir, I don't.

Q Well, when you say no, do you mean to say you have no recollection, or testify that it is not there. A I have no recollection.

Q You have no recollection one way or the other? A Yes, that's it.

B E N J A M I N S C H W A R T Z, M. D., a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a physician, are you, doctor? A Yes, sir.

Q You graduated when and where?

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MR. FALLON: We admit the qualifications.

MR. BROTHERS: I would like the jury to hear them.

A Cornell Medical College, 1907.

Q And you have been practicing your profession in this State ever since? A Yes, sir.

Q And you are one of the Medical Examiners of this City, are you? A Yes, sir.

Q How long have you held that position? A Since 1918.

Q Now, prior to that you were a Coroner's Physician, while the Board of Coroners was in existence? A Yes, sir.

Q For how many years? A For three years.

Q You have devoted a great deal of your time to investigating the causes of death? A Yes, sir.

Q Did you perform a post-mortem examination of the body of Paul Boittano? A Yes, sir.

Q Where did you first see the body? A In West 37th Street; the 33rd Precinct Station House.

Q And when was that? A October 13th, 1930, at 7:10 p.m.

Q When you saw the body at the station house, it was dead-- it was not a living body; was it? A Yes, sir, it was a dead body.

Q Describe the appearance of the body as you saw it at the time? A It was fully clothed. There was a scraping of the skin on the right side of the face. There was a bullet wound of entrance over the middle of the front of the left collar bone, and another bullet wound of entrance over the

upper part of the left thigh.

Q Any other marks of injury upon him? A No, sir.

Q That you could see at that time? A Oh, there were some abrasions over the lips.

Q Later, did you see the body elsewhere? A Yes, sir.

Q When you saw it at the station house, did anybody identify the body to you? A Yes, sir.

Q Who was that? A Officer Nicholas Moore.

Q Did you examine the clothing that was upon the body? A Yes.

Q And did you find bullet holes in the clothes? A Yes.

Q Now, when you saw the body at the Morgue, when was that?

A The next morning, that is, October 13th, 1930.

Q And there you made a complete examination, did you? A Yes.

Q Will you please tell us about how old a man he was?

A About 32.

Q And his size? A 5 feet 6 inches and a half, and weight about 150 pounds.

Q Was he a well built man, well developed, or otherwise?

A He was fairly well developed, yes.

Q Do you remember what colored hair he had? A I would have to refresh my memory from my notes on that. No, sir, I don't remember the color of his hair.

Q You didn't make any note of that? A No, sir.

Q Well, was he a man of fair complexion, or otherwise?

What is your recollection? A I don't recollect.

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Q Now tell the jury what you noticed, doctor, please, what injuries you found on the outside of his body? A There was a scraping of the skin on the right side of the face, and abrasions of the upper and lower lips; and there was a bullet wound that entered over the middle of the left collar bone, in front, three inches to the left of the middle line of the body.

Q What do you mean by the middle line?

BY THE COURT:

Q A line drawn down the front of the body, is it not? A Yes. And also a bullet wound that entered the upper part of the ~~right~~ left thigh, three inches below the prominent point of the pelvic bone, and just a little external to a line drawn down from that prominence.

BY MR. BROTHERS:

Q Was that in the front of the thigh? A Yes, sir.

Q Now, just describe the skin on the face, or abrasions on the lips. As you have described, what would be a competent producing cause of that? A A fall.

Q On the sidewalk? A Anywhere, yes.

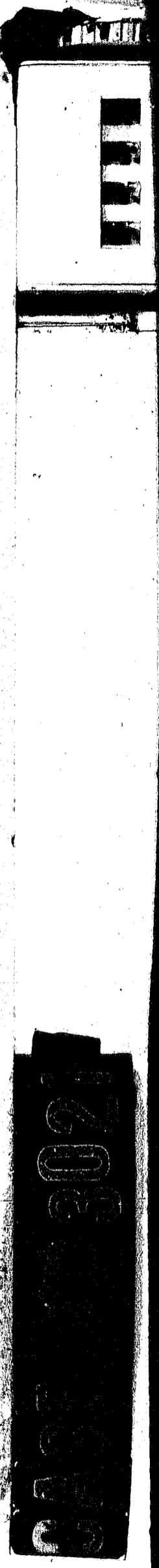
Q Were they accompanied by any contusions or abrasions? A Just scraping of the skin.

Q It is not your opinion that they were caused by a blow?

A No, sir.

Q And did you open the body? A Yes, sir.

Q What did you find? A That both chest cavities were filled with blood. That there was a bullet hole that went through



two of the large bloodvessels of the left part of the chest, bloodvessels coming off from the largest artery in the body, the aorta; and a bullet wound through this large blood vessel, and into the covering of the heart, and went through the right lung.

And I removed a .32 calibre bullet from the skin on the right side of the chest, about the region of the seventh rib.

BY THE COURT:

Q Will you stand up, doctor, and indicate? You removed the bullet from what portion of the deceased, indicating it as near as you can on your own person? A About here, on the right side, in the region of the armpit (indicating).

BY MR. BROTHERS:

Q And where? A Opposite the seventh rib.

Q And the bullet went in near what rib? A The collar bone and the first rib. The first rib lies immediately behind it. They are on the same level.

Q So that the path of the bullet from the point of entrance to where you found it was what? A Downward, backward and to the right.

Q Well, had it struck anything that deflected it? A It struck the collar bone, and also the first and seventh ribs, on the right side.

Q Do you think that the bullets upon entering the body were deflected and went downward? A Yes.

Q Have you the bullet here? A Yes.

Q Well, what calibre is that, Doctor? A .32

Q And how would you describe the bullet, what kind of a bullet is it? A It is a steel jacketed bullet, with copper rifling, running from right to left.

MR. BROTHERS: We offer it in evidence, if the Court please.

THE COURT: Received.

(It is marked People's Exhibit 4).

Q With respect to the injuries inflicted by this bullet upon his organs, did you find any other abnormal condition of the bodily organs? A No, sir.

Q Would you say that he was in average good health? A Yes.

Q Now, the other bullet wound that you first spoke of, where was that? A In the upper part of the left thigh, in front.

Q And what did your examination consist of in regard to that? A Well, there was infiltration of the muscles with clotted blood, and I was not able to recover the bullet. I had an X-ray taken, but that wouldn't reveal the bullet, and we were unable to recover it at the autopsy.

Q And did you see any indication of the track that the bullet pursued? A No, sir, all the tissues were infiltrated with blood, and we couldn't.

Q Did you form any opinion as to the cause of that man's death? A Yes, sir, bullet wounds at left common carotid artery,

left sub-clavian artery, aorta, and right lung; hemorrhage.

Q About how soon after the infliction of that injury would death result? A Very soon.

Q Due to the intense hemorrhage? A Yes, sir.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. FALLON:

Q By very soon, I presume you mean that the man might live an hour or more under such circumstances? A No, sir.

Q Where was the aorta ruptured? A At the junction of the left common carotid artery, just as it gives off its branches.

Q And how many inches from the heart? A Well, that would be about an inch and a half -- that is, depending upon the size of that --

Q Well, within how many inches of it? A About an inch and a half.

Q Now, how much of a rupture was there in the aorta?

A There was a hole in the aorta.

Q Well, how much of a hole, how large in dimensions?

A About three-sixteenths of an inch in diameter.

Q Well, was that the principal cause of the hemorrhage, the rupture in the aorta? Just yes or no. A Well, I can't answer that question yes or no.

Q Well, was it the principal cause of hemorrhage? A It was one of the causes of hemorrhage.

Q Was there any other cause of hemorrhage that would

produce a greater hemorrhage than the one in the aorta? A Not a greater, but a similar hemorrhage.

Q Now, then, under those circumstances, with just those two hemorrhages as you have described them, a man would live a considerable time before he would bleed to death? A No, sir.

Q Would he become unconscious before the lungs filled up with blood from those hemorrhages? A Well, I can't answer that question, because it can't be answered.

Q Well, would there be anything to render him unconscious, before the lungs filled up with the hemorrhage? A I can't answer your question, because it isn't answerable. The lungs did not fill up with blood.

Q Oh, there was no hemorrhage that filled up the lungs of this man, at the time you made the autopsy? A Not the lungs, but the chest cavity, which is different.

Q Now, what, Doctor, would you say, would be the probable chance of life, after the infliction of such a wound as you found? I want your best opinion as to that. A Well, it is very hard to say in an exact number of minutes.

Q I only asked your best opinion, doctor. A Oh, I should say about five or ten minutes, but he might die sooner.

Q Your best opinion is that he could live five or ten minutes? A Oh, yes.

Q Now, Doctor, you said there were no contusions about the man's mouth. A Two small abrasions.

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Q Were they both on the upper lip, or both on the lower lip, or what? A One was on the upper lip, and one on the lower.

Q And they showed that something had come in contact with the man's mouth before he died; isn't that so? A Not necessarily before he died.

Q Well, now, ~~isn't~~ isn't it true, from the fact that the blood had still come from the mouth, to crystallize, as it were, on those wounds, that the wounds must have been inflicted before the man died?

MR. BROTHERS: I object to that. He said nothing about any blood crystallizing on his lips.

THE COURT: Objection sustained.

MR. FALLON: Exception.

Q Was there blood on the places where these wounds were made?

A No, sir.

Q Were they just abrasions? A They were abrasions.

Q Merely black and blue marks? A No, sir.

Q Were there any evidences of black and blue on the man?

A There were scrapings on the face, but no black and blue marks.

Q Now, will you look at your notes, and read the jury just your description of those wounds on the upper and lower lip?

A There was a small abrasion on the left side of the upper lip, and on the right side of the lower lip.

Q Is that the only **description** you have in your report?

A Yes, as far as the lips are concerned.

Q Well, then, that is all we want. And that could have been occasioned by a falling or a blow, could it? A I don't believe it could have been produced by a blow.

Q That is, if a man fell on a stone pavement, you believe that that could have occasions that sort of injury; but, if he were struck some sort of a blow, it couldn't? Is that your testimony? A Well, it is due to some injury, but a blow would cause more severe injury. A man might scrape a wall, for instance; that is--

Q That is, if a man fell on a stone pavement, he could produce as great an injury as from a man's fist? A I didn't say that.

Q Well, didn't you say that it might have been caused by a fall? A Well, he might have fallen up against a wall, and produced the scraping of the skin.

Q But didn't you say that that particular injury might be caused by a fall? A Well, in falling, one may fall up against a wall, and it might be produced in that way.

Q Well, your opinion is then, that it was produced by rubbing his mouth against a wall? A It might have been produced that way.

Q You don't mean that he could have fallen with his face on a stone pavement and so produced the injury? A No, not a severe fall.

Q So you want this jury to believe that he fell sideways,

and scraped his face against the wall? A That is one way of obtaining the injury.

Q Well, was there any abrasion on the nose to show that that also was injured in the same way? A There were no marks on the nose, but there were on the right side of the face.

Q And you think all that was produced when he rubbed his face against the wall? A That couldn't have produced it.

Q Why, it could have been produced by any manner of blow inflicted upon his face, isn't that right? A Only as I have said.

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N I C H O L A S F. P. M O O R E , of Traffic Squad B,
a witness called on behalf of the People, being first duly
sworn testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Are you a member of the Police Department of this City?

A Yes, sir.

Q How long have you been a police officer? A A little
over four years and a half.

Q And you are in the Traffic Division, are you? A Yes.

Q How long have you been in that division? A A year and
a half.

Q What is your post? A 41st Street and Sixth Avenue is
my steady post.

Q Were you on duty at that place on the 13th of October last?

A No, sir, I was on duty at 39th Street and Broadway, on that day.

Q At that place, at 39th Street and Broadway, it is one
block west of Sixth Avenue? A Yes, sir.

Q About half past five that afternoon, was your attention
called to anything that was happening between Broadway and
Sixth Avenue on 39th Street? A Yes, sir.

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

Q Now what was the first thing you noticed or heard?

A I heard about three shots, in quick succession, and I saw
a crowd running, and then I heard three more shots, and I ran up
and the crowd was all coming towards me. When I got about a

hundred feet east of Broadway, I saw Melli.

Q Yes. A Melli kind of fell behind an automobile.

Q Now, who do you mean by Melli? A There was a Pasquale Melli, who I arrested as a material witness.

Q Is he outside, today, Officer? A Yes, sir, he is outside.

Q Where was Pasquale Melli when you first saw him? A He was like in a sitting position on the street, like.

Q And is this the man that you refer to that is coming in here now (indicating)? A yes, sir.

THE CAPTAIN: He says his name is Pasquale Melli, and he lives in Farmingdale, Long Island.

MR. BROTHERS: Let him go out now.

Q When you say sitting on the street, that he was sitting on the street, do you mean the roadway or the sidewalk? A Well, just as if his feet were on the curb, and he just fell back on the street.

Q Where was that? A In front of the stage entrance of the Casino.

Q How far from Broadway was that? A About a hundred feet, or a little more.

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

Q What else did you see at that time? A I then saw Stern. I asked Melli --

Q No, not what you asked him, but what you saw?

BY THE COURT:

Q Did you have a talk with Melli? A No, I only asked him

Q No, you can't tell what you asked him. Did you have a conversation with Melli? A Just as I grabbed him, I asked him--

Q No, you cannot tell what he said to you or what you said to him. Now, did you say something to him? A Yes, sir.

Q And after that what happened? A I asked him--

Q No. After you asked him something what did you next see? A Well, when I asked him that question, he pointed to Stern on the sidewalk, and he said "There he is."

BY MR. BROTHERS:

Qx Now, was that the first time that you saw Stern? A Yes, sir.

Q And where was Stern? A He was on the south side of 39th Street about one hundred foot from Broadway.

Q How far from where Melli was squatting or sitting on the curb of the street? A About five or six foot.

Q Now you ran down there, did you, Officer? A I did.

Q As you ran down to where you saw Melli, you didn't know Stern at all? A No, sir, I hadn't seen Stern.

Q Well, how close were you to Melli when you saw him?

A I was right on top of him.

Q Well, were there people between you and him? A No, no people between us. There was an automobile just where he fell near the automobile. The automobile was facing east.

Q And what was Stern doing? A He kind of walked like, towards Broadway, a couple of foot.

Q Well, when you first saw him was he walking? A Yes, sir,

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he was still walking.

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Q Did he have anything else in his hand? A No, not in his hand.

Q Now, when you looked at him and saw him walking towards Broadway, what else did you see him do? A I grabbed him-- when I brought Melli over, I pointed my gun at Stern, and said "Stand there," and Melli broke away from me, and made a punch at Stern, and Stern pulled the gun from under his coat (illustrating), and I pushed his arm with the gun up against the wall.

Q In which hand did he have the gun, when he drew it from the left side lower part of his coat, as you have indicated?

A In his righthand. And Sergeant Schaneu came up behind him, and grabbed Melli.

Q Is he a police sergeant? A Yes, sir.

Q Attached to what precinct? A He was attached to the 23rd. I don't know where he is now.

Q Was he in uniform? A Yes, sir.

Q Now when you had pushed the gun in the defendant's hand up against the building, what happened? A I then asked Stern "What is the matter," and he said "The men tried to hold me up," and ~~xxxx~~ I said "Who?" And he pointed to Melli, and he said two others, and I said, "Who is the two others?" And he said, "One is down there," and so I brought him back, and I pointed to the deceased on the ground --

Q Where did you find the deceased? A In front of 108 West 39th Street.

Q What kind of a place is that? A That was a saloon, at the time.

Q Do you know who ran the saloon? A No.

Q Do you know the name of the proprietor then? A I do not, no.

Q Or the name of the saloon then? A No, sir.

Q And in front of the saloon you saw the man who was dead?

A Yes, sir.

Q In what part of the street was he lying? A On the sidewalk.

Q And with reference to the entrance to the saloon, or the hallway next to the saloon, where was he lying? A Right opposite the front door of the saloon.

Qx And where, in front of that building, was the saloon door?

A Right in the middle.

Q Now, we have a picture here, People's Exhibit 3, which shows the place as it is today, run as a restaurant. Was the doorway just the same then as it is in that picture? A Yes, sir.

Q And he lay in front of that door, on the sidewalk?

A Yes, sir.

Q Not the hallway, but the saloon door? A The saloon door, yes.

Q Would you point out with your finger, so that the jury can see about where he lay? A About there (indicating).

MR. FALLON: And will you have a mark made, Mr. Brothers?

THE COURT: Now do you want marks made on those

photographs? Why not let him first try to describe with respect to the curb and the sidewalk and the entrance to the saloon, where the body was lying? Because you know what confusion sometimes results from marks on photographs.

MR. FALLON: Yes, I think that is a better suggestion.

BY THE COURT:

Q Now, officer, you said that this body was lying in front of the saloon door. A Yes, sir.

Q Now, see if you can describe on what part of the sidewalk the body was lying, and how it was lying? A It was about a foot and a half in from the curb (indicating).

THE COURT: Is that what you wanted, Mr. Brothers?

MR. BROTHERS: Yes, sir.

BY MR. BROTHERS:

Q And do you recall whether it was lying on its back, or face, or side? A On its back.

Q Now, when you looked at that man, was he dead or alive? In your opinion? A He seemed to be alive, to me. His eyes were like opening and closing a little bit (illustrating).

Q Did he speak? A No, he couldn't speak.

Q Did you know that man? A No, I didn't.

Q Did you see any injury upon him? A Not at the time.

Q Did you see any marks on his face? A No marks on his face, just the blood; that's all.

BY THE COURT:

Q You saw no marks on his face, only blood? A Yes, sir.

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Q Now describe the appearance of the face, with respect to the blood which you say you saw. A The blood like come out of the left side of the mouth. There was a little bit on the face, on the left side of the face.

BY MR. BROTHERS:

Q Well, was that apparently wet blood? A It was wet blood, yes, sir.

Q Now, as you stood there, looking at the injured man on the sidewalk, where was the defendant Stern? A He was right beside me, about six foot away from the body. I had a hold of him.

Q And where was the gun that he had at that time? A I had taken the gun off Stern.

Q What, if anything, was said by you to Stern, to which he made any answer, as you stood there looking at the injured man?

A I asked him if that was one of the men, and he said yes, and I said "Do you know him?" And he said No. And I then took him in the hallway--

Q Was there anything said, at that moment? A No, that was all.

Q Now, search your memory, and tell me whether anything else was said at that moment, by you or the defendant? A Only what I stated before, that he said it was one of the men had held him up.

Q Did he say where the hold up occurred? A In 108, in the hallway. And I asked Stern if he shot this man that we were

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standing by, the body, and he said yes.

And I took him in the hallway and asked him where the trouble started and he said about six foot from the vestibule door, where they had shoved him into the hallway, and I found two empty cartridges on the floor, .32 calibre automatic.

Q Have you got them? A The detective has got them I think.

BY THE COURT:

Q How do you describe the cartridges? A .32 calibre, automatic.

Q That is, cartridges used ordinarily in an automatic gun?

A Yes, sir.

BY MR. BROTHERS:

Q I wish you would look at that automatic pistol and tell me whether that is the pistol you took from the defendant Stern (indicating)? A yes, sir.

Q Will you open it and see whether it is loaded now or not?

A No, it's empty.

MR. BROTHERS: Now, we offer it in evidence, sir.

MR. FALLON: No objection.

THE COURT: Received.

(It is marked People's Exhibit 5).

BY MR. BROTHERS:

Q Will you look in this package (indicating), and see whether you find the shells that you testified to finding in the hall? A These two loaded shells were in the chambers yet (indicating).

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Q Yes. A These are the other six (indicating). Four were found on the sidewalk, and two in the hallway.

Q And did you find these four on the sidewalk? A No, sir, I didn't.

Q The two that you found are among these? A Yes, sir.

Q They are all alike; are they not? A Yes, sir.

BY THE COURT:

Q Now, there were four found on the sidewalk, and two shells exploded shells, in the hallway? A Yes, sir.

Q And how many unexploded shells were in the gun when you took it from Stern? A Two.

BY MR. BROTHERS:

Q Are you able to distinguish among these six discharged shells, the two you found? A No, sir.

Q Have they been marked for identification? A. I marked the whole six, not those two in particular.

MR. BROTHERS: Then they are marked for identification, People's Exhibit 6 for Identification, if your Honor please?

THE COURT: Yes.

BY MR. BROTHERS:

Q Now these two were in theung when you examined it? A Yes.

Q They were unexploded? A Yes, sir.

MR. BROTHERS: We offer them in evidence.

THE COURT: Received.

(They are marked People's Exhibit 7).

BY MR. BROTHERS:

Q Now, there is a little package that was with those, containing a number of cartridges. Do you know anything about them? A No, sir; Detective Sullivan found them on the prisoner.

Q Did you see them found? A I did. He said, "He's got some more shells in his pocket. There is eight here," and he counted them.

Q In what part of his person were they found? A The left hand lower vest pocket.

MR. BROTHERS: We offer them in evidence, eight unexploded cartridges.

MR. FALLON: We object to them as immaterial, irrelevant and incompetent, and as not having any bearing on the issues here.

THE COURT: Objection overruled.

MR. FALLON: We except.

BY THE COURT:

Q Officer, how do you describe the revolver which has been marked in evidence here? A A .32 calibre automatic pistol.

BY MR. BROTHERS:

Q It is a Colt, is it not? A Yes, sir.

THE COURT: We will suspend here, gentlemen.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Tuesday morning, June 14th, 1921 at 10:30 o'clock).

MR. BROTHERS: May I ask your Honor to tell the jury not to go into 39th Street, where this happened?

THE COURT: Take your seats again, gentlemen, for a moment. It would be improper for any of you gentlemen to inspect the locality that has now been called to your attention, as the place where the People claim the crime was committed.

At any time during the course of the case, if it becomes necessary for the jury to inspect the premises, ^{that} ~~they~~ will be taken care of in a legal and proper way, but it would be improper for any of you gentlemen to examine those premises for yourself, because the theory is that, if one juror took that upon himself, he might be in possession of knowledge that the other jurors were not in possession of, when you came to consider the case.

The law says that if the premises are inspected, they must be inspected by all twelve jurors going to the place at once, so that they may all inspect it at the same time and under the same circumstances.

You will be in your seats, please, promptly at 10:30 o'clock, tomorrow morning.

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NOT IN ORIGINAL

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TR I A L R E S U M E D.

New York, June 14th, 1921/

N I C H O L A S F. P. M O O R E, his direct examination being continued, testified as follows:

DIRECT EXAMINATION (continued) BY MR. BROTHES:

Q While you were--

THE SECOND JUROR: May I address your Honor a moment, before you proceed with this case?

THE COURT: Well, is it on a matter that pertains to the other jurors in the case?

THE SECOND JUROR: Yes, sir. You offered a suggestion yesterday of visiting the scene. Of course you have a very nice chart there, but it isn't like going to the actual place and inspecting. Now, as these witnesses testify we will know what to do, in considering the case, as each witness testified now, and I would like for one, before they go any further, to go to the place and inspect it. You have asked me to be a fair juror, and I want to do it, and I want all the assistance from the Court that I can get to do that.

THE COURT: We will see how the case progresses, Mr. Juror, and then we will determine if it is necessary. At the present time it is not necessary to visit the premises. But, during the trial, if it develops that it is

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necessary for the jury to go up to the premises, and view them they will be taken there in a legal and proper manner.

DIRECT EXAMINATION (continued) BY MR. BROTHERS:

Q Now, while you were still on 39th Street, Officer, on the day of the shooting, and while you were in the company of Pasquale Melli, did you search him? A Yes, sir.

Q What did you find on his person? A I didn't go in his pockets. I just felt him on the outside to see if he had a gun (illustrating).

Q What is the term that you use to describe that kind of search? Frisking? Is that what you call it? A Yes.

Q That is, you rub your hand outside of his clothing?

A Yes, sir.

Q And you found no weapon? A No, sir.

Q Like a gun? A No, sir.

Q Was anything afterwards found? A Yes, by detective Sullivan.

Q What was it? A A small knife.

Q Did you see it? A Yes, sir.

Q Is that the knife (indicating)? Do you know it?

A That's it, yes.

MR. BROTHERS: May it be marked for identification?

THE COURT: Yes.

(Masked People's Exhibit 9 for Identification).
BY MR. BROTHERS:

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Q Did you search the person of the deceased, in 39th Street?

A No, sir, in the station house I searched the person of the deceased.

Q Yes. What did you find in the way of a weapon on him?

A No weapon at all.

Q Now when you saw the body of Boittano, the deceased, lying on the sidewalk in front of 108 West 39th Street, did you see anything on the sidewalk near him? A A small pearl handled knife. It was closed.

Q Have you that knife with you? A No, sir, I left it in my uniform coat pocket.

BY THE COURT:

Q Where do you live? A Home Street, in the Bronx.

BY MR. BROTHERS:

Q Will you bring that knife to court? A Yes, sir.

Q When you saw the knife on the sidewalk was the blade exposed? A No, sir, the blade was closed.

Q When you searched the deceased's clothing at the station house, did you find jewelry in his possession -- did you search the defendant, I mean, and find jewelry in his possession?

A Detective Sullivan searched the defendant in the station house, and he found some jewelry and a check on him.

Q That was Sullivan? A Yes, sir.

Q You took no part in that search? A No, sir.

They held that.

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Q Did you take possession of the clothing that was on the dead man? A I did.

Q And did you tag it? A I did.

Q Look at this coat and tell me whether or not that is the coat worn by the dead man when you first saw him? A Yes, sir.

Q And I call your attention to a hole in the collar of the coat, just above the left lapel, and also a hole in the coat itself right near the one in the collar. A Yes, I noticed that at the time.

Q You noticed that at the time? A Yes, sir. There were two holes.

Q And are the holes now in about the same position as they were when you first saw them? A About the same place, the left shoulder.

Q You didn't change the coat in any way? A No, sir, I didn't change it.

Q Of course, it is all rumped up from being packed, is it not? A Yes.

MR. BROTHERS: We offer the coat in evidence.

THE COURT: Received.

(Marked People's Exhibit 10).

Q Have you told us all that Stern said to you at the scene of the shooting? A In the hallway, Melli wanted to get away. He said, "You got nothing on me, Officer. Let me go. That guy is crazy."

Q That is what Melli said? A Yes, sir.

Q Well, have you told us all that the defendant Stern said?

A Stern didn't say any more in the hallway, but Melli tried to get away; he wanted me to let him go and I turned around and said to Stern, "Are you sure this is the man? Did you ever see him before?" And he said, "I seen him hanging around the place." And Melli said to Stern, "What the hell are you trying to do? Hang me to save your own neck?"

Q Now, was there any permit found upon the person of William Stern, to carry a pistol? Or did he speak of having a permit?

A He told me he had a permit, the minute I took the pistol off him.

Q Did you see the permit? A Yes, sir.

Q Do you know where it is now? A Detective Sullivan had the permit.

Q You looked at it and read it? A Yes, sir.

Q And it seemed to be a proper permit, did it? A Yes, from Mincola.

BY THE COURT:

Q Do you know the name of the Justice of the Peace who signed it? A I can't recollect it now. I have a memorandum of it.

BY MR. BROTHERS:

Q Was it Judge Seaman? A No, sir.

MR. FALLON: It was Justice Lewis M. Reisig, if your Honor please.

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Q Did you afterwards go to the Morgue, and identify the body of the deceased to Doctor Sbbwartz? A Yes,

Q And was there a woman named Minde Klein who appeared there and identified the body and gave you her name? A She was there, yes.

Q Now, is there anything else, Officer, that I haven't asked you about, that happened at the scene of the shooting? A Only that Doctor Thompson of Bellevue Hospital pronounced him dead, and Doctor Schultze, and Doctor Schwartz and Doctor Morris were at the Morgue the following morning.

Q How many shots do you recall hearing, Officer?

MR. FALLON: I object, if your Honor please, on the ground that he has already been over that. He said three and three.

THE COURT: He may go over it. I, for instance, do not recollect what he said, and possibly the jury do not?

A About six shots.

BY MR. BROTHERS:

Q Well, how were they fired with reference to succession? Were they all at one time or were they grouped in any way?

A No, there were two together sounded kind of dead, and one loud, two loud, and then two more, loud.

Q How much time do you think there was between the first shot and the fourth one? A Oh, about a second, that's about all.

Q And they were louder? A Yes, louder.

Q You didn't see anybody fire any of these shots, did you?

A No, I didn't.

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Q I show you a paper, and ask you whether that is the pistol permit which you say was found upon the defendant Stern?

A Yes, that's it. I had that name on my memorandum book, that is there.

MR. BROWERS: We offer it in evidence.

THE COURT: Received.

(It is marked People's Exhibit 11).

MR. BROWERS: I won't read it all, but just enough of it to show what it is. (reads)

BY MR. BROWERS:

Q When you saw Stern there, at the scene of the shooting, was he injured in any way? I am now referring to the defendant.

A Not that I noticed.

Q Were there any bruises or scratches upon his face?

A I didn't notice any.

Q Did he call your attention to any? A No, he didn't call my attention to any.

Q How was his clothing? Was it in order or disorder?

A It was in order.

Q When you went into this hallway at 108, did you find the door open or closed? A Both doors were open, the outside door and the inside door.

Q Was there any artificial light burning there at that time, if you remember? A Not that I remember, no.

Q How far into the hallway did the defendant Stern take

you, to show you where he said this thing happened? A Just inside the doorway, just inside of the vestibule door, about fifteen foot.

Q So that you passed through both doors? A Yes, sir.

Q Was there anything in the hall, outside of these discharged shells? A No, sir, not that I noticed.

Q Were there any objects standing there, furniture, or barrels or anything of the sort, or was the hall apparently clear? A Apparently clear.

Q Did you see any marks upon the walls? A No, we couldn't find any.

Q Did you look? A I looked.

Q You saw no marks upon the walls there that might have been caused by bullets? A No marks at all.

Q Or in the doors themselves? A I don't remember the doors.

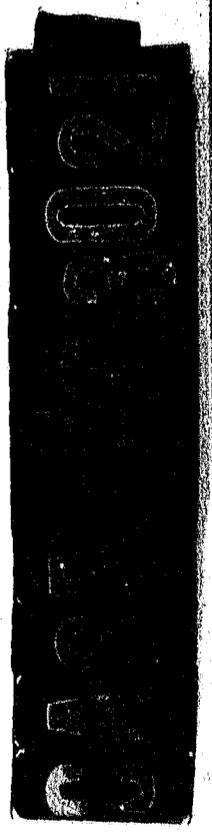
MR. BROTHERS: I think that is all.

CROSS EXAMINATION BY MR. FALLON:

Q Now, Officer, where you first saw the witness Melli was parallel to what point on the street? That is, where was that place with relation to the various houses on that street?

A There is a stage entrance of the Casino Theatre, and he was about three or four foot east of that, that is, on the south side.

Q Now, the Casino Theatre, that is, the entrance that you are talking about, was about how many feet from the entrance to the



hallway? The hallway that we have been talking about in this case? A I should say about 150 feet, or something like that.

Q Well, it is all the way down the block, is it not?

A Yes, sir

Q And it is the full distance from the entrance to the hallway down to the corner at Broadway and 39th Street, except for a few feet, isn't that right? A You mean the 150 foot?

Q No. Well, I will withdraw the question. Now, the Casino is on the corner of 39th Street and Broadway? A Yes.

Q That is, the corner building? A Yes.

Q Now, the hallway in question is down on the west side, that is, it is west on that street; is that right? A It is west of--

Q It is west of Broadway? A 108?

Q Yes. No, rather, east of Broadway. A Yes, sir, east of Broadway.

Q And how many feet west of Broadway and 39th Street is the hallway? As you approximate it. A About 90 foot.

Q So that the hallway, being 90 feet west of Sixth Avenue, where you saw this man fall on the ground, was all the way down at the other end of the street? A Yes, about 150 foot, I would say.

Q Now you know where the little lemonade and candy, or orangeade shop is located on 39th Street, don't you? A Yes/

Q And that is only a few feet west of the corner of 39th

Street and Sixth Avenue? A Yes.

Q Well, it isn't more than twentyfive feet, is it? A About that.

Q And when you saw Melli, he had travelled all the way down from the little candy store until he was almost at the corner of Broadway and 39th Street, isn't that right?

MR. BROTHERS: We object to that, because ~~it~~ assumes that Melli did something about which no testimony has been given. He said the first time he saw him he was crouched on the street, near Broadway.

THE COURT: The question is, in effect, asking the witness if Melli did not do a certain thing. I will allow the question. Just ask him did Melli do a certain thing, and I will permit the question. But if you ask him whether he saw a certain thing, I will sustain the objection, because it assumes something which as I recall it, is not in evidence.

MR. MR. FALLON:

Q Did Melli travel from the little candy store all the way down, past the entrance of the hallway, until he arrived at a point almost at Broadway and 39th Street? A That was what Melli told me he did.

BY THE COURT:

Q No, the question is, did you see him do it? A No, sir.

BY MR. FALLON:

Q How far was Melli from the corner of Broadway and 39th Street when you first saw him? A About one hundred feet.

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Q Can you fix that by the stage entrance of the theatre?

A Yes, sir.

Q Is that stage entrance shown on People's Exhibit 3?

Look at that picture carefully and see if you can find it on there?

A It's right down here (indicating).

BY THE COURT:

Q Just say yes or no. It is on there? A Yes, sir, it is.

BY MR. FALLON:

Q Will you just stand up here and point it out to the jury?

So that they may see where it is? A Yes, sir. (the witness indicates)

Q Now, while you are still standing here, I want you to show me, if you can, where the candy shop is located, or whether it is shown on this photograph at all. A It isn't on the photograph.

Q That is, it is beyond; it is east of this building here? (indicating) The last building shown on the photograph? A Yes, sir.

Q Now just indicate with the pencil where the hallway is.

A There (indicating).

Q Approximately next to the Princess Theatre Building as shown on that photograph, is that right? A Yes.

Q Now was Melli on the ground when you first saw him, or did you see him run a few steps? A I didn't see him run. He just fell around the machine, like (illustrating), and sat down, and I run on top of him and grabbed him.

Q Now, just answer the question. Did you see him take a step

in any direction? A No, sir.

Q You just simply saw him fall? A Yes, sir.

Q Apparently he tripped, from what you saw? A Yes, he tripped.

Q And how close to the defendant was Melli at that time?

A About three or four foot.

Q Now, was he nearer the building line, that is, where the building was located on the street, or was he in the centre of the street? A He was near the ~~side~~ curb, about two foot away from the curb.

Q Now, which one of them was nearer to you at that time--

A Melli.

Q As you approached them going east from the corner.

A Melli.

Q Now, just as soon as you went up to the defendant Stern, he told you that these men tried to rob him? A That's what he said

Q What is the very first thing that you said to him? "What is taking place here?" And he said "These men are trying to rob me"? A To hold him up.

Q To hold him up? A Yes, sir.

Q Now, did he at any time give you an explanation -- I mean then and there, at that time -- any statement or explanation, any other statement or explanation, than that these men were trying to hold him up? A No, sir.

Q Did he ever tell you that there was a fight, or any other

reason for having a gun in his possession, or ~~was~~ ~~there~~ of those things that had taken place there? A He said, walking down the street, that they had shoved him in the hallway and tried to rob him.

Q But that was later, wasn't it? A Yes, sir.

Q And just at that time, when you apprehended the defendant, he told you that the men tried to hold him up? A That's when Melli made a spring for him. I caught Melli on the street, and I said "Who shot the gun?" And he said "That man" indicating Stern, and I backed Stern up against the wall, and Melli made a punch for him.

Q And when the defendant said that they tried to hold him up, Melli was within a few feet, wasn't he? A Yes, sir.

Q Did Melli say that he hadn't tried to hold the defendant up?
A He said, "Don't you believe it, officer."

Q Did he say that there was not a hold up there, or anything like that? A Nothing was said about the hold up there. It was down in the hallway Stern said that.

Q And Melli said "I haven't done anything?" A Yes, sir.

Q And he tried to break away from you? A He tried to get away. He said that I had nothing on him.

Q And didn't the defendant Stern insist that he be held there?
A He said he was one of the men.

Q Yes, but he wanted to go away and was insisting that there was nothing on him, Stern said "Hold him. He is one of the men

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that tried to rob me"? A Yes, sir.

Q And when Stern insisted that Melli was one of the men that tried to rob him, what did Melli say? A Melli said "What are you trying to do? Hang me to save your own neck?"

Q And what did Stern say to that? A He didn't say nothing.

Q Didn't he say, "You can say anything you like, but the fact is that you and two others tried to rob me, and you are not going to get away with it"? A I didn't hear him.

Q Didn't he, or did he say it? Will you say that he did or did not? A I didn't hear him, I will say.

Q And Stern told you at that time that Melli and two others had dragged him into the hallway? A He said "This man and the man down the street took me into the hallway."

BY THE COURT:

Q Did he say anything about three men doing that? A He said three men were in it.

BY MR. FALION:

Q Didn't he say there were two others and the man down the street who had tried to drag him into the hallway? A Yes.

Q He said that there was one man down the street, while two others dragged him into the hallway? A Well, I wouldn't say that those were his exact words, but something to that effect.

Q And then you went to the hallway, didn't you? A This all happened in the hallway, when he said that.

Q Wasn't that just as you approached the hallway, and just as

you entered with the defendant, that the defendant told you the shots were fired in the hallway? A I was in the hallway when Stern said that.

Q Don't you remember asking Stern where the first shot was fired? A No, I didn't ask him that at all. I took him down the street and saw the body there, and the fellows down there said "It happened in the hallway, Officer."

Q Well, didn't the defendant tell you, and not the fellows, as you say -- didn't the defendant tell you that? A When I came in the hallway, I asked him was this the hallway and he said yes.

Q Officer, you didn't know anything about a hallway until the defendant told you about a shooting in the hallway, did you?

A Yes, some people there said it happened in the hallway.

Q Well, didn't the defendant take you down to the particular hallway, and bring you in, and show you where the shooting occurred?

A No, we brought the defendant into the hallway.

Q Certainly. But didn't he pick out the particular hallway for you; isn't that right? A No, I won't say that. I will say that some people there told us what had happened in the hallway.

Q Did he take you in, before you knew anything about the hallway, and show you some shells? A No, he didn't show me the shells.

Q And the shells were right near the stairs, weren't they?

A No, one was about ten feet from the stairs, and the other was about three or four foot from the stairs.

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Q Now this plan shows the plan of the street in front of the hallway, and the remaining portion of it shows the hallway itself? A Yes, sir.

Q And, indicated on the plan, you see the first and second door leading into the hallway: do you understand the plan now? A Yes, sir.

Q And here you have indicated the stairs leading upstairs to the apartments above the saloon or restaurant? A Yes.

Q Now, you say that you picked up the first shell about how far away from the foot of the stair case? A About there (indicating).

Q And by that you mean to indicate the feet. How many feet? A About four foot from the foot of the staircase.

Q You picked up one of the shells there? A Yes, sir.

Q Now, just indicate with the pencil, without making a mark, where you say you picked up the second shell? A Just about there (indicating).

Q And that would be about how many feet away from the staircase? A I should judge about six or seven.

Q Now, officer, at that time you say that both of those doors leading into the hallway were open? A Yes, sir.

Q And so far as you recall, there wasn't any light lighted in that hallway on that occasion? A No, sir.

Q As you left the street, and walked into the hallway, the hallway is almost entirely in darkness, isn't that right? A Yes.

but the yard door was open in the back, too.

Q Oh, you are positive that the yard door, the door leading from the hallway to the yard beyond, was open? A Yes, when I got there.

Qx Well, you got there almost immediately after the shooting?

A Yes.

Q And was that particular door fastened back, or did it appear to have been flung back?

Objected to; sustained; exception.

Q Was it ~~xxxxxx~~ ~~xxxx~~ partly open, or all the way? A All the way.

Q Did you go on through and see what was in the rear? A I did.

Q In the rear you found just an open space, through which there were many ways of going from that yard into the street, or into the other houses, or various other places? A There was no way out of the yard, unless you crossed the fence.

Q Why, isn't there an opening to the right, so that you can get into the apartment house, or through the alley way? A Not that I noticed.

Q Now, is it your testimony that there are not several ways of going through other buildings, or through the alleyway, or other places? A I don't remember any such ways.

Q You remember looking at the space west of the restaurant?

A Yes, I looked to see whether anybody was there, or could get out through there.

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Q Did you try the door leading from the hallway into the saloon? Was that locked or not? A That was open when I went in there. Both of them were open, leading to the yard, and the door leading to the back room of the saloon.

Q Now was the door leading to the back room of the saloon wide open? A Yes, sir.

Q So that you had to close that to get into the yard, behind? A No, there is an entrance in the hall, going all the way through.

Q But the door of the saloon opened out into the hall, didn't it? A No, it opens into the back room.

Q And that was the door that was open, into the back room of the saloon? A Yes, sir.

Q And the other one was also open? A Yes, into the back yard.

Q Now, officer, did you close both those doors, to see whether or not you could see anything in the hallway? A No, sir, I didn't.

Q Now, officer, you have had some experience in handling firearms? A Yes.

Q And a revolver such as we have in this case, immediately upon explosion of the bullet, throws out the shell? A Yes, sir.

Q In other words, just as soon as it is fired, the shell is ejected by the pistol. A Yes.

Q In other words, upon the firing of the shot, a part of the revolver goes back and that throws out the shell? A Yes, sir.



Q So that the shell is thrown out almost in the same position as that in which the shot is fired? A Yes, sir.

Q Is it thrown out on the ground? A It throws out about six feet, to the right; that is, an automatic.

Q Now, when you say you heard the first two shots, you say you heard those two shots very distinctly? A No, sir.

Q And was the third shot fired almost immediately after that? A A little ~~later~~ louder. You could hear it a little louder, and it was just about a second after.

Q Now, were the next three shots fired in rapid succession, or was there a considerable time, a considerable interval of time between the firing of the first three shots, and the firing of the second three shots? A Well, it was just like Bang! Bang! Bang! I wouldn't say how long it was.

Q Well, were there any three shots fired, and then a considerable pause, and then three more shots? A No more than half a minute's pause.

Q You mean -- you don't mean full half a minute, do you? A Well, no. They went like that (snapping his fingers).

BY THE COURT:

Q Now, begin with the first two that you heard; give those and then, as near as you can reproduce it, the manner in which the other shots sounded to you. Now, begin at Number 1. A Snap, snap, snap -- snap, snap, snap.

Q There was very little interval between any of the shots;

is that true? A Yes, sir.

Q And the difference in sound was that the first two shots sounded muffled, or dead? A Yes, sir.

Q And the others sounded louder and more distinct? A Yes, sir, more distinct.

BY MR. FALLON:

Q Now, Officer, at what point did you find the shells exploded from the revolver that was nearest to Broadway?

THE COURT: Do you mean which shell was nearest to Broadway?

MR. FALLON: Yes, sir, which exploded shell, in the street.

A I didn't find any shells in the street. The other officers picked them up.

Q Was Officer Sullivan the man who picked up the shells in the street? A ~~Yes~~ No, sir.

Q You picked up two in the hallway? A Yes.

Q When you looked about where Melli had fallen, didn't you see shells there? A No, sir.

Q And you walked back from the place where he had fallen to the doorway -- did you see any shells on the sidewalk? A No, sir.

Q Now, you say that you found another penknife than this one (indicating)? A A small pearl handled pen knife.

Q And did you find this one, too? A No, that was found on Melli, in his pocket, in the station house.

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Q Now, when the defendant told you that three men held him up, did you ask him where the third man had gone? A I did; and he said he didn't know where he was.

Q Didn't he tell you he must have gone out through the back of the hallway? A I don't remember. I went into the yard, anyway.

Q Now, officer, please try to remember that. After you heard about the three men you went back to the yard? A Yes.

Q And wasn't that because the defendant told you that the third man had gone out that way? A I don't remember.

Q Well, tell us why you went there, if it wasn't for that reason? A Stern said one fellow had a gun, and I went out there to see if I could find a gun, and searched the saloon to see if I could find a gun.

BY THE COURT:

Q Did you find any? A No, sir.

BY MR. FALLON:

Q Stern told you that there was a third man who had a gun, who ran out at the back? A He didn't tell me that anybody ran out at the back.

Q Didn't you tell me just now that you don't know whether he said that or not? A Yes. I don't know whether he said that or not.

Q Well, then, so far as you know or remember, he may have said that to you? A He may have, but I don't remember his saying that.

Q Now, didn't you go out into the yard first, and then back into the restaurant, and then out of the back room of the saloon, or the restaurant, into the yard again, and then to those tenement houses at the back? A No, sir, nothing like that happened.

MR. BROTHERS: I object. Counsel includes in his question tenement houses, and there is no evidence of tenement houses.

THE COURT: No, there is no evidence of that kind, but the witness had answered before the objection was made.

BY MR. FALLON:

Q Now, to the west of the saloon, or that which was then the saloon, what sort of a building was there? A There is a cabaret there, the Pre Catalan there.

Q It is a kind of restaurant, isn't it? A Yes.

Q And upstairs are there not apartments? A There are dining rooms there.

Q And are there any apartments in that building? A That I couldn't say.

Q Do you know whether or not there is a fire escape leading right from the corner of the building that adjoins the saloon, a fire escape leading all the way up to the top of that building?

A I don't remember.

Q Now, who was present, that is, who other than the defendant and Melli -- when the defendant told you there was a third man,

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who the defendant told you had fired shots at him? Or he had a
revolver and had run away?

MR. BROTHERS: I object to that question, as to the form.

THE COURT: Objection sustained.

MR. FALLON: May we respectfully except?

BY MR. FALLON:

Q Did the defendant tell you that there was a third man who
had a gun, who had run away? A He said there were three men, and
one had a revolver, and the other a knife.

Q Was that afterwards found, the little penknife? A That
was after.

Q After the little penknife was picked up on the street?

A Yes, sir.

Q Now, then, at the time that he made the statement about the
little knife and the revolver, what people were present?

Objected to; sustained; exception.

Q At the time that the defendant told you that there were
three men, and one had a revolver and the other a knife, when he
made that statement, what people were present? A There was
Detective Sullivan and Detective Woods.

Q And how long was that after you had found Melli on the
ground, or had seen him fall to the ground? A No more than about
five minutes.

Q It was almost immediately after the occurrence, isn't that
right? A Well, I'll say about five minutes.

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Q Just as soon as you arrested him, or as soon as you saw him with a revolver in his hand, he told you that three men tried to hold him up, did he? A I don't remember his saying it at that time, but he told me that in the hallway.

Q Now, didn't he tell you, just as soon as you placed him under arrest, that three men tried to hold him up? A I asked him--

Q Now, please try to answer the question.

THE COURT: Well, let the witness answer the question before you begin another question.

MR. FALLON: Well, will your Honor direct him to answer responsively.

THE COURT: He has answered responsively, in my judgment, right through.

MR. FALLON: May the question be repeated?

THE COURT: Yes.

Q (repeated by the stenographer)

MR. BROTHERS: I object, on the ground that the question is confusing, because it doesn't appear when the officer placed him under arrest.

BY MR. FALLON:

Q Officer, you placed him under arrest immediately, did you not? A Yes, sir.

Q And as soon as you placed him under arrest, at that very moment, didn't the defendant tell you that three men tried to hold him up? A I asked him what was the matter, and he said

that three men tried to hold him up, and I said, "Who?" 62

Q And didn't he say then that three men tried to hold him up? A That was after. He said the three men had tried to hold him up, in the hallway.

BY THE COURT:

Q That is after you had walked from the stage entrance of the theatre to the hallway? A Yes, sir.

Q Was that the first time that he told you that three men had held him up? A That's the first time I remember.

BY MR. FALLON:

Q Now, didn't you say, as soon as you arrested him, -- as you arrested him didn't you say "What's the matter?" A Yes.

Q And didn't he then say, at that very spot, "Three men tried to hold me up"? A Yes, and I asked him who tried to hold him up.

Q Yes, right there. A Yes, sir.

Q And then he said three men tried to hold him up? A No sir, he said Welli did. I said "Is this one?" And he said Yes.

Q Now, didn't you tell me just a moment ago, Officer, that as soon as you placed him under arrest that he said that these men tried to hold him up? A He said "Three men," yes.

Q Yes. And you said "Who?" A Yes, sir.

Q And he said "There is one of them"? A Yes, sir; him and two others.

Q Then, immediately upon his arrest he said "This man and two others"? A Yes, sir.

Q So that he told you about the three men before he went down to that door at all? A He said three men in the hallway.

THE COURT: Just a moment, counsel.

BY THE COURT:

Q Now, Officer, counsel is asking you whether or not the defendant said that three men held him up in the hallway. At the time you first came upon him in front of the stage entrance of the Casino, when he was standing there in front of the stage entrance to the Casino, did he at that time tell you that these men had held him up, or that three men had held him up; now did he say that for the first time, when you brought him down to the hallway? Now, do you understand the difference between those two points, the Casino theatre and the hallway? A He said "These men," when I first placed him under arrest, and down in the hallway he said "Three men."

BY MR. FALLON:

Q As soon as he said "these men" didn't he immediately point to Melli? A Yes.

Q And say "This man and two others"? Isn't that what you have just told us? A That I wouldn't say.

Q Now, Officer, try and remember the facts for us.

THE COURT: Now, Mr. Fallon, if there are any admonitions to be addressed to the witness, this or any other witness, the Court will do it.

MR. FALLON: I am not admonishing him. I am just trying

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to refresh his recollection, trying to help him in that way.

THE COURT: I have not observed that he has needed help, and if there is any admonition to be given to him, I will give it. Proceed.

BY MR. FALLON:

Q Will you say that, as he was placed under arrest, he did or did not say that three men tried to hold him up? A He said "these men". I don't remember the exact words.

Q Didn't he say at one time -- haven't you told us that he said, "This man and two others"? A I don't know. I might have said it.

Q Well, was it the fact that it happened? A I don't remember him saying it on the street, but in the hallway he said "three men."

Q When he pointed Melli out did he say down the street, there were some others, or anything like that? A I walked him down the street and I pointed to Boittano, and I said, "This man, is he one of them?" And he said, "Yes." And in the hallway, he said "three men."

Q So, when you came down to the deceased, he said there was another one, after having pointed out Melli as one of them?

A Yes, sir.

Q And then in the hallway he said three men? A Yes, sir.

Q Now, all this time you were bringing Melli along with you? That's right, isn't it? A Yes, sir.

Q And whenever the defendant was saying three men had robbed him, Melli could hear what he said? A He was within about five foot, with Sergeant Schanue.

Q Could he hear what was being said about him, so far as your opinion goes? A No, sir, he couldn't.

Q That is, he was only five feet away, but couldn't hear what was said about him? A I think not, no.

Q How far was he away from the defendant when he said "Let me go. There is nothing on me"? A About two foot from the defendant in the hallway.

Q And then the defendant said "He's one of the men"? A Yes. And he said that on the street.

Q When this man Melli tried to get away, then the defendant said he was one of the men? A Yes.

Q And told you to hold him? A I had to hold him anyway.

Q Did this man that they tried to hold him up and tried to take jewelry from him? A He said they tried to hold him, up, and he had jewelry in his pockets, and a check.

Q Did he say where he had been just before the attempted robbery? A Not that I remember.

Q Did he say that he had been in the Pre Catalan, in an endeavor to get a check cashed? A He said he had a check belonging to somebody at the Pre Catalan.

Q Didn't he say that, just before this occurrence, he had been into the Pre Catalan, the little restaurant there, in order

to get a check cashed? A He ~~has~~ told me the check was dated--

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BY THE COURT:

Q Did he tell you that? You know what getting a check cashed means, don't you? A yes, he did.

BY MR. FALLON:

Q Did he show you a check in a substantial amount? A Yes, sir.

Q What was the amount of the check? A Something over \$600.

Q Didn't he say because the gentleman who was to cash the check wasn't there, he didn't get ~~the~~ check cashed? A No, sir, he told me there was a wrong date on the check; that it was dated for a holiday, that was October 13th, Columbus Day, and he couldn't go to the bank and draw the money out.

Q But is that the reason he assigned why it couldn't be cashed in the restaurant by him? Didn't he say he was going to have this check cashed by a friend in the restaurant, because he couldn't collect the money at the bank? A No, sir, he said that he wanted the check -- the date, changed.

Q And he said then that these three men dragged him into the hallway; that it was just after he had come out of the Pre Catalan Restaurant, and was walking out on the sidewalk there, when these men grabbed him and shoved him into the hallway, and tried to rob him? A No, sir.

Q Did he say anything like that? A He told me he was walking down from Sixth Avenue, I remember now.

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Q Down to or from Sixth Avenue? A Walking west from Sixth Avenue.

Q Did you ask him where he was coming from? A No, sir, I didn't.

Q Now, Officer, how do you fix the time at about half past five? A I don't know of any reason why I should think it was exactly that time, only I had my raincoat on my arm, and I was going to leave it in a store, and I looked at my watch, and it was about twentyseven after, when the shooting began, just as I walked off the corner.

Q Officer, the second door, the glass door, you are positive was fastened back against the wall? A Yes, sir.

Q So that any shot fired from the inside of the hallway, out, would meet with no obstruction, is that right? A Yes.

Q You say you looked about the hall, to see if there were any marks? A Yes.

Q How much of a search did you make? A About five minutes.

Q Did you look across the street to see whether there had been any shots over there? A No, sir.

Q You didn't look across the street, right out of that doorway, to see if any bullets had gone beyond? A No, sir.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer, as I recall your testimony, as you went down, on hearing the shots, the first person you saw was Melli? A Yes.

Q Was he the first person to whom you spoke at all? A Yes, sir.

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Q But, at that moment, the defendant was near by on the sidewalk? A Yes, sir, on the sidewalk.

Q What did you say to Melli and what did he say to you?
A I said "Who's got that gun?" And Melli said "Stern," and pointed to Stern on the sidewalk, and I pointed my gun at Stern and told him to stop.

Q Now, have you told us all that Melli said when Stern was accusing him of holding him up, or attempting to? I am referring now to what you say took place in the hallway. A That's all I can remember.

Q You said, on your cross, that Melli said he had nothing to do with it, and that he wanted you to let him go; is that right? A Yes.

Q Did he attempt to run away? A No, no.

Q He simply asked you to let him go? A Yes, sir. He told me they had nothing on him,

Q And did he use the word "frame-up" in speaking of to Stern?
A That I don't remember.

Q Do you know whether or not when Stern said that Melli endeavored to hold him up, whether he said "What kind of a frameup are you trying to put up?" Did he use any words like that?

A I don't recall that.

Q Well, just what did he say? I want to get it. A When Stern accused him, and Melli wanted to get away, welli turned to Stern and said "What the hell are you trying to do? Hang me to save your own neck?"

Q Did Stern say to you at any time that he knew Melli?

A At first he said he didn't know him, and then he said he knew him from hanging around the place.

Q Will you bring that knife here? A Yes, sir.

Q How far away from the body of the deceased was that knife?

A About a foot.

Q Were there many people on the street there, that day?

A Yes, there was quite a few.

Q Was that a busy block at that hour of the day? A Yes, it is very busy.

Q Did you have to pass any people, when you were walking from the Casino Theatre entrance, with Melli, followed by Stern-- no, you had Stern, did you not? A Yes.

Q Did you have to pass any pedestrians before you came to the body? A I did.

Q How far away from the body were you when you first saw the body? A The knife?

Q No, the body. A I should say about six foot.

Q Well, why didn't you see him sooner? A It was so small, I just happened to look down.

Q ~~So~~ No, I am talking of the dead man's body, lying on the sidewalk. How far away ~~from~~ from him were you when you first saw him? A I couldn't see it, on account of the crowd.

Q Did you have to push the crowd aside, to get to the body?

A Yes, I had to push the crowd.

MR. BROTHERS: That is all. Bring the knife tomorrow, will you?

THE WITNESS: Yes, sir.

RE-CROSS EXAMINATION BY MR. FALLON:

Q The defendant told you, didn't he, that he knew Melli from hanging around different parts of that locality? A He said from hanging around the place. He didn't say what place.

Q Did he say from hanging around different places? A He said from hanging around in the place.

Q But he did say that? A He admitted --

Q He did say that he knew him? A He admitted afterwards that he did, but he denied, first, that he knew him; then he said he knew him from hanging around the place.

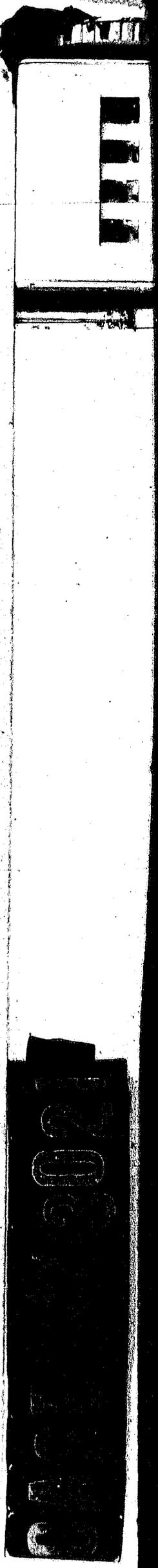
Q Didn't he say that he didn't know him in the sense that he knew him well but knew him from seeing him hanging around the place? A Yes, sir.

Q Isn't that what he said, Officer? A Yes.

MR. BROTHERS: We offer, by consent, a photograph that we didn't have yesterday, in time to put it in evidence, showing the soda place, and also the place where the shooting was alleged to have taken place.

THE COURT: Received.

(It is marked People's Exhibit 13).



C O R N E L I U S F. S U L L I V A N, of the 23rd

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Precinct, Detective Division; a witness called on behalf
of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Sullivan, are you a member of the Police Department of
this City? A I am.

Q And you have been on the Force, how long? A Fourteen years.

Q Are you now in the detective division? A I am.

Q How long have you been there? A Four years.

Q Do you recall the 13th day of October, 1930, whether you
saw the defendant that day? A I did.

Q Where were you when you first had your attention called to
anything that was happening in West 39th Street, between Sixth
Avenue and Broadway? A At the 30th Street Station.

Q That is near what Avenues? A Near Sixth Avenue, 138 West
30th Street.

Q Where did you go? A On a telephone communication I went
to 39th Street between Sixth Avenue and Broadway.

Q yes. A There I saw the defendant.

Q Did you come through Sixth Avenue? A Yes, in an automobile.

Q And at what place did you alight from the automobile?

A At Sixth Avenue and 39th Street, at the crossing, the corner.

Q And, as you got out of the car and looked into 39th Street,
what did you see? A I saw a crowd of people.

Q Were they in front of one particular building, or all along

the street? A Their attraction was drawn in front of 108 West 39th Street.

Q You walked there, did you? A Yes.

Q Were you alone? A I was with detective Woods.

Q What is Mr. Woods' first name? A Archibald J.

Q And where was the defendant when you saw him? A He was standing in front of the entrance to the house at 108 West 39th.

Q On the sidewalk? A On the sidewalk.

Q And who was near him? A Why, Officer Moore was on one side of him and Sergeant Schanue was upon the other side of him.

Q Did you see a man named Pasquale Melli there? A I did.

Q Where was he? A He was next to -- Sergeant Schanue had a hold of him.

Q And was there some conversation there? A There was.

Q Did the defendant take part in it? A He did.

Q Will you relate what was said while you were standing there? A I asked the defendant if he shot the man, pointing to the man laying on the sidewalk. He said, "I did."

And I said, "Why did you shoot him?" And he said, "Well, I was passing here, and two men pushed me into the hallway, and a third man put a gun up to me, and with that I began shooting."

He said, "I am a jewelry salesman, and I carry a considerable amount of jewelry and money with me."

Q yes. A I then said to the defendant, "What part, if any, did the deceased, pointing to the man on the sidewalk, play

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in this holdup?" He said, "He is the one that had the gun.

He was in the hallway when I was pushed in, and he had the gun."

Q Do I understand that correctly, that the defendant said that the dead man was the man who had been in the hallway, and had the gun? A Yessir, I then said to him "What part, if any, did this man Melli play?" He said, "He had a knife, and he is one of the men that pushed me into the hallway."

Q Yes. Was that about all that was said at the time?

A Well, that is the substance of what I said to him and he to me. He said the same thing over several times. I asked Melli if he pushed him into the hallway -0

Objected to. Objection withdrawn.

A I asked Melli in the defendant's presence, "Did you push this man into the hallway" and he said "No, Sterny and Pauly had an argument, and I separated them, and after separating them I went down to the candy store near Sixth Avenue, and had a soda."

I said to welli, "Who was with you, if anybody?" And he said "The two McLoughlin brothers."

BY THE COURT:

Q Where? IN the candy store? A Yes, sir, in the candy store. With Melli. And he said, "And, while I was in there, just as I was ordering a soda, I heard shots fired." He said, "At first I thought it was the backfire of an automobile, and I ran out and saw the crowd running towards Broadway, and I ran with them, and then I saw Sterny and he pointed the gun at me, and I ran

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around an automobile, and he fired some shots at me, and one of them hit the raincoat that I was carrying."

BY MR. BROTHERS:

Q Now, that was all that Melli said, was it? A Yes, practically all.

Q And he said that in the presence of the defendant? A Yes, sir.

Q And did you again address yourself to Stern? A Yes, I did. I asked him if what Melli was saying was the truth, and he said "No, Melli was one of the men that pushed me into the hallway" and that he had a knife.

Q And what was said by Stern as to knowing Melli? A I asked him if he knew the deceased, first, and he said no. Then I asked him if he knew Melli, and he said "No. I saw him maybe two or three times but I never had a speaking acquaintance with him."

Q Did you search the defendant at that place? A I searched the defendant in the hallway, that is, I gave him a frisk.

Q Yes. A And he had considerable jewelry on him, and I found a package containing eight loaded cartridges, besides the jewelry.

Q When you say package, what do you mean? A They were wrapped up in a little piece of brown paper.

Q I show you People's Exhibit 8 and I ask you whether that is the package? A Yes, that is the package, and that is the paper it was wrapped up in. There was a rubber band on it

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Q Did you search the deceased as he lay there on the sidewalk? A I didn't search him, no.

Q Did you search ~~at~~ him at any time? A Never.

Q Did you have anything to do with searching him at that time?
A No, I didn't.

Q Now, did you take possession of the jewelry that was on the person of the defen dant? A I did.

Q And did you make a list of it? A I did.

Q Have you the jewelry here? A I have.

Q Well, what, in addition to the jewelry and the bullets, did you find? A Why, we found -- the revolver was handed to Detective Woods by Officer Moore, and the defendant also had a permit to carry a revolver, and he had about \$70. in money, and the jewelry, and a pencil, a fountain pen, and a magnifying glass which jewelers use, which I have here (indicating).

Q Do you recall a check? A There was a check.

Q Have you the check? A I have.

Q Will you let me see it? A Yes, sir.

MR. BROTHERS: We offer it in evidence.

THE COURT: Received.

(It is marked People's Exhibit 13).

BY MR. BROTHERS:

Q Now, the jewelry -- will you give us the jewelry from your list, please, what the articles were? A I retained \$50. in cash. One white metal ring, with . white stone in it; one yellow metal

ring, with a white stone, and blue enamel; one yellow metal wrist watch.

Q Well, now, when you say yellowmetal, it appeared to be gold, didn't it? A Yes, sir, it was either gold or gold filled. And a yellow metal wrist watch; a white metal wrist watch. Two white metal wrist watches.

BY MR. FALLON:

Q Do you mean by that, platinum, or something of that kind?

BY THE COURT:

Q Do you mean that it might be silver or platinum? A Yes, sir.

Q You are only describing the color of the metal, without indicating whether they were gold or brass, is that right?

A Yes, sir. One white metal wrist watch; twentyeight white stones. One string of supposed pearls; one hundred pearls; one yellow metalpin, one white and yellow; one white metal cigarette case, and a check, Number 1144.

BY MR. BROTHERS:

Q Is that all that you found? A Yes, that is, the valuables.

Q Did you see any injuries upon the defendant Stern?

A There were none.

Q Now, how was his clothing when you saw him as to being in order or disorder? A It was in order, just as it usually is.

Q Have you stated all that was said in the hallway, that you remember? A That is, I asked him, when I found out he had a gun, I asked him if he had a permit, and he said yes, and I asked him

where he got it and he said on Long Island.

Q Now, had you ever seen Stern before that occasion?

A I had not.

Q Did you know the man, Pasquale Melli? A No, sir.

Q Or the deceased, Paul Boittano? A I did not.

CROSS EXAMINATION BY MR. FALLON:

Q Officer, you have there the jewelry that you took from the defendant; isn't that right? A Yes.

MR. FALLON: Now, may we have this marked for identification? There might be occasion to offer it later.

THE COURT: Yes.

(Two packages are marked, respectively, Defendant's Exhibits A and B for identification).

BY MR. FALLON:

Q Now, did the defendant tell you that the jewelry in his possession was of considerable value? A Yes, sir.

Q And did he put any value on it? A Not at that time, but in the station house he did.

Q And what value did he fix there? A A couple of thousand dollars.

Q Did he put it in this way, that he had more than two thousand dollars' worth of jewelry? A Yes, he said, "I have more than a couple of thousand dollars' worth of jewelry there."

Q Well, he told you at once that three men had tried to hold him up, to take the jewelry from him? A He said two

men had pushed him into the hallway and another man was in there and pointed a gun at him.

Q And did he say that one man had walked away and two men had pushed him into the hallway? A He did not.

Q Now, Officer, when Helli was questioned by you, was he under arrest? A Not at that time. Sergeant Schanue detained him there until I got there, and I requested that he be still detained.

Q Did he make a statement right off? A He did.

Q And that was when he told you that he had walked down the street, isn't that right? A That he made a statement about walking down the street?

Q Yes. And he did that almost immediately upon your arrival at that place? A Yes.

Q He told you that he left the defendant arguing with the deceased; isn't that so? A He separated them from an argument.

Q And he told you that at that time they were on the sidewalk didn't he? A Yes.

Q He didn't tell you that there was any argument in the hallway of the building, did he? A No, sir.

Q You are quite positive that he said that when they were arguing, they were on the sidewalk in front of the saloon?

A He said they were arguing in front of 108, in front of Flannery's saloon, -- that's the name he mentioned -- the saloon takes up almost the front of the building, and the hallway is

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OR
three and a half ~~and~~ four feet wide.

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Q But the point that I want to get at is whether he said he left them on the sidewalk. A Yes, sir.

Qx And that he walked down to the little candy store ~~for~~ or orangeade place almost at the corner? A Yes.

Q And he had to travel fully fifty feet to get there, didn't he? A No, I guess it isn't more than thirty feet.

MR. BROTHERS: Our plan is accurate as to the distance.

MR. FALLON: Yes, and he fixed it at 68 feet.

Q Now, what, Officer, if you agree to that approximate measurement -- do you say that it is only thirty feet from the hallway door to the little candy store? A Well, I wouldn't like to go on record as saying just how far it is.

Q Well, you had to go the entire length of the Princess Theatre? A Yes.

Q And then the little candy shop is just east of that? A Yes.

Q And Melli told you that he had just gone in there and ordered something to drink when he heard a noise? A Yes, sir.

Q And he told you he thought it was backfire? A Yes, sir.

Q Did he tell you that? A He did.

Q Now, your recollection is clear on that, that Melli told you that he thought the noise was back fire? A He did, yes.

Q Didn't he tell you that he was all the way in the candy store? A No; and, in ~~fact~~, it isn't a candy store that you require to go in very far. The depth of the candy store I don't

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think is more than two or three feet.

Q And he said, although he thought it was backfire, he immediately ran out of the place? A Yes, and he ran out and saw the crowd, and ran after the crowd, ran with the crowd.

Q Did he say that he ran with the crowd, or ahead of the crowd? A He said he saw the crowd, and ran with the crowd.

Q Didn't he say that as soon as he heard the backfire, he ran right down to catch the defendant? A He did not.

Q Did he tell you how far he ran after the defendant? A He ran probably to the corner of Broadway.

Q That is, he ran almost the whole block after the defendant? A Yes, he ran there, but he didn't run directly after him. The defendant chased him around an automobile.

Q No, please answer. Didn't he say that he went all the way down the block and almost to the corner before the defendant turned and fired at him? A He did not.

Q Didn't he tell you that he had followed the defendant, and had almost caught him when he fired the shot? A No, sir.

Q Didn't he say that he ran down towards Broadway, and when the defendant turned, he turned, and went up the block again? A No, sir.

Q Now, officer, you are positive of that, are you? A Yes.

Q Your recollection is good? A Yes.

Q Did you ask him afterwards, when you were making your investigation, why he ran after this man? A Did I ask Nelli?

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Q Yes. A No, I didn't ask him. He volunteered it. 81

Q I mean when he told you that he had run from that candy store all the way to Broadway, almost, after the defendant, did it occur to you to ask him why he did that thing? A No, sir, I didn't ask him about that at all. I thought possibly--

Q No. You didn't ask him. A No, sir.

Q Now did he make that statement in the police station or on the sidewalk? A He made that statement in the hallway of 108.

Q Now you were present when the officers, the other officers, found the shells? A No, I wasn't.

Q Did you find any of the shells on the street? A No, I didn't.

Q Which officer found the shells which were on the street?

A I believe it was Officer Moore that had all the shells. Now, who found them I don't know.

Q Now, Officer Moore says he found two, and there were four others. Who found those; can you tell us? A No, sir, Officer Moore had the shells, and handed them to either Woods or I; I don't remember which.

Q Now, did Officer Moore say where he had found the shells?

A He did not.

Q And the defendant said that the shooting had occurred in the hallway? A Yes, sir.

Q Did you make any investigation of the hallway, to find

out what possibilities there were for anybody to escape from that hallway, and into the place at the back of the yard? A Yes.

Q Did you find out that there were various exits there?

A Yes, you can go into the saloon from the hall.

Q And did you see whether there was an entrance into the Pre Catalan, which is beyond? A No, I don't remember seeing any entrance except the entrance to the yard and to the saloon, and upstairs.

Q And the defendant said there were three men concerned in the alleged robbery? A Yes, sir.

Q Or attempted robbery? A Yes, sir.

Q And that it occurred in the hallway? A In the vestibule of the hallway.

Q And didn't he say that it occurred in there, where it was dark? Just yes or no. A No.

Q Didn't he tell you that it occurred near the stairs in the hallway? A He did not.

Q Now, officer, did you ever get Melli to sign a statement?

A I did not.

Q Didn't you try to get him to sign one?

MR. BROTHERS: We object to that as immaterial, irrelevant and incompetent.

THE COURT: Objection sustained.

MR. FALLON: May we respectfully except?

Q For several days, didn't Melli refuse to make any statement

or utterance at all?

Objected to; sustained; exception.

P A S Q U A L E M E L L I, of Farmingdale, Long Island,
a witness called on behalf of the People, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q How old are you, Melli? A I am 33 years old.

Q You were born where? A Italy.

Q What part of Italy? Raise your voice. The jury complain
that they cannot hear you. A Podenza.

Q And when did you come to the United States? A When I
was just about eight years old.

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

Q Living in New York City or nearby? A Yes, sir.

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

Q How long have you known him? A Oh, about six months.

Q Do you mean six months from today or six months from
the 13th of October? A From October 13th.

Q Where were you living prior to last October, before
last October? A Before October?

Q Yes. A Long Island, Farmingdale, Long Island.

Q And how long have you lived there? A Well, probably
about a year now.

Q Are you married? A Yes.

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Q Any children? A Two.

MR. FALLON: We object to that.

THE COURT: Objection sustained.

BY MR. BROTHERS:

Q Do you live there with them? A Yes, sir.

Q And what kind of work do you do? A Laborer.

Q And for whom do you work? A Well, I have been lately working in Farmingdale there as a plasterer.

Q Who is your employer? A Doctor Michaels is the one getting bungalows built over there.

Q When did you first become acquainted with William Stern?

A From 39th Street.

Q Well, what place in that street? A The Pre Catalan.

Q Did you first see him there? A Yes.

Q And how did you get acquainted with him? A Why, I bought some jewelry off him.

Q You say you bought some jewelry from Stern, is that right?

A Yes, sir.

Q Well, did you buy from him in the Pre Catalan? A I bought it out in the street.

Q Well, did you buy anything else from him at that time?

A No, sir.

Q Or since? A No, sir.

Q How many times did you see him from the first time you met him until the day of the shooting? A Do you mean after the

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shooting happened?

Q No. A before?

Q I want to know, during the six months you knew him, how often you saw him? A Oh, I used to see him almost every night I used to come to New York, around 39th Street.

Q And did you know others who knew him? A Yes.

Q Who else? A Pauly.

Q Pauly? A Yes.

Q That is, the dead man in this case? A Yes, sir.

Q Any others? A Yes, but I don't know their names.

Q Where do they hang out, these other people? A Well, two of them are witnesses.

Q Do you mean witnesses in this case? A Yes, sir; the McLoughlin Brothers.

Q And what is their business? A Chauffeurs.

Q Did you see them fronttime to time in 39th Street? A Yes.

BY THE COURT:

Q Did all these people hang out in the Pre Catalan? A Yes, sir.

Q And did you meet them frequently? A Yes, sir, every night I came to New York.

Q About how many times did you go to the Pre Catalan?

A Well, seven or eight times.

Q Do you mean in six months? A Yes, sir.

BY MR. BROTHERS:

Q And did you see him there in the daytime or the night

time? A In the evening.

Q How long have you known -- or how long had you known Paul Boittano, before he was killed? A Well, I knew Pauly, as I figure, about eighteen years.

Q Do you know where he lived? A He lived in Thompson Street.

Q What number? A I couldn't tell you the number.

Q Thompson Street? A Yes.

Q And did you go to his house there? A Sometimes?

A No, sir.

Q Did you know with whom he lived in Thompson Street? A No.

Q Do you know Minnie Klein? A Yes.

Q Did you ever see Minnie Klein with Paul? A I did.

Q When had you seen Stern, the defendant, the last time before October 12th, 1920? A In 39th Street.

Q Well, when was the last time before the shooting?

A The day previous to the shooting.

Q Where? A In front of the Catalan.

Q And did you have any talk with him then? A No, sir.

Q Well, what were you and Stern doing there, the night before the shooting?

MR. FALION: I object to that as leading, your Honor.

He says he happened to see him there.

THE COURT: Objection overruled.

MR. FALION: Exception.

Q You saw Stern there? A Yes, sir.

Qx What was he doing? A Well, he was always busy in selling jewelry, and I just said "How do you do" and walked into the saloon.

Q Where did you spend that night? A In New York, in my mother's house, in the Bronx. I missed my train that night.

Q And at whose house did you stay? A My mother's.

Q Now, the next day, did you see Paul? A Yes, sir.

Q When? A In the morning, when I was going home, to get the train, at the house, at 42nd Street and Tenth Avenue,

Q At whose house was that? A Paul's.

Q You spoke about his living in Thompson Street, didn't you? A Well, that was years ago.

Q And how long had he been living in the place in 42nd Street? A To my knowledge, about two months.

Q Did you go to Farmingdale on the 13th of October, that is, Columbus Day? A Yes, sir.

Q When did you come back to New York? A I took that 1.28 train that left Farmingdale.

Q And when you got into New York where did you go? A I went to 41st Street.

Q What did you do there? A I stayed there ~~asking~~ a while, and then I come around into 39th Street.

Q What place did you go to in 41st Street? A On the corner of Broadway and 41st Street.

Q Were you looking for somebody?

MR. FALLON: I object to that, unless it is answered
yes or no.

BY THE COURT:

Q Answer yes or no. Were you looking for somebody?

A No, sir, I just happened to be standing there, looking at the
sights there.

BY MR. BROTHERS:

Q And how long did you stay there? A About an hour or so.

Q And then where did you go? A To Flannery's saloon, in
39th Street.

Q To Flannery's saloon? A Yes, sir.

Q I show you People's Exhibit 3, which shows a restaurant,
108 West 39th Street. Do you know whether that is where the
saloon used to be? A Yes, that's the building.

Q Did you go into the saloon? A I did.

Q Now, you know what time that was, do you? A Well, I
figure around half past four.

Q Did you see Stern that day? A I did.

Q When did you see him? A When I come out of Flannery's
saloon.

Q And when was that, about what time? A Around that time,
about half past four.

Q And where was Stern when you saw him? A He was standing
there, and Pauly was talking to him.

Q Did you hear what they said to each other? A Well, they were talking about whiskey, about Paul being supposed to get some whiskey from him.

MR. FALLON: I object to that, if your Honor please.

THE COURT: Objection sustained, and it is stricken out.

BY MR. BROTHERS:

Q Had you seen Paul and Stern together on other days?

MR. FALLON: I object to that. There is a situation here where he ought not to be led.

THE COURT: Objection overruled.

MR. FALLON: Exception.

Q We had drank together.

Q Well, on how many occasions? How many times? A Several occasions.

BY THE COURT:

Qx What do you mean by several? Does that mean three or more than three? A More than three times.

Q Well, about how many do you mean by several? A Around four or five times.

BY MR. BROTHERS:

Q Now, when was the 1st time, before the day of the shooting, that you had seen Paul Boittano with Stern? A Before the shooting?

Qx Yes. A Well, I have seen them together about four nights previous.

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Q And where was that? A In 39th Street.

Q Now will you please tell us, as loud as you can, what you heard Paul Boittano and Stern talking about at Flannery's saloon, about 4.30, on Columbus Day, giving their words, if you can? A Paul had told ~~xxxx~~ me, the night previous, about the--

Q No. (question repeated) A Well, they were speaking about whiskey, and Pauly didn't want him to sell any more whiskey for him, and he said, "I want Patsy to sell it."

Q You were Patsy? A Yes, sir, he meant me. He was to get whiskey that night off a friend of his with a permit.

Q Yes. Well, did you say -- or did he say that to Stern, that he was to get it that night? A Pauly was telling that to Stern, yes.

Q And what else did they say? A And Stern says, "I want to get paid for my trouble, going around soliciting trade for you." And Paul wouldn't give him nothing for his trouble, and with that they come to blows.

Q Well, where was that? On the sidewalk? A On the sidewalk.

Q Well, who started the fight? A Well, they both of them had punched one another.

Q And then what was said? A I separate the both of them.

Q Yes. A And I told Pauly to walk away; that there was a crowd gathering around, and it looked bad, and with that Paul walked as far as the Pre Catalan, and Stern stood in front of Flannery's saloon, and Franky McLaughlin came along, and asked

me, "Patsy, would you buy me a drink?" And I said, "What do you want?" And he said, "An ice cream soda," and we went to the soda fountain in 39th Street near Sixth Avenue.

Q Now, when you started away with McLaughlin, did you see Stern? A I left Stern in front of Flannery's saloon, at the time.

Q What was he doing? A Standing there.

Q And do you know where Paul was at that time? Did you see him? A He was standing in front of the Pre Catalan.

Q Were there other people there on the sidewalk? A Well, there must have been, but I couldn't describe anybody.

Q Well, how many blows did you see struck? A About three or four blows, when I separated them.

Q Were either of these men knocked down on the sidewalk? A No, the both of them were dazed.

Q Was anything said by either of them when they were punching each other? A No, not as I know.

Q Well, when you separated them, how did you do it? A I just went between them and separated them. (illustrating), and I told Pauly to go about his business, and let them both cool off.

Q You are a pretty good sized man, are you not? A Yes.

Q How much do you weigh? A Two hundred pounds.

Q Did you strike either one of them? A No, sir.

Q Were they angry at that time? A Yes.

Q Did they appear to be angry then, when you had separated them and got them apart, did they say anything? A No, because Pauly went about his business when I told him to.

Q Can you find in this picture which I show you, People's Exhibit 13, the soda fountain that you are telling about?

A Yes, sir, here it is (indicating).

Q What place did you go with Frankie McLoughlin? To this soda fountain? A Yes, sir.

Q And what happened there? A Well, I ordered a drink, and then there was also a woman there, and one or two more persons, and he couldn't very well serve it, and he said "Wait a minute."

Q At the time you ordered your drink, where were you?

A I was right at the soda fountain. It's right on the sidewalk. All open. You can't get inside of the place. Just a little counter.

Q Did you get anything to drink? A No, sir.

Q About how long were you standing there waiting for the drink? A Well, I should judge about a couple of minutes.

Q And then what happened? A I heard the backfire of a gun, and I looked around and I seen Pauly staggering out of the hallway of Flannery's saloon.

Q Yes. Then what did you see? A Then I seen Sternly walk up the street.

Q And did you see what became of Pauly? A Pauly was lying down when I went to him.

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Q Now, you say that Sterny^o- You call the defendant Sterny; is that it? A Yes.

Q Walked away? A Yes, sir.

Q In which direction did he go? A Towards Broadway.

Q Yes. And what did you do? A I ran after him.

Q In which direction? A Towards Broadway.

Q Now tell us all that happened as you ran towards Broadway?

A When I ran towards Broadway, in his direction, and got close to him, never thinking he had the gun in his hand at the time, he turned and fired at me.

Q Now, at the time the defendant fired at you, which one of you was nearest to Broadway? A Why, Sterny was.

Q How far away was he from you when he fired at you?

A I should judge about four feet.

Q What had happened just before he fired? A Why, when I seen him pull out and point the revolver in my direction, I ran around the car.

Q Where was the car? A That was right in front of the express office there. I think it is Adams Express.

Q And was it standing by the curb? A Yes, about on the curb.

Q Well, why were you going towards Broadway? A Because I was going after Sterny.

Q You wanted to catch him, did you? A I did.

MR. FALCON: I object to that, as leading.

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THE COURT: Yes, that is leading. Sustained. Strike
out the answer.

BY MR. BROTHERS:

Q How close did you get to him before he shot at you?

A I should judge about four feet.

Q Did he say anything to you, or you to him, as ~~xxxx~~ you were going after him before the shot was fired? A That I can't remember. I was all excited at the time.

Q Were you running or walking? A Running.

Q And how was he going? A Well, he was on a fast walk.

Q How many shots were fired at you? A Well, I couldn't very well tell you the right amount, because it sounded more like fire works than anything else, when I was running around the cab.

Q Did any of the bullets strike you? A There was in the coat.

Q And what did you do? A I kept running around the cabs there, to prevent myself from getting killed.

Q And then what happened? A An officer come along, and I was out at the curb and he had grabbed me, and Stern.

Q Yes. Now, when the officer came, about where were you? Did you see Stern? A Yes.

Q Where was he? A From about here to the chair in front of you.

THE COURT: Mr. Foreman, what do you say the distance is

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between the witness and that chair there?

THE FOREMAN: I would say about eight foot.

THE COURT: Then indicating about eight feet.

BY MR. BROTHERS:

Q I show you a coat and ask you if you know whose coat it is?

A It is my coat.

Q Is that the coat you had on at the time that Stern shot at you? A Yes, sir.

Q Will you show us anyhole that you say was made by a bullet? A Right ~~there~~ (indicating).

Q At the time you say the bullet struck your coat, how did you have your coat? Buttoned or unbuttoned? A I had it unbuttoned.

Q Were you running or standing still at the time the shot struck you? A I was running, and I had the rain coat on this arm (indicating the left arm).

MR. BROTHERS: We offer the coat in evidence.

THE COURT: Received.

(It is marked People's Exhibit 14).

BY MR. BROTHERS:

Q As you went west from the soda place towards Broadway, as you say, after Stern, did you pass by Paul? A I did.

Q Where was he when you passed by? A Laying on the sidewalk near the curb.

Q Did you see him fall down? A I did.

Q You did? A Yes.

Q When did he fall down? You say you saw him stagger out of the hallway and then you saw Stern come out.

MR. FALLON: I object. He didn't say that at all. I object to that as a misquotation of the testimony.

THE COURT: My recollection is that he said he saw him come out of the hallway.

MR. FALLON: Yes, sir, but not that he then saw Stern come out.

THE COURT: No, I do not recollect that he said he saw Stern come out.

MR. BROTHERS: Well, maybe I am wrong.

THE COURT: Yes, objection sustained.

BY MR. BROTHERS:

Q Well, you saw Paul come out of the hallway; is that right?

A Yes, sir.

QxWhen did he fall down? A Just as I was running towards Stern.

Q Yes, well where did you see Stern for the first time after you saw Paul come out of this hallway? A Up the street, running towards Broadway -- walking towards Broadway rather.

Q You saw Paul come out of the hallway, did you not? A Yes.

Q After you saw Paul coming out, I want to know where you first saw Stern? A Running towards Broadway.

Q How far from the hallway? A Well, he was up about as

far as the Pre Catalan when I first saw him.

Q That is, next to the saloon? A Yes.

Q Now when was it that Pauly fell down, with reference to that? Did he fall right down right away, or walk around a while? What did he do? A (no answer)

Q Did you understand me? A I seen him stooping over, like holding his stomach (illustrating), and then ~~was~~ as I was running towards Stern I seen him falling.

Q When this police officer came up to you, what happened?

A I asked ~~him~~ to be left alone; that I didn't want to be in any trouble, because I wasn't in a position to get into trouble, and the officer says, "I can't let you go, because Stern says that you and Paul and another unknown person were sticking him up."

Q Well, what was the first thing that was said when the officer came to you; can you remember that? A No, I don't remember that.

Q Do you remember that the officer came up to you as you were there at the curb? A Yes.

Q Do you remember what he said to you? A No, I don't recall it.

Q Well, where did you go with the officer? A Well, I went right to Stern.

Q Where was he? A He was up on the sidewalk.

Q And what happened then? A Well, I made a pass at him.

Q You tried to hit him, didn't you A Yes, and the officer grabbed my arm.

Q Now, at that time, what did you see Stern do? A I seen the officer taking the weapon off him.

Q Now, was there any talk between you and the officer and Stern there, right there, at that place and time? A Yes.

Q What was that talk? A That I wanted to be left alone, and Stern insisted upon me being arrested, that I was one of the men that stuck him up in the hall. He said that I had a knife, and Pauly had a gun, and the other unknown person, I don't know what he had.

Q He spoke about a third man, did he? A Yes, sir.

Q And where did you go with the officer and Stern from that place? A Flannery's hallway.

Q Now, you came back to Flannery's hallway -- when you came back there did you see Paul again? A I did.

Q Where was he then? A 30th Street Station.

Q No. As you came back along the sidewalk with the officer? A Oh, he was laying on the sidewalk.

Q Was he in the same place where you had first seen him, or had he moved? A In the same place.

Q And what happened when you back there to the hallway? What was done and said? A I don't kind of get you on that question, District Attorney.

Q Well, when you came back, which officer had a hold of you? A Officer Sullivan and Woods.



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Q But the first officer who came to you, when you first saw any officer, what officer was that? A Officer Moore, I think.

Q Well, then, another Officer came along, did he? A Yes.

Q And you all walked back to Flannery's saloon, did you, with these officers? And two officers made a search; is that right? A That was after I was taken to the 30th Street Station, and ~~xxxxxx~~ brought back by Sullivan and Woods.

Q Now you say that the defendant was shooting at you and you ran around an automobile? A I did.

Q And then the officer came up to you? A Yes.

Q And you tried to hit Stern, is that right? A Yes, sir.

Q Now where did you go from that place? A In Flannery's hallway.

Q Now, what was said when you ~~ge~~ got back into Flannery's hallway, or what was done? A Well, I was insisting upon being left alone; I didn't want to be in any trouble, and Stern says "Why, no, you've got to hold him; he was one of them that stuck me up."

Q Yes. And what else did he say? A That's all I know of.

Q Did you have a gun with you that day? A No, sir.

Q Did you have a knife? A A penknife.

Q What does it look like? A A sort of a little figure on the back there, a lady, I think.

Q I show you People's Exhibit 9. Is that the knife that you had? A Yes, sir.

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Q How long had you had that knife? A Why, I should figure about a week.

Q It is a sort of a combination knife and cigar cutter, isn't it? A It is.

Q Did the officer take that from you? A Yes.

Q Now do you -- were you in that hallway of Flannery's saloon with Stern that afternoon, before the shooting?

A As I was coming out of Flannery's saloon, and was outside there, he was talking to Pauly, and he was right by the hallway, and I spoke to him.

Qx Did you try to hold him up in the hallway that afternoon?

A No, sir.

Q When was this argument occurred, as you say, between Stern and Paul, where was that? A On the sidewalk.

Q In front of what part of the building? Can you point out in this picture, People's Exhibit 3 to the jury, where Paul and Stern were standing when you say you came out of the saloon, and saw them arguing? A This window here (indicating).

Q Indicating on the picture, the window east of the doorway?

A Yes, sir.

Q How close were they standing to the window? A About two feet away from the window.

Q Now, at that time, did any of your men get into the hallway?

A No, sir.

Q Was any man there with you at that time? A With me? No.

Q Now, I ask you whether you were in the hallway of Flannery's saloon that afternoon, before the shooting, trying to rob Stern? A No, sir.

Q Did you know he had any jewelry with him? A I knew he always had jewelry on him.

Q Did he always have it, every time you saw him? A Yes, sir.

Q And have you told us all now, Mr. Melli, that happened between you and Stern and Paul? A Yes.

Q You have been convicted of crime, have you not? A I have.

Q What were you convicted of? A Manslaughter in the first degree.

Q When was that? A 1915 -- 1914.

Q In the Court of General Sessions? A Yes, sir.

Q I tried the case, didn't it? A You did.

Q And how long did you remain in State Prison? A About four years and a half.

Q What was your sentence? A Ten to twenty.

Q What was -- and you were paroled, were you; you had time off, is that it? A I got commuted by Governor Whitman. He commuted my sentence.

Q Had you been convicted before that of any offense?

A No, sir.

Q Had you had any talk with Stern before the afternoon of October 12th, about whiskey -- you yourself? A No, sir.

Q Had you been present at any time when the sale or purchase

of whiskey was spoken of by the defendant and Paul? A No, sir.

Q And this was the first time you had heard about it? A Yes.

Q Where did you go from the hallway of Flannery's saloon, after you came back there, immediately after the shooting?

Where did the police take you to? A The 30th Street station.

Q And how long did you stay there at the station house?

A Until late that night.

Q And were you held as a witness? A Well, I don't know what I was held for at the time. I was held more for stickup

than anything else, because they took me over to Headquarters that same night, late.

Q And how long were you locked up? A About three days and a half.

Q And then what happened? A Then I went before the Grand Jury and stated what happened.

Q Did you go free then or get bail, or what? A I give bail.

Q Were you committed as a witness? A Yes, afterwards.

MR. BROTHERS: That's all.

CROSS EXAMINATION BY MR. FALLON:

Q To whom did you first make a statement substantially the same as you are making on the stand today? A Before the Grand Jury.

Q Now, up to that time, did you tell anybody anything about these occurrences? A Not as I can remember.

until

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Q That is, /you went before the Grand Jury you never said a word to anyone in the Police Department, or the District Attorney's office, about anything of the things that happened on the night of the shooting, is that right? A Yes, sir.

Q You refused absolutely to tell the police anything about it, didn't you? A I did.

Q And it was not until after you had been locked up for three days that you told, you first told anybody anything about the things that you are now testifying to? A I did.

Q And you never told Officer Sullivan, you say, anything at the time of the shooting or thereafter, about the things that you had done that night? A Well, he tried to say--

Q (repeated) A No, sir.

Q You didn't tell him about running after this man down the street? A No, sir.

Q And you never told him anything about going to the orangeade place, to get a glass of soda or orangeade, and then hearing the shooting and thinking it as a backfire, and then running out and down the street after the defendant? A Not that I can remember.

Q Now you have how many years short time?

THE COURT: What do you mean by that? I never heard he expression before. Maybe he knows what you mean.

MR. FALLON: The short time means the number of years he will have to go back for if he gets into any new trouble.

BY MR. FALLON:

Q How many years have you to serve if you violate the terms of your parole? A About fifteen years.

Q And so that, if you get into any trouble, whatever it may be, your understanding is that you will have to be returned to State Prison for fifteen years? A Yes.

Q And that is the remainder of the original sentence which you received for shooting a man? A Yes.

Q Where did that shooting take place? A Now, your Honor--

MR. BROTHERS: I object to that.

THE COURT: Yes, objection sustained. You are not entitled to the details. He has admitted that he was convicted. That is sufficient.

MR. FALLON: Very well. I will not go further into that.

Q Now, you knew the man that was how, for about eighteen years, didn't you? A Yes, sir.

Q Did you know of how many robberies he had been convicted?

Objected to; sustained; exception.

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

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A F T E R R E C E S S.

P A S Q U A L E M E L L I, his cross examination being continued, testified as follows:

CROSS EXAMINATION(continued) BY MR. FALLON:

Q I understood you to say that preceding this affair, you lived down at Farmingdale, Long Island, is that right? A Yes, sir.

Q And you had lived there for about how long before this occurrence? A I had moved out there in August.

Q You mean the August before this October? A Yes, sir.

Q So that you had lived there about two months, is that right? A Since August I lived there.

Q Well, you mean August of the same year? Had you lived there a year or a year and two months? A Well, this August I will be there on year.

Q I see. Now, while you were living down on Long Island, did you have any business in New York; were you occupied anywhere?

A No, sir.

Q You had no business to come to New York at all, did you?

A I came over to see my mother.

Q Outside of an occasional visit to your mother, you had no occasion for coming to New York City, had you? A No at that present day.

Q For about two months previous to the date of this occurrence where did you live? A I lived in Avenue C.

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Q Is that in New York City? A Yes, sir.

Qx How far is that away from 39th Street, the place where all these things happened? A I should judge about two miles.

Q Where did you work then? A I worked for the Peerless Packing Company.

Q Where is that place located? A Why, in West 10th Street.

Q So that you never had any business around 39th Street at any time preceding this happening in October, had you? A I had a car.

Q When? A Right before the shooting.

Q Didn't you tell me that at that time you had no business in New York, and for two months before that you had lived in Long Island? A I did.

Q Well, now then, was that so, or did you have a car then at or around 39th Street? Which is right? A I didn't have a car at that time, No. I had sold it.

Q Didn't you tell me just now that, just before the shooting, you had a car that brought you to conduct your business at or around 39th Street? A That's how I came to be around 39th and 41st Street.

Q Now, for six months at least, before the shooting, had you any car to conduct business at or around 39th Street? A I did.

Q Didn't you tell me that for two months before you were in Long Island, for two months before that, you were working for the Peerless people? A I did.

Q And that you worked down in Tenth Street? A Yes.

Q And do you still say that while you were working in Tenth Street, and while you were living on Long Island, you had a car that brought you about or around 39th Street, for business?

A I didn't have a car at that time.

Q And so, when you said that, it wasn't true?

(Objected to)

Q When before that, October 13th, did you last have a car in 39th Street? A I can't recall the date.

Q Five months, a year before; how long before? A Well, a couple of months before.

Q Is that when you worked for the Peerless people? A No, sir.

Qx Was it before that? A I worked for the Peerless people when I first came out.

Q Came out where? A Out of Sing Sing.

Q Didn't you say you worked for the Peerless people just before you moved to Long Island? A I did.

Q So that just before you went to Long Island, you were working for the Peerless Company? That is right, is it not? A It is before I went to Long Island, yes.

Q And so that you didn't then own a car when you were working for the Peerless people, did you? A No, sir.

Q Well, then, when did you have your own car? A Well, up to about a couple of months previous to the shooting.

Q Didn't you say you worked for the Peerless People from

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the time you left prison until you moved to Long Island? A No.

Q Now, for three months before the shooting, you had no business at all in 39th Street, did you? A Well, that's just what brought me around the street, the car.

Q The car? A Yes.

Q Now this defendant never employed you as a chauffeur, did he? A No, sir.

Q And he never rode in your car so far as you know? A He did.

Qx Will you tell the jury some place you took him in the car?

A As far as 39th Street.

Q But wasn't the car at 39th Street? A No, 41st Street.

Q Did you run this car then yourself? A Yes, sir.

Q And when did you sell the car? You must know the date of that, don't you? A I don't remember the date, but the car was sold to Stern.

Q It was sold to the defendant? A Yes, sir.

Q Did you sell it to him? A I did.

Q Have you any record of that sale? A I haven't any record now, because they have the record.

BY THE COURT:

Q Who do you mean by "they", when you say that they have the record? A The ones that bought the car from me.

Q The people who bought the car from Stern have the record of the sale by you to Stern? A Yes, sir.

Q Did you give him a bill of sale, a paper showing that you sold the car to him; is that what you mean? A Yes, sir.

BY MR. FALLON:

Q Now, do you know a man named Johnson, in 41st Street, in the taxicab business there? A Yes, sir.

Q And did you sell that car to Mr. Johnson and his partner?

A No, sir.

Q Do you remember the name of his partner? A I do.

Q What is his name? A I know him as Jimmy Kelly.

Q Do you know his right name? A No, sir.

Q Was that the man with whom you negotiated the transaction for the sale of the automobile? A No, sir.

Q Did you ever talk to the man that you identify as Kelly?

A I did.

Q Was the car afterwards used for hacking purposes in this City? So far as your observation went? A Well, more for friends than anything else, private.

Q Well, is it a fact that that car was sold more than a year before the shooting? A No, sir.

Q Well, now, by what means do you fix the date? How are you able to tell us it was only three or four months before?

A Because he has got papers on record.

Q Yes, showing that transaction; isn't that right? A Yes.

Q And that's the first time you ever saw the defendant in your life, isn't it? A No, sir.

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Q Isn't that the first time you ever saw him or anybody else-- A No, sir.

Q Where before that did you meet him? A 41st Street and also 39th Street.

Q Now, you told this Court, in answer to a question by the Court, that you had met this defendant some six or seven times before the shooting. Is that so? A Yes.

Q Was that correct? A It was.

Q Didn't you tell the Court that you met him, each time, at or near the Pre Catalan Hotel? A I did.

Q Where was the sale of the automobile negotiated? A 50th Street Court, I think it was.

Q Do you mean in the Court house on 50th Street? A By some lawyer, I don't know his name. We went before the lawyer, supposed to be a notary, and he takes the record.

Q Well, that is one of the seven occasions on which you met the defendant you say; is that right? A Yes.

Q Now, then, after that, you say you saw him at or near the Pre Catalan Hotel? A Yes, that was afterwards.

Q Yes, & afterwards? A Yes,.

Q After you had sold your car? A Yes.

Q What business had you at the Pre Catalan then? A Well, I knew friends around there, and I used to go around there and pay a visit.

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Q What business had you at that hotel in 39th Street, near Broadway, when you lived up on Avenue C?

THE WITNESS: I don't know if I have got to answer that question, your Honor.

THE COURT: Yes, you may answer it.

A I had as much right as anybody else to go around 39th Street.

BY MR. FALLON:

Q I am not denying you that right. But what business had you that brought you to 39th Street on the six visits that you made there?

MR. BROTHERS: I object. He didn't say that he had made six or seven visits. He said that he had seen this defendant six or seven times.

MR. FALLON: Then I will change the question. That is entirely right.

Q For the two months before the shooting, how often did you go in the vicinity of the Pre Catalan, in 39th Street? A I had been going there, through that street, on and off.

Q I only asked you how often, after you moved to Long Island, and before the shooting, how often in that time you went to the Pre Catalan, or in that vicinity? A On or off I went through there.

Q I ask you again. How often? What do you mean by on and off?

A I really don't know how to answer that question?

THE COURT: Just a minute.

BY THE COURT:

Q Are you able to state how many times you went to the Pre Catalan Restraint or cafe, or whatever it was, for the two months before the shooting? Do you know how many times you went there, or went around there, or stood around there? A I didn't keep no track of how many times I've been going there, your Honor.

Q Are you able to state how many times? A No, sir.

BY MR. FALLON:

Q Will you give us your best estimate of the number of times you went there, ^{or} that vicinity, during the two months you were living on Lond Island? Just give us your best estimate. A Every time I come down to see my mother, I used to go through there.

BY THE COURT:

Q About how many times was that? Was it as many as twice? A More than twice.

Q Was it five or six times? A About five or six times.

Q Was it more than that? A About five or six times.

BY MR. FALLON:

Q Where did you say your mother resided? A Bronx, 113rd Street.

Q Now, in the two months, you say you attended at that place some four or five times, and yet the day before the shooting you were in the vicinity of 39th Street; weren't you?

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A The day of the shooting, yes.

Q And the day before that; isn't that so? A Yes, sir.

Q At about what time of the day before the shooting were you at or near the Pre Catalan? A That was in the afternoon.

Q About what time? A Around between one and two o'clock.

Q That is, the day preceding the day of the shooting? You remember that now, don't you; you are not misunderstanding that? A That was not the day of the shooting, no. That was the day before.

Q Yes, the day before. A Yes, sir.

Q You were there about half past one; is that right? A One or two o'clock; I am not sure.

Q Now, on that day, did you see the man who is now deceased, at that place, Pauly? A I have met him, yes.

Q No, the day before the shooting, did you see him at or near the Pre Catalan? A Yes, sir.

Q And did you see him again, the night of the day before the shooting, there? A No, sir.

Q The next morning, before you went down to your place on Long Island you did see the deceased; didn't you? A Yes.

Q Where? A At his home.

Q Where was that? A 42nd Street and Tenth Avenue.

Q Now, you stayed up at your mother's, that night;

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that's right; isn't it? A Yes, sir.

Q And you left your mother's home, and came down where this man lived, in the vicinity of 40th Street, to visit him there? A Yes, sir.

Q And then you went to your home on Long Island?

A Yes, sir.

Q And then you came back to New York? A Yes, sir.

Q And ~~against~~ again you met the deceased at the Pre Catalan Hotel; that is right, is it not? A Yes, in front of Flannery's saloon.

Q Now, you had no business transaction with him; did you? A I had, yes.

Q Didn't you tell Mr. Brothers that you never had been involved in any transaction with that man, relative to the sale of liquor or anything else? Didn't you say that? A Yes.

Q Well, now, which is right? Did you have any business transaction with him or not? A I was just about to have one.

Q Up to that time, had you had any transaction at any place or time before that day; had you had any business dealings whatever with the dead man? A Yes.

Q And how long before? A That was around one o'clock.

Q You said that, before that day, you had a transaction-- you had some transaction with him, and you also was to have one

on that day of the shooting? A I was going to have some business with him.

Q Didn't you answer the Court, just a moment ago, that you had had some business transactions with him? A No, sir.

Q You say that the fact now is that you never had any business transaction with him, throughout the eighteen years you knew him? A No, sir.

Q And the only business transaction that you ever had with him was the one that was going to ~~XXXXX~~ ^{fall} on the day the shooting happened; is that right? A Yes, sir.

Q Now, what time of the day did you leave home, that is, what time in the morning, before you went to Long Island? A I should judge about half past five, to get the 6.10 train, in the morning.

Q And you told Mr. Brothers that, at that time, you were working for some builder, down on Long Island? A Not that time, no.

Q Didn't you say that you were working regularly for a builder, at or about the time immediately preceding the shooting?

MR. BROTHERS: That is objected to as too indefinite.

Q Well, you had been out of work for how long before this shooting? A I had been working on and off.

Q Didn't you say that you were not working at all at that time? A No, not at ~~that~~ that time.

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Q Now, then, I ask you when, before the shooting, had you last done any work? A I had been working for Archibald, as a loader.

BY THE COURT:

Q Now, this shooting took place on the 12th of October; you remember that? A Yes, sir.

Q Were you working on the 11th of October? A No, sir.

Q Or the 10th? A No sir.

Q What day were you working on last, before the 12th of October? A I should judge about four months.

BY MR. FALLON:

Q And so that, four months before the shooting, you hadn't done anything that gave you any living whatever?

A No, sir.

Q Didn't you say that, for three months before, you were in that vicinity with an automobile, which you were running for yourself? A Yes, sir.

Q And didn't you tell me, just now, that, for four months you hadn't done anything that brought in any revenue?

A Yes, sir.

Q Now, which story is true?

MR. BROTHERS: I object to that. It doesn't appear whether he was running the automobile for profit or pleasure.

Objection overruled.

A Well, I didn't work for four months.

BY MR. FALLON:

Q Now, when you ran your automobile, you ran that for hire, to make money to support yourself; isn't that so?

A I just hired it out private.

Q You hired it out for money; isn't that right?

A Just hired it out private.

Q To make money; is that right? A No, sir.

Q Well, when you hired it out privately, wasn't that for the purpose of proving a living for you? A (No answer)

Q Was it for the purpose of making money that you hired it out privately? A Yes.

Q And the automobile was the last money--- the money that you got by hiring out the automobile, was the last money that you made before this shooting; isn't that so?
A Yes.

Q Now, then, after that, how did you support yourself and your family, your wife? A Well, we had money, and the money I got on the car.

Q How much did you get for the car? A \$800.

Q And, outside of that \$800., you had no other means of supporting your family? That is right; is it not? A I had.

Q What? A I had.

Q You did do other work? A I did not, no.

Q Now, then, on the afternoon of the shooting, you recall

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that you met Pauly, after you returned from Long Island, at his home, first; isn't that so? A That is before I went to Long Island.

Q Then, when you came back from Long Island didn't you go to his home? A No, sir.

Q Did you make an appointment with him to meet him at the Pre Catalan? A Yes, sir.

Q Now, you had been to his home in the morning? A Yes.

Q Now, did he have any office or place of business at the Pre Catalan Hotel, that you ever saw? A No, sir.

Q Now, was the appointment made to meet him in the saloon, next door, or the Pre Catalan Hotel? A Outside.

Q Outside on the sidewalk; isn't that so? A Yes.

Q And it was while you were keeping this appointment that the defendant came along? That's right; isn't it? A I was inside before they was there.

Q That is, it was while you had gone to that place to meet the man that was shot that the defendant happened to come along? A I met them two, speaking, when I went inside of Flannery's saloon, and came outside.

Q Now, how many people were in the saloon when you came outside to join the dead man? A I don't get you on that.

Q You say that, just before you saw the defendant talking to Pauly, you came out of the saloon? A Yes, sir.

Q In the saloon, how many people were there? A I didn't stop to count them.

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Q Well, there were other men in the saloon? A Well, there must have been.

Q Don't you remember a particular man in that saloon while you were there? A No, sir, just the bartender.

Q Well, why do you say there must have been one other man there? A The bartender.

Q Was he the only man in the saloon? A No, there was somebody else, but I don't know who they were.

Q There was somebody else in that saloon; was there not? A Yes.

Q And, when you came out, somebody came out with you; isn't that so? A Not as I know of.

Q Will you say that, when you came out to join these two men that another man didn't come out with you? A I came out alone.

Q That is, you passed through the door alone, but didn't another man follow you out? A Why, I didn't see anybody else follow me out, or come out after me.

BY THE COURT:

Q Did anybody follow you out of Flannery's saloon, when you came out of it yourself? A I haven't seen anybody following me.

BY MR. FALLON:

Q Well, do you know whether anyone followed you out or not? What is your recollection about it? A I am not positive of that.

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Q You don't know whether a man did or did not? Is that what you mean? A Yes.

Q Now, you didn't have any business transaction with this defendant that day; did you? A No, sir.

Q You hadn't had any business transaction with him for a long time; had you? A With regards to what?

Q With regard to liquor. A I never had any business with him in regards to liquor.

Q Did you ever have any transaction with this defendant at any time, involving the purchase or sale of liquor, or having anything to do with liquor? A No, sir.

Q Did you, at any time before October 12th, talk to this defendant about liquor? A No, sir.

Q So that, on that day, you had absolutely no business with him at all; did you? A No, sir.

Q And you never had a quarrel with this man? A No, sir.

Q Or even a single cross word with him? That is true; is it not? A Yes, sir.

Q And then you say you saw him in the saloon, you mean that he was in the saloon, drinking with other people; don't you? I don't mean on that day, but previous to October 12th, when you say you met him there. You saw him drinking with others, didn't you? A Yes.

Q And you only said, "How do you do," to him? A I drank

with him many times.

Q Yes. When you were invited to join him and other men in a drink, you drank? A Yes.

BY THE COURT:

Q What do you mean by saying that you drank with him many times? A Because, when I seen him in the saloon, and he invited me to take a drink, or I invited him, and we had a drink together.

BY MR. FALION:

Q Now, then, when you say you saw this defendant and Pauly together, you mean that that was on an occasion when the various people who were in that saloon were drinking; isn't that the fact? A I don't understand you.

Q Then we will make that a little clearer. You testified to Mr. Brothers' questions that you saw the defendant talking to Pauly on four or five occasions before this shooting. Do you remember testifying to that? A No, sir.

Q Did you ever see them together when those two were engaged in a private conversation? Yes, or no? A The three of us together, yes.

Q Did you ever at any time see this man and Pauly, the decedent, talking together separately? A Yes.

Q Didn't you just now tell me the three of you were together? A Drinking together, yes.

Q Now, wasn't that on occasions when you went into the

barroom and everybody else asked everybody else to have a drink?

A I not only drank on the bar, but at the soda fountain at the corner.

Q Then you didn't drink with the deceased at the soda fountain? A Yes, sir.

Q But not that day? A No, sir.

Q Now, when before this occurrence did you ever drink with the defendant at the soda fountain? A About a week previous to the shooting.

Q Now, you told Mr. Brothers that you knew that this defendant always had a great deal of jewelry about with him; you remember answering that? A Yes, sir.

Q You knew that, whenever he was at or about that particular place, the Pre Catlan Hotel, that he had considerable value in jewels on his person? That is right; is it not? A Yes.

Q You knew, on this very day, that he had jewels with him; didn't he? A Well, I hadn't seen it, but I know he has been carrying jewelry with him all the time, but I can't say that I have seen it that day, no.

Q And he was in and about that place, carrying on his business in selling jewelry? A Yes, sir.

Q And when the deceased was around, it was always when the defendant had lots of jewelry in his possession? That's right; isn't it? A (No answer.)

Q Isn't that so? A N I don't seem to understand you on that question.

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Q Well, we will try to make it clearer. When the deceased was there, and when you say the defendant was present, weren't those times when the defendant had lots of jewelry about it? A The defendant was around, and had jewelry, and the deceased was around also, and I knew he had it.

Q Yes. So that you saw the deceased present, at different times, when the defendant was present, and showing his jewelry?

A Yes.

Q Now, there was some conversation that day, on the sidewalk, about liquor? A Yes.

Q And, right after that, you walked away? A I was called away, yes.

Q Well, you walked away, or you were called away? A Yes.

Q And when you left the deceased and this defendant, they were right about in the center of the sidewalk; weren't they? A No, sir.

Q Weren't they both on the sidewalk? A They were both on the sidewalk. He was up against Flanner's window, and Pauly was down near the Pre Catalan.

Q That is, to the west of the building where the saloon is? A Yes, sir.

Q So that you went east, the deceased went west, and the defendant was in the middle; isn't that right? A Yes, by Flannery's saloon, yes, sir.

Q Now, then, you walked directly from where you left the defendant and the deceased, and went down to the little soda fountain? A I did.

Q Now, you were not in there long enough to be served, were you? A There were two or three other persons before me, and we had to wait for our drink.

Q Now, isn't it a fact that ~~three~~^{six} people couldn't get into that little store?

MR. BROTHERS: I object to that. He didn't say anything about six people.

THE COURT: Objection sustained.

BY MR. FALLON:

Q Didn't you say that you had to wait for about three other people to be served? A Yes, sir.

Q And were there six people in that little booth? A We couldn't fit in the booth, because its right on the sidewalk.

Q Did you ever go inside of the booth; did you ever go inside of the booth, or were you always on the sidewalk? A I was inside of the booth, yes.

BY THE COURT:

Q Could you be served with drinks at that soda fountain without leaving the sidewalk at all? A Yes, sir.

BY MR. FALLON:

Q Now, then, before you were served with the drinks,

you heard a sound and thought it was a back fire? A Yes, sir.

Q And you didn't see a soul in the street, after you looked out from the booth; didn't you? A All I seen was Pauly coming out.

Q Certainly. That is, as soon as you heard the noise that you thought was back fire, you looked down in the direction of the saloon, and you didn't see anybody except Pauly coming out? A Yes, sir.

Q That is true; isn't it? A Yes, sir.

Q Now, then, when you thought it was backfire, why did you immediately run out of the booth?

MR. BROTHERS: I object to that? He didn't say he immediately ran out of the booth. He said he was on the sidewalk.

THE COURT: Objection sustained.

MR. FALLON: All right. I withdraw the question.

Q Now, you didn't think that anything unusual had happened; did you? A I always knew that he had a revolver in his possession.

Q No, please answer. (Question repeated) Just yes or no. A Yes, sir.

Q Now, as soon as you heard the noise, you thought it was so unusual that you thought it was backfire? A Yes, sir.

Q Is that right? A Yes, sir.

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Q You didn't think it was a shooting? A Not right away, no.

Q And you were in a position where you could look down?

A Yes, sir.

Q And didn't you, as soon as you heard the noise, you looked? A Yes.

Q You looked to the west? A Yes.

Q And the first thing you saw was Pauly coming out of the hallway; isn't that true? A I seen him up on the sidewalk.

Q Didn't you say, in your direct examination that you saw him coming out of the hallway? A Well, the hall is right there. I couldn't see him in the hall, no.

Q So he was just coming out of the entrance; isn't that so? A Yes.

Q Now, at that moment, when you saw Pauly coming out of the doorway, where was the defendant? A Near the Pre Catalan.

Q Near the Pre Catalan? Going in what direction?

A Broadway.

Q That is, going away from Pauly; isn't that right?

A Yes, sir.

Q And going away from you? A Yes, sir.

Q Now, you saw Pauly come right out, just as you stood

there by the soda water fountain; you saw Pauly come out and go in the same direction as the defendant; isn't that so? A No, he wasn't going in that direction.

Q Didn't he go west, towards Broadway? A Pauly?

Q Yes. Did he go west? A Why, he fell right there, he staggered.

Q Now, do you say that Pauly didn't go from the doorway down to a place west of the Pre Catalan Hotel? A Before the shooting?

Q What's that? A Before the shooting?

Q No, after you saw him come out of the doorway, didn't he go to the west, up to a point where he was in front of the Pre Catalan Hotel? A That was after the fight, when I separated them.

Q Won't you please answer my question?

BY THE COURT:

Q Now, Melli, after you heard first the sound which you thought was a backfire, did you then see Pauly?

A Yes, sir.

Q What did you see him do? A All I seen him do was he was grabbing stomach, and all doubled up, and ready to fall (illustrating), and then I seen Sternny near the Pre Catalan, and I ran after him.

Q And what was Pauly doing? A He was about to fall, and I then I ran after Sternny.

Q Did you see him fall? A No, I didn't have time to see him fall.

Q Then you didn't see him fall? A No, sir.

BY MR. FALLON:

Q Then, when he came out from the doorway, you were about 68 feet to the east of the Pauly, as he came out of that doorway? A I couldn't say how many feet it was.

Q Well, it was a distance from the soda water fountain, past the Princess Theatre, to the hallway; isn't that right?

A Yes.

Q And I believe we have it agreed upon that that is 68 feet. And you looked to the west 68 feet, and there was nobody in sight, except Pauly? A There were other people in the street, walking by.

Q Didn't you tell me that, when you looked from the soda water fountain to the place where you saw Pauly, there was no one between you and Pauly, or do you now say that you saw others? A I saw Pauly. That's all that I have in mind at the time, because I knew him.

Q Now, then, while you were running towards Stern, who was going west, running away, didn't you see what Pauly did? A No, sir.

Q That is, you went the 68 feet, directly in the direction where he was in front you, that is right, isn't it?

A Yes.

Q And you tell the jury that you don't know what he did, and didn't see him? A All I seen him do was holding his stomach, and I was running on at the time.

Q Didn't you have to go right up to him, and then pass him, and go on towards where Sterny was? A Yes, I had to pass him.

Q But you say you didn't see him fall? A No, sir.

Q Was he on his feet when you passed him? A Yes.

Q Which way was he facing? A He was facing towards me.

Q That is, he was coming in your direction? A He wasn't coming in my direction.

Q Didn't you just tell me that he was facing you? A Yes.

Q Then he was coming east?

MR. BROTHERS: I object to that, that is most unfair.

MR. FALLON: I don't want it to be.

BY MR. FALLON:

Q Well, weren't you going from the east to the west?

A Yes.

Q Was he coming towards you then? A He was coming out of the hall.

Q You were coming from the east to the west and he was coming towards you, he had to come towards the east; didn't he?

THE COURT: He did not say he was coming towards the east.

BY MR. FALLON:

Q Didn't he say he was coming towards you? A He was facing me.

Q Was he coming towards you?

BY THE COURT:

Q Was he moving in the same direction in which you were standing, or were running from? A As he was coming out, staggering, he was facing towards me, and I passed him.

BY MR. FALLON:

Q Well, as he came out from the building, did he come directly out to the middle of the street, ~~sxxxthax~~ toward the east or west? A He was towards the street when he fell.

Q Towards the curb, do you mean? A Yes, sir.

Q So that you saw him leave the hallway, and go towards the street, and fall almost directly in front of the hallway? A I didn't see him fall. I didn't have a chance, because I kept going.

Q But you saw him holding his stomach (illustrating)?

A Yes, sir.

Q But you didn't stop to say a word to him or do anything to help him? A No, sir.

Q But just kept running after the defendant? A Yes, sir.

Q And you ran after the defendant until you ~~was~~ almost reached Broadway; isn't that right? A No, sir.

Q Well, you went down to the stage entrance of the Casino,

didn't you? A In front of the express office there.

Q Is the express office the next building from the Casino building, as I have shown on that photograph, People's Exhibit No. 2? A The Casino is on the other side of the express office.

BY THE COURT:

Q Do you mean by the other side, near Broadway? The Casino is on the corner of Broadway and 39th Street. You remember that? A Yes, sir.

Q Now, the express office is next to the Casino on Thirty-ninth Street? A Yes, sir.

BY MR. FALLON:

Q So that you ran all the way from the Soda Water Fountain to the building next to the Casino building, the corner building on 39th Street? That is the run that you made? A Not to the corner.

Q I said to the express office next to the Casino.

A Yes.

Q Then you ran that whole block; did you?

THE COURT: Well, is it a whole block, Mr. Fallon?

MR. FALLON: I think it is, substantially.

Q You ran to the corner building on Broadway; isn't that the fact? A No, sir.

Q Well, wherein is it wrong? A It ends off right at the Pre Catalan, in the same building.

Q Didn't you say that the express building was the building next to the Casino? A Yes.

Q Is that next to the Pre Catalan? A Yes, also.

Q Well, it was not down to in front of the entrance of the Casino, then? A No, sir.

Q And Stern was going west? A Yes, sir.

Q And he was going hard? A Yes.

Q And he didn't fire at you until you almost caught him; did he? A No, sir.

Q Now, from the point where you ran from, the point where you got the soda, or asked for it, until the point that you have previously described, he didn't fire at you?

A No, sir.

Q When did he fire at you first? A When I was about four feet from him.

Q And you didn't want to get into any trouble, in the circumstances that you were in; didn't you? A No, sir.

Q And you didn't want to arrest anybody that day? A No, I am no officer.

Q Well, then, tell us why you ran down the block after the defendant? A I don't know why. I done it on the impulse of the moment. I wanted to get the weapon on him.

Q When you were running down the block, you didn't think he had a weapon, did you? A No, sir.

Q Now, give this jury any reason why you ran all that distance after this man who was running away, if you didn't want to arrest him. A Well, I figured that I could overpower him. I am bigger than he is.

BY THE COURT:

Q The question is, Melli, why did you run after the defendant? A Seeing my friend there getting shot.

BY MR. FALLON:

Q You didn't see what happened to your friend; did you? A Why, I did.

Q You only saw him staggering out. A I knew he was shot when I heard the shots.

Q Did you first think it was bacfire? A Yes, sir.

Q And you didn't know whether he had been seriously hurt or not? A I knew he was hurt when he was holding his stomach, I knew it was something serious then, and I heard someone hollering, "He's shot."

Q You didn't see him fall on the ground, you told us.

A No, sir.

Q You didn't think this other man had a gun; did you?

A What man?

Q This defendant? A I knew he had it, at all times.

Q Didn't you say that you didn't think he had it when you ran after him? A I thought he had thrown it away, but I knew he had it when he started to shoot at me.

Q But when you were running after him, you thought he had thrown the gun away? A Yes, sir.

Q You didn't know that Pauly had been seriously shot?

MR. BROTHERS: I object to that. He said that he didn't think so.

MR. FALLON: I will withdraw that. I think that is entirely right.

Q You had simply seen him bending over? A Yes.

Q And you didn't even stop to see whether he was hurt?

A No, sir.

Q Or give him any assistance? A No, sir.

Q Now, I want to know why you ran after the defendant?

THE COURT: He has already answered that, but he may answer it again. He answered it in answer to my question.

BY THE COURT:

Q The question is repeated now by Mr. Fallon, Welli, why did you run after the defendant, after you saw Pauly coming out of the hallway, holding his hands over his stomach? hurt

A I ran after him to overpower him, after he had shot my friend.

BY MR. FALLON:

Q Now, didn't you run after him to assault him?

Objected to, sustained, exception.

Q Didn't you testify just now, that you ran after him to

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overpower him? A Yes, sir.

Q Why did you want to overpower him? You knew that he had no gun? A I knew he had a gun when he shot at me.

Q But you thought he had no gun when you were running after him? A Yes.

Q Then why did you want to overpower him? A Because I seen my friend holding his stomach, and I knew then that he was shot, when he was holding his stomach.

Q Now, why did, since you didn't want to arrest anybody, want to overpower the defendant? That's what I want to get at. A Just to protect my friend. I didn't want to run away from him.

Q Well, but he was leaving your friend; wasn't he? A He was.

Q Now, wasn't the statement just made, under oath, that you wanted to protect your friend, true? A Yes, sir.

Q Wasn't this man going away from your friend? A Yes.

Q How did you expect to protect your friend by running after this man? A Well, I wasn't going to run around the block. That was a cinch.

Q (Question repeated) A More to get revenge for my friend; that's all.

Q Oh, then, instead of protecting your friend, you were going there to revenge him; is that it? A Yes, for my friend.

Q In other words, you were going to assault this man?

A Yes, if I had got his own weapon.

Q Oh, you were going to get his gun, and shoot him?

A If I had got his weapon.

Q Didn't you tell me that, when you ran after him, you didn't think he had a gun? A I did.

Q And now you say that you were running after him to take his gun away from him and shoot him; is that right? A I did.

Q And so, when you ran down the street, your intention was to kill this man? A That was after he shot at me.

Q No. When you were running down the street, and when you thought he had no gun, you were running to assault him, weren't you, or to kill him? A To overpower him with my hands.

Q And, even after the police officer had arrested this man, you tried to assault him; didn't you? A I did.

Q Now, this is a man that you have never had any quarrel with in your life? A Yes.

Q A man who had done nothing to you? A Nothing.

Q And who had no reason to shoot at you, so far as you knew? A Yes.

Q And that is the man you were following down the street to kill?

Objected to. Sustained. Exception.

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RE-DIRECT-EXAMINATION BY MR. BROTHERS:

Q You state that you knew the man always carried a pistol? A Yes, sir.

Q Had you ever seen it in his hands or in his pocket? A Yes.

Q Now, when you went to the station from where the shooting happened, do you remember whether you came back to 39th Street, with the police officers? A I do.

Q And to what place in 39th Street did you go on that visit with the police? A To the soda fountain.

Q And whom did you see at the soda fountain? A I didn't get a chance to see anybody, but they went over, and spoke to the owner of the soda water fountain themselves, the officers did.

Q And what was the owner's name? Do you know the name? A I couldn't recall his name, but I know him.

Q Now, do you remember that evening, at the station house, talking with Mr. Marrow, of the District Attorney's office? A Yes, sir.

Q And you made a statement; didn't you? A In regards to what?

Q About the shooting? A No, sir.

Q Don't you remember making a statement to him about eight o'clock that evening? A No, sir.

Q You have no recollection of that? A In regards to what?

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Q Don't you remember he asked you some questions?

A In regards to what?

Q About your being in 39th Street and what happened there? A Yes, sir.

Q And, three days later, you went before the Grand Jury?

A I had told him I wasn't sticking him up.

Q No. (Question repeated) A Yes, sir.

Q Now, you were asked whether for four months before the shooting you had done any work, and you said you were not working; and you were asked if you had any means other than the \$800. to support your family? A Yes, sir.

Q What means did you have? A I had more money home.

Q Now, what business were you in, before you were convicted? What did you work at? A Worked in the street cleaning department.

Q Yes. How long did you work in the Street Cleaning Department? A I should judge about five or six years.

Q And what salary did you get there? A At that time I was only getting \$15.34 a week.

Q Were you working for the Street Cleaning Department at the time you were arrested in that shooting case on which you were convicted? A I was working for Degnon, the contractor, then.

RE-CROSS-EXAMINATION BY MR. FALLON:

Q Didn't you tell me here, this morning, that you never

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made any statement about the facts in this case, until three days after they occurred? A Yes, sir.

Q That was true; wasn't it? A Yes, sir.

Q Now, is it not a fact that you made a written statement to Mr. Marro, on the night after the occurrence? A No, sir.

Q You never did make a written statement to Mr. Marro?

A No, sir.

Q You are positive about that; are you? A I am.

Q You never made a statement of any kind, telling any of these facts to officer Sullivan? A No, sir.

Q Or any other policeman? A No, sir.

Q And you kept these things to yourself for three days? A Yes, sir.

Q And you had nothing to hide; had you?

Objected to. Sustained. Exception.

Q You know who Mr. Marro is? A Do I know him?

Q Yes. A I do.

Q Do you know the gentlemen to whom Mr. Brothers referred that is you identify a gentleman to whom Mr. Brothers referred in his question; do you? A What man was that?

Q That you made a statement to. A (No answer)

BY THE COURT:

Q To you know the gentleman to whom the District Attorney refers when he mentions the name of Marro? A Yes, sir.

BY MR. FALLON:

Q And you didn't make any statement to him or anybody

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else until you were brought before the Grand Jury?

A Yes.

Q And you didn't sign a statement, and you never made any statement to Mr. Marro, at any time before you went in before the Grand Jury? A No, sir.

Q And that is absolutely true; is it not? A Yes, sir.

BY THE COURT:

Q Did you say anything to Mr. Marro at any time? A Concerning the case? No, sir.

Q Were you asked any questions about it by Mr. Marro, in the station house? A Yes.

Q Did you answer them? A No, sir.

Q Were you asked any questions by policeman Sullivan, at the time he came around in 39th Street? A He wanted to know if I stuck him up.

Q Did you answer him? A Yes.

Q What did you say? A No, sir.

Q Were you asked any questions by the first officer, the traffic officer, that came along, when you were down near the stage entrance, policeman Moore; did he ask you any questions? A He asked me a few questions, yes.

Q Did you answer him? A Yes.

Q Now, in the station house, did you meet Marro, an Assistant District Attorney? A I did.

Q Did he ask you any questions? A Yes, sir.

Q Did you answer them? A I answered them in regard to I was not sticking him up, and had nothing to do with the case.

Q Did you say anything else about the case to Mr. Marrow?

A No, sir.

Q Is that all the conversation you had with Mr. Marrow?

A Yes, sir.

BY MR. FALLON:

Q Now, you were asked if you made certain statements to officer Sullivan, or to officer Moore, the traffic officer; weren't you? A Yes.

Q Did you ever say anything to those officers, in addition to ~~was~~ denying that you were in the stickup? A All that I told him was that I had nothing to do with the stick-up, that I had nothing to do with the case, and I wanted to be left alone. That's all I told them.

Q And you didn't tell them about running down the street after this man; did you? A No, sir.

Q Or about getting ice cream soda? A Yes.

Q To which one of them did you say that? A To officer Sullivan.

Q And where was that? A In the police station.

Q Or was that in some other place? A That was in the hallway.

Q Now, then, you refused to answer these questions by

them, by the police, and also by the District Attorney, for three days; is that true?

Objection to. Sustained. Exception.
all

Q And by that time you knew that the defendant was accusing you of robbery? A Yes.

Q And you knew how serious a matter that was for you; that it was a matter of fifteen years to you?

Objected to. Sustained. Exception.

Q At all times, while you were refusing to answer, you knew that the defendant accused you of robbery, and that, if you were engaged in any illegal act, you knew it would mean fifteen years in prison for you; didn't you.

Objected to. Objection overruled.

A (No answer).

Q Didn't you know that? A Yes.

BY MR. BROTHERS:

Q Now, you did tell the police about the soda fountain, didn't you? A Yes.

Q And you went with the police to the soda fountain, shortly after the shooting; didn't you? A I was left in the car. I wasn't brought to them.

Q But you saw the officers go in there? A Yes, sir.

Q Did you tell Mr. Marro, about being at the soda fountain? A Yes, sir.

Q Did you tell Mr. Marro about running down the street?

after this defendant Stern?

MR. FALLON: We object to that, as having been covered. If it is covered for us, it must be for them.

THE COURT: I will allow it.

MR. FALLON: We except.

BY MR. BROTHERS:

Q Do you know this man at the rail (indicating a man at the bar of the court)? A Yes, sir.

Q Who is he? A The man that owns the soda fountain.

MR. BROTHERS: What is your name? *

THE MAN: Harry Halpern.

BY MR. BROTHERS:

Q Did you see him there at the time of the shooting?

A Yes, sir.

Q How long were you talking with Mr. Marrow in the station house? A Not long.

Q Well, about how long do you think? A He just asked me a few questions, and I wouldn't answer him, because I says I don't know nothing about the case.

Q Now, isn't it a fact that you told him a great deal about this shooting?

MR. FALLON: I object to that, if your Honor please as already covered.

THE COURT: Objection sustained.

BY MR. BROTHERS:

Q You told him your name? A Yes, sir.

Q And where you lived; didn't you? A Yes, sir.

Q Did you tell him that? A Yes, sir.

Q Did you tell him whether or not you knew this defendant Stern?

MR. FALLON: I object to that. I object to all these questions.

Overruled. Exception.

A Yes.

Q Did you state that you heard the shooting?

MR. FALLON: I make the same objection.

THE COURT: Objection sustained.

MR. BROTHERS: Well, we offer the statement in evidence.

MR. FALLON: We object to it, as entirely, immaterial, irrelevant and incompetent, at this time.

MR. BROTHERS: We ask to have it marked for identification.

(Marked People's Exhibit No. 15 for identification)

MR. FALLON: I would like to see whether it is the same statement that we have.

MR. BROTHERS: What do you mean?

MR. FALLON: I understand that he made a statement to an assistant District Attorney, and, if you will let me see the statement, Mr. District Attorney, I will tell

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you at once whether it is the same statement that we have.

THE COURT: No, the District Attorney is not required to show you anything that is not in evidence, that is merely marked for identification.

MR. BROTHERS: But counsel said that he wanted to see if it was the same statement that he had, and I want to know what he means by that statement.

MR. FALLON: No, I didn't say that.

THE COURT: Yes, Mr. Fallon, my recollection is that you said that.

MR. FALLON: Well, perhaps I said it, but I mean it was a statement that I heard existed. Now may I except to all your Honor's remarks along this line, and I think it is unfair and doesn't give me an opportunity to make my position clear. I understand--

THE COURT: Now, Mr. Fallon, it is quite apparent that the Court and you cannot speak at the same time.

MR. FALLON: May I explain the meaning of my statement, or may I not?

THE COURT: You have explained the meaning of your statement.

MR. FALLON: Well, I don't think I have, to my satisfaction.

THE COURT: Well, you have to my satisfaction.

MR. FALLON: If your Honor says it is a complete explanation, that is sufficient to me. But I wouldn't like any imputation to follow any statements of mine, to Mr. Brother's question or your Honor's statement.

THE COURT: The explanation was asked and given, and you will now proceed, Mr. Fallon.

MR. FALLON: Only for the purposes of the record, I ask, because of this circumstance, that a juror be withdrawn.

THE COURT: Motion denied.

MR. FALLON: We respectfully except.

Q At the time you returned to the soda fountain, were the McLoughlin boys, or either of the McLoughlins present? A When I returned?

Q Yes. When you returned from the police station? A That I couldn't say. I was in the machine.

Q Did you see them about there? A I couldn't say.

H A R R Y H A L P E R N, of 663 Sixth Avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Halpern, how old are you? A 46.

Qx46? A yes.

Q What is your business? A Confectionery.

Q Where do you have your place? A 100 West 39th Street.

Q How long have you been in business there? A 8 years.

Q Eight years there? A yes, sir.

Q I show you a picture which is Exhibit Number 12. Do you see a picture of your place in that photograph? A I haven't got my glasses here, but that isn't the right picture, because last year when that happened, it was all different from what it is now.

Q What is the place next to you? A The next building, or the next door?

Q Now, take on the side towards Broadway. A It is the

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Q Do you know his name? A No, sir, I don't.

Q Did you ever know his name? A I hear them calling him Melli.

Q Did you ever hear him called that name before the shooting?

A No, sir, I couldn't say that.

Q Do you know this man here who is on trial? A Just the same, as a customer. The two of them fellows come in my place about fifteen times, at different times.

Q Did you ever see them there together? A No, sir, I can't say that.

Q Now, on the 13th of October of last year, Columbus Day, were you at your soda fountain in the afternoon? A Yes.

Q Did you hear any shots fired? A I did.

Q What were you doing at the time you heard the shots?

A A young lady was in my place to be served with an ice cream soda, and I served her. And then that man that was here before that recognized me--

Q The witness on the stand before you? A Yes. He come in with two brothers, the McLoughlin Brothers. One brother I know very well, because I am eight years there, and Johnny McLoughlin I know, and since then I know his brother, but I didn't know him then. And they come and asked me for an ice cream soda, and, before I had a chance to start to serve them, because a young lady come in just before them, and before I was finished with the young lady's service, I heard one of them, and they all run out.

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Q You ~~was~~ say -- could you see in which direction they¹⁵⁰ went? A No, sir, because I didn't take it at first for shots at all. I didn't take any interest in it at first, because I thought it was an automobile.

Q And you say that Melli was in your place when the shots were fired? A Yes, sir.

Q Did you go out of your place to see what had happened? A Not right away, positively, but later, because in a couple of minutes I see the crowd running, and I didn't leave my place because I was there alone.

Q And when you went out, how far did you go? A I didn't go more away than the door, the store, on the outside.

Q What did you see? A I seen only crowds running, and then I heard that there was a shooting and a man got killed.

Q And how long did you stay at your soda fountain? A Until the officers took me away, about half past six or seven, because it was dark already when they took me, that time. It was the theatre crowd starting to come, because I asked them to leave some officer to watch my place, because I had only a little boy, and they left an officer with him.

Q When the officer came there, did he ask you some questions? A Well, I should say yes.

Q When the policeman came there did he come alone? A No, sir. Another policeman ~~was~~ comes with him.

Q And did you see anybody when you went out with the police officers? A Well I was in the same car with that witness

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that was here.

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Q Where did you go with the officers in the car? A To the 30th Street Police Station.

Q And at the Police Station did you see the District Attorney? A Yes, and I noticed him here, too, a stout man with gray hair.

Q Now, how many shots do you remember hearing altogether? A Well, I should say about probably six or seven or eight, something like this,

Q At first you heard two? A Yes, about two. I didn't take notice at all because I didn't think it was shooting at all.

Q And how soon after you heard the first two shots, did you hear the rest of them? A I couldn't say certainly, sir, because I didn't take no notice of the shooting. It must have been one after the other. I can't say, but I heard the shooting.

Q Did you see the man who was shot? A No, I didn't.

Q Do you know who he is? A No, I don't. Maybe if I see him, I might just as well know him by his looks, but I don't know him. The officers took me down that night, but I couldn't recognize him.

CROSS EXAMINATION BY MR. FALLON:

Q Now you say the three men came into your place at once?

A Yes, sir.

Q And where did they drink their drink? A They didn't drink it at all.

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Q I understand. Where did they go? Were they inside or outside of the stand? A They were inside.

Q When the shots were fired? A Yes, when the first two shots I heard was fired, they were positively inside.

Q And did they run rightout? A Yes.

Q The McLoughlins didn't run out, did they? A I didn't see them run out. They went out.

Q Now, let's see if we have it right. These men came right into your store? A Yes.

Q And you were making an ice cream soda for some lady? A Yes, sir.

Q And while you were preparing the ice cream soda for the lady, before you had finished it, you heard the shots? A Yes,

Q Now, then, how long was it -- how long would you take to fix an ice cream soda for a lady? A Perhaps a minute; maybe a minute and a quarter.

BY THE COURT:

Q Did you ever time yourself in making up an ice cream soda?

A No, sir.

BY MR. FALLON:

Q In fact, you had actually started to attend to the lady before the men came in? A Yes, sir.

Q And even before you had finished that, the shots were heard? A Exactly.

Qx And then they all left there? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q While you were making the soda for the young lady, you were looking at the soda, were you; you were watching what you were doing? - A I got to do that, yes.

M I N N I E P. K L E I N, of 254 West 84th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mrs. Klein, is it? A Yes, sir.

Q Where do you live now, Madam? A 254 West 84th Street.

Q Did you know Paul Boittano? A Yes, sir.

Q And prior to the date of his death, you knew him for how long a time? A One year and about eight months.

Q Where were you living on October 13th, 1930? A 587 West 43rd Street, near 10th Avenue.

Q Did Paul Boittano live there in your apartment? A Yes, sir.

Q Do you know the defendant here, William Stern? A Yes, sir, I know him.

Q How long did you know him before the 13th of last October?

A On the 31st of August I met Mr. Stern.

Q Of last year? A Of last year.

Q Where did you get acquainted with him? A In the lobby of the Pre Catalan.

Q Where is that? A 39th Street and Broadway.

Q Who introduced you to him? A A fellow by the name of Jack.

Q Jack? A Yes, sir.

Q How many times did you see the defendant, William Stern, from the time you met him until the 13th of October? A Well, I saw my friend Paul talking to him two or three times, when I went to the Pre Catalan to see Paul, and he was in company with Sterny -- he called him Sterny -- I called there several times to see Paul because I knew he was there, and he was in company with Sterny, outside of the Pre Catalan.

Q On those several occasions when you saw the defendant and Paul talking, did you join in the conversation? A No, I didn't. I called Paul to one side.

Q Do you know Pasquale Melli? A Yes, sir.

Q How long have you known him, about how long a time?

A Well, I didn't know him so long. I don't know just how long I have known him.

Q Did he ever come to your house? A Yes, he was in the house three times.

Q When was the last time that you saw Melli, before you learned that Paul had been killed? A On the morning he was killed.

Q Yes. Where did you see him? A On the 13th of October, he left my house about six o'clock in the morning, or seven o'clock. I had also talked to Mr. Sterny over the telephone, delivering a message from my friend to him, at the Pre Catalan.

Q Did you ever ~~taxi~~ deliver messages by telephone from

Paul to the defendant? A Yes, sir.

Q When? A On one occasion he had entrusted him with a string of pearls, to sell me.

Q Well, when you say he had entrusted him with a string of pearls, who do you mean?

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

THE COURT: Yes, strike it out, and the jury will disregard it.

BY MR. BROTHERS:

Q Did you have any talk with the defendant Stern about jewelry? A No, only the time that I called up on the telephone and told him that Paul would n't see him that evening, but would probably see him the next evening.

Q When was that? A I couldn't tell you the date, to save my life. I know it was after the 31st of August, when I first met him.

Q And you didn't see him after the 12th of October, did you? A No, sir.

Q Then it was within that interval of six weeks? A No, it wasn't six weeks. I delivered a message twice, that I can recall.

Qx Now did you ever deliver any messages from Paul to Stern in any other way than by telephone? A No, sir.

Q Where else did you see the defendant Stern besides at the Pre Catalan Hotel? A Out on the street there.

Q In 39th Street? A Yes, sir.

Q And is that the only neighborhood in which you saw Stern?

A Yes, that's the only neighborhood, and there at the fountain where they were drinking.

Q Where who was drinking? A Paul and Stern and Patsy, and some other men. I didn't pay much attention to who was there, because it was only a bunch of men together, and I passed them by.

Q What fountain do you mean? A The one near Sixth Avenue.

Q Was it about there (indicating a photograph in evidence)?

A Yes, sir.

Q How many times did you see them at the fountain together?

A Only one time.

Q Did you hear a talk between these men at that time?

A No, sir, because I didn't have any conversations with any of them.

Q No, I didn't ask you what you said, but did you hear them speak to each other? A No, sir.

Q Well, were there relations friendly, so far as you could see? A They were friends, yes, because I would ask him if they were, and he would tell me.

MR. FALLON: I object to that, and move to strike that out.

THE COURT: Yes, strike out that part which refers to her understanding that they were friends. You may have an answer to the question as to whether they appeared to be friendly when they were talking together.

MR. BROTHERS: Will your Honor put a question, then? ¹⁵⁷

BY THE COURT:

Q When you saw Pauly and Sterny, this defendant, talking together, did they appear to be friendly? A Yes, sir.

THE COURT: Now, then, proceed.

BY MR. BROTHERS:

Q And did you know in what business Pauly was engaged, shortly before he died? A No, sir.

CROSS EXAMINATION BY MR. FALLON:

Q You haven't any idea of any business that this man was engaged in at all? A In liquor.

Q Anything else? A Nothing else.

Q You lived with him about a year and a half, or eighteen months? A Yes.

Q And in all that time you never knew of any work that he did, except ~~for~~ some liquor business? A Yes; he was a solicitor for a detective, and he had a detective business of his own.

Q Where was that? A In 101 West 10th Street.

Q Was it open during the last eighteen months of his life?

A Detective Agency?

Q Yes. A Sure

Q Do you remember when he went to South America? A Yes.

Q How long was that before October 13th? A He left on the 31st day of August.

Q The 31st day of August? A The 1st of September, he left for Mexico.

Q Was it Mexico or South America? A Well, I don't know exactly.

Q Well, he was away about six weeks, wasn't he? A Yes.

Q So that, during the entire month of September, and up to the 12th day of October, he was away for six weeks? A Yes.

Q Or had been away? A Yes.

Q And now, on the 31st of August, is the day when you met the defendant? A I met him.

Q And on the 1st of September did Paul leave the City and remain away for six weeks? A No, I am wrong myself. The 31st of August was when I was speaking with Stern, and he leaves the 1st of September, and the 12th of October was when he was killed.

MR. BROTHERS: May I ask counsel who went away?

MR. FALLON: We will find out all about it, if we are allowed to go ahead for a minute.

THE COURT: Nobody is stopping you. Now ask your question and I will see that you get an answer.

BY MR. FALLON:

Q Now are you quite sure that it was on the 31st day of August that you saw these men, these two men together? A I didn't say that I ever saw the two men together on the 31st of August. I said that on the 31st of August I was speaking with Stern in the Pre Catalan lobby, and that was my first meeting with Stern.

Q And the man that you lived with, Paul, wasn't there?

A No, sir.

Q He had left the City? A Yes, sir.

Q And you didn't see them together at that time? A No, sir.

Q And, the next day, Paul went away for six weeks? A He was gone until the 27th of September.

Q And didn't you say that he was away six weeks, and not ~~merely~~ merely twentyseven days? A Well, that's the time he went away, and the time he come back.

Q Isn't it a fact that he was away for six weeks, and that he didn't return until a day or two before the shooting? Isn't that the fact? A The 27th ~~xxxxx~~ of September was the day he returned.

Q Was he away six weeks? A Well, how many weeks do you call it?

Q Was his trip a trip for six weeks? A Well, I wouldn't call it six weeks; would you?

Q Now, then, after the 27th of September, and before the 12th day of October, did you ever see the defendant and Paul together? A I saw them, yes.

Q How many times in those fourteen or fifteen days?

A I tell you a couple of three times, when I passed by, that I can recall of.

Q Did you ever talk to this man in your life, (indicating the defendant)? A Yes, I did talk to him.

Q Where? A In the Pre Catalan, in the lobby. I was waiting for him for half an hour, and he returned from a Broadway show, and I was told a friend of Paul's was waiting for him.

Q Did you ever talk with this man in the presence of Paul in your life? A No, I didn't.

Q You say you saw them talking together on three occasions?

A Yes.

Q And you noticed that they were apparently friendly? A Yes.

Q What did you notice that made you think they were friends?

A Because he told me they were friends.

MR. FALLON: I move to strike that out, as not responsive.

THE COURT: Motion granted. Strike it out.

BY MR. FALLON:

Q What led you to judge that they were friendly? A Well, when I passed and saw my friend with several men, it was my privilege to ask "Well, who were those men? Were they friends of yours?"

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

THE COURT: Motion granted. Strike it out.

BY THE COURT:

Q Now, Madam, when you say you saw Paul ~~and~~ Sterny talking together, you say that they appeared to be friendly? A Yes, sir.

Q Well, how did they act, counsel asks, or what did they do or say that led you to believe that they were friendly?

A Because they were standing there in conversation.

BY MR. FALLON:

Weren't

Q ~~Wasn't~~ there several other men there? A Well, Patsy was there and several others, yes.

Q And the only ground on which you base your opinion that they were friendly was that you saw them standing together, talking?

A No, not at all; because he told me that they were friends.

Q You said that Melli left your house at six or seven o'clock in the morning of October 13th? A Yes, sir.

Q Had he been there all night? A Pauly?

Q No, Melli. A He come there about half past five or six o'clock in the morning.

Q And he hadn't been there all night? A No, sir, he hadn't been there all night. He had been there for about one hour.

N A T H A N C O H E N, of 159 East 101st Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Cohen, what business are you in, please? A Tailor.

Q Are you in business for yourself? A Yes sir.

Q Where is your shop? A 3069 Third Avenue.

Q And on October 13th, 1930, where were you employed?

A At Clemon's.

Q Where was his place? A 39th Street and Broadway.

Q How long had you worked for Mr. Clemons? A Four years.

Q And now you have your own place, is that it? A Yes, sir.

Q Do you remember where you were, a little after five o'clock on Columbus Day, October 13th, 1930? A I was going home from work

Q Had you left the store? A Yes, sir.

Q Which corner is Clemon's place on, or is it on the corner?

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A It is on the corner of Broadway and 39th Street.

Q Well, there are four corners of there, one of which is a theatre; are there not? A Well, it is towards Seventh Avenue.

Q On the uptown or downtown side? A The uptown side.

Q Did you see or hear any shooting that afternoon? A Well, as I was going through 39th Street I just heard the shots.

Q Yes. What did you see? A I just seen this fellow running after another fellow, towards Broadway.

Q Now when you say you saw "this fellow" running after somebody, who do you mean? A This one (indicating the defendant).

BY THE COURT:

Q Do you mean this man at the table, sitting here? A Yes.

Q You saw him doing what? A Running Firing down the street after another fellow.

Q Now where were you when you saw that? A Well, I was just a few yards in 39th Street, towards Sixth Avenue as I was going home.

BY MR. BROTHERS:

Q Well, how far away from Broadway were you? A Oh, about three yards; something like this.

Q And on which side of the street were you? A Well, I was in the middle of the street, because there were crowds of people on both sides.

Q Well, when you left the store, which is on the southwest corner of 39th Street, you were going towards what place?

A Through 39th Street towards Sixth Avenue.

Q Did you cross Broadway? A Yes, sir.

Q And did you cross Broadway? A Yes, sir.

Q And when you got over on the east side of Broadway, you were on the sidewalk, were you? A Well, I couldn't go on the sidewalk no more. There was a crowd of people on both sides of the sidewalk.

Q And what time was that? A There was a whole crowd of people running towards Broadway.

Q Well, you say you heard shots? A Yes.

Q Where were you when you heard the shots, before you saw anything? A I had just got into 39th Street.

Q And were you then on the sidewalk? A No, in the middle of the street.

Q Now how far away from you was the man that you say is here today, at the table (indicating the defendant) when you saw him running and shooting? A He was just coming towards me.

Q About how far from you? A I couldn't tell you that; I don't remember that.

Q Well, could you point out here, from where you sit, some place in the room? A Well, he was a little further than you are from me.

Q A little further than I am from you? A Yes, sir.

Q Would you say back as far as this fence here (indicating)? A Yes, sir.

THE COURT: Mr. Foreman, just compute that distance.

From where the ~~sixth~~ witness chair is to where the District Attorney stands.

THE FOREMAN: Well, I would say from eighteen to twenty foot.

BY MR. BROTHERS:

Q Now where was the man that you say the defendant was running after, and shooting at? A He was in the middle of the street.

Q Did you know that man? A No, sir.

Q Now tell us all these two men did that you saw, will you?

A This is the man that was --

Q Now, don't whisper. Just speak right out. You don't need to be frightened or nervous. A Well, I saw this man, but I hadn't seen the other man. I seen him this morning in the hall.

Q Have you found out what his name is? A No, sir.

BY THE COURT:

Q Look around and tell us whether you see the man that you saw being pursued and shot at? A It is that man (indicating the witness Melli).

Q Is that the man you are pointing to? A Yes, sir.

Q Now, Mr. Cohen, will you tell us, will you tell these twelve men, what you saw in 39th Street, and tell them out loud?

A As I went out from work, in 39th Street I was going towards Sixth Avenue, through 39th Street, and I heard the shots and I have seen this young man chasing the other one (indicating the

defendant) and fire at him. That's all I seen.

BY MR. BROTHERS:

Q Well, did you see any shots fired? A I heard the shots, I couldn't see them.

Q Did you see any pistol? A I saw this man (indicating the defendant) hand over the pistol to the police officers.

Q Well, where did the police officer come from; do you know?
A Well, they came from Broadway and they stopped at the Casino Theatre.

Q Now, did you see what this man Melli, the stout man, did?
A No I saw the police officer had a hold of him, and they held him.

Q And then what did you see after the policemen came there?
A I didn't see nothing else.

Q Did you see any man who had been shot? A Well, they came back in front of the cafe of the saloon.

Q Did you know that man that you saw by the saloon? A No.

Q Which way was this man Melli, that is sitting out here (indicating Melli), running, when you saw him? A When he was getting chased? ~~xxx~~

Q Yes. A He was running towards Broadway.

Q And how far away from him was the man on trial, William Stern? A When he was chasing him?

Q Yes. A About twenty feet.

CROSS EXAMINATION: BY MR. FALLON:

Q At just what point were you when you heard the shots?

Where were you standing? A I was just into 39th Street.

Q Right at the corner, in front of the Casino? A No, sir, I couldn't get on the sidewalk, because there was a whole lot of people there.

Q You had gone out on the street, to get around the crowd coming out of the theatre? A What?

Q (question repeated). A Yes, sir.

BY THE COURT:

Q Was the crowd leaving the theatre, or was the crowd coming down 39th Street? A I don't know, there was a very big crowd, and they were all running--

Q They were all running? A yes, sir.

BY MR. FALLON:

Q Well, was there a crowd coming out of the theatre at that time? A I don't know.

Q Had you gone any distance down 39th Street before you heard the shots? A No, sir.

Q About how far had you walked? A I usually used to go through 39th Street to the Grand Central.

Q I don't think you understood me. How far had you walked down 39th Street from Broadway, from the corner of Broadway?

A When the shooting took place?

Q Yes. When you heard the shots how far had you walked down 39th Street? Do you know what it means to walk towards the east, towards Sixth Avenue? A Yes, sir.

Q And how far had you gone from Broadway towards Sixth Avenue? A I was only three or four feet in 39th Street.

Q Yes, only three or four feet east of Broadway? A Yes, sir.

Q And these men were as close to you as eighteen or twenty feet, the distance you indicated? A They were running towards me.

Q I understand that. And they were as close to you as eighteen or twenty feet, as you have indicated, is that right?

A I don't understand you.

Q Did they come as close to you as that? A Well, they were running all the time.

Q Well, what was the closest that they came to you? A About eighteen or twenty feet.

Q So that they were within eighteen or twenty feet of Broadway; weren't they? A Something like that, yes.

Q Yes. They had gone past the Casino, and the telephone Building and were almost to Broadway when you saw them, is that right? A They were running all the way to Broadway.

Q But they were at least within twentyfive feet of Broadway? A Yes, sir.

Q Now which one was chasing the other then? A This man (indicating the defendant) was chasing the other man.

Q Now, were they running around an automobile? A I just seen the defendant. He leaned against the wall of the Casino. Then the officers arrived and they got a hold of this other

fellow (indicating Melli), and then they came towards this fellow (indicating the defendant), and he handed them over the pistol. That's all I have seen.

Q No, I didn't ask you that. Did you see them at any time run around an automobile? A No, sir.

Q But you say that you did see the officer with this man (indicating the defendant), leaning against the Casino building itself, is that it? A Yes, sir.

Q And when the officer came up, what did the defendant do? A He just handed over the pistol to the officer.

Q The officer didn't take it from him, or anything like that, did he? A No, sir.

Q He just handed it to the officer? A yes, sir.

THE COURT: Gentlemen, we will suspend now until 10:30 tomorrow morning.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and ~~was~~ adjourned the further trial of the case until WEDNESDAY MORNING, JUNE 15th, 1931, at 10:30 o'clock).

CASE 3021

T R I A L R E S U M E D.

New York, June 15th, 1931.

N I C H O L A S F. P. M O O R E, being recalled for further examination, by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer Moore, have you brought today, the knife which you say you found near the body of the deceased? A I have.

Q And was it closed at the time you first saw it on the 13th of October last? A Yes, sir.

Q As it is today, in court? A Yes, sir.

MR. BROTHERS: We offer it in evidence.

THE COURT: Received.

(It is marked People's Exhibit 15).

MR. BROTHERS. Mr. Fallon and I have measured this knife and closed the case is two and a half inches long. The only blade in it is a ^{short} ~~sharp~~ two inch blade, barely two inches long.

J A M E S W A L L, of 309 East 90th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Wall, what is your occupation? A Railroading, now.

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Q Where? A Third Avenue.

Q In what capacity are you working there? A Conductor.

Q What kind of work were you employed in doing on October 12th, 1920? A Bartender.

Q Who were you working for? A P. J. Flannery, 108 West 39th Street.

Q Is that the place which now appears as a restaurant, in People's Exhibit 3? A Yes, sir.

Q And how long did you work in that saloon as a bartender?

A About two and a half years.

Q Did you know the defendant, William Stern? A I used to see him there.

Q Do you know Melli? Stand up please, Melli. Did you know that man over there (indicating)? A Yes.

Q Do you know him by name? A "Patsy."

Q Where did you know him? A In that neighborhood.

Q Was he a customer of your saloon? A Not so much, once in a while.

Q Well, you have seen him in there, from time to time?

A Yes, sir.

Q What time did you go to work on the afternoon of October 12th? A Three o'clock.

Q And were you there when some shooting was done, near by?

A Yes, sir.

Q Did you hear the shooting? A Yes, sir.

Q Did you see any shooting? A No, sir.

Q At the time you heard it, where were you? A Behind the car.

Q And which part of the barroom is the bar, as you enter the door from the street? A On the Sixth Avenue side, west.

Q That is the side nearest to the hall? A Furthest from the hall.

Q Well, isn't the hall on the Sixth Avenue side of that building? A The bar is on the Broadway side, I meant to say.

Q Now in the picture, People's Exhibit 3, we are looking right at it. B If we went into this door, which side would the bar be? A On the Broadway side.

Q Yes, this side, over here (indicating)? A Yes, sir.

Q The right hand side as you enter from the street? A Yes, sir.

Q Were there any doors which led from the barroom into that hallway? A One.

Q At the time you heard the shots, was that door opened or closed? A Open.

Q And from what place did the shooting seem to come? A From the street. That's all I know about it.

Q Well, did it sound like any of the shots were fired in that hallway? A I couldn't say, really.

Q Well, did they sound near by or some distance away? A Nearby.

Q At that time were there any other people there? A Four people.

Q What were they doing? A They were drinking some near beer. They were standing at the bar.

Q And how many shots do you remember hearing? A Two or three

Q And then what was the next thing? A I went to the door and seen the man laying on the street.

Q With reference to your doorway, where was the man lying?

A In front of the two swinging doors.

Q And that would be the door of the barroom? A Yes, sir.

Q Did you know that man? A I had seen him around there a few times.

Q Now, just before you heard the shots, did you hear any ~~disturbance~~ disturbance in that hallway? A No, sir.

Q Did you hear any sounds whatever from that hallway? A No, sir.

Q Did you hear any loud talking? A No, sir.

Q Or any talking of any kind? A No, sir, not that I can remember.

Q Did you hear any struggling of persons? A No, sir.

Q You say that the door that went from the barroom into that hallway was open? A Yes, sir.

Q Did you go into the hallway at any time after the shooting, that same afternoon? A Yes, sir.

Q When did you go in there? A When I had to go in there to lock the door.

Q Which door? A The door from the hallway into our place.

Q Well, when that door is open, which way does it swing?

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A Into --

Q Into the hallway or into the room? A Into the room.

Q When you went and locked this door, was that before the policemen came back with these men, or after? A No, after,

Q After? A yes.

Q Now, there is a stairway in the hall, is there not, Mr. Wall? A Yes.

Q Is the door that you speak of -- where is that door, with reference to the stairs? A About ten or twelve foot back of the stairs.

Q Then the stairway is between the street and this door?

A Yes, sir.

Q Is there any other doorway into the hall, between the street and the stairs? A There is two vestibule doors there.

Q Well, I mean that go into your place. A No, sir, only the entrance from the rear door.

Q Now, how was this room arranged; did you have a front room and a back room? A yes.

Q Well, then, was this doorway leading from the saloon into the hall opening into the back room or the bar? A Opening into the back room.

Q Now, how is the back room separated from the bar; is there a partition there? A Yes, sir, and folding doors.

Q Do they cover the whole opening, or only part of it?

A They cover the whole opening.

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Q And at the time of the shooting how were they? A Open.

CROSS EXAMINATION BY MR. FALLON:

Q Now, there wasn't any door, as you explained, leading from the room where you were serving drinks, into the hall, that is the hall that adjoins to the east, is it? A There is one door to the backroom; no other from the hallway.

Q Yes. And was there any door into the room in which you were standing? A The folding doors.

Q No, no, was there any door going into the room in which you were standing, into the hallway, just east of where you were?

A Only the one door, that is from the hallway into the back room.

Q Now how far was that door from where you were standing?

A About twentyfive foot.

Q And that is again separate by a partition, isn't that right? A Yes, sir.

Q And the wall that separated the hall from the saloon, was a heavy soundproof wall, was it not? A (no answer)

Q Well, to get at it correctly, what kind of a wall was it? Made of cement, or what? A I couldn't really tell you. Probably. I don't know.

Q Well, you were there for a good many days. Now, what kind of a wall was it? A A thick wall I suppose.

BY THE COURT:

Q Do you know? A I don't know

BY MR. FALLON:

Q Was it not a thick, soundproof wall?

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MR. BROTHERS: I object to that question; it has already been answered.

BY MR. FALLON:

Q Was it possible, from the experience that you had in that saloon, on numerous occasions, to hear people who talked in the hall, going upstairs?

Objected to; sustained; exception.

Q Now, on that day, when you heard the shots, did you have any idea where the sounds came from? A No, sir.

Q You couldn't tell whether the noise came from the hall, across the street, or in front of your place? A No.

Q You were not paying any particular attention to that matter, were you? A No, sir.

Q You had several people in the saloon and were serving them with drinks? A Yes, sir.

Q Now, do you remember the defendant coming in there, just before the shooting, or before you heard that noise, and buying a package of cigarettes, just a minute or two before the shooting? Do you remember that? A Yes, I think he came in and bought a package of cigarettes.

Q And do you remember that, when he bought the package of cigarettes, he asked you if you had seen a man named Simpone around there, or not? A I couldn't tell you. I don't remember anything of the kind.

Q But you do remember that it was several minutes before

the shooting when he came in there and bought a package of cigarettes? A Yes.

Q When he came in did he come in alone? A Yes, sir.

O L L I E G L A S S, a witness called on behalf of the People:

(The Court examined the witness, he saying that he was fourteen years of age, and decided that the witness was competent to be sworn, and the witness was sworn).

DIRECT EXAMINATION BY MR. BROTHERS:

Q How old are you? A Fourteen.

Q When was your birthday? A April 7th, 1920.

Q What school do you go to? A De Witt Clinton High School.

Q And how long have you been there? A Half a year.

Q When did you start in there? In January of this year?

A Yes, sir.

Q Where do you live? A 339 West 38th Street.

Q And who lives there with you? A My father and mother.

Q Have you any sisters or brothers? A Yes, sir, one sister, sixteen, and one sister three years old.

Q Do you remember last Columbus Day? A Yes, sir.

Q 1920? A Yes, sir.

Q Did you hear any shooting, that day? A Yes, sir.

Q Where were you? A On my way home.

Q And where were you when you heard the shooting? A On the

south side, the south corner of 39th Street.

Q And what Avenue? A Sixth.

Q What did you see? A I saw Melli run out from the candy store.

Q Yes. A And he went towards Broadway. There were two other fellows with him.

Q Yes. And Melli had a soda or an orangeade, I don't know if it was a soda or orangeade, and he put it aside and ran towards Broadway; and I ran down, the fellow was on the floor already.

Q Now, how many shots did you hear? A Four.

Q Did you know this man Melli that you speak of? A No, sir.

Q What did he look like? A He was a fat fellow.

Q Had you seen him before that day? A Once.

Q Where? A In the candy store. I saw him a few months before.

Q Now you say two men went with him towards Broadway?

A No, sir, they were in the candy store with him.

Q Now how far away from the candy store were you when you saw this? A I was across the street from the candy store.

Q Were you on the side nearest your home, or the side furthest away from your home? Were you on the north side or the south side of the street? A South side.

Q Which side is the candy store? A No, I was on the north side, and the candy store is on the south.

Q Were you on the same side of the street with the candy store? A No, sir.

Q Now, these men that you say came away from the candy store with Mellli, do you know who they are? A Frank/Mc Govern and John McGovern.

Q Now, do you see Mellli here in the room now? Will you look around and see if he is here?

THE COURT: Stand up, and take a look around.

A Yes, there he is (indicating the witness Mellli).

BY MR. BROTHERS:

Q Is that the man? A Yes, sir.

Q Now, how far down to Broadway did you see Mellli run?

A Down to the Casino Theatre.

Q Could you see what happened down there? A No, sir.

Q Did you hear any more shots? A Yes, sir.

Q How many more? A About three.

Q Now, which happened first? Did you hear the shots first or did you see Mellli first? A I saw Mellli first. I heard one shot and then I saw Mellli run out.

Q Run out of what? A The candy store.

Q What did you do? A I had a paper for a customer, and then I put there quick, and I ran down, and I saw this fellow was dead already, before I could run down. But I heard the shots.

Q Where was the man that you say was dead already? A By the beer saloon.

BY THE COURT:

Q Whereabouts by the beer saloon? A He was lying on the

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sidewalk by the beer saloon.

Q Did you know him? A No, sir.

BY MR. BROTHERS:

Q Do you know this man here, that is being tried, Mr. Stern?

A No, sir.

Q Do you know whether you ever saw him before today? A No, sir.

Q Were you there when the policeman came along? A Yes, sir.

Q Did you speak to any of the policemen? A No, sir.

Q Did you speak to any policeman, that day? A Yes, sir.

He asked me whether I knew anything, and that's the only one I spoke to.

Q When was that? A That was after everything happened.

Q Well, where was it? In the street or somewhere else?

A Right by the candy store.

Q Did you go over to the station house that evening?

A Yes, sir.

Q Did you notice whether Melli, as he was leaving the candy store, was carrying anything? A No, sir.

Q You didn't notice that he was carrying anything? A He was carrying a coat.

Q How was he carrying it? A I think it was on his arm.

Q What time did you get out of school -- you didn't have school that day? A No, sir.

Q You said something about a paper which you were going to deliver. A Yes, my father owns a newspaper stand, and he told me to deliver it to a customer across the street.

Q And where is your father's stand? A On the northeast corner of Sixth Avenue and 39th Street.

Q And you were helping him that afternoon? A Yes, sir.

CROSS EXAMINATION BY MR. FALLON:

Q Now, you tell us that you were standing just about the candy store, is that right? A Yes, sir.

Q And you were not watching the candy store, were you? A No; when the shot went off, I looked across.

Q That is, before you heard the shots you were not watching the candy store, were you? A No, sir.

Q And then you heard how many shots? A One.

Q Only one shot? A Yes.

Q And just as soon as you had heard that you looked to see what it was; is that right? That is, as soon as you heard the noise you looked in the direction that it appeared to come from? A Yes.

Q And in which direction did you believe or think the noise came from? A From the Pre Catalan.

Q Didn't you look down the street? A No, sir, I saw people running, and I saw Melli run out.

Q Was he inside of the candy store so that he had to come out of the door? A Yes, sir.

Q Are you quite sure about that? A Yes.

Q Now you say that he put down some orangeade that he had in his hand? A I don't know that it was orangeade.

Q Well, did you see a glass in his hand? A Yes.

Q And was he inside when you saw the glass in his hand?

A Yes, sir.

Q Now are you quite sure that you saw him with the glass in his hand inside of the door, or did you just see him as he came out of the door? A As he came out, he had the glass. The glass was on the fountain.

Q Now, do you remember that you saw the glass in his hand, or are you just guessing that? A Yes, he had one in his hand.

Q He had one in his hand? A Yes, sir.

Q You remember that? A Yes, sir.

Q And you are sure he came out of the store, that he was in the store; that he was in the store when you saw him? A Yes, sir.

Q And he wasn't just standing on the sidewalk in front of this orangeade place? A No, sir.

Q And then he came running out? A Yes, sir.

Q And he ran down as fast as he could? A Yes, sir, he ran towards Broadway.

Q And he ran down almost to the Casino, didn't he?

A Yes, sir.

Q And you didn't hear any more shots until he had run away down the street? A No, sir.

Q And then you think you heard two more shots? A Yes, sir.

Q Well, you might have heard more. A No, sir, only two.

Q Now, when you heard the last two shots, did they seem to

you to come down from near the Casino? A Yes, but it wasn't right near the Casino. It was by the American Express.

Q But that is next ~~km~~ to the Casino, is it not? A Yes, sir.

Q Did you see anybody come out of the hall by the side of the saloon? A No, sir.

Q Did you see any man walk out of the saloon, and fall down on the sidewalk? A No, sir.

Q Did you see any man running on ahead of Melli? A Yes, I think it was Stern.

Q And he was running? A Yes, sir.

Q And Melli ran after him? A Yes, sir.

Q And Melli ran so fast that he almost got up to him, is that so? Or did you see that? A No. Melli ran across the street to where the restaurant is.

Q Did you see that? A Yes, sir.

Q So that you saw Melli run all the way after Stern, and then he ran over to the other side, near Broadway? A Yes, sir.

Q Now, Stern was running too, wasn't he? A Yes, sir.

Q Now, where was Stern in the block? Where did you first see him running? In front of what store? A The store right after the Pre Catalan.

Q That is the next store over towards Broadway, next to the Pre Catalan? A Yes, sir.

Q At that time he was running over towards Broadway?

A Yes, sir.

Q And how did you know his name was Melli? Did you learn it afterwards? A Yes, sir.

Q Who first told you that the name of the man you saw running was Melli? A Well, I don't know. Somebody said that his name was Melli.

Q Did you know McGovern; did you know the McGoverns?

A I knew just one of them by sight.

Q And when did you first find out that their name was McGovern? A When I went with the detective. He took me to 39th Street, and he asked me did I know the McGoverns, and he said do I know the two chauffeurs that drive autos, and he told me one of the, his name was Frankie McGovern, and I said yes.

Q Now you were walking from Sixth Avenue to Broadway, when you first visited his place? A Yes, sir.
Q And as you were walking, you were walking along, as you say, on the north side of the street? A Yes, sir.

Q And were you walking fast or at an ordinary rate?

A I was walking fast. I was running a little bit, because I saw the people running.

Q But I mean before the shooting at all, you were walking down 39th Street on the north side? Were you walking fast or at an ordinary rate? A I was going at an ordinary rate, then.

Q Did you go down Sixth Avenue or did you cross Sixth Avenue?

A Yes, I got down to Sixth Avenue.

Q So that you could see ahead of you all the time you were

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going through 39th Street? A Yes.

Q Now there weren't very many people on that street as you were walking wodn there, were there? A No, sir, but there was a lot back of Stern.

BY THE COURT:

Q Were they running after Stern? A Yes, sir.

Q That is what you mean by saying that there were a lot of people in back of Stern? A Yes, sir.

Q You tell me then that is what you mean by that? A Yes, sir, a lot of people were running in back of Stern.

BY MR. FALLON:

Q And they were also running back of Melli; the people were running in back of both men? A Yes; Melli ran at the same time with Stern.

Q And then the peopl~~r~~ ran after both of them? A Yes, sir.

Q Is that what you mean? A Yes, sir.

Q Now, before you heard the shots as you say, you had crossed over Sixth Avenue and had got over on the east side of Sixth Avenue and come east down the street? A Yes, sir.

Q And before you heard any noise were there very many people on 39th Street? A Yes. I think they were coming from some work.

Q From work where? Where do the people come from work on that street? A Both ways, coming from Sixth Avenue, going through 39th Street.

Q Now, as you crossed over from one side of Sixth Avenue

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to the other and walked down 39th Street, did you see any men there, fighting? A No, sir.

Q Did you see any two or three men having a fist fight there? A No, sir.

Q Did you see any man separate two men who were fighting, in front of the saloon? A No, sir.

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

Qx Right next to the little hallway? A Yes, sir.

Qx And right next to the Princess Theatre? A Yes, sir.

Q You know that neighborhood very well, don't you? A Yes.

Q You go through there often? A Yes, sir.

Q Now, did you see any men fighting in front of the Pre Catalan, or the saloon, or the Princess Theatre? A No, sir.

Q Now you could see everything that occurred there, couldn't you?

MR. BROTHERS: I object to that.

THE COURT: Objection sustained.

MR. FALLON: Exception.

Q Now, at that time, as you were going along there, could you see all that was going on in front of the saloon, and in front of the restaurant next to it? A Yes, sir.

Q You had a good view of everything that took place there? A Yes, sir.

Q And you didn't see anybody fighting there, did you? A No, sir.

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Q And you didn't see any two men striking each other, did you? A No, sir.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Were there any horses and trucks or automobiles in the street at that time? A Yes, there was one automobile that stopped and the lady started hollering.

Q What? A There was one automobile right by the Princess Theatre, and the lady looked out, and she started in screaming.

Q Now, when you went over to the station house that night, did you see Stern there at the station house? A Yes, sir.

Q And you saw Melli there, too, did you? A Yes, sir.

Q And you think that Stern is the man that was running down the street in front of Melli? A Yes.

Q But you didn't know his name that night? A No, sir.

RE-CROSS EXAMINATION BY MR. FALLON:

Q Just one more question. I ask it for the purpose of the record, and I don't want to be cantankerous about it, in view of your Honor's ruling.

THE COURT: Very well, proceed.

BY MR. FALLON:

Qx Now, if two men had been fighting in front of the saloon, could you have seen them, as you went down from Sixth Avenue through 39th Street?

Objected to; sustained; exception.

Q Now, if there had been any men fighting there, would

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you have seen them? A Yes.

Q Did you see anything of that kind? A No, sir.

BY MR. BROTHERS:

Q I am not very clear about it. Where is your father's place? Could you tell me again? A On the northeast corner of 39th Street and Sixth Avenue.

Q And that is where you came from? A Yes, sir.

Q And you walked right straight from the stand or store down towards Broadway? A Yes, sir.

J O H N M c G O V E R N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. McGovern, where do you live? A 515 East 49th Street.

Q And you have lived there about how long? A About two years.

Q Are you married? A Yes, sir.

Q What is your business? A Chauffeur.

Q Are you in business for yourself? A Not at present.

Q Well, when you say you are a chauffeur, what kind of vehicle do you drive? A Taxicab.

Q What is the name of the company? A I don't work for any company.

Q You mean, at present, you are not employed? A Well, I work for an individual.

Q What is his name? A Greenwich, the Empire Garage,

31st Street, between Sixth Avenue and Broadway.

Q How long have you been a chauffeur? A Ten years.

Q And do you know ~~the~~ "Patsy" Melli, who is sitting over there in the court (indicating)? A Yes, sir.

* MR. BROTHERS: Do you want him to go outside, Mr. Fallon?

MR. FALLON: Yes, I do, while this witness testifies.

BY MR. BROTHERS:

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

Q How long have you known Melli? A Five or six months.

Q And Stern? A About ten years.

Q Do you mean that you have known Melli five or six months prior to today? A No, sir, before October 13th.

Q Were you in West 39th Street, between Sixth Avenue and Broadway, between five and six o'clock on that day? A I was on Sixth Avenue, on the corner.

Q Did you see any shooting? A No, sir.

Q Did you hear any? A Yes, sir.

Q At the time you heard the shooting, where were you?

A In the soda store.

Q And who was at the soda store, at the time you heard the shooting? A "Patsy" Melli and Frank McGovern.

Q Is Frank McGovern related to you? A Yes, my brother.

Q In this picture, People's Exhibit 13, do you see the soda store where you were at the time of the shooting? A Yes.

Q Will you point it out to the jury. A There (indicating)

Q Yes, thank you. Now, at the time you heard the shots were you inside of the store or upon the sidewalk? A Inside of the store.

Q And do you say that Melli was there when you heard the shots? A Yes.

Q And your brother Frank? A Yes.

Q Now, were there any other people there that you remember? A There was a woman there at the time.

Q Yes. And the proprietor, he was there, was he? A Yes, sir.

Q How many shots did you hear? A Well, I don't remember how many many shots I heard.

Qx Well, was it more than one? A Yes, I think it was.

Q Well, what is your best recollection ~~about~~ about the number that you heard? A I should judge about six or seven.

Q All together? A Yes.

Q When you heard the shooting begin, what did you do?

A Well, I was having a soda at the time, and I finished my soda, and I heard people yelling outside and I walked down the block, and the show was just breaking, and there was a lot of automobiles there and there was a crowd of people around. And I walked down and I seen a police officer walking back with Mr. Stern and Mr. Melli.

Qx Now, did you see any man there who had been injured?

A I seen a man falling in the gutter.

Q And in front of what building did you see this man fall?

A In front of the saloon there.

Q Did you know the name of the saloon? A Flannery's.

Q Did you know that man, the man that fell down? A No, sir.

Q Did you know him by sight? A No, sir, I never seen the man before.

Q Did you see what Melli did at the time of the shooting?

A Well, after the shots were fired he run out of the soda store and towards Broadway.

Q Did you watch to see where he went? A I couldn't see where he went, on account of the crowds that were there, but I saw him run towards Broadway.

Q Now, in front of what building did it appear he was when you last sight of him as he was going towards Broadway?

A The Knickerbocker Building.

Q Where is that? A 116 West 39th Street.

Q What kind of a building is that? A An office building.

BY THE COURT:

Q What is on the ground floor? A The American Express office is on the ground floor.

BY MR. BROTHERS:

Q Can you see this building in the photograph, People's Exhibit 2? A This building there (indicating).

Q Are you indicating the building that seems taller than any other on that side? A Yes, sir.

Q And what was it that prevented you from seeing any more of him? A On account of the crowd in the street. The show was

breaking at the time.

Q There had been a matinee? A Yes.

Q It was a holiday? A Yes.

Q Where did you get acquainted with Melli? A When I worked on the Sightseer. He had a touring car at 41st Street and Broadway then.

Q Did you ever see Melli talking to Stern, the defendant?

A I don't remember that I ever did

Q Had you ever seen them together? A I don't think I ever did.

Q Do you know whether or not they knew each other? A I don't know.

Q What? A I don't know.

Q How long had you been doing business in this place in 39th Street as a taxicab chauffeur? A About eight or nine years.

Q Your business took you into that immediate neighborhood, that block, for eight or nine years? A Yes, sir.

CROSS EXAMINATION BY MR. FALLON:

Q Do you know what the defendant's business was? A Jewelry salesman.

Q Did you know him from that neighborhood as a jewelry salesman? A Yes, sir, I did.

Q Now, did you go into the candy store with Melli? A No, sir.

Q You were in there and he came in? A They were in there when I come in.

Q Oh, that is, he was in there and your brother was in there? A Yes, sir.

Q And then you came in and joined them? A Yes, sir.

Q Now did you see them come in? A No, sir.

Q Where did you come from? From Sixth Avenue? A Yes, sir.

I come down Sixth Avenue.

Q As you came down Sixth Avenue, did you see anybody in front of the saloon? Flannery's saloon, as you came downtown Sixth Avenue, did you see anybody in front of Flannery's saloon?

A I can't say that I did. I don't recollect if anybody was there or not.

Q Had your brother and Melli ordered anything at the time you went into the soda store? A They were just about getting their soda when I walked in.

Q Were they served with anything there? A Yes, they had their soda.

Q Now, you didn't run out, did you? A No, sir.

Q Somebody said something about it being backfire? A I thought it was a backfire, and I didn't pay any attention to it.

Q And Melli ran immediately down the street? A Yes, sir.

Q And your brother stayed and finished his soda? A Yes.

Q And so that the only one who ran out, upon hearing this sound, was Melli? A yes, sir.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q I understood you to say that, when you got outside, you

saw this man fall down in front of the saloon? A Yes, sir.

Q And that is the man who was shot? A Yes.

Q But you didn't see that from inside the soda store, did you? A Well, when I had come out from the soda store, I seen it.

Q You came out, and saw the man who was shot fall down? Is that correct? A Yes, sir.

BY THE COURT:

Q And say that you stood there and drank your soda? A Yes.

Q After Melli had run out? A Yes, sir.

Q You and your brother ^{stayed} ~~stood~~ at the fountain? A Yes, sir.

Q And drank your soda? A Yes, sir, and I heard people yelling and when my soda was finished I walked out, and I seen this man that had been shot falling in the gutter.

Q Did you and your brother and Melli go into the soda place together? A No, sir.

Q Was Melli there when you and your brother entered the place? A I went to the place myself.

Q And then did your brother and Melli come in after you got there? A No, sir, they were ~~there~~ when I came in.

BY MR. FALLON:

Q They were there, but they hadn't been served with anything?

A They were just about to get served when I walked in.

Q But you didn't see them enter, as you walked from Sixth Avenue? A No, sir.

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F R A N C I S M c G O V E R N, of 413 West 15th Street,

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

DIRECT EXAMINATION BY MR. BROTHERS:

Q Your name is Francis McGovern; is that correct? A Yes, sir.

Q Are you a brother of John McGovern, who just came in and
went out again? A Yes, sir.

Q What do you do for a living, Mr. McGovern? A Taxicab
chauffeur.

Qx What is the name of your employer? A William Greenwich.

Q That is the same man your brother works for? A Yes, sir.

Q How long have you been a chauffeur? A This is my third
year.

Q How old are you? A 21.

Q Where do you live? A 413 West 15th Street.

Q Are you married? A No, sir.

Q Did your business take you into West 39th Street between
Sixth Avenue and Broadway? A Yes, sir.

Q Have you a stand there? A I work from that stand.

Q And that stand is located near what building? A 110
West 39th Street.

Q That is the Pre Catalan, is it? A Yes, sir.

Q Do you know William Stern, the defendant? A I have seen
him around there a few times.

Q Did you know him so that you spoke to him when you met

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him? A Well, I said Hello to him.

Q Do you know a man named "Patsy" Melli? A Yes, I knew him by seeing him on a touring car several times. He had a touring car then.

Q How long were you acquainted with him? A Only during the summer months of that year.

Q Now, on the afternoon of the 12th of October last, did you hear any shooting? A Yes, sir. I was up near Sixth Avenue in the candy store, getting a soda, when I heard the shooting. I didn't know whether it was shooting or not. I heard some noise, and didn't pay any attention to it.

Q Have you any recollection of what time it was? A No, sir.

Q Do you think it was between five and six in the afternoon?

A It was in the afternoon, yes.

Q Did you have your taxicab with you then? A At the time, I owned a taxicab, a Maxwell, and my brother was supposed to bring it down from the shop, and I was supposed to go to work on it that night.

Q Now, just before you came to the soda place, where had you been? A I was coming from my home.

Q From what direction did you come? A I come down Broadway, and east of Broadway.

Q Were you walking or riding? A Walking

Q And on which side of 29th Street did you walk? A On the north side.

Q And where did you cross over? A At the corner, almost opposite the candy store.

Q When you went into the soda place did you see anybody there that you knew? A No, sir.

Q Who was there when you came in? A Well, when I came in nobody was there, only Harry Halpern, the proprietor.

Q Now, while you were there, did anybody come there? A Yes,

Q Who? A "Patsy" Melli, and then my brother.

Q And so that the three of you were there together? A Yes.

Q And the proprietor? A Yes, sir.

Q Now do you remember any other customers being there?

A No, sir.

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Q And how long ~~was~~ your brother and Melli arrived there, at the soda place, did you hear the shooting? A Well, I didn't know it was shooting.

Q Well, the noise that you have been telling us about

A Well, I said to "Patsy" Melli, "Are you going to buy a soda?" And he said "I'll buy you anything," and the man was just about to bring out the sodas when I seen the people running down the street.

Q What did Melli do when the shots were fired? A That's the last I saw of him. I seen him run out, and then I seen him come walking back up the street, with a policeman.

Q You say you asked Melli if he would buy a drink? A Yes, sir.

Q Did he say he would? A Yes, sir.

Q Now, about how long do you think you were in there, in the soda place, before this noise that you think was shooting, was heard? A I have got no idea of the time; it wasn't long. He had just put up the sodas when it was heard.

Q Now when you heard this noise, and you say Melli went out, what did you do? A I walked down the street with the rest of the people, and heard screaming, and police whistles blowing.

Q Did you see any man who had been hurt? A I seen a man laying on the sidewalk there.

Q In front of what place? A In front of 108 West 39th.

Q Did you see where that man came from? A No, sir.

Q What was he doing when you first saw him? A He was laying, face down, on the sidewalk.

Q Now, had you been in that candy store on any other day with Melli? A Yes, sir.

Q Do you recall whether you ever saw Stern there, at the soda fountain? A No, sir.

Q Had you seen Stern and Melli together? A Well, I may have seen them in a group around there, talking together.

Q Well, you saw them talking together many times, didn't you? A Well, they were in the group; I don't know whether they were talking to each other or not.

Q Do you know whether they were acquainted with each other? A No, sir.

Q Where did you used to see Stern? A I used to see him

around the Pre Catalan, and Melli I saw up around 41st Street and Broadway, and 39th Street and Broadway, driving his car.

Q Now, I ask you again whether you ever saw Stern talking with Melli? A Not that I could swear to.

Q Did you ever see Melli talking to Stern? A Not that I could swear to.

BY THE COURT:

Q Did you ever see them standing together, around there? Around 39th Street? A I seen them standing in a group of ten or twelve fellows, and Stern and Melli were in the group.

Q And themen in those ~~gangs~~ groups were talking together? A yes.

Q How many times did you see Stern and Melli in one of those groups? A Oh, several times.

BY MR. BROTHERS:

Q Did you know the dead man? A Yes, sir.

Q Did you ever hear of any trouble between Stern and Melli?

Objected to; sustained.

CROSS EXAMINATION BY MR. FALLON:

Q Now you say that you went into the soda store, and you were there just a moment when Melli came in? A Yes, sir.

Q Now is it not a fact that you were on the sidewalk, or somewhere in that street, and you were walking towards the soda water fountain, you met Melli, and asked Melli, or he asked you, to go in there and have a drink? A No, sir, he was in the soda

water store already.

Q And on the sidewalk, down near the saloon, you never asked Melli to have a soda with you? A No, sir.

Q There was no time on that street when you said to Melli, "Are you going to treat me?" And he said "Yes, come along with me"? A No, sir.

Q At no place on that street did you ask Melli to have a drink? A No, sir.

Q Now you say that you came up from Broadway and 39th Street to where the soda water stand was? A Yes.

Q And, as you walked, did you see anything ahead of you? The street wasn't crowded as you walked through from Broadway to the Candy store, was it? A Yes.

Q And you walked right on the north side? A Yes.

Q The opposite to where the candy store is located? A Yes.

Q And you walked at a moderate pace, I presume? A Yes, sir.

Q And did you have a good view of the place in front of the saloon, or in front of the Pre Catalan? A I wasn't looking that way.

Q Now, if anything had gone on there, unusual -- if anything unusual had gone on there, would it have attracted your attention?

A Yes.

Q Did you see any two men fighting on the street? A No, sir.

Q Or engaged in a fist fight? A No, sir.

Q Did you see Melli separate any two men who were fighting?

A. No, sir.

Q Now, then, as you passed that saloon, did you see anybody quarrelling or fighting there? A No, sir.

Q Nothing of that sort, was there? A No, sir.

Q Did you see Melli go into the candy store? A No, sir.

Q At what point did you cross the street? Directly opposite the candy store? A Yes, nearly opposite.

Q And you went right over? A Yes.

Q And by the time you got there, Melli hadn't even ordered a soda? A When I got there, Melli hadn't come in yet.

THE COURT: Gentlemen, we will take a short recess, for three minutes.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure).

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A F T E R R E C E S S .

MR. BROTHERS: We offer in evidence People's Exhibit 6 for Identification, consisting of four empty shells, which were produced/here by the Police Officer, Moore, and two of which he said he found in the hallway of 108, and that the other four were handed to him by another policeman. Now, as I haven't been able to find out who picked up the others, or where they were picked up.

MR. FALLON: We don't object to it, and we did try to

place them somewhere on the street.

THE COURT: They are received.

(They are marked People's Exhibit 6 in evidence).

MR. BROTHERS: And we offer in evidence People's Exhibit 9 for Identification, which is the knife taken from Melli by the officer, and which Melli himself identified as his property.

MR. FALLON: My only objection to that is that it is immaterial. I don't think that it has any materiality.

THE COURT: Objection overruled.

MR. FALCON: Exception.

(It is marked People's Exhibit 9 in evidence).

MR. BROTHERS: And the People rest.

MR. FALLON: And we move for a direction on the ground that the People have failed to make out a case sufficient in law and in fact to submit to the jury.

THE COURT: Motion denied.

MR. FALLON: Exception.

(Mr. Fallon then opened for the defense as follows):

May it please the Court and Gentlemen of the Jury:

I will not take more than a few minutes to tell you what the defense expects to prove in this case. When you were selected as jurors here you said that you would give the defendant a fair trial, and listen with all due attention to his part of the case, that you would keep your mind open until you heard any explanation or denial that he made, might care to introduce in opposition to the proofs that have so far been adduced by the People.

The defendant's part of this story is very simple. The defendant has been in the jewelry business for many years. I mean by that, that he is a man who takes a considerable amount of jewelry on consignment, and always has several thousand dollars' worth of jewelry in his possession, and that he frequented that place because it was the sort of place where he could readily sell those wares.

Now, we are going to show you that he was well known that in that neighborhood, and he carried around a large amount of jewelry. Melli was a man who had been convicted of manslaughter, and the man who was killed had been convicted of burglary, and we will show you that this defendant knew the history of those two men, who played so important a part in this drama.

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Now, on the preceding evening, the evening preceding the shooting, the defendant was at that restaurant, the place next to the saloon, and he had in his possession and exhibited there, \$15,000. worth of jewelry. About that there is no question, and we are going to prove that absolutely to your satisfaction.

Now, the defendant does not recall whether both of those men were there, the man who was shot, and Melli, or the other man, the third man. I will tell you frankly he does not know whether they were there or not, but I will tell you that everybody around there knew that he had that large sum in jewelry at that time in that place.

Now, you remember that Melli testified ~~that~~ today, the deceased and himself met, that night, and the next morning. Now, we are going to try to show you the significance of those events, and show that the defendant and the deceased were there the evening before when the defendant was exhibiting these jewels.

Next day, however, the defendant sent back to the man from whom he had taken the \$15,000. in jewelry -- he was a gentleman on 43rd Street, who will be produced here, and he is a reputable jeweler, and there is no question that you will take his word, substantiated by his books, and we will show that the return of the jewels occurred almost immediately before the shooting.

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Then the defendant went down to the place where this occurred. Indirectly the man named Simpone has the privilege of hacks or automobiles there. A few days before, Simpone had given the defendant a check for some \$600., and he said "I am a little short of cash, but I will make this check now, and you can come on October 12th and get the cash."

The defendant saw, on the 11th, that it was dated on the 12th, and Simpone had told him to come the next day, and that he would ~~either~~ either give him a new check or cash.

When he gets there, he is informed that Simpone has not arrived, and he believes that Simpone might have gone next door to get a drink, and he walked out of the little office of Simpone, ~~and~~ in the cabaret next door, and was starting to go next door, when the man Melli, the deceased, and the third man prevented him.

Now, the defendant had only a slight speaking acquaintance with the deceased. And they said to the defendant, "What are you doing around here?" And he said, "What I'm always doing around here," and one of them said, "Why don't you get some of the easy money that is in the bootlegging business around here?" And he said, "Well, I've got enough to do with my own business."

And then Melli said, pointing to the third man, "There

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is a man who has made a great deal of money in that business," and we say that that was all done by these men to get into conversation with the defendant.

Then he walked into the saloon and bought a package of cigarettes, and had a drink. After spending some few minutes in the saloon, and inquiring for Simpone, and as he walked out of the saloon, and he is not out of the door before he is seized from behind, and pushed into the hallway.

Now, all the doors in the back of that hallway were closed at that time. As soon as he was pushed into the hallway, he was in utter darkness. At once he felt people going through his pockets and he heard the men say "Come now, hands up. Give us what you have."

And this thing was quickly done, after that --- this man was thrown into this dark hallway, and we are going to ask you to believe the fact will be proved absolutely, and we are going to show you that anything could have occurred in the dark hallway, and that his story of this attempted robbery is entirely true, when you consider where this thing happened, and under what other circumstances could this shooting have occurred in that dark hallway, in defending himself from the would-be robbers. All that was done to this defendant was for one purpose, ^{no} ~~no~~ other purpose than that of robbery

And when they were grappling with him in that dark hallway he succeeded in getting hold of his gun, and he did what we claim, and the learned Judge, I believe, will charge you, he was justified in doing. He fired two shots, and they let go and ran out. And he did not continue to fire five or six other shots in that hallway. He fired just enough to get out.

And then he went down the street, only to find himself pursued by somebody, and when he gets almost to Broadway, feeling that these people had overtaken him, he then turns around and fires some more.

Now, he will tell you that when Melli was first chasing ~~him~~ him, he fired at him, but when he saw that he ducked behind an automobile, he simply fired then for the purpose of attracting attention, and that is precisely what he did do.

And he will tell you that when the policeman came up, there was no difficulty in getting the gun away from him. He said "There is my gun", and he said "This is one of the men that was in the robbery, he is one of the three."

Now that was, without going into details, because nobody can go into details at such a moment, what this man did. He saw those three men on the sidewalk when he went into the saloon; we say that they deliberately engaged him in conversation for the purpose of robbing him; and when we

say that one of them had a gun, that is the truth, and we say that the only purpose of putting him into the hallway was to rob him.

Now, we are going to show you the fact that this man had all those jewels in his possession the night before, and that was the motive for the attempted robbery, and that he had those jewels was known by everybody around there, the night before, and that this man believed when he was in the dark hallway, that he was dealing with murderers and ~~big~~ burglars, with whom he had to deal in a very summary way. And when he ran towards Broadway, we will show you that he was going to get protection from those robbers.

We are going to tell you that all this talk about a fight in the street is all nonsense, that that is put into the case deliberately by Melli for a purpose, and for the time being we are going to ask you to listen to the defendant, and hear his side of the story, and hear him tell you just what took place, and I do not believe that you will fail to believe that he shot in self-defense, when he was unjustly and violently assaulted by murderers and burglars.

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THE DEFENDANT'S TESTIMONY.

W I L L I A M S T E R N, the defendant, being duly sworn,
testified as follows:

DIRECT EXAMINATION BY MR. FALLON:

Q Mr. Stern, you are the defendant in this case? A Yes, sir.

Q How old are you? A 34.

Q And where do you live? A 312 West 111th Street.

Q And how long have you lived there? A Five years.

Q Are you a married man or single? A Married man.

Q Have you any family? A Just the wife.

Q Just your wife? A Yes, sir.

Q Now, in what business are you engaged, or were you engaged, previously to your arrest? A Jewelry business.

Q And for how long a time? A Eight or nine years.

Q And in what manner did you conduct your business?

A Well, I would go to most any jewelry place, and get any considerable amount of jewelry on consignment, and if I would sell it, I would pay him for it, or I could return it.

Q That is, you had arrangements with various places where they sold jewelry, whereby they would allow you to take jewelry, and if you didn't sell the jewelry, you could return it, and, if you did sell it, you could pay them for it? A Yes, sir.

Q Now, name some of the jewelry houses with which you have an arrangement? A The Provident Diamond Company, 598 Seventh

Avenue. Mr. Hirsch, Broadway and 41st Street. I can't think of the number. He has a jewelry store. I used to do business with people downtown, David Brothers, and Pissarelli and Lambert, Sixth Avenue. I used to do business with Mr. Glasier, 76 Bowery. And different people on the jewelry ~~game~~ exchange on the Bowery. The Exchange is that different people that have got showcases with jewelry. I would either buy for cash or take stuff on memoranda.

Q Now did you carry this jewelry about on your person?

That is, did you carry it in your pockets? A Yes, sir.

Q And did you usually have jewelry in a considerable amount about you? A Yes, sir.

Q And did you, sometimes, go into the vicinity of 39th Street? A I used to go there pretty nearly every day. I used to sell jewelry in the Pre Catalan. The gentleman that owns it is a friend of mine, Mr. Barnes.

Q And he allowed you to go therein an endeavor to sell jewelry among his patrons? A yes, sir.

Q And did you know a man about that place named Simpone? A Yes, he's got an office there. He has got the privilege of keeping cars outside, in front of the Pre Catalan.

Q And he has an office there? A Yes, sir, just inside.

Q Now do you recall a transaction you had with him about selling some jewelry? A I sold him a diamond bracelet with 33 stones, about four days before I got in trouble, for \$650.

Q Now, as a result of that sale, did Mr. Simpone give you a check?
A yes, sir.

Q Now, I show you a check, People's Exhibit 13, and ask you if that is the check he gave you several days before this occurrence? A Yes, sir.

Q And that is a check in the sum of \$660.? A Yes, sir.

Q Now, what, if anything, was said at that time about giving you a check dated ahead? A When I sold him the bracelet he said, "I am short in cash, and I'll give you a check and hold it until the 12th, and I will give you the cash, or I'll give you a check when I have money enough in bank to cover the check." And I noticed the check was made out on a holiday, and I was going down to the office of the Exchange the next morning,-- that is, the next morning--

Q On the next morning, on the 12th, you intended to go down to the Exchange to buy jewelry? A Yes, sir.

Q And you noticed that the check was dated on the 12th, a holiday? A Yes, sir. I didn't notice it before.

Q And that you couldn't use it? A yes, sir.

Q Now where did you see Mr. Simpone? A On the 11th.

Q Where? A In the Pre Catalan.

Q And when? What time of day? A About eight o'clock in the evening. And he said "Meet me about five o'clock, and I'll either give you the cash, or I'll give you a different check, or cash I'll try to ~~have~~ it in the place for you."

Q Now do you recall on the 11th, whether you had anything in your possession when you were in the Pre-Catalan? A I got 32 carats of diamonds, charged to me for \$15,000.

Q And he extended you credit on memorandum? A Yes, sir.

Mr. Hirsch did.

Q Now when did he give you those stones? A He gave me them stones on the morning of October 11th.

Q Now, did you show those stones in or about the Pre Catalan on the night of the 11th? A Yes, sir.

Q Now do you remember what people were present at that time? That is, have you any recollection of any particular person? A Well, Mr. Barnes had seen the stones, and Mr Simpone thought of buying one of the stones for his wife's birthday. I showed them to various people inside.

Q Now, where was it you showed these stones? A In the Pre Catalan.

Q And what part of the place? A Well, inside, and out in the lobby.

Q That is where you had sold goods before, and where you always sold your goods? A Yes, sir.

.did you come in

Q And ~~xxxxxxxxxxxx~~ there the next about five o'clock, to the Pre-Catalan? A yes, sir.

Q Now, previously to that, and on that day, what had you done? A I was down in the Exchange trying to dispose of these thirtytwo carats of diamonds.

Q Where is that place located? A It is 76 Bowery. There is two exchanges there.

Q Did you go to both of them that day? A Yes, sir.

Q Tell me some of the people you met there? A I met Mr. Boggart there. I showed them diamonds to Mr. Blake, and a man by the name of Mr. Schilling.

Q And after you left there where did you go? A I went up town and I was uptown about four, got up there about four o'clock, and I had some lunch, and I went back to the jewelry store about four thirty, and I returned the stone. They were not suitable to the people I showed them to, and I returned the 32 carats of stones to Mr. Hirsch.

Q Now, did you return them to him personally? A Yes, sir.

Q And that was at his place of business at Broadway and 41st Street? A Yes, sir. And I stood there talking to him for a few minutes, and then I went down to meet Mr. Simpone in 39th Street, to get this check rectified as to the date, or cashed.

Q Now this was on the 12th? A Yes, sir.

Q All this that you have been telling us about going down to the Exchange, and returning the jewels, all occurred on the day of the shooting, is that so? A Yes, sir. And I went inside of the Pre Catalan and I asked for Mr. Simpone, and he wasn't around; and I spoke to Mr. Woods, the day manager, and I asked him if he had seen Mr. Simpone, and he said "No, he hasn't been here yet." And so I walked outside, and there was a saloon next to that place, and I went in there to see if Mr. Simpone was in there. He generally goes in there for a little lunch and a glass of beer. And as I was going in, I saw three men standing

in front of Flannery's saloon. One was the deceased, and one was Melli, and one I hadn't seen before.

Q Now, then, as you approached ~~the~~ them, or passed them on your way from the Pre Catalan to the saloon, what took place? A As I went into the saloon Melli said to me "What are you doing here? What brings you around here now?" I said, "Did you see Mr. Simpone?" And he said, "No." And he said, "How is the jewelry business?" And I said, "All right."

And he said, "Why don't you get into a regular business?" And I said, "What do you mean?" And he said, "Why don't you get into this bootlegging business?" And I said, "I have plenty to do to take care of my own business. It's no business for me." And he said, "There is a man that made a fortune. Why don't you go into this bootlegging business?"

And I went into the saloon and bought a glass of beer, and bought a package of cigarettes.

Q Were you served by the bartender who was ~~xxxxx~~ on the stand here today? A Yes, sir.

Q And is he the man from you bought the beer and the cigarettes? A Yes, sir.

Q And then what did you do? A I drank my glass of beer and lit a cigarette, and I was walking to the door, and the first thing I knew was that I was shoved into the hallway and there was somebody in there with a gun, and he said "Put them up and give us what you've got." And they took me in the rear, and they were

grappling with me, and I got out my gun and fired a shot, and then I heard three shots fired, and they released my arms, and I fired another shot, and I was released, and I ducked out of the hallway; and I started to go down towards Broadway to get an officer.

Q- Now, let me interrupt you for a moment. How far were you in the hallway, if you are able to tell us? Were you near the ~~six~~ stairs, or could you see the stairs? A Well, it was kind of dark in there. I was a good ways in the hallway, about ten feet -- there is a door on the outside, there is a little vestibule, and then another door, and along hallway, and I was shoved to the middle of the hallway.

Q Now, was there any light coming in from the back of the hallway? A No, sir.

Q Was the back of that hallway entirely in ~~darkness~~ darkness? A Yes, sir.

Qx Now, you say you were pushed into the hallway in the manner you have described? A, yes, sir.

Q And after you succeeded in releasing yourself, you got out of the hallway? A yes, sir.

Q And then what did you do? A I was starting to go down to Broadway to get an officer.

Q And how far did you run before anything happened?
A I was in front of the express office, and I heard somebody right on top of me, and I saw Melli, and I started to run, and

He started to run after me, and I fired a shot.

Q Did you fire any shots after you got out of the hallway until Melli overtook you? A No, sir.

Q And how far, about how far did you run before you fired any shots? After the shots that were fired in the hallway? A About onehundred feet.

Q Well, isn't it more than onehundred feet? A Well, probably; I don't know.

Q Well, anyway, it was from in front of the hallway, until you got in front of the telephone building? A ~~Yes~~ Well, I know there is an express office there.

Q The next building to the Casino theatre? A Yes, sir.

Q Now, while you were running towards Broadway, did you know who it was that was following you? A No, sir, not until I turned around.

Q And then you saw it was Melli? A yes, sir.

Q Then, after you fired the firstshot, what took place?

A He was running around an automobile, and he was trying to get me, and I fired two shots in the air, to attract the attention of the officer on the corner, and when he came up, I handed him the gun, and I said, "I've just been held up, and there is one of them, and there is one of them down the street, and I think he's shot." And Melli was there, and the sergeant grabbed Melli, and the sergeant said "Is he one of the men?" And I said, Yes, and with that he hauled off and punched me in the head, while Officer Moore was holding me.

And he said "Why don't you left me go, officer? I had nothing to do with it," and I said, "Hold him, officer, he is one of the men."

Q Now, then, did the officer ask you any questions at that time about how many men were in the affair? A Yes, sir.

Q And what did you tell him? A I told him there were three men, probably.

Q Yes, right then and there, at the time of the arrest, you told the officers there were at least three men? A Yes.

Q And you pointed out Melli and told them he was one of them? A Yes.

Q And that the man on the ground was another one of them? A Yes, sir.

Q And what did you say about the other, if anything?

A He said to me where were the others, and I said to him I don't know.

Q Did you tell them where the thing happened? A In a hallway, and he took me back into the hallway, and started to look around in the hallway and found a couple of cartridges on the floor in the hallway.

Q And did you take him right back into that hallway, and into the hallway, to show where it happened? A Yes, sir.

Q And is that the time that he picked up the bullets?

A Yes, sir.

Qx Were they picked up near the stairs? A In the centre of

the hallway. As you go in the hallway, there is a stairs that leads upstairs to the apartments, and it was half way in the hallway that the shells was laying.

Q How far from the stairs? A Oh, about five feet or so.

Q And what took place after that? A He brought me outside and the man was laying there, and he said "Is that one of the men?" And I said, "Yes, he's one of them." And he started in to ask me questions, and Melli said "Why don't you let me go? I had nothing to do with it," and I said, "You hold him officer." And he was trying to say "Why don't you let me go, I had nothing to do with it."

Q And then you went over to Police Headquarters, and you made some further statements to Officer Sullivan? A I didn't make no statements. He asked me how this happened, and I told him.

Qx Just as you have told us now? A Yes, sir.

Qx Did you tell him that the men got behind you and pushed you into the hallway?

Objected to; sustained; exception.

Q What did you tell Officer Sullivan? A That, as I was going out of the saloon, the men shoved me from the rear into the hallway.

Q Did you tell Officer Sullivan that? A Yes, sir.

Q And that was on the same day as the occurrence? A Yes, sir.

BY THE COURT:

Q What did you tell Officer Sullivan? A I told him that

I was shoved into the hallway from the rear, and he said "Could you see the men?" And I said, "No."

Q And you told that to Officer Sullivan on the day of the shooting? A Yes, sir.

BY MR. FALLON:

Q Now, just tell us what you said to him? A I told Officer Sullivan I was coming down to meet Mr. Simpone, to get a check rectified, and he said "What is this check for?" And I said, "I sold him some jewelry."

And he said, "Are you sure you sold him jewelry?" And I said, "Positive." And he said, "Why, Melli says you bought some whiskey," and I said, "I don't deal in whiskey. I deal in jewelry." "This is the check I was paid for selling a diamond bracelet." And Officer Sullivan said, "Now, tell the truth. What is this check for?" And I said, "This is a check that I sold a bracelet to Mr. Simpone."

And he laughed, and he kept on questioning me, and he said "Are you sure it was for a diamond bracelet?" And I said "Positive. You can call Mr. Simpone on the phone." Sergeant Mooney can vouch for me, because he knows me from selling jewelry around the neighborhood," and they called up Sergeant Mooney, in the 30th Street Station house.

Q And what was the value of the jewelry that you had with you? A About \$2200., including the check.

Q Well, was this real jewelry? This was not imitation

Jewelry, was it? A No, sir.

Q It was all genuine jewelry? A Yes, sir.

THE COURT: We will suspend now, gentlemen, until two o'clock.

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

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A F T E R R E C E S S .

W I L L I A M S T E R N, the defendant, on the stand.

THE COURT: Proceed.

MR. FALLON: You may inquire.

CROSS EXAMINATION BY MR. BROTHERS:

Q Have you ever been convicted of crime? A About eleven years ago I got in a little trouble over a coat, or so. I got three months.

Q What were you convicted of? What do you mean you got in a little trouble over a coat or so? Did you steal the coat?

A I was accused of it.

Q Well, you pleaded guilty, didn't you? A No, sir.

Q Were you tried? A Yes, sir.

Q And convicted? A Got three months in the workhouse.

Q Was that the first time you were convicted? A Yes, sir.

Q And you stole that coat from a clothier named Morris Mack, at 718 Broadway, is that right? A I didn't steal the coat.

Q What? A I didn't steal the coat.

Q Although you have been convicted and served a term of imprisonment, you still claim you didnot steal the coat? A Yes.

Q Well, did you have anything to do with it? A Well, I was told to deliver it.

Q Well, what were you working at, at that time, 1911?

A Clothing house.

MR. FALLON: Talk up, won't you, please?

BY MR. BROTHERS:

Q What clothing house? A I can't remember the name.

It was on Broadway and 4th Street.

Q Was that the man who charged you with stealing the coat?

A He didn't chargeme. It was the elevator man.

Q Well, I don't want to twist words with you. You know whether or not you were accused of stealing a coat from your employer, don't you?

MR. FALLON: I object to that, sir. We are now going behind the conviction.

MR. BROTHERS: No, I am not going behind it. I am trying to find out what manner of man the defendant is, as a witness.

MR. FALLON: I object to that statement. I wanted

to go into that situation--

MR. BROTHERS: To save time I will withdraw that question.

BY MR. BROTHERS:

Q By what name were you known at the time you were convicted of petty larceny, in Special Sessions, in August, 1911?

MR. FALLON: I most strongly object to that. It is not competent at this time. The conviction speaks for itself, and they brought it out.

THE COURT: Objection overruled.

MR. FALLON: Exception.

BY MR. BROTHERS:

Q Will you answer, please? A Under the name of Kudish.

Q Were you known as Herman Kudish? A Yes.

Q Is that your right name? A No, sir.

Q What is your right name? A William Stern.

Q Well, were you working for this clothier on Broadway, at 4th Street, under the name of Kudish? A Yes, sir.

Q How long did you go under the name of Herman Kudish?

A A short while.

Q Well, about how long? A Five or six years.

Q Well, what was your purpose in going under the name of Herman Kudish? A I was arrested once for shooting crap, and I give that name.

Q Were you punished for shooting craps? A No.

Q Is that the only reason that you continued to live and work, for five or six years under the name of Herman Kudish, that you had been arrested once for shooting crap? A Yes, sir.

Q Now, were you convicted on another occasion? A No, sir.

Q What?

THE COURT: The answer is "No, sir."

Q You were not convicted on another occasion? A No, sir.

MR. FALLON: If your Honor please, he said no. I object to any repetition of the same question.

BY MR. BROTHERS:

Q Were you convicted in the City of Boston, on the 31st of December, 1914? A No, sir.

Q Under the name of Henry Smith? A No, sir.

Q And did you serve three months in the House of Correction there? A No, sir.

MR. FALLON: For what? I ask for what? If he specifies one part--

MR. BROTHERS: You may look at this paper.

MR. FALLON: Oh, lascivious cohabitation.

BY MR. BROTHERS:

Q Is that true? A No, sir.

Q Were you ever in the City of Boston? A No, sir.

Q Now, were you fingerprinted when you were arrested?

MR. FALLON: I object to that. He says he wasn't here.

THE COURT: On the question of identity I will allow it.

MR. FALLON: Exception.

BY MR. BROTHERS:

Q Were you finger printed by the police of this City when you were arrested in the case upon which you are being tried?

A Yes, sir.

Q Were you finger printed when you were convicted of petit larceny in 1911? A Yes, sir.

Q And were you photographed? A I think so.

Q What? A I think so.

Q Now, when you left the workhouse in 1911 or 1913, where did you go; where did you go to live? A I went home.

Q Where? Where was your home? A I was living in 8th Street at that time.

Q Did you go to work? A Yes, sir.

Q And did you remain in New York all the time up until you were arrested, last Fall? A Yes, sir.

Q You didn't go out of the City? A No, sir.

Q When did you take the name of William Stern again? A When I come out of the workhouse.

Q What is your right name? A William Stern.

Q Where were you born? A New York City.

Q Do you know the address? Have you any idea where it was you were born? A Somewhere on Canal Street.

Q Yes. Are your parents living now? A They are.

Q Where are they? A I haven't been living with them in years.

Q Well, where are they? Do you know? A They are living somewhere in Brooklyn.

Q Have you any idea of the address at which they live?

A No, sir.

Qx When did you last hear from your father or mother?

A About eighty years ago.

Q What? A About eight years ago.

MR. ~~XXXXX~~ BROTHERS: I wish you would keep your voice up louder. It is for your best interest to be heard by everyone.

Q Are you married? A Yes.

Q Where were you married? A In the City Hall.

Q When? A 1915.

Q Do you remember the month and the day of the month?

A In November.

Q Under what name were you married? A William Stern.

Q Where did you go to live after being married? A 313 West 11th Street.

Q When did you first go into the jewelry business?

A Eight and a half years ago.

Q Did you know anything about jewelry at that time? A I was just learning, buying little things down in the Exchange,

buying and selling it.

Q And you had been working as a packer, hadn't you?
Had you been working as a packer, when you were arrested for
stealing this coat? A Yes.

Q Where did you work as a ~~packer~~ packer?
A I don't remember the
name of the place.

Q Well, what did you pack? A Clothing.

Q And you went from that work into the jewelry business,
is that right? A Yes.

Q How long did you know Pasquale Melli before October 12th?
A I met him two or three times around 39th Street.

Q Yes. Ever talk with him? A Just "Hello."

Q Was that all? A Never had any dealings with him.
He had at an automobile at one time.

Q And you bought it from him? A No, sir.

Qx Well, you had something to do with the sale of it, didn't
you? A No, sir.

Q Nothing at all? A It was a friend of mine bought the
automobile from him.

Q What was your friend's name? A Mr. Quinn. He was in
the automobile repair business, and he was looking at the car
one day, and he said "I would like to buy this car," and Melli
said to this friend of mine--

Q Were you there when it happened?

MR. FALLON: Won't you let him finish?

MR. BROTHERS: Certainly. But, with the Court's ^{mission} position, I will ask him one more question first.

Q Where did this talk occur? A 41st Street and Broadway.

It was the first time I met Melli, and Melli asked him a thousand dollars for the car, and this fellow said "It isn't worth that to me. I'll give you \$800." And they had some further talk about the automobile, and they agreed to sell it, and then Melli said he would give a bill of sale, and we went in the car to have a bill of sale made up.

Q Then you knew Melli by name at that time, did you? A No, sir only as "Patsy."

Q Now, how long before October 13th was this transaction about the car? A Oh, seven or eight months, I think.

Q Seven or eight months? A Yes, sir.

Q And how many times after that did you see Melli around in 39th Street? A Why, I would see him now and then, hanging around there.

Q Well, did you ever talk to him about this when you met him? A No, sir.

Q And you don't think that Melli knew you were in the jewelry business, do you? A Well, he seen me hand jewelry to Mr. Simpone around there, and selling jewelry around there.

Q Well, did you tell Officer Sullivan or Officer Moore, right after the shooting, that you didn't know Melli? A He said, "Do you know Melli?" And I said, "I've seen him around. I don't

know him. I've just seen him."

Q Did you tell either of them that you didn't know him?
That is my question. A I don't recollect.

Q Do you recollect talking to Mr. Marro of the District Attorney's office, on the night of the arrest? A In the station house he called me into a room.

Q My question is-- (question repeated) A Yes.

Q Did he asked you whether you knew this man Melli?

A No, sir.

Q Do you remember speaking with Mr. Marro in the station house, the 21st Precinct Station House, at about twenty minutes to nine, on the night of the shooting? A I remember speaking to him -- I don't know what time. He called me into some room there,

Q Do you remember his asking you this question, "Do you know this fellow, Pasquale Melli? A No." A I do not.

Q Was there a stenographer there, writing at the time you were talking to Mr. Marro? A No, sir, there was a gentleman sitting there, but he wasn't writing. Mr. Marro called me in, and I asked him "Who are you?" And he said, "I am from the Assistant District Attorney's office. I have come to get a statement off you. You don't have to make any statements until you see counsel." And I said, "I got no statements to make." And he said, "That's all," and I walked out of the room.

Q Well, do you say that you refused to say anything to Mr. Marro about the shooting? A No, sir.

Q Well, did you say anything to him about the shooting?

A He didn't ask.

Q Didn't he ask you anything? A He just told me I didn't have to make any statements. The officers were asking me about the shooting, and I was telling the officers.

Q Well, did he ask you this? "Q What is your full name?

A William Stern. Q Where do you live? A 312 West 111th Street." A I did.

Q And then, "How old are you? A 35." Is that right?

A I might have said it.

Q Did he ask you whether you were married or single, and did you answer married. A Did you say that? A Yes, sir.

Q And do you remember this question: "Q What is your business?" And did you say "Diamond broker"? A I guess I did.

Qx Did he ask you whether you knew this Paul Boittano, the man who was shot and killed? A I don't remember him asking me that.

Q Did you know him? A I did not.

Q Had you ever seen him before you saw him lying on the sidewalk in front of Flannery's saloon? A I might have seen him once or twice. I am not positive about it.

Q Well are you at all sure about it? A I don't know him. Positive, I don't know him.

Q But my question, sir, is "Did you see him at any time that you can remember, that you can be sure about, before you saw him lying on the sidewalk in front of Flannery's saloon? A Yes.

Q How many times before that had you seen him? A I might have seen him once or twice.

Q Where? A Around that saloon.

Q Now, do you remember this question of Mr. Marro: "Q Did you know this Paul Boittano?" And did you reply "No, I don't know him. Just know him by sight, but I don't know him. I've seen him probably two or three times around there." Did you state that to Mr. Marro? A I don't know if I stated it to Mr. Marro.

Q Well, that is substantially correct, anyway, is it not?

A Yes, sir.

Q And then did he ask you: "Q Do you know this fellow Pasquale Melli?" And did you answer "No.?" A I don't know him. I've seen him around there.

BY THE COURT:

Q The question is, did you answer No. to the question the District Attorney has ready to you? A I don't remember.

BY MR. BROMBERG:

Q Now, do you know the lady who testified here, Mrs. Minnie Klein? A No, sir.

Q You say you don't know her? A No, sir.

Q When did you first see her? A In court here.

Q You had never laid eyes on her until she walked into this court room? A No, sir.

Q You didn't see her frequently, or several times, in the Pre Catalan cafe? A No, sir.

Q Did she ever telephone to you? A No, sir.

Q Did you ever hand Paul Boittano, a pearl necklace, or bead necklace, for her, which was returned to you because she didn't like it or for any other reason? A No, sir.

Q Why did you go down to Hempstead, Long Island, to get this pistol permit, People's Exhibit Number 11? A I was in a jewelry store, at a time last year, and I had a lot of jewelry on me and the jewelry man says "You are taking a big chance, carrying the jewelry around that way." A friend of mine was in the jewelry store at the time, and he said "Why don't you get a permit for a gun?" I said "I don't think it's necessary," and he said, "It's always best to protect yourself." So he knew a Judge, and he said, "Some day when I go out there I'll get you a permit to carry a gun," and I said, "All right."

Q Did you go down there? A I did.

Q Where did you go? A Cedarhurst.

Q Cedarhurst, Long Island? A Yes, sir.

Q How did you get to Cedarhurst? A Took a train at the Pennsylvania Station.

Q Yes. A And went to the courthouse there, and a friend of mine introduced me to the Judge.

Q Yes. A And told him who I was.

Q Did you sign any papers? A The Judge said to me, "Were you ever convicted of a felony?" And I said, "No." And he said, "Raise your right and and swear," and I did, and he gave me a gun -- a permit for a gun.

Q Yes. And that is the Judge who signed this paper? A Yes.

Q Had you before that tried to get a permit in the City of New York?

MR. FALLON: We object to that, if your Honor please. That is not material here, whether he tried to get a permit or not.

THE COURT: Overruled.

MR. FALLON: We except.

BY MR. BROTHERS:

Q Did you pay anything to get that permit?

MR. FALLON: We make the same objection to that.

THE COURT: Overruled.

MR. FALLON: We except.

A One dollar fee.

BY THE COURT:

Q Where was it that you say you met the Judge in Cedarhurst Long Island? A In the courthouse.

Q Whereabouts is the courthouse in Cedarhurst? A I don't know the neighborhood. I went out with this friend of mine.

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

Q What is the name of your friend that introduced you to the Judge? A Mr. Angrolia.

Q What is his first name? A "Rocks."

Q Do you mean "Rocks Angrolia" got the permit for you? A Yes.

BY MR. BROTHERS:

Q Do you know where he lives? A He was living in Long Island then. In Rockaway, I think.

BY THE COURT:

Q In Far Rockaway, was it? A Yes, sir, I think so.

BY MR. BROTHERS:

Q Do you know what business he was in? A Real Estate business.

Q And how do you spell his last name? A Whose last name?

Q The man we have been speaking about. A "Rocks"

Angrolia.

Q Have you seen him since the day you got the permit?

A Oh, I've seen him quite often.

Q And where did you get the gun? A I bought the gun downtown.

Q Where? A At a place in Chambers Street.

Q Well, do you want me to ask you every question, to find out where it was, the name of the place? Where was it? Whereabouts on Chambers Street? A On Chambers, between Broadway and Church Street.

Q What kind of a place was it? A They sell sporting goods there, rifles, and everything.

Q Now, why did you carry these extra cartridges? A Mr. Hirsch the jeweler, asked me to get him some cartridges.

Q When? When did he ask you that? A The 11th of October, to bring him down some .32 cartridges, and I brought them down.

Q Why didn't you give them to him? A I did; he said they were no good for his kind of gun, and I put them back in my pocket.

Q Well, they were just right for your gun, weren't they?
A Yes, because his wasn't an automatic.

Q They were just like the ones ~~xxxxx~~ you had in your gun?
A Yes, sir.

Q And how many cartridges were in your gun, just before the shooting? A Eight.

Q When had you last loaded it? A When I first bought the gun.

Q How many does it hold? A Eight.

Q Did you carry this gun every day? A Yes, sir.

Q Did you have instruction in how to use it? A Yes.

Q Who told you how to use it? A I had a shooting gallery in Long Island, during the war.

Q Oh, you had. A Yes.

Q Where was it? Coney Island? A Camp Upton.

Q Oh, you had a shooting gallery out there? A Yes.

Q For how long? A Six or seven months.

Q So that you knew all about automatic pistols is that right? A I didn't know all about automatic pistols.

Qx Well, this is an automatic pistol, isn't it? A Yes, sr.

Q Now did you know anything about how that pistol was to be loaded, or discharged, before you fired the first shot in that hallway, on October 13th? A Yes, sir.

Q Now, when did you learn the operation of this pistol?

A When I bought it.

Q Well, who gave you any instructions in it? A The salesman behind the counter.

Q Did he show you that there was a safety clip on there?

A He did.

Q Point it out to the jury, will you? A There is the safety clip (indicating).

Q Will you show them how it works? A That way (illustrating).

Q Now, the safety clip is made so that it will not allow the gun to be discharged, is it not? A Yes.

Q Show the jury how it is then? A That way (illustrating).

Q Now it can't be fired? A No, sir.

Q And the only way you can get the gun ready to be fired is to push that catch down, is that right? A Yes, sir.

Q How did you have the gun loaded? Do you remember how it was loaded? A The cartridges were inside, and the gun was loaded.

Q Well, where were they? Were they all in the clip?

A There is always one in the chamber.

Qx When did you put one in the chamber? A The time when

I loaded the gun.

Q And did you always have it there? A Yes, sir.

Q And to get it there you would have to pull this thing back like that (illustrating); wouldn't you? A Yes.

Q And you say that you carried this gun, cocked, in your pocket? A Yes.

Q And did you have the safety clip on? A I did.

Q In which pocket were you carrying it? A The back pocket.

Q Will you put it in your back pocket now, where you had it when you went into the hallway? A That way (illustrating).

Q And how did you have your coat? A Open.

Q And where were you carrying the jewelry? A In my vest and coat pockets.

Q And now, at the time you took the gun out of your pocket, ^{shoved} what was happening? A I was ~~just~~ in the hallway, and when I was shoved in the hallway, they said "Put your hands up, and give us what you have got," and I was shoved up against the wall, and as I was, I ~~up~~ pulled my gun and fired."

Q In which direction did you fire? A I fired inside, in the hall.

Q Well, the time you took your gun from pocket, did anyone have hold of you? A No, sir.

Q Did anybody have hold of you when you went through the doorway? A Yes.

Q And just where were you with reference to the doorway,

when ~~was~~ whoever had hold of you let go? A I couldn't say who was holding me. I was shoved in from the back. I couldn't see.

Q Well, they pushed you into the hallway, did they?

A Yes, from the back, as I was coming out of the saloon.

Q Yes. But you say that at the time you pulled the gun from your pocket, nobody had hold of you? A Yes.

Q Well, now, which is right? Did anyone have hold of you when you took the gun out? A Yes.

Q How many? A Oh, probably two, three.

Q Well, what part of you did they hold you by? A My left arm and my back, and I was shoved in the hallway, and there was a man in the hallway with a gun.

Q And it was pitch dark in there, too, wasn't it? A Yes, it was dark in the hallway.

Q But you saw the man have a gun? A Well, the door was open, and I could see that as I was shoved in.

Q When did you see the man in the hallway with a gun?

A When I was shoved into the hallway, while I was shoved in there was a gun cocked up in front of me, ~~in~~ a man with a gun.

Q By the way, when you came out of the saloon, where did you intend to go? A I intended to wait for Mr. Simpone.

Q He had an office in the Pre Catalan? A Yes, sir.

Q And he was the only person in the neighborhood you wanted to see? A No, sir.

Q Who was the other person? A I was looking also in the Pre Catalan for a lady named Mrs. Gorian. I gave her a diamond ring, a string of pearls, the night before.

Q Then you intended to go into the Pre Catalan Cafe when you left Flannery's saloon? A Yes, and I just put my foot out of the door, and the first thing I realized I was shoved into the hallway.

Q Now will you point out on People's Exhibit 3, this picture, just where you were when the first hand was put upon you?

A (no answer)

Q Can't you recognize the saloon there? A No, sir.

Q In that picture you can't find the saloon that you came ~~out~~ out of? A There is a restaurant here.

Qx Well, isn't it the same building? A Yes, but the saloon isn't there.

I can't see the principal part of the building. It's right next to the Princess Theatre. It is a restaurant on this picture.

Q Well, is there anything in that picture that you recognize?

A I recognize the hallway entrance.

Q Yes. Well, don't you recognize the building out of which you said you came? A There was a canopy then in front of this building, and there were swinging doors.

Q That is the same doorway, isn't it? A Yes, sir.

Q Now will you point out to the jury just where you were when the first hand was put upon you, and you were pushed into the

hallway? A Well, they are different doors here now.

Q But the sidewalk is the same? A Yes.

Q The windows are the same? A No, sir.

Q The doorway is the same? A Yes, sir.

Q Now point out as I have asked you to do. A This was a saloon, and swinging doors in here (indicating). As I was coming out, as I put my foot on the sidewalk -- the people were standing here when I went in (indicating) -- there was a canopy about half a foot in, and I was shoved into the hallway.

BY THE FOREMAN:

Q When you came out of this doorway, which way were you facing? A Towards Sixth Avenue.

BY MR. BROTHERS:

Q Well, why were you facing towards Sixth Avenue? A Well, because I stepped out on the right hand side of the door.

Q Well, you were going to the Pre Catalan Hotel? A I didn't have a chance.

Q Were you going to the Pre Catalan Hotel? A Yes, sir.

Q And that is towards Broadway? A Yes.

Q Towards your left side? A Yes.

Q Were there any steps in front of those doors? A No, sir.

Q Are you sure of that? A I wouldn't call it a step.

Q Well, as you came out of the door, did you have to step down a few inches before you got on the sidewalk? A Yes.

Q And had you not stepped down on the sidewalk? A One foot.

Q One foot? A Yes, sir.

Q Now you say that somebody was standing near the door when you came out? A Was standing there when I went in.

Q When you went in? A yes, sir.

Q Well, was there anyone standing there when you came out?
A I didn't get a chance to look. I was shoved from the rear.

Q From the time you came out of that saloon, until you fired the shot, did you see any person whatever? A I did not.

Q Well, what did you do when somebody took hold of you in front of that door? A Before I ~~xxxxxx~~ realized, I was in the hallway.

Q I asked you what you did, if you did anything? A I tried to get loose.

Q Yes, and you say that somebody pushed you from that doorway, across the sidewalk and into that vestibule, and through both those doorways, and ten feet further in? Without your seeing anybody? A Yes, sir, but I wasn't pushed across the sidewalk.

Q Well, how did you get ~~to~~ ^{from} the doorway of the saloon, to the hall door if you were not pushed across the sidewalk, or along the sidewalk? A Well, that was along the side.

Q Well, then is that true, that you were pushed that distance? A Yes.

Q And you didn't see any person at all? A Not until I got into the hallway.

Q Not until you got into the hallway? A No, sir.

Q Now, when you got into the hallway, whom did you see?

A The deceased.

Q Oh, you saw the deceased in there? A Yes, sir.

Q Was he in there before you got in there? A I don't know.

BY THE COURT:

Q Did you recognize him as a man known to you as Pauly?

A Yes, sir.

Q Before you fired the shot? A Yes.

Q Did you recognize him as a man you knew before? A Yes, sir.

Q Well, didn't you tell the District Attorney that you didn't see anybody you knew? A Afterwards.

Q Wait a moment. Didn't you tell the District Attorney that you didn't see anybody, from the time that you were pushed from the saloon door, up to the time you fired the shot?

A (no answer)

Q Didn't you tell the District Attorney that? A I don't think so.

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

MR. FALLON: May he not explain, in answer to your Honor's question, what he did say?

THE COURT: No, he says "I don't think so." That is an answer. Proceed.

BY MR. BROTHERS:

Q Now where was this man that you say you knew as Pauly, when

you caught sight of him the first time, after you came out of the saloon? A In the hallway.

Q How far in the hallway was he? A About halfway in the hallway.

Q Well, what do you mean by halfway? A Between the ~~stairs~~ ^{stairs} and the entrance to the hall.

Q And when you caught sight of him about how far away from you was he? A About ten feet.

Q He didn't push you in the hallway, did he? A I don't know if he did or not.

Q Well, he was in there before you got in, you say?

A Before I realized I was in the hallway.

Q And he was ten feet away from you, you say? A When I got my hands unloosened.

Q Well, who opened the door to get into the hallway, do you know? A The doors were open.

Q The doors were open? A Yes, sir.

Q You were struggling with whoever was pushing you? A Yes.

Q You fought with them? A Not until I got into the hall.

Q Did you fight on the sidewalk? A No, sir, I didn't get a chance.

Q Did you turn around? A No, sir.

Q Well, whereabouts did anybody have hold of you? What part of your body? A From the rear.

Q (repeated) A My back and my left arm.

Q Your back and your left arm? A Yes, sir.

Q What part of your back? A They grabbed me this way
(illustrating).

BY THE COURT:

Q Do you mean by the back of your coat collar? A Yes, sir.

BY MR. BROTHERS:

Q And your left arm? A Yes sir.

Q Was anythin' said by anyone?

MR. FALLON: When? May he not say whether it was
inside or outside of that hallway?

THE COURT: Well, I will not direct him how to put
his questions. But, if the questions are improper, if
you object, I will sustain your objection.

MR. FALLON: Then I object to this question.

THE COURT: Overruled.

MR. FALLON: Exception.

BY MR. BROTHERS:

Q Do you say that you when you stepped out of this
saloon it was bright daylight, was it not? A Yes.

Q You opened the door and you stepped out onto that side
walk, in bright daylight, and you didn't see any person there?

A No, sir.

Q No person there at all? A No, sir.

THE FOREMAN: Can I ask a question, your Honor?

THE COURT: Yes.

BY THE FOREMAN:

Q Were those swinging doors? A Yes, sir.

Q Did they go right down to the ground? A No, sir there was a space above the sidewalk.

Q Couldn't you see any feet under those doors? A No, sir.

Q Did you use one hand or both hands, going out, in opening the swing doors? A Just one hand, my righthand. And I had just one foot on the sidewalk, when I was shoved into the hallway.

Q Then you didn't see any feet under the swing door on either side? A No, sir.

BY MR. BROTHERS:

Q How many steps did you take outside of the door, before you felt anybody touch you? A One step.

Q And how far was your back away from that door? A My back was outside.

Q Yes. But how far away from the door which was behind you? A About a foot.

Q And you were grabbed from behind, is that right? A Yes.

Q Was the door closed at that moment? A It is a swinging door.

Q Was it closed? A It was open.

Q How was it open, if it was a swinging door? A I had my hand on it, and I was pushing it open that way (illustrating).

Q In fact, you had not got out of the door when you were grabbed? A Yes, sir.

BY THE COURT:

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Q Do you mean by that, that you hadn't gotten out of the door when you were grabbed, the doorway? A I just had one foot on the swinging door, and one foot on the sidewalk, and I was shoved right into the hallway.

Q Before you had time to take your hand off the swinging door? A Yes, sir.

BY MR. BROTHERS:

Q And did the door swing in and out (illustrating)? A Yes.

Q And you had your hand on it, and it was pushed out towards the sidewalk? A I don't understand what you mean.

THE COURT: He says he was pushing the door out, Mr. Brothers.

MR. BROTHERS: All right, sir.

Q Now, when you were grabbed by the back of the neck and arm at the same time-- A Yes, sir.

Q And did you turn around to see who it was? A I didn't get a chance.

Q I didn't ask you if you had a chance. Did you? A No, sir.

Q Why not? A Because they had a hold of me, and I was pushed in the hallway before I realized what had happened.

Q Was anything said when you were grabbed? A Where?

Q Well, where they grabbed you. That's what I want to know. Was anything said when they grabbed hold of you? A I was in the hallway before I realized anything happened.

Q (repeated) A No, sir.

Q Well, did you call for help? A I didn't get no chance.

Q Don't you like to answer my questions?

MR. FALLON: Now, I object to that.

THE COURT: Objection sustained.

BY MR. BROTHERS:

Q Did you call for help? A I did not.

Q Did you pull your gun out? A I did.

Q Before you got into the hallway? A No, sir.

AQ Now, as you were being pushed, as you claim along the sidewalk, you were being pushed towards Sixth Avenue, weren't you? A Yes.

Q You were going towards Sixth Avenue? A Yes, sir.

Q How many people do you think were holding onto you?

A Two or three.

Q Two or three? A Yes.

Q Could you see any part of their bodies, or legs, or arms? A No, sir.

Q And did you do any struggling at all? A Not until they put me in the hallway, and I realized what happened.

Q And how far in the hallway were you when you say you began to struggle? A I was about ten feet in the hallway.

Q You had to pass through both doors? A I was shoved through both doors. I was shoved right into the hallway.

Q Now, then, you had been shoved through both doors?

A Yes, sir.

Q Could you reach out with your hands and touch the casings of those doors? A They held my hands.

Could

Q ~~Did~~/you reach door casings, of those doors with either hand, as you passed through? A I don't know what you mean by door casings.

Q Don't you know what a door casing is? A No, sir.

Q It is the side of the doorway that the door hangs on.

A On that side, my hand was held.

Qx Well, how about the other hand? A There is no doorway on that side.

you

Q Did ~~you~~ go right around the corner of the show window there, to get into the doorway? A There was then a round canopy there.

Q A canopy? That was an awning, was it not? A No, sir.

Q Did the canopy touch the sidewalk? A No, sir.

Q Well, did you go around the corner of the building, close ~~to~~ to it, when you went into the hallway? A As you step out of the door, it is a triangle, right into the hallway. The saloon wasn't built the way it is now. It is a restaurant now. There are altogether different men.

Q Was there a window in the doorway then? A Yes, a small window.

Q Smaller than this one (indicating)? A Yes, sir.

Q Well, did you pass by that window? A Yes.

Q And didn't touch any part of the building, or the doors, as you went into the hallway; did you? A No, sir.

Q Were there any other people on the sidewalk at that time

A I don't know.

Q Did you see any? A I didn't realize anything like that.

As soon as I put my foot out of the door, I was grabbed.

Q Did you see any people on the sidewalk? A No, sir.

Q Had you ever been in that hallway before? A Yes.

Q When? A Numerous occasions.

Q What were you doing in there? A I went in there to get a glass of beer.

Q In the hallway? A For the entrance to the back room.

Q You frequently went through that hallway, didn't you?

A No, sir.

Q Well, didn't you just say you had been in there on numerous occasions? A I did.

Q Well, when was the last time before the shooting that you had been in that hall? A Before Prohibition.

Q Well, that's very indefinite, before Prohibition. Could you fix the day a little better, in point of weeks or days? Had you been in that hallway that day, the day of the shooting? A No, sir.

Q Had you been in there the day before? A No, sir.

Q Or the week before? A No, sir.

Q Well, the last time you were in that hallway, had they any light burning in it? A Yes.

Q And was there a light burning at the time of the shooting?

A No, sir.

Q Do they keep that door locked, the front door? A After hours.

Q Did they keep the door locked at any time? A Yes.

Q When? A After hours, twelve o'clock at night.

Q I am speaking now of the outside door, that leads into the hallway from the street? A Yes, sir, that's the door I am talking about.

Q During the day anybody could walk in, couldn't they?

A Yes, sir.

Q Where did you know this man who was called Pauly? A I didn't know him.

Q Didn't you tell us here, about fifteen minutes ago, that you knew as Pauly, or called him Pauly?

MR. FALLON: I object to that, as misconstruing his testimony. He said that he knew who he was, not that he knew him.

THE COURT: Objection overruled.

MR. FALLON: We except.

BY MR. BROTHERS:

Q Didn't you say to Judge Talley, a moment ago that when you went into the hall that you saw a man that you knew and recognized as Pauly? A I didn't know him then, I didn't know his name then. I know it ~~now~~.

MR. BROTHERS: May I have the stenographer's minutes upon that point read? Your Honor asked him just that question. May I have the testimony read?

THE COURT: Yes.

(The testimony is read by the stenographer).

MR. FALLON: And I object to that. He meant to say that he didn't know him by name.

Overruled; exception.

BY MR. BROTHERS:

Q Now, did you understand what the Judge asked you, and what the stenographer has just read, when he asked you that question? A I understood the question to be if I knew him when he was standing in front of the saloon. I didn't know his name then. I had practically only seen him standing around here once or twice. I didn't know him.

Q Now, did you tell the jury this morning, that you didn't see anybody in the hall at all? Even when you fired the shot, that it was too dark? A I did not.

Q Well, were you being pushed through doorways facing into the hall? Do you understand that? A No, I don't.

Q As you were pushed from the sidewalk, as you claim, into the hallway, which way were you looking? A I just put my foot through the swinging doors. I was just coming out of the door and had put my foot down, and naturally, my face was to Sixth Avenue. It was the right hand door that I opened.

If I opened the left hand door, my face would be towards Broadway.

Q Did you walk towards Sixth Avenue? A I didn't get a chance to.

Q Now, will you sit down again and listen to the question? When you came to this hallway where the shooting happened, as you went into that hallway and through the doorway, which way were you looking? A I didn't go into it. I was pushed into it.

BY THE COURT:

Q Which way were you looking when you got into the hallway? Never mind whether you walked, crept, or were pushed? A My face was towards Sixth Avenue.

BY MR. BROTHERS:

Q Now you passed through the first door, didn't you?

A There is only one doorway there.

Q Now, I have got just as much time as you have.

MR FALLON: Now, I object to that, if your Honor please

THE COURT: Yes, we will not argue with the witness at all.

MR. BROTHERS: I don't intend to, sir. It is the last thing in the world that I wish to do.

BY MR. BROTHERS:

Q Now, you went from the sidewalk into this vestibule?

A No, I didn't go. I was shoved.

Q Well, as you were shoved from the sidewalk into the

vestibule, at 108, did you see into the hallway, could you see into the hallway? A No, sir, not until I was shoved in the hallway.

Q How far in the hallway were you when you first saw into the hallway? A About ten feet.

Q Ten feet? A Yes, sir.

Q And at that moment what was the thing you saw? A A man in front of me, and "Put them up and give us what you've got".

Q Who had the gun? A The deceased.

Q How far away from you was he then? A About ten feet.

Q Was he ten feet from you? A About ten feet, yes.

Q Now will you indicate here from where you sit, some object in the room which you say is ten feet? A From here to about here (indicating the nearest end of the District Attorney's table).

Q And that is the first time you saw the man in the hall with the gun? A Yes, sir.

Q He was further from the ~~ix~~ street than you were, is that right? A Yes, sir.

Q Had anybody passed you as you were being pushed into the hall? A I don't know.

Q Is it a narrow hall? A About five or six feet wide.

Q Where was the light coming from? A From the street.

Q From 39th Street? A Yes, sir.

Q It was coming from behind you, is that it? A Yes.

Q Could you see who was near you at that time? A The deceased was in the hallway.

Q Well, he was ten feet away from you. Now, was there anybody any nearer to you than he? A There was a stocky man with a moustache.

Q Where was he? A In the hallway.

Q Whereabouts in the hallway? A Why, he held me.

Q Where was he holding you? A Well, when I was pushed in, they had me by the back of the arm and I was wriggling up against the wall.

Q What was the stock man doing when you saw him in the hall? Please tell us. A He must have been one of them that shoved me in there.

BY THE COURT:

Qx What was he doing when you saw him, that was the question. A They had a hold of me, trying to go through me.

Q What was the stocky man with the moustache, doing, when you saw him for the first time? A They were going through my clothes.

Q Was the stocky man with the moustache, going through your clothes, the first time you saw him? A No; they were standing in front of the saloon before I come out of the saloon. They were standing in front of the saloon, ~~xxxxxx~~ three of them.

Q Did you see them before you came out of the saloon?
A I seen them going in.

Q Going in where? A In the saloon.

Q Were they in the saloon at the same time you were in the saloon? A No, sir.

Q Did you see them in the saloon at all? A No, sir.

MR. FALLON: May I put on the record that he said he saw them when he was going in?

THE COURT: Don't interrupt my examination. I know, and the jury know, I am sure, exactly what the witness says.

BY THE COURT:

Q Where were they as you saw them when you were entering the saloon? A They were at the window, facing the curb.

Q What attracted your attention to them when you were entering the saloon? A I asked Melli if he seen Simpone.

Q What did he say? A He said no. "What brings you around?" I said, "I had an an appointment with Simpone."

Q At that time did you recognize the other two men who were standing with Melli? A Yes, sir.

Q Who did you recognize? A The deceased, and the stout man with the moustache.

Q That is, you recognize the deceased, as the man known to you as Pauly? A No, sir, I didn't know his name then.

Q Before you saw him standing with Melli, had you ever seen the man now known to you as Pauly before?

A I seen him once or twice around there.

Q Had you ever spoken to him before that time? A No, sir.

Q Did you know what business he was in? A No, sir.

Q Did you know anything about him before that time?

A Yes, sir.

Q From conversations you had had with other people?

A Yes, sir.

Q And you say you never had a talk with him at all?

A No, sir.

Q Now, when you came out of the saloon, and you say you were pushed towards the doorway, did you recognize the same three men, when they began to push you, or came behind you, or touched you, as the three men that you had seen when you went into the saloon? A I didn't see who shoved me into

the hallway while I was in there.

Q And then did you recognize them as the same three men? A I recognized the deceased and the man with the mustache.

Q Did you recognize Melli? A Not until after I came out of the hallway.

Q After you fired the shot? A Yes, sir.

BY MR. BROTHERS:

Q What was the stout man with the mustache, doing?

A He was starting to go through my clothes (illustrating).

Q Was he in front of you or behind me? A He was behind me.

Q How did you see him, if he was behind you? A When I got sideways of him, I got a side view of him, as he was going to put his hands in my pockets.

Q And the deceased was ~~xxxx~~ ten feet away at that moment?

A About that.

Q Was he pointing a gun at you? A Yes.

Q Now, at that time, was there any light in the hall?

A Just coming in from the street.

Q Did you state, this morning, that the hallway was so dark that you couldn't see anything, when these men were trying to go through you? A No, sir.

Q Well, was it dark? A It was dark; yes, sir.

Q Well, when was it you pulled the gun out? A When they was going through me, when they had started to go through

my clothes, and after this man said, "Put your hands up and give us what you have got."

Q Had they let go of you then? A No, sir, they still had hold of me.

Q And you were able to pull this gun out of your pocket? A Yes, sir.

Q And was that the first time that you thought of the gun? A Yes, sir.

Q And did you remember, too, that you had to adjust the safety clutch? A As I pulled it, I did.

Q As you pulled it, you did? A Yes, sir.

Q And, when you pulled it out, at whom did you fire?

A At the man in front of me, with the gun, and I fired the shot, and they let me loose; and two shots were fired back at me.

Q By whom? A By the man with the gun.

Q That was the dead man? A Yes, sir.

Q Did either of them hit you? A No, sir.

Q And these men had been wrestling with you? A When I fired, they had loosed their hold on me.

Q How close was the nearest man to you when you fired the shot? A Why, right beside me (illustrating). I was sideways up against the wall.

Q Were they close enough to you to touch you? A They had hold of me.

Q And when you fired the shot, did they let go of you, or try or hit you, ~~xxxxxx~~ to take the gun away from you? A They let me go.

Q They didn't try to take the gun away from you?

A No, sir.

Q And the stout man, in particular, didn't? A No, sir. I don't know if they tried to.

Q Now, who was the first man out of the hallway?

A Those two that had hold of me.

Q Who was next? A I came out of the hallway next.

Q You came out? A Yes, sir.

Q Now, at the moment you fired the shot, which way were you facing? A I was facing in the hallway.

Q In the hallway? A Yes.

Q And were you standing in the center of the hall, or nearer the one side or the other? A At the side of the hall.

Q Which side? A The one towards Broadway.

Q And was that the side that you had your right hand towards? A Yes, sir.

Q Now, at the time you fired your ~~short~~ shot, you fired toward the back of the hall, did you? A Yes.

Q And there was only one man then in front of your gun; is that right? A I don't know if there was one or two there. It was very dark in the back and I couldn't see

who was in the rear.

Q Did you try to shoot somebody? A I fired to be unloosened and get out of the hallway.

Q What was your purpose in shooting? A To make them leave me loose, and to get away from there.

Q Why, then, didn't you shoot at the man who had hold of you, or the men who had hold of you? A When I shot, I shot in the hallway. I didn't know who was inside in the hallway.

Q Is that true, that, when you fired in the hallway, you didn't know who was in there? A I knew the deceased was in there. I seen him, but I couldn't say who else was in there.

Q Well, didn't you say you saw the stout man, with the mustache? A Yes, he was alongside of me (illustrating).

Q And you shot so that they would let go of you?
A Yes.

Q Well, then, why didn't you shoot the man that had hold of you? A Well, I couldn't turn around. When I got out my gun, I fired right into the hallway.

Q Now, when you had the gun in your hand, there was a man right alongside of you, was there any reason why you couldn't have done just as I am doing (illustrating), point the gun right at him, and shoot him? A Well, I wasn't thinking of them things then. When they shoved

me in the hallway, I pulled and fired.

Q Didn't you just now state that ~~that~~ your purpose was to make these men let go of you? A Yes.

Q And then I ask you again, and for the last time, why you didn't shoot the man that had hold of you? A I didn't want to shoot anybody.

Q Then why did you pull the gun? A To protect myself, have them to release their hold on me.

Q Now, when you came out of the doorway, what was the first thing you saw? A When I come out of the doorway, I started running towards Broadway.

Q (Question repeated) A I saw Melli after me.

Q Was he coming out of the hallway after you? A I don't know where he was coming from.

Q Where did you see him? A Chasing me.

Q Where was he? A Why, when I got out of the hallway, and I was down in front of the express office---

Q No. When you got out of the hallway, you were not in front of the express office; you were in front of the doorway of 106; weren't you, and what was the first thing that you saw as you stepped out into the daylight?

A I seen people around.

Q Anything else? A Not that I noticed.

Q What people were they? A I don't know.

Q Were they strangers? A I guess so.

Q Where did you intend to go? A Down to the corner of Broadway, to get an officer.

Q Yes. And did you walk or run? A I started in running down towards Broadway.

Q Now, how far had you run before you saw any person that you did know? A Melli was trying to grab me.

Q Perhaps you didn't listen to the question. How far had you run from this hallway, before you saw some person whom you knew? A (No answer.)

Q Did you go two feet, ten feet, or a hundred feet? A I didn't look back.

Q Well, after you left that hallway, and before you were arrested, did you see any person on the street whom you knew? A No, sir.

Q Did you see anybody? A I didn't stop to look.

Q Did you see anybody on the street whom you knew? A Not that I noticed.

Q You saw Melli? A Not until I was away down the street, when I heard him right in back of me.

Q How far were you from 108, after coming out of this hallway, before you saw Melli? A 116.

Q What building is that? A That's the building where the express office office is.

Q Yes. And you didn't look behind you at any time? A Not at all.

A Not at all, not until I got there.

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Q And then you did look behind you? A Yes.

Q When you came out of that doorway, did you look around to see if the stout man, with the mustache was on the sidewalk?

A I did not.

Q Did you look to see if Melli was waiting there or standing there? A No, sir.

Q But you say they went out ahead of you? A Well, when I got out of the hallway, all I was thinking of was to get to Broadway, to get an officer.

Q But they got out of the hallway before you? A Yes.

Q And you still had the gun in your hand? A I did.

Q At that time were you still afraid of Melli and the stout man with the mustache? A Yes.

Q Well, didn't you look to see where they were? A I did not.

Q Why not? A Because I wanted to get away from there, to get an officer.

Q Weren't you afraid that, when you came out of the hallway, they might be there, waiting for you? A As soon as I came out of the hallway, I went towards Broadway.

Q Were you afraid, as you came out of the hallway, that either Melli or the stout man might be waiting for you on the sidewalk? A Yes.

Q Why, then, didn't you look to see if they were there?

A I don't know everything. It was in the impulse of the

moment (illustrating).

Q Did you see what became of Pauly? A No, sir.

Q Did you stop to see? A I did not.

Q Now, you were very well known in Flannery's saloon?

A Yes, sir.

Q And you were very well known in the Pre Catalan Hotel?

A Yes, sir.

Q Why didn't you run into the Pre Catalan Hotel? I was running towards Broadway, to get an officer. I had jewelry on me. I wanted to let an officer know that I was held up in that hallway.

Q Was that the only reason why you didn't run into the hotel? A I didn't think of it. I was only running to Broadway, to get an officer, to get away from these people.

Q Why you ran over 150 feet; didn't you? A Yes, about that.

Q And you never looked behind you? A No, sir.

Q Well, how is it you saw Melli if you didn't look back of you? A Because I heard a noise, footsteps, behind me, and I looked around, and he said, "You Jew son of a bitch, I kill you."

Q Why didn't you tell us that this morning, that he said, "You Jew son of a bitch, I kill you?" A (No answer.)

Q Did you tell us this morning? A No, sir.

Q Why didn't you? A I didn't think of it.

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Q Why not, why didn't you think of it? A It just come to me, what he had said.

Q And he didn't have anything in either hand; did he?
I
A ~~He~~ had the gun.

Q I say, did he have anything in his hand? A I don't know, but I seen something shiny in his hand.

Q Did you say anything about that, this morning?
A I told the officers about it.

Q But did you say anything to this jury, this morning, about seeing something shiny in Melli's hand? A No, sir.

Q Why didn't you? A It wasn't in that conversation.

Q You were, examined, this morning, and told to tell everything that happened; weren't you? A Yes, sir.

Q Well, then, why didn't you say that you saw something shiny in Melli's hand? A Well, I wasn't through; I hadn't said everything when I came back to court.

Q After recess, do you mean? A Yes, sir.

Q Now, then, when you turned around, and saw Melli, where was it? A Right in front of the express office.

Q How far away from you? A About two feet.

Q Could he have touched you, if he put his hand out (illustrating)? A Yes, sir.

Q And did he put out his hand to touch you? A I had my gun out, and I run around an automobile, and him after me, and

I fired a shot to keep him away from me, and he ran around the automobile, and I fired two shots to bring the police, and I told the officer this was one of the men that robbed me, and there was another down the street, that had been shot.

Q How did you know that he was shot? A Because I fired the shot.

Q Didn't you just say that you didn't know, when you came out of the hallway, what had become of Pauly, and now you ~~said~~ say you told the officer that he had been shot?

A I thought so, yes.

Q What makes you think so? A Because people were running down.

Q What makes you think Pauly was shot? A Because he was in the hallway when I fired the gun.

Q Is that the only reason? A That's all. I wanted to let the officer know that there was some shooting going on down the street.

Q You thought, merely because you had fired off the gun, that Pauly had been hit? A No, sir, not him in particular.

Q Well, you knew two men had gotten out ahead of you? A Yes, sir.

Q And you knew that they hadn't been hit? A Yes, sir.

Q And did the crowd make you think anybody had been hit?

A Yes, sir.

Q And where was the crowd? A All along that street and in front of the saloon.

Q Well, you saw that you had wounded Pauly; didn't you?

A No, sir.

Q Why, you knew that you had shot him twice, didn't you? A I didn't know that.

Q Don't you know that you shot him in the hallway, and then, when you got out, and he got out on the sidewalk, you shot him again in the leg? A No, sir.

Q And you had eight shots in this pistol? A Yes, sir.

Q And you fired only four shots? A I fired six.

Q You said that you fired one shot in the hall, and one at Melli, as he was running around the automobile, and two into the air?

MR. FALLON: That is objected to, as not stating the evidence.

Objection overruled. Exception.

A I shot one shot, and then I was fired at, and I got loosened with the first shot, and I fired two more shots to make them loose me.

Q How many shots did you fire in the hallway, do you say? A Two.

Q At whom did you fire the second shot? A I was firing in the hallway.

Q Yes. And how many did you fire on the street?

A Three or four.

Q Didn't you tell me that, in the hallway, you fired one shot, and then these men let go of you, and ran out into the street, after firing two shots at you?

MR. FALLON: I object to that. That is not the testimony, and that is the second time it has been misquoted.

MR. BROTHERS: I am asking him if he said that or not.

Objection overruled. Exception.

Q Didn't you say to me that you pulled your gun, and fired one shot back into the hallway, to make these men let go of you? A I did.

Q And then you got fired at you? Is that right?

A Yes, sir.

Q And that these men let go of you, and two of them went out of the hallway? A Yes, after two shots were fired at me, I fired another shot.

Q And you know that there were ^{only} loaded shells found in your gun, don't you? A Yes.

Q And you had eight loaded ones when you started?

A Yes, sir.

BY THE COURT:

Q And you fired some shots to attract attention outside?

A Yes, sir.

Q You said that; didn't you? A Yes, sir.

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Q How many shots did you fire outside? A I must have fired four shots, outside.

Q Not what you must have done, but how many shots did you fire? A Three or four.

Q Well, which is it, three or four? A Four, I think.

Q Then how many shots did you fire at Melli? A Well, that's the shots I was talking of, outside.

Q Then we will go back. I asked you how many shots you fired outside, to attract attention, as you say? A Four. I fired ^{two} in the air.

Q You fired two in the air? A Yes.

Q When did you fire those two? A Down towards Broadway, when I was being chased around the automobile.

Q And then did you fire additional shots at Melli?

A I fired one shot at Melli first, and then I pulled the gun, and fired in the air.

Q How many times? A Two or three times.

Q Now, go over that again, and tell me how many shots were fired, beginning with the first shot you fired in the hallway. Now, tell us where you fired them, and where you were when you fired them. A I fired two shots in the hallway, then, when I ran out of the hallway, towards, Broadway, I fired the balance of the shots.

Q Did you fire one of those shots at Melli? A Yes.

Q You were trying to hit him? A Yes, sir.

Q And the other three out of those four additional shots, you say you fired to attract the attention of the police? A Yes, sir.

THE COURT: Proceed, Mr. Brothers.

BY MR. BROTHERS:

Q Well, what did you want to hit Melli for? A I wanted to get him away. He was trying to hit me.

Q How far from him were you when you fired? A About three feet or so.

Q Was he running towards you or away from you at the time? A He was running around the automobile.

Q Was he chasing you or were you chasing him? A We were chasing one another around that machine there.

Q Well, who was ahead? A I don't know.

Q Well, did he have his back to you, or you towards him? A Both our faces were together.

Q Well, when you shot at him, what did he do? A He backed up.

Q Now, if you wanted to attract attention, why didn't you fire the gun as soon as you came out on the street from the hallway? A I didn't think it was necessary, because I was running towards Broadway, and I knew there was an officer stationed on the corner.

Q And there was one stationed on Sixth Avenue, is there not? A Not that I know of.

Q Now, did you have this gun under the corner of your coat when the policeman came up, as I have indicated?

A Yes.

Q Where was the gun? A In my coat, when the policeman got him.

Q But where was the gun when you say the policeman came up to you? A In my pocket.

Q Well, why did you say that you had it in your hand? Is that a mistake? A I didn't understand you meant, then.

Q I asked you where the gun was when the officer first came up to you, and you said it was in your hand, and then you said also it was in your pocket. Now, where was it? A In my hand.

Q And did you run in the street with the gun in your hand? A Yes, sir.

Q And Melli kept coming after you, though you had a gun in your hand? A Yes, sir.

Q Now, the people whom you knew in the jewelry business knew that you were carrying a gun? A Some of them did.

Q Now, did one of these officers jam you up against the Casino Theatre wall, and take the gun away from you?

A No, sir.

Q Nothing like that happened? A No, sir.

Q Did you tell officer Sullivan, "I was shoved into the hallway from the rear, and I couldn't see who did it"? A Yes.

Q Why then did you accuse Melli, if you didn't know who had shoved you into the hallway? A He asked me did I see who was shoving me in the hallway, and I couldn't see who shoved me, because I was shoved from the back.

Qx Well, why, then did you accuse Melli of shoving you into the hallway, when you didn't know who had done it?

A Well I knew they were standing there, and wasn't there for any good purpose.

Q Did you ever have any trouble with them before that day?

A No, sir, but I knew what they were.

Q Did you ever have any trouble with Melli before that day?

A No, sir.

Q Did you ever have any trouble with Paul? A No, sir, I didn't know him.

Q Did you ever have any trouble with the stout man, with the moustache? A No, sir.

Q Then I ask you again, if you didn't know who pushed you into the hallway, why did you accuse Melli of being the one who robbed you in the hallway? A Because he was chasing me.

Q Now, was it because he was chasing you or because you saw him standing in front of the saloon? A Both.

Q You thought Melli was chasing you, did you? A I didn't think. I seen him when I turned around.

Q Was there anyone else running in your direction, besides Melli? A Melli was the one close to me.

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Q Were there other people running after you? A I didn't take notice. I didn't see anybody.

Q Now, when did you, for the first time, talk to Melli about selling or purchasing whiskey? A I didn't talk to him about it. Going into the saloon, when I asked him did he see Simpone --

Q (question repeated) A I didn't speak to him about buying or selling.

Q What? When did he first speak to you about it?

MR. FALLON: I object to that, as an assumption of something that has not been testified to. I object to the form of the question.

THE COURT: Didn't he testify that Melli, or someone else had said to him "Why don't you get into a regular business?" And spoke about bootlegging.

MR. FALLON: Yes, sir. That is exactly right. But that is not the question.

THE COURT: The objection is overruled.

MR. FALLON: We except.

BY MR. BROTHERS:

Q Did you ever say anything to Melli, or he to you, about bootlegging? A Yes.

Q Now what do you understand bootlegging means? A Melli says--

Q No. (question repeated) A Bootlegging is buying and

selling whiskey.

Q Now, when did you have first any talk with Melli about buying and selling whiskey? A I didn't have any talk with him.

Q Well, didn't you tell the jury, a little while ago, that you did? A I didn't say that I was having any talk about buying or selling whiskey.

Q Now, then, did he say to you "Why don't you get into a regular business?" A Yes, sir.

Q And did he say you ought to get into the bootlegging business? A I don't remember his saying "bootlegging."

Q Well, didn't you use that word here yourself, today. A As he was going in he said, "Why don't you get into this liquor business, bootlegging?"

BY THE COURT:

Q The question is, didn't you say in your testimony here today, that someone said something to you about the bootlegging business, using the word "bootlegging"? A Yes.

BY MR. BROTHERS:

Q Well, now, who said that? A Melli.

Q Now, is that the first time that Melli had ever said anything to you about bootlegging? A Yes, sir.

Q Did you have an engagement, an appointment, to meet Paul there, at Flannery's saloon, that afternoon, and isn't that why you were there? A No, sir.

Q And didn't you have a talk with him about ~~xxxxx~~ you were not

going any further, because they hadn't paid you for your part of the work? A No, sir.

Q Didn't Paul say to you, a long time ago, some time before the shooting, that you knew a lot of people in your business that you could deal with, and sell this whiskey to? A I never spoke to Paul in my life.

Q Not even about a necklace for Mrs. Klein? A No, sir.

Q Have you ever had any trouble with Mrs. Klein?

A I don't know her.

Q (repeated) A No, sir.

Q Do you know of any reason why Mrs. Klein should come here and state falsely that she talked to you about Paul's business, or any other matter? A No, sir.

Q Did you ever have any trouble with these McGovern's?

A No, sir.

Q Or the man who runs the soda fountain? A No, sir.

Q Or with the little boy, Ollie Glass? A No, sir. I don't know him.

Q Now, when did you notice, for the first time, that this check for \$660. was dated on the 13th of October? A On the 11th of October.

Q And on what day was it given to you? A It was given to me on a Saturday night.

Q Well, what date? A The 7th of October.

Q So that you had the check for five days, did you? A Yes.

Q Is that the only mistake on the check, if you may call ²⁷⁵
it a mistake? A Yes.

Q Your name is not William Stein, is it? A No, sir.

Q Well, isn't that made out to William Stein? A I had never
noticed that.

Q You didn't notice that? A No, sir.

Q Is this the only check that you ever got from Mr. Simpone?
A No, sir.

Q When did you receive a check from him prior to this check?
A I can't recall the date. I got a few checks off him. He bought
jewelry before off me.

Q When you were in the Pre Catalan Hotel on the night of
October 11th, you stated that you exhibited a number of valuable
jewels to some people; is that so? A Yes, sir.

Q Were those unset stones? A Yes, sir.

Q And in what sort of package did you have them? A It was
a white package, tissue paper on the inside, kind of glazed
paper.

Q To what person did you first show those stones, in the
pre Catalan Hotel on the 11th of October? A I think I showed them
to Mr. Barnes first, showed him one stone.

Q Yes. And in what part of the hotel did you show them to
him? A In the lobby.

Q In the lobby? A The sitting room.

Q Is that the first room you enter from the street? A No, sir.

Q Now, when you go into the hotel from the street what is the first room that you enter? A Well they call that the lobby. And then there is a sitting room on the side of it.

Q And it was in the sitting room you saw Mr. Barnes? A Yes.

Q Was there anybody else there at the time? A Well, people going in and out.

Q And were they passing you and Barnes? A Yes, sir.

Q Were they friends? A Yes, some friends passed, and some I knew.

Q And did you have the jewels on a table or in your hand?

A In my hand. I had the package open.

Q How many stones were there? A About 23 stones.

Q When you finished showing them to Barnes, what did you do?

A I put them in my pocket, and I sat around there a while, as I do every night.

Q Did you show them to anybody else? A Yes.

Qx Who was the next person? A Mr. Simpone.

Q Where were you when you showed them to him? A In the lobby.

Q Was there anybody present when you showed them to Simpone?

A Yes, people walking and out.

Q And you didn't seem in the least timid in showing those valuable jewels? A No, sir. And I showed another piece, a single stone, to a Mr. Allegro, up at 41st Street and Broadway.

Q Well, you didn't show them to anybody else in the hotel, except the two persons you have mentioned? A No, sir.

Q Did you see Melli in the hotel that night? A No, sir.

Q And you didn't see him or the other man until about five o'clock on the afternoon of the 13th? A No, sir.

Q And you didn't show them any jewelry then? A No, sir.

Q And how long had you been carrying around jewelry?

A About seven or eight years.

Q And you had known Melli, you had seen him around for months? A Only a few times, occasionally I would see him.

Q Well, you saw Pauly occasionally? A No, sir, once or twice around there.

Q And they never attempted to hold you up before? A No, sir.

Q And you say it was Melli told you that the man with a moustache had made a fortune bootlegging? A Yes, sir.

Q And that is the man that you say tried to hold you up in the hallway? A One of them. There were three of them.

Q Now you say you were held up in that hallway by three men one of whom had a gun? A Yes, sir.

Q And your clothing was not disarranged? A No, sir.

Q And you were not marked by any sign of violence? A No, sir.

Q And your collar was not even soiled? A I didn't take much notice of that.

Q And you didn't lose any of your property? A No, sir, only a string of pearls was broke.

Q What string of pearls? A That I had in my pocket.

Q And when was that broken? A After I was taken to the

station house, where they took the stuff out of my pockets, a string of pearls was broke.

Q Were they done up in a package? A They were in tissue paper, and they made a grab for my pockets.

Q Well, when did it get broken? A It must have got broken when they started, in the hallway, going through my pockets.

Q Do you say that a man got his hand in your pockets?

A Tried to.

Q Well, did he get his hand into your pockets? A I don't know.

Q And in which pocket did you have this pearl necklace?

A In the left hand coat pocket (indicating).

Q What was it done up in? A It was just laying in tissue paper.

Q And that was a valuable necklace, was it? A About \$35.

Q That was not real pearls, was it? A No, sir.

Q Now, had you ever heard anybody talk in any way about Melli to you? A There were some talk from parties some time ago, that he had killed a man, or something of that sort.

Q How long ago was that, Mr. Stern? A Oh, I think four or five months ago.

Q Do you remember what the occasion was when somebody spoke about Melli having been convicted of that crime? A No, sir.

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

Q Can you state how when it was? A No, sir.

Q And can you state now why it was that anybody mentioned that fact to you, when you didn't know Melli? A It wasn't mentioned to me. It was in some conversation that I heard it mentioned.

Q You didn't go into the particulars at all? A No, sir.

Q Do you know how your friend Quinn -- is that the man that bought the automobile? A Yes, sir.

Q Do you know how he got in touch with Melli about the purchase of this automobile? A No, sir.

Q You didn't have anything to do with bringing them together? A No, sir. I was just standing there while they were talking.

BY THE COURT:

Q Just standing there talking; what do you mean by that?

A They were talking about the automobile, and I happened to be there at 41st Street and Broadway, but I didn't have anything to do with the automobile. It wasn't concerning me any.

Q That is, you and Melli and Quinn were standing together, talking about the matter of this automobile, and this came up? You see, I am trying to find out what you mean. A Quinn and Melli were talking about the automobile, and I was standing by the cigar store, and they were talking about the price, and Quinn said to me "What do you think? It is a nice car," and I said "Yes, it is a nice car."

Q Well, you and Melli and Quinn had a talk about the car?

A No, sir.

Q Were you standing there when they were talking? A Yes, sir.

BY MR. BROTHERS:

Q Well, had you gone to that corner with Quinn? A No, sir, I met them there.

Q Just by accident? A By accident.

Q Well, why did you go to the trouble of going with them to the place where the bill of sale was made out? A Mr. Quinn asked me if I would take a ride, and I took a ride in the car.

BY THE COURT:

Q Did you know Quinn better than you knew Melli?

A Yes. He used to go around and fix automobiles, around there.

Q You didn't have an automobile then, did you? A No, sir, my friends did, up town.

Q Did you know Quinn before you ever met Melli? A Yes, I had met him.

BY THE FOREMAN:

Q Were you a witness to the bill of sale? A Yes.

Q Were you introduced to Melli by your friend? A No, sir.

BY MR. BROTHERS:

Q Now, did you tell the officer, when he came running up, and you were there, with Melli, near the Casino theatre, that you didn't know him? A I said I had seen him, but I didn't know him.

Q Well, didn't you know his name? A No, sir, not then.

Q Didn't you know his name when you signed the bill of sale?

A No, I didn't know what his name was. They went up to a notary public to have a bill of sale made out, and I went along with them.

Q And you didn't know this man's name? A No, sir, just to say Hello and good-bye, that's all.

Q Then why did you tell the policemen that you didn't know this man? A Because I don't know him.

RE)DIRECT EXAMINATION BY MR. FALLON:

Q Now, you were asked by the foreman of the jury if you witnessed the bill of sale, and you said, I think, yes. Now, just tell us what you meant when you said yes. You witnessed the bill of sale? A I rode up in the car with them.

Q No, did you witness the bill of sale?

THE COURT: Now, wait a moment, Mr. Fallon. Let him answer your question.

MR. FALLON: I am not interrupting him.

THE COURT: Yes, you are. Let him answer the question.

A (continuing) They went up to the notary public, and I sat down, and they walked over by the table, and there was some talk, and they showed papers, and we went away, that's all.

BY MR. FALLON:

Q Will you listen to my question? What did you mean, that you witnessed it? That you were there, or wrote your name on the bill of sale? A I was there.

Q Was there a bill of sale made out? A I don't know.

There was some paper made out between them two. I was sitting over on a chair, and they were over at the table with the notary public.

Q This man Quinn you had known before then? A Yes.

Q How long? A For a year and a half before this time.

Q Now, did you give any paper to him? A No, sir.

Q Did he give you any paper? A No, sir.

Q Transferring that automobile to you? A No, sir.

Q Now, how long before the shooting was that transaction?

A About seven or eight months.

Q And this paper, so far as you know, was turned over to the man who bought the car, and you didn't have any more to do than that? A No, sir.

Q Now, you were asked by Mr. Brothers whether that woman sitting over there (indicating Mrs. Klein), had any reason for making any false statement about you, or testifying as she did.

A Yes, sir.

Q Now, did you know of the fact that she was the mistress of the deceased for eighteen months?

Object to; sustained; exception.

Q Now, this woman testified that there was a time when she was introduced to you by some gentleman, at or near the Pre Catalan Hotel. Do you know the man she mentioned? A No, sir.

Q She testified that somebody introduced you to her, or her to you. Do you remember the name of the man she gave as the name

of the man who gave the introduction? A No, sir.

Q Do you remember that name? A No, sir.

THE COURT: He has said twice that he did not.

Now proceed to some thing else.

MR. FALLON: We will produce that man in court.

Q Now, there was only one conviction against you, for petit larceny, for which you got three months? A Yes, sir.

Q And was there any other conviction against you? A No, sir.

Q And you were married in November 1916, at the City Hall?

A Yes, sir.

Q And by whom were you married? A By one of the clerks of the court there.

Q By one of the Aldermen, do you mean?

Objected to.

Q Why do you call the man a clerk? A Because he was the man that made out the paper, and ^I paid him. It was in the Marriage Bureau.

Q How much did you pay him? A One dollar.

Q And then where did you go? A He took us in the back there.

Q Back where? A After we got the paper there, a different man come over there, and was speaking to us, and he said "Raise your hands."

Q Yes. That is, after you went to the man that gave you the paper, did you go before a second man? A Yes.

Q What did he say to you? A "Do you solemnly swear to take this woman as your lawful wife?" And so on.

Q Now, that was right down in the City Hall in New York City?

A Yes, sir.

Q Did they give you a certificate? A Yes, sir.

Q Where is that certificate? A It is home, somewhere.

Q That is, your wife can produce it tomorrow morning?

A Yes, sir.

Q Now, you were asked by the Judge what, if anything, you knew about the man that was shot, what you have heard said about him. Now, tell what you heard about him? A That he was in some sort of bank robbery, in a taxicab, or something of that sort; that he was a badman.

Q And did you hear that about him? A Yes, around that neighborhood.

Q You were asked about what experience you had in the use of firearms. Were you in the army during the war? A No, sir. I had a shooting gallery at Camp Upton.

Q For about seven months? A About that.

Q And under what authority did you conduct the shooting gallery? A Major Bell --

MR. BROTHERS: We object to that.

THE COURT: Objection overruled.

A Major Bell gave us permission to have that shooting gallery there, before the boys had any rifles at all, and he gave us that privilege to have that shooting gallery there, so that the

bous could learn how to shoot.

BY THE COURT:

Q Do you mean to say that the United States Government had to come to you for the soldiers to have an opportunity to learn how to shoot? A No, sir.

MR. FALLON: May I object to the question of the Court?

THE COURT: The question is withdrawn, if you object to it.

BY MR. FALLON:

Q Now, when you first purchased this pistol, how did you carry it about? A In my pocket.

Q And after that how did you carry it about? A Carried it in my pocket.

Q Was there a time when you had a holster, and used to carry it about in a holster? A Yes.

Q That is, you had a leather belt or strap that you used to carry it around with? A Yes, sir.

Q And how long did you do that? A Until the holster was broke, and I threw the holster away and carried it in my pocket.

Q Now, you were asked where you bought this gun. Do you know the name of the particular place where you bought it?

A It was some sporting goods place, on Chambers Street.

They sold rifles, revolvers and different sporting goods.

Q And can you take anybody down there and show them the

place? A Yes, sir.

MR. FALLON: That's all.

BY THE COURT:

Q When you got your pistol permit, did you sign a written blank for it? A No, sir.

Q Did you sign anything at all? A No, sir.

Q Did you sign a receipt in a book that the Judge down there presented to you? A No, sir.

Q You didn't sign your name any place, or sign anything in connection with getting the pistol permit? A I put my name and address on a slip of paper, and what I was doing.

Q And did you give your name and address on a slip of paper to the Judge at Cedarhurst? A No, sir, I gave it to Rocky Angrolia.

Q You gave it to "Rocky Angrolia"? A Yes, sir.

Q Where did you give it to him? A Why, in New York.

Q Before you went to Cedarhurst^{at}/all? A Yes, sir.

Q And you went to Cedarhurst with Angrolia? A Yes, sir.

Q And you were introduced to a man as a Judge there? A Yes.

Q But you signed no papers there? A No, sir.

MR. FALLON: I neglected to ask one question.

BY MR. FALLON:

Q As you were coming out of the saloon, did you pay any attention as to whether there were people outside, that is, did you look under the swing door to see whether anybody was

standing there? A No, sir, I didn't look or didn't think of anything. Just opened the door and stuck my foot out. 287

Q That is, when you were going out of the door you had no idea anything was going to happen, did you? A No, sir.

Q And you didn't pay any attention as to whether any feet could be seen under the door? A No, sir.

Q And were you paying any particular attention, to notice whether the people were standing outside? A No, sir.

Q And id this thing happen all of a sudden? A Yes, sir. And it -- I was taken off my feet.

THE COURT: Is there anything further, Mr. District Attorney?

MR. BROTHERS: I find there was something that I overlooked.

RE>CROSS EXAMINATION.

BY MR. BROTHERS:

Q Did you tell Officer Moore that one of the men in the hallway had a knife? A I told Officer Moore, "I think one of them had a knife in his hand."

Q Did you also tell Officer Sullivan that Melli had a knife in the hallway? A I didn't say in the hallway.

Q Did he ask you "What prt did Melli play in it?" And did you say, "He had a knife, and he is one of the men that took me into the hallway?" Did you say that? A I don't remember.

Q Did you tell any officer that Melli had a knife? A I think I did.

Q Well, when did you see Melli have a knife? A When he was chasing me.

Q Well, did you tell the officer that he had the knife in the hallway? A I did not.

Q Well, did he have a knife in the hallway? A I didn't see him in the hallway.

Q Well, when did you see him have the knife? A When he was chasing me, he had something shiny in his hand. It looked like a knife.

Q And is that what you meant when you told the officer there were three men, and one had a revolver and the other a knife? Is that what you meant? A Yes, sir.

Q And that's the only time you saw any knife? A Yes, sir.

Q And you didn't tell the jury anything about a knife, did you? You didn't tell them here that you had seen a knife, today?

MR. FALLON: Haven't we been over that, if your Honor please?

Q Did you tell them that you saw Melli have a knife?

A I don't remember if I did or not.

Q How big a knife was it? A I didn't stop to look. I seen the blade, that's all. It was shiny.

Q Was it open? A There was a blade there; I seen the blade.

Q Well, when I asked you those things, if you saw anything in Melli's hand, you said he had something. Do you remember saying that? A He had something in his hand that looked like

a knife.

Q Well, why didn't you say then that it looked like a knife, when I first asked you? A (No answer)

Q Had you forgotten about the knife?

MR. FALLON: I object to that, for the reason that he thought he was answering in response to the question of Mr. Brothers.

THE COURT: My recollection is that he did not say anything about the knife at that time.

BY MR. BROTHERS:

Q Had you forgotten about the knife when I called your attention to the testimony of the officers, on that subject?

A I probably did.

BY MR. FALLON:

Q Did you have a set of imitation pearls in your pocket?

A Yes, sir.

Q And in the course of this affair, the pearls were broken, is that right? A yes, sir.

Q Have you got them now? A No, sir, Officer Sullivan took all my jewelry from me.

MR. FALLON: Officer Sullivan, will you let me have the package of jewelry?

OFFICER SULLIVAN: It's in the possession of the Court.

MR. FALLON: May I open the package, if your Honor please, which the clerk hands to me?

THE COURT: Yes, certainly.

BY MR. FALLON:

Q Now, come down here; pick out the pearls. A There they are (indicating).

Q And there is another one there (indicating)? Is there not? A Yes, sir.

Q Handle them carefully. Put them out here. These are the stones that you say were broken in the trouble? A Yes, sir.

Q And were they together in your pocket? A Yes, sir.

Q Now, I just want to ask you one more question, in this connection. Go back to the stand.

THE SEVENTH JUROR: I would like to ask him one question.

THE COURT: After the counsel finishes, you may.

Proceed, counsellor.

BY MR. FALLON:

Q You say those were imitation pearls? A Yes, sir.

Q And that string was intact; that is, all together?

A Yes, sir.

Q And you say, in the course of the disturbance or trouble, that was broken?

MR. BROTHERS: I object to that. He didn't say that.

Q Well, what did you testify to as to the manner in which the string of pearls was broken? A I said that when the officers took my jewelry off me, there was a string of pearls broken when they were trying to get into my pockets.

Q Now, you passed these men and went into the saloon?

A Yes.

Q Were they then intact? A Yes, nsir.

Q And when you noticed them in the police station again, were they broken? A Yes, sir.

Q And did you call that to the attention of the officers?

A Yes, sir.

Q And did you tell them how they were broken? A Yes, sir.

MR. FALLON: That's all.

THE COURT: Now, as your question, Mr. Juror:

BY THE SEVENTH JUROR:

Q You had a few hundred dollars' worth of diamonds and jewelry? A Yes, sir.

Q Were they your own property, or did you have them on memorandum? A Some were on memorandum, and some my own.

Q Have you got the memorandum bill? They generally give a memorandum bill, don't they? A Not when I take stuff uptown. They give me a bill.

Q Have you got that here? A No, sir.

Q You haven't got the memorandum bill, have you? A No, sir.

BY MR. FALLON:

Q Your jewels that you refer to, or your necklace that I am showing you now, are these real? A Yes.

Q Those are not fake things, at all? A No, sir.

Q That is, they are gold? A Yes, sir.

Q And those are platinum (indicating)? A Yes, sir.

BY THE SEVENTH JUROR:

Q Is this a brand new watch (indicating)? A No, sir.

Q It is a second hand watch? A Yes, sir.

Q Because it has got scratch marks in it, where it has been repaired; hasn't it? A Yes/

BY MR. FALLON:

Q Are these other articles new or second hand? A There is three watches new, and one watch was repaired.

Q That is the three platinum watches are new? A Two of them are white gold.

Q Is that a real diamond (indicating)? A Yes, sir.

MR. FALLON: Now, so that the jurors may see all these articles, I will offer them in evidence, so that the jury may examine them, and there will be no question about their value.

THE COURT: Now, do you want to encumber the trial with jewels that may or may not have some value? I think you can bring the attention of the jury to these articles without making the clerk the custodian of things that no clerk wants to be responsible for.

MR. FALLON Then I will withdraw the offer.

THE COURT: Yes, You appear to have an expert on the jury, Number seven, and doubtless he will let his brother jurors know just what the articles amount to.

MR. FALLON: That's all.

BY MR. BROTHERS

Q Do you find the wrapper here in which you had the necklace? What was it wrapped in? A Oh, plain tissue paper.

Q Now, who took it out of your pocket in the station house?

A The officer.

Q How was the package when it came out of your pocket?

A It was all upset.

Q Did you see the officer take it out of your pocket, and break it? A No, sir, I gave it to the officer.

Q Didn't I ask you who took it out of your pocket, and didn't you say the officer did. A Yes, I did.

Q Now, what is the truth? Did you take it out, or did the officer? A I took it out.

Q It wasn't broken then? A Yes, it was.

BY MR. FALLON:

Q Did any officer break that necklace in your presence?

A No, sir.

BY THE COURT:

Q You don't know who broke it, do you? A No, sir.

BY MR. FALLON:

Q That is, when you took it out it was broken, is that what you say? A Yes, sir.

Q And no officer broke it after that, as far as you know?

A No, sir.

MR. FALLON: That's all.

THE COURT: Call your next witness. Now, Mr. Fallon and Mr. Brothers, there is no objection. I suppose, to turning over the package of jewelry to the officer, that the clerk has? They have better facilities for keeping such things.

MR. BROTHERS: No objection whatever.

MR. FALLON: No, sir, none.

THE COURT: Now, you may call your next witness, Mr. Fallon.

MR. FALLON: We haven't any other witness here now, sir, but we will have three or four more witnesses tomorrow morning. Simpson isn't here, though he was expected to be here.

THE COURT: Very well, then; we will adjourn now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case to THURSDAY MORNING, June 16th, 1921, at 10:30 o'clock.)

People vs. Stern.

T R I A L R E S U M E D.

New York, June 16th, 1931.

J O H N M c C O R M I C K, of 257 West 35th Street,
a witness called on behalf of the defense, being duly
sworn, testified as follows:

DIRECT EXAMINATION BY MR. FALLON:

Q Mr. McCormick, on October 13th, of last year, where
were you employed? A The Pre vCatalan.

Q And that is located at West 39th Street? Is it not?

A Yes, sir.

Q And that is the cabaret or restaurant, or whatever we
may call it, next to Flannery's saloon? A Yes, sir.

Q How long had you been employed there before that date?

A From the early part of the summer.

Q Last summer, you mean? A yes, sir.

Q What did you do there? A Starter.

Q And you were employed by whom? A Mr. Barnes.

AQ Now do you see the lady sitting over in that chair near
the wall there (indicating Mrs. Klein)? A Yes.

Q Now did you ever have any conversation with that lady?

A yes.

MR. BROTHERS: To whom do you refer?

MR. FALLON: Mrs. Klein.

Q You remember having any conversation with her? A Yes, sir,
I do.

MR. BROTHEERS. We object to that. There is no foundation
laid for it. It is not proper rebuttal.

MR. FALLON: Why this is the man she said was the man
who introduced her to the defendant.

MR. BROTHERS: No, I don't recall any such testimony.

THE COURT: What do you say the testimony is that
this witness is called in rebuttal of?

MR. FALLON: She said that she went to the Pre Catalan,
and was introduced to the defendant by this man, who was
called "Happy Jack". However, we can get rid of the
situation in a minute by calling her back, and getting
from her whether this is the man or not.

BY MR. FALLON:

Q What nickname have you up there? A "Happy Jack."

MR. FALLON: And this is the man that she says intro-
duced her to the defendant. She said that she was intro-
duced to the defendant by a man known there as "Happy Jack."

THE COURT: I have no recollection of any such
testimony.

MR. FALLON: Well, I will recall Mrs. Klein, if your
Honor please, on that point.

M I N N I E K L E I N, being recalled by counsel for the
defense, for further cross-examination testified as
follows:

CROSS EXAMINATION (continued) BY MR. FALLON:

Q Now, you said, when you were on the stand yesterday,
that you were introduced by some gentleman to the defendant.
Who was that man? A This man (indicating the witness McCormick)
I was introduced to him by this very man here (indicating).
I knew him by the name of Jack.

Q Then this is the "Jack"? A Yes.

Q And he introduced you to the defendant, you say? A Yes.

MR. BROTHERS: No questions.

J O H N M C C O R M I C K, being recalled by counsel for
the defendant, testified as follows:

DIRECT EXAMINATION (continued) BY MR. FALLON:

Q Now, tell us what occurred when you met this lady at
the Pre Catalan Hotel?

MR. BROTHERS: We object to that. That is not in
rebuttal or contradiction of anything.

THE COURT: objection sustained.

MR. FALLON: Will your Honor hear me on that
proposition?

THE COURT: Why, it is quite obvious that this man is
called in rebuttal, or at least to contradict the testimony

of Mrs. Klein.

MR. FALLON: Yes, certainly. But this is not rebuttal, strictly speaking. She says she met the defendant, and the defendant says he never saw her, and this man is supposed according to her testimony, to have introduced her to the defendant, and we want to show by him that she was never introduced by him to that man (indicating the defendant).

THE COURT: Very well. Proceed.

BY MR. FALLON:

Q Now tell us what happened at that time? A A lady came up to me one night, and asked me if I knew a man named Paul, and I said I didn't, and she said, "I have an appointment with him," and I said, "All right if you have. I'll go inside and find out if he's there," and I went in and found out he wasn't there; and I went back to her and I said he wasn't there, and she said "It's very funny, because I was expected to meet him here, tonight," and I said very well, "If you expected to meet him tonight, I'll take you right inside and sit you down on a sofa, and you can wait for him as long as you want to, and about two hours afterwards she came out and said it was funny that he didn't come, that she an appointment with him, and then she went away.

Q Did she say anything whatever about the defendant? A No, sir.

Q Did she ask to see the defendant? A No, sir.

Q Or mention his name in anyway? A No, sir.

Q Did you introduce her to the defendant? A No, sir.

CROSS EXAMINATION BY MR. BROTHERS:

Q How long have you been working there? A Why, I have been in the same block for ten or twelve or fourteen years.

Q But in that particular place how long did you work?

A For six months, up to the end of the summer.

Q Did you know "Patsy" Melli? A No, sir, only by seeing him around.

Q Did you know Paul? A No, sir; I never saw him, to my knowledge.

Q Did you see him after he was dead? A Yes.

Q Did you recognize him then? A No, sir.

Q How often did you see Stern go into that hotel? A Quite often.

Q What do you mean by that, quite often? A Maybe three or four times a week.

Q Did he ever show you any jewelry? A No, sir; I didn't have no dealings with none of them.

Q What name did you know him by? A Only by the name of Stern.

Q Did anybody call him Stern around there? A I don't know. I never took any attention to it.

Q Or "Steiny", or "Sterny", or "Stein"? A I never heard anybody call him that.

Q Or "Willie", "Willie, the jeweler"? A Yes. I have

heard him called that.

Q To whom did Stern talk around there? A Well, to Timpone and the boss.

Q What boss? A Mr. Barnes.

Q Now what was your position up there? A Doorman, outside.

Q When were you first asked whether you had ever seen or introduced Mrs. Klein to Stern? A When was I asked?

Q Yes. When did anybody first ask you about that? A Why this morning.

Q This morning? A Yes.

Q Is that right? A No. I'll tell you now about it.

Q Oh, are you going to change your mind about that now?

MR. FALLON: Now, I ask that the witness be allowed to finish.

MR. BROTHERS: He had finished.

THE COURT: I direct the District Attorney to permit the witness to finish.

BY MR. BROTHERS:

Q Now, finish your answer. I thought you had finished.

A I didn't quite understand you.

Q What did you think I meant? A That I introduced her to Steiny.

Q Now, then, you understood my question, didn't you?

A I thought you said something about introduce.

Q Yes. What did you think I meant, what question did you

make answer to that you were not spoken to about this matter until this morning? A I thought you said when was I asked did I introduce her to Stein.

Q No. My question was, "When for the first time did anybody ask you whether you had introduced Mrs. Klein to Stern," and you said, "This morning." Now, do you want to change that answer?

A No, sir. Because that's what I am supposed to be here for.

Q Well, you were subpoenaed by us, weren't you? A Yes.

Q And you told me that you didn't know anything about this shooting, didn't you? A Yes, sir.

Q And then you were told, if that was the case, that you needn't come back? A Yes.

MR. FALLON: We object to this entire line of examination.

THE COURT: Overruled.

MR. FALLON: Exception.

BY MR. BROTHERS:

Q Now, is that correct, that nobody asked you a word as to whether you introduced Mrs. Klein to Stern until this very morning? A Yes, sir.

Q And who asked you about that? A Well I saw Mr. Moore, the police officer, out there --

Q No. Who asked you that question? A Who asked me the question?

Q Yes. A Well, just now. That's how I come to come down.

I was speaking to Officer Moore out there, and he asked me why I was down.

Q No, I don't want that. I don't want any conversation with Officer Moore. But who was the first person who asked you this morning, whether you had introduced Mrs. Klein to the defendant? A Officer Moore. He said that was why I was down here.

Q Well, who subpoenaed you to be down here this morning?

A Nobody. One of the lawyers told me to be here.

Q What lawyer? A That lawyer (indicating Mr. Fallon). He was the one I was supposed to come down for,

Q Well, who told you to come down? A Some man in front of the place, last night.

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

Q When did he tell you? A Last night.

Q What time? A About five o'clock, between five and six.

Q Did he ask you any questions about Mrs. Klein? A No, sir.

Q Did he mentioned Mrs. Klein at all? A No, sir, never mentioned her name.

Q Did anybody ask you any question about Mrs. Klein, until you sat down in that chair where you are now? A No, sir, not a one.

Q Not a one? A No, sir.

Q So that Mr. Fallon did not know what you were going to say, when he asked you the first question, after you got on the stand?

MR. FALLON: I object to that, I object to his asking the witness what he knew about what I might know.

THE COURT: Yes, the form of the question is not good.

\ Objection sustained.

BY MR. BROTHERS:

Q Had you said anything to Mr. Fallon about Mrs. Klein?

A No, sir.

BY THE COURT:

Q What did you mean when you said a lawyer subpoenaed you? Pointing, as I understood, to Mr. Fallon? A Well, the man that spoke to me last night, said I would be needed this morning.

Q But how did you know whether it was the District Attorney or Mr. Fallon that would need you? A Well, I thought I was to come down to Mr. Fallon, because the District Attorney told me he didn't need me any more.

Q And is that why you pointed to Mr. Fallon? A Yes, sir.

BY MR. BROTHERS:

Q Can you tell us any more about that alleged visit of a woman to the hotel? A Well, no, sir.

Q When was that visit? A It was in the last part of the summer.

Q What summer? A Yes, the summer.

Q This summer? A No, last summer.

Q Do you know what month it was? A Well, it must have been in August or September, some time around there.

Q Do you think it was the 31st of August? A Well, I couldn't say exactly. I know it was late.

Q Had you forgotten all about her being there? A I had forgotten all about the case. I never followed it up at all.

Q Had you forgotten how Mrs. Kein looked? A Yes, sir.

Q Who told you who she was, when ~~she~~ ^{you} came into court this morning? A I can identify her from that night, and I have seen her here all the week.

Q And when did you first see her -- at least, when you first saw her, did you remember she was in the hotel that night?

A No, sir.

Q Well, when did you first begin to remember that she was there? A Well, I remembered it this morning, because I know I was talking to that lady.

Q But you didn't know it yesterday? A No, sir.

Q Or the day before? A No, sir, or the day before.

RE-DIRECT EXAMINATION BY MR. FALLON:

Q That is, you were not asked anything about it until this morning, and there was no reason to bring it back to your mind, was there? A No, sir.

Q Now, you came to me in the hallway, this morning, didn't you, and explained to me that you were the doorman in the Pre Catalan? A Yes, sir.

Q And I asked you --

MR. BROTHERS: I object to that as leading.

THE COURT: Now, do not lead him.

MR. FALLON: I don't intend to.

THE COURT: He is your witness. Let him state what occurred, if you care to have him do so.

BY MR. FALLON:

Q. And did I tell you, afterwards, that I was going to call you as a witness?

MR. BROTHERS: That is objected to, as leading.

THE COURT: Objection sustained.

BY MR. FALLON:

Q. And what else did we have to say? A. That's all.

Q. Did you say something about wanting to get away in a hurry, or something to that effect? A. Yes.

MR. FALLON: That is all.

BY THE COURT:

Q. How long did you say you were working as a starter at the Pre Catalan? A. Well, from the early part of last summer up until about the last of November.

Q. That is, you worked there from -- what month did you say you went to work there? A. Well, about the last of May.

Q. And you worked from May until November? A. Yes, sir.

Q. And you were there on the 13th of October were you?

A. No, I wasn't there on the 13th of October.

Q. Were you working there on the 13th of October? A. No, sir.

Q. You did not work there on the night of the 13th of

October? A No, sir.

Q Why not? A Because there was too much excitement.

Q Too much excitement, as a result of the shooting?

A Yes, sir. But, the next night, I went to work.

Q And you worked the night before? A And the night before.

Q What time did you report for work on the 28th of October, the day of the shooting? A I was supposed to report between six thirty and seven.

Q And did you? A No, sir.

Q Why not? A Well, on account of too much excitement.

Q Well, how did you know about the excitement until your time for reporting, at six thirty? A Why, there was thousands of people around there, when I came around there and ~~xxx~~ reported.

Q You did report then? A Yes.

Q And what happened? A And I says, "I'm not going to work tonight."

Q You said that you were not going to work that night?

A Yes, sir.

Q Then you simply took the night off? A I just simply took the night off.

Q Because of the shooting? A Because of the shooting.

Q Where were you about five thirty? A I was at 38th Street and Sixth Avenue, in Daly's saloon.

Q Was there dancing in the Pre Catalan, last October? A Yes.

Q Were not the hours between five and seven rather busy

hours at the Pre Catalan? A Well, they were rather busy.

Q And that was a holiday, on the 13th of October, and was it not unusually busy on that account? A That was a very busy day.

Q That was a very busy day? A Yes.

Q And the dancing began earlier on a holiday, ordinarily, than on a business day? A Yes, sir.

Q But, in spite of the fact that it was a busy day, you were not there? A I wasn't there.

Qx At half past five? A Yes, sir.

Q And that is about the busiest hour in the day, at the Pre Catalan, is it not? A Yes, sir, that's the time of the rush.

Q And when did you report for business, ordinarily? A Six thirty.

Q Did you report there earlier on holidays? A No, sir, generally the same time.

Q Was there another starter that was there in the afternoon? A No, sir.

H E N R Y H I R S C H, of Freeport, Long Island, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FALLON:

Q Mr. Hirsch, what is your business? A I am in the jewelry business.

Q And how long have you been in that business? A About twenty years.

Q During the month of October last, where was your place of business? A At 1491 Broadway.

Q And that is located at what street? A 43rd Street.

Q Now, you know the defendant Stern, do you not?

A I do.

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

Q And have you had various transactions with him? A I have.

Q What was the nature of those transactions? A Well, I gave him on various occasions, on numerous occasions, I should say, diamonds on consignment, which he sold for me, and turned in the cash for.

Q And were those diamonds of considerable value? A Yes.

Q What amount, in the aggregate, have you given to this man on consignment? A Well, I should say that, during the nine or ten months that I did business with him, the amount of diamonds could not have been less than a quarter of a million dollars.

Q And during all those transactions, did you have any trouble or business difficulty of any kind with the defendant? A Never.

Q Do you recall any occurrence on the 11th day of ~~December~~ October? A He came to me, on that day, and said that he had ~~wanted~~ to sell to some man from out west, a number of large stones of good quality, if I could get them, that he had an opportunity to sell those diamonds, and I got in touch with a man downtown

and obtained a bracelet, containing twentyfour stones, and they weighed a little over 32 carats, and the price I got them for was \$450., and I gave them to him to sell for \$500. a carat, and the aggregate amount of the value of the stones was about \$16,000.

Q Now did he sell those diamonds? A He did not,

Q How long did he have them in his possession? A Well, he had them from about noon on the 11th until three or four o'clock the following day, on the 12th.

Q Do you recall him returning them to you on the 12th?

A He did return them to me.

Q To you personally? A Yes.

Q At that time were you in business alone, or engaged in business with your brother? A With my brother.

Q And since then you have separated, you and your brother? A Yes, we have dissolved.

CROSS EXAMINATION BY MR. BROTHERS:

Q What name did you call him? Stein, did you say?

A Stern.

Q I thought you said Stein. A Well, we used to call him "Steiny", that's how I came to say that.

Q Well, when you say you called him "Steiny", what do you mean? A Well, most of the dealers around the neighborhood called him that, and we got into the habit of calling him that.

M I L T O N L U B I N, of 834 Riverside Drive,
New York City, a witness called on behalf of the defense,
being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FALLON:

Q Mr. Lubin, what is your business? A Jeweler.

Q How long have you been in that business? A 33 years.

Q And where is your place of business located? A 42nd
Street, Times Square.

Q And how long have you been located in business at that
place? A Two years.

Q And before that? A The Marbridge Building, at 34th
Street and Broadway.

Q Do you know the defendant Stern? A Yes, in business.

Q And how long have you known him? A Maybe four or five
years.

Q And have you had various transactions with him? A Yes.

Q And of what nature? A Memorandum.

Q And by that you mean just what? A I give him diamonds
on memorandum, and if he sold it, he paid me, and if not, he
brought it back to me.

Q Now, how extensive were your dealings with him? A Well,
sometimes he had diamonds for three or four thousand dollars.

Q Well, did it go, altogether, into considerable money?
A yes.

Q Now, just before the 12th of October last, did you have

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some transactions involving diamonds? A Yes. I think he got one diamond for between \$3,500. and \$4,000. And one brooch for \$1,800., and on scarfpin, \$190., and three wrist watches, \$26. a piece.

Q But you do remember that there were three wrist watches?

A Yes.

Q What kind of wrist watches were they? A Three ladies' gold wrist watches.

Q Well, were they gold or white gold? A That I couldn't remember now.

Q Now, then, on the 11th day of October, he had from you on consignment, how much in value? A Around \$5,000.

CROSS EXAMINATION BY MR. BROTHERS:

Q Did you take receipts for it? A Yes, he signed always.

Q Have you got any of those receipts here? A No; we destroy these books (indicating a small book), when it is over, when they are settled up. And we need five or six books, and it is too many books like this.

BY THE COURT:

Q Books like the book you have in your hand? A Yes, sir.

Q And you say you could not keep five or six of them, books of that size, in your place? A Well, my store is very small, your Honor, and we destroy them because they take up so much room. We never keep them.

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Q You couldn't keep in your store five or six books of that small size, without crowding it? A Well, my store is very small, like a telephone booth, your Honor. We don't need those books any more, and we destroy them.

F R A N K J. T I M P O N E, of 3544 Broadway, New York City, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. FALLON:

Q Mr. Timpone, what is your business? A Taxicab business.

Q And were you in that business on October 12th, last?

A Yes, sir.

Q Do you know this defendant, Stern? A Yes, sir.

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

Q Now, during the month of October 1930, where was your place of business? A In 110 West 39th Street.

Q And what place is that? A Pre Catalan Restaurant.

Q And did you have the privileges there, the hacking privileges? A Yes, sir.

Q And you had an office there? A No, no office; just a hack stand outside of the door.

Q Now, some days before that, some days before the 12th of October, did you have any business transaction with this defendant? A Yes.

Q Now, just tell the jury what and when that was? A Well,

I can't just remember when, but I know it was a couple of nights before the trouble. ~~XXXXXXXXXX~~

Q What was the transaction? A He showed me diamonds, and wanted me to buy some more diamonds for my wife, and so I got a bracelet, anyhow, and I gave him one of my checks for \$690. odd.

Q Now, is this the check (indicating the check in evidence)?
A Yes, sir.

Q Well, that is for \$660. A Yes, it is for \$660. There was something come off that.

Q Now do you recall whether or not you dated this check ahead? A Yes, I did.

Q And was that done at your suggestion? A Yes, sir.

Q Now where is the jewelry? Have you the jewelry that you bought, with you? A No, sir, but I can get it, though.

Q That is, it was a wrist watch that you bought for your wife? A No, sir, a bracelet.

Q Now, do you recall having any conversation with the defendant on the night before the trouble? A He showed me a lot of stones, a lot of diamonds, and asked me if I wanted to take them home, and show them ~~which~~ to my wife, and see which one she wanted, and I said, "No, I'll just take a bracelet, this time."

Q No, I mean, on the night before October 12th, did you have any conversation with him about this check? A Yes, sir,

it was dated on --

Q And at that time did he show you more diamonds? A Yes, sir, he did.

Q Now, tell us what the conversation was about the check?

A The conversation was about the check, that he didn't think the check was any good, being dated on a holiday, and I said, "Come around tomorrow night, when I come back from the racetrack, and I'll give you another check."

Q And did you fix with him any time when he was to meet you there on the following day? A Yes, half past six -- six to half past six I generally got back.

Q Now, then, did you usually stay about there and carry on your business, around that Pre Catalan Hotel? A Yes, sir.

CROSS EXAMINATION BY MR. BROTHERS:

Q Are you sure you didn't tell him five o'clock, to meet you at five o'clock? A No, sir, I couldn't have told him at five o'clock, because I don't get back until six.

Q How were you able to give him a better check on October 12th, as to the date, than ~~xxxx~~ you gave when you wrote this check? A Well, that is dated Columbus Day, isn't it?

Q It doesn't say so on this check. A Well, but that was the 12th.

Q Where were they racing on Columbus Day? A I believe it was Aqueduct, or Jamaica. One of the two.

Q You are not sure? A No, sir, I can't remember.

Q And what were you going to do when you met him on Columbus Day, at 6.30? Were you going to give him another check or cash? A I was going to give him another check that he could go to the bank with next day, and I would take that one up.

Q Well, what date were you going to put on it, the new check? A The next day, sir.

Q And was there any reason why you couldn't have done that on the 11th? A No, sir. It was just my mistake.

Q When he came to you on the 11th, and said that he couldn't use the check, because it was dated on a holiday, and the banks were closed, couldn't you have written the check then for the day you intended it to be paid? A Well, I wanted to be sure that I had the money in the bank. I wasn't sure that I had it in the bank at the time.

Q And you didn't have money enough at the bank to meet the check, on the day you drew this check? A Well, I wasn't sure about that.

Q Now, when did you first meet this defendant, when did you first learn his name? A Well, it was around 42nd Street and Broadway.

Q But when? A Six years back, I think, and I had seen him around often since.

Q Well, how long have you known him altogether? A Ten years.

Q And now do you mean ten years or six years? Which is it?

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A Well, I've surely known him about eight years.

Q Now, which is it, six or eight or ten years? A It's about ten years.

Q Well, he has testified that, ten years ago, he was in jail.

MR. FALLON: I object to that. It wasn't ten years ago.

MR. BROTHERS: It was in 1911, he said.

MR. FALLON: And it was only for three months.

THE COURT: Objection overruled.

MR. FALLON: Exception.

BY MR. BROTHERS:

Q Did you know him at that time? A No, sir.

Q Did you know him under the name of Herman Kudish?

A No, sir.

Q Did you ever know him as Henry Smith? A No, sir.

Q Now would you search your memory and tell me where you first laid eyes on this defendant, if you can? A At 42nd Street and Broadway.

Q And what was the occasion of that meeting? A Why, a gentleman by the name of Johnson owns a sightseeing company up there, and I believe he was working for them at that time.

Q Did you ever pay Stern this \$660.? A No, sir.

Q You still owe it to him? A No, I paid it with a check.

Q I asked you whether you had ever paid it, and you said no.

A Yes, but I didn't pay it to Mr. Stein.

Q To whom did you pay it? A I gave it to Mr. Johnson.

Q Did you give it to him to give to the defendant, is that it? A Yes, sir.

Q When was that? A I ca n't just recall, sir. But I have got a check made out, I know, though.

Q Well, why did you write William Stein on this check?

A Well, that's the name I know him by. That's his name; isn't it?

Q Did you know him by that name? A Yes, William Stein, or Steiny.

Q Do you know this lady over there, Mrs. Klein (indicating)?

A No, sir.

Q Did you ever see her before? A No, sir.

MR. BROTHERS: Now, Melli, stand up.

Q You know him, you know that man, of course^u(indicating)?

A Yes, I seen him around 39th Street, around the Pre Catalan.

Q Was he around there a great deal? A Yes, I have seen him several times.

Q And did you see him talking with Stein or Stern? A No, I can't say that I did.

Q Well, why can't you say so? A Well, because I can't.

Q I don't understand why you can't say so? A Because I never seen them speaking together.

Q Did you ever see them together? A No, sir.

Q Never? A Yes, I did see them together once or twice,

Q And where was it? A Stand right on the sidewalk.

Right on the sidewalk there.

Q In front of the Pre Catalan? A No, a little this side of the Pre Catalan.

Q Nearer Broadway or Sixth Avenue? A Nearer Sixth Avenue, yes.

Q In front of Flannery's place? A Yes,.

Q Did you stop and talk with him then? A No, sir, I never had no conversation with him.

Q How long had you been around the Pre Catalan Hotel?

A Twelve years. I was around it when it wasn't the Pre Catalan.

Q Were you there at any time in the afternoon or evening at the Pre Catalan, on the 13th of October? A No, sir.

Q Didn't you go back there from the race track? A No, sir.

Q Well, you had an engagement to meet your friend Stern, didn't you? A Yes, but I didn't go back.

Q Why not? A Because I went from the race track in a car with a friend to the Carpentier and Dempsey fight -- No, the Carpentier and Levinsky fight, over there in Jersey.

Q You went right over there from the track? A Yes, sir.

Q And you didn't send any word to Stern? A No, sir.

Q By the way, did he tell you his name was Stern or Stein?

A Stein or Stern; I can't remember which.

Q Well, you wrote it out on the check for him -- and when you wrote out the check, you knew how to write his name, didn't you? A Yes, I did, but I can't remember whether his name was

Stein or Stern or Steiny, or what it was.

Q Have you told us all that took place between you and the defendant on the 11th of October? A Yes, sir.

Q Nothing else happened? A That's all, sir.

Q You can't remember his doing anything else than ask you for this check? A Only about the check, that's all.

Q Well, didn't he show you some very beautiful diamonds?
A Oh, yes, he did.

Q You forgot about that? A Yes, sir. I said he asked me to take them home, and show them to my wife.

Q Well, perhaps I didn't hear you testify to that. Did you ever see Melli inside of the hotel? A Inside of the Pre Catalan?

Q Yes. A I believe I did.

Q Now you knew Pauly; didn't you? A I seen him once or twice.

Q Where? A Around there.

Q Did the people around there call him Pauly? A I don't know what they called him, sir.

Q Well, what did you call him? A I never talked to him at all.

Q Well, how did you know who they were talking about?

A Well, of course, I seen him around, and he was described to me.

Q Who described him to you? A The McGovern boys.

Q When? A A couple of nights after the trouble.

Q When did you first hear about the hooting? A The night

I came back from the fight.

Q That was about what time? A About one, something.

Q That is, you came back to the hotel about an hour after midnight? A No, sir, I came back to the garage, and one of my drivers told me about it.

Q Did you know that the defendant carried a pistol? A No, sir.

Q You knew him very well, didn't you? A Yes; I knew that he had a permit for a pistol.

Q And you saw him very frequently, did you not? A Yes, sir.

Q And he had a permit to carry it, too? A Yes, I knew that.

Q But you didn't know that he had the pistol? A No, sir.

MR. FALLON: I offer in evidence the indictment and the record of conviction of Paul Boittano, charging him with grand larceny in the sum of \$4,000., lawful money of the United States.

MR. BROTHERS: I object to the charge. I don't object to the conviction.

MR. FALLON: Upon which indictment--

THE COURT: No. Is that the paper you hold in your hand?

MR. FALLON: Yes, sir.

THE COURT: Then hand it up.

MR. FALLON: I want to make a record, that's all.

THE COURT: Now, is there any objection to the offering

of the indictment against one Paul Boittano?

MR. BROTHERS: No, sir, none.

MR. FALLON: The conviction is criminally receiving stolen property, and we offer that paper in evidence.

THE COURT: Is there any objection?

MR. BROTHERS: No, sir, none at all.

THE COURT: Then it will be regarded as being marked in evidence, but not marked.

(It is considered marked Defendant's Exhibit C in evidence).

MR. FALLON: And we rest.

MR. BROTHERS: Before you rest, I would like to recall the defendant.

W I L L I A M S T E R N, the defendant, being recalled
for further cross examination, testified as follows:

CROSS EXAMINATION (continued) BY MR. BROTHERS:

Q Did you sign that paper, there, at the bottom (indicating)?

A No, sir.

Q What? A No, sir.

Q. Do you swear that you didn't sign that? A Yes, sir.

Q. Absolutely, you didn't? A I did not

MR. FALLON: May I see that?

MR. BROTHERS: Certainly.

BY MR. BROTHERS:

Q Do you recognize that paper as one that you have ever seen before? A No, sir.

Q You haven't looked at that side of it (indicating). Now, look at that side of it. A No, sir.

MR. BROTHERS: We ask to have the paper marked for identification.

THE COURT: It may be marked.

(It is marked People's Exhibit 18 for Identification).

BY MR. BROTHERS:

Q Did you live in the City of Boston, Massachusetts, at one time, at 604 Massachusetts Avenue? A No, sir.

Q Well, particularly, in the month of December, 1914?

MR. FALLON: I object to that, because we were over this very fully, Judge, and he says he was never in Boston in his life.

THE COURT: Objection overruled.

MR. FALLON: We except. And we make the specific objection that it has been already covered.

THE COURT: Objection overruled.

MR. FALLON: Exception.

A No, sir.

BY MR. BROTHERS: Your Honor, I have to ask -- it is a repetition, perhaps, but it has to be asked, in order to make the next question proper.

Q Were you convicted on the 31st of December, 1914, in the City of Boston, under the name of Henry Smith, alias Herman Kudish, of lascivious cohabitation, and sentenced to three months in the House of Correction?

MR. FALLON: I object to that as immaterial, irrelevant and incompetent, and improper.

THE COURT: Objection overruled.

MR. FALLON: Exception.

BY MR. BROTHERS:

Q And weren't you fingerprinted at that time?

Objected to; allowed; exception.

A No, sir.

Q And weren't you arrested by Sergeant Irwin, of the Boston Police? A No, sir.

THE SECOND JUROR: Can I ask a question, your Honor?

THE COURT: Yes. Ask the question yourself directly of the witness.

BY THE SECOND JUROR:

Q I would like to know if the deceased was a short or a tall man? A Who?

Q Was the deceased a tall man or a short man?

MR. BROTHERS: We have the testimony from the doctor in the case.

MR. FALLON: Yes, the doctor said he weighed 150

pounds.

THE SECOND JUROR: Well, that's the weight, but not the height.

THE COURT: I think the doctor testified to the height. The testimony is from the doctor that the deceased appeared to be about 32 years of age, and that his height was five feet six inches, and that he weighed about 150 pounds, and that he was well developed. Now, does that give you what you want?

THE SECOND JUROR: That's what I want, exactly.

MR. FALLON: We rest.

MR. BROTHERS: I have sent for Mr. Birchall. I did not know that he would be wanted so quickly. He will be here in a moment. His testimony is very short.

THE COURT: Very well.

REBUTTAL.

NATHAN BIRCHALL, Jr., a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Birchall, what is your occupation? A Stenographer.

Q And you have been a stenographer for how many years?

A About fifteen years.

Q You have been employed by the office, or in the office, rather, of the different District Attorneys of the county of New York how many years? A About thirteen.

Q On Columbus Day, October 12th, 1920, were you present in 23rd Precinct Station house, with Deputy Assistant District Attorney Marro? A I was.

Q And did you there see this defendant Stern? A Yes, sir.

Q Was there a conversation, question and answer, between Mr. Marro and this defendant? A There was.

Q Did you take down correctly in shorthand, Mr. Marro's questions, and the answers made thereto by the defendant?

A Yes, sir.

Q And have you your original notes here? A I have.

Q Did you take it down, as you stated you did, correctly?

A yes, sir.

Q And did you take down all that was said by both of these people? A Yes, sir.

Q Now, will you produce your original notes, please? A Yes.

Q Have you a note as to who was present at the time this talk was had? A I have. Mr. Marro, Officer Sullivan, the defendant and myself.

Q And when did they begin to speak to each other? A At 8.43.

Q Now, do you find in your notes a question, "Do you know this fellow, Pasquale Melli?" Now, will you give us the answer?

MR. FALLON: I object to that, as not proper rebuttal.

They had that testimony from the officer, on the stand, and they are not entitled to it again, I submit, in the guise of rebuttal.

Overruled; exception.

A "Do you know this fellow Pasquale Melli? A No."

CROSS EXAMINATION BY MR. FALLON:

Q Did he, as part of that same conversation, say "Q Who did you fire them at? A Well, when I was stuck up in the hallway, I fired them." A Yes.

Q "Q Well, tell us all about it. How were you stuck up?

A Well, I don't care to make any statement, District Attorney, until I see my counsel. Q Of course, if you have been stuck up here, naturally it is in your favor, if it is true. That is what we want to get, the facts. A It is true, all right.

Q You have nothing to be afraid of, if it is the truth. A Well, it is the truth, all right."

THE COURT: Just designate what part of the page you are reading, as question, and what part is answer. It is quite impossible to tell as you read, what language is that of Mr. Marro, and what is that of the defendant. You should "Question" before you read a question, and "answer" before you read an answer.

MR. FALLON: I didn't think there could be any question about that, but I will do so.

Q "Q There is nothing you have got to be afraid of, is that's the truth. A Well, it is the truth, all right.

Q Why should you be afraid to talk? A Well, my counsel says not to make any statement until he comes." Now, was that said by the defendant in answer to Mr. Marro's questions? A Yes, sir.

Q Do you recall, also, this question being asked, and this answer given: "Q Did you know this Paul Boittano? A No, I didn't know him. I knew him by sight, but I didn't know him. I have seen him probably two or three times around there."

A Yes, sir.

MR. FALLON: That's all.

MR. BROTHERS: That's all, Mr. Birchall. Now, if the Court please, I have been confronted by a situation here that I did not anticipate would really exist, but I sent word for a certain witness, yesterday afternoon, on leaving the court, and the witness has not yet arrived. It is on a very material matter, and I really feel that, in justice to my side of the case, I should ask your Honor to grant us an adjournment to secure the attendance of that witness.

THE COURT: Is there any way of ascertaining whether the witness is on his way to court, or has received your message?

MR. BROTHERS: I think, if we telephone, we could get some information.

THE COURT: How long will it take?

MR. BROTHERS: It might take half an hour to get the message through. It may be that the witness will be here by two o'clock.

THE COURT: Yes, but I don't want to adjourn until you can assure the Court definitely that the witness has received your message, or is likely to be here at some definite time. Now, if you can get into communication with him, or somebody representing him, by telephone, I think that the thing to do would be to take a short recess, until you can learn whether the witness will be here.

MR. BROTHERS: May I suggest half an hour, and we will do our best?

THE COURT: Yes, half an hour. Gentlemen, in view of the statement of the District Attorney, we will take a recess until a quarter past twelve, and you appreciate that at this stage of the case, it is very important for you to strictly adhere to the admonition that the law requires. Do not talk about the case among yourselves, or with anyone else, and do not form or express any opinion about it until it is finally submitted to you. In other words, keep your minds open and free as to the case, until the case is finally submitted to you.

(The Court then took a recess until a quarter past twelve o'clock).

A F T E R R E C E S S .

MR. BROTHERS: If the Court please, as suggested by your Honor, we telephoned, and received such information that we cannot have the proof required here before tomorrow morning, and, inasmuch as it is a very material matter, and one that could not have readily been foreseen by me, so as to have it here in advance, I am going to ask your Honor to adjourn until ~~at~~ tomorrow morning.

MR. FALLON: Your Honor recalls that Mr. Meyer, the District Attorney's office, took up with your Honor an engagement that I have in the Bronx, before Judge Tierney, tomorrow morning; and, if we sum up at two o'clock tomorrow afternoon, unless the Court charges at once, it will be very likely to go over to Monday.

MR. BROTHERS: I am ready to accede to anything that appears reasonable to your Honor and Mr. Fallon. I am the one who is asking a favor.

THE COURT: Well, what I want to know from you is this, Mr. Brothers: Is the evidence of sufficient importance in this case to justify suspending at this time, until any time tomorrow, or later?

MR. BROTHERS: In my judgment, it is, and I very earnestly ask you to grant our request. I feel that, if I did not have the opportunity to get this evidence here,

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I might be, later on, justly criticised for not urging with the greatest seriousness and earnestness, your Honor to grant the adjournment.

THE COURT: In view of the statement made by the District Attorney, I will give the People an opportunity to produce the witness referred to.

Gentlemen, I agreed this morning, to permit Mr. Fallon to fulfill another engagement that was peremptory for tomorrow, in another court. It will therefore be necessary, much as I regret it, to adjourn this case until Monday morning.

If we came back here, tomorrow afternoon, the case would not be submitted to you until quite late in the afternoon or evening, and I know that that is not relished, as a rule, by jurors, and I think it is for your convenience, if it is submitted to you on Monday morning.

Therefore, you are excused, gentlemen, until Monday morning. Be in your seats promptly at 10:30 o'clock.

Now, that is a rather long adjournment, and please bear in mind the admonition that I have frequently given you. Do not talk about this case among yourselves, or with anyone else, and do not form or express any opinion about it until it is finally submitted to you.

(THE further trial of the case was then adjourned to MONDAY MORNING, JUNE 30th, 1921, at 10:30 o'clock).

T R I A L R E S U M E D .

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New York, June 20th, 1921.

R E B U T T A L (continued)

C O R N E L I U S F : S U L L I V A N , being recalled
by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer Sullivan, did you go to Boston, Massachusetts,
since this case began? A I did.

Q When did you go there? A I left on the 16th, and
arrived on the 17th.

Q Have you brought from the City of Boston, certain
records? A I have.

Q Will you let me have them? A Yes, sir.

(A paper is marked People's Exhibit 19 for Identifica-
tion).

Q This paper, which is marked People's Exhibit 19 for
Identification, was obtained by you from what place? A From the
Municipal Court, Boston, Massachusetts, from the Clerk's Office.

Q And when did you get it? A I got it on the morning of the
17th.

Q Of this month? A Of this month.

Q And is it not in the same condition as it was when you
received it? A No, it is not. There were some alterations
made on it. I took it to the State Capital and had the Great
Seal put upon it.

Q So that, when you received it from the Capital -- whom did you see at the State Capitol? A Mr. Peter F. J. Carney, Deputy Acting Secretary of State of the Commonwealth of Massachusetts.

MR. BROTHERS: Now I ask to have this other paper marked for identification.

(It is marked People's Exhibit 20 for Identification).

Q I show you People's Exhibit 20 for Identification, and ask you where you received that document? A From Mr. Carney, in the same place, and he also placed the Great Seal upon it, at the same time.

Q Yes. Now I show you a photograph. At what place did you receive that? A I received it at Police Headquarters, from Chief Inspector of Police McDurr, of the Boston Police Department.

Q On the same date as you have testified to? A Yes, sir.

(It is marked People's Exhibit 21 for Identification).

CROSS EXAMINATION: None.

C H A R L E S A. O C H S, of 185 Bowdin Street, Dorchester, Massachusetts, being called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Do you live in Boston, Mr. Ochs? A Yes, in ~~Boston~~ ^{Dorchester,} which is a suburb of Boston.

Q What is your business? A I am a folding machine paper operator.

Q And where are you employed? A By Ginn & Company, Cambridge, Massachusetts.

Q Were you formerly a member of the Police Department of the City of Boston, Massachusetts? A Yes, sir.

Q And what was your rank? A Just an ordinary patrolman. I was doing detective work, now and then.

Q How long were you a member of the Police Department? A Eighteen years and eleven months.

Q Do you know the defendant in this case? A I do.

Q Under what name do you know him? A I knew him under the name of Henry Smith, and also Herman Codage, as an alias.

Q Did you arrest this defendant in Boston? A Yes, sir.

Q On what date? A Thursday morning, December 31st, 1914.

Q Was there another officer present? A Yes, sir.

Q What was his name? A Sergeant William J. Erwin.

Q He is dead now, isn't he? A Yes, sir, he is dead and gone.

Q Was the defendant arraigned in court, and tried upon a charge, as the result of your arrest? A Yes, sir.

Q And were you present when he was convicted? A I was.

Q Of what was he convicted? A He was convicted of lewd and lascivious cohabitation, and also another charge, when in court, was put against him, for deriving support from a prostitute.

Q Was he convicted on that, too? A Yes, sir.

Q So that there were two convictions? A Yes, sir, two convictions.

Q And he was arraigned under the name of-- A Henry Smith, and also Codage. One of them was an alias.

Q Do you remember the name of the Judge? A No, I don't.

Q Can you refresh your recollection by examining this paper, People's Exhibit 19 for Identification? A Yes, sir, that's correct, in this case.

Q Well, what is the Judge's name? Was it Wilfred Bolster?

A Yes, sir. He is the Chief Justice, and he is on all public papers in that court.

Q And this defendant, known to us as William Stern, is the man referred to in that exhibit as Henry Smith, with Codage as an alias? A Yes, sir.

Q And also in People's Exhibit 20? A Yes, sir.

Q And what was the woman's name? A Rose Powell.

MR. BROTHERS: We offer in evidence People's Exhibit 19 for Identification, an exemplified copy of the judgment against Henry Smith, now identified by this witness as this defendant.

THE COURT: Received.

(It is marked People's Exhibit 19).

MR. BROTHERS: We make the same offer as to People's Exhibit 20 for Identification, on the same ground and on the same proof. It is the judgment against Henry Smith, known

and identified here as this defendant. There are two different charges.

THE COURT: Received.

(It is marked People's Exhibit 20).

BY MR. BROTHERS:

Q What was the sentence imposed? A Three months and nine months on Deer Island. He was sentenced on the 5th or the 6th of January.

BY THE COURT:

Q What year? A 1915.

BY MR. BROTHERS:

Q Have you any knowledge as to whether he served those full sentences? A No, sir.

Q I show you People's Exhibit 21. Whose picture is that?

A The gentleman right there (indicating the defendant).

Q The defendant in this case? A Yes, sir.

Q Were you present when that picture was taken? A No, sir.

Q Can you tell me whether that is a picture taken in the Police Department of Boston, or otherwise? *

MR. FALLON: We object to that. He has just said he was not there at the time.

MR. BROTHERS: But, there may be other means of identifying

BY THE COURT: He is asked if he knows. Just yes or no.

THE WITNESS: I wasn't present when this picture was taken, but I can identify it as a picture taken in the

Department.

BY THE COURT:

Q Can you state whether or not it was taken by the Police Department? A I wasn't present at the time, but there is a means of identification on the back.

Q Can you state from anything appearing on that card whether it is a Police Department picture? A Yes, sir, it is.

THE COURT: Objection overruled.

MR. FALLON: Exception.

BY MR. BROTHERS:

Q Well, is it? A Yes, sir, it is.

MR. BROTHERS: We offer it in evidence.

MR. FALLON: We object.

MR. BROTHERS: Well, I will not press it. Perhaps it is not properly admissible.

THE COURT: The objection is sustained.

CROSS EXAMINATION BY MR. FALLON:

Q Now, how many arrests have you been present at, Officer?

A A number of arrests. I can't say the exact amount.

Q Well, about how many? A I couldn't give it to you exact. Just a rough guess, that's all.

Q Well, give us a rough guess. A About 200.

Q You remember the faces and features of the entire 200? Do you not, Officer? A I do not.

Q You were present in court when how many prisoners were

arraigned, of the prisoners arrested by the Boston Police, while you were a police officer? A I was at some of them, and some not,

Q Was there anything unusual about this case that you have told us about? A Yes, sir.

Q Now you say that a good many of the defendants you arrested you couldn't remember? A Yes, sir.

Q You remember this defendant very well, don't you? A Positively.

Q Now how was he dressed when you arrested him, the day you arrested him? A The day I arrested him--

Q No, how was he dressed? A He wasn't dressed at all, the day we placed him under arrest.

Q I see. He had no clothes on, that day? A Only his undershirt, that's all.

Q Now, when he did dress, if he did dress, in what colored suit did he dress? A He had a dark suit.

Q Was it blue, black or brown? A To the best of my recollection, it was a mixture of some kind.

Q Now, do you remember it all, or are you just guessing? A I am giving you the best of my recollection about the suit. I had no reason to look at his suit of clothes, what he had on. I ~~xxxx~~ knew he had clothes on; that's all.

Q What kind of a hat did he wear? A If I remember rightly, he had a cap.

Q A cap? A I won't say positively, but as far as I can remember.

Q What sort of eyes has this defendant? A He has a sort of blue grey. We might call it a light or dark blue.

Q Step up here. Now, ~~it~~ take a look at that man's eyes and tell us what color that is (indicating the defendant)? A You would call that bluish grey eye.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q What did you see unusual in the arrest of the defendant, which you speak of in answer to counsel's questions?

MR. FALLON: If your Honor please, I object to that. He simply said that there was something unusual. ~~I think~~

THE COURT: I think you opened the door, but the objection is sustained. The only question is as to identity, and the officer says that he is the man that he arrested in Boston.

MR. BROTHERS: Now, is Boittano here?

THE CAPTAIN: Yes, sir.

J O S E P H J. B O I T T A N O, of 64 Rodgers Avenue, Brooklyn, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Boittano, are you a brother of Paul Boittano, the deceased in this case? A Yes, sir.

Q In what business are you engaged? A I have been a shipping clerk for about twenty years.

Q By whom are you employed? A I am now employed by ³³⁹
Darrow & Rudden.

Q Where is their place of business? A 137 Flint Street,
New York.

Q How long have you been employed by them? A I have been
employed by them for going on twelve years.

Q How old was Paul at the time of his death? A This is
1921. He was murdered 1920. He was born in December 1887, and
that would make him 33 years on the following December, which
would be about, say, six weeks after his death, when he would
have been 33 years old.

Q For some time prior to his death, in what business was
he? A He was employed by the Facinella Detective Agency, on
Fifth Avenue, for about three years. He was their main solicitor.

Q Shortly before his death, did he engaged in some other
enterprise? A After he left the detective agency, he thought
he would venture--

Objected to; sustained.

Q No. What was he doing at the time of his death?

A Then he was in the liquor traffic. In fact, I helped him
financially to start. He was buying and selling liquor.

Q Now, were you appointed the administrator of his Estate?

A I was.

Q And how much property did he leave in the bank?

MR. FALLON: That is objected to. How is that material

here?

MR. BROTHERS: Why the charge here, by way of defense, is that this man attempted to rob the defendant of jewelry.

MR. FALLON: But there is no proof that that money did not come from such such escapade. You can't say that it didn't come that way, merely from the fact that it is in the bank.

THE COURT: The objection is sustained.

MR. BROTHERS: Pardon me, your Honor, may I call your attention to this? If Boittano was here on trial, charged with attempting to rob a man in a hallway, proof that he was engaged in business, and had a considerable sum of money in bank, would be some proof that he was under no necessity to rob, and would be received on the question of character, and the probability of his engaging in a felonious act.

THE COURT: The mere fact that a man has a large sum of money in bank does not, of itself, or even as a circumstance negative the position that he might engage in a robbery. Objection sustained.

CROSS EXAMINATION BY MR. ~~BROTHERS~~ FALLON:

Q Now, just one question --

MR. FALLON: Mr. Clerk, may I have the indictment for robbery that is in evidence?

Q Do you know in what business your brother was engaged between 1914 and 1917? A No, I don't.

Q Was he working as a private detective, and then as the chief confidential man? A Excuse me. I might be a little puzzled. Now my brother ~~was~~--

Q No. Just please answer my questions. I don't want to know anything else.

Q Do you know what business he was engaged in at any time after the 15th of February 1912 until 1917? A 1912 to 1917?

Q Yes. A Yes, I do.

Q What business was he in? A He was then in the detective agency business.

Q For the whole five years? A No, I don't say that.

Q Well, approximately the whole five years? A No, I wouldn't say that.

Q Well, how many of the five years was he in the detective business? A Well, say, two out of the five.

Q About from 1915 to 1917? A No. Excuse me a moment, counsellor. I happen to be a married man with a family.

Q Now, I didn't ask you anything about your family. A Well, I don't have time to keep track of his movements, according to months and years. I can't tell the Court what my brother had done all his life.

MR. FALLON: I object to this, and move to strike it out.

THE COURT: Yes, strike it out.

THE COURT: Boittano, you are just asked one point.

If you don't know, say so.

THE WITNESS: No, the dates are too conflicting.

I have too much family trouble to remember such things.

BY MR. FALLON:

Q But you do testify that, for at least two years within those five years, your brother was engaged in the detective business? A Yes, sir.

Q Now don't you remember that, during the year 1917, and several years before that, your brother was living for a number of years up at Sing Sing? A No, not a number of years, not two years.

Q Don't you know that from the 15th day of February 1914, your brother was a fugitive from justice, and was out of New York State altogether? A Yes, that's true, at least part of it.

Q And that he hadn't returned until 1919? A No, sir, that's wrong, counsellor. As the facts stand, my brother wasn't away from the United States six months of all those years that you are referring to. At that time he was in Mexico City, for the six months I have referred to. He was right in New York City during all that time.

Q Now, just before your brother's death, for two or three months before that, you remember seeing him almost every day?

A Not every day. Paul had a habit of coming to my place of business, about once a week, just to see how I and my boy were getting along.

Q And he did that in 1920; didn't he? A No, he did that

for at least two years. My wife will be dead pretty near three years, and he came for almost three years to see me and my boy because we were living alone.

Q Now, then, from September until the time he was killed, he was at your house at least once a week? A At my place of business.

Q And he was then engaged in the liquor traffic? A Yes.

Q And don't you know that he was in South America during the month of September? A Yes, counselor, I have his passport right here.

Q (repeated) A No; he was not.

Q Where was he during the month of September 1920? A He left here on September 1st, 1920, and went to Mexico City, and arrived here on the 27th, and had supper with me at my home on the 28th.

Q Well, did you mean to tell the jury that you saw him every day and every week that he was in Mexico City? A No, not during those twentysix days.

Q And you don't mean to say that he was in the bootlegging business during those twentysix days, was he? A The Proceeds of his liquor traffic was the means of paying his fare both days.

MR. FALLON: May I have this answer stricken out, your Honor?

THE COURT: Yes, strike it out.

BY MR. FALLON:

Q Was your brother engaged in the liquor traffic while he was in Mexico City, during the month of September? A Not to my knowledge.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Was your brother married? A He certainly was.

Q Where did his wife live? A In Mexico City.

Q Is she an invalid? A Yes.

Q And did he go to see her? A Yes.

Q And you have his passport showing when he went, and when he returned? A Yes, I have his passport right in my pocket here.

G E O R G E M c F A R L A N D, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. McFarland, where are you employed? A City Clerk.

Q Have you produced here the records of the issuance of marriage licenses for the year 1915, in this City and Borough?

MR. FALLON: We object to that. It is not the subject of collateral attack, because it was brought out in cross-examination.

MR. BROTHERS: No, sir, it was brought out by them, in direct. It was about the third question.

THE COURT: Well, he can testify as to whether he brought any records here or not. Then another situation will arise.

BY MR. BROTHERS:

Q Have you brought the records of the marriages that took place in the Borough of Manhattan in the year 1915? A Yes, sir.

Q Now, did you look through those records yourself, to find whether or not a license to marry was issued in November 1915 to William Stern, of this City?

MR. FALLON: We object to that.

THE COURT: You say it was brought out on the direct examination that the defendant was married at a certain time in the County of New York?

MR. BROTHERS: Yes, sir. I will give you the exact evidence. The first testimony given by him was in answer to questions of his own counsel, at page 209, and also on page 225, which was on cross-examination.

THE COURT: I have it here in my copy of the minutes.

MR. BROTHERS: And upon re-direct examination, he was asked again. You will find that at page 283.

THE COURT: Objection overruled.

MR. FALLON: May I specify the objection more particularly than I have on the record? We object on the ground that it is only a question affecting the credibility of the witness, and therefore cannot be impeached.

THE COURT: If it had been brought out by the District Attorney on crossexamination, your objection would be forcible, but the main fact was brought out by yourself on

direct examination.

MR. FALLON: And I submit that it cannot be a matter of collateral attack or impeachment.

THE COURT: Overruled.

MR. FALLON: Exception.

(The question is repeated by the stenographer). A Yes.

Q Did you look? A Yes.

Q Did you find any such records? A No, sir.

Q Did you find any record of the issuance of such marriage license to William Stern, in this City and Borough, at any time during the year 1915? A No, sir.

Q Or 1916? A No, sir.

Q Have you also looked through the records which you have here in court, as to the performance of a marriage ceremony, New York City and Borough of Manhattan, between William Stern and any woman, during the month of November, 1915? A No, sir.

Q Is there any such record? A Not in our books.

Q And did you look for the year 1914 and 1916 also? A Yes.

Q And did you find any such records? A No, sir.

CROSS EXAMINATION BY MR. FALLON:

Q Did you also look for the name Stein, in addition to the name of Stern? A Yes.

Q Did you look for the name Henry Smith? A No, sir.

MR. BROTHERS: The People rest, sir.

MR. FALLON: We move for a direction, on all the grounds.

previously stated, at the time of the motion made to dismiss, and also for a direction at that time.

THE COURT: Denied.

MR. FALLON: We except, and we rest. Are we going to be limited to any time, or can we take as much time as we desire?

THE COURT: I shall not limit you, but I will ask you to keep within reasonable bounds. I never make a suggestion to counsel to curtail summing up. Will an hour be ample for you?

MR. FALLON: Oh, yes, sir.

(Mr. Fallon then summed up for the defense).

(Mr. Brothers then summed up for the People).

THE COURT'S CHARGE.

Talley, J.

Gentlemen of the jury:

The defendant, William Stern, was indicted by a Grand Jury of the County of New York on a charge of murder in the first degree, in that, on the 13th of October, 1920, in this County, with a loaded revolver, he shot and killed one Paul Boittano.

You are not to infer from the fact that an indictment has been found against this defendant that he is guilty of the crime charged merely because of the finding of an indictment, because an indictment is merely an accusation reduced to writing, its province being to acquaint the accused with the character of the charge, and to bring him into court.

The burden of proving that he is guilty of the crime with which the indictment charges him rests upon the People of the State, and in the consideration of the evidence brought against the defendant by the People, and in the consideration of the evidence brought forth by the defendant in his own defense, you are performing one of the two functions that exist in every criminal case. One is that which is exercised by the jury; the other is that which is exercised by the Court, and one is distinct

and separate from the other.

You, gentlemen, as jurors, are judges of the facts of this case. You are the ones who are to determine, as a judge must determine, and decide where the truth lies in this case; and you are just as much Judges upon the facts in this case, as is the Court a Judge upon the law in the case. But the Court is only the Judge upon the law, and has nothing whatever to do with the determination of the facts, because that is your task, your duty, your province.

Certain rulings have been made by the Court during the course of this case, having to do with questions of evidence, the admission of some and the rejection of the other. Certain motions were made by the counsel for the defendant, and were decided by the Court, but with those things, you have nothing whatever to do, because they belong within the domain of the law of this case, whereas you are here as sole judges of the facts.

You have listened with the most careful attention, and given close scrutiny to the evidence presented in this case, and it is quite apparent that you realize the importance of the duties which you are called upon here to perform.

It is difficult to imagine any more serious task...

that falls to the lot of a citizen in this community than that of being called upon to sit as a juror in a case of this character. You have your obligations as citizens of this country, as residents of this county, jealous of the good name and repute of the City in which we live; and you have obligations, under the oaths which you took as jurors, in this particular case, to well and truly try and determine the guilt or innocence of this defendant, not upon something outside of the case, but on the evidence that has been given from this witness chair.

In this, as in every other criminal case, the law, jealous of the rights of all citizens, has thrown certain safeguards around the defendant; and while to those of you who have sat as jurors before, they may sound familiar and trite, they are, nevertheless, of the highest importance, and must be accorded to this as to every other defendant.

The first of those is that the defendant is presumed to be innocent, until his guilt is proven to your satisfaction beyond a reasonable doubt.

Now, let me see if I can put that in another way. It means this: It means that, under our forms of law, a defendant is not required to prove his innocence. The burden of proving his guilt remains upon the

prosecution, the People of the State of New York, represented by the District Attorney. And they must go a step further, in the matter of proving it, and they must prove it beyond a reasonable doubt.

Now, we must consider what the law means by laying down that rule of proof beyond a reasonable doubt. There must be proof to your satisfaction, beyond a reasonable doubt.

Now, what is a reasonable doubt? Well, it is one of those self-apparent propositions that, the more one attempts to define the words, the more difficult to understand they become. A reasonable doubt is a doubt founded in reason. It is a doubt for which you must be able to give a reason, if anybody should require a reason to be given. It is the kind of doubt which any one of you twelve men might have with regard to any of the important affairs of your business, or your domestic, or your social life. It is the kind of a doubt that resolves a man to do or not to do a certain thing, probably every day of his life. It is not a guess, it is not a whim, it is not a surmise, nor can it be used as a subterfuge to avoid doing a disagreeable duty. It must be a fair, conscientious doubt, the kind of a doubt that a conscientious man might have, after carefully reviewing the facts of any situation.

If you have that kind of a doubt about the guilt of this defendant, then it is your duty to acquit him. But if, after a careful, conscientious, scrupulous review of all the evidence in this case, you do not entertain a reasonable doubt of his guilt of the killing of Paul Boittano, on Columbus Day of last year, then it is your bounden and sacred duty to convict this defendant.

It would be an unthinkable thing, if twelve men, strangers to this defendant, strangers to counsel, strangers to one another, brought here and empaneled as the jury in this case, should be convinced of the guilt of a defendant, and then, for any reason not founded upon the evidence in this case, should fail to do your duty, because it has been my observation that the ultimate enforcement of the law in this great Empire City of ours, depends, not upon an army of policemen, depends not upon the organization of the prosecutor's office, nor on the maintenance of the dignity of the Court, and the presence of the officers, and the panoply and accoutrements of a great courtroom, but the ultimate enforcement of the law of this State depends upon whether or not jurors do their duty. If they do not, all the other considerations that go to make up the fabric and the structure of justice will fall into decay.

The law does not require the People to prove the

guilt of the defendant in a criminal case to a mathematical certainty. So few of the things of life are subject to that accuracy of proof that, to require it, would be putting too great a burden upon the prosecution in a criminal case, a heavier burden than they could reasonably be expected to sustain. But what is required is that a defendant's guilt be proved to a moral certainty, to the satisfaction of fair, conscientious jurors, beyond a reasonable doubt.

Now, gentlemen, your task is to find out where the truth lies in this case. We have not any mechanical apparatus invented to enable us to tell whether a witness, when he is speaking words, is telling the truth or not. We have not invented any microscope or X-ray that can penetrate into the brain of a man, to tell us, as he is speaking, whether he is speaking the truth. But there are other ways which are perfectly reliable, whereby we can tell, to some degree, whether people are uttering truth or falsity. There are searchlights which are provided for us, which we can use in daily experience, or when we sit in a jury box.

For instance, we can train on the testimony of a witness, the searchlight of our own experience as practical men, the searchlight of common sense, of the probabilities of the case. We can observe the demeanor

of the witness as he testified. All of these tests we can apply whenever a witness is testifying, and from their interest in the case, if any, we can then determine whether or not, in our judgment, witnesses are telling the truth.

Now we come to the question of the credibility of witnesses. Credibility is the main thing to be established by a witness in your minds, when you come to consider his testimony. There was evidence adduced that at least one of the witnesses had been convicted of the crime of manslaughter. You have the right to consider that. Considering it does not mean that you should reject his entire testimony, but you have the right to inquire whether a man who has been convicted of a serious crime is as apt to tell the truth as one who has heretofore enjoyed an unblemished reputation.

The defendant in this case took the stand in his own behalf. He was not required to take the stand. Had he remained silent, relying upon his undoubted right to make the prosecution prove his guilt, if his counsel had so requested, I would have been required to charge you that you could indulge in no presumption as to his guilt, if he had chosen to remain silent.

Those are privileges which our beneficent law gives to those who are charged with crime. But he did take the stand, and having taken the stand, he must be

subjected to the same kind of scrutiny, the same kind of tests, that you would apply to any other witness.

The District Attorney contends that the evidence shows that the defendant was convicted of crime prior to his indictment in this case. Well, now, gentlemen, you cannot convict him of this crime with which he is charged because of his prior conviction of crime. You are here to try this one issue, and that is: Is this defendant guilty of the unlawful killing of Paul Boittano, on Columbus Day last?

You are not here to try him for any other crime, and you must not be influenced in arriving at your verdict in this case because of his previous conviction. But you may consider the previous conviction upon the question of his credibility. You may consider the fact that he was previously convicted of crime in determining whether or not the story that he tells in his defense in this case bears upon it the earmarks of credibility, and carries with it the stamp of truth from this witness chair into the jury box.

It is a rule of law, based upon experience, and one which you may apply in this case, that, if you believe that a witness, or any person who has testified, has wilfully testified falsely with regard to any material point in the case, then you are at liberty to disregard his

entire testimony.

It is your recollection, gentlemen, of the testimony that must prevail in this case. It is not what the learned counsel for the defense says was testified to, or what the able District Attorney says was testified to, nor what the Court says was testified to, if the Court finds it necessary to refer to the testimony. It is your recollection of the evidence in this case which must prevail, when you come to consider the guilt or innocence of this defendant.

Now, gentlemen, the indictment here is for murder in the first degree. The law requires that no person can be convicted of murder or manslaughter, unless the death of the person alleged to have been killed and the fact of killing by the defendant, are established as independent facts.

The killing, the death of Paul Boittano, must be established as an independent fact in this case. It is conceded by the defendant that he killed Paul Boittano, but he did it, he says, under circumstances which bring it, if they are true, under the provisions of the law, to which I will call your attention later, of justifiable or excusable homicide.

Now, that you may approach your task with a knowledge of the law as to the killing of one human being by another, I will review as briefly as possible, and as

consistently with a complete understanding as is possible, the law of this State with regard to homicide.

Homicide is the killing of one human being by the act, procurement, or omission of another.

Homicide is the generic term meaning the killing of a human being, the killing of a man, in this case.

Homicide has four sub-divisions, and one of them is murder; the second is manslaughter; the third is homicide that is excusable, and the fourth is homicide which is justifiable. So we divide homicide into murder, manslaughter, excusable and justifiable homicide.

Murder is again sub-divided by the law into murder in the first degree and murder in the second degree. Murder in the first degree is defined as the killing of a human being, which is neither excusable nor justifiable, and which is committed from a deliberate and premeditated design to effect the death of the person killed, or of another.

Murder in the second degree is the killing of a human being, when committed with a design to effect the death of the person killed, or of another, but without premeditation and deliberation.

You see that the essential elements of murder in the first degree are that the killing shall be done with a design to kill that person or another, where there is

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deliberation and premeditation, accompanying the act.

Murder in the second degree has all the elements of murder in the first degree, except that murder in the second degree is present when the killing is accomplished with a design to kill the person whose death is accomplished, or another, but where there is an absence of premeditation and deliberation.

The next sub-division of homicide is manslaughter, and manslaughter can best be described as the case of the killing of a human being, which is neither murder in the first degree nor murder in the second degree, and is neither justifiable nor excusable; and, as in the case of murder, it is divided into manslaughter in the first degree, and manslaughter in the second degree.

Manslaughter in the first degree is present where the killing is without the design to effect death, in the heat of passion, but in a cruel or unusual manner, or by means of a dangerous weapon. We have manslaughter when there is an absence of a design to effect the death of a person killed, but where that killing comes as the result of an act done in the heat of passion, or by the use of a dangerous weapon.

Manslaughter in the second degree is where a death is effected, but without the use of a dangerous weapon, and has no application to the case at bar, in view of

the admitted testimony that the death of Paul Boittano was caused by the use of a dangerous weapon, introduced in evidence in this case, a revolver.

We have discussed the first division of homicide, murder, the second division of homicide, manslaughter, and now we come to the third and fourth sub-divisions, which refer to excusable and justifiable homicide.

Excusable homicide is that which is committed by accident and misfortune, in lawfully correcting a child or a servant, or in doing any other lawful act by lawful means, and without an unlawful intent.

That provision of law has no application to the case at bar, but the next sub-division has, according to the defense presented here by this defendant.

The next subdivision of homicide is justifiable homicide. That is the kind of homicide which the defendant says he committed. Homicide is justifiable when committed in the lawful defense of the slayer, when there is reasonable ground to apprehend a design on the part of the person slain to do some great personal injury to the slayer, and there is imminent danger of such design being accomplished.

So that the law says that the killing of a human being is justifiable when the person killed is slain in the lawful defense of the slayer, when there is reasonable ground upon the part of the slayer, the man who kills, to

apprehend a design on the part of the person slain to commit a felony, or to do some great personal injury to the slayer.

Then the law goes on to state further:

"And when there is imminent danger -- " that is, immediate danger -- "of such design being accomplished."

Now, there is one other provision of law which applies to what is called common law self-defense.

"An act, otherwise criminal, is justifiable, when it is done to protect the person committing it, or another whom he is bound to protect, from inevitable and irreparable injury, and the injury could only be prevented by the act, nothing more being done than is necessary to prevent the injury."

"Before a party can justify the taking of life in self-defense, he must show that there was reasonable ground for believing that he was in great peril, and that the killing was necessary for his escape, and that no other safe means was open to him."

The law further provides:

"When one believes himself about to be attacked by another, and to receive great bodily injury, it is his duty to avoid the attack, if it is in his power to do so, and the right of attack, for the purpose of self-defense does not arise until he has done everything in his power

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to avoid its necessity.

The Court of Appeals, upon this question of self-defense, upon this question of the resistance of attack upon the person or property, says this:

"When one who is without fault himself is attacked by another in such a manner and under such circumstances as to furnish reasonable ground for apprehending a design to take away his life, or to do him some great bodily injury, and there is reasonable ground for believing the danger imminent, he may safely act upon appearances, and kill the assailant, if that be necessary to avoid the apprehended danger, and the killing will be justifiable, although it may turn out that the appearances were false, and that there was, in fact, neither design to do him serious injury, nor that it would be done."

But the Court of Appeals also said:

"Before one can justify the taking of life in self-defense, he must show that there was reasonable ground for believing that he was in great peril, and that the killing was necessary for his escape, and that no other safe means of escape was open to him."

Now, gentlemen, upon the question of premeditation and deliberation, which I have charged you are essential elements to sustain the charge of murder in the first degree, as charged in this indictment, the question for

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you to determine upon that phase of the case is whether or not, assuming that you do not believe the story of the defendant, the killing of Paul Boittano was effected with a deliberate and premeditated design to take away his life.

Deliberation and premeditation might be had in almost the twinkling of an eye. They might, under other circumstances, require a considerable period of time. To deliberate upon some given proposition requires some appreciable space of time, but that time need not be long. There might be deliberation and premeditation accomplished between the time of the drawing of a revolver from the hip pocket and the pulling of its trigger. There might be deliberation and premeditation between the walking out of one door, and the walking into another. So that the law requires that there be some appreciable space of time, wherein the human mind which acts with great speed, can determine to do or not to do a given thing.

The highest Court of this State has said:

"There must not only be an intention to kill, but there must also be a premeditated and deliberate design to kill. Such design must precede the killing by some appreciable space of time, but the time need not be long. It must be sufficient for some reflection or consideration upon the matter, for a choice to kill or not to kill, and for the formation of a definite purpose to kill, and when

the time is sufficient for this, it matters not how brief it is. The human mind acts with celerity, which it is sometimes impossible to measure, and whether a deliberate and premeditated design to kill was formed, must be determined from all the circumstances of the case."

"If the killing is not the instant effect of impulse, if there is hesitation or doubt to be overcome, a choice made as the result of thought, however, short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder."

"Whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case," and that, gentlemen, is what you must consider in arriving at your verdict, all the circumstances in this case. You must put them all together, you must test all the evidence that was given, you must use every effort to determine upon which side of the situation the truth lies; and then you must arrive at a fair and a just verdict, a verdict that is fair and just to this defendant, and fair and just to the People of this State, who are equally entitled to your consideration.

All of the testimony in this case that was admitted into evidence should be carefully considered and weighed by you; the actions of this defendant before and after

Paul Boittano fell prostrate to the sidewalk, with a steel bullet in his body, causing death; his actions after that; the going away, with the gun in his hand, the shooting at Melli, who, he says, pursued him; his denial of knowledge of or acquaintance with the dead man; any statements that he made afterwards; all of these things are part of the circumstances of the case which you are entitled to consider, and you are entitled to consider the testimony of every witness in this case. Then, when you have considered them all, have carefully and conscientiously weighed their testimony, approach the just determination that you must now make as men, courageous men, men not afraid to do that sometimes disagreeable thing which we call duty, and find a fair and just verdict, in accordance with the evidence, but not in accordance with sympathy, nor in accordance with prejudice. Both the People and this defendant are entitled to a verdict undisturbed, not actuated, by any of these emotions. They may be perfectly human emotions, which we sometimes unconsciously entertain, but they have no place in the jury box nor in the jury room.

As a Judge of this Court, I would be subject to the severest censure, and to the scorn of decent men, if my actions were actuated by prejudice for or against the defendant, or by sympathy for anyone else connected with

the case; I would be no less deserving of scorn than a jury man who is actuated in the rendition of his verdict by emotions and considerations which he denies to a Judge upon the bench. We are in a court of law here, gentlemen. The dignity and majesty of the law under which we live must be maintained. They cannot be maintained, if sympathy and prejudice, and elements of that kind, enter into the deliberations of jurors in this case or any other case.

Your task is to decide this case upon the facts. You have heard the testimony and the evidence in this case, and you have listened to it carefully and conscientiously, during the days of this trial, and now the task is yours to do exact justice.

Your verdict, gentlemen, will be guilty of murder in the first degree, or guilty of murder in the second degree, or guilty of manslaughter in the first degree, or not guilty.

Are there any requests?

MR. FALLON: I first want to except to that portion of your Honor's charge wherein you explain the duties of the jurors, and the fact of the disagreeable duty, and various those/points throughout your charge; and I ask your Honor to charge that the People's case is based entirely upon circumstantial evidence.

THE COURT: I decline to so charge.

MR. FALLON: I respectfully except. I ask your Honor to charge the jury that, if they find that the People's case is based entirely on circumstantial evidence, before they can convict, they must exclude every reasonable hypothesis but that of guilt.

THE COURT: Gentlemen, there is no witness in this case, as the Court recalls, who saw this defendant fire the revolver, and discharge the bullets from that revolver into the body of Paul Boittano. There is no eye-witness of that precise thing.

It is contended by the defendant's counsel that the only evidence of the killing of Paul Boittano is what is called circumstantial evidence.

Now, gentlemen, a crime may be established by circumstantial evidence. Where the evidence is of sufficient probative force, evidence is not to be discredited, because it is circumstantial. It ^{has} often more reliable elements than direct evidence. Where it points irresistibly and exclusively to the commission by the defendant of a crime, a verdict of guilty may rest upon a surer basis than when rendered upon the testimony of eye-witnesses, whose memory must be relied on, and whose passions or prejudices may have influenced their testimony.

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But, in the consideration of circumstantial evidence as it is called, there are certain rules which the law requires shall be applied; the first is that the hypothesis of guilt should flow naturally from the facts proved, and be consistent with all of the facts proved, and the evidence **must** be such as to exclude to a moral certainty every hypothesis but that of the guilt of the defendant of the offense imputed to him; or, in other words, the facts proved must be all consistent with, and point to his guilt, and they must, in addition, be inconsistent with his innocence.

The highest Court of this State, in discussing circumstantial evidence in a case that was noted, many years ago -- that of the People against Carlyle Harris -- you, gentlemen, may doubtless remember the case when it occurred -- said this:

"All that we should require of circumstantial evidence is that there shall be proof positive of the facts **from** which the inference of guilt is to be drawn, and that that inference is the only one that can be reasonably drawn from the facts."

In other words, in the matter of considering circumstantial evidence, there must first be proof of the facts. There must be proof, for instance, that a

revolver was found there, with one bullet discharged, and that the dead body of a man was found there with one bullet in his body; and there must be proof that a man was seen fleeing from this point in the room where the revolver lay, out of the door. Those are facts; whether the man who fled out of the door is the man who fired the bullet into the body of the deceased, is an inference to be drawn from the circumstances that I have indicated. Having the revolver, the dead man, the fleeing man, an inference might be drawn from those facts that the fleeing man was the man who killed the deceased with the revolver.

But the law requires that there must be proof of the facts, the body, the question of flight, before any inference can be drawn as to the guilt of the defendant. In other words, there must be proof positive of the facts, from which the inference of guilt is to be drawn, and that inference must be the only one that can reasonably be drawn from those facts. Does that meet your request, Mr. Fallon?

MR. FALLON: Yes, sir, that is substantially the wording of my request. Now, in the course of your charge, I think you stated that the defendant must show that he was justified in the killing, before he can establish a justifiable killing in self-defense, or in the protection of his property.

Now, I ask your Honor to charge the jury that it is

incumbent upon the defendant to prove nothing; that the People must prove affirmatively, and beyond reasonable doubt, that the defendant did not fire in self-defense, or in the protection of his property.

THE COURT: The burden of proving the defendant guilty always rests upon the People. But, where the defendant raises the defense of justifiable homicide, the law is, as I have charged you, and I will charge you again, that the defendant must **show** that he had reasonable grounds for apprehending a design to take his life, or to rob him of his property, **as** part of his defense that he was justified in killing the man who was killed.

MR. FALLON: I except to that portion of your Honor's charge in which you say he must prove anything, and I ask your Honor to charge that they must be satisfied beyond any reasonable doubt, after considering the People's case and the defendant's case, beyond reasonable doubt that it was not done in self-defense, or in the protection of his property. That is substantially the same request, formulated somewhat differently.

THE COURT: I do not understand that request. Please repeat it.

MR. FALLON: I ask your Honor to charge the jury that the People must affirmatively prove every portion of their case -- I will repeat that to make it clearer -- I ask your

Honor to charge the jury that it is unnecessary for the defendant to show anything in making out a case of self-defense; that the case of self-defense must be established, not by the defendant, but against the defendant, beyond a reasonable doubt, before a verdict of guilty can be brought in.

THE COURT: I decline to charge in the language requested.

MR. FALLON: May I respectfully except? And that is all.

THE COURT: Have you any requests to charge, Mr. District Attorney?

MR. BROTHERS: No, sir.

THE COURT: Gentlemen, the case is in your hands.

MR. BROTHERS: If your Honor please, I consent that the jury should have any of the exhibits, or all of them, that they may desire.

MR. FALLON: We also consent, your Honor, It is entirely agreeable to us to have the jury have the exhibits.

(The jury retired at 4:05 P.M., and returned to the courtroom at 6:50 P.M., finding the defendant guilty of manslaughter in the first degree).

MR. FALLON: I move to set aside the verdict, as against the law and the facts, and on the various exceptions

taken through the case.

THE COURT: Motion denied.

MR. FALLON: Exception.

THE COURT: What day will be agreeable for you for sentence?

MR. FALLON: Well, I think we had better adjourn it for a week.

THE COURT: Is that satisfactory, Mr. District Attorney?

MR. BROTHERS: Yes, sir, perfectly satisfactory.

THE COURT: Then sentence will be imposed on the 27th.
The defendant is remanded until the 27th.

THE SENTENCE.

New York, June 27th, 1921.

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

Assistant District Attorney Charles N. Brothers,
For the People.

William J. Fallon, Esq.,
For the Defense.

The defendant being arraigned for sentence:

MR. FALLON: I don't know that there is anything to be said, in addition to what has been said. Your Honor heard the case tried, and while there are a good many unusual features about the case, I do believe that, so far as the defendant's story is concerned, concerning the crime, that there he told the truth. I think that part of the story is absolutely so.

I am satisfied in my own mind that somebody did set upon him for the purpose of robbing him. Whether or not the motive that actuated the actors in that drama are the same as he outlined, I might have some doubt in my own mind, but I am absolutely satisfied that that part of his story in which he claims that several men tried to hold him up and rob him, is absolutely the truth, and I am sure that your Honor can come to that conclusion on all the facts presented, much more safely than I can, from your experience in this criminal court and on this bench.

THE COURT: I understand that the District Attorney does not claim, under the law of this State, that the defendant has previously been convicted of a felony?

MR. BROTHERS: Yes, sir, that is my understanding.

THE COURT: And that the law, therefore, requires the Court to give the defendant an indeterminate sentence?

MR. BROTHERS: Yes, sir, that is so.

THE COURT: William Stern, you have been convicted of manslaughter in the first degree. The sentence of the Court is that you be confined to State Prison for a term of not less than ten, nor more than twenty years.

MR. FALLON: Will your Honor grant a stay of two weeks, for the purpose of making an application for a certificate of reasonable doubt?

THE COURT: No, I will grant a stay of one week, until July 5th, Mr. Fallon.

I hereby certify that the foregoing is
a correct transcript of the stenographic
minutes of the trial of the case of The People
vs William Stern

Frank J. Beard
Official Stenographer

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