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CASE # 498

COURT OF GENERAL SESSIONS OF THE PEACE,  
CITY AND COUNTY OF NEW YORK.

-----X  
THE PEOPLE,  
-against-  
HARRY STAHL.  
-----X

Indictment filed the 18th day of November, 1904.

Indicted for Murder in the First Degree.

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

For the People, ASSISTANT DISTRICT ATTORNEY CLARKE.

For the Defendant, M. A. SACHS.

Tried before HON. MARTIN T. McMAHON, Judge, and a  
Jury, on the 27th day of February, 1905, etc.

Thomas W. Osborne,

Official Stenographer.

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THE CLERK: If you intend to challenge an individual juror, you must do so when he appears and before he is sworn.

The Jury is duly empaneled and sworn.

TIMOTHY D. LEHANE, called as a witness on behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q You are a physician and surgeon? A Yes, sir.

Q And you are one of the Coroner's physicians of the County of New York? A Yes, sir.

Q Did you perform an autopsy upon the body of Richard Fitzpatrick? A Yes, sir.

Q Where? A At the Morgue.

Q When? A On the 2nd day of November, 1904, at 3 P.M., fifteen hours after death.

Q Who was present to point the body out to you? A Officer Meyer.

MR. CLARKE: Stand up, Officer Meyer.

(A man arises in the courtroom.)

Q Is that the officer? A Yes, sir.

Q You performed the autopsy upon the body indicated by him? A Yes, sir.

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Q What did you find? A I found a lacerated wound at the angle of the left eye. A pistol-shot wound two inches to the right of the right nipple -- of the left nipple.

Q Two wounds? A No, sir; one wound. There was a lacerated wound, ante-mortem wound, like as if he had been in a struggle or somebody scratched him.

Q Not a bullet wound? A No, sir, -- and a bullet wound two inches to the right of the left nipple, at the fourth intercostal space.

Q Show the jury? A About here (Indicating).

Q What was the track of the bullet? A It went clean through the heart and struck the spinal column and was deflected downward -- found the bullet through the diaphragm and on the liver.

Q Did you recover the bullet? A Yes, sir.

Q What calibre was it? (The witness produces a bullet).

BY MR. CLARKE:

Q Do you produce the bullet taken from the body of Richard Fitzpatrick? A Yes, sir.

MR. CLARKE: I offer it in evidence.

Received and marked People's Exhibit 1.

Q You made this autopsy for the purpose of ascertaining the cause of death? A yes, sir.

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Q What was the cause of death, in your opinion, of Richard Fitzpatrick? A Pistol shot wound of the thorax followed by internal hemorrhage.

Q State whether the course of the bullet was downward or upward to any marked degree? A No, sir.

Q Straight back? A Yes, sir; and struck the spinal column and fell.

Q Who was present at the autopsy? A I don't remember.

Q Anybody besides the officer? A I don't remember.

Q The officer was there? A Yes, sir; he identified the body to me.

CROSS-EXAMINATION BY MR. SACHS:

Q Did you say the wound discovered over the left eye was put there before death? A It was antemortem wound.

Q Ante? A Ante, yes.

Q Could you give any opinion as to what caused that wound? A No.

Q You never saw Richard Fitzpatrick until the time you made the autopsy? A No, sir.

Q And that was about thirteen hours after death?

A Fifteen.

BY MR. CLARKE:

Q How old a man was he? A About thirty, I should

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Judge.

Q Large or small man? A He was about -- I did not  
about  
measure him, but I should judge five foot seven and a half  
or five foot eight -- pretty muscular, very well developed.

Q In good physical condition? A Yes.

BY THE COURT:

Q The pistol shot, you say, went through the heart?

A Yes, sir.

Q Did you notice any indications which would enable  
you to determine about how far that shot was fired from the  
person of the deceased? A I couldn't say.

Q He had his clothes on, of course? A I suppose so.

Q Did you examine the coat to see whether there were  
any powder marks? A I did not see the coat.

Q Did not? A No, sir.

BY MR. CLARKE:

Q From the condition of the bullet, could you judge  
anything, from being flattened? A Well, it is scraped  
there. There are marks -- they might be due to the barrel of  
the pistol.

Q You are not prepared to give any opinion about the dis-  
tance at which the shot was fired? A No, sir.

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J O S E P H I R E L A N D , called as a witness in behalf of  
the People, being duly sworn and examined, testified  
as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q You are a civil engineer? A I am an architect and  
draughtsman.

Q Place of business? A 302 Broadway.

Q Did you, on or about the 6th of December, 1904, visit  
the neighborhood of the intersection of Sheriff and Rivington  
Streets, in the County of New York? A I did.

Q Did you measure the distances? A I did.

Q Between Stanton and Rivington and the width of  
Sheriff Street, and make a plan thereof? A I did.

Q I show you a plan, and ask you if you made that from  
measurements? A I did.

Q To what scale? A Scale of 20 feet to 1 inch.

Q That is a correct representation of the various dis-  
tances between Rivington and Stanton Streets, on Sheriff  
Street, and the width of Sheriff Street? A Yes, sir.

Q And the location of the various stores and places of  
business there? A Yes, sir.

MR. CLARKE: I offer it in evidence.

Received in evidence and marked People's Exhibit 2.

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CROSS-EXAMINATION BY MR. SACHS:

Q You say this is a scale of 20 feet to 1 inch?

A Yes, sir.

Q Now, Mr. Ireland, I want the distance from the center of this corner of this house to the center of this point (Indicating).

BY MR. CLARKE:

Q State what the distance is from the northwest corner of Sheriff and Rivington Streets to the southeast corner, measuring from the center of the sidewalk in each case.

A I have not a rule with me.

(A rule is produced and handed to the witness.)

THE WITNESS: From the center of the sidewalk there to the center of the sidewalk there (Indicating)?

BY MR. CLARKE:

Q Yes. A 55 feet.

Q What did you find it actually with your measure, how many inches? A 2 inches and  $3/4$ , making 55 feet.

Q Mark with a pencil from what point to which point you measured?

(The witness indicates by making two dots.)

Q These two dots indicate the two points from which you measured? A Yes.

Q The distance from one to the other is  $2-3/4$  inches on the plan? A yes, sir.

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Q And 55 feet actually? A Yes, sir.

BY MR. SACHS:

Q From the dot on the southeast corner of Rivington and Sheriff Street, to the saloon No. 77 Sheriff Street, will you measure that for us, and let us know the distance, from this dot, the southeast corner, to the saloon at 77 Sheriff Street? A To the center of No. 77?

Q To about the center? A 140 feet.

BY MR. CLARKE:

Q How much do you find it on the plan? A 7 inches.

Q Make a mark at the point you measured from in the front of the saloon, 77, whether in the center of the walk or where it was? A The center of the building,

Q You measured from the center of the front wall of the building? A Yes.

Q To the point indicated on the southeast corner?

A Yes.

Q Which you say is how many feet? A 140 feet.

Q You examined all these different buildings? A Yes.

Q And you have indicated on this plan the character of each place? A Yes, I have.

Q That is, you have on the corner here, northwest corner of Rivington and Sheriff, water, soda, cigars, etc. -- that was a place where that sort of business was carried on? A Yes,

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right on the corner.

D A V I D M E Y E R , called as a witness in behalf  
of the People, being duly sworn and examined, testified  
as follows:

DIRECT EXAMINATION BY MR. CLARKE:

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

Q Of the police force of the city of New York?

A Yes, sir.

Q You are attached to the 13th precinct ? A Yes, sir.

Q Were you such police officer on the first of Nov-  
ember, 1904? A Yes.

Q Attached to the same precinct? A Yes.

Q What is the northerly boundary of that precinct?

A Northerly boundary -- of what street?

Q Rivington Street? A Taking the south side.

Q Rivington is the north boundary of your precinct?

A Yes.

Q What was your post on the night of November 1st,  
1904? A Sheriff Street and Columbia Street, on Rivington  
Street, as far as Grand Street.

Q That is, on the south side of Rivington? A On the  
south side only.

Q How far east and west? A Half a block.

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Q How far east? A Half a block.

Q From what street? A West of Sheriff Street, and half a block east of Columbia Street.

Q How long have you been on the police force? A Seventeen months.

Q Now, prior to that night in question, did you know this defendant? A No, sir.

Q Never had seen him before? A Yes.

Q Then you knew him? A Yes, sir; I knew him but not to speak to.

Q Have you seen him in that neighborhood before?

A Yes, sir; I have seen him a dozen times.

Q How long before this happened had you seen him?

A How long?

Q Yes. A Only a couple of days.

Q Did you know Richard Fitzpatrick? A Yes.

Q How long had you known him? A A couple of years.

Q Did he live in that neighborhood? A Yes.

Q Now, you remember what took place that night, November 1st, 1904? A Yes.

Q What time did you go on post? A 4 P. M.

Q And at what time was your attention first attracted to any trouble in Sheriff Street, what time was it? A It was about 8:25.

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Q Where were you when your attention was first attracted, and what first attracted your attention? A I was standing on the corner of Sheriff and Rivington.

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

Q There are four corners to those two streets, which corner were you on? A This corner (Indicating).

Q That is the southeast corner? A The southeast corner.

Q And which way were you going, which direction? A I was going down towards Columbia Street on Rivington.

Q Going towards the east? A Yes, sir.

Q You were on patrol duty? A Yes.

Q What kind of weather was it? A Nice weather.

Q Go on and tell what attracted your attention?

A About 8:30, while on patrol, on Sheriff and Rivington Streets, I happened to stop there. There was a political meeting going on at Sheriff and Rivington, on the north corner.

Q That is on the corner indicated by the word "saloon", where there is a saloon on the corner? A Yes, sir.

Q Outdoor meeting? A Yes, sir. I noticed them, a few minutes later, Stahl --

Q That is the defendant? A Yes, sir; and Fitzpatrick.

Q Richard Fitzpatrick, the deceased? A Yes, sir; and

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three or four others come out of a saloon at 77 Sheriff Street.

Q Who keeps that saloon? A Adam Henderer.

Q 77 Sheriff Street? A Yes, sir.

Q Which side of Sheriff Street is that? A On the west side.

Q How many men were in the party? A About four.

Q What were they doing when you first saw them? A They came out and were standing there a minute or so, and speaking among themselves.

Q Could you hear them talking? A No, sir.

Q How do you know they were talking? A Well, I could see them talking,-- you can tell a person when he speaks or don't speak.

Q Standing together? A Yes, sir; in a crowd, and they were about to separate when I noticed Stahl walk a few feet away from Fitzpatrick and his companion, and I then noticed Stahl pull a revolver from the back pocket of his pants, pants pocket, and shoot twice at Fitzpatrick.

Q How far was Fitzpatrick from him? A I should judge, now, about seven feet away.

Q Can you indicate what store Fitzpatrick was in front of when the shooting occurred -- had they moved down the street at all? A Yes, sir; they walked down a little way. I should judge about there (indicating).

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Q Make an X mark? (The witness complies.)

Q That is in front of what store? A That butter store.

Q In front of the butter store? A Yes, sir; in front of that butter store.

Q Which is No. 75? A 75 Sheriff Street.

Q Where was Stahl? A Stahl walked away.

Q Where was he when he fired the shot, compared with the position Fitzpatrick was in? A About seven feet away from there.

Q That is seven feet further up Sheriff Street? A No, down.

Q Down towards Rivington? A Yes, sir.

Q So, of the two, Stahl was nearer to you? A Yes.

Q How long a space of time intervened between the two shots? A Just the snap of your finger, a second -- not a second, a tick.

Q Did you make any move between the shots, or after you heard them? A No, sir; not until the two shots were fired and then I -- I was stunned for the moment.

Q You were stunned? A That is, yes, because I did not expect the shooting.

Q What did you do the minute you saw it? A When the two shots were fired, Stahl run in the direction north down Sheriff Street, and Fitzpatrick after him.

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Q Towards what street? A Towards Rivington Street .

Q That is south? A South, yes.

Q He ran south in your direction? A Yes, sir!

Q When he fired the shot, was his face or back to you?

A When he walked away, his face was towards me.

Q When he fired the shot? A When he fired the shot, his back was towards me.

Q What did he do immediately after that? A Run.

Q Did he turn around ? A Yes.

Q He must have turned around towards you? A He turned right around.

Q Then his face was towards you? A Yes, sir.

Q Then he ran towards you? A Yes, sir; down through Sheriff.

Q On the west side of Sheriff, towards Rivington ?

A Yes, sir.

Q Did you see the revolver? A No, sir; I seen him throw it away after he ran.

Q That is what I say? A Yes.

Q How far did he run -- did you move at all? A Yes; when he started to run I run, and I got him at the corner of Sheriff and Rivington Street on the north side.

Q The northwest corner? A Yes.

Q Did he turn when he got to the corner of Rivington

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and Sheriff? A No, sir; didn't get a chance because I got him.

Q You intercepted him before he got to the corner?

A Just when he was about --

Q About to the corner? A Yes, sir.

Q Where was Fitzpatrick then? A Fitzpatrick went after him.

Q Ran after him? A Yes.

Q How far behind him was he, did you notice? A Only a couple of feet.

Q Nearly caught him? A Yes, sir.

Q What did you do when you caught up to him? A I arrested Stahl, and in the meantime Fitzpatrick had fallen down. I then called a citizen and gave him the keys of my signal box, to telephone for an ambulance to Gouverneur Hospital. In the meantime a few officers of the 14th precinct and an officer of the 13th precinct had arrived on the scene, and then, took Fitzpatrick into the drug store and laid him out there.

Q That is the store on the corner, 73 Sheriff, this store on the corner? A Yes, sir; that drug store.

Q Did you notice any wounds upon him? A No, sir; I did not. I did not know what was the matter with him.

Q Was he conscious? A No, sir.

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Q He was not conscious when you saw him? A No, sir.

Q In the drug store? A No, sir.

Q Go ahead; what happened next? A After I had arrested Stahl and Fitzpatrick had been taken into a drug store, an ambulance was on its way to Sheriff and Rivington Street. I then went back with Stahl and looked for the gun.

Q Did you say anything to the defendant about it?

A Yes, sir; I said, "Why did you shoot him?"

Q I mean about the gun -- did you ask him where it was? A No, I did not ask him then. I brought him back, and then I looked around for the gun, and it was gone. I then came back again, and the ambulance had arrived.

Q You say you said something to him; what was it?

A I said to him, "Why did you shoot him?" I said, "I did not shoot him." That is all I asked him.

Q Did the deceased regain consciousness at any time?

A Not in the drug store.

Q When did he? A When we had him taken to Gouverneur Hospital.

Q You asked the deceased no questions while he was there on the street? A I brought him there, but he was not in no condition to be asked any questions.

Q Who was the ambulance surgeon? A Dr. Bell.

(A gentleman arises in the courtroom, at the request of the District Attorney.)

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Q Is that the gentleman? A Yes.

Q You went to the hospital with him? A No, sir. First I had him taken to the station house.

Q The defendant -- took the defendant to the station house? A Yes.

Q Did you have any conversation with him, any further talk? A No.

Q Did he make any further statement? A No, he said nothing, and then he was taken to the station house, made no further statement to me, or anybody that I know of.

Q Were there any marks upon the defendant? A On the defendant?

Q Yes. A No.

Q Had he been drinking, did you observe? A No, he had not been drinking.

Q No reason given, or no information given by him as to the cause of this quarrel, if there was a quarrel?

A No, sir.

Q Did he say whether he was with the deceased or not?

A He said nothing.

Q What did you do after that? A I had him taken to the station house, had his pedigree taken, and then in the meantime we had the patrol wagon sent for, and we took him down on the patrol wagon to Gouverneur Hospital.

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Q Took the defendant? A The defendant. Fitzpatrick had been taken there by the ambulance surgeon in the ambulance, and then took him in the patrol wagon.

Q When you say "him", who do you mean? A The defendant, Officer Armstrong and myself.

Q To the Gouverneur Hospital? A Yes, sir; and we brought Stahl in front of Fitzpatrick, who refused to identify him.

MR. SACHS: I object to that answer.

THE COURT: Strike it out.

BY MR. CLARKE:

Q State what he said -- where was Fitzpatrick then?

A Fitzpatrick was laying on some operating table, like.

Q You brought the defendant into the room? A Yes, sir.

Q Who was present?

BY THE COURT:

Q State what occurred then -- what was said and what occurred? A Officer Armstrong was there, and myself and some other people there, some nurses, I believe, and we brought Stahl in front of him.

BY MR. CLARKE:

Q What did you say, or what did anybody say? A I asked him --

Q Asked who? A I asked Fitzpatrick if this was the man

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that shot him, and he shook his head.

BY MR. SACHS:

Q Did he shake it up or down, or yes or no? A He went every which way.

BY MR. CLARKE:

Q Was he conscious? A Yes, he was conscious.

Q Was that before or after Stahl had been operated on?

A I do not think he had been operated on.

BY THE COURT:

Q Was he able to speak at this time? A Yes.

BY MR. CLARKE:

Q Did you hear him speak? A Yes.

BY THE COURT:

Q What did he say? A He was talking to his sister.

I don't know what he said to her.

BY THE COURT:

Q He said nothing in answer to your question, except to shake his head in every way? A Yes, sir; that was all.

BY MR. CLARKE:

Q Did the defendant make any statement in the hospital?

A No, sir.

BY THE COURT:

Q Did you ask any further questions of Fitzpatrick, or did anyone, in your presence? A No, sir.

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BY MR. CLARKE:

Q Did not Officer Armstrong ask him something? A Yes, he asked him the same questions I asked him.

BY THE COURT:

Q Did he answer? A No, sir; the same as I, shook his head.

BY MR. CLARKE:

Q Fromside to side? A yes, sir.

Q Were you present on the 2nd of November, in the Morgue? A Yes, sir.

Q Did you see the Coroner's physician Lehane, who has been a witness here, on that occasion? A Yes, sir.

Q Did you see an autopsy performed there by him? A I did not see the autopsy.

Q Did you see him preparing to perform an autopsy? A Yes, sir.

Q State whether or not upon which the Coroner's Physician was about to perform this autopsy, was the body of Richard Fitzpatrick? A yes, sir.

Q The same man whom you have been testifying about as having been shot? A Yes, sir.

Q You delivered the body to <sup>the</sup> Coroner's Physician, or at least identified it to him? A Yes.

Q You did not stay for the performance of the autopsy? A No, sir.

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Q You saw the wounds on the body? A There was only one wound.

Q You did not see this mark on the forehead? A I did not notice that.

Q Did not notice that at any time? A No.

Q You say you saw the defendant throw a revolver away?  
A yes, sir.

Q Can you tell the jury more explicitly just what you saw him do? A After he had shot the man, he threw it away.

BY THE COURT:

Q Which way, in the street? A Threw it.

BY MR. CLARKE:

Q What did you see, how much of it could you see?

A I could not see the revolver at all, but I saw an object.

Q That is what I want to know, just what you saw?

A I was too far away.

Q How far away were you? A I stated --

Q How far away were you? A Now, before, I made a rough guess, at the Magistrates' Court; I should judge now I was about 125 feet away.

Q You were down on the sidewalk, were you? A Yes.

Q Of the southeast corner of Rivington and Sheriff Streets? A Yes, sir.

Q Were you near the curb, or near the building?

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A About the center.

Q It is about where this mark is? A Yes, sir.

Q And these people were up in front about, of 75 Sheriff Street? A Yes, sir.

Q Cannot you give us an idea of just what you saw him throw -- what hand did he throw it from -- and how he threw it? A His right hand.

Q Then it was the hand towards the building? He ran down Sheriff -- the building was on his right? A Yes.

Q Was he running at the time he threw it away?

A As soon as he threw it away, then he started to run.

Q In what direction did he throw it? A On the east side of Sheriff Street.

Q With the right hand? A Yes, sir.

Q Show us how he did it? A This is Sheriff Street, this is the west side and this is the east side. As soon as he shot the man, he threw it that way, and then turned around and run.

Q That would be exactly towards the building -- if a man is running down Sheriff Street towards Rivington, would not his right side be towards the building? A No, sir.

THE COURT: Has the officer testified, when he fired the shot, his left side was towards the building, and then he turned around and ran.

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BY MR. CLARKE:

Q It was before he turned around that he threw away the revolver? A Yes, sir.

Q Did he throw it across the street? A I do not know. He might have thrown it in the gutter.

Q Did he throw it towards the street? A Yes, sir.

BY THE COURT:

Q That is where you looked for it, afterwards? A Yes, sir; I went back again and looked in that direction.

BY MR. CLARKE:

Q Have you ever been able to find any of the other men?

A No, sir.

Q Do you know who they were? A Outside of Stahl and Fitzpatrick, I recognized McCauley. I have seen him before, but I did not see any of the rest. I did not know any of them.

Q Have you seen McCauley since? A We had him in the station house. I do not know how the Captain disposed of it. I did not ask, but we were instructed to arrest him, and he was arrested by Officer Moran, if I am not mistaken, but he was let go in the morning.

Q Have you made any effort to find him since? A Yes, sir; I have made a good many efforts to find him.

Q But have not found him? A I could not locate him.

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Q What kind of a hat did the deceased have on? A Derby hat.

Q Did you have anything to do with that -- was it on his head when he fell? A No, sir.

Q Was it on his head when he was shot? A When he was first shot, yes.

Q How did it come off his head, did you notice that? A I don't know.

Q Did you notice it? A No, sir.

Q When he was running down the street after the defendant, he had no hat on? A No, sir.

Q Did the defendant have his hat on? A Yes.

Q Did you examine the deceased, his clothes, to see whether there were any indications on his clothes of powder, or anything? A No, sir.

Q Did you search his body to find out if he had any revolver? A Yes.

Q Did he? A No, sir.

Q How did you search? A I went through all his pockets. Went all through him.

Q I talk about the deceased? A Yes.

Q Fitzpatrick? A Yes, sir.

Q You went through all his clothes? A Yes.

Q Where? A All through his pockets.

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Q Where was he at the time? A On the ground, on Rivington and Sheriff.

Q Before he was taken into the drug store, or after?

A Before he was taken in the drug store.

Q I suppose you searched the defendant as soon as you arrested him? A No, sir; we never search them on the street. Wait until we take them to the station house.

Q He had no weapon upon him? A No.

CROSS-EXAMINATION BY MR. SACHS:

Q You say you saw the defendant Stahl throw something away? A Yes.

Q And you were at that time at a distance of about 150 feet? A 125. That is, not exactly.

Q About that? A Yes, sir.

Q You stated in the police court that you were 20 feet away? A I did.

Q But then was when you made a rough guess? A Yes, sir.

Q This was a very serious matter? A It was.

Q A man had been shot? A Yes, sir.

Q And yet you were willing to make a rough guess in the police court? A Well, yes.

Q This was the day after the shooting occurred? A The day after the shooting.

Q When you had had plenty of opportunity to make an

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investigation as to the distance? A Yes, sir.

Q And you did not think it was important enough, did you? A Well --

Q Yes or no, did you think it was important enough to find out how far away you were? A I should think it was, yes.

Q But you did not do it? A No, sir.

Q Are you prepared to swear that what you saw thrown away was a revolver? A No, sir.

Q You are not? A No, sir.

Q You say you heard some shots fired? A Yes, sir.

Q Are you prepared to swear that at the distance from where you were standing, that any bullets followed that shot? A There might have been some bullets followed that shot.

Q I want to know what you saw -- did you see any bullets?

THE COURT: That is an absurd question.

THE WITNESS: I seen him shot.

THE COURT: When a man fires a revolver at another man, and that other man is finally found with a bullet in him and dies, I think it is a fair inference --

MR. SACHS: I will withdraw that question.

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BY MR. SACHS:

Q You say you are not prepared to swear that what you saw thrown away was a revolver? A No.

Q You were standing on the southeast corner of Sheriff and Rivington Streets? A Yes, sir.

Q Had you come up Sheriff Street? A Yes, sir.

Q And when you got to the corner, did you immediately start to go east towards Columbia? A No, I stood there.

Q You stood there -- this was at about 8:25? A About 8:25.

Q November 1st? A November 1st.

Q Rather dark in that neighborhood, wasn't it? A Well, I guess it was. It is night time, 8:25.

Q I do not want you to guess, I want to know what your opinion was -- I am willing to take your opinion as to whether it was light or dark on that corner? A There was a lamp-post on the opposite street.

Q That was the only light? A Yes.

Q Now, on the northeast corner, that is, the corner opposite the saloon, and exactly opposite you -- is that right? A Yes.

Q This corner where you see the word "saloon", were there any people standing on that corner? A Yes.

Q What was going on? A About to start a political meet-

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ing of some kind.

Q Did you hear any speakers? A Yes, they were about to start.

Q Do you know if anybody had been speaking before you came up? A I don't know; there might have been.

Q There was a political meeting? A Yes .

Q There was people standing in the gutter? A Yes, sir; a few people.

Q Were there twenty-five? A Not as many as that.

Q They were standing right in the gutter, not on the sidewalk, around some stand? A There was some in the gutter and some on the sidewalk.

Q Did they in any way interfere with your sight as to what occurred at No. 77 -- were there any people passing in front of you, or were the people who were standing in the gutter in front of you when you were standing on this corner?

A There was some people passing up and down, it is a busy street.

Q Are you willing to testify that the distance between 77 Sheriff Street and the corner was so clear that you could see everything that happened? A No, sir.

Q Now, there was a political meeting on this corner, wasn't there? (Indicating). A I don't think there was.

Q Did you make any investigation as to that fact?

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A I don't believe there was, no, sir.

MR. CLARKE: Which corner.

BY MR. SACHS:

Q On the corner diagonally opposite this corner, that is, the southwest corner.

THE WITNESS: There is a crowd of young fellows usually congregate there.

Q I do not ask you about that -- do you remember whether on the night of the first of November, and I will help your memory along, whether or not on the southwest corner of Sheriff and Rivington Streets there was any meeting being held by the Social Democratic Party? A I don't think so.

Q But you don't know? A I ain't positive; no, sir.

Q The matter was not of sufficient importance for you to make any investigation? A No, sir.

Q Do you know what party had their meeting on the northeast corner? A No.

Q But you say that your vision as to No. 77 Sheriff Street was not clear, that is, people were all the time passing up and down in front? A Yes, sir.

Q This was a matter of about 125 feet between the point where you were standing and 77 Sheriff Street? A Yes, sir.

Q It was rather a dark night? A Yes, sir.

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- Q How many men do you say came out of 77 Sheriff Street?
- A About four or five.
- Q Four or five? A Yes.
- Q Officer, are you prepared to swear that you could recognize the faces of any of the people who came out of No. 77 Sheriff Street? A Yes, sir.
- Q You can swear to that? A Yes, sir.
- Q From the point where you were standing on the corner there? A Yes, sir.
- Q A distance of 125 feet away? A Yes, sir.
- Q Whose face did you recognize? A Fitzpatrick and McCauley. They were together.
- Q Fitzpatrick and McCauley? A Yes, sir.
- Q Had you known McCauley before this night? A Yes, sir.
- Q Had you known Fitzpatrick before this night? A Yes, sir.
- Q How did you come to know McCauley? A I have lived in the neighborhood.
- Q You have lived in the neighborhood? A Yes, sir.
- Q And McCauley lived in the neighborhood? A Yes.
- Q Did you have any trouble with McCauley? A No.
- Q Do you know if the precinct to which you are attached -- the officers of the precinct to which you are attached,

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ever had any trouble with McCauley? A Yes.

Q Lots of trouble with McCauley? A Yes.

Q How long did you know Fitzpatrick? A A couple of years.

Q Have you ever arrested Fitzpatrick --

Objected to.

MR. SACHS: I want to find out how he knew them and recognized them.

Objection sustained. Exception.

THE COURT: You may ask the question, what you want to know, but you cannot ask other things which you do not want to know. You can ask how he became acquainted with Fitzpatrick.

BY MR. SACHS:

Q You say you knew Fitzpatrick a couple of years?

A Yes, sir.

Q How often had you seen Fitzpatrick in those years?

A On and off every week or so.

Q Will, you say you saw him twice a week for the past three years? A No.

Q Once a week for the past three years? A No, sir; because in the past three years he has been sent away.

Q Since he has been out -- how long was he out?

A He was only out a couple of months.

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Q Two months? A I don't know howmany months. Might be a year.

Q Who, Fitzpatrick? A Yes.

Q In the last year, how often have you seen him? A Very seldom.

Q You saw him twenty-five times in the past year?

A No, sir.

Q Twenty times in the past year? A No, sir.

Q Ten times in the past year? A No, sir.

Q Fitzpatrick? A No, sir.

Q You have just said before that you saw him a couple of times a week for the past few years? A No, I did not.

THE COURT: He said every week or so, off and on, and that is not a couple of times a week.

MR. SACHS: I thought he said a couple of times a week.

BY MR. SACHS:

Q But, you knew Fitzpatrick? A Yes, sir.

Q When Fitzpatrick came out of the door of the saloon, with McCauley, you recognized them? A Yes.

Q Because you had known them? A Yes, sir.

Q Officer, did the man who fired those shots come out of that same saloon? A He came right behind them.

Q Out of the saloon? A I ain't positive whether he came out of the saloon, but I seen him come right behind them.

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Q You don't know if he came out of the saloon? A (Continued) -- with some other companions.

Q (Question repeated). A I am not positive, but I think he did.

Q You have made an affidavit in this case? A Yes, sir.

Q Do you remember what the affidavit contained? A Yes.

Q How many people were in Fitzpatrick's party, including the person you claim shot him? A Five altogether, four or five.

Q You remember saying in your affidavit, "I saw the deceased Richard Fitzpatrick, and three or four others, come out of the saloon No. 77 Sheriff Street? A Yes.

Q Did you mean by that, that the man who shot Fitzpatrick came out of that saloon? A No, sir.

Q You did not? A No.

Q You say the man that shot Fitzpatrick came from behind him? A Yes, sir.

Q Did he then walk ahead of Fitzpatrick? A Yes, sir.

Q How long had you been looking in the direction of Fitzpatrick before you heard the shot? A About five minutes.

Q Was Fitzpatrick standing in front of 77 Sheriff Street all that time? A Well, a little while, and then he walked down.

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Q During all this time, your view of No. 77 Sheriff Street and the people who had come out of that place, was not unobstructed? A There was people going up and down.

Q Going up and down all the time? A Yes, sir.

Q You at times lost sight of these men who had come out of the saloon? A Lost sight?-- no, sir.

Q I do not mean for any great length of time, for a minute, or less than a minute, perhaps? A Well, I should not say a minute -- not a minute.

Q You were not paying any great attention to them, were you? A I was watching them.

Q There was no quarrel there that you saw? A No.

Q Or heard? A No.

Q You were standing on your beat? A Yes.

Q Your post? A Yes.

Q Where they were was not on the post you belonged to at all? A No, different precinct.

Q You were looking at them, but not paying any great attention to them at all? A I was looking at them, that was all.

Q You saw no fight at all? A No, sir.

Q How long before this night had you last seen Harry Stahl? A I should judge about a week or so.

Q How long had you known the defendant Stahl? A I don't know him at all, only I have seen him around.

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Q How long have you seen him around -- when I say known him, I mean by sight? A I only saw him here lately, that is all.

Q You saw him around there in the evening? A Yes, sir.

Q Around seven or eight o'clock? A Yes.

Q And perhaps a little later? A Yes.

Q Can you tell us how often you have ever seen him altogether? A I should say I did not see him only a few times.

Q Ever have any trouble with him? A No, never had any trouble.

Q Not at all? A No.

Q Never had any occasion to arrest him for anything?

A No, sir.

Q Did you ever see him brought in your precinct as a prisoner? A Not since I have been there.

Q Did you ever see this defendant Stahl in the company of Fitzpatrick? A No, sir.

Q You say that when you saw these men come out of the saloon, you saw that the man whom you afterwards claim shot Fitzpatrick, was talking to him, did you? A I did not understand your question.

Q You say that you saw the man who shot Fitzpatrick first talk to him and then walk away? A He did not speak to him, no.

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Q Did you testify on your direct examination that when Fitzpatrick and the other man came out of the saloon, the man who afterwards shot Fitzpatrick spoke to him?

THE COURT: No, he said they were standing in a group talking to each other.

THE WITNESS: He was not speaking to Fitzpatrick.

BY MR. SACHS:

Q But they were standing in a group? A Yes, sir.

BY MR. CLARKE:

Q Was he in the group? A Yes.

BY MR. SACHS:

Q Now, you say the man who afterwards shot Fitzpatrick, came from behind? A Yes, sir.

Q Did he stop in that group and then go forward about seven feet? A Yes.

Q Then he stopped when he came up to them? A Yes.

Q And spoke to them? A Yes.

Q And then they all started down? A Yes.

Q Did you hear any angry words? A No, sir.

Q Any discussion? A They were talking, but I don't know what they were talking about.

Q Were there any loud voices? A No.

Q Any quarrel? A No.

Q You mean to say that the man who fired the revolver

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or who shot Fitzpatrick, did not quarrel with him that night?

A No, sir.

Q Not while they were in your presence? A No, sir.

BY MR. CLARKE:

Q I thought you said you could not hear it? A They were not quarreling; they might have been talking together.

BY MR. SACHS:

Q All this time, as you said before, there were people passing up and down in front of them? A Yes, sir.

Q And there was a crowd at the political meeting?

A Yes, sir.

Q Is there any possibility that you are mistaken in your identification of the defendant? A I could not say that.

Q What? A I could not say that.

Q Do you mean to say that you are not sure it is the defendant?

THE COURT: He did not say that -- put your question right. You asked him if there was any possibility. There is a possibility of anything.

BY MR. SACHS:

Q Is it possible that you may be mistaken as to your identification of the person who shot off that revolver?

A There may be a doubt, because he was such a distance away.

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Q There may be a doubt?

BY THE COURT:

Q Is there any doubt in your mind that the person whom you arrested was the person who fired that pistol? A There may be.

BY MR. CLARKE:

Q Did you losesight of him at any time -- you saw the man fire the pistol? A Yes, sir.

Q You saw him make a motion to throw something, and you saw him run? A Yes, sir.

Q You ran after him and caught him? A Yes, sir.

Q Was it the same man? A That was the same man.

Q You did not lose him out of your sight? A No.

BY MR. SACHS:

Q Between the time the shot was fired, the shot or shots, and the time that you ran the distance 125 or 100 feet, did any people pass in front of you? A Yes, sir.

Q The moment the shots were fired, there was some?

A There was a crowd.

Q And there was some change in their positions?

A Yes, sir.

Q They certainly wanted to know what had occurred?

A Yes, sir.

Q Did the people standing at the political meeting move around at all? A Yes, sir.

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Q Did not some go up towards the Bowery? A Yes, sir.

Q And did not some come down Sheriff? A Yes, sir.

Q And some east on Rivington Street? A Yes, sir.

Q Do you mean to say the crowd did not disperse? A Yes.

Q And that there were people in your way before you got to Stahl? A Yes.

Q Why didn't you say so at first? A I did say that.

BY THE COURT :

Q You saw a man fire two shots? A Yes, sir.

Q And then turn around and start to run in your direction? A Yes.

Q Was there anything that did interfere with your seeing him and ~~mixing~~ mistaking another person for him? A There was people passing up and down. There might have been.

Q That is not the question, was he sufficiently under your observation to render you certain that this was the man that fired the shot, ~~and~~ the man that was running in your direction, and whom you arrested? A There may be a doubt, because there was people passing after I heard the shot, before I caught him.

Q Do you arrest men where you have a doubt as to their identity, and charge them with the crime of murder in the first degree, when you have a doubt about it? A Yes.

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BY MR. CLARKE:

Q You testified before the Magistrate there was no mistake about it? A Yes.

Q That was soon after the shooting, a day or two after?  
A The next day.

Q If there was a mistake about it, what change has come over you since then? A Nothing, only that I have considered this thing.

Q Who have you talked with? A Nobody, myself.

Q You have not talked with anybody? A Nobody.

Q You talked with the District Attorney?? A I have.

Q He is somebody? A Yes.

Q Who else have you talked with? A Nobody else.

Q Did you talk with Officer Armstrong? A Yes.

Q Isn't he somebody? A Yes.

Q Have I got to name every person you talked with, before you will tell whom you talked with -- haven't you been talking with various people about this? A No.

Q Have not friends of this defendant been to see you?  
A No.

BY MR. SACHS:

Q When the shot or shots were fired, were there many people who started to run? A There was a few.

Q Did they start to run in all ways? A Yes, sir.  
There was.

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Q Do you know if there were more than one who started to run towards Rivington? A There was a few.

Q That started to run towards Rivington? A Yes, sir.

Q You were coming towards them? A Yes, sir.

Q And you arrested the man that was nearest to you?

A Yes.

BY THE COURT:

Q The man you arrested, was he the man that Fitzpatrick was chasing? A Yes, sir.

BY MR. SACHS:

Q How many men were running towards you, do you know, after the shots were fired? A A few.

Q Were there two? A More than two.

Q Four? A About four.

Q And Fitzpatrick, was he in front of them or behind them? A He was in the rear of them.

Q In the rear of the four? A Yes, sir.

Q How can you state which man Fitzpatrick was running after? A I don't know; I cannot say positively.

BY THE COURT:

Q Why did you say a little while ago that Fitzpatrick, at the time that he fell, was within two feet of this man you were arresting? A There was other people around.

Q Could there be any other people between the man he

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was chasing, and Fitzpatrick? A Yes, sir.

Q When they were only two feet apart? A That is when he got near Rivington.

Q You said at the time Fitzpatrick fell, when you arrested the other man, he was within two feet? A About two feet.

Q Were there any people between Fitzpatrick and the defendant at the time? A Yes.

Q How many men can you put in two feet of space?  
A I think you can put a couple.

Q They must be mighty thin -- they were not police officers, I take it?

BY MR. SACHS:

Q You say Fitzpatrick was behind the four men? A Yes, sir.

Q Therefore, you don't know which man he was chasing?  
A I cannot say positively.

BY MR. CLARKE:

Q Why did you arrest the defendant? A Why did I arrest him?

Q Yes. A Because I thought he done it.

Q Why didn't you arrest one of the other men that was crowded in this space of two feet? A Because I had seen him before in this crowd, before the shooting occurred.

Q Why didn't you detain the others as witnesses, if

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they were there between the man that was shot and the man that did the shooting, as you say? A They knew nothing about it.

Q You did not arrest them? A No.

Q Did you question them? A The citizen's clothes men did, detectives, from the station house.

Q What are the names of the men? A I don't know.

Q Didn't you testify before the Magistrate as follows, "They had just come out of the saloon, and I noticed the defendant walk away from Fitzpatrick and pull out a revolver and shoot twice at Fitzpatrick. He ran away, and while running away the defendant threw the gun away. And then I ran up and arrested the defendant." A Yes, sir.

Q It all took place in the twinkling of an eye? A Yes, sir; a minute or so.

Q When you say you saw the defendant pull the revolver out, and shoot, he is the same man you saw afterwards make a motion to throw something away?

MR. SACHS: I object, upon the ground that it contains the word "revdler", when the officer testified that he cannot swear there was a revolver in Stahl's hand at any time.

THE COURT: The question is, did not he testify to that -- read the question again.

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(The question is repeated by the stenographer as follows: When you say you saw the defendant pull the revolver out and shoot, he is the same man you saw afterwards make a motion to throw something away.)

THE COURT: Leave out the words "pull the revolver".

BY MR. CLARKE:

Q How long a time intervened between the firing of the shot and the motion to throw away something? A Just a second.

Q Was it or was it not the same man that you testified before the Magistrate that you saw throw the gun away, whom you had previously seen fire the shot? A I don't know if it was a gun or not.

Q You testified before the Magistrate it was? A Yes, sir.

Q That was the day after the shooting? A Yes, sir.

Q He made a motion to throw something away? A Yes, sir.

Q And that took place within a second after the shooting? A Yes, sir.

Q Was that the same man, or not? A The same man that threw that thing away.

Q You do not want the jury to find that you saw one man fire and saw another throw something away? A It was the same man.

Q Was the man who turned to run down the street towards

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you, the same man that you saw make the motion to throw something away? A I don't know.

MR. SACHS: I object to that as incompetent, irrelevant and immaterial. The officer has already testified that there were four or five men coming towards him after the shots were fired.

Objection overruled. Exception.

BY MR. CLARKE:

Q You have testified that, as soon as he fired, he threw the gun away, and then immediately turned around?

A Yes.

Q I want to know whether the man immediately turned around, after making the motion to throw something across the street, was the same man who made the motion to throw something across the street? A Yes, sir.

Q That is certain? A Yes, sir.

Q Now, you have him facing you? A Yes, sir.

Q You could see his face then? A Yes, sir.

Q Did not you see this defendant, Henry Stahl, then -- you saw him? A I did.

BY THE COURT:

Q You knew him? A Yes.

BY MR. CLARKE:

Q What did he do? A He run towards Rivington Street.

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Q You ran towards him? A In the meantime, some passersby --

Q You got nearer to him? A Yes, I ran too.

Q And he got nearer to you? A Yes.

Q You both approached each other? A Yes.

Q You were a police officer seeking to arrest a man?

A Yes.

Q You kept your eyes upon him? A Yes.

Q How long before you caught him -- it was not more than two seconds, was it? A About a minute.

Q A minute, sixty seconds? A Yes.

Q Sure about that -- to get across the street twenty-five feet? A It was more than twenty-five feet.

Q Fifty feet? A About forty feet.

Q It didn't take you a minute to run forty feet?

A Well, it must have took less, then.

Q You kept your eyes upon him? A Yes.

Q You did not want him to get away? A No.

Q You thought he had committed a crime? A I did.

Q You mean to say the man you caught, as you ran towards him, was not the same man who turned around and ran towards you? A Yes.

Q What? A Yes.

Q What is your answer? A I said yes.

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Q It is the same man? A Yes.

Q It was the same man? A Yes.

Q You have not any doubt about it? A Yes.

Q Have you any doubt about it; you say yes? A No doubt.

Q What you testified before the Magistrate was your conscientious opinion of what took place? A I didn't have time really to consider this thing over.

Q We don't want you to consider it over -- you remembered what took place before? A Yes.

Q Did you have any intention to tell anything before the Magistrate that was not strictly true? A No, sir; not that way.

Q Then you came down to the District Attorney's office?

A Yes.

Q And you made a deliberate, sworn statement before the District Attorney? A Yes.

Q And signed it and swore to it? A Yes.

Q That you intended to be true? A Yes.

Q In that you stated, "I then saw the defendant Harry Stahl walk from Fitzpatrick, and when he got about seven feet away he pulled out a revolver from his pocket and shot twice at Fitzpatrick. Fitzpatrick ran after the defendant Stahl, who ran down Sheriff Street to Rivington, where I arrested him." Didn't you so state to Mr. Kernochan, the



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District Attorney? A Yes.

Q And you swore to it? A Yes.

Q You intended to tell the truth? A Yes.

Q It was the truth? A There is a doubt.

Q Why is it there was no doubt before the Magistrate, and no doubt when you made the statement before the District Attorney, but now here you have a doubt; why is that? A Because my conscience feels that way.

Q Nobody has talked to you? A No.

Q Sure about that? A Yes.

Q Armstrong has talked to you? A I have spoken to them, yes.

Q Who else? A We have not spoke about the case, though.

Q Did you talk to Mr. Gray, the Assistant District Attorney, about this case? A Yes.

Q Didn't you tell him then there was no doubt about the defendant being the man? A Yes, I did.

Q Last Saturday? A Yes.

Q Your doubt has arisen since last Saturday? A Yes.

Q What has caused it? A Because I was mistaken in distances -- for that reason -- that I thought the man that shot this man -- there may be a doubt in my mind.

Q We don't ask you to recognize his face when you first

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saw him, but we are trying to find out if it was the same man you finally arrested -- you say it was -- the man you finally arrested was the man you saw fire, was it not?

A Yes, sir.

Q It does not take any great amount of eye-sight to keep a man in sight, even if you don't recognize who he is until you catch him, does it? A No, sir.

RE-CROSS EXAMINATION BY MR. SACHS:

Q For a short time before you heard the shot fired, you saw these people in front of 77 Sheriff Street? A I did.

Q And of the people who were standing there in front of that store, there were some with their backs turned towards you? A Yes, sir.

Q About how many had their backs turned towards you? A Two.

Q It was after the shots were fired that those two, among others, turned around and ran towards you? A Yes.

Q Did you see the face of those whose backs were turned towards you, before the shot was fired? A No.

Q Were they standing close together? A Yes.

Q It was after the shot was fired that they started to run towards you? A Yes.

Q You say that among the two whose backs were turned

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towards you, Stahl was one, is that right? A His back?

Q Yes. A Yes.

Q His back was turned towards you? A Yes.

Q You say it was one of the persons whose back was turned towards you, who fired the shot? A Yes, sir.

Q Now, can you swear which of those two persons held the revolver? A No, sir.

BY THE COURT:

Q How close were they standing together? A They were together in a bunch, like.

Q When the shots were fired? A Yes.

Q Why did you say that the defendant walked seven feet away before he fired the shot? A He did walk seven feet away.

Q Why do you say at the time the shot was fired, they were standing in a bunch together? A Not when the shots were fired.

BY THE NINTH JUROR:

Q Tell me whether he had on his overcoat that night?

A Overcoat?

Q Yes. A No.

BY MR. SACHS:

Q Did any of the others have on overcoats? A I don't remember.

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BY MR. CLARKE:

Q Did you see this boy, Jacob Berger, there? A No, sir.

Q Look at him? A I know him.

Q When did you see him? A The next day.

Q Where? A I think it was Essex Market Court.

Q Have you talked with him about his testimony in this case? A No, sir; I have not spoken at all to him.

Q Did you ever tell this boy what he should say on any occasion? A No, sir.

J A C O B B E R G E R , called as a witness in behalf of  
the People.

BY THE COURT:

Q How old are you? A Eleven years.

Q Do you go to school? A Yes.

Q What school? A Sheriff Street Public School.

Q What is your religion, Hebrew? A Yes.

Q Do you go to church at all? A Yes.

Q Every week? A Yes.

Q Now, do you know why they brought you down here?

A As a witness.

Q To tell the truth about a certain thing? A Yes.

Q Do you know what it is to take an oath, to tell the truth, to swear that you will tell the truth? A Yes.

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Q Suppose you took an oath to tell the truth, and did not tell the truth; what would happen to you? A Be put in prison.

Q Do you think it would be wrong to swear to tell the truth, and not to tell it? A Yes.

Q To swear to tell the truth and not tell the truth, do you think it would be wrong? A Yes.

Q And if you swear to tell the truth, you will tell it? A Yes.

Q And nothing more? A Yes.

Q Do you think you can do that? A Yes.

THE COURT: I will let him be sworn.

(The witness is sworn, and testified as follows:)

DIRECT EXAMINATION BY MR. CLARKE:

Q Where do you live? A 74 & 76 Sheriff Street.

Q In this city? A Yes, sir.

Q How old are you? A Eleven years.

Q Who do you live with? A I live in the house 74 & 76 Sheriff.

Q Who with? A Father and mother.

Q Now, do you remember the night of November 1st, 1904? A Yes.

Q When this trouble took place? A Yes.

Q Do you remember some political meeting on the corner

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there? A Yes.

Q Which corner was it on? A Sheriff and Rivington.

Q By the saloon? A By the druggist's.

Q Now, do you know this officer Meyer, who was on the stand? A Yes.

Q He is the policeman along there? A Yes.

Q Do you remember being out on the street that night?

A Yes.

Q What time? A Half-past eight.

Q You were out there at half-past eight? A Yes.

Q What were you doing? A Playing with the boys.

Q Where were you, what street were you on? A On the other side Sheriff, 74 & 76.

Q Right in front of your house where you live? A Yes.

Q Do you know the saloon across the street there?

A Yes.

Q What number is that? A 77.

Q Who keeps that? A Hosie Henderer, the boss.

Q He is the boss? A Yes.

Q Did you know Richard Fitzpatrick? A Yes.

Q Do you know his brothers? A Yes.

Q Do you know this defendant? A Yes.

Q What is his name? A Harry Stahl.

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

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Q Did you see him that evening? A No.

Q Did you see Richard Fitzpatrick that evening?

A Yes.

Q Where? A On the sidewalk.

Q Whereabouts? A About 77, by the beer saloon, or  
75.

Q Did you see anybody come out of that saloon about  
8:30 that night? A Richard Fitzpatrick and Tom McCauley.

Q You know Tom McCauley? A Yes.

Q Anybody else with him? A No, sir.

Q You mean you did not recognize anybody else? A No,  
sir.

Q As they came out of the saloon, what direction did  
they go in? A Wrnt to Rivington.

Q Down towards Rivington? A Yes.

Q Turned down right as they came out? A Yes.

Q Did they stop to talk on the curb there? A No.

Q Sure about that? A Yes.

Q Were you watching these men carefully, or playing?

A I was playing.

Q So you would not be sure about that, would you?

A No.

Q Did you hear any shots fired? A Yes.

Q How many? A Two.

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Q How far apart? A About ten feet apart.

Q How close were the shots to each other, how long a time between the two shots? A Five minutes.

Q Take a pencil and rap on the table, the distance between the shots?

(The witness indicates by striking twice on the table as directed.)

Q You would not call that five minutes? A No, sir.

MR. CLARKE: We will agree that that is about two seconds.

MR. SACHS: No.

THE COURT: The jury can judge what it is.

BY MR. CLARKE:

Q Were you looking towards the other side of the street when these shots were fired? A Yes.

Q How many men did you see over there then? A Two men.

Q Who? A Richard Fitzpatrick and Tom McCauley.

Q Didn't you hear McCauley say something to Fitzpatrick?  
A Yes.

Q What was it? A He said, "Go on and run".

Objected to.

MR. CLARKE: We claim that we have other proof that the defendant was there.

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BY THE COURT:

Q Was Harry Stahl there at the time? A No, I did not see Harry Stahl.

BY MR. CLARKE:

Q Where was he? A I think he was around Rivington Street.

Q Had you seen him that evening? A No.

Q How do you know where he was? A A boy told me.

Q Did you see anybody run down the street? A Richard Fitzpatrick.

Q Who was he running after? A He ran around the corner.

Q He ran after somebody? A I don't know who he ran after.

BY THE COURT:

Q When these shots were fired, as soon as you heard them, did you turn around and look, or were you looking at the time? A I was looking at the boys playing.

Q When you heard the shot, did you turn around and look? A Yes.

Q Did you see who did the shooting? A No, I did not see.

BY MR. CLARKE:

Q Why did you tell the District Attorney that you saw--

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Q You know Mr. Kernochan? A Yes.

Q The Assistant District Attorney? A Yes.

Q You were in his office on the 17th of January? A Yes.

Q Why did you tell him that you saw this defendant shoot Fitzpatrick? A I had afraid.

Q Did you sign that affidavit? A Yes.

Q That is your signature? A This?

Q No, look at your signature, Jacob Berger? A Yes.

Q You can write? A Yes.

Q And you can read? A Yes.

Q After talking it over with Mr. Kernochan, do you remember his calling in a stenographer and having it written out? A Yes.

Q It was read over to you? A Yes.

Q And you signed it? A Yes.

Q Then a gentleman came in and swore you? A Yes, sir.

Q A Notary? A Yes.

Q Do you mean to say you told an untruth then?

A I had afraid that night, that day --

Q What? A I had afraid.

BY THE COURT:

Q Finish your answer. A I was afraid.

Q That day? A Yes.

Q That they would do what? A I don't know.

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Q Who do you mean by "they"? A Mr. Kernochan.

Q You were afraid of the District Attorney? A Yes.

BY MR. CLARKE:

Q What did he do to you? A Nothing.

Q He treated you nicely and kindly? A Yes.

Q Was he kind to you? A Yes.

Q Did he threaten you, make any threats to hurt you?

A No, but Dobby Meyer threatened me.

Q The officer? A Yes.

Q Have you known him a good while? A No, only since that night.

Q He threatened you? A Yes.

Q What did he threaten to do? A He said I should say that Harry shot it.

Q He said that you should say that Harry shot it?

A He told me to say all the things I don't know.

Q Then you did sign this paper? A Yes.

Q You did say to Mr. Kernochan, and sign an affidavit, that you saw Richard Fitzpatrick come out of the saloon?

A Yes.

Q 77 Sheriff Street, with Tom McCauley? A Yes.

Q "That saloon is on the opposite side of Sheriff Street from where I was standing"? A yes.

Q "Tom McCauley was out in the middle of the gutter

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and Richard Fitzpatrick was on the sidewalk"? A Yes.

Q "I heard McCauley say to Fitzpatrick, 'Hurry up, run, don't be afraid' -- I will leave that out -- I saw Harry Stahl, the defendant, and two or three other men whom I do not know, come from Rivington Street just as Fitzpatrick and McCauley came out of the saloon. I saw Harry Stahl take a revolver out of his pocket and fire two or three shots at Fitzpatrick. I saw Harry Stahl run away towards Rivington Street, and I saw Officer Meyer arrest Harry Stahl on the corner of Rivington and Sheriff Streets. After the shots were fired, I saw Richard Fitzpatrick run after Harry Stahl and then fall down on the corner of Sheriff and Rivington Streets." A Dobby Meyer forced me to say that.

Q Forced you to say that? A Yes.

Q Where have you been living since that affair?

A 74 & 76 Sheriff.

Q Right down in that neighborhood? A Yes.

BY THE COURT:

Q Where did you have the talk with Policeman Meyer?

A In Mr. Kernochan's office.

Q You heard him here just before you came up, -- you heard him say that he never talked to you; is that true?

A No, sir.

MR. CLARKE: Never told him what to say.

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THE WITNESS: He spoke to me in the Court.

BY THE COURT:

Q What did he say to you in Court? A He said, "Did you see Harry?" And I said -- I was afraid, and then I said yes.

BY MR. CLARKE:

Q Did David Meyer threaten you? A Yes.

Q Was Mr. Kernochan there? A Yes.

Q You know Mr. Kernochan? A Yes.

Q What did David Meyer say when he was there? A He said Harry Stahl shot.

Q He said that you should say that Harry Stahl fired the shot? A Yes.

Q Mr. Kernochan sat there? A Yes.

Q And heard what he said? A Yes.

Q Sure about that? A Yes.

Q What did Mr. Kernochan say? A Nothing.

Q He said nothing? A No.

Q What did the officer say he would do to you if you did not say that? A Put me in the biggest prison.

Q Who has been to see you about this, tell us about it, nobody will hurt you. A What is that?

Q Since you saw Mr. Kernochan, who has talked to you about this? A No one.

BY THE COURT:

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Q Has anybody talked to you about it? A No.

BY MR. CLARKE:

Q You talked to me this noon? A No, I did not tell you anybody talked to me.

Q You remember talking to me this noon? A Yes.

Q Didn't you say you had seen Mr. Sachs? A Yes, I have seen him.

Q When did you see him? A About two months ago.

Q Have you seen anybody else? A I didn't see no one else.

Q Have not any friends of this defendant been to see you? A No.

Q Swi Fox, you know him? A Yes.

Q Has he talked to you? A No.

Q Haven't you seen him at all? A No.

Q Do you know a boy called Kid Twist? A Yes.

Q Who is he? A A fellow.

Q He is a friend of the defendant? A Yes.

Q Has he talked to you? A No; he has not talked to me. No one has talked to me.

Q The only reason you signed this affidavit was because --  
A I had afraid.

Q Because the policeman and the ~~is~~ Assistant District Attorney made you sign it? A Yes.

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Q The Assistant District Attorney sat there while the officer threatened you? A Yes.

Q Did you cry? A No, sir.

Q Did you tell your parents about it when you went home?  
A Yes.

Q Who did you tell? A Father.

Q What did you say to your father -- didn't your father come with you when you first came over here? A Yes.

Q He told you not to say anything? A No, sir; he told me to say what I know.

Q Then you went home -- did your father stay here while you made your statement? A No, he went home.

Q You went home, and what did you tell him? A I told him I signed my name. I was afraid.

Q And that you told a lot of lies? A No, sir.

Q Didn't you tell him that? A No.

Q When did you first tell anybody that you told a lot of lies? A I didn't tell anyone I told a lot of lies. Just now I told you.

Q This was the first time you told anybody that this affidavit is not true? A Yes.

Q You never told anybody else that? A No.

Q Not even your father? A No.

Q Why didn't you tell somebody? A I told him that

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I signed my name. That was all.

Q You knew this man was going to be tried for this crime?

A Yes.

Q You knew you were going to be a witness? A Yes.

Q And yet you never told anybody you had been forced to swear to ~~it~~ a falsehood? A I never told anybody.

BY THE COURT:

Q You answered one of my questions in this way: I asked you if you swore to tell the truth and then you did not tell the truth, what would happen to you, and you said you would be put in prison? A Yes, sir.

Q Did you know that at that time, or did you learn that since? A Since that time. Since Dobby Meyer told me I would get in serious trouble.

Q Who told you that? A Dobby Meyer.

Q Then it is since you have made the statement to the District Attorney that you learned that you might go to prison if you swore falsely? A Yes.

Q You learned that from the policeman? A Yes.

BY MR. CLARKE:

Q And yet the policeman told you to swear falsely?

A Yes.

Q Do you want to go to prison? A No.

Q Weren't you down to see Mr. Kernochan two or three

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times? A Yes.

Q At which time did you sign the affidavit, the first time? A The last time.

Q You told the same story every time? A Yes.

MR. SACHS: No, he has not.

BY MR. CLARKE:

Q Did you tell anything different the first time?

A Yes.

Q What did you say the first time? A I told him when I heard the shots I ran up in the house.

Q That was all you said to Mr. Kernochan the first time? A Yes.

Q Did he ask you who fired the shot? A No, sir.

Q He did not ask you? A A little afterwards he asked me.

Q How long afterwards? A About a quarter of an hour afterwards.

Q It was the first time you went there? A Yes.

Q You told the whole thing then? A Yes.

Q First you told your story to Mr. Kernochan? A Yes.

Q He had this paper drawn up? A Yes.

Q He read it to you? A Yes.

Q Then you did not sign it the first day? A No.

Q But you came down another day and signed it?

A Yes.



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Q You had time to think it over? A Yes.

Q You had time to tell your parents if you were forced to swear to a falsehood? A Yes.

Q And yet you came down and then swore to it the next time? A Yes.

Q You did not say anything to Mr. Kernochan about not wanting to sign it? A No.

Q Did you tell Mr. Kernochan that the policeman had threatened you? A No.

Q The policeman was not there the second time?  
A No, sir.

Q Nobody threatened you when you signed this paper?  
A No, sir.

Q Is it not a fact that this is the truth, that you now want to tell a falsehood to save this man, is not that the truth? A What is that?

Q What you swore before Mr. Kernochan was the truth?  
A Yes.

Q And what you are swearing to now is a lie? A It was a lie before. I cannot see because there was too much men over there -- too much people over there -- how could I see?

Q You say now you saw Fitzpatrick and McCauley?  
A Yes.

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THE COURT: I hardly think the child is responsible, and while I would have him retained for further investigation of the very serious thing he states, in the meantime, if a motion is made to strike out his testimony I will grant the motion.

MR. CLARKE: That is, assuming what he states is true.

THE COURT: What?

MR. CLARKE: About his being threatened, but we have Mr. Kernochan here, who will dispose of the story that he was threatened,-- you mean throw it out because he changes it so often?

THE COURT: First, because it is very unreliable. Nobody believes for a minute that Mr. Kernochan would allow a threat to be made. I will let the testimony stand, and go to the jury, if you like.

MR. CLARKE: Let it go for what it is worth.

MR. SACHS: Yes.

MR. CLARKE: I offer this hat in evidence. There is no dispute that it was the hat worn by the deceased on the night in question.

MR. SACHS: No.

Received in evidence, and marked People's Exhibit 3.

THE COURT: Either the policeman was wrong in making

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the arrest and making the charge, or he was wrong subsequently in his testimony here. He may have been conscientious in both, but it brings the police greatly into disrepute when they are charged, in the first place, with over-zeal in trying to convict innocent men, and then it confirms that view of the case which some of the public take when one of them admits that he did reconsider and change his testimony in most essential particulars. But, I will let the case go over until half-past ten to-morrow morning.

THE CLARKE: I would like to examine Dr. Bell now, before we adjourn, with your Honor's permission.

THE COURT: Very well.

C H A R L E S B E L L , called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

BY THE COURT:

Q You are a physician and surgeon? A Yes.

Q Attached to Gouverneur Hospital? A Not at present.

Q You were there on the 1st of November last? A Yes.

Q Did you bring the man Fitzpatrick to the hospital?

A Yes.

Q What was his condition? A His condition was serious.

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Q What was he suffering from? A From a wound over the heart.

Q Did he die from that wound? A Yes.

Q In the hospital? A Yes.

Q And was delivered over then to the Coroner's representative? A As far as I remember.

BY MR. CLARKE:

Q Did you observe his clothes, whether there was any powder marks? A No, sir; the shirt was open when I took him.

Q Did he have an overcoat on? A No.

Q Did the bullet wound pass through? A Went through --

Q What clothes? A The undershirt.

Q Did not pass through his coat? A I did not see it -- the shirt was thrown back.

Q Did you notice any marks near his eye? A No, I did not.

Q Was he conscious? A Yes.

Q Was anything said by him in the presence of the defendant? A He would not talk.

Q Do you remember the officer bringing this defendant in, while he laid there in the drug store? A I remember him bringing someone in, but I couldn't say whether it was

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this man.

Q Was there anything said by the deceased as to who  
whot him? A I don't remember.

BY THE COURT:

Q Did he at any time, while in the hospital, make any  
statement as to who shot him? A I did not see him after I  
brought him in.

The Court admonishes the jury in accordance with  
Section 415 of the Code of Criminal Procedure, and takes  
an adjournment until to-morrow morning, February 28th,  
1905, at 10:30.

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February 28, 1905.

TRIAL RESUMED.

C H A R L E S B E L L , recalled by the People, testified  
as follows:

BY MR. CLARKE:

Q As I understand it, this deceased, Richard Fitzpatrick, died the same night he was shot, November 1st? A Yes, sir.

Q About ten o'clock? A 10:55.

Q When did you see him? A I saw him at 8:15.

Q Just after the shooting? A Yes, sir.

Q You went with him to the hospital? A Yes, sir; and reported the case to Dr. Batcheller, and did not see him afterwards.

Q State whether or not, at the time you saw him, in your opinion, there was any chance of recovery? A No.

Q None whatever? A No.

MR. CLARKE: That is sufficient foundation.

THE COURT: No -- no difference what he thought -- it is what the dead man thought.

MR. CLARKE: I want to show both, that he had actually no chance to live --

THE COURT: If this man thought it, that would

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lay a foundation.

MR. CLARKE: I understand you have to lay both.

THE COURT: If you show simply that the man believed he was dying, and that he had no hope of recovery, those are the two essential facts.

MR. CLARKE: I thought you had to show he was actually dying.

THE COURT: Oh, well, it is not necessary. Of course, unless he dies, you cannot give a dying declaration.

MR. CLARKE: He died within two hours.

THE COURT: The doctor's opinion on the subject is relevant only in this, if he communicated it to the dying man, and then if the dying man believed it.

BY THE COURT:

Q Did you inform him that he was certain to die?

A No.

LILLIAN FITZPATRICK, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. CLARKE:

Q You are a sister of the deceased, Richard Fitzpatrick?

A Yes, sir.

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Q Where do you live? A 84 Ridge Street.

Q Did you visit your brother, Richard Fitzpatrick, at the Gouverneur Hospital on November 1st, 1904? A Yes.

Q After he was shot? A Yes.

Q At what time did you arrive at the hospital? A About ten minutes to nine. I got there just as they brought him in.

Q Did you see him before he went to the hospital?

A Yes, sir; I was with him in the drug store, as they picked him up and brought him in.

Q Did you live near the scene of the shooting? A Yes, sir; about two blocks.

Q You were summoned and went to the drug store?

A Yes, sir; I went there just as the ambulance came.

Q And you accompanied him to the hospital, or at least went there? A I went right down after the ambulance.

Q When he got to the hospital, was he conscious?

A Not then.

Q How long after did he regain consciousness? A I was there about fifteen minutes sitting alongside of him, and he came to.

Q Was he on a bed, or what? A Yes, sir; he was in bed.

I said to him, "Rich, were you fighting?" And he said no.

MR. SACHS: I object to any conversation had be-

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tween the deceased and this witness, not in the presence of the defendant.

Objection sustained.

MR. CLARKE: We offer this evidence as laying the foundation for the dying declaration.

THE COURT: It is no foundation.

MR. CLARKE: I do not see how you can have a dying declaration unless you can give it.

THE COURT: She asked if he was fighting.

MR. CLARKE: That is the opening of it.

BY THE COURT:

Q You knew he was wounded? A Yes, but he was only out of the house about fifteen or twenty minutes.

Q You knew he was wounded -- that is all that is necessary.

BY MR. CLARKE:

Q Leave out about fighting -- I will have to lead the lady in order to direct her to what I want.

THE COURT: No, direct her without leading her.

BY MR. CLARKE:

Q Did he say anything about his condition?

THE COURT: First you have to show this, that this man believed he was dying, and that there was no hope of recovery.

MR. CLARKE: How can I show it, except by what he

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said?

THE COURT: On that subject.

MR. CLARKE: That is just what I ask her. What did he say about his condition.

BY THE COURT:

Q Did he say anything about himself as to his condition?

A Not just then. He asked me for a drink of water.

BY MR. CLARKE:

Q Leave that out, and come down to the time that he did say anything on that subject? A Yes.

Q What did you say to him and he to you? A He said to me, "Lil, I guess I am a goner". I said, "Well, Rich, do you think they have the right fellow?" And he said, "Yes, that son-of-a-gun done me". That was just what he said to me.

Q Was this before or after the defendant had been there? A After.

Objected to.

BY THE COURT:

Q Up where? A To see him.

BY MR. CLARKE:

Q They brought the defendant up there, and then took him away? A Yes.

Q This conversation was after that? A After that.

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BY MR. CLARKE:

Q Was there anything else said? A No, sir. That was the last thing he said before he died, and he did not say that until he thought he was going. He said, "Lil, I guess I am a goner."

Objected to.

THE COURT: Strike that out.

BY MR. CLARKE:

Q What did he call you? A He said, "Lil, I guess I am a goner", and I said, "Rich, have they got the right fellow?" And he said, "Yes, that son-of-a-gun done me", and he was the only one that was brought before him.

CROSS-EXAMINATION BY MR. SACHS:

Q Were you present when the defendant was brought before him? A No, they did not let me go upstairs. I was downstairs.

BY MR. CLARKE:

Q You knew he had been there? A Yes.

Q Did you see him brought in there? A I saw him brought in. He was brought in the drug store when I was there.

BY MR. SACHS:

Q Did your brother say anything when he was brought in the drug store? A He was unconscious.

Q Do you know if he was brought to your brother's bedside when they took him in the room where your brother was lying?

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A He was taken upstairs.

Q You were downstairs? A Yes.

Q Do you know if they took him before your brother?

A The officer said they did.

Q I do not ask you what the officer said, what you saw?

A That was what I saw, they took him upstairs. I don't know where they took him.

Q You don't know if they took him before your brother or not? A No.

BY THE COURT:

Q Did he say anything about the defendant Stahl having been brought before him? A No, he did not say anything about him at all, but he told me the week before about Stahl. He told me about him standing behind him all the time.

THE COURT: That won't do.

THE WITNESS: He had some suspicions upon him.

THE COURT: Strike all that out. It is only what occurred right then and there, just before he died, that you are concerned in, and nothing else.--

BY THE COURT:

Q Did you know at the time that you were talking to him, that when he was asked if Stahl shot him, that he shook his head? A No, sir.

Q You did not know that? A No, sir. I do not see.

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how he could do it; he was unconscious when I went up.

Q The police officer says he did? A When I went up he was moving around the bed, and shaking himself in all directions. I was there ten or fifteen minutes before he came to.

BY THE COURT:

Q The police officer swears he refused to identify Stahl as the man that shot him. You were not aware of that?

A No, sir.

MR. SACHS: I ask that the testimony of the witness be stricken out, on the ground it is incompetent.

THE COURT: If it is offered as a dying declaration, I shall have to exclude it.

MR. CLARKE: He said, "I am a goner".

THE COURT: "That son-of-a-gun done me"--that is not definite enough for a dying declaration. It must be shown that the person knows he is dying. He said "I guess I am a goner". A guess is not sufficient. The only reason a dying declaration is received when not sworn to, is because it is supposed that the immediate and certain presence of the coming of death creates such solemnity that the person will speak the truth, and therefore it is regarded as equivalent to an oath or testimony on the stand. But, as an essential, before it can be received, it must be shown that the person

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believed he was dying -- not a guess that he was dying, --  
that he had reason to believe he was dying.

MR. CLARKE: There was one additional statement  
that the young lady omitted to give, about his suffering  
very severe pains through the heart.

THE COURT: That makes no difference.

MR. CLARKE: And then saying "I guess I am a goner".

THE COURT: "I guess I am a goner" is not sufficient  
evidence that he believed he was going to die. Then as  
to the peculiar testimony given by the other witnesses  
for the People, I do not think I need make any comment  
upon it, but I shall have to rule that out as a dying  
declaration. In many cases it has been held, after a  
man makes what is a valid declaration, and then adds,  
"but I hope I will get well" or "I think I will get well",  
that then makes it objectionable so that it cannot be  
received on the trial, should he die.

NATHAN SCHECHTER, called as a witness in  
behalf of the People, being duly sworn and examined,  
testified through the official interpreter, Mr. Dollin,  
as follows:

BY MR. CLARKE:

Q Where do you live? A 75 Goerck Street.

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Q What is your business? A Embroideries.

Q Who do you work for? A Lavine, West Broadway.

Q You remember the night of November 1st, 1904? A Yes.

Q Were you in the neighborhood of Sheriff and Rivington Street on that night, about 8:30 that night? A Yes, I was near Rivington.

Q You saw this police officer, David Meyer, there, didn't you? A I saw a policeman there.

Q You saw a big crowd there? A Yes.

Q You heard some shooting there, didn't you? A No.

Q Do you know this defendant, Harry Stahl? A No.

Q Did you see him that night? A No.

Q Did you see any man with a revolver in his hand that night? A No, sir.

Q You told the officer you saw him? A Yes.

Q And you later told it to one of the Assistant District Attorneys, Mr. Kernochan, didn't you? A I don't know what they wrote down, because I cannot understand English, and I don't know what they told me.

Q You cannot speak English? A I can a little, but not much.

Q Didn't you talk with me up in my room, a half an hour? A Not much.

Q In English -- did I speak German to you? A No --

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a little bit, I couldn't understand all the words.

Q Did you make this statement about the revolver being in the defendant's hands, to anybody besides the officer?

A No.

Q You told the officer that? A Yes.

Q When did you tell that to the officer, the same evening? A No, Sunday.

Q The following Sunday? A I was in a dancing place at that time, and I was in a hurry.

Q I do not ask you that -- when did you tell the officer?

A Sunday.

Q Where did you tell him? A In a dancing place.

Q Did the officer come there? A Yes.

Q After you? A After me.

Q Do you know who told him about you? A I can't recollect that.

Q And did you leave the dancing place with the officer?

A No.

Q You talked with him there in the dancing place?

A Downstairs.

Q What did the officer say to you?

Objected to; sustained.

Q Then you afterwards visited the District Attorney's office? A Yes.

Q Who did you see, Mr. Kernochan, a young man that

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was here yesterday, did you see him there? A I saw an officer, and another man, and the District Attorney.

Q You repeated your story there, didn't you? A I couldn't understand that.

Q Did you repeat the same story up there in the District Attorney's office? A I told upstairs that I told so the policeman.

Q Was not the statement prepared for you to sign?

MR. SACHS: I object to anything that may have occurred between the witness and the District Attorney, not in the presence of the defendant at the bar.

THE COURT: The People have a right to show that if this witness now testifies differently from what he did before the District Attorney, they have a right to show that, and that has been the principal feature in this case.

Objection withdrawn.

THE COURT: That has been the principal feature in this case, the change of testimony, and I commend it to the careful attention of the District Attorney.

BY MR. CLARKE:

Q I ask you if what you said to the District Attorney was written out in a paper like that? A I don't know what was written there.

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Q Did you see the officer arrest the defendant? A Yes.

Q You did see that? A Yes.

BY THE COURT:

Q Didn't you testify a few minutes ago that you did not see the defendant that night at all?

BY MR. CLARKE:

Q You said a minute ago that you did not see the defendant at all that night? A I don't know who it is, who it was. I saw that a man was conducted.

Q Conducted? A Conducted, led.

Q Did the man who was arrested have a revolver in his hand? A No.

Q Why did you say he did? A I was in a great hurry to go into the dancing place, and I didn't know what I was doing.

Q Who did you speak to first about it? A To nobody.

Q You say you were in a great hurry to get away, so you said something and then went away, who did you say it to?

A I said in my home that I saw the man arrested.

Q You did not speak to anybody there at the time?

A No, sir.

Q Did you see a revolver in the hand of the man before he was arrested? A No, sir; I just arrived there.

Q What was the man that was arrested doing when you got there? A He did nothing. I came just there, and I saw that

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the policeman was holding him, and then I immediately went away.

Q Did you see the man that had been shot? A No, there was a big crowd around.

Q You went home and told somebody that you had seen this affray or this trouble? A I went up to my aunt's, and at my aunt's place I didn't say anything.

Q You finally reported it to your family, is that it? A Yes.

Q What did you say? A The same thing, I saw the man was led.

Q When did you first say you saw a revolver in his hand? A Sunday, when the officer came to the dancing place.

Q You had not told any of your family that you saw a revolver? A Home I did not say anything.

Q So the officer when he came there, he did not know that you had said anything about seeing a revolver? A I don't know if he knew it.

Q Did he ask you to say that, or did you say it voluntarily? A He did not say anything, but I was in a great hurry to go upstairs, and so I said something.

Q That is twice you were in a hurry, the night before you were in a hurry to get away? A It is the same day.

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CROSS-EXAMINATION BY MR. SACHS:

Q After you got to Sheriff Street, did you hear any shooting? A No.

Q There was a big crowd around, you say? A Yes.

BY THE COURT:

Q Did you know why this man was arrested, the man the officer took away? A I did not ask, and I did not know it.

Q You did not ask? A No, I did not ask.

Q Did not think it necessary to find out what that crowd was gathered there for? A No, sir; I immediately left.

Q Was the crowd in front of a drug store? A Yes, sir.

Q Didn't you hear anybody say that a man had been shot? A Yes, sir; I heard it.

Q Where did you hear it, and how? A When I passed the crowd, I heard that they were saying it.

Q I asked you a little while ago if you knew why this man was arrested and taken away, and you said you did not?

A I did not know from the man himself, but I heard from the People.

J A C O B B E R G E R., recalled by the People.

BY MR. CLARKE:

Q I asked you yesterday if you talked with anybody about this case? A No, sir.

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Q After you left the District Attorney? A No, sir.

Q Did you go to any lawyer's office? A No.

Q Do you know Mr. Sachs? A Yes.

Q Did you go to his office? A No.

Q At no time? A No, sir.

Q Did you go to any office where Mr. Sachs was? A No, sir.

Q Did you sign any paper? A Yes, sir.

Q Where? A In Mr. Sachs's office.

DAVID MEYER, recalled by the People.

BY MR. CLARKE:

Q The boy says that he made his affidavit for the District Attorney under threat from you, that he would get into serious trouble if he did not tell what he knew; is that so?

A No.

Q Did you have any conversation with him about it?

A I never did, only in the District Attorney's office, and Mr. Kernochan was there at the time, every time I spoke to him.

Q Did you threaten him there? A No, sir.

THE COURT: I do not think this is competent just now. You have not closed your case yet. You cannot call one of your witnesses to contradict another before you

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close. You might after the defence has finished.

MR. CLARKE: I want to clear this up. It is a peculiar state of facts.

THE COURT: I know, but you may call him after the defence has finished, in rebuttal, but you cannot call one of your witnesses in your case, in chief, to contradict another one.

THE PEOPLE REST.

MR. SACHS: The defendant moves the Court to take from the consideration of the jury the indictment charging this defendant with the crime of murder in the first degree, and to instruct them to acquit upon the ground that the People have not made out a case.

THE COURT: Well, I agree with you, the People have not made out a case. There is no question about that. The testimony given is of such a character as to certainly leave the case surrounded by every reasonable doubt. As to the child that is brought here to swear, why, of course I would strike out his entire testimony on account of the numberless contradictions of the boy, and the fact that while he seems to be bright in other respects, he seems to have no moral sense, and to be absolutely without it. As to the other witness. for the People, you see how he has changed his testimony,



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how his conscience reproached him, and therefore he changes his testimony. Why the man's conscience should lead him, two or three weeks after, to give a different relation of facts that occurred under his attention and required his official action, is something that is difficult to understand.

On the other hand, I think the defence ought to be proceeded with, but that would be a violation of a most important principle of law, perhaps, where a defendant is required to give testimony against himself, and perhaps convict himself. There is not a sufficient case made out by the People to require that.

MR. CLARKE: Could not the jury take this position, that they believed the officer's first testimony on his direct?

THE COURT: I do not think they could.

MR. CLARKE: And on re-direct -- the last words, really, were in favor of the People's case.

THE COURT: That is true, but I am looking at what the appellate courts will say, reading that testimony in cold blood; they will simply say that they do not believe one solitary word of your witnesses; they won't believe the officer; they won't believe the child -- and when I say the other witnesses, I except the young

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lady who testified here. Of course, they would believe her, but at the same time her testimony did not establish a dying declaration in the sense of the law, and therefore the People have nothing to stand upon, and I should have to charge you, gentlemen of the jury, that if you found any one of the witnesses had wilfully and deliberately sworn falsely, you are at liberty to disregard their entire testimony. Of course, if you throw out the policeman's testimony and throw out the boy's testimony, then there is nothing to stand upon, because the young lady's testimony, of course, I had to rule that it did not constitute under the law a dying declaration such as would be admissible before the jury.

MR. CLARKE: Should not the question whether it should be thrown out be left to the jury?

THE COURT: No, that is a question of law.

MR. CLARKE: I thought it was in their discretion to regard or disregard it.

THE COURT: Here is the question of law, is there evidence enough to sustain a conviction?

MR. CLARKE: Here is a man who says he saw the shooting, and on his redirect he says there is no doubt the man who threw the gun away is the same man that fired the shot, and the man that ran is the same man that threw

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the gun away, and the man he caught is the same man.

THE COURT: Suppose the jury did convict on that, the Court of Appeals would set the conviction aside beyond a question. There would not be a dissenting vote on it, upon reading the whole testimony, and they would not only do that, but very properly censure the Court for permitting it to go to the jury. That is the view I take of it. Now, the question as to whether there is sufficient evidence to go to the jury is a question of law for the Court to decide. As to the sufficiency of that evidence to convict, that is for the jury, that is a question of fact. I am obliged to hold under all the circumstances of the case that there is not testimony sufficient in this case to sustain a verdict of guilty, and while I may have my own views upon the subject, I have nevertheless to act according to the law and to direct an acquittal.

The jury rendered a verdict of Not Guilty.

THE COURT: I would say to the District Attorney that all the testimony in the case, with the exception of that of the sister of the deceased, to which there can be no possible objection at all -- she is no doubt a truthful witness -- that all the rest of the testimony be carefully submitted to the District Attorney's office.

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MR. CLARKE: Yes, I will take steps to do that.

THE COURT: That, of course, disposes of the case, and, the methods by which this result was made obligatory of course you may ascertain.

MR. SACHS: I told Mr. Clarke I would give him all the help I possibly could.

MR. CLARKE: Will you let me have that affidavit?

MR. SACHS: Yes.

THE COURT: I mean no reflection upon you, Mr. Sachs, in the remarks that I have made, but I do think there are suspicious circumstances enough about it to warrant a rigid investigation.

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