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CASE 1678

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

-----X
THE PEOPLE OF THE STATE OF NEW YORK : B e f o r e

- against -

: HON. OTTO A. ROSALSKY, J.

M A X O S T R A N S K Y :
(Three cases)

and a Jury.

-----X
New York, Tuesday, March 4th, 1913.

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

INDICTMENT FILED February 7th, 1913.

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

GEORGE Z. MEDALIE, Esq., Assistant District Attorney

For the People.

K. HENRY ROSENBERG, Esq.,

For the Defendant.

(A jury is duly impaneled and sworn).

(By order of the Court, all witnesses are excluded from
the Courtroom).

T H E P E O P L E ' S C A S E

(Mr. Medalie opens the case to the jury on behalf of
the People).

IN THE COUNTY OF NEW YORK
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H A R R Y S A L K I N, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q What is your name? A Harry Salkin.

Q Where do you live? A 311 South Fifth Street, Brooklyn.

Q What is your business? A Manager of a moving picture place.

Q Whose moving picture place is that? A My father's.

Q And where is it? A 301 Grand Street, Brooklyn.

Q And on the 8th of December last were you in the County of New York? A Yes, sir.

Q And where were you? A I was over to visit some friends in New York.

Q What time did you get to New York? A Around five o'clock in the evening.

Q Where were you after seven? A I was in a delicatessen store on Broome Street.

Q And then, after that, where did you go? A Walked to the corner of Orchard and Broome.

Q Who was with you at that time? A Sam Shapiro and Charles Shapiro.

Q What time was that? A Half past seven.

Q Were you talking to Sam Shapiro and to Charles Shapiro at that time? A Yes, sir.

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Q Did anybody else appear there at that time? A Yes, sir.

Q Who? A Max Ostransky.

Q This defendant? A Yes, sir.

Q Where did he come from? A Come from Orchard Street.

Q What side of the street were you on? What corner?
Was it the uptown corner? A Uptown corner.

Q And it was near Allen Street, that is, the corner that is near Allen Street? A Yes, sir.

Q That is, you were on the northwest corner of Broome and Orchard Streets at half past seven on that night? A Yes, sir.

Q And the defendant, Ostransky, came down Orchard Street in your direction? A Yes, sir.

Q Was there anything the matter with him at that time?
A He had a bandage on his face.

Q He had a bandage on his face? A Yes, sir.

Q Did anybody say anything to him at that time? A Yes.

Q Who spoke to him? A A young lady.

Q Somebody passing by? A Yes, sir.

Q What did she say to him? A She says "What is the matter with your face, Max?" and he says "my girl kissed me." Of course, I turned my back.

Q Why did you turn your back? A I didn't want to smile in his face.

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Q Did anybody else do the same? A Yes.

Q What happened to the girl at that time? A She kept on walking.

Q Who else turned his back at the defendant? A Sam Shapiro.

Q How about Charles Shapiro? Was he facing him?

A I don't know about that.

Q Was Charles Shapiro ^{with you} and Sam Shapiro and Ostransky on the corner at that moment? A Yes, sir.

Q At that moment, was anybody else near by? A Yes, sir.

Q Who? A People passing by and a few fellows around the corner.

Q The minute you turned your back was anybody within ten or fifteen feet of you? A I didn't notice that.

Q When your back was turned, what happened to you? A I was shot twice.

Q Did you hear two shots? A I heard the report of the first one; the second one I fell unconscious.

Q Where were you struck? A In the back and the arm.

Q Show the jury where? A Right in the back, here, and one up here, in the arm (indicating).

Q Indicate at your back where this was? A There is the bullet hole yet there (indicating).

MR. MEDALIE: The lower part of the left side of the back, at about a little above the waist line.

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MR. ROSENBERG: In the centre of the back, isn't it, Mr Medalie?

MR. MEDALIE: Near the spine, but on the left side. The other on the back of the left arm, midway between the elbow and the shoulder joint.

THE FOREMAN OF THE JURY: Is that it where the hole is?

MR. MEDALIE: Yes. About three-quarters of the way from the elbow to the shoulder joint, in the back of the arm

Q And the coat you now wear is the coat you wore when you were shot? A Yes, sir.

Q And the hole in the back of the sleeve near the shoulder of your left arm is the place where you were shot? A Yes, sir.

Q And the hole in the back of your coat above your waist, on the left side, is also the hole where you were shot in the back? A Yes, sir.

Q I presume you were taken to the hospital? A Yes, sir.

Q And you were treated there? A Yes, sir.

Q Prior to that, did the defendant have any conversation with you about a ball? A I promised to be up to his ball, but we were on good terms at that time.

BY THE COURT:

Q What did he say to you? A He told me he expected me to go to his ball. That is about all he asked me. I said

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"sure".

BY MR. MEDALIE:

Q What was that ball? A It was run by the Young Sharkey Association.

Q Who is Young Sharkey? A A fellow they call Max Ostransky.

Q You have known him also under that name? A Yes, sir.

Q And that is the association which ran the ball?

A Yes, sir.

Q Do you know whether there is such an association? A That I don't know.

Q He asked you to attend his ball? A Yes, sir.

Q And he referred to the ball of the Young Sharkey Association? A Yes, sir.

Q That ball was given where? A At Manhattan Hall.

Q Where is that? A Grand corner of Allen.

Q And how long before the shooting was that ball given?

A About three weeks before the shooting.

Q You did not attend it? A No, sir.

Q You were on good terms with him until the ball, weren't you? A After the ball, too, we were speaking together, having good times together, drinking together.

Q Did he ever speak to you about not going to the ball?

A He says, "What is the difference if you didn't come up? I know you didn't have the price to come up to attend the ball".

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Q How far away from you was the defendant at the time you turned your back to him? A Ten feet away.

Q He was facing you before you turned your back? A Yes, sir.

Q And you turned your back directly on him? A Yes, sir.

BY THE COURT:

Q How many persons were near you at the time that you turned your back to the defendant? A There were people passing by, and quite a few fellows standing around the corner.

Q Who were the fellows? A I don't know them. Max Ostransky was standing in back of me.

Q Max Ostransky was in back of you? A Yes, sir.

Q Where was Shapiro? A Shapiro was standing about two feet away from me.

Q And the woman? A The girl kept on walking. She asked him, "What is the matter with your face?", and he said, "my girl kissed me". She kept on walking.

Q How soon after you turned your back to the defendant were you shot? A About two or three minutes later. As soon as I turned my back and I smiled, then I was shot.

Q You don't mean to say that that took two or three minutes? A Well, it took about that time.

THE COURT: Gentlemen of the Jury, counsel for the defendant has an actual engagement before the Appellate Division of the Second Department, and under the rules he is entitled to an adjournment. It is a good, legal and suf-

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ficient excuse. We shall, therefore, adjourn this case until two o'clock. Do not discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is ultimately submitted to you. It is important, gentlemen, that the Court's admonition should be observed, for if you discuss the case before you heard all of the evidence then you make up your minds either one way or the other, and it is unfair both to the People and to the defendant. If anybody talks to you about the case, it is taking evidence out of court, and I shall be obliged, if anything like that happens, to set aside your action; so, let nothing interfere with a proper discharge of duty, and it is not a proper discharge of duty where a juror violates the Court's instructions. This admonition is sacred, and must be strictly observed. We will take a recess until 2 o'clock.

(The Court accordingly took a recess until 2 P.M.)

A F T E R R E C E S S

HARRY SALKIN, resumes the stand.

CROSS-EXAMINATION BY MR. ROSENBERG:

Q How old a man are you? A Twenty-two years
of age.

Q And you live with your family? A Yes, sir.

Q In Brooklyn? A Yes, sir.

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Q Do you belong to any gang? A No, sir.

Q Did you come over to Orchard and Broome Street that night to have a fight with anyone? A No, sir, no intentions of having any fight.

Q Did you come over to New York for the purpose of shooting up some one? A No, sir.

Q Were you engaged in a gang fight on that night?

A No, sir.

Q Do you know of any gang fight that was on that night?

A No, sir.

Q Were you to be in a gang fight that night? A No, sir.

Q Your meeting with the defendant on that night was purely accidental, wasn't it? A No, sir.

Q Was it an accident that you met him? A No, sir.

Q Did you intend to meet him that night? A Well, I always met him. Whenever I pass that corner I always met him there.

Q That is, you two met, but you had no appointment to meet him? A No, sir.

Q On this particular day, you had no particular arrangement to meet the defendant on the corner of Broome and Orchard Street that day, did you? A I met him unexpectedly.

Q What? A I only happened to pass.

Q You only happened to pass? A Yes, sir.

Q You did not have any prearrangement about passing there

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on that hour of the night when you were shot; you had no arrangement to pass there that night, did you? A No, sir.

Q So, it was a purely accidental meeting, so far as you know? A Yes, sir.

Q You did not tell anybody you were going to pass that corner on that night, did you? A No, sir.

Q Where had you been just before going to Orchard and Broome Street? A On Broome near Orchard and Allen.

BY THE COURT:

Q What time? A At seven o'clock.

BY MR. ROSENBERG:

Q You were there about half an hour? A About half an hour.

Q Did you meet anyone there that you knew? A I happened to pass there, and I met Charles Shapiro and Sam Shapiro, and they asked me to come in and have a bite with them.

Q To have a bite with them? A Yes, sir.

Q And you went in the delicatessen store?

A Yes, sir.

Q And had a little meal? A Yes, sir.

Q That is, Charlie Shapiro, Sam Shapiro and a young lady?

A No, no young lady in this. This girl happened to pass the time I was shot, before I was shot.

Q So your meeting with the young lady was a pure accident?

A Accident.

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Q She is a friend of yours, I assume? A What is that?

Q Was she a friend of yours? A I never saw her before.

Q You knew her? A I never met the young lady before.

All I know is, she passed, and she said, "Hello, Sharkey, what is the matter with your face?" He says, "My girl kissed me". Of course, I smiled at him, and I turned around.

Q That was at the northwest corner of Orchard and Broome?

A Yes, sir.

Q The northwest corner? A Yes, sir.

Q Then, in order to get across the street, you were right at the middle of the street? A I was about ten feet from the sidewalk.

Q Were you on the block between Orchard and Ludlow, or on the block between Orchard and Allen Street? A On the corner; it is in the centre of the street.

Q I know that, but were you on Broome Street between Orchard and Ludlow, or between - is it on Broome Street between Orchard and Allen Street? A This was right at the curve, right toward Ludlow Street side.

THE COURT: That is the northwest corner.

Q Sure it was not on the Allen Street side? A It was on the Allen Street corner.

Q Allen Street? A Here is where it happened, on the up-town side of Orchard Street.

Q Is the delicatessen store between Orchard and Ludlow,

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or between Allen and Orchard? A Between Allen and Orchard, the delicatessen store.

Q Sure of that? A Yes, sir.

Q Where did you intend going when you left the delicatessen store? A I intended to go to Madison and Clinton and meet my lady friend.

Q So, you were in the direction of the East River? A Yes, sir.

Q Then you crossed Orchard Street? A Yes, sir.

Q You crossed Orchard Street and got on to the other side of Broome Street and Orchard? A Yes, sir.

Q So that, you were on the northwest corner of Orchard and Broome? A Yes, sir.

Q And there you say you saw the defendant? A Yes, sir.

Q Isn't that right? A Yes, sir.

Q At half past seven at night on that particular night it was pretty crowded, wasn't it? A Yes, sir.

Q Isn't that right? A Yes, sir.

Q That is, the people on that block do business on Sunday? A The passers by.

Q And the sidewalk is pretty well crowded with people going one way and the other way, going in both directions, isn't that right? A I didn't notice that. I noticed the people passing by.

Q Were there a lot of people passing by? A Well, I can't exactly tell you.

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Q Well, you were there and I was not there? A I didn't notice that.

Q Didn't notice? A I was minding my own business.

Q You knew, however, there were a number of people going past at the time? A Yes, sir.

Q And you paid no special attention to it; is that right?
A Yes, sir.

Q You didn't pay any attention to them? A Didn't pay no attention to them.

Q Nothing unusual attracted your attention? A No, sir.

Q At the time you met the defendant, were you friendly with him? A Yes, sir, but I had less to do with him, because I -

Q Were you friendly with him?

MR. MEDALIE: Let him finish.

A (Continuing) I had less to do with him, because I disappointed him to his racket.

Q There was a ball which took place sometime in November; is that right? A Yes, sir.

Q Of the Sharkey Association? A I don't know if it was in November.

Q Well, when was it? A I don't remember the date.

Q How long before December 8th was it? A I can't exactly tell you what date it was.

Q Can you give the jury some idea? A It might have been

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two or three weeks before.

Q May it not have been six weeks before? A I can't just tell you.

Q There was supposed to be a ball which was known as the Young Sharkey Association? A Yes, sir.

Q And how much were the tickets? A Fifty cents admission.

Q Fifty cents, which included lady and gentleman?
A Yes, sir.

Q Including hat check, A Yes, sir.

Q Sometime before the ball, the defendant asked you to buy a ticket? A He didn't ask me to buy no ticket. He said he expected me up as a friend.

Q He merely asked, "are you coming to the ball?"?
A Yes, sir.

Q There was no quarrel at the time? A No, best of friends.

Q He merely said to you, "are you coming up to the ball?"?
A yes, sir.

Q Is that right? A Yes, sir.

Q And that was before the ball? A It was the night before Saturday night he told me that.

Q He merely in and offhand way said, "are you coming to the ball?" A Yes, sir.

Q And what did you say? A I said, "of course, sure, you

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are a friend of mine".

Q "Of course, sure"; is that right? A Yes, sir.

Q From that time until you met him on Broome and Orchard Street, did you see him? A Yes, sir.

Q Where? A I met him Sunday afternoon, about five o'clock, I think it was, or after five; he was standing there.

Q The night of the ball I am talking about? A No, I am talking of the day I was shot.

Q What? A The very day I was shot.

Q And from the time that he offered tickets of the ball until the day you were shot, you had not seen him? A Yes, I seen him; we had a conversation.

BY THE COURT:

Q You saw him at five o'clock Sunday afternoon? A Yes, sir.

BY MR. ROSENBERG:

Q I mean from the time of the offer of the ticket, until the day you were shot you had not seen or spoken to the defendant? A Yes, I spoke to him.

Q When? A Before that, right along.

Q Right along? A Yes, sir.

Q There was no quarrel between you, was there? A No quarrel. He told me all about the racket. He said, "I know you couldn't come over; you didn't have the price."

Q Did you quarrel with him about not going to the racket?

A No, sir.

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Q You did not quarrel with him? A No, sir.

Q You were just as friendly after the ball as before the ball? A We had drinks together, too.

Q After the ball? A After the ball.

Q No quarrel at all? A No quarrel at all.

BY THE COURT:

Q What occurred on Sunday afternoon at five o'clock when you met the defendant? A We had a drink together at Broome and Orchard, and I left him, and I went toward Allen Street and met another friend of mine. I come back about seven o'clock, and I met Charles Shapiro and Sam Shapiro, and we ate together.

Q No, at five o'clock what occurred? A We had a drink together at Orchard and Broome, too, the same place.

Q Who constituted the party? A Of course, I had about half a dollar in my clothes.

Q How many were in the party? A Only me and him, only the two of us.

BY MR. ROSENBERG:

Q Did you have any quarrel with him at that time? A No, sir.

Q You had a friendly drink together? A Yes, sir.

Q And you parted friendly? A Yes, sir.

Q Sure of that? A Yes, sir.

Q Did you see any pistol on the defendant at that time?

A No, sir.

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Q Did you see any pistol on the defendant at that time?

A No, sir.

Q Did you see any pistol on the defendant at any time?

A No, sir.

Q Did you ever see him with a pistol in his hand? A I never look through anybody's pocket.

Q I am talking about his hands? A In his hands, no, sir.

Q So, at no time did you ever see this defendant ~~was~~ with a pistol in his hand? A No, sir.

Q When you met the defendant at the time, or just before you were shot, you were walking in the direction of Ludlow Street, on the south side of Broome Street? A Yes, sir.

Q Is that right? A Yes, sir.

Q Is that right? You were walking towards Ludlow Street or towards Clinton Street, and on the downtown side of Broome Street? A Yes, sir.

Q Isn't that right? A Yes, sir.

Q And the defendant was coming towards you? He passed you, didn't he? A He was coming up through Orchard Street, from the uptown side down.

Q That is, he was coming from uptown on Orchard Street, walking south? A Towards Broome Street.

Q Towards Broome? A And stopped at the corner of Broome.

Q Had he been on the other side of Broome Street, on the north side of Broome Street? A He came from DeLancey Street

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down.

Q But that was on Orchard Street? A Yes, sir.

Q That is, Orchard Street runs north and south, and Broome Street runs east and west? A Yes, sir.

Q Isn't that right? A Yes, sir.

Q So that, when you were coming down Broome Street towards Ludlow Street the defendant was coming south between - or on Orchard Street between DeLancey and Broome, isn't that right? A Yes, sir.

Q Now, how many feet separated you when you saw the defendant over on Orchard Street coming down between DeLancey and Broome? A I was about to leave my friends, Charles Shapiro and Sam Shapiro, and finally -

Q When you first saw the defendant coming down Orchard Street, A When he come down he stopped at the curb, and I kept on walking; I was going to leave my friends; I was supposed to go down and meet my girl.

Q You continued to walk on the south side of Broome Street toward Ludlow; you continued to walk? A Yes, sir.

Q And the defendant was then back of you, wasn't he? A Yes, sir.

Q And you were not looking back of you, were you? A I seen him standing there after I had the conversation.

Q He was talking? A Yes, sir.

Q When he was talking, wasn't there a great many people

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between the defendant and you? A Yes, sir.

Q And a great many people passing by? A Yes, sir.

Q How many people were passing by at the time? A I can't exactly tell you.

Q Can you give the jury any idea? A Well, I seen quite a few people pass up and down all the while, and there was a few fellows standing on the corner at the same time.

BY THE COURT:

Q How many? A About three or four standing together.

Q Did you know any of them? A No, sir.

Q Did you ever have any words with those persons? A No, sir.

Q Did you look at their faces, A No, sir; I seen their faces but I never saw them before.

Q You never saw them before? A No, sir.

Q And, so far as you knew, you never had any words with them? A No, sir.

Q Where were they standing? A They were standing with their faces toward the Broome Street side.

Q On what street? A On Orchard, corner of Broome, the same corner I was shot.

Q Their faces were towards where? A Towards Broome Street.

BY MR. ROSENBERG:

Q Was the defendant talking to those people? A No, sir, he was about four or five feet away from them.

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Q That is, on that corner there were a lot of sets of men talking together? A There is always people talking on that corner.

Q Always people? A Yes, sir.

Q That is, two or three fellows together, talking?

A Yes, sir.

Q And there was nothing unusual on that night? A No, sir.

Q So, on this particular night, how many groups of fellows did you see standing talking together? A A ll I saw was the three or four standing together. The rest was walking past. That is about all I noticed.

Q Do you know who those fellows were? A No, sir.

Q You don't know whether you saw them before? A No, sir, they looked strange to me.

Q They were strangers to you; you have a great many friends around the East Side, haven't you? A Well, I have got a few.

Q A few? A Yes, sir.

Q And, like every young fellow, you have enemies, haven't you? A I have ^{n't} got enemies. I always make friends with everybody.

Q You try to make friends, but in making friends you make some enemies, didn't you? A As far as this is concerned, I have got no enemies.

Q You don't think you have any enemies, is that it? A Yes.

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Q Have you now told the Judge and jury everything that you can remember? A Yes, sir.

Q Sure of that? A Yes, sir.

Q You told the Judge, in answer to the question after the talk between you and the defendant, or between the defendant and the young lady, about two or three minutes elapsed between the time that the talk was had with the defendant and the shooting; is that about right? A Yes, sir.

Q It may have been five minutes, may it not? A Well, at the time I was shot it took three minutes before I was shot, after the laughing.

Q That is, after the talking, about three minutes? A Yes, sir.

Q You judge between two and three minutes? A About three minutes.

Q About three minutes? A Yes, sir.

Q You did not look back to see where the defendant was after you talked to the young lady, did you? A I seen him standing there all right.

Q Did he walk away? A I didn't notice him walk away.

Q You don't know what happened between the three minutes after the talk with the young lady, do you? A I turned around to see what happened. I saw the girl starting to walk, and he turned around. I turned my back and started to smile.

Q Wasn't he walking with the girl? A No, ^{she} kept walking

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straight down Broome Street.

Q The girl kept walking on toward Allen Street? A Down Broome Street, toward Ludlow.

Q Is that the same direction you were going? A Yes, sir.

Q And you kept on walking in that direction? A I was going to walk in that direction.

Q But you did not look back to see what was going on at the corner after the talk between the girl and the defendant?

A I seen him standing there, and I turned back and started to smile.

Q And about three minutes afterwards you were shot? A Yes I didn't notice about that.

Q You didn't look back to the corner? A No, sir.

Q And you don't know where the defendant was during those three minutes? A No, sir.

Q And you don't know whether he was on the corner or not, do you? A About that I don't know.

Q So that, at the time you were shot, you don't know where the defendant was? A Yes, sir.

Q You don't, do you? A I don't know.

Q You never had any fight with the defendant, did you?

A No, sir, I was on good terms with him.

Q Now, then, you were taken to the hospital, weren't you?

A Yes, sir.

Q And that same night the policeman brought the defendant

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over to the hospital? A Yes, sir.

Q And did you tell the policeman in the presence of the defendant, that he was not the man who shot you? A Yes, I told him I don't know who shot me.

Q Didn't you say he did not shoot you? A I didn't say that I said I don't know who done it, because I had my back turned at that time.

Q What is that? A I said I had my back turned at the time and I couldn't see who it was.

Q How many hours after the shooting? A The officer came up at twelve o'clock sharp.

Q And he brought with him the defendant? A Max Ostransky

Q And you knew the defendant? A Yes, sir.

Q You were awake? A Yes, sir.

Q You understood what you were doing? A Yes, sir.

Q And didn't the officer say, "Did the defendant shoot you?", and didn't you say, "no"? A They told me that Charles Shapiro says -

MR. ROSENBERG: I ask ~~that be~~ stricken out, what they told him.

THE COURT: Strike it out.

Q Didn't the officer ask you on that night at the hospital "Did this man", meaning the defendant, "shoot you?", and didn't you say, "no, he did not shoot me"? A Yes, sir, I said that.

Q And when was it that you went to court? A About three

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weeks later.

Q Three weeks later? A I was laid up three weeks in the hospital.

MR. ROSENBERG: Now, then - that is all.

RE-DIRECT EXAMINATION BY MR. MEDALIE:

Q When they brought Ostransky to your bedside in the hospital, are you sure you said no, that he did not shoot you?

A Well, when they brought him up, I says, "I don't know who shot me", I told the officer right off the reel.

Q But you didn't say, "No", did you? A I said, "I don't know".

Q Sure about that? A Yes, sir.

Q You did not say, "No"? A I said, "I don't know who shot me", I told the officer.

Q Isn't it a fact that when the officer brought the defendant to your bedside in the hospital and asked you whether the defendant was not the man who shot you, you simply turned over on your side and turned your back to him and said

"We will see tomorrow"? A I didn't say nothing of the kind. All I said to the officer was, "I don't know who shot me".

(Question read by stenographer).

BY THE COURT:

Q Did that take place? A No, sir. I never said that at all.
all. / I said to the officer was "I don't know who shot me".

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BY MR. MEDALIE:

Q How much of what I asked you did take place? A All I know is I had pain, and the officer woke me up. I was laying with my face down on the pillow, and he says to me, "Get up. Is that the fellow that shot you? Is that the fellow they call Young Sharkey, who shot you?". I said, "I don't know; I don't know who shot me; I know he was standing on the corner before I was shot."

Q Isn't it a fact you were shot just as you turned your back to the defendant? A It took time before I was shot, about three minutes later.

BY THE COURT:

Q How do you fix the time as three minutes? A Because I turned around to see if he was there. The girl kept on walking, and I stood there for about three minutes.

Q You have taken an oath here to tell the truth? A Yes, sir.

Q From the time that you turned around when you - you saw the defendant when you turned around, did you not? A Yes, sir.

Q How far away was the girl from your sight at the time you were shot? A I just seen the girl going; she kept on walking.

Q How far was she from your view at the time you were shot? A I didn't notice that at all. I know before I was shot I seen the girl.

Q Now, let me illustrate. When I clap my hands the first

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time you will proceed and tell me when to stop, with a view to indicating what you consider to be three minutes, and in making that test don't count. Proceed. (Claps hands)? A About now.

Q Eight and one-half seconds. So, when you turned around, in about eight and one-half seconds you were shot? A Yes, sir.

Q Now, when the first bullet penetrated your body, what did you do? A I fell to the floor.

Q And what direction did you look? A I fell unconscious right off the reel.

Q Did you feel the effects of the second bullet? A My leg got -

Q Did you feel the effects of the second bullet? A That I don't know; I was dazed like. When I fell, I grabbed this here Sam Shapiro, and I got the other one in the arm.

Q You remember that? A Yes, sir.

Q You remember being struck in the arm? A Yes, sir.

Q Did you see the defendant? A No, sir. At that time -

Q Were you unconscious when you were taken to the hospital?

A No, sir; they took me in the drug store and give me something to drink, and I was up.

RE-CROSS-EXAMINATION BY MR. ROSENBERG:

Q The Judge figures out the time of eight and one-half seconds between what you consider, sitting on the witness-stand, as being the time that you thought elapsed. I ask you now how long a time elapsed between the time when you last saw

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the defendant and the time that you were shot on the evening in question?

MR. MEDALIE: I object to the question, on the ground it has been answered, and in view of the test already made by your Honor.

MR. ROSENBERG: Your Honor, that test, you know as well as I do, there is not a witness in this court who could sit in that chair and subject himself to the same test that your Honor made who would not make the same kind of answer.

THE COURT: Counsel's remarks will be disregarded, gentlemen, and you will give them no weight whatsoever. They should not be made. I allow the question.

MR. ROSENBERG: Strike out the question.

Q The Judge figured out it was eight and one-half seconds, as you now state, while sitting on the witness-chair, between the time that you saw the defendant - last saw the defendant and the time you were shot. I ask you now how long a time elapsed between the time that you saw the defendant on the corner or Broome and Orchard Street on the day that you were shot until you were shot? How many minutes elapsed, or how much time elapsed? A From the time the girl asked him what was the matter with his face, that is about all I know.

Q How much time do you tell the jury between the time that you last saw the defendant at the corner and the time that you were shot? A I figured it about three minutes, three or five

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minutes, before I was shot.

MR. ROSENBERG: That is all.

BY THE COURT:

Q Now, in view of your testimony now, and that which you stated in answer to one of my questions, that eight and one-half seconds elapsed between the time that you turned around and the time you were shot, which is it? A I figured it would be about three minutes, I figured it.

Q You know how many seconds make a minute, do you not?

A Yes, sir.

Q Now, I will put this test to you. Proceed, now (Claps hands). Now, I will tell you when three minutes are up, and I want to know whether it took that length of time? A It took quite a time.

Q Now, wait. I will tell you when the three minutes are up. Now, we have just reached one minute? A It is a long minute.

Q Two minutes. A I think it was about two minutes, if I ain't mistaken.

Q Now, is it not true, that, as soon as you turned around, your back being turned toward this defendant, you immediately felt a bullet, the effect of a bullet in your back? A I can't exactly tell you how long it took me, but I know it was quite a little while after.

Q How do you fix three minutes? A Oh, I can't -

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Q Are you not guessing? A I was gusessing at the time I was shot; it took about three minutes.

Q Is it not true that within a few seconds of your turning about you were shot? A It took quite a little time; I can't exactly tell you how long it took.

Q Now, did it not take less than a minute? A About that; I can't tell you. It seemed to me as if it was about three minutes.

BY MR. MEDALIE:

Q You remember that you were in my office yesterday afternoon? A Yes, sir.

Q And you were telling me what you knew about the case? A Yes, sir.

Q Don't you remember that you told me yesterday afternoon that just as you turned around you were shot, and that you curled up and went down on the ground?

MR. ROSENBERG: Objected to as hearsay.

THE COURT: Objection overruled. This question is directed ~~reexaminated~~ by the District Attorney with a view to refreshing the recollection of the witness; is that correct?

MR. MEDALIE: That is my purpose.

THE COURT: And on the authority of the People vs. Kelly, 113 New York, I will allow it.

MR. ROSENBERG: Exception to that ruling.

A I told you, as I turned around -

BY THE COURT:

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Q No, did you tell that to the District Attorney? A I said I had a short smile first, and standing there a few moments or so, and I was shot; I curled up and fell to the floor; I held on to my friend, and fell to the floor.

BY MR. MEDALIE:

Q Weren't you smiling at the joke, or what you thought was a joke, at the time you were shot? A Yes, sir.

Q Isn't it a fact, then, that the smile was still on your face when you were shot?

MR. ROSENBERG: How does he know, your Honor?

THE COURT: I overrule your objection. Now, make no suggestions, Mr. Rosenberg.

MR. ROSENBERG: I object, on the ground it is self-evident that the witness could not tell.

THE COURT: I overrule your objection.

MR. ROSENBERG: I take an exception.

A I can't remember at the time I was shot I was smiling.

Q You won't say you were not? A I won't say I was, or was not. As soon as I turned around, I wanted to smile. I didn't want to smile in his face. I turned around and smiled, and I stood there a few moments; I don't remember how long, and then I know I was shot.

Q You had your back turned to him for only one reason, and that reason was you were smiling at what you considered a joke at his expense? A Yes sir.

Q You did not want him to see a smile on your face at that

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time? A Yes, sir.

Q You did not want to give him offense? A Yes, sir.

Q And as soon as that smile passed off your face, there was no longer any reason why you should not turn around and face him; isn't that so? A I stood there, and I was about to leave my friends, and Charles Shapiro sidestepped me, and I was shot.

Q That girl did not walk very far while your back was turned to the defendant, did she? A I turned around to see where the girl was. She kept on walking.

Q She did not walk very far until the moment you were shot? A I don't know that.

Q You were watching her, you say? A I turned around to see if she was there yet.

Q And was she there? A No, sir.

Q And just as you turned around to see if she was there, you saw she was not there, and you were shot? A No, I smiled; I started to think of the joke, when he said his girl kissed him, when he was out.

Q That didn't last long, did it? A Of course not.

BY THE COURT:

Q At the time that you saw the defendant, at five o'clock, did he have any bandage on his face? A Yes, sir.

Q Do you know how he came to have his face bandaged?

MR. ROSENBERG: One moment. I object.

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THE COURT: Objection sustained.

Q Isn't it a fact that the reason why you refused to make any identification in the hospital - A No, sir.

Q (Continuing) - was because you wished to take revenge in your own way? A No, sir.

Q And isn't it a fact that for that very reason, you are withholding your testimony now? Isn't that a fact? A That is no reason why I should hold back. If I seen him do the shooting, I would say it.

Q Now, stop and think again. Didn't you say in the hospital to the detectives, when they asked you about the defendant having done the shooting, you said, "Well, will see tomorrow"? A I never said nothing of the kind. I told them I don't know who done the shooting; I don't know who; I had my back turned at that time.

Q Now, didn't you tell me yesterday in my office that the defendant was the only person near you at the time the shooting occurred?

MR. ROSENBERG: One moment. I object to that as incompetent irrelevant and immaterial.

THE COURT: Is this question asked for the purpose of refreshing the witness' recollection?

MR. MEDALIE: That is the only purpose.

THE COURT: The objection is overruled.

MR. ROSENBERG: I take an exception.

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A I told him he was about ten feet on the sidewalk, and I was out in the gutter, about ten feet away from him, and a little further away was a group of fellows, three or four fellows.

Q Didn't you tell me he was the only person there? A About ten feet in back of me.

MR. ROSENBERG: I ask the same objection be noted.

THE COURT: Objection overruled.

MR. ROSENBERG: I take an exception.

Q Don't you remember you told me he was the only person standing nearby?

(Same objection; same ruling; exception).

A He was standing there, and near the curb was the other fellows standing.

Q You did not tell me that yesterday? A You asked me who was standing in back of me. I told you that this fellow was standing in back of me.

BY THE COURT:

Q Did you mention the fact that there were three men standing nearby? A No, sir, he only asked me who was standing in back of me.

BY MR. MEDALIE:

Q Didn't I ask you who was standing between or near you or who was on the street nearby? Isn't that what I asked you?

(Same objection; same ruling; exception).

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A I don't know that. You only asked me who was standing back of me; that is about all I remember.

Q You are sure there was no person back of you except the defendant? A Yes, sir.

Q And you were shot in the back? A Yes, sir.

BY MR. ROSENBERG:

Q Are you sure there was no person back of you excepting the defendant? A There was a group of fellows standing at the curb.

Q Were there people passing by? A Yes, sir.

Q Were there people between you and the defendant just before you were shot? A I don't know; I didn't notice that, because I had my back turned.

Q While you had your face to the defendant, were there people between you? A Yes, sir.

Q And there were people on the corner? A Walking up and down.

Q Were there men standing on the corner, in groups? A Yes, sir.

MR. ROSENBERG: That is all.

S A M U E L S H A P I R O, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q What is your full name? A Samuel Shapiro.

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Q Where do you live? A 500 East 136th Street.

Q What is your business? A House-painting.

Q Do you remember the 8th of December last? A Yes, sir.

Q Do you remember being at the corner of Broome and Orchard Streets, in the County of New York, on the evening of ~~the~~ that day? A Yes, sir.

Q Now, that was a Sunday, wasn't it? A Yes, sir.

Q Were you in the company of the complaining witness, Harry Salkin, on that day? A Yes, sir.

Q Who else was with him? A Charles Shapiro.

Q Charles Shapiro is your brother? A Yes, sir.

Q Had you seen the defendant, that day? The defendant is Max Orshansky? A Yes, I did.

Q You saw him? A Yes, sir.

Q When did you first see him that day? A Four o'clock in the afternoon.

Q Did you see him later? A Later, yes.

Q Where did you see him later? A On the corner of Broome and Orchard.

Q What time in the evening was it that you saw the defendant at that corner? A 7:30.

Q At half past seven? A Yes, sir.

Q Who was with you then? A Max - this fellow and my brother, Charles Shapiro.

Q Harry Salkin and Charles Shapiro were with you? A Yes, sir.

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Q On which corner were you standing? A The west side corner.

Q North, or south? Uptown, or downtown? A Uptown side.

Q You were standing at the northwest corner of Broome -
A Broome and Orchard.

Q The northwest corner of Broome and Orchard Street at that time? A Yes, sir.

Q How long had you been there before you saw the defendant? A Ten minutes.

Q You and Charles Shapiro and Harry Salkin were ^{walking} ~~together~~ to each other at that time? A Yes, sir.

Q Where did the defendant come from when you first saw him?
A Come out from the saloon. —

Q Is there a saloon on that corner? A Yes, sir.

Q From which entrance of the saloon did he come, the Orchard Street or the Broome Street entrance? A Orchard Street side.

Q Did he come over to you and your friends? A No, he passed us by.

Q Did he say anything to either of you as he passed by?
A No, nothing.

Q What was his condition when he passed by? A He had a bandaged face.

Q How far away from you was he when somebody first spoke to him, A Six or seven foot away.

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Q And who spoke to him? A A young woman.

Q He was going south, was he? A He was going east.

Q That is, toward the river? A Toward the river, yes.

Q You and Salkin were six or seven feet away from him at that time? A Yes.

Q Was this young woman going in an opposite direction from the one in which the defendant was going? A No, I don't think so. She come through from east to west, through Broome Street.

Q She came through Broome Street, walking east to west? A Yes.

Q And had crossed the street, and was on the same sidewalk you were on at that time? A No, we were on the same sidewalk.

Q You were all on the same sidewalk? A Yes, sir.

Q You, Harry Salkin, Charles Shapiro, Ostransky and this young woman were on the same corner, on the sidewalk? A Not on the sidewalk. We were on the gutter and they were on the sidewalk.

Q You and your two companions were at the gutter at the curb? A Yes, sir.

Q And they were six or seven feet away from you? A On the sidewalk, at that corner.

Q What did the young woman say then? A "What is the matter with your face?".

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Q What did she say to him? A She asked him why was his face bandaged.

Q Her words, not your words. How did she address him? What are the exact words she said to him? A She said, "Who kissed you?", or "A girl kissed me", I don't remember exactly what she said.

Q Now, stop; and think. You told me yesterday what was said. Now, stop and think. Now, what was said by both of them? A She asked, "What is the matter with your face?", and he said "A girl kissed me", or so; that was the talk, the conversation they had.

Q You heard those words? A Yes, sir.

Q What did you do at that time and what did Salkin do at that time? A He turned around and started to laugh.

Q You had your backs turned to Ostransky? A Yes, sir.

Q How long after that before anything happened? A A few moments.

Q A few moments? A Yes, sir.

Q You mean, a few seconds? A About a minute or so, or two minutes.

Q You did not laugh out loud, did you? A No, I didn't laugh loud.

Q You just smiled, isn't that all? A Yes.

Q You had not moved from the spot before anything happened; isn't that so? A No, only turned around.

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Q Just enough to turn around and no more, before anything happened? A We turned around; we had a chance to speak each one to the other, "It is a nice kiss".

Q That is all that was said? A A few more words. It took about a minute or two.

Q It took a very short time? A A short time, yes.

Q And then what happened? A Then I heard three shots.

Q You heard three shots? A Yes.

Q Did you turn around? A I did.

Q What did you see? A I seen Sharkey -

Q Who was Sharkey? Who do you mean? A Max Ostransky.

Q The defendant? A Yes, sir.

Q What was he doing? A He was running away.

Q He was running with his back turned to you? A Yes.

Q How far away was the defendant when you first turned around and saw him running? A No more than I am from you.

Q That is, no more than ten feet? A Yes.

Q In other words, he was six or seven feet away from you when your back was turned to him, and the minute you turned around, when you heard the shots, he was only about three feet further away from you than that? A Yes, sir.

Q And where did he run? A He run the same place; he come out the back entrance of the saloon.

Q Now, did anything happen to anybody at that time? A Sall was shot in the back, and my younger brother was shot in the

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belly, and I had to take Salkin into the drug store.

Q You took Salkin into the drug store because he was shot?

A Yes, sir.

Q - Your brother, who was standing near by, was he facing the defendant? A Yes, sir.

Q And he was shot in the abdomen, in the stomach? A Yes, sir.

Q So that you had no time to pursue the defendant?

A What does that mean?

Q To run after him? A No.

Q And try to catch him? A No.

Q Was anybody else at that very corner at that time?

A Then two fellows came out together.

Q Before anybody came out? A No.

Q At the time your brother and Salkin were shot - by the way, they were both shot at the same time, weren't they? A Yes, at the same time.

Q These three shots came one after the other? A In succession, yes.

Q They were not fired all at the same time? They were fired as though from one pistol?

MR. ROSENBERG: One moment; I object.

THE COURT: Objection sustained.

Q I will put it in a different form. Did any of these shots occur at the same instant, or were they separated by some

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small portion of time? A No, they were the same thing.

Q One after the other? A Yes.

Q And they all occurred within a second, didn't they?

A Yes, at the same time.

Q And you turned around ~~and~~ immediately, ^{and} saw the defendant running, with his back to you, but not more than ten feet away?

A yes, sir.

Q At the time you turned your back on the defendant, was anybody else near by, on the very corner? A No, there was nobody.

Q You didn't see anybody? If there was anybody there, you would have seen him? A I think so.

Q You went immediately and made a complaint to the police, did you not? A Yes, sir.

Q And it was at your request that the defendant was arrested?

MR. ROSENBERG: One moment. I object.

MR. MEDALIE: I shall not insist on the question, if it is objectionable.

Q Is there any doubt in your mind that this defendant was the person who was running away as you turned around, when the shots were fired?

MR. ROSENBERG: One moment. I object.

THE COURT: The objection is overruled.

MR. ROSENBERG: I take an exception.

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Q What is your answer? A Say it over again?

Q Is there any doubt in your mind, are you at all uncertain, that this defendant is the person who was running away when you turned around immediately upon hearing the shots? A No, no doubt.

Q You are absolutely sure, aren't you? A Yes, sir.

MR. MEDALIE: That is all.

CROSS-EXAMINATION BY MR. ROSENBERG:

Q You knew Salkin, didn't you? A What is that?

Q Did you know Salkin, Harry Salkin? A Yes.

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

Q Did you have any fight with him? A Never.

Q Did he ever have any fight with you? A No.

Q Are you a member of any gang? A No.

Q were you there on that night to square up any accounts of a gang fight? A No.

Q Keep your voice up. The jury can't hear you. A No.

Q Did you know you were going to meet the defendant at 7:30 that night? A No.

Q Did you have any appointment to be at that place that night? A No.

Q You were in the company of Harry Salkin before the shooting, weren't you? A Yes.

Q And you were in a delicatessen store? A Yes, sir.

Q Isn't that right? A Yes, sir.

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Q Where is that delicatessen store? A Allen and Orchard and Broome.

Q What is that? A Broome Street between Orchard and Allen.

Q Between Orchard and Allen? A Yes, sir.

Q Is it on the north side of Broome Street, or on the south side, the uptown side, or downtown side? A It is on the uptown side.

Q Sure of that? A Yes.

Q And you had a little bite to eat? A Yes.

Q Who consisted of the party who was eating in the delicatessen store? A Harry Salkin, my brother and myself.

Q Anybody else? A Nobody else.

Q Wasn't there other people there? A No.

Q Sure about that? A Sure.

Q Won't you please keep your voice up? A Sure.

Q When you got out of the delicatessen store, you intended walking on Broome Street east towards Ludlow Street; is that right? A Yes, sir.

Q Is that right? A We went to Orchard Street, toward Orchard.

Q Toward Orchard Street? A Yes, sir.

Q Then, you were on Broome Street and you had not reached Orchard Street, when you met the defendant; is that right? A We reached Orchard Street, just on the corner.

Q On which side of Orchard Street? The west side of Orchard

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or the east side? The side nearest to Allen, or the side nearest to Ludlow Street? A The side nearest to Allen.

Q Allen? A West side.

Q Then, you had not crossed Orchard Street when you met the defendant? A No, we did not cross.

Q Then, according to your story, you were on the north or the southeast corner of Orchard and Broome Street; is that right?

A No.

Q You were on the uptown side of Broome Street; is that right? A Up on the west side corner.

Q The west side of Orchard Street? A Yes.

Q And the north side of Broome; that is the uptown side of Broome? A The uptown side of Broome - the uptown side of Orchard Street and the west side of Broome.

Q Orchard Street has no uptown side? A Yes, one side goes to the water, and the other goes uptown.

Q Orchard runs north and south, and Broome runs east and west. Now, you were on the uptown side of Broome Street; is that right? A Yes, sir.

Q And you were on the west side of Orchard Street; is that correct? A Yes, sir.

Q Then, you were on Broome Street between Allen and Orchard; isn't that right? A No.

Q Isn't that right? A No; I was on Broome and Orchard, just on the corner.

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Q What is that? A Broome and Orchard.

Q Were you on the block between Orchard and Allen Street, or on the block between Orchard and Ludlow Street, A Orchard - a little more to Orchard - Broome and DeLancey Street.

Q Broome and DeLancey? A Yes, about ten feet from the corner, fifteen feet away from DeLancey Street.

Q Then, you were on the west side of Orchard Street between Broome and DeLancey Street? A There is the corner (indicating). It goes in Orchard and Broome and everything is together; it is a circle.

Q I know that, but were you on the block which is bounded on one side by the west side of Orchard Street and with the east side of Allen Street, or were you on the other side of the street, which is bounded by the east side of Orchard Street with the west side of Ludlow Street? Do you understand what I mean? A No.

Q You know the neighborhood pretty well, don't you? A Yes.

Q When you are on Broome Street, the uptown side, this delicatessen store is? A Yes, sir.

Q When you face towards the river, when you face towards Ludlow Street, walking towards Ludlow Street, it is on the left hand side; is that right? A Yes.

Q As you are walking on Broome Street toward Ludlow Street, which side of the street is the delicatessen store? The right-hand, or the lefthand? A Lefthand.

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Q The lefthand? A Yes.

MR. ROSENBERG: Then, it is admitted it was the north side, is it?

MR. MEDALIE: I have always contended it was the north west corner.

MR. ROSENBERG: I have been trying to get it from this man.

MR. MEDALIE: He has stated it, only you confuse him with too much geography.

BY THE COURT:

Q Do you know where Kupperman's saloon is on Broome Street? A There is two, one on one side and one on the other.

Q Where the moving picture place is? A Yes, sir.

Q Is it on that side of the street? A Yes, sir.

BY MR. ROSENBERG:

Q You saw the defendant on Orchard Street? A Yes, sir.

Q And you and your friends were walking towards Ludlow Street? A No.

Q Where were you walking with your friends? A We were waiting for some party.

Q You were waiting? A Yes, sir.

Q You were waiting on the corner? A Yes, sir.

Q You are sure of that? A Yes, sir.

Q And you were on the northwest corner, waiting? A Yes.

Q How long were you waiting on the corner? A Ten

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minutes or so.

Q How long? A Ten minutes.

Q Ten minutes? A Yes, sir.

Q And who were you waiting on the corner with? A Three of us were waiting.

Q Who were the three? A Myself, Harry Salkin and Charles Shapiro.

Q The northwest corner of Broome and Orchard? A Yes, sir.

Q Is that right? A Yes, sir.

Q Were you in the gutter, or were you on the sidewalk?

A In the gutter.

Q What? A In the gutter.

Q In the gutter? A Yes, sir.

Q Were there a lot of people waiting and standing around there at that time? A Not in our conversation.

Q Not in your conversation; I know that; but there were other people walking and standing on that corner? A There is a street; people are walking.

Q Of course, it is a street and it is a busy street, isn't it? A It is a busy street.

Q And there are a lot of people walking on Broome Street, and a lot of people walking on Orchard Street? A Yes.

Q And there were a lot of people walking past you when you were standing there with your friends? A Passing by, but they did not stop.

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Q Yes, passing by? A Yes, passing.

Q And a great many people were passing by, weren't they?

A For the ten minutes, yes.

Q And a lot of people were walking on the street, weren't they? A Yes, sir.

Q Weren't there a lot of people standing on the corner also, not in your party, but other parties? A Oh, I don't know; I didn't see anybody.

Q You say there were other people standing there? A They were walking.

Q Were there any people standing on the corner? A I didn't

Q Are you sure there was no one there, or don't you remember? Which? A Well, a thing like that, I couldn't be sure, but I didn't see no people exactly standing in conversation.

Q But you saw people passing all the time? A Yes, sir.

Q And during the ten minutes that you were standing there how many people will you say passed you, A Fifty.

Q How many? A Fifty, twenty-five.

Q Forty-five or fifty? A Fifty or twenty-five; I couldn't remember exactly.

Q Is that all there were, fifty or twenty-five people? A yes, sir.

Q Wasn't there more than that? A There might have been more; I couldn't swear.

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Q You paid no attention to that? A I paid no attention to that.

Q When you first saw the defendant, where was he? A He was on the sidewalk.

Q Coming down towards you? A Yes.

Q He was walking on Orchard Street, coming from DeLancey Street? A Yes.

Q Is that right? A Yes.

Q Sure of that? A Yes.

Q How far up Orchard Street did you see him coming down?

A We were on the corner there; no more than twenty-five feet away.

Q About twenty-five feet away? A Yes, sir.

Q When you first saw him, he was walking? A Yes, sir.

Q And then he was coming towards you? A Yes, sir.

Q Is that right? A Yes, sir.

Q Didn't you say he was in the saloon, before? A Yes, he came out of the door, about twenty-five feet.

Q Came out of the saloon? A Yes - sir.

Q Didn't you say he was walking down Orchard Street from DeLancey when you first saw him? A Excuse me; I didn't understand your question; he was walking between the door and me.

Q He was walking toward your party? A Yes, sir.

Q He did not recognize you at that time, did he? A I don't know if he did, or not.

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Q You did not recognize him? You did not speak to him?

A No.

Q I am talking now of when he first came out of the saloon?

A Yes.

Q He did not recognize you then, did he? A I don't know.

Q You did not recognize him? A No, I didn't talk to him.

Q You didn't talk to him, and he didn't talk to you? A No.

Q How many people were with him at that time? A One fellow.

Q One other person? A Yes, sir.

Q A man walking with him? A Walking a little ahead of him.

Q You don't know whether that man was with him? A I seen the other fellow come out of the saloon, too, but I don't know if he was with him, or not.

Q The only reason you say he was with him was they both came out of the saloon? A Yes, sir.

Q But you did not see him talking to him? A No.

Q How many feet behind the one man was this defendant?

A Four feet behind.

Q About four feet? A Yes, sir.

Q There were other people walking on that street at that time, weren't there? A No, I didn't see any.

Q What? A I didn't see nothing at present, not at that minute.

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Q When you saw the defendant approaching you, was your friend and brother looking toward him? A Yes, they did.

Q They were looking toward him; is that right? A Yes, sir.

Q Now, where did the young lady come from? A She came from Broome Street.

Q The young lady was walking from Broome Street? A Yes.

Q You didn't know who she was? A No.

Q And as she passed the defendant she made some remark?

A Yes.

Q Is that right? A Yes, sir.

Q Did the defendant appear mad, or angry, or did he answer friendly? A He answered friendly, with a smile.

Q With a smile? A Yes, sir.

Q Sure of that? A Yes sir.

Q There was no quarrel between the defendant and the woman? A No.

Q And she asked some questions and went about her business; is that right? A Yes.

Q Didn't she stop and talk to him? A She stopped for a second, and she walked away; she stopped for a few moments, and she walked away.

Q Sure of that? A Yes, sir.

Q Did anybody else stop and talk to the defendant at that time? A No, I didn't see it.

Q How many people were between you and the defendant when

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the woman was talking to him? A People passed by, but I didn't see anybody talking.

Q People were passing by at that time? A Yes, sir.

Q By the way, it was dark that night? A Yes, sir.

Q Sure of that? A Yes, sir.

Q The lights were lit? A No, it was Sunday night; the saloon lights were kind of dark.

Q It was dark in the saloon, but was there an electric light there? A Yes, sir.

Q Is there an electric light there? A Yes, sir.

Q But there were other lights around? A No, there was not

Q Was it dark at that place? A Yes.

Q Dark? A Yes, sir.

Q You continued to talk to your brother and your friend, Harry Salkin, didn't you? A Yes, sir.

Q You were talking? A Talking to Salkin.

Q And you were waiting for somebody? A Yes.

Q Were you looking toward the defendant when you were talking? A We started to smile, and then we turned around.

Q And then you continued to talk, didn't you? A Yes.

Q What were you talking about? A He said the girl kissed him, and I laughed.

Q Was he talking to some one else? A No.

Q Weren't you waiting for somebody? A Yes.

Q At that time you were waiting for somebody? A Yes, sir.

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Q And it did not impress itself on your mind about the defendant? A No, sir.

Q Nothing happened at that time with the defendant to pay attention to him? A No, sir.

Q Is that right? A I only paid attention he had a cut face.

Q And he ran away? A No, we only paid attention because he said a girl kissed him.

Q And at that time how many feet away was he from you?
A At that time, about five or six feet away.

Q You were in the gutter? A Yes, sir.

Q And the defendant was on the sidewalk? A Yes.

Q Sure of that? A Sure.

Q Now, wasn't you standing between the defendant and Harry?
A No, we were the same thing.

Q You were all three in a line, or bunched together?
A Bunched together.

Q Weren't you standing nearest to the defendant? A I?

Q Yes. A No, I was far away; he was nearest.

Q Who was nearest? A Harry Salkin.

Q Your brother was next? A My brother was first.

Q Your brother was first? A Yes, sir.

Q Then Harry Salkin was second? A And I was third.

Q And you were third? A Yes, sir.

Q Is that right? A Yes, sir.

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Q Were you all bunched together? A Yes, sir.

Q In a circle? A Yes, sir.

Q Sure of that? A Yes, sir.

Q If you were in a circle, who was nearest the defendant?

A My brother was nearest him.

Q Sure of that? A Sure.

Q You began to laugh? A Yes, sir.

Q Isn't that right? A Yes, sir.

Q And then you were waiting for some friend? A Yes, sir.

Q Isn't that right? A Yes, sir.

Q You didn't know what was going on with that girl and the defendant, did you? A No.

Q You didn't pay any attention to that? A No.

Q Is that right? A Yes, sir.

Q And after you were waiting for some time, what was the next thing you heard? A Three shots fired.

Q You heard three shots? A Yes, sir.

Q Whether they came from three revolvers, or from one, you don't know? A No, I think it came -

Q You don't know -

MR. MEDALIE: The witness is answering, and he is cutting him off. That is not right.

THE COURT: Yes, don't do that.

Q Do you know whether they came from one pistol, or three pistols? A It was three shots in succession; one, two, three.

Q You did not see who fired the shots? A No.

Q At the time the shots were fired, your back was to the defendant? A Yes, sir.

Q Or your back was - you were in a position where your back was to the defendant, if he was standing where he was when you last saw him? A Yes, sir.

Q Is that right? A Yes, sir.

Q You don't know whether he was standing there when the shots were fired, do you? A (No answer).

Q Did you see the man fire the shots? A Fire the shots, no.

Q Was your back turned to the man or men who fired the shots? A Yes, sir.

Q Is that right? So that, you did not see the man who fired the shots? A No, I did not.

Q Now, at the time that the shots were fired, were there a number of people around you and your friend Harry and your brother? A No, I didn't see nobody.

Q Were there people passing by? A Yes, far away they were passing by.

Q That is what I am asking you.

THE COURT: He said far away they were passing; is that right?

THE WITNESS: Yes, sir.

Q How far away were they passing? A From ten to fifteen

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feet away from us.

Q Weren't there any people passing by you at the time of the shooting? A I don't remember exactly.

Q What? Didn't you say before people were passing by you when you were standing on the corner? A Ten minutes time is a lot of time; thousands of people could pass in ten minutes.

Q There were crowds passing? A When? In the ten minutes, or at that moment?

Q During the ten minutes? A Yes, sir.

Q There were crowds of people passing? A Yes, sir.

Q Going one way and going the other way, isn't that right?
A Yes, sir.

Q And wasn't that so up to and including the time the shots were fired, crowds of people passing, going in one direction and the other direction? A No, I didn't see very much people.

Q You didn't see very much people? A No.

Q But you did see some people? A Yes, sir.

Q Passing? A Passing, yes, sir.

Q At the time of the shooting? A At the time of the shooting.

Q When the shooting took place, you saw a lot of people running away? A I only paid attention to him running.

Q Didn't you see a lot of people running? A They only come up to the corner where he was shot.

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Q I asked you if you saw a lot of people running immediately after the shooting?

THE COURT: Running in what direction?

Q Did you see a lot of people running immediately after the shooting?

MR. MEDALIE: I object to the question, on the ground it is misleading.

THE COURT: Objection sustained, as to form.

MR. ROSENBERG: I take an exception.

Q Immediately after the shooting, did you see a number of people running away from you, from where you were? A No, I seen a bunch of people coming around me, where I was.

BY THE COURT:

Q Now, did you see anybody run away from where you were standing after the shots were fired? A No, only this fellow.

Q This defendant? A The defendant.

BY MR. ROSENBERG:

Q Didn't you see a lot of people around you immediately after the shooting? A Yes, sir, I did.

Q Before you saw the defendant running away? A No, just at the same time I seen him running away, the other people came.

Q That is, when you turned around, you saw the defendant running, and at the same moment a number of people surrounded you? A Yes.

Q How many people was it that surrounded you? A Ten;

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from five to ten people.

Q At least five to ten people surrounded you? A In that second.

Q In that second? A Yes, sir.

Q The moment you turned around, you saw the defendant running? A Yes sir.

Q And at the same time a number of people were on top of you? A Yes.

Q Is that right? A Yes, sir.

Q Sure of that? A Yes, sir.

Q And when they were on top of you, they were on top of your brother and Harry? A No, we took Harry in the drug store.

Q Just try and put yourself in the position of recalling what happened at the time of the shooting. Didn't you see a number of people running away at that time? Didn't you? A I seen people running, but not running away.

Q Of course, you saw a lot of people running, didn't you? A Yes, sir.

THE COURT: He said he saw people running, but not running away from where he was. Is that right?

THE WITNESS: That is what I said.

Q Didn't you see people running in every direction as soon as the shooting took place? A I don't know.

Q Didn't you see people running towards you as soon as the

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shooting took place; that is, people coming towards you? A Yes, sir, I did.

Q Didn't you see that? A Yes, sir.

Q And didn't you see people running away from you as soon as the shooting took place? A No.

Q Will you swear there were not other people who ran away at the time of the shooting? A Well, I didn't see any, but I did run away -

Q Will you swear other people did not run away at the time of the shooting, run away from you? A (No answer).

Q Is that plain to you? A (No answer).

BY THE COURT:

Q Did you, Mr. Shapiro, see persons other than this defendant running away from where you were standing? A Well, I only paid attention to him running away, and I didn't see any others run, or not. Harry Salkin was hollering so fierce I had to take him to the hospital. I couldn't see nobody.

Q Will you swear other people did not run away?

THE COURT: He has answered the question. He said he only paid attention to the defendant. He saw the defendant running.

Q It was absolutely dark around there? A yes, dark.

Q And it was hard to see anybody; is that right? A Yes.

Q And you could not tell a person's face five or six feet away, could you, because it was so dark; is that right? A Strange people I couldn't recognize.

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BY THE COURT:

Q Strange people you couldn't recognize? A Yes.

Q But you knew the defendant? A Yes, sir.

BY MR. ROSENBERG:

Q When you saw the man running away whom you say was the defendant, did you see that man's face? A I couldn't see his face, but I saw a bandage on his face.

Q That is the only reason you say the defendant ran away, was because you saw somebody with a bandage running away? A Yes, sir.

Q What? A Yes, sir.

Q So, you did not see the man's face who was running?

A He didn't have no face. The whole face was tied up.

Q The whole face was tied up? A Yes.

Q It was the back you saw of the man running? A Yes, I did see the back.

Q But you could not see the face when he was running? A No.

Q And wasn't it absolutely dark? A It was dark.

Q Did you see the defendant that night after the shooting?

A Yes.

Q When? A Broome and Orchard.

Q Where? A Around Orchard Street.

Q After the shooting? A After the shooting.

Q Where? A Orchard Street.

Q Orchard and Broome? A Yes.

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Q Standing there? A Walking with a young lady.

Q Walking with a young lady? A Yes, sir.

Q What time of night was it? A An hour or two later I saw him in two places. I saw him in the moving picture place, too.

Q You saw him in the moving picture place alone, or with a lady? A With a lady.

Q What? A With a young lady.

Q Do you know who that young lady was? A No.

Q Wasn't that the young lady who spoke to him in the evening? A No.

Q Now, when you say you first saw the defendant and you turned around and smiled, how long were you standing there talking, or waiting at the corner, before you heard the shots? A About two minutes.

Q And while you were waiting those two minutes, do you know where this defendant was? A No, I didn't pay no attention to him.

Q You paid no attention to him? A Yes, sir.

Q You know a minute is sixty seconds, don't you? A Yes, sir.

Q What is your business? A House-painter.

Q What? A House-painter.

Q House-painter? A Yes, sir.

Q And when you work you work on time? A Yes, sir.

Q So that, you are a pretty good judge of time? A Yes.

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Q Do you charge by the day, or hour? A Hour.

Q So, you know pretty much how to figure time? A Yes, sir.

Q Is that right? A Yes, sir.

Q Well, now, when you say you saw the defendant running away, did you see his hands? A His hand?

Q Yes. A I only seen one hand.

Q What hand did you see? A The right hand.

Q Did he have a pistol in his hand? A I didn't see it.

Q Did he have a pistol in the other hand? A I didn't see the other hand.

Q When you saw him before the shooting, did he have a pistol? A No, he had his hand in his pockets.
outside

Q His/pockets? A Inside pockets.

Q What? A In the inside pockets.

Q Which hand did he have it in his inside pockets? A Both hands in his overcoat pockets.

Q Wasn't it cold that night? A It was chilly.

Q Didn't you have your hand in your pocket? A No, I had my gloves on.

Q What? A I had my gloves on.

Q Didn't your brother have his hands in his pockets?

A Yes, sir.

Q And the girl had her hands in her pockets? A She might.

Q Didn't Harry have his hands in his pockets? A He might.

Q Nothing unusual about that? A No.

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Q It was a cold night? A Yes, sir.

Q And he had his hands in his outside coat pockets; is that right? A Yes, sir.

Q He had his overcoat on? A Yes, sir.

Q That is, when you first saw him? A Yes, sir.

MR. ROSENBERG: That is all.

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RE-DIRECT EXAMINATION BY MR. MEDALIE:

Q You know the defendant pretty well, don't you? A Yes, sir.

Q You have known him for some time? A Yes.

Q You know what he looks like? A Yes, sir.

Q And even if he has his back turned to you, you can recognize that it is he, can't you? A Yes, sir.

Q And so when he was running that time, you had no difficulty at all in recognizing him as the person who was running? A No.

Q Partly from his face, partly from his form, partly from the way he was dressed and running? A Yes, sir.

Q You were absolutely sure it was the defendant? A Yes, sir.

Q Because you knew him a long time? A Yes.

Q Your brother was shot in the stomach, wasn't he?

A Yes, sir.

Q And Salkin was shot in the back? A Yes, sir.

Q Are you able to indicate just how your brother was facing, with reference to the door of that saloon into which the defendant ran? Can you show us? A Yes, we were in a circle, and we couldn't smile, so we turned around, and my brother had nerve enough to smile, and he stood in the same position; he was facing him.

Q I understood you to say your brother was facing him, because your brother had nerve enough to laugh in his face; that is right, isn't it? A Yes, sir.

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Q So that your brother laughed in his face, and was facing him, while you and Salkin had your backs to him? A Yes, sir.

Q And it was then your brother and Salkin were shot?

A Yes, sir.

Q While your brother was still facing him and laughing in his face? A No, he turned around and I turned around. I didn't see whether he was still laughing, or not. My back was to him. I turned.

Q Wasn't your brother still laughing when your back was turned? A When I turned, I don't know what he was doing. We were all laughing at the start.

Q But your brother was not talking to the defendant? A No.

Q And he laughed in the defendant's face? A Yes, sir.

Q You had your back turned? A Yes, sir.

Q And as he was still facing the defendant he was shot?

A Yes, sir.

Q Your brother did not turn around? A No.

Q To talk to you, during the time his face was turned toward the defendant? A No.

Q That you are sure about? A Yes.

Q Now, as your brother was facing the defendant, he was shot? A Yes sir.

Q Now, you saw the part of his body where he was shot, didn't you? A Yes, sir.

Q And you know exactly how he was standing? A Yes, sir.

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Q And you saw the part of his body that Salkin was shot?

A Yes, sir.

Q And you know exactly how he was standing? A Yes.

Q Now, did those shots come from the direction of the defendant, from where he was standing? A Yes, sir.

Q They came from the direction of where the defendant was standing on that corner facing your brother and facing your back and Salkin's back? A Yes, sir.

Q That is the direction the shots came from? A No, other way, but I didn't see anybody shooting.

Q Nobody was in front at all? A No.

Q Between the door of that saloon into which the defendant ran and the defendant, was there any other person at the time you turned around? A A few persons.

Q What did they do? Did they run? A No; they walked quick; they did not run.

Q They walked? A Yes, sir.

Q They came over to you, to your brother and to Salkin?

A Afterwards.

Q Did they, or not, run away? A Well, that was hard to tell, because as soon as I heard the shots, Salkin hollered "Police", and I grabbed him, and all of a sudden I was surrounded.

Q I want you to tell us your mind at the exact moment that you turned around and saw the defendant had already run

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about three feet from where he was last standing. At that moment, was anybody else running away? A I didn't see anyone.

Q You faced directly in the defendant's direction? A I faced his back.

Q And that was the direction from which the shots came? A No, that was the opposite.

Q He faced the other direction? A Yes, before.

Q What I mean is this: Let us assume that you are your brother, and that I am the defendant. At the time the shooting occurred, the defendant was facing your brother? A Yes.

Q That is the direction from which the shots came? A Well, when the shooting was going on, the defendant was back a little, and when I turned around I seen the front -

Q You turned around? A Yes, sir.

Q And then the defendant had his back to you, this way (Illustrating)? A Yes, sir.

Q And was running? A Yes, sir.

Q Now, this is the place where the shots came from, isn't it (indicating)? A A little bit ahead a ways, because he kept on running.

Q So, three feet nearer to you was the place from which the shots came?

MR. ROSENBERG: Objected to as problematical and speculation.

MR. MEDALIE: Question withdrawn.

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Q You have in mind the door of the saloon into which the defendant ran? You know where that is? A Yes, sir.

Q He ran in a straight line for that door, didn't he? A Yes, sir.

Q And he ran from the point at which he was standing when your back was turned to him; isn't that right? A Say it over again?

Q You have in mind the door of the saloon, you know where that is? A Yes.

Q And you remember where you were standing in the gutter? A Yes, sir.

Q You remember where the defendant was standing when your back was turned to him? A Where the defendant was standing when my back was to him, yes.

Q That was before the shooting? A Yes, sir.

Q Was it a straight line from the place where he was standing before the shooting to the saloon door? A Yes, sir.

Q Was he running, was he running in that straight line? A Yes sir.

Q Was anybody else running in any direction from about that place? A At that place, I only seen people walking.

Q And he was the only person at that place who was running? A Yes, sir.

Q And the shots came from about that place? A I didn't see the shots come.

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Q That is the place they came from?

MR. ROSENBERG: Objected to as speculative.

MR. MEDALIE: Of course, he has testified already as to what kind of wounds they had, and how they were physically located.

RE-CROSS-EXAMINATION BY MR. ROSENBERG:

Q You brought out on your re-direct examination that the shots came from the direction the defendant was standing. Now, at the time of the shooting, did you face the defendant? A No.

Q Your back was what you considered - where you considered the defendant was? Your back was to the place where you thought the defendant was? A Yes, sir.

Q Is that right? A Yes, sir.

Q You were looking in an opposite direction? A Yes, sir.

Q Is that correct? A Yes, sir.

Q Now, when you heard the shots, do you know where they came from? A They came from the direction he was before.

Q What? A They came from the back side direction.

Q That is, you are sure they did not come from the front of you? A Yes.

Q So, they must have come from some place in the back of you? A Yes, sir.

Q What particular place in the back of you, you don't know?

A No.

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Q You did not see the shots fired? A No.

Q So, when you said they came from the direction where the defendant was standing, you mean to say that they came from some place in the back of you, is that it? A Yes.

THE COURT: That is perfectly plain.

BY THE COURT:

Q How long did it take for the three shots to be discharged from the revolver? A Straight shots, one, two, three.

Q And then you turned around, and you saw this defendant running? A Yes, sir.

BY MR. ROSENBERG:

Q He didn't have any pistol in his hand? A No.

Q And you saw his hands? A I saw one hand.

THE COURT: He saw the right hand.

Q Where did he run to? A Up to the saloon, ^{and} turned in the saloon.

Q Didn't you see a number of people run into the saloon for safety? A In the saloon, no.

Q Didn't you see a number of people running into that door? A There were people standing by the door, but not running in. People walked in afterward.

Q people walked in the door at the same time the defendant went in? A A second later.

Q A second later? A Yes, walked in.

Q And they were standing around where the defendant was

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at the time of the shooting? A I don't know, because my back was there. When I turned around I seen the people there standing.

Q When you turned around, you saw this defendant running in the direction of the door of the saloon? A Yes, sir.

Q Didn't you see other people running in the direction of the door of the saloon at that same time? A I seen people walking in, but not running in.

Q Walking in? A Yes, sir.

Q Were they walking fast? A Plain walking.

Q How many people did you see walking plain, as you described, it, into the saloon, at the same time that you saw the defendant going in? A Two.

Q Two? A Yes, sir.

Q Sure of that? A Not more than three.

Q That night was dark, wasn't it? A Yes, sir.

Q And you could not distinguish a person more than a foot or two away from you, could you? A No; I could see far away. Couldn't see exactly a face, but I could see a body.

Q You could see a body? A Yes, sir.

Q But you could not see any features more than a few feet away, could you? A A few feet?

Q Could you distinguish a person more than five or six feet away from you at the time that you say the shooting took place? A I don't know.

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Q What? A I don't know. A strange person I could not recognize.

BY THE COURT:

Q That is, you could see the faces of the persons that night, could you not? A No, I could not see the faces.

BY MR. ROSENBERG:

Q You could not see the faces? A No.

Q Because it was too dark? A Cloudy.

Q What? A It was cloudy. If I saw the faces, I would not remember. I never knew those faces.

Q The only thing you saw of the person that was running away was the back of the person? A Yes, sir.

MR. MEDALIE: And the bandaged face, he said .

Q Did you see the bandage? A I seen the bandage; he had it over his head, all around his face.

Q The person had a bandage on? A Yes.

BY THE COURT:

Q What kind of hat did the defendant wear that day? A A derby.

BY MR. ROSENBERG:

Q Sure of that? A Sure.

BY MR. MEDALIE: You are the brother of Charles Shapiro?

A Yes, sir.

Q You remember Charles Shapiro being in the Police Court?

A Yes, sir.

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Q Have you seen him since? A I seen him a week later.

Q Since then, have you seen him? A No.

Q Do you know where he is? A No.

Q Have you heard from him in any way? A I heard from him from outside people, but not from home.

Q Not from your own family? A No.

Q Your own family knows nothing about him?

MR. ROSENBERG: Objected to.

THE COURT: Strike out "your own family knows nothing about him".

BY THE COURT:

Q Where did your brother live prior to that time? A At that time, he was living home.

Q With you? A Yes, sir.

BY MR. MEDALIE:

Q Is he living home now? A No.

Q And you don't know where he is? A No.

Q You have not heard from him? A I have not heard from him outside of the street.

Q Do you know whether he is in New York? A I don't know. They told me -

THE COURT: No, don't state what he told you. He is not living home?

THE WITNESS: No.

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

DIRECT EXAMINATION BY MR. MEDALIE:

Q What is your name? A John Hayes.

Q You are a police officer? A Yes, sir.

Q Attached where? A Detective Bureau, Thirteenth Pre-
cinct.

Q Did you arrest the defendant? A Yes, sir.

Q On what day did you arrest him? A On a Sunday,
about 11 P.M.

Q Do you remember being -

BY MR. ROSENBERG:

Q What date? A 8th of December.

BY MR. MEDALIE:

Q Do you remember being in the Third District City
Magistrate's Court, at First Avenue and Second Street, at the
time the defendant was arraigned on various charges?

MR. ROSENBERG: That is objected to.

THE COURT: The objection is sustained.

Q On this charge? A Yes, sir.

Q Did you hear him have a conversation with any person
in the clerk's room? A I did.

Q Who was that person? A A man by the name of Bielsky.

Q Do you recall what Bielsky was doing in that courtroom
at that time?

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MR. ROSENBERG: That is objected to.

THE COURT: The objection is sustained.

Q What did the defendant say to Bielsky, and what did Bielsky say to the defendant, in your presence?

MR. ROSENBERG: I object to that as incompetent irrelevant and immaterial and hearsay, and up to the present time the defendant hasnot taken the stand and cannot be contradicted by any testimony such as is attempted to be elicited from this witness.

THE COURT: On the grounds urged, the objection is overruled.

MR. ROSENBERG: I take an exception.

THE COURT: Now, Officer, in answering this question, be careful that the conversation relates to this particular case.

THE WITNESS: It related to the case of the defendant and Bielsky, your Honor.

THE COURT: Did it relate to this case?

THE WITNESS: No, sir; it related to Bielsky and the defendant. Bielsky was -

Q Let me ask you this: Did the defendant say anything at all about the case pending against him on the complaint of Salkin, A He did.

Q Tell us what that conversation was?

MR. ROSENBERG: I object to that as incompetent irrele-

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vant and immaterial, upon all the grounds urged to the previous question.

THE COURT: The objection is overruled.

MR. ROSENBERG: I take an exception.

A The complaint was being drawn against Bielsky for -

THE COURT: Don't start off that way. State what, if anything, this defendant said concerning ^{the} Salkin matter.

THE WITNESS: The defendant said to Bielsky, in an answer to what Bielsky said to him, he said - Bielsky said "Are you going to pound me?" he said, "why don't you pound the right man? you know you ain't got the right man"; and the defendant stated, he said "if they are going to pound me, I will stick it into you". That is the words he used.

Q Were there at that time any complaints in that court pending against the defendant for which he was being arraigned?

MR. ROSENBERG: I object to that.

THE COURT: I will allow that.

A Yes, sir, he was charged with shooting two men.

Q And who were they?

MR. ROSENBERG: Objected to.

Q Was Salkin one of them? A One of them.

MR. ROSENBERG: May I have an objection to the last question, and an exception?

THE COURT: Yes. People vs. Pallister, 138 N.Y.; People vs. Barabotto, 196 N.Y.

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Q Was Charb s Shapiro the other complainant? A He was. He was in court, making a complaint against the defendant.

Q Who else was present at the time that conversation took place? A Patrolman Rothchild.

Q Anybody else? A The defendant and Bielsky and myself.

MR. MEDALIE: You may examine.

CROSS-EXAMINATION BY MR. ROSENBERG:

Q Did you make a memorandum of that talk, Mr. Officer?
A No, I did not..

Q Did you reduce it to writing? A That was not my case; I did not have him on that case. I had him on the shooting.

Q I am asking you, did you make any memorandum of that talk? A No, I did not.

Q And that occurred about when? A It occurred when he was being -

Q Fix the date, about? A On the 9th.

Q The 9th of December? A Yes, 9th of December.

Q And from that time to this did you refresh your recollection from anything on the subject of that talk? A Why, no.

Q Sure of that? A No, I did not refresh my memory.

Q Was there any writing which you made at that time or any time since embodying that conversation? A You mean writing of that conversation?

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Q Yes. A I made none.

Q In other words, there was talk between this man Bielsky, whom this defendant charged with stabbing? A Yes.

Q That is, the defendant had Bielsky arrested for stabbing?

A Yes, sir.

Q And, as a matter of fact, the defendant was stabbed, isn't that right? A (No answer).

BY THE COURT:

Q Do you know that of your own knowledge? A No, sir.

BY MR. ROSENBERG:

Q You know he was in the hospital?

THE COURT: I will exclude that.

Q There was a talk between Bielsky and the defendant about the case in which the defendant charged Bielsky with stabbing him? A Yes, sir.

Q Is that right? A Yes, sir.

Q And the conversation related to that case? A That case.

MR. ROSENBERG: That is all. — Now, I ask that the answers given by the witness with respect to a conversation purporting to be in a case other than the Bielsky case be stricken out, as it appears on cross-examination for the first time that it had reference solely to the so-called case against Bielsky, and not any other case.

THE COURT: Your statement is not borne out by the facts. Motion denied.

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J O S E P H R O T H C H I L D, called as a witness on behalf of the People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q What is your name? A Joseph Rothchild.

Q You are a member of the Municipal Police Force of this City? A Yes, sir.

Q Attached to what precinct? A Thirteenth Precinct.

Q Do you recall being in the Third District City Magistrate's Court during the month of December, on the arraignment of Frank Bielsky on a charge of assault? A I do, sir.

Q And do you recall being in the clerk's room at that time? A Yes, sir.

Q The complaint clerk's room? A Yes, sir.

Q Was the defendant present then? A Yes, sir.

Q Was Bielsky present? A Yes, sir.

Q Did you hear a conversation between Bielsky and the defendant?

THE COURT: That must relate to Salkin's case.

Q Did you hear anything said about the case pending against the defendant on the complaint of Harry Salkin? A Yes, sir.

Q Now, what was said? Give the entire conversation?

MR. ROSENBERG: I object to that as incompetent irrelevant and immaterial and hearsay.

THE COURT: The objection is overruled.

MR. ROSENBERG: I take an exception.

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A While the affidavit was being drawn up for -

THE COURT: Strike that out. Answer the District Attorney's question.

Q What did Salkin say, and what did the defendant say?

A He said, "If you rap me -".

Q Who said? A Max Ostransky said, "If you rap me I will stick you up".

BY THE COURT:

Q What was that? A Max Ostransky said, "If you rap me, stick I will rap you up", meaning "I will rap you".

THE COURT: Strike out the evidence. I asked you specifically what, if anything, the defendant said concerning the Salkin complaint.

THE WITNESS: He says in the room -

BY MR. MEDALIE:

Q Who said? A Ostransky.

Q Ostransky, the defendant? A Yes - Bielsky was talking to Max Ostransky. Max Ostransky was standing with the clerk; Bielsky was standing alongside of me. Ostransky said to Bielsky, "If you rap me, I will rap you".

Q Do you know to whom he referred, "yes", or "no", after that?

MR. ROSENBERG: That is objected to.

THE COURT: The objection is sustained.

Q No, stop and think a minute? Was anything said against the defendant for shooting

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Harry Salkin by either of them at that time? A Let me hear that again, Mr. District Attorney.

Q Was anything said by either of them about the complaint against the defendant for shooting Harry Salkin? Do you know who Harry Salkin is? A Yes, sir. I don't know who Harry Salkin is, no.

Q Just look at that young man over there (indicating Harry Salkin)? A Yes, sir.

Q Was anything said about him? A I don't remember.

Q Now, Officer, did you inquire for Frank Bielsky at his address? A Yes, sir.

Q Did you know what his address was at the time, where he last lived? A 93 Second Avenue.

Q Did you go there? A Yes, sir.

Q Were you able to find him there? A No, sir.

Q Did you go to any other address to look for him?

A Broome and Orchard .

Q Did you find him there? A No, sir.

Q During the past three months, have you been able to find any address of Bielsky? A No, sir.

Q Though you have looked for him on several occasions?

A Carried a subpoena, yes, sir.

MR. MEDALIE: That is all.

CROSS-EXAMINATION BY MR. ROSENBERG:

Q Now, is it a fact the only thing that took place in

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that complaint room between the defendant and Bielsky was that the defendant said to Bielsky, "If you rap me, I will rap you", or words to that effect; is that right? A I don't remember anything else.

Q Isn't it a fact that that is all that took place?

A I couldn't tell you.

Q Didn't you, in answer to the District Attorney, tell this jury what took place in that complaint room? A I don't remember. All I heard is he said to Bielsky, "If you rap me, I will rap you".

Q And who was there when that took place? A I think Officer Hayes was standing in back of me.

Q Standing in back of you? A In back of me, or on the side of me.

Q And where was the defendant? A In front of me.

Q Sure of that? A Yes, sir.

Q Didn't the District Attorney ask you to tell what took place, and you replied by saying the defendant said to Bielsky, "If you rap me I will stick you up, or I will rap you"? Isn't that what took place? A Yes, sir.

Q And isn't that all that took place? A I couldn't tell you. I then looked out for my affidavit.

Q Isn't that all that took place? A I don't remember.

Q If there was anything else, wouldn't you know, to tell this jury? A No, sir, because I walked away, looking out.

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for my perjury charge. I had nothing to do with the shooting match at all.

Why
Q /Was it necessary for you to say anything about perjury?
Did I ask you anything about that? A No, sir.

Q But you wanted to get it before the jury? A No; I walked away. I had nothing to do with the shooting whatsoever - the shooting case.

Q As a matter of fact, you and Officer Hayes were in Mr. Medalie's office within the last few days? A Never was in there with Officer Hayes at all. I was alone.

Q Never spoke to Mr. Medalie? A I did, yes, sir.

Q And didn't he ask you what took place in the complaint room? A I don't remember.

Q Do you mean to tell this jury you don't remember whether he asked you what took place in the complaint room?
A No, sir; he asked me different things about the case.

Q Didn't he ask you what took place between Bielsky and this defendant? A I don't remember.

Q So, the first time that you ever repeated that conversation was on the stand today? A Yes, sir.

Q You never told anyone about it? A No, sir.

Q Do you want the jury to believe that? A Yes, sir, I am telling you the truth.

Q You were there during all the time the defendant was in that room, weren't you? A Not all the time.

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Q Wasn't he your prisoner? A Yes, sir.

Q Wasn't he your prisoner? A Yes, sir.

Q And it was your duty to stand alongside of him? A Yes.

Q And you did stand alongside of him, didn't you? A Yes.

Q During all the time he was in the complaint room? A Not all the time.

Q Did you ever tell anyone about this talk that you heard between Bielsky and the defendant except what you said to this jury on the stand today? A Yes, sir.

Q When, and to whom?

THE COURT: Mr. Rosenberg I have virtually excluded his evidence. As I understand it, Officer Hayes testified - I better not state it in the presence of this witness./

MR. ROSENBERG: The reason I am dwelling upon it is because I believe it has some connection with Officer Hayes' testimony which will permit me to argue this case at another time as to what happened. I will be very brief.

Q Did you ever tell of that conversation anywhere than on the stand today? A Yes, sir.

Q Where? A Never.

Q What? A I never did.

Q And the first time you ever spoke of it was on the stand today? A Yes, sir.

Q Did you take the defendant to the hospital on the night

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of December 8th, Sunday night? A To a hospital?

Q Yes. A No, sir.

Q Did Officer Hayes, or did you take him over to be identified? A I didn't take him to no hospital.

Q And you know Bielsky? A Yes, sir.

Q Sure of that? A I locked the both of them up.

Q And where did you say you looked for him? A I looked for him at Second Avenue.

Q When? A I just don't know the date.

Q How long ago did you look for Bielsky at Second Avenue?

A I looked for Bielsky four or five times.

Q When? A About two weeks, a week back, three weeks back.

Q Sure of that? A Yes, sir, four weeks back.

Q When is the last time you looked for Bielsky? A Friday.

Q Last Friday? A Yes, sir.

Q Where did you look for him last Friday? A Where he always hung out, at Orchard and Broome; ^{he} was always there, every day of the year he used to go there.

MR. ROSENBERG: That is all.

RE-DIRECT EXAMINATION BY MR. MEDALIE:

Q Counsel for the defendant wanted to know whether you

talked to me about the conversation in that complaint

between the defendant and Bielsky?

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MR. ROSENBERG: No, I didn't say anything of the kind.
I object to his misquoting the record.

Q Did you talk to me about this particular indictment?

A No, sir.

Q You spoke to me about another indictment? A Yes, sir.

MR. ROSENBERG: Objected to.

THE COURT: Strike it out, and the jury will disregard it.

MR. MEDALIE: Your Honor, it was brought out that this officer came to my office and talked to me about a case.

THE COURT: He did not talk to you about this case.

Q You did not talk to me about this case in my office, did you? A No, sir, I did not.

MR. MEDALIE: That is all.

THE PEOPLE REST

MR. ROSENBERG: The defendant moves for the discharge of the defendant, and for the direction of an acquittal, upon the grounds the facts stated in the indictment have not been proved, that the People have failed to establish the facts stated in either of the counts charged in the indictments. The People have failed to establish the commission of either of the crimes

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charged in either of the counts of the indictment beyond a reasonable doubt.

THE COURT: Motion denied.

MR. ROSENBERG: Is your Honor open to argument?

THE COURT: I will listen to argument.

MR. ROSENBERG: Does your Honor believe there is sufficient to go to the jury on this evidence?

THE COURT: I have denied your motion. I do.

MR. ROSENBERG: I take an exception.

THE COURT: (To the jury) Do not discuss this case among yourselves, nor permit any person to talk to you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant, until the case is finally submitted to you. Be in your seats tomorrow at 10:30.

(The Court then took a recess until tomorrow, Wednesday, March 5th, 1913, at 1030 A. M.)

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THE PEOPLE ETC.
-against-
MAX OSTRANSKY.

New York, Wednesday, March 5th, 1913.

TRIAL CONTINUED.

THE DEFENDANT'S CASE.

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

M A X C O H E N, called as a witness on behalf of the
defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your name? A Max Cohen.

Q Where do you live? A 975 Union Avenue, Bronx.

Q What is your employment? A I am bookkeeper
with Messrs. Schwartz Brother, Cigar factory.

Q Where is their factory? A 376 Greenwich Street, New
York City.

Q How long have you been connected with that firm?

A Over thirty years, now, thirty-one years now.

Q Do you know this young man, the defendant?

A Yes, I do.

Q What name do you know him by? A Max Ostransky.

Q Did he ever work for your firm? A He worked for us.

Q How long? A Between four and five years.

Q Covering what period of time? Can you fix the time?

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A Well, I can't say exactly. I know it is more than five years; about four years and five or six months, about that time.

Q How long ago did he work for you? A About a year ago, he left us.

Q He left your place about a year ago? A He left our place about a year ago, yes, sir.

Q And before that he worked between four and five years? A Yes, sir.

Q What did he work at in your place? A Making cigars.

Q Cigar maker? A Yes, sir.

Q Did he work regularly? A Worked regularly every day.

MR. MEDALIE: If this is a character witness, I suggest we get the testimony on that subject.

MR. ROSENBERG: I am going to show, as I indicated in my opening, that he had been employed regularly by this firm for four or five years.

THE COURT: Proceed. These, are, of course, preliminary questions.

Q Now, Mr. Cohen, you knew him only by the name of Ostransky? A Yes.

Q Max Ostransky? A I knew; Max Ostransky.

Q And was he a week worker, or piece worker?

A All piece work.

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Q All piece-work? A Yes, sir.

Q And was he a rregular workman there? Did he work regularly? A Yes, sir.

Q The same as everybody else? A The same as everybody else, yes, sir.

MR. ROSENBERG: That is all.

MR. MEDALIE: It seems to me, that in view of the offered, immaterial testimony, I ought to be allowed a wide latitude. I thought the witness would be a character witness, by these preliminary questions.

MR. ROSENBERG: I indiczted in my opening that I zm going to show that this young man had been empooyed for four or five years with Schwartz Brothers; that after he left Schwartz Brothers, he worle d for another firm. I want to show what he has done for the last six years, to show that he is not a gangster or a man mixed up with gangs, as indicated by the people.

THE COURT: Are you offering this witness as a character witness?

MR. ROSENBERG: He has testified as to what he has been doing for the last four or five years.

THE COURT: Are you offering him as a character witness?

MR. ROSENBERG: I have not proved any character by this witness.

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THE COURT: How is the evidence competent?

MR. ROSENBERG: The District Attorney claimed in his opening that this was a gangster, or it may be claimed he is a gangster. I want to show, as part of his life's history, that he is a young man who has worked for four or five years at one place.

THE COURT: You understand the difference between evidence of this character and establishing good reputation?

MR. ROSENBERG: Of course I do. This is not evidence of good character. It is evidence of part of this man's life history.

THE COURT: That you are entitled to prove.

MR. MEDALIE: I thought that could be proved by the defendant himself, but I did not think it was admissible by independent proof.

THE COURT: I will allow it.

MR. ROSENBERG: It may be out of the order of proof. I am going to put him on the stand.

CROSS EXAMINATION BY MR. MEDALIE:

Q You don't know what Ostransky did after business hours, do you? A I do not, sir.

Q You don't know people with whom he associated after business hours, do you? A No.

Q As to his private life, you don't know a single thing?

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A No.

Q Not a single thing? A I know that he associated with some of our other cigar makers.

Q But you did not see what he did once he left the office, did you? A No.

Q You don't know with whom he associated, or how he carried on? A That I don't know.

Q You don't profess to be a witness to his good character?

MR. ROSENBERG: I object.

THE COURT: Well, he has stated that. Objection sustained.

MR. MEDALIE: That is all.

BY THE COURT:

Q Have you seen the defendant during the past year?

A I have seen him, yes, sir.

Q Where? A Up in our shop.

Q Did you ever visit him in the neighborhood where he lives? A I never visited him, no, sir.

HERMAN GORDON, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your name? A Herman Gordon.

Q Where do you live? A 39 Rutgers Street.

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Q Mr. Gordon, what is your business? A I am in the moving picture business.

Q And have you a moving picture place? A Yes, sir.

Q Where? A 39 Rutgers Street.

Q 39 Rutgers Street? A Yes, sir.

Q And do you know this defendant? A Yes, sir.

Q What is his name? A Max Ostransky.

Q How long have you known him? A He worked for me for a year.

Q Where did he work for you? A At his place of business, at the moving picture house.

Q From when and up to when did he work for you?

A My partner has known him before, and he recommended--
BY THE COURT:

Q When did he commence to work for you, and when did he leave you? A He started to work for us last year; it was sometime in the beginning of the season. That means around the month of January some time.

BY MR. ROSENBERG:

Q A year ago, January? A Yes, sir.

Q How long did he work for you? A (No answer)

Q He went to work for your firm a year ago last January?

A A year ago last January.

Q And how long did he work there? A He has worked until about a few months ago.

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Q Up to a few months ago? A Yes, sir.

MR. MEDALIE: Now, your Honor, I object to this line of testimony, on the ground it is incompetent, irrelevant and immaterial, and that the testimony on this subject, unless this is a character witness, can come from the defendant only. I may be mistaken as to the rule, but that is my recollection.

THE COURT: No, a defendant is allowed to give a brief history of his life, and there is no objection to having facts stated as to his employment, but this evidence is not evidence of good reputation, and is not offered as such.

MR. MEDALIE: But I understand this kind of evidence can only come from the mouth of the defendant.

THE COURT: I will allow this evidence.

Q And can you give the jury some idea of his hours of labor at your place of business? A Yes, sir; the hours are from two o'clock until eleven every day.

Q Two in the afternoon? A Two in the afternoon until eleven at night, every day in the week.

Q And has he worked regularly? A Regularly, yes sir.

Q And was he working up to the time of his arrest?

A The very time, yes, sir.

Q The arrest in this case? A Yes, sir.

BY THE COURT:

Q When did he leave your employment? A I couldn't

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exactly say the date.

Q About when? A About a few months ago.

Q Before Christmas, or after Christmas? A That was, I believe, before Christmas.

Q Before Thanksgiving, or Labor Day? A I think he worked until Thanksgiving.

Q Did you ever visit the defendant's home? A No, sir.

Q Or associate with any people whom he knows? A No.

CROSS EXAMINATION BY MR. MEDALIE:

Q I understand you to say that he worked regularly for you; that is right, isn't it? A He worked for us regularly, yes, sir.

Q He was there every day, because your place is open Sundays and Holidays as well as the ordinary business days? A Yes, sir.

Q What position did he have there? A He was on the floor, managing the floor.

Q It is a small place that you own there, isn't it?

A Well, it is an ordinary place of business; it was mine.

Q But it was a small place? A I don't know what you mean by small.

Q How many people can you get in there? A We have three hundred feet; two hundred and ninety-nine feet.

Q Then, it is a small place? Now, be frank with me. I want to know the facts? A Well, the size of the house I

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described.

Q The sitting capacity? A Two hundred and ninety-nine. There is no moving picture house permitted to have any more.

Q That is really a small house? A Well, a small house.

Q It is not a theatre? A We have one there, too, besides.

Q That has not a very big traffic, has it?

A Well, we do quite a good sized business.

Q You are in charge of the place? A At times, I am there.

Q And your brother-in-law is there? A At times, yes.

Q Then, why do you need a manager, if you are there and he is there? A Well, we absolutely need a man on the floor to handle the people, usher them into the seats, and take care of the place.

Q Was he the manager? A He was manager and ushering people to the seats.

Q How many ushers do you have there? A Only one.

Q He was usher? A And also Managing the place.

Q You had some one in the ticket office? A Yes sir.

Q Who was that? A A girl.

Q She took care of the money side of it? A She sold the tickets.

Q He had nothing to do with that? A With the

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managing business, but not the money.

Q All he had to do was to take care of the people?

A To see that everything was in order and everybody was seated.

Q You had an operator who ran the machine? A Yes sir.

Q And the defendant had nothing to do with that?

A No, sir.

Q So, all he had to do was to see that people got their seats and that the house was clean? A The law requires--

Q Don't tell us what the law requires. Just answer my questions, and when Mr. Rosenberg stands up, then pay attention to him, and not until then, because he can't examine you while I am examining you. Will you tell us now that he was there every day? A He was there every day in the week.

Q Do you recall how he stopped working for you?

A Well, at night, he went home.

Q I mean, when did he stop working for you all together? You say he has not worked for you for a few months?

A Yes, sir.

Q When did he stop working for you? Did you give up business? A No; the next day he didn't show up, and we made inquiries, and were told that he was arrested.

Q That is the time he stopped working for you?

A Yes, sir.

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Q By the way, did he work every night? A Every night, yes, sir.

Q Did he miss a single night? A Not any.

Q You are very sure of that? A If he took once off a day, which of course, I give him a day off once in a while, if he asked for it.

Q For instance, he took a night off for his ball?

A I think he had a night off then.

Q And was he selling tickets for his ball in your place?

A Not to my knowledge.

Q How many balls did he go to, other balls of the same kind as his own? A I don't know.

Q You don't know the first thing about that? A Not where he went to.

Q You don't know what his connection is with the Young Sharkey Association, do you? A No.

Q You really know nothing about him, except his being in your place? A He worked for me regularly. He attended to his business.

Q And now and then he took a day off? A Well, naturally, he took a day off.

MR. MEDALIE: That is all.

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H A R R Y S H A P I R O, called as a witness on behalf
of the defendant, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your name? A Harry Shapiro.

Q Where do you live? A 1015 East 167th street.

Q Are you the partner of the last witness? A Mr.

Gordon?

Q Mr. Gordon? A Yes, sir.

Q And what is your business? A Moving Picture,
vaudeville house.

Q And do you know this defendant? A I do.

Q And Max Ostransky? A I do.

Q He worked in your moving picture place? A He did.

Q Is that the house on Rutgers Street? A Rutgers
Street, 39 Rutgers.

Q And how long did he work there? A About a year.

Q Up to when did he work there? A Until he was
arrested.

Q And he was arrested on December 7th, last year?

A About that time.

Q Sunday, the 7th, or 8th? A It was on a Sunday, I
remember, it was in December, I don't remember the date.

Q And up to that time he worked in the place? A He
worked in the place.

MR. ROSENBERG: That is all.

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CROSS EXAMINATION BY MR. MEDALIE:

Q What was the job that he held in your place?

A Manager.

Q Of what A All around man.

Q You really manage the place, don't you? A Yes, but when we go out we want some one there.

Q You are not out all the time? A I am not out all the time, but we shange off.

Q But you are there most of the time? A Most of the time, yes.

Q Because that is your business? A Yes, sir.

Q You have no other business? A No other business at present.

Q So, you really are in charge of the place? Who is the boss? A We are both boss, Mr. Gordon and myself.

Q You are in charge of the place, and you are there most of the time? A Since six weeks, but I had another business but I had another business before six weeks ago.

I was not there all the time, only three days in the week.

Q And the other three days Mr. Gordon was there?

A Mr. Gordon was there.

Q And when you came there for three days in the week, you stayed there? A Yes, sir.

Q During all of the business hours? A Yes, sir.

Q So that either you or Mr. Gordon was in the place?

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A Yes, sir.

Q Whenever the place was open? A Whenever the place was open.

Q So either you were the manager, or Mr. Gordon was the manager? A Yes, sir.

Q Whenever the place was open? A Yes, sir.

Q The house has a capacity of how many seats?

A Two hundred and ninety-nine.

Q So, it is not a very large house, is it? A No.

Q It is not a theatre? It is a moving picture place?

A Yes, sir.

Q You charge five and ten cents admission, I suppose?

A Five cents.

Q The defendant worked on the floor, didn't he?

A Yes, on the floor.

Q You had no other usher besides the defendant?

A We had another one. We got two.

Q Two ushers? A Two ushers.

Q Mr. Gordon said only the defendant? A There is one for the stage and one for the floor.

Q The defendant has nothing to do with the stage?

A I know, but he was the main man on the floor.

Q But there was no other man on the floor? A We have another man from the stage who goes on to help him.

Q To help Ostransky give people seats? A To give

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seats and see that nobody is in the aisle, to see that every¹⁰² thing is in order.

Q So, he is really usher? A We call him manager.

Q What does he manage? A The days I was not there, maybe Mr. Gordon has to go out a couple of hours, and we have to have some one in the place in case the Inspector comes in.

Q You had him there for appearances, in case an inspector came in, he could do the talking? A No; you don't understand me. The idea of having two men in the place, is this: We have to be on registry. If I am out, or Mr. Gordon out, suppose we go out, somebody is there to answer.

Q To answer what? A Suppose a fireman comes in and wants to inspect the place.

Q Do you have to call him the manager for that reason?

A Certainly.

Q That is the reason you call him the manager? A The manager.

Q But, really, he was the usher? A Yes, sir, and caretaker.

Q Was he also the bouncer?

MR. ROSENBERG: That is objected to.

THE COURT: The objection is overruled.

MR. ROSENBERG: I take an exception.

Q Now, wasn't he the bouncer? A I don't understand.

Q Suppose somebody came in and was disorderly, he was the person who put him out, wasn't he? A We all did that, if anybody is disorderly.

Q But didn't you hire him because he was a strong man and could put people out? A Not exactly for that purpose. He was hired as a general man.

Q I didn't say he was hired exactly for that purpose. Was that one of the purposes for which he was hired?

A Well, I would say yes, in one way.

Q In a way, that is so? A Yes.

Q Because he is a strong fellow? A There are stronger men than him.

Q You occasionally have some trouble in that place?

A We occasionally have a man on the floor.

Q Sometimes rowdies come in? A Yes, they do.

Q Some times rowdies come in? A Yes, sir.

Q And they raise a disturbance? A Yes, sir.

Q Probably want to come in without paying, and you have got to have somebody to put them out; so you hired the defendant, because you knew he could do that kind of work?

That is true, isn't it? Be frank with me? A I couldn't admit to that, because we have very little trouble there.

I don't see how I can admit to that, when I didn't think I needed a man like that.

Q Now, just a minute; counsel will sum up. You did

hire him because he could be used for that purpose whenever it was necessary? A Yes, sir.

Q Did he work there every day? A Oh, yes.

Q What hours? A From one till about eleven o'clock in the evening.

Q From one to eleven? A Yes, sir.

Q Sure he came at one? A One, and sometimes twelve, and if we needed him at ten he would come at ten.

Q But usually he came at twelve or one? A Yes, sir.

Q And worked right on until eleven? A Yes.

Q Every day? A Every day in the week.

Q Ever miss a day? A Never missed a day.

Q Not a single day? A Not a single day.

Q For no reason at all? A For no reason at all.

Q You are sure of that? A Excepting the day he was arrested.

Q That is the only day he missed? A Yes.

Q And he was working for you a year? A Yes.

MR. MEDALIE: That is all.

RE DIRECT EXAMINATION BY MR. ROSENBERG:

Q Are you sure of the hour of one o'clock when he came?

A I am sure of the hour?

Q Yes. A Yes, he came at one o'clock.

Q Were you always there when he came? A When I was there he always came at that time.

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Q Isn't it necessary to have somebody in the place to keep order? A It certainly is.

Q Did you hire this man as a bouncer? A Not exactly for that, no.

Q Do you know what a bouncer is? A I first hear that word now.

Q If you don't know what it is, what are you answering? A Because the District Attorney explained it to me.

Q What do you think a bouncer is? An usher?
A What is that?

Q What is a bouncer? A A bouncer now I think is a man that kicks somebody out.

Q Did you hire him for that? A No, sir, we don't kick anybody out.

Q Did he ever get a day off when he was there?
A Not that I could remember. Mr. Gordon may give him a day off, or two, but while I was there he was always in the place.

Q The place is open until about eleven o'clock at night? A Until eleven o'clock.

MR. ROSENBERG: That is all.

G U S S A N D E R, called as a witness on behalf of the defendant, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your name? A Gus Sander.

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Q Where do you live? A 97 Orchard Street.

Q Sander, what is your business? A Cook.

Q Where do you live? A 97 Orchard Street.

Q Is that near Broome Street? A That is near Broome Street, yes, the Third house from Broome Street.

Q The third house from Broome Street? A Yes, sir.

Q Between Broome and Delancey? A Between Broome and Delancey, hut more to Broome street.

Q Keep your voice up? A Between Broome and Delancey, but more to Broome Street.

Q Do you know the saloon corner of Broome and Delancey?

A Yes, sir.

Q The northwest corner? A That is to the west side, on the west side corner.

Q The west side or Orchard Street? A The west side of Orchard Street, yes, sir.

Q On the corner? A On the corner.

Q There was a shooting took place on December 8th, last year? A Yes, sir.

THE COURT: Don't lead the witness.

MR. ROSENBERG: I want to fix the time, your Honor.

Q Did you ever witness any shooting at the corner of Broome and Orchard Streets? A Yes, sir.

Q Were you there when a shooting happened? A Yes sir.

Q How many shootings did you ever witness on that corner? A There was three shots there.

Q How many times, or how many days, upon how many occasions did you ever hear somebody shooting on that corner?

MR. MEDALIE: I object to that.

Q Was it more than once?

MR. MEDALIE: Objection withdrawn.

Q How many times did you ever witness a shooting?

A Never. That is the first time.

Q And that was about when? A That was on the corner of Broome Street and Orchard street; that was about three foot away from the sidewalk; I saw that Mr. --

Q Do you know Ostransky? A Yes.

Q Do you know him well? A Yes, sir.

Q On that evening, were you in the neighborhood of Broome and Orchard Streets? A Yes, sir.

Q Did you see Ostransky there? A I saw him on --

Q Did you see him? A Yes, sir.

Q What was the condition of his face? A He had a bandage on his face.

Q What? A He was bandaged on his face.

Q All around his face? A Yes, sir.

Q Are you sure of that? A Yes, sir.

Q Was that in the morning, or afternoon? A No, that was after supper.

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Q After supper? A After supper. It could be from seven to eight or nine-- after seven.

Q And you were on the corner, were you? A Yes sir.

Q Was Mr. Ostransky alone on the corner that evening?

A There was a lady there.

Q I ask you whether he was alone, "yes", or "no"?

A No, sir.

Q Who was he with? A A lady was there with him, and two men was there with him.

Q Two men with him? A Yes.

Q Are you sure of that? A I am sure they were standing on the corner more, but near him was two mans, and a lady. I didn't heard what they were talking, but I know they was talking together; and then, a couple of minutes later, about three or four minutes, I heard three shots, just about three foot away; it was just on the corner, in the middle, about three foot away from the sidewalk.

Q Where were the men standing when the shots were fired?

A Who was standing?

Q Did you see the man, or men, who were shot? A I can't tell for sure.

Q Did you see the man shot -- was there a man shot?

A Yes, sir.

Q Did you see him? A No, sir, because everybody started to run.

Q Did you see him before the shooting? A No sir.

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Q What is the first thing ^{that} you recollect of this thing ?

THE COURT: Let him tell his own story.

Q Tell your own story, in your own way?

A Well, I know that I was standing there that evening, and I was looking at Mr. Ostransky, Max Ostransky. Of course, I was surprised at that time. I saw him the day before, and he didn't have no bandage on his face; and the same day, when I saw him in the evening, he was standing with a lady there and two mans was near him; it was just on the corner, about two or three foot away from me; I didn't measure it; and I was surprised, and I looked at his face straight, when he had the bandage on. Then, about three or four minutes later, I heard three shots, one right after the other. The shot was on the middle of the sidewalk, it was away from the sidewalk about three foot, just on the corner of Broome-- that was in Orchard, the shot was in Orchard, but on the corner of Broome, then everybody started to run away. Certainly, I run away, too, because I didn't want to get shot, or anything like that.

Q Did you see the man who did the shooting? A The man who--

Q Did you see the man who did the shooting? A No, sir, because I didn't look on the corner, but I looked at Mr. Ostransky's face at that time.

Q Were you looking at Mr. Ostransky when the shooting

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took place? A Yes, and then I heard shots.

Q While you were looking at him? A Of course, I was surprised--

Q While you were looking at Ostransky, did you hear the shooting? A At the same time I heard the shooting.

Q Did you see a pistol in his hand? A No, sir.

Q Are you sure of that? A Yes, sir.

Q Did you see the pistol in the hand of the man who did the shooting? A No, sir.

Q How many people were around that corner when the shooting took place? A There wasn't much when the shooting started, but about two or three minutes later--
BY THE COURT:

Q How many people were there at the time you heard the shooting? A On the same corner?

Q Yes. A It was in the evening, and people were passing up and down.

Q They were passing up and down? A Yes, sir.
BY MR. ROSENBERG:

Q Can you tell the jury about how many people were passing up and down at the time of the shooting? A There was passing lots of people; I didn't count them.

Q Is it a very busy street? A Certainly, it is busy.

Q Crowds of people on the sidewalk? A On the sidewalk and on the corners there were people.

Q Sure there were a lot of people when the shooting

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took place? A I saw people that was walking.

Q The moment you heard the shots fired, did you see anybody run? A I saw lots of people running. Everybody started to run.

Q Was there any noise? A Certainly, they was and hollering murder on every corner they was running.

Q Now, did you see the man who was shot? A No sir.

Q There was a man shot before-- did he fall down?

A I heard some one say, but I didn't want to stay and look.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. MEDALIE:

Q How long do you know Ostransky? A How long I know him?

Q How long do you know him? A How long I know Mr. Max Ostransky?

Q Yes. A About five years.

Q Know him well? A Yes, sir.

Q What is your business? A Cook.

Q Were you working at the time this shooting occurred? A If I am working?

Q That is what I asked him? A If I am working at the time when the shooting was?

Q Yes. A Certainly, yes.

Q Where? A 157 Grand Street, by Mr. Goldstein.

Q As a cook? A Yes, cook and waiter.

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Q Cook, waiter, and anything? A Not anything.
not
I am a cook, and sometimes, if I can get a cook's job, I am
working, I am working for a waiter.

Q Then, you were not working as a cook on that day?

A Yes, sir.

Q Why did you say "or waiter", when I asked you about
Mr. Goldstein? A There I was a cook.

Q You were a cook? A Yes, sir.

Q You were not a waiter there? A No, sir.

Q How long had you been working there? A I am work-
ing at that place since the last six years, but only in the
winter time. In the summer time, I go away to the country.

Q Were you ever convicted of any crime? A No, sir.

Q You know Ostransky well enough to see him very of-
ten, don't you? A I used to meet him, certainly.

Q How often did you meet him? A Sometimes once a
week, or twice a week.

Q During the last year, did you meet him during the
various weeks? A Not very often.

Q During the last year, before the shooting? A In 1912

A In 1912?

Q Yes, during the year 1912? A I used to come in
some times when I went to work, and I went to a moving picture
place on Rutgers Street, and I saw him there.

Q Did you meet him there? A I used to go there once

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in a week, sometimes twice a week.

Q You went there because he was working there?

A No, I went home from work, and went in to see a picture there.

Q Where else would you meet him? A I didn't meet him in the street. I used to go up in his brother's house.

Q Would you meet him in his brother's house? A Not often.

Q How often? A I used to meet him sometimes, not often, but some times there in the house.

Q About once in two weeks? A When I come up in the day time he didn't was there. Of course, I couldn't stay there until eleven o'clock at night, because I had to go to work.

Q You used to meet him once or twice a week at some place or other, at one place or another place? A I used to meet him about once a month in he house.

Q No matter at what place; at some place, whether at home or in the moving picture place, you would meet him about once a week? A Yes, sir.

Q And you are a very good friend of his? A I am not a friend, but I know him; I know Mr. Ostransky's brother very well.

Q Then, you are a friend of his family? A Of his brother.

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Q You are a good friend of his brother? A Yes, I know him since the same time.

Q If you answer my questions "yes", or "no", we will get through quickly? A Yes, sir.

Q Are you a good friend of his brother's? A Yes sir.

Q Who were you with that evening when the shooting occurred? A With who I was?

Q Isn't that easy? A Oh, with whom I was?

Q That is what I asked you? A I was with myself.

Q Nobody was with you at that time? A No sir.

Q You were all alone? A Yes, sir.

Q How long had you been on that corner? A I was on that corner not long, because I just come there. It was in the evening.

Q Sunday night? A Sunday.

Q How long were you on the corner? A I was there about ten minutes; that is all I was there.

Q Ten minutes before anything happened? A No, sir, not before anything happened. I was standing at the corner and looking at his face. That took three or four minutes.

Q Before that, how long were you on the corner?

A On the same corner?

Q Yes. A I didn't was on the same corner, but I was on the other side, where his brother lived.

Q Had you been there to visit his brother? A At the

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same time, no, sir.

Q Where had you come from? A I wanted to go up to his brother.

Q Where had you come from? A From where I come?

Q Yes. A I was walking the streets. It was Sunday, and Sunday I never work.

Q You did not work that day? A Sunday I never work.

Q Where had you come from? A (No answer)

BY THE COURT:

Q Where had you been before you reached Broome and Orchard? A Oh, where I had been before? I was on Madison Street.

BY MR. MEDALIE:

Q What were you doing there? A I think we were enjoying ourselves.

Q Where? A 154 Madison Street.

Q With whom were you? A By the name a man Sam Laskowitz.

Q What were you doing there? A We was talking there. He is a tailor. Then I went out from there.

Q Did you say it was a Hotel? A No; he is a family man.

Q You spent about an hour or two there, and then went away? A Yes, I spent more than an hour or two; about three or four hours I was there.

Q You stayed there for three or four minutes, just looking at Ostransky? A Yes, sir.

Q That is all you did? A Yes, sir.

Q And somebody did some shooting? A Yes, sir.

Q Where did the shots come from? A The shots came right in the corner. I was standing on the sidewalk, and the shots came about five foot away from me.

Q In front of you? A I was standing like that, straight, and the shots were coming this side (Indicating)

Q At your right, and in front of you? A On this side (Indicating), and I turned over, and there was three shots already.

Q Was anybody besides the woman with Ostransky standing in the gutter? A Near him?

Q Yes. A I didn't see nobody. I saw a lady there.

Q And how near the gutter was he? A Very near.

Q Right on the curb, wasn't he? A Yes, very near.

Q Did you notice whether anybody was right near him, in the gutter? A No, sir.

Q You didn't see who was shot? A No, sir.

BY THE COURT:

Q How many feet away were you from the defendant and the woman? Was the woman present? (Question withdrawn)

Was the woman talking to this defendant at the time you heard the three shots? A Yes, sir.

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Q Sure about that? I heard it.

Q Are you sure about that? Are you sure about the statement that you made that at the time you heard the shooting this defendant was talking to a woman? A Yes sir.

Q Sure about that? A Yes, sir.

Q Now, how far away were you from the defendant and this woman? A It is from here to there (Indicating).

MR. ROSENBERG: About how far is that?

THE FOREMAN OF THE JURY: About eight feet.

MR. ROSENBERG: I don't think that is eight feet.

THE COURT: Yes, I think it is about eight feet.

Let us measure it and see who is right.

(The distance indicated is measured, and is six and one half feet)

Q Was this defendant facing you? A No, he was looking straight at the lady.

Q His back was turned to you? A No, sir, he was standing -- I was standing like that, and he was standing like that, on the side (Illustrating)

Q Now, did you see two or three persons standing near the defendant? A Yes, sir.

Q At the time that the shots were fired? A Yes sir.

Q What were those persons doing? A Those that were standing together?

Q Yes. A I know they were talking.

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Q And was your back to any part of the building ¹¹⁸ on
Broome Street corner of Orchard? A No, my back was toward
Broome Street.

Q What were you doing on that corner? A On the
same corner? Nothing, I was just coming. I wanted to go up
to his brother's.

Q On what corner did this take place? A On what
corner the shot was?

Q Yes. A On Broome Street -- on Orchard Street.

Q What corner? There are four corners there?

A That is near Broome.

Q Towards Allen Street, or towards Ludlow Street?

A It was on Orchard, between Delancey and Broome, but it
was right near Broome, but more to Allen street.

Q That is, it was on the corner of Orchard and Broome?

A Not quite on the corner; it was a little ways from the
corner.

Q But on the block between Orchard and Allen Streets,
is that right? A That comes out between Delancey and
Broome.

Q Delancey and Broome? A Yes, sir.

Q But on the corner of Orchard and Broome? A Yes, sir.

Q And on the street towards Allen Street? A Yes, it
was more to Allen Street.

Q You know how Broome Street runs? A Yes, sir.

Q The first street is Allen, where the elevated is;

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then Orchard, and the Ludlow? A Yes, sir.

Q Did this shooting take place nearer toward Allen Street, or towards Ludlow? A Yes, it was more to Allen Street.

Q More to Allen? A More to Allen, yes, sir.

Q Now, here are the corners (Exhibiting paper to witness). Here is Orchard, here is Allen, here is Ludlow, this is Broome street. Now, on that corner did you see the shooting? A This is Orchard?

Q Yes, and this is Allen, and this is Ludlow. Now, at what corner did you see the shooting? A Where is Rivington?

Q This is Delancey, and Rivington is over here. (Indicating on paper). A This is Broome Street?

Q This is Broome Street, right here? A And this is Allen?

Q This is Broome Street, this is Allen? A And this is Orchard?

Q This is Orchard? A And this is Delancey?

Q Yes, this is Delancey? A It was about that part (Indicating on paper)

Q This is the sidewalk? A Yes; ^{and} this is Broome Street, Allen and Broome.

Q Allen, Orchard, Ludlow? A That is Delancey Street?

Q Yes. A There (Indicating)

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Q You say it occurred on Orchard Street? A Yes sir.

Q Not on the sidewalk? A No, sir.

Q Out in the street? A Yes, sir.

Q Do you know what business is on that corner?

A On the same corner there is a saloon there. The saloon comes in Orchard Street. There is a restaurant in the back.

Q Where did this defendant's brother live? A 85 Orchard Street.

Q 85 Orchard? A Yes, sir.

Q Was this shooting on the same side of the street where the defendant's brother lived? A No, sir; that is on the other corner.

Q I don't mean on the other corner, but on the same side of the street? A You mean on Orchard Street?

Q On Orchard Street, the same side, that is going--

A Yes, on this side.

Q The left hand side coming from Grand Street?

A Yes, sir.

Q Left hand side? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, 85 Orchard Street is between Grand and Broome?

A Grand and Broome, yes, sir.

Q And how many houses from the corner of Orchard and Broome is 85? A The first house.

Q It is a corner house? A The first house, yes sir.

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Q How many times have you been in that house?

A Oh, I have been there -- I can't tell exactly, but I know I was there a couple of times, sure.

Q Is there a saloon down stairs? A In this same building?

Q Yes? A Yes, sir.

Q Now, the fight did not take place near that saloon?

A No, in the other saloon.

Q In the other side, across the street? A Yes sir.

Q That is, if the brother lives on this side of the street, the fight took place over here (indicating on paper)?

A Yes, sir.

Q Sure about that? A Yes, of that I am sure.

Q What business is across the street from that, from the fight, from where the fight took place? A On the other side there is a cigar store.

Q And the fight did not take place near the cigar store? A No, it more was on this side. The cigar store is on the other side, between Ludlow--

Q Do you know where Kupperman's Moving Picture House is, on Broome Street? A I know there is a moving picture place, but I never go in there.

Q Between Orchard and Ludlow? A No, between Ludlow and Essex.

Q Is there any between Orchard and Ludlow? A Between

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Orchard and Ludlow, I don't think so. .

Q And you are sure the fight took place out in the highway, on the highway, and not on the sidewalk?

A No, sir.

Q Now, did you see anybody discharge a revolver that night? A No, sir.

Q You only heard the shots? A Yes, sir.

Q Did you see any fire? A When I just heard the three shots, I started to run away.

Q Where did you run to? A To the other corner, over to Grand Street.

Q Where did the defendant go? A I didn't see where he went.

Q Did you see him run? A No, sir, I saw everybody running.

Q Running away from where the shooting took place? and
A Yes; they was hollering "murder, murder".

Q How many shots were fired? A Three shots; there was one after the other, bing, bing, bing.

Q At the time you heard the shooting, your eyes were fixed on the defendant? A No, sir, but when I heard the three shots I turned over.

Q But before you heard the three shots, what were you doing? A I was looking at his face.

Q What were you doing when you heard the first shot?

A I turned over, and I seen people--

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Q Were your eyes fixed on the defendant at the time that you heard the first shot? A (No answer)

Q Were your eyes fixed on the defendant? Were you looking at the defendant when you heard the first shot?

A Yes, sir.

Q How was he dressed? A An overcoat and a hat; I can't tell what was behind the overcoat, but I know he had an overcoat and a hat.

Q Did you notice where he had his hands? A Where he had his hands?

Q Yes. A I can't tell exactly, because I didn't look on his hands.

Q You didn't look? A No, sir.

Q How close was this defendant to the three men at the time the shooting took place? A Together?

Q Yes, how close? A The lady was facing him, and on one side was a man, and on the other side was a man.

Q How far away? A But the girl was very near him.

Q Very near the defendant? A Yes, sir.

Q How far from the defendant were the three men?

A The three men were a little bit so (Illustrating), but the lady was very near him.

Q Were there any persons behind you? A At my back?

Q Yes. A I can't tell.

Q Did you notice whether any persons were standing near any of the buildings on Orchard Street? A Orchard?

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Q Yes, Orchard and Broome? A From the back, I can't tell you that.

Q Did you notice, when you walked through Orchard Street, whether there were any persons standing there?

A No, sir, I can't say that.

MR. ROSENBERG: May it appear, your Honor, what he indicated on the diagram your Honor drew?

THE COURT: Yes, he indicated that it took place on Orchard Street, on the southerly side of Orchard Street, on the southwesterly side of Orchard Street.

Q Will you mark again where you saw it? This is Allen, this is Orchard, this is Broome, this is Delancey (Indicating on diagram). Now, where did it occur? Mark it?

A (Witness marks on diagram)

THE COURT: As indicated by a red dot, it appears, according to this witness's testimony, that the fight took place on the highway, on Orchard Street, on the southwesterly side of Orchard and Broome.

BY MR. ROSENBERG:

Q Mark on that diagram where the defendant's brother lives, will you? A (Witness marks on diagram)

BY THE COURT:

Q Mark the southeast corner of Orchard Street and Broome? A The windows from the house go on Orchard and on Broome.

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BY MR. MEDALIE:

Q Where did the defendant run? Where did he go?

A Ostransky?

Q Yes. A After that shooting?

Q At the time the shooting occurred, what did he do?

A I can't tell, because everybody started to run, and I run away too.

Q Where did you run to? A To Grand Street.

Q To Grand Street? A Yes, sir.

Q You ran to Grand Street? A Yes, sir.

Q When did you come back? A Come back?

Q Yes. A I didn't come back, but I meet his brother.

Q You went down to Grand Street? A Yes, sir.

Q Where did you go? A From Grand Street, I went down Grand, from Grand I went in Essex Street.

Q What did you do there? A Nothing, because I went away, and then I went from Essex through Rutgers Street.

Q You just kept on walking? A Yes, sir.

Q And what did you do in Rutgers Street?

A From Rutgers Street I went to Madison Street, and I meet a friend of mine.

Q Then what did you and your friend do? A Nothing. We went in a lunch room, corner of Madison and Rutgers, and we sit down there, a lunch room and restaurant, and we sit down, and we have coffee, and I told him there was a shooting

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on the corner.

Q Then, when did you get back to that corner?

A I come back about eleven o'clock.

Q Eleven o'clock at night? A Yes, sir.

Q That was the time the defendant was arrested?

A Yes, sir.

Q You were present when he was arrested? A I was?

Q Were you there the time the detectives arrested him? A No, sir.

Q Did you know at that time that the detectives had arrested him? A Yes, I heard that in the morning, and I heard that in the evening.

Q In the evening, I am talking about? A Yes, sir.

Q At eleven o'clock that night, you heard that he had been arrested? A Yes, sir.

Q For the shooting? A Yes, sir.

Q And you knew, of course, that he had not done the shooting? A That he--

Q You knew he was arrested for doing something he did not do? A Yes, sir.

Q He was arrested that evening? A Yes, sir.

Q You are sure he did not do the shooting? A Yes sir.

Q And you remember the facts that evening the way you remember them now? A Yes, sir.

Q Now, did you go to the police station and tell the detectives what you knew about it? A No, sir, I never went

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there.

Q Did you go the next day to the police court, where you knew Ostransky was taken? A No, sir.

Q You knew there was to be a hearing before the Magistrate in the Police Court, didn't you? A Yes, I heard it.

Q Did you offer to give information to the authorities about this shooting? A Yes, sir, I said to his brother, "In case you need me, I will be there".

Q So, that it was his brother that you told about that?

A Yes, sir.

Q Nobody else? A No, sir.

Q You did not attempt to tell the police about it?

A No, sir.

Q You did not tell the Magistrate about it? A No sir.

Q You didn't notify the Assistant District Attorney in the Essex Market Court, where the case came up? A No sir.

Q Though you knew it was coming up there? A I heard it was coming up.

Q You were interested enough in the defendant to try to do what you could for him, weren't you? A I was not so interested in that.

Q You knew him five years? A Yes, sir.

Q And you knew a charge of shooting a man with the intention of killing him was made against him? A Yes, sir.

Q Of shooting two men? You knew that, didn't you?

A Yes, sir.

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Q And you knew there were such charges against him at that time? It was the talk of the neighborhood, wasn't it?

A Yes, sir.

Q Knowing all that, you kept away from the police, you kept away from the Magistrate, and you kept away from the court?

MR. ROSENBERG: I object to that question. He has already told the facts. Now, I object to the resume?

THE COURT: Objection overruled.

MR. ROSENBERG: Exception. It involves more than one question.

THE COURT: Answer the question.

A I never went to the police, and I never was arrested since I am in New York.

Q I am not asking about your troubles. I am asking about the defendant's troubles, and what you did? A Well, that is what I am answering, because I didn't want to mix in a case like that.

Q You didn't want to mix in it? A No.

Q You wanted to keep out of the case? Answer my questions. If I am asking you a question, and you think of something else, you will say something else, that is not an answer to the question. A Yes, sir.

Q Now, you did not want to mix up in the case; isn't

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that so? A Yes, sir.

Q Yet you knew the defendant five years? A Yes sir.

Q You used to meet him about once a week? A Yes sir.

Q You were a very good friend of his brother's?

A Yes, sir.

Q And yet you did not want to be mixed up in the case?

A Yes, sir.

Q Though you knew he was innocent; is that right?

A Yes, sir.

Q When did you first talk to his lawyer about this case, to Mr. Rosenberg, his attorney? A Mr. Rosenberg?

Q Yes. A Never.

Q This is the first time? A Yes, sir.

Q He had not seen you before? A No, sir.

Q You had not been to his office? A No sir.

Q Never said a word to him about the case before?

When had you first spoken to Mr. Dittler, who was his lawyer in the police court? A I didn't speak to him at all.

Q You knew he had a lawyer in the police court?

A No, sir.

Q Did you try to find out? A I was busy myself; I was trying to make a living for myself.

Q Didn't you think his liberty, being charged with two serious crimes, was important enough for you to try to find out something? A Well, I was asking his brother a couple of

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times about it, and he--

Q So, it was with his brother that all this was arranged; is that right? A What is that?

Q Did you tell his brother? A Yes, sir.

Q That you saw the shooting? A I told him.

Q And that the defendant, Max Ostransky, did not do the shooting? A Yes, sir.

Q You told that to his brother? A Yes.

Q What is his brother's name? A Hyman.

Q Hyman Ostransky? A Yes, sir.

Q How soon after the shooting did you tell it to Hyman Ostransky? A About a week or eight or nine days later.

Q Do you mean to say that you did not see him for eight or nine days after the shooting? A I saw him, yes, sir, but I didn't tell him about nothing.

Q So, for eight or nine days, though you met Hyman Ostransky, this defendant's brother, who was a good friend of yours, you made no mention at all of the fact that you saw the shooting? A Of course I never--

Q You didn't. Now, you can answer me "yes", or "no"?
A No.

Q Hyman Ostransky, of course, mentioned to you the fact that the brother of Max Ostransky was charged with shooting two people, didn't he? A No, he didn't told me so much.

Q He said something to you about it? A He didn't

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ask me about that case at all.

Q Hyman Ostransky made no mention of the fact that his brother was charged with shooting two people?

A No, sir, he didn't told me at all.

Q Never said a word to you about it? A No sir.

Q So, for a week or ten days, neither you nor he discussed the case? A Yes.

Q Though you met him several times that week?

A I met him that week about three times.

Q And yet you never said a word to him? A No sir.

Q And he never said a word to you? A No sir.

Q Though you were very good friends? A Yes, sir.

Q And though he knew you knew his brother for five years? A Yes, sir.

Q And so, about ten days after this happened, Hyman Ostransky told you about it; is that right? A Yes sir.

Q He told you his brother was charged with shooting somebody? A Yes, sir.

Q Was it then that you first told him about the case?

A That was the time, yes, sir.

Q Did you then tell him everything that you have told this jury to-day? A Yes, sir, I told him that I was in the corner, and I saw it, the same thing, yes, sir.

Q Did you explain to him why you had said nothing to him for the past ten days, though he had met you three times?

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A No, sir, I didn't explain it.

Q He didn't even ask you? A I didn't explain it.

Q So, you just told him what you could testify to; is that right? A I told him that in case you need me I will be there.

Q And that was the only time you discussed the case with him? A Yes, sir.

Q And from that time, that is, about the 18th of December, down to to-day, you talked over the case with nobody at all; is that right? A (No answer)

Q What are you doubtful about? The date?

A Yes, I talked with people.

Q Beginning with the 18th of December, you began to talk to people? A Later.

Q Then you told everybody what you knew about the case?

A Not everybody.

Q Who did you tell? A Some people I meet, and they say so and so, do you know about that, and I answered it.

Q Then you were willing to be in the case after his brother had spoken to you? A Yes, sir.

Q But until his brother had spoken to you, you wanted to keep out of the case? A Yes, sir.

Q Though you were an eye witness, and though you knew that a man's liberty might depend on your testimony, though you knew that a friend's liberty might depend on your

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testimony? A Yes, sir.

MR. MEDALIE: That is all.

BY THE COURT:

Q At the time that you heard the shooting, did you take notice of the defendant's hands? A No, sir.

Q You did not? A No, sir.

Q Did you see any man fall to the ground? A At the time the shooting was?

Q Yes. A After the shooting, I saw the people was running.

Q Did you see any man fall to the ground? A No, sir, because I turned, and I run away.

RE DIRECT EXAMINATION BY MR. ROSENBERG:

Q At the time of the shooting, you say you saw the defendant? A Yes, sir.

Q Did you see his hands at that time?

THE COURT: He said he did not.

Q Did you have him in full view? Do you understand my question? A Yes.

Q Could you see his face? A Yes, sir.

Q When you heard the shooting, did you see the defendant's face? A Yes, sir.

Q Did you see his body? A Yes, sir.

Q Did you see his arms? A I saw his hands. He was standing this way (Illustrating); he had an overcoat on,

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and he was so standing.

Q When the shooting took place, his hands were in his pockets? A I couldn't see the pockets, because the lady was in the front.

BY THE COURT:

Q Could you see his hands? A I saw him talk to her.

Q Could you see his arms? A Yes, sir.

BY MR. MEDALIE:

Q Sure you saw his arms? A Yes, sir.

BY THE COURT:

Q The upper part, the fore arm? A Yes, sir.

BY MR. ROSENBERG:

Q That is, from the shoulder blade to the elbow?

A I couldn't tell to the elbow, but I saw the first part.

Q You saw him when the shooting took place, didn't you? A Yes, sir.

Q You saw his face? A Yes.

Q You were facing him, and he was facing you, the same as you and I are now, ~~and~~ you were looking at me, and I looking at you? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, was the lady-- A Not like you say he was. Like that (Witness stands sideways); and I was like that (Illustrating)

Q And you were looking toward him? A Yes, and he

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was on Orchard Street.

Q He was on Orchard Street? A Yes, on the corner.

Q Looking toward where? A He was looking right on the other side. Of course, the girl was standing in front.

Q But he was talking to a girl, and he was looking-- was he looking towards -- what street was he looking toward?

A Who?

Q The defendant? A Across the street.

Q That was towards -- was that looking towards Ludlow Street? Was that looking towards Ludlow Street? A Who was looking?

Q When you say the defendant was talking to the girl, and he was looking, which way was he looking, toward Allen Street, or toward Ludlow Street? A On the other side, to Ludlow.

Q Toward Allen Street, or toward Ludlow Street?

MR. MEDALIE: He said towards Ludlow.

MR. ROSENBERG: I am asking him.

MR. MEDALIE: He has answered.

Q Looking toward Ludlow? A Yes, sir.

Q Then he was on Orchard Street; is that right?

A Yes, sir.

Q And his back was to the building, to the saloon?

A Yes, sir.

Q And his face was toward Ludlow Street? A Yes.

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Q Is that right? A Yes, sir.

Q How many feet from the corner of Broome Street was he when the shooting took place? A How many he was from the shooting place?

Q How many feet from the corner of Broome and Orchard Street was the defendant when you heard the shots? From where you are to where? A About five feet.

Q Sure of that? A On the corner, yes.

Q And the position which the defendant was in at the time, you could see both of his arms? Could you see both of his arms? A I saw only just the arm.

BY THE COURT:

Q One arm, or both? A This arm, I saw all right (Indicating right arm)

Q The right arm? A Yes. Of course, the man was standing on the other side, but this one I only saw a little (Indicating)

BY MR. MEDALIE:

Q That is, the left? A Yes, sir.

Q You could not see all of the left arm? A No sir.

BY THE COURT:

Q At the very time that you heard the shooting, did you see any man, or men, or person pass the defendant and the woman, when you heard the shooting? A Yes, at the same time as the shot they were walking up and down.

Q Did you see anybody pass? any person pass the de-

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fendant? A On the sidewalk?

Q Yes. A They was walking.

Q At the time that you heard the shooting, the very time of the shooting, did any person pass by? A On the same minute?

Q Yes. A I can't tell you.

Q Was there any person between you and the defendant when you heard the shooting? At the time you heard the shooting, was there any person between you and the defendant?

A I don't know that, but they was walking between.

Q When you heard the shooting, was anybody walking?

A They were walking up and down. There was the sidewalk, and I was on the corner (Indicating)

Q Did anybody pass the defendant at the time that you heard the shooting? A I can't tell you exactly if they passed the defendant, but I know there was walking people there.

BY MR. ROSENBERG:

Q When the shooting happened, did you see the fire?

THE COURT: He said not.

Q Did you see the smoke? A Smoke, a little smoke.

Q Where was the smoke when the shooting took place?

A The smoke was right on this corner, so.

Q On the corner? A Yes, sir; not right on the corner, but a little way.

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Q Away from the corner? A Yes, sir.

Q Was the defendant at the place where you saw the smoke? A No, sir.

Q Sure of that? A So much I am sure. The same minute I run away.

BY THE COURT:

Q Did you see any smoke on that night there?

A On the corner.

Q You took notice of that? A Yes, a little smoke, but no fire.

Q When did you notice the smoke? When you were running? A No, I was standing like that, and the shot was here. (Illustrating) The shooting was right away, and when I turned there was a little smoke.

Q Do you know whether the smoke came from a revolver, or a cigarette? A I heard a shot, but I don't know where the smoke came from.

Q And you saw no person discharge a revolver that night? A No, sir.

Q Did you see anybody run before the shots were fired? A No, but there was running lots of people after the shots.

BY MR. ROSENBERG:

Q Immediately after the shots were ~~ix~~ heard, did you see people running? At the moment the shots were fired, did

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you see any one running? A Lots of people started to run.

Q And it was at the corner that the people were running? A Yes, sir.

Q When you come up Orchard Street from Grand, coming up Orchard Street from Grand towards Broome, on which side of the street is 85, where the defendant lives, 85 Orchard Street, coming up Orchard Street, is it on the right side, or the left side? A From Grand?

Q Coming up from Grand Street toward Broome?

A It is on the left side.

Q Now, then, where did the shooting take place with respect to the place where the defendant lived? The house he lived in is on the corner, is that it? A Yes, sir.

Q It was on the corner of Broome and Orchard; is that right? A That is on Orchard.

Q Where did the shooting take place?

A (No answer)

BY THE COURT:

Q Did it take place on the left hand side of Orchard Street, or on the right hand side? A More on the left side.

Q How many feet from the curb, from the sidewalk, the left side of Orchard Street? A About four foot.

Q Left side, going in the direction of Grand street?

A Yes.

Q Coming from Grand towards Houston? A From Delancey

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it comes on the right hand.

BY MR. ROSENBERG:

Q On the night of the shooting, did you tell anybody that you saw the shooting? A I heard it.

Q Who did you tell? A Lots of people.

Q You told lots of people? A Yes, sir.

Q Mr. Medalie said it was the talk of the neighborhood everybody was talking about it; is that right? A They was talking about the shooting on the corner.

Q Did you speak to me, Mr. Rosenberg, to-day?

A Yes, sir.

Q Where? A Right here.

Q Outside the Court room? A Yes, sir.

Q Mr. Rosenberg asked you what you knew about the case, and you told him? A That is what I told him.

Q That is the first time you saw Mr. Rosenberg, is that right? A Yes, sir.

MR. ROSENBERG: That is all.

MAX OSTRA NSKY, the defendant herein, called as a witness in his own behalf, being first duly sworn, testified as follows:-

DIRECT EXAMINATION BY MR. ROSENBERG:

Q What is your name? A Max Ostransky.

Q Where do you live? A 85 Orchard Street.

Q How old are you? A Twenty-four.

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Q Where do you live? A 85 Orchard Street.

Q What corner is that on, or is it on the corner?

A On the corner.

Q With respect to Broome Street, what corner is it on?

A It is on the west side corner.

Q The west side of what? A Orchard Street.

Q With the south side of Broome? A Yes, sir.

Q It is the southwest corner you live; is that correct? A Yes, sir.

Q Did you, on the 8th day of December, 1912, have a revolver in your possession? Did you, "yes", or "no"?

A Nothing like that.

Q What? A No.

Q Did you on that day, the 8th day of December, 1912, shoot Harry Salkin? A No.

Q Did you? A No.

Q Can't you talk? A No, I said.

Q Did you on that day, in the evening, at about seven thirty at night, with a revolver or pistol in your hand, discharge it and shoot Harry Salkin? A No.

Q Did you assault or strike Harry Sallin on that evening? A No.

Q Do you know Harry Salkin? A Yes, sir.

Q Did you have any feeling against him? A No.

Q Any bad feeling? A Always a good friend of mine.

Q Was he friendly towards you? A All the time.

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Q And were you friendly toward him? A Yes, sir.

Q How long did you know Harry Salkin? A About six months.

Q Is that all? I mean, before the shooting, before December 8th? A About a couple of months.

Q Sure of that? A Yes, sir.

Q Were you bad friends with him at any time during the two months, or any time that you knew him, before December 8th? A Was always on good terms with him.

Q Sure of that? A Yes, sir.

Q Were you ever on bad terms with him, or angry with him, after December 8th? A No.

Q Sure of that? A Yes.

Q Did you ever have any quarrel with him? A Never did.

Q Or any fight with him? Did you? A No.

Q Now, do you remember offering-- did you ever have any drinks with him, after? A Yes, I met him after my ball.

Q After the ball? A I met him on Broome and Orchard.

Q It was developed yesterday that you had a ball under the name of Young Sharkey; is that it? A Yes, sir.

Q Tell us, did you offer to sell Harry Salkin a ticket for your ball? A No.

Q Tell us about that? A I just met him, and I give him one of my throw-aways.

Q What do you call throw-aways? A An advertisement, one of them short tickets. That aint no ticket.

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Q A complimentary ticket? A A throw-away. I said, "Harry, if you have time, try to be up". He said, "Yes, I will, Max, if I have a chance I will be up." I said, "All right".

Q When was your ball? A November 29th.

Q November 29th, 1912? A Yes, sir.

Q And the ball was run under the name of what?

A Sharkey.

Q Young Sharkey ? A Young Sharkey.

Q Young Sharkey Association? A Yes, sir.

Q And where was the ball? A On Grand, near Allen, Grand Manhattan Hall.

Q Having given Harry Salkin a ticket, or a throw-away, as you say, and asked him to be at the ball, was he at the ball? A No.

Q What? A He was not.

Q Did you see him after the ball? A Yes, sir.

Q Did you have any fight with him or quarrel because he did not come to the ball? A I met him and he said, "Well, Sharkey, how did you make out?" I said, "Pretty good, Harry". Then he said, "come on in, we will have a drink"; so we went in Broome and Orchard and had a drink, and we shook hands, and were on good terms.

Q Did you tell him why you thought he did not come to the ball, because he was busted? A He says, "I am

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sorry, Sharkey, I didn't have no money". I said, "That is all right, you will be up the next time".

Q Is that all that happened? A Yes, sir.

Q Did you see him after that? A Certainly.

Q More than once? A A couple of times.

Q Did you ever have any quarrel with him at any time?

A No.

Q On the night of December 8th, Sunday night, you were arrested, were you? A Yes, sir.

Q Where were you arrested? A Up in my house where I live, Orchard and Broome.

Q 85 Orchard Street? A 85 Orchard Street.

Q It was on Sunday night? A It was on Sunday night.

Q What time of night was it? A About eleven o'clock.

Q Sure of that? A Yes, sir.

Q Were you home? A Certainly.

Q Who arrested you, do you remember? A I was sitting up there.

Q Who was it? A policeman? Hayes & Rothschild?

A Hayes and Stapleton.

Q And you were taken them to what hospital?

A Gouverneur.

Q And who did you see at Gouverneur Hospital?

A They took me up there and brought me over to this fellow, Harry Salkin, and they woke him up, and they asked him "did

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this fellow shot you?" He turned around and said, "no".

Q What else did he say? A That is all, and we walked out.

Q Did he say anything else besides "no". A He said, "Hello, Sharkey", and I asked him "what is the matter"? I said "they have got me for shooting you". He said, "No, you didn't shoot me."

Q Did they ask him who did shoot him? A Yes.

Q What did he say? A He said, "No".

Q Didn't the police then ask Harry "who did shoot you?"?

A He said, "I didn't see it, and I don't know who shot me". He said, "That aint the fellow". He said to the detectives "that aint the man". That is what he told Stapleton. He said "That aint the man that shot me".

Q Did he say at that time anything to this effect-- turn over on his back and say, "I will get even in the morning", or, "I will see about it in the morning," or anything like that? A No.

Q Sure of that? A Yes, sir.

Q Did you have anything to do with the shooting?

A No, sir.

Q This shooting took place about seven thirty on the night of December 8th, 1912, on the corner of Broome -- at about the corner of Broome and Orchard Street. Were you in that neighborhood at about that time? A I happened to pass.

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Q Were you in the neighborhood? A Yes.

Q Were you on that corner, or near the corner at that time? A I happened to pass on the corner, just on Broome and Orchard, and I happened to see one of my friends, a lady friend.

Q What was her name? A I couldn't tell you exactly. She knows me from far away. She knows me good. If I saw her I would recognize her. She met me on the corner and said, "What is the matter with your head, Max"? I said, "some girl kissed me", like that.

Q Was it a joke? A Just in a joke.

Q You said some girl kissed you? A Yes, sir.

Q Well, what happened then? A Then she spoke to me for about two minutes, and I heard a couple of shots coming off.

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

Q Were you talking to the girl at the time?

A I spoke to the girl about a minute and a half or two minutes, I spoke to the girl.

Q May it have been longer than two minutes that you were speaking to the girl? A No, just about two minutes.

Q While you were talking to the girl, did you see Harry Salkin pass? A There were a couple of fellowsthere, three or four, on the corner, in the middle of the gutter.

Q Three or four fellows were in the middle of the gut-

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ter? A Yes, sir.

Q Who were those three or four fellows? A I didn't pay no attention to them.

Q Was it Shapiro, who was on the stand? A I guess yes.

Q Was it Harry Salkin? A Yes, sir.

Q And somebody else; is that right? A Yes, sir.

Q And they were standing in the gutter? A In the gutter.

Q Near the corner; is that right? A yes, sir.

Q Sure of that? A Yes, sir.

Q Did you shoot them at that time? A No, sir.

Q Did you have a pistol in your hand? A Never had any.

Q Did you hear the shooting? A I heard the shots.

Q Where did the shooting come from, if you know?

A When I spoke to this girl, about a minute or two, because I didn't pay no attention to talk to the girl, because I was all bandaged up, and I heard a couple of shots coming off, and I run in the saloon.

Q Why did you run? A I was all excited, and I didn't feel very well, and I was afraid myself, and I run in the saloon, because I thought he would shoot me again; he cut me and shot me, and might do anything, and I run in Orchard and Broome, Morris Goldberg's place.

Q Were you the only person on that corner that night at the time of the shooting? A No, there was Harry Salkin

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and a couple of more fellows on the corner; it was awful crowded.

Q Were there many people on Broome Street on that corner, and Orchard? A Certainly.

Q At the time of the shooting? Before the shooting, were there many people? A Certainly, people passing by, and a couple of fellows on the corner, and four of them were here (Indicating), and they were all separated, you know.

Q Did you have any fellows with you that night?

A I was there, and the girl, and a couple of fellows was there, talking to one another, but I didn't take no attention to the talk. I didn't have nobody with me. I was going down from Seventh Street, supposed to meet my girl, and I happened to pass on Broome and Orchard.

Q Weren't you in the saloon before? A No.

Q Sure of that? A No.

Q Shapiro said you came out of the saloon? A No, I just passed through Orchard Street, and on the corner, about six or seven feet away, I happened to see this girl, and she said, "What is the matter with you". I said, "I said, "Oh, nothing, I got kissed by my girl", and I kept on, and all of a sudden I heard a couple of shots, and I run, and everybody run, and this girl disappeared. She hollered "Murder", and I run in the saloon.

Q Did any one else run besides you? A Besides me? Everybody.

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Q How many was everybody? A Well, about seventeen or eighteen there on the corner.

Q Was there more than that? A Well, there was people passing by.

Q Did you see the man fall? A Fall?

Q Did you see Harry Salkin fall? Did you? A No.

Q Did you see the man who did the shooting? A No sir.

Q Did you have anything -- did you know who did the shooting? A No.

Q Are you sure of that? A Yes, sir.

Q And do I understand you ran because you thought they were going to shoot you? A Certainly; I was all cut up, and I was excited myself, so I thought -- I got up about one o'clock, and that happened about eight o'clock, so I was afraid, so I run in the saloon. The saloon was on the corner.

Q Did anybody else run in the saloon? A A couple of more fellows, certainly.

Q At the time you were arrested, that was Sunday, wasn't it? A Yes, sir.

Q Were you working at that time? A I was not working.

Q Had you gone to work that day at all? A Supposed to go about one o'clock, or two o'clock.

Q On this particular Sunday, December 8th, did you go

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to work? A Certainly.

Q Were you to go to work? A Yes, sir.

Q Did you work that day? A No. I got up in the morning about--

Q Come down to about twelve or one o'clock. Something happened about one o'clock? A Yes, sir.

Q You were cut; is that right? A Yes, sir.

Q And you were taken to the hospital? A (No answer)

Q You had how many stitches? A I was taken to the police station; and they bandaged me up, gave me ten stitches, nine or ten.

Q Your whole face bandaged up? A All around, yes.

Q Nothing exposed excepting your nose and eyes and mouth; is that right? A Yes.

Q Then, you did not go to work? A No, I could not work.

Q Where were you working up to that time?

A On Rutgers Street.

Q For whom? A For Mr. Gordon and Mr. Shapiro.

Q The two gentlemen who were on the stand? A yes sir.

Q How long had you worked for them? A About a year, a year and a month, or so.

Q Before you worked for them, who did you work for?

A I worked for Schwartz Brothers.

Q How long did you work for Schwartz Brothers?

A About five years, five or six years, five years and a

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couple of months.

Q And what were you doing there? A Making cigars, cigar maker.

Q Cigar maker? A Yes, sir.

Q Sure of that? A Yes, sir.

Q During all of that time, wheredid you live? With whom did you live? A My brother and my sister-in-law.

Q Where? A 85 Orchard Street.

Q Before Schwartz Brothers, for whom did you work?

A I am here about nine years in this country. I worked on West Broadway, by Josephson; I worked for him about five or six months. Then I worked in Ninety-ninth Street. Then I happened to get the job at Schwartz Brothers, and I worked there about five years. Then I worked here about a year. I worked all the time.

MR. ROSENBERG: That is all.

CROSS EXAMINATION BY MR. MEDALIE:

Q Is there such a thing as the Young Sharkey Association?

A No.

Q But you advertised a ball as the Young Sharkey Association. There is no such thing. How long have you been doing that kind of thing? A Once.

Q What is that? A That is the only time.

Q That is the first time you did it? A Yes, sir.

Q How long before this shooting did that ball occur?

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A Before the shooting?

Q Yes. A About six or seven weeks.

Q Do you remember the date? A Yes, sir.

Q What was the date? A November 29th.

Q Well, as a matter of fact, that was only about a week, a little over a week, before the shooting, wasn't it?

A I couldn't tell you.

Q Did you say November 29th? That was after Thanksgiving, wasn't it? It was the day before Thanksgiving?

A Yes, I guess the day before Thanksgiving.

Q That was not six weeks before, was it? A Well, about five or six weeks.

Q It was only nine or ten days before? A Something like that.

Q Is that right? A Yes, sir.

Q How long before Thanksgiving had you been advertising this ball? A For about a couple of weeks.

Q Two weeks? A A couple of weeks.

Q Three weeks? A Three or four weeks.

Q About a month? A Yes, sir.

Q There were no other members in the Association except yourself? A Yes, sir.

Q So that, you had to do all the advertising; is that right? A Yes, sir.

Q And you had to do all the financing of it? A Yes sir.

Q You had to advance the money for printing? A Yes sir.

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Q And you had to advance the money to hire the hall?

A No, I got the hall--

Q What? A I used -- it is a friend of mine, and he said, "you can have that hall to run a little ball for you and your friends". I didn't exactly make a ball to make money.

Q It was not exactly a ball? A I didn't make exactly this ball for making money, but I made it for a couple of friends.

Q Who were your friends for whom you were making the ball? A For my lady friend, my brothers and sisters and so on.

Q Do you mean you were doing it for their personal pleasure? A Yes, sir.

Q And not for profit? A Not at all.

Q But you took care of the selling of the tickets?

A I didn't have no tickets at all.

Q You advertised it? A I had just plain throw-aways.

Q And you attended to those? A That is all.

Q Didn't you have these card board signs? A Yes sir.

Q Put them in saloon windows? A No. Yes.

Q Stick them on telegraph poles? A Yes, sir.

Q You did that? A Yes, sir.

Q You had somebody to do it for you? A Me and a friend of mine. A man always has a friend of his to help him.

Q You asked various stand keepers to come to the ball?

A Stand keepers?

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Q Yes. A No, sir.

Q Didn't you? A No, sir.

Q Didn't you leave your throw-aways at various soda water stands? A No, sir.

Q Are you sure of that? A Yes, sir.

Q With whom did you leave your throw-aways? A My throw-aways?

Q Yes. A To personal friends.

Q Did you give them only to personal friends?

A Well, I give it to a fellow if I meet a friend of mine, and I am talking to him, I wouldn't give him a throw-away. I would just give it to my friends. If he is willing to come up, all right.

Q Did you distribute them in saloon? A What is that?

Q You gave your throw-aways in saloons? A No.

Q Only friends you met? A Yes, sir.

Q And are you sure you did not leave them on soda water stands? A No.

Q Didn't you ask stand keepers to come to your ball?

A No.

Q Didn't you tell them they would have to come to your ball? A Have to?

Q You did not? A No, sir.

Q Didn't you ask people who owned gambling houses to come to your ball? A I aint no gambler.

Q Didn't you tell them they would have to come to your

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ball, or there would be trouble? A No.

Q You limited yourself altogether to your personal friends? A Yes, sir.

Q And you hoped in that way to have a successful ball?

A No, just have my friends up there.

Q You were willing to lose money on it? A Yes.

Q Did you have money to lose? A I work all the time for a living, and I had a couple of dollars with me. I didn't exactly make a ball to make money.

Q But to increase your popularity? A What is it?

Q To make yourself more popular? A Well, --

Q That was the idea? A Certainly.

Q When you were giving the throw-aways out, did you tell people you were Jack Zelig's successor? A Jack Zelig?

Q Yes. A No.

Q You were a friend of Jack Zelig's? A A friend?

Q Yes. A I heard about Jack Zelig, and I read the papers about him, but I never spoke to the man.

Q Is that all you knew about him? A Yes, sir.

Q Nothing else at all? A No.

Q Somebody cut you at one o'clock; is that right?

A Yes, sir.

Q Who did that? A You can see it.

Q That is the mark on the left side of your face?

A Yes.

Q That was one o'clock? A Around one o'clock.

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Q Who did that?

MR. ROSENBERG: Objected to.

Q Salkin did not do it? A No.

Q Charles Shapiro did not do it?

MR. ROSENBERG: I object to that.

THE COURT: The objection is overruled.

Q Did he do it? A No, sir.

Q Did Sam Shapiro do it? A No.

BY THE COURT:

Q Did you know Charles and Sam Shapiro? A Yes, sir.

Q Did they attend your ball? A No.

Q Did you notice whether Charles Shapiro laughed when you made the remark that your girl kissed you? A Yes, they were there at the time.

Q Did you notice whether he was laughing when you made that statement? A No, I didn't notice it.

Q Did you notice whether Salkin laughed? A No, I didn't pay no attention.

Q Did you notice whether or not Salkin turned his back towards you when you made that statement, after you made that statement? A Salkin?

Q Yes. A No.

BY MR. MEDALIE:

Q Who stabbed you?

MR. ROSENBERG: I object to that, your Honor, as long

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as he said it was nobody connected with this indictment.

THE COURT: The objection is sustained. (To the jury) Do not discuss this case among yourselves, nor permit any person to talk to you about it, nor form nor express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you. We will take a recess until Two o'clock.

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

A F T E R . R E C E S S .

M A X O S T R A N S K Y, the defendant, resumes the stand.

CROSS EXAMINATION CONTINUED: BY MR. MEDALLIE:

Q Where had you come from at the time you were on the corner where the shooting occurred? A Seventh Street.

Q What were you doing there? A Going to meet my lady friend.

Q You had an appointment with her? A Yes, sir.

Q When had you made that appointment? A On Sunday night.

Q A week ago? A A couple of days-- on Wednesday.

Q Wednesday, you made an appointment to meet her that day; is that right? A Yes, sir.

Q For what time was your appointment? A From six until-- from seven until eight.

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Q From seven to eight? A Yes, sir.

Q And you met her at seven o'clock? A No, sir.

Q You did not meet her? A No, sir.

Q Now, then, you made an appointment for Sunday; so you told us before that it was your intention to work all day Sunday, and the only thing that prevented you from working was your getting stabbed? A Yes, sir.

Q Now, it is not so that you intended to work on Sunday, is it? A Certainly, I was to meet her there at supper hour, between seven and eight.

Q That is your explanation? A Yes, sir.

Q As a matter of fact, between seven and eight a moving picture house on a Sunday night does most of the business, doesn't it? A Yes, sir.

Q And what were you doing intending to keep away from your business at the busiest hour of that day? A Well, between six and seven it aint so crowded as between eight and nine

Q But between seven and eight, all the crowd comes immediately after supper; isn't that so? A I had to take supper hour that night.

Q But you had an appointment for seven o'clock?

A Yes, sir.

Q On Seventh Street? A To meet my lady friend.

Q And you were going to stay away from your business

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at the busiest hour? A No.

Q But seven to eight is the busiest hour? A No, between eight and nine.

Q But you just said seven to eight was, and it is the busiest hour? People begin to come in between seven and eight? A yes, sir.

Q That is the time that ylu, as an usher, have to do most of your work? A Certainly.

Q And yet you made an engagement to keep away during the busiest hour, and yet you want us to believe that on that day you intended to go to work? A Every time I used to meet my girl, I used to make an appointment, I used to meet her in her house at seven o'clock, and go to the moving picture house.

Q You would not have come down until after eight?

A No.

Q In other words, you were going to be away the busiest hour, and you knew you were going to be away the busiest hour of the busiest day of the week? A Well, I had to take supper.

Q As a matter of fact, if you were working, would you be through with your supper before seven o'clock, to get back to the place in time? A No.

Q Don't you need to be in the place before seven o'clock? A Certainly; as soon as I get through with my supper I come back to work.

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Q Ordinarily, when do you take your supper?

A It is according to the crowd.

Q The crowd begins to come at seven, doesn't it?

A Well, if it is a nice day, they don't come in until about nine o'clock, if it is a nice evening.

Q Do you mean to tell us the crowd does not come to a moving picture show until nine o'clock? A Certainly.

Q But you said before the crowd begins to come between seven and eight. Now, that is true, isn't it? A Certainly.

Q Most of the crowd comes between those hours? A Yes sir.

Q You made an appointment for that busy hour several days in advance, so you knew you did not intend to work that day? A That day?

Q Yes. A No.

Q Do you mean to say it was your intention to work that day, when you had already arranged to stay away the busiest hour of that day? A Well, I have been working just the same, and I had to take my supper hour, and every time I would take my supper hour, twice a week I used to met my lady friend, meet her and go down to the moving picture house.

Q Why did you select Sunday night, the busiest night of the week? A I just walked over and met her, where I work; as soon as I get through work I take her home.

Q Now, as a matter of fact, you did not have any such appointment, did you? A I certainly did.

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Q You still stick to your statement that you intended to go to work that day? A Why, of course.

Q Ordinarily, you have your supper at about six o'clock, don't you? A Around that time.

Q So as to get back to the place not later than seven? A I had a little bite; I used to walk in the delicatessen store and have a bite, and walk over and see my lady friend.

Q Never mind your lady friend. It is your business to get to your place not later than seven o'clock, isn't it, so as to be ready for the crowd, and yet, on the busiest night of the week, you had made arrangements for the busiest hour?

A Yes, sir.

Q You said, "yes"? A Yes.

Q You walked from Seventh Street, I suppose?

A Yes, sir.

Q You walked from Seventh Street to Broome and Orchard Street? A Yes, sir.

Q Though you knew you were due in your place of business? A Certainly.

Q Why did you walk down to Broome and Orchard Street on that busy night at such a busy hour? A Well, I always like to walk. I don't like to ride. I am a pretty husky fellow, and I walk.

Q So, it was only accidental that you happened to be on that corner? A I live right on that corner, and I

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always pass through that corner, because I come down to Orchard Street and Seventh Street, and meet my lady friend.

Q Do you meet her at Orchard and Broome? A Seventh Street.

Q You did not go to Orchard & Broome for the purpose of meeting her, did you? A No.

Q Then why did you go there? A Well, I lived there.

Q To go to your work, was it necessary for you to go where you lived? A I always pass through that block.

Q So, you were just on your way down when this thing happened? A Yes, sir.

Q And had you come from any house, or any store?

A My lady friend's house.

Q In other words, not finding her at Seventh Street, you went to visit her; is that right? A Yes, sir.

Q And did you visit her? A No.

Q You didn't find her? A No.

Q She was not there? A No.

Q You did not see her that night? A I did.

Q What time? A Around nine o'clock.

Q You told her about the shooting? A Nothing like that. She heard about it.

Q We will get to that a little later. What building had you come out of before you went to that corner?

A No building at all.

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Q What store? A I kept on walking right through Orchard Street.

Q And you stopped, didn't you? A No. Yes, I stopped with a lady friend.

Q And you don't know her name? No, I couldn't -

Q You never knew her name, did you? A No, I don't know her name. I can recognize her if I see her.

Q She knew your name? A Well, it is funny everybody knows me, and I don't know them.

Q She said, "Sharkey, what is the matter with your face?" that is what she said? A Yes, sir.

Q And she knew you well enough to call you by your, shall we say pet name? A Max; that is my right name.

MR. ROSENBERG: Oh, I object.

Q Did she call you Max? A No, she didn't call me no name. She said, "What is the matter with your face?"

Q You said a minute ago she addressed you as Sharkey? A No, nothing like that. She said "What is the matter with your face?", and I said "my lady friend kissed me".

Q And just then somebody was shot? A I heard a couple of shots and I ran.

Q The minute you heard a shot, you ran, and you ran into the saloon? A Yes, sir.

Q Other people ran into the saloon at the time of the shooting? A Certainly.

Q Then what did you do? A I was there about half an hour. Then I walked up in the house.

Q Your own house? A Yes, sir. I live right on the corner.

Q I understand you to say that Harry Salkin was a friend of yours? A A friend of mine?

Q Yes. A Yes, sir.

Q You were on good terms with him? A Yes, sir.

Q How about Charles Shapiro? A Every one of them.

Q How long had Charles Sapiro been a good friend of yours? A Mine? About a year and a half.

Q You were intimate with him, weren't you? A What is it?

Q Intimate. You were a close friend of his? A Certainly.

Q And the best of terms existed between you and him?

A Yes, sir.

Q He was the last person in the world whom you wanted to be shot? A Certainly.

Q That is true also of Harry Salkin? A Certainly.

Q He was the last person in the world you wanted to see shot? A Certainly.

Q And you felt sorry that he was shot? A Yes, sir.

Q And you felt sorry that Charles Shapiro was shot?

A Why, certainly.

Q After the shooting was over, why didn't you go out of the saloon to see what happened to Harry Salkin and your friend,

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Charles Shapiro? A I didn't take no attention to it.

Q You knew they had been shot? A Well, I heard somebody got shot, but I didn't know who got shot.

Q You knew they were shot? A No, nothing like that.

Q When did you first find out they were shot? A When I was sitting up in my house and two detectives came up and arrested me. They said to me, "You are under arrest", and they took me to the hospital, and he said, "Hello, Sharkey, here is Harry Salkin".

Q Never mind the conversation. We have fixed the time when you say you first heard that Harry Salkin and Charles Shapiro were shot, and you say that was about eleven o'clock; so that, from about half past seven to eleven O'clock, you did not know who was shot? A No.

Q Because I assume that, had you known that Harry Salkin was shot and that Charles Shapiro was shot, you would have come out, to see what was the matter with them, wouldn't you?

MR. ROSENBERG: Objected to as speculative.

THE COURT: The objection is sustained.

Q Now, the shooting was right in front of that saloon?

A Well, I didn't say that.

Q You knew the shots were fired right there? A Yes, right on the corner.

Q And you stayed in the saloon a half an hour? A When was that?

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Q You said so before. A After the shooting? match?

Q Yes. A Certainly.

Q Did you say "After the shooting match"? A Yes.

Q What do you mean by that? A I was in the saloon.

When I heard a couple of shots coming off, I run in the saloon.

Q You were in the saloon when you heard a couple of shots?

A I heard coming off a few shots, and I ran into the saloon, and I was there about half an hour.

Q What were you doing there? A They were all talking, this fellow got shot, and that fellow got shot.

Q You heard who got shot? A I heard about fellows getting shot, but I didn't know who got shot.

Q Didn't you hear in the saloon? A Yes, I heard a fellow got shot, but they didn't mention no names.

Q Do you mean to say you stayed in that saloon half an hour without knowing who was shot? A Yes, sir.

Q Even though the shooting was right near the saloon?
A Yes, sir.

Q Because people kept going in and coming out of the saloon? A Yes, sir.

Q So, you must have known that somebody was shot? A No.

Q And you heard people mention who was shot? A (No answer).

Q You did not ask, did you? A No, sir.

Q From that saloon, you went right up to your house, did

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you? A Yes, sir.

Q Now, did you stay in the saloon because you were afraid?

A Afraid?

Q Yes. A I didn't want to take no attention. I was all cut up, and I was excited myself.

Q What were you excited about? You had been had been cut many hours before? A Well, I was cut around one o'clock.

Q And this was after seven? A I was bandaged up, and I didn't take no attention to it.

Q When you came out of the saloon, before you got up to your house, you had to pass into the street, didn't you?

A Yes, sir.

Q Didn't you hear there that Salkin and Shapiro had been shot? A No.

Q You did not hear it? A I heard somebody got shot, but they didn't mention no names.

Q You told us before that you remembered that Salkin and Shapiro -? A A member?

Q Remember, not member. Don't let that frighten you. You told us before that you heard Salkin and Shapiro right near you on that corner. Now, that is so, isn't it? A They were right there, certainly.

Q You saw them there? A I happened to see them, yes.

Q And you saw them at the time that the shooting occurred? A No, I just spoke to this girl, the girl I met;

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she says, "What is the matter with your face?"

Q Never mind going over that. I am asking you a simple question. At the time the shooting occurred, you saw them standing in the gutter, right at that corner? A Yes, sir.

Q And you knew the shooting occurred right at that spot?

A What spot?

Q Where you and they were standing, or very near to it?

A I didn't see the shots coming, but I heard the shots coming off.

Q What was your impression at the time? Where did they come from? A Well, I couldn't tell you that.

Q Were they near by, or far away? A Well, I never tried to shoot anybody, and I heard a couple of shots coming from the other side.

Q You were afraid they were coming in your direction, otherwise you would not have run? A I thought they were going to shoot me again.

Q You were afraid the shots were coming in the direction you were standing? A Yes, sir.

Q And that was the direction where Harry Salkin and Charles Shapiro were standing? A No, they were on the other side.

Q They were only a few feet away from you? A About ten feet away.

Q So, the shots came not only in that direction, the shots came also in the direction of Charles Shapiro and Harry

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Salkin? A I didn't say that.

Q Well, but you were afraid; that is why you ran? A Certainly.

Q Because you were afraid that the shots were coming in your direction? A Certainly.

Q And that was also the direction that Charles Shapiro and Harry Salkin were? A Yes, sir.

Q Now, then, after you had run to safety, in the saloon, didn't you make any inquiries whatever to find out if Harry Salkin and Charles Shapiro had been shot? A Nothing like that; I didn't take no attention; I just run in the saloon.

Q It did not concern you? A No.

Q You were not interested? A No.

Q You had no reason to suspect that they might have been shot? A Not at all.

Q Even though they were right near you when you began to run? A I had my own trouble that night, and I didn't take no attention.

Q What was your own trouble? A I got cut up.

Q That was the only trouble you had? A I guessthat is sufficient.

Q But weren't you worried about your friends? A I was worrying about my cuts.

Q You didn't give them the least thought? A No, I was sorry for them, but -

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Q But you made no attempt to find out whether they were shot? A No.

Q And you are certain you did not know all that night, until eleven o'clock, that they were shot? That is the first you heard about it? A Yes, sir.

Q Wasn't it a little unusual for you to stay in your house all evening? A What is it?

Q Wasn't it a little unusual for you to stay in your house all evening. A Talk to me plain. I don't know what that word means.

Q It is not often that you stay in your house all night, is it? A Certainly not.

Q You stayed in the saloon half an hour? A Yes, sir.

Q Went right up to your house? A Yes, sir.

Q Didn't lose a minute getting to your house? A I lost a minute or two.

Q You didn't talk about the shooting? A No.

Q You went right up to your house? A My lady friend was up there.

Q You stayed in your house for three hours? A Yes, I played cards.

Q You did not take your lady friend out? A No.

Q Though you had an appointment with her? A I couldn't walk out with the bandage around my face; I couldn't walk out with my girl.

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Q She was just visiting you? A She heard I got cut.

Q Had she heard anything about the shooting? A No.

Q Did you discuss the shooting with her? A No, I don't know about that.

Q Did you talk with her about the shooting? A No, she spoke to me about the cut I got on my face.

Q Not a word was said about the shooting? A No.

Q Not a question asked by you as to who was shot? A I said, "Some fellow got shot on the corner", and that is all.

Q That is all you knew about it? A Yes, sir.

Q And that is all you said about it? A Yes, sir.

Q And those are the only questions you asked anybody?

A Yes, sir.

BY MR. ROSENBERG:

Q Have you ever been convicted of a felony? A Never.

BY MR. MEDALIE:

Q You were sent by Magistrate Barlow to the Workhouse on a charge of disorderly conduct? A Never.

Q Weren't you? A Yes, I got ninety days.

Q You got ninety days? A yes, sir.

Q For disorderly conduct? A Yes, sir.

Q And you just got through serving the ninety days in the Workhouse? A No, I have been waiting for trial.

Q You have not served your ninety days yet? A Next Monday my ninety days are up.

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Q But you were sentenced to ninety days in the Workhouse?

A Yes, sir.

Q By a City Magistrate? A Barlow.

RE-DIRECT EXAMINATION BY MR. ROSENBERG:

Q That was growing out of a row?

MR. MEDALIE: That is a conclusion.

Q What were you convicted of by Magistrate Barlow?

MR. MEDALIE: He said it was for ~~idm~~ disorderly conduct

Q Was it for something that happened Sunday, the 8th?

A Yes, sir.

Q Tell the jury why you got ninety days from Judge Barlow on December 8th?

MR. MEDALIE: I want to say, your Honor, that I shall have the right, of course, to go into that, as soon as counsel gets through getting his client's explanation.

A On Sunday, December 8th, I was sitting on a chair, at Broome and Orchard Street, taking a shine, about one o'clock; I had to go to work; so four fellows come over to me, and one fellow says, "Come here, I want to talk to you". I says, "You want to talk to me?" I said, "wait until I get through with my shine". So I got through my shine, and I got off the chair, and the first thing he said was, "What are you talking about me bad for?" I said, "me? I ain't got nothing to talk about you, or anything like that". He said, "Yes, you did; you are going around telling everybody I am a bad fellow." I

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said, "I didn't say a word about you"; so he says, "I can prove it". I says, "Go ahead and prove it"; and he struck me. When he struck me, I struck him back again, and four of them attacked me, and the first thing I was cut, and a policeman was there, and he grabbed the other fellow. I said, "Have this fellow locked up", because he was there at the time when this happened; he was with them; and I got cut. That is all.

Q Did you get the ninety days for hitting the man with your fist? A Yes, sir.

Q Did you have anything --? A With my fist.

Q For hitting the man with your fist? A Yes; when I told the cop - the officer to have this man arrested, I was bleeding; I was excited, and I struck him.

Q And was the officer there when you struck the man? A Yes, sir.

Q What is the name of that officer? Rothchild, or Hayes? A No, he is a policeman.

Q Was he one of these men who were on the stand? A Yes, the one that was here yesterday.

Q The last one? A I guess the last one, yes.

Q That is what you got the ninety days for? A I got the ninety days because I struck him, and that is why I told the cop to have him arrested, and I struck him because I knew he was one of them.

Q Were you ever convicted of a misdemeanor? A No, sir.

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Q Were you ever convicted of a felony? A No, sir; this is the first time I am arrested.

RE-CROSS-EXAMINATION BY MR. MEDALIE:

Q You told the Magistrate your story? A Yes, sir.

Q And the policeman told the Magistrate his story? A Yes.

Q And, after hearing his story and your story, the Magistrate found you guilty, did he? A Yes, sir.

Q And sent you to the Workhouse? A Certainly, I got ninety days.

BY MR. ROSENBERG:

Q You admitted you struck the man? A Yes.

BY MR. MEDALIE:

Q You also told the Magistrate about getting out?

A Certainly.

Q And after the Magistrate heard you tell all about that he nevertheless found you guilty, didn't he? A What is it?

Q Found you guilty, even though you told him about your being out? A He give me ninety days.

Q You told him your whole story? A Yes, sir.

Q He did not believe you?

MR. ROSENBERG: Objected to.

THE COURT: The objection is sustained.

BY THE COURT:

Q On what side of Orchard Street were you talking to this young woman at the time that you heard the shooting? A On

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this side, (indicating).

Q On the side opposite where you lived? A Right on the same side.

Q That is, on the northerly side of Orchard Street?

A Yes, sir.

Q Rather, on the easterly side of Orchard Street? A Yes, sir.

Q Going from Grand Street; is that right? A Not from Grand Street. From 7th Street.

Q From Seventh Street, down? A Yes.

Q Is it on the same side where you lived? A Yes, sir.

Q Nearer Allen, or towards Ludlow? A Towards Allen Street.

Q How far away from you were the Shapiros and Salkin?

A They were away about nine or ten feet. I was walking on the sidewalk, and they were out in the middle of the gutter, just on the corner, about ten feet away.

Q Did you hear Gus Sander say you were all close together? A Yes.

Q You, the young woman, the Shapiros and Salkin were all together? A No; no, sir, your Honor.

Q Did you see anybody fall to the ground? A No.

Q Did you hear anybody make an outcry when the shots were fired? A Everybody was running; they hollered, and I run myself.

Q You saw Shapiro, did you not? A Yes, I did.

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Q Harry Shapiro? A Yes; yes, sir.

Q Was he facing you at the time he was shot? A No; no, sir.

Q Did you talk to Shapiro or to Salkin that night? A I didn't speak to them at all.

Q Did they pass you by? A I passed them by.

Q Did you notice that they were on the street that night?

A I didn't know it. I just happened to see them there.

Q Did you see them? A I certainly did.

Q What were they doing? A Just in a circle, about three or four standing there and talking to one another.

BY MR. ROSENBERG:

Q Do you know who that young woman was whom you were talking to? A I can recognize her if I see her.

Q Do you know where she lives? A She must be around Broome Street or Orchard Street; I am not positive.

Q Did you ask people to find out who that woman was? A I was trying to find out every day in the week, and trying to get this girl, but I can't get her, and I don't know what became of her.

Q You have been in the City Prison since December 8th?

A Yes sir.

Q Up to and including the present time? A 93 days in the Tombs now.

MR. ROSENBERG: That is all.

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MR. ROSENBERG: I offer to prove by the office that, on the afternoon of Sunday, December 8th, this defendant was cut, his face bleeding, and a police officer was present; that, while the police officer was present, he struck ~~in~~ a man by the name of Bielsky, with his fist; the police officer arrested the defendant and Bielsky, and thereupon, on the trial before Magistrate Barlow, the defendant was convicted, and got 90 days for that assault.

MR. MEDALIE: I will concede that the defendant was charged with disorderly conduct, committed in the presence of Officer Rothchild, and that he was convicted.

MR. ROSENBERG: And that it consisted of assault?

MR. MEDALIE: Yes.

MR. ROSENBERG: With his hand?

MR. MEDALIE: I am unable to say, but it was an assault which the Magistrate treated as disorderly conduct, and for which he sentenced the defendant to 90 days in the Work house.

T H E D E F E N D A N T R E S T S

MR. ROSENBERG: The defendant renews the motion made at the close of the People's case, and asks that each and all of the grounds stated therein be enumerated, as if fully set forth here, and on the additional ground, that

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the people have failed to establish the commission of the crime charged in the indictment, or either of the crimes charged in the indictment, beyond a reasonable doubt. The People have failed to establish the corpus delicti of the crime charged in the indictment.

THE COURT: The motion is denied.

MR. ROSENBERG: I take an exception.

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

(Mr. Medalie then sums up the case to the jury on behalf of the People).

THE COURT: I shall charge the jury tomorrow morning. Gentlemen of the jury, do not discuss this case among yourselves, nor permit any person to talk to you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant, until the case is finally submitted to you.

(The Court accordingly took a recess until tomorrow, Thursday, March 6th, 1913, at 10:30 A.M.).

J. L. ...

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THE PEOPLE, Etc., vs. MAX OSTRANSKY.

New York, Thursday, March 6th, 1913.

TRIAL CONTINUED.

THE COURT'S CHARGE.

ROSALSKY, J:

Gentlemen of the Jury, the defendant, in the first count in the indictment, is charged with the crime of assault in the first degree, and in the second count of the indictment he is charged with the crime of assault in the second degree.

An indictment is a mere accusation in writing, charging a person with a crime. The mere finding of an indictment by a grand jury does not warrant a jury to infer that a person is guilty of the crime charged therein. An indictment, therefore, is no evidence of guilt, but is a mere accusation in writing, charging a person with a crime.

Under our system of law, there are two methods by which the guilt of a person is established. The first method is by a defendant pleading guilty to an indictment, and when a defendant pleads guilty to an indictment it is not necessary to take any proof in order to establish his guilt. The second method is by a jury convicting a person of the crime charged against him.

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Whenever a defendant enters a plea of not guilty to an indictment, an issue of fact is raised, which must be determined by the Jury. So you have been impanelled in this case to determine from the proofs presented by the District Attorney whether or not the defendant is guilty of the crime charged against him.

You are the exclusive judges of all questions of fact. Neither counsel for the defence nor the District Attorney nor the Court can advise you how you should act upon the evidence. That power is left to you, and to you alone. As the sole judges of the facts, it is your duty to weigh the facts.

You must not be influenced by sympathy or prejudice, but you must be neutral and impartial. It is the duty of the Jury to analyze, scrutinize and weigh the evidence, and after a careful analysis of the evidence it is for you, and you alone, to say what impression the proofs submitted on both sides make upon your minds.

It is the duty of the Judge to declare the law, and, likewise, it is the duty of the Jury to accept his instructions as to the law.

You have no right to question the correctness of the law as declared by the Court, but you must accept

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it without question. Whatever impressions you may have that are not founded on the evidence you must dismiss from your minds. It is your duty to weigh the evidence, and determine only from the evidence whether the People have, or have not, established the guilt of the defendant.

The Jury in weighing the evidence should take into consideration the interest and the motive of the witness in giving his testimony. Is he a truth-telling witness? Is he favorable to the defense, or to the People? Or is he hostile to the defense, or to the People? Has the witness had opportunity to observe the event concerning which he has testified? Is he animated by a desire other than to tell the truth? So, therefore, in weighing the testimony of a witness, you have a right to take into consideration his demeanor, deportment and manner in giving testimony; and, after carefully weighing the evidence of the witness, it is for you to say whether or not the witness impresses you as one whose testimony should be given credence. You have great powers in analyzing and in weighing testimony.

If you believe that any witness has wilfully testified falsely in any material particular, you are authorized, but not bound, to disregard the entire testimony of such witness. You may accept all of a

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witness's testimony as true, or you may reject it all as untrue. You may credit it in parts as true, and discredit it in other parts as untrue. What weight and credit you will attach to the testimony of a witness rests entirely with you.

Jurors must, however, remember that when they enter the jury box they must lay aside all personal prejudice in weighing the evidence, and determine solely from what the witnesses state whether they will believe them, or not.

It is your duty, therefore, to exercise your discriminating judgment, with a view to finding, if you can, from a witness's testimony, whether or not he has told the truth, and if he has then it rests with you what weight you shall give to his testimony.

In a criminal case, it is important for a Juror not to be moved by any consideration of what will follow the verdict of a Jury. In other words, you have nothing to do with what punishment the Court might impose in the event of your finding a defendant guilty. Your duty simply is to try the facts, and decide whether a person committed the crime, if in fact he did commit the crime. That is the responsibility which is placed upon a jury.

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Likewise, it is important for jurors, and it is their duty, while they are deliberating upon their verdict, to give careful consideration to the views and opinions of their fellow jurors. A juror should not capriciously or arbitrarily stop his ears and stubbornly stand upon the position he first takes, regardless of what might be said by his fellow jurors. You should discuss the case together, and compare views and reasons, but before you make up your verdict each juror, without reference to the other jurors, should be satisfied in his own mind of the guilt or the innocence of the defendant.

It is the duty of each juror to reason with his fellow jurors, with an honest desire to arrive at the truth, and with a view to arriving at a verdict, either for the People or for the defendant, if the facts and circumstances of the case so justify.

It should be the object of jurors to arrive at a conclusion, and to that end to deliberate together with calmness. It is your duty to agree upon a verdict, if that is possible, without a violation of any conscientious conviction.

You have heard both the District Attorney and Counsel for the defendant make certain statements, and present arguments and reasons to you. So far as the

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District Attorney is concerned, the defendant should be convicted. So far as the Counsel for the defendant is concerned, the defendant should be acquitted.

When statements and comments and arguments of Counsel on either side are based upon the evidence, or if a legitimate argument be made upon the evidence, and such statements, arguments should be given careful weight and consideration by the Jury; but statements, comments and arguments, or reasons or statements which are of a personal nature, should be given no weight or consideration by you.

The aim in a cause of this kind is to ascertain the truth from the evidence, and, therefore, gentlemen, do not go outside of the evidence to find a reason whether a man should be convicted or acquitted; but your arguments must be based upon the proofs presented, and no extraneous considerations should withdraw your attention from an honest, careful consideration of the evidence.

Jurors must appreciate that while they serve as such they are a part of the machinery of justice, and the aim should be uppermost in the mind of every man called upon to determine an issue involving the liberty of a human being to do justice. An unfair trial would be a reproach to the administration of justice, and,

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likewise, an unfair verdict is a reproach to the administration of justice.

The State has no right to demand a verdict unless the proofs beyond a reasonable doubt justify your so finding. The state does not seek vengeance. It simply seeks the truth; and if the law has been violated, the jury should perform its duty fearlessly, honestly and conscientiously.

Now, gentlemen, this is the beginning of the term. Many of you gentlemen have had no experience in the trial of criminal cases, so I have, therefore, briefly outlined to you the duties which the law imposes upon you.

You must understand that in weighing evidence jurors, as well as Judges, might make mistakes; but that mistakes will occur in our Jury system is a thing that neither you nor I can prevent, but we should never fear to perform our duty if we believe conscientiously that the probabilities of the case indicate beyond a reasonable doubt the guilt of a person charged with crime.

You are not called upon to find to a mathematical certainty that a man is guilty of a crime. You are not called upon to consider the possibilities of a particular case, or whether you might make a mistake; but

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you are to consider the probabilities in determining whether or not the People have established the guilt of a defendant.

In this life, nothing can be established with mathematical certainty, and in our criminal Courts you are not called upon to establish the guilt of a person with mathematical certainty. You are simply called upon to establish the guilt of a person beyond a reasonable doubt.

Every person charged with crime, be he the most abandoned or abject character, is entitled to a fair trial. He is presumed to be innocent until the contrary be proved by your verdict, and he is entitled to the benefit of every reasonable doubt arising from the evidence in the case.

Now, reasonable doubt is not a guess or a conjecture or a surmise, nor must resort be had to invoking a reasonable doubt because a juror might desire to avoid the performance of a disagreeable duty. A reasonable doubt is not a guess or a conjecture or a surmise, but it is such a doubt as reasonable men may entertain after a careful and honest review and consideration of the evidence. It must survive the test of reasoning; and the mental process of a reasonable examination; and if jurors have an abiding conviction of a defendant's guilt

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which leads them with moral certainty to a conclusion as to a defendant's guilt, they may act upon such evidence and find a defendant guilty.

As I have said, the indictment in this case contains two counts. The first count charges the defendant with the crime of assault in the first degree. Assault in the first degree is defined under our Statute as follows:

"A person who, with intent to kill a human being, assaults another with a loaded firearm or any other deadly weapon, or by any other means or force likely to produce death, is guilty of assault in the first degree".

Under the second count of the indictment, assault in the second degree is defined as follows:

"A person who wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm is guilty of assault in the second degree".

Under the count charging the crime of assault in the first degree, it is necessary to prove in this case that, if the defendant shot Harry Silkin, he discharged a loaded revolver, a deadly weapon. It is for you to say whether it is a deadly weapon, and, if so, whether or not he shot Silkin with the intent to kill him.

If he did, and those facts are proved to you beyond

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a reasonable doubt, you will be warranted in finding the defendant guilty of assault in the first degree.

Under the second count of the indictment, it will be necessary for you to find beyond a reasonable doubt that the defendant wilfully and wrongfully assaulted Salkin by the use of a weapon or other instrument likely to produce grievous bodily harm; and it is claimed that the injuries which Salkin sustained consisted of two bullet wounds produced by the discharge of a revolver ~~being discharged~~, the bullets of which penetrated his body.

Now, the People in this case have not produced any eye-witness who actually saw the defendant, Ostransky, discharge a loaded fire arm at the complaining witness, the bullets of which entered his body, and the People, therefore, rely upon circumstantial evidence to establish the charge.

Under the law of this State circumstantial evidence is regarded and accepted by our Courts as legal evidence, as competent, as evidence upon which a Jury may act.

Whatever might be the impression of any member of this Jury with relation to the efficacy of circumstantial evidence you must lay it aside, since you have sworn to make a true deliverance in this case between The People and this defendant, and it is your duty, upon

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your oaths, to accept circumstantial evidence, and give it due weight.

Your power is to determine whether the circumstances presented for your consideration are strong enough to point in the defendant's direction as the person who shot Salkin. Your power is simply limited to weighing the evidence.

No juror has a right to say "I will not accept circumstantial evidence". You must consider circumstantial evidence. Your power is limited to weighing the evidence and to determine therefrom whether the circumstances are sufficient in your judgment to establish the guilt of the defendant.

Now, how did The People establish the circumstantial evidence? They established it by witnesses who have been called and sworn, and who have given testimony as to the circumstances observed by them.

While you are to consider the circumstantial evidence, you must bear in mind that witnesses have testified to the circumstances, and, therefore, you must determine whether the witnesses who have testified as to the circumstances have told the truth, or whether they have wilfully falsified their testimony, or whether they are biased, or mistaken as to facts testified to by them.

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Circumstantial evidence must point to the guilt to the exclusion of every other reasonable hypothesis. The proof of circumstances must not only be consistent with guilt, but inconsistent with innocence. If the circumstantial evidence be susceptible of two constructions, the most favorable to the innocence of the defendant should be adopted, but if the circumstantial evidence points in one direction, and in one direction only, namely, the guilt of the defendant, or if the circumstantial evidence be inconsistent with every reasonable hypothesis of the innocence of the defendant, and consistent only with his guilt, you are bound as jurors to regard this evidence as controlling, and to be guided thereby.

I shall read to you, from the case of The People against Harris, what the Court of Appeals has said on the subject of circumstantial evidence:

"All evidence is, in a strict sense, more or less
"circumstantial, whether consisting in facts which permit
"the inference of guilt, or whether given by the eye
"witness of the occurrences, for the testimony of
"eye witnesses is, of course, based upon circumstances
"more or less distinctly and directly observed, but of
"course there is a difference between evidence consist-
"ing in facts of a peculiar nature, and hence giving

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"rise to presumption, and evidence which is direct, as
"consisting in the positive testimony of eye witnesses,
"and the difference is material, according to the degree
"of exactness and relevancy or weight of the circum-
"stances and the credibility of the witnesses. The
"mind may be reluctant to conclude upon the issue of
"guilt in criminal cases upon evidence which is not
"direct, and yet when the facts brought out, when
"taken together, all point in the one direction of guilt
"and to the exclusion of any other hypothesis, there
"is no substantial reason for that reluctance. Purely
"circumstantial evidence may be even more satisfactory
"and a safer form of evidence, for it must rest upon
"facts to prove the truth of the charge made and must
"collectively tend to establish the guilt of the ac-
"cused. A fact has the sense of and is equivalent
"to the truth, or that which is real. It is in the
"ingenious combination of facts that they can be made
"to deceive or to express what is not the truth. In
"the evidence of eye witnesses to prove facts of an
"occurrence, we are not guaranteed against mistake,
"falsehood or the distortion of truth by the exaggeration
"of prejudice, but when we are dealing with a number
"of established facts, if upon arranging, examining and
"weighing them in our mind we reach only the conclusion

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"of guilt, the judgment rests upon pillars as substantial and sound as though resting upon the testimony of eye witnesses. The necessity of a resort to circumstantial evidence in criminal cases is apparent in the nature of things, for the criminal act is sought to be performed in secrecy, and an intended evil-doer chooses his time and action when most favorable to concealment, and sedulously schemes to render detection impossible. All that we should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from these facts."

It would, therefore, gentlemen, be injurious to the best interests of society if circumstantial evidence could not avail in judicial proceedings. If it were necessary always to have positive, direct evidence, how many criminal acts committed in a great community like ours would result in criminals going unwhipped of justice. Such miscarriages of justice would destroy the peace, order and security of the citizens of this community.

The necessity, therefore, of resorting to circumstantial evidence, if it is safe and reliable, is obvious, and so, gentlemen, in this case you must deter-

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mine whether the circumstances point unerringly in the direction of this defendant as the man who did the shooting. If the combination of circumstances point to the defendant as the man who shot Salkin, it is for you to say whether or not you will accept this evidence and act accordingly.

If the circumstances are susceptible of two constructions, one set suggesting innocence and the other set suggesting guilt, it is your duty to adopt the set of circumstances that favor innocence, because the law presumes every person to be innocent.

It is, gentlemen, necessary in a case of circumstantial evidence not to weigh one circumstance that might indicate innocence, two circumstances that might indicate innocence, three circumstances that might indicate innocence, but it is for the Jury to survey all of the circumstances, and to determine whether the combination of circumstances point to innocence or point to guilt.

If the circumstances lead you away from this defendant as the person who shot Salkin, acquit him, but if the circumstances lead you to the defendant as the person who shot Salkin, it is for you to say, gentlemen, whether you will act upon the evidence.

You are to consider the proofs presented by both

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The People and the defendant, and determine from all of the circumstances whether or not this defendant was the person on the night of December 8th, that discharged a loaded fire arm at Salkin, and whether in doing so he intended to take the life of Salkin, or whether he willfully and wrongfully discharged a loaded fire arm at Salkin, intending to inflict grievous bodily harm upon him? Did he use a weapon on that occasion, and was it his intention to inflict grievous bodily harm on the person of Salkin?

Reference has been made by the learned Counsel representing the defendant to the fact that the People have established no motive against this defendant that should have tempted him to indulge in the criminal act.

On the other hand, The People claim that there is a motive that moved and tempted the defendant to shoot Salkin.

Now, there is no rule as regards the adequacy of a motive for all cases. There is usually a motive for every voluntary act of a rational being which operates as an inducement to the commission of crime.

One may kill another to obtain a small amount of money. One may kill another because of jealousy or hatred or to gratify some supposed or real injury.

The motive, therefore, may not always be disclosed

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for the reason that the perpetrator of the crime may keep it hidden from any human being, or it may arise at the very moment when the crime is committed.

Now, gentlemen, there is a vast difference between motive and criminal intent. In the case of The People against Molineaux, Judge Werner said:

"In the popular mind, intent and motive are not infrequently regarded as one and the same thing. In the law there is a clear distinction between them. Motive is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such result. When a crime is clearly proved to have been committed by a person charged therewith, the question of motive may be of little or no importance, but criminal intent is always an essential element to the commission of crime".

Motive is an inducement or that which leads and tempts the mind to indulge in the criminal act. It is resorted to as a means of arriving at an ultimate fact; not for the purpose of explaining the reason of a criminal act which has been clearly proved, but for the important aid it may render in completing the proof of the commission of the act when it might otherwise remain

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in doubt. With motive in any speculative sense you have nothing to do. In a case of circumstantial evidence, the question of motive often becomes not only material, but controlling, and in such case the facts from which it may be inferred must be proved. Motive cannot be imagined, any more than any other circumstance in the case. The motive attributed to the accused in any case must have some legal and logical relation to the criminal act, according to the known rules and principles of human conduct. If it has not such relation, or if it points to one direction as well as in the other, it cannot be considered a legitimate part of the proof, and as bearing upon the question of intent, motive, or absence of motive, may present considerations of the utmost importance. Intent may be inferred from motive clearly established, and, conversely, absence of motive, even if not conclusive, may be considered as pertinent to the question of intent, where intent is an issue, and the question of intent in this case is in issue.

Now, The People claim that on the night when Salkin was assaulted the defendant was engaged in conversation with a young woman who inquired of him the cause of his being bandaged, and he replied that his girl had kissed him; whereupon Salkin, and the brother of

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Charles Shapiro, who is a witness, turned around, but Charles Shapiro did not change his position. Salkin laughed at the remark, and Charles Shapiro also laughed in the presence of this defendant.

That some time elapsed, one witness saying that about two or three minutes, and when tested as to the time, he said about eight and one-half seconds, after which three shots were fired in succession, two bullets entering the body of Salkin, and one of the bullets striking Charles Shapiro.

Salkin testified that he was a friend of the defendant; that, so far as he knows, the defendant had no grievance against him, and that he had none against the defendant.

It is your duty, gentlemen, to weigh all of the evidence, and to determine how much of what the witnesses have said you will believe, and how much you will disbelieve.

Had Salkin or Shapiro any enemy? Did some person have a motive to shoot Salkin, and, if so, who is that person? Was the defendant piqued at the conduct of Salkin and Shapiro because of their laughter at the statement made by him to this girl? Did this defendant feel resentful because of the conduct of Salkin in turning about and laughing at the statement made by

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him? And did the defendant, because of his irritation at the conduct of Salkin shoot him? In other words, did this defendant have a motive to shoot him?

You are to consider the defendant's condition in life. What might move one man might not move another: Therefore, as I have said to you, there is no rule of law as regards the adequacy of motive in all cases.

A man might shoot or injure another to gratify any supposed or real injury, and, therefore, it is for you to say, from all of the evidence, the closeness to which Salkin was to this defendant, what transpired in the presence of the defendant, and what immediately followed when Salkin turned about and laughed.

Gentlemen, upon you, and you alone, rests the responsibility of determining this case. The Court, under our law, cannot express any opinion as to the guilt or the innocence of the defendant. He has no right to express any opinion as to the guilt or the innocence of the defendant.

You must not give any special consideration to the questions that the Court put to the witnesses, nor are you to give special consideration to the facts which the Court calls to your attention, but you must weigh

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all of the evidence, and all questions of fact are left for your consideration.

Now, there is some evidence here that when the shots were fired this defendant ran. You are to regard a person's flight from two view-points. A man might run, and his running, instead of showing evidence of guilt, might show upon investigation, that there was justification for his flight. A man may run because of a purely innocent act, and a man might run because of a guilty act.

If the defendant's running that night was due to fear occasioned by a person shooting Salkin, and such person was one other than the defendant, the flight was justified; the defendant had a right to run. No man ought to be compelled to place himself in danger.

One of the witnesses for the defense, Shapiro, says that this defendant was the first person to run when the shots were fired; that the other persons were running, not away from the scene of the shooting, but towards the scene of shooting.

A witness for the defense, Sander, states that he ran, and that while running he saw the defendant talking to this girl, and that he was a few feet - I don't remember the number of feet, either six and one-half or seven feet - away from the three persons at the

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time the shots were fired; that there were several people running.

Did this defendant run because some other person discharged the revolver, thereby putting him in fear, or did this defendant run because of his consciousness that he had done some wrong, in order to escape and to avoid arrest?

You must determine from the circumstances of the case, after hearing what all of the witnesses have said, what moved and tempted the defendant to run away. If he ran because some other person discharged a revolver at Salkin, of course his running is indicative of innocence; but if this defendant ran after he shot Salkin, if he did shoot him, it is for you to say what motive he had in running away.

"Evidence of flight is competent because, when explained, it tends to show a consciousness of guilt, and although standing alone it raises no legal presumption thereof. When the cause is proved but the identity of the person is in doubt, it bears somewhat on the question of identity. Ordinarily it is of slight value, and of none whatever unless there are facts pointing to the motive which prompted it, and hence any explanation which the accused offers should always be considered

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"and weighed by the Jury in connection with the defendant's
"fleeing."

Of course, gentlemen, as I have said, you are to find out what were the real occurrences that took place that night. Where do the facts lead you? Do they lead you towards this defendant, or do they lead you away from him?

Is there anything in this case to show that Salkin had an enemy who had designs upon him to do him injury?

Bear in mind the time and the place and the occasion and the circumstances under which Salkin was shot, and determine from all of the circumstances whether or not the People have established his guilt beyond a reasonable doubt.

If so, you will be warranted in convicting him of the crime of assault in the first degree; and if you have a reasonable doubt as to his guilt of the crime of assault in the first degree, and no reasonable doubt of his guilt of the crime of assault in the second degree, you will convict him of assault in the second degree.

If you have a reasonable doubt as to his guilt, either on the case made out by The People, or on his own case, or upon the whole case, it belongs to him, and it will be your duty to acquit him.

Any requests or exceptions?

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MR. ROSENBERG: Your Honor, I except to that part of your Honor's charge - Or, rather, I first ask your Honor to charge that the defendant was not bound or required to prove that Salkin had any enemies, in view of what your Honor told the Jury.

THE COURT: I so charge.

MR. ROSENBERG: I except to that portion of your Honor's charge wherein you quote from the case of The People against Harris fully on the subject of circumstantial evidence, and I except to your Honor's submitting that quotation to the Jury without proof of the facts in the Harris case, to show the applicability of that statement of the law to the real facts in the Harris case. I ask your Honor to charge the facts, or to tell the Jury what the facts were in the Harris case, so that they may understand what the Court of Appeals said in respect to circumstantial evidence as being good evidence and proper evidence under the facts in that case.

THE COURT: The Court declines to comply with Counsel's request, and the Court again reminds the Jury, and has reminded the Jury, that the Jury must find that the circumstances point in the direction of the defendant, to the exclusion of every other hypothesis. The Jury must be satisfied beyond a reasonable doubt that

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facts and circumstances have been proved which will permit the inference that the defendant is the person who committed the crime.

MR. ROSENBERG: I except to that portion of your Honor's charge wherein you state, in words or in substance, that no juror can say "I will not accept circumstantial evidence. You must accept circumstantial evidence". I except to that part -

THE COURT: You are giving only a portion of the Court's instructions.

MR. ROSENBERG: That was after your Honor -

THE COURT: My recollection is clear. I said it is the duty of the Jury to accept circumstantial evidence. They have no right to question it, but upon them devolves the duty of weighing and considering the circumstances. Whether the circumstances are sufficient is for them to determine.

MR. ROSENBERG: I except to that portion of your Honor's charge as corrected by your Honor, so that your Honor may understand to what the exception relates.

THE COURT: Of course, the Jury understands the Court did not say the Jury must accept this evidence and convict the defendant. That is, you can't arbitrarily throw circumstantial evidence out. You must take the

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evidence, weigh it, scrutinize it, analyze it, and determine whether the circumstances are sufficient in your judgment to establish the charge laid in the indictment against the defendant.

MR. ROSENBERG: I except to that portion of your Honor's charge wherein you state, in words or in substance, was the defendant piqued at Salkin's smiling, or Salkin or Shapiro smiling, and did he feel a resentment at that? What might be a motive for one would not be a motive for another, upon the ground that that suggests an argument to the Jury prejudicial to the defendant. I except to that portion of your Honor's charge - or, rather, I ask your Honor to charge the Jury, in view of what you did say concerning the question of flight, that if the defendant has explained to their satisfaction that his flight was consistent with his innocence, that therefore the presumption concerning, or the inference concerning which your Honor directed the Juror's attention to absolutely is destroyed, and that the statement of the defendant must be accepted.

THE COURT: If the Jury believe the defendant's testimony; I said any explanation made by the defendant must, therefore, be taken into consideration by the Jury

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in connection with the defendant's flight, and if you believe that the defendant ran away from the scene of the shooting under the circumstances narrated by him, of course there is nothing to indicate that the flight was due to any consciousness of wrong doing on his part.

MR. ROSENBERG: I ask your Honor to charge the Jury that if, after reviewing the evidence, their minds are in a state of uncertainty, that then it is their bounded and sworn duty to acquit the defendant.

THE COURT: I so charge.

(The jury then retired, at 11:42 A. M.)

(The jury return, at 12:56 P. M.)

THE CLERK OF THE COURT: Gentlemen of the Jury, have you agreed upon a verdict?

THE FOREMAN OF THE JURY: We have.

THE CLERK OF THE COURT: How do you say? Do you find the defendant at the bar guilty, or not guilty?

THE FOREMAN OF THE JURY: Guilty of assault in the second degree.

THE CLERK OF THE COURT: Harken unto your verdict as it stands recorded! You say you find the defendant guilty of assault in the second degree, and so you all say.

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THE PEOPLE, Etc., vs. MAX OSTRANSKY.

New York, April 14th, 1913.

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

W. H. L. EDWARDS, Esq., Assistant District Attorney,
For The People.

K. HENRY ROSENBERG, Esq.,
For the Defendant.

THE DEFENDANT IS ARRAIGNED FOR SENTENCE BEFORE
HON. OTTO A. ROSALSKY, J.

THE CLERK OF THE COURT: Max Ostransky, what have
you now to say why judgment should not be pronounced
against you according to law ?

MR. ROSENBERG: The defendant moves to set aside
the verdict, and for a new ~~trial~~ trial, upon all the
grounds stated in the Code of Criminal Procedure.

(Motion denied; exception.)

THE COURT: This act of the defendant, in shooting
the complaining witness, was done in cold blood. It
was a wilful, conscious and deliberate shooting, and,
in my judgment, he is entitled to no sympathy whatsoever.
I think that the administration of justice ought to
pursue this man, in order that he be kept out of harm's

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way for the longest time possible. He intended to rise on the East Side as Jack Zelig's successor. I will hear your motion.

MR. ROSENBERG: The defendant moves to set aside the verdict, and for a new trial, upon the ground that the verdict is contrary to law, contrary to the evidence, against the law and against the evidence; because the Court erred in admitting illegal, incompetent and hearsay evidence, and rejected evidence, to which exclusion and rejection the defendant duly excepted; because the Court erred in denying the defendant's motion to direct the Jury to acquit made at the close of the People's case, and renewed again at the close of the whole case, to which denial the defendant duly excepted. Because the Court misdirected the Jury on matters of law, and refused to charge the jury as requested by defendant's counsel, to which refusal and denial the defendant duly excepted.

The defendant moves in arrest of judgment for errors apparent upon the face of the record.

(Motion denied; exception.)

MR. ROSENBERG: I don't think, your Honor, that the defendant had any such desire to become the successor of Jack Zelig; in fact, he was working as a peddler. His people are here; they are outside.

THE COURT: Well, this defendant certainly had

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borne an excellent reputation to within about a year of this shooting. I am told he is the leader of a gang over on the East Side, and that people fear him over there; that he makes it a practise of holding up saloon keepers and stand keepers. A reign of terror has prevailed over on the East Side while this man was permitted to mingle in decent society.

State prison not less than two years and six months nor more than four years and five months, and the defendant is fined one thousand dollars. In default of the payment of the fine, he is to stand committed one day for each dollar until the fine is paid.

MR. ROSENBERG: Your Honor will grant us a stay of a week? There is another case pending, anyhow.

THE COURT: Yes.

I hereby certify that the foregoing is a full and accurate transcript of the stenographic notes taken by me on the trial of this indictment.

Amos G. Russell

Official Stenographer

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