

START

1402

CASE

CASE #1402

INDEX.

Direct

Otto H. Schultze

7

CASE #1402

001

TELEPHONE

00114

-: INDEX :-

	Direct.	Cross.	Re-D.	Re-C.
Peter W. Bertrand,	13	23	39	42
Delia Murphy,	44	49		
William J. Burke,	75	79		
Michael Murray,	99	102		
Carmelo Presci,	124			
Salvatore Sciortni,	125			
Giuseppe Favaro,	128			

CASE #1402

Index.

Direct. Cross. Redirect. Recross.

Albert Klein,	130			
John Lupes,	133			
Francesco Ursa,	134	141	145	
Giuseppe La Bella,	146	151		
Sebastiano Tornetta,	157	158	159	
Sebastian Delego,	159			
Antonio Di Narco,	164	171	175	
Giuseppe Trongale,	180	185		
Saberio Grecco,	186	189		
Guisepppe Rendo,	195	198		
Carmelo Giacobe,	202			
Orsa Bongione	210			
Giuseppe Bongione,	213	218	221	222
James Trainor,	223			
James E. Sheehan,	228	230		
Jeremiah O'Connell,	231	236		
Theron R. Strong,	242			
Constance J. Mancini,	243	247	252	
Theron R. Strong (recalled),	254	255	255	

CASE #1402

INDEX.

	Direct	Cross	Re-direct	Re-cross
S. Philip Goodhart	258	275	291	292
Frank Wade Robertson	293	303	317	
S. Philip Goodhart (recl'd)	319			
Ira O. Tracy	322	330		
Charles E. Bruce	352	356		

CASE #1402

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

1511

RECORDED

0012

-----X
THE PEOPLE
against
GIUSEPPE BONGIONE
-----X

Before
HON. WARREN W. FOSTER, J.
and a Jury.

Tried, New York, June 21st, 1911.

Indicted for Murder in the First Degree.

Indictment filed May 23rd, 1911.

A P P E A R A N C E S:

ASSISTANT DISTRICT ATTORNEYS FRANK MOSS and JAMES O'MALLEY,
for the People.

MESSRS. ABRAHAM J. LEVY and GERARDO J. CUOCO, for the Defense.

Frank S. Beard,
Official Stenographer.

CASE #1402

(A jury was impaneled and sworn)

New York, June 22nd, 1911.

MR. MOSS: The jury having been sworn, before I open to the jury, your Honor, I call attention to the fact that the only plea that appears on the papers is the plea of not guilty. There is no plea of insanity formally entered in the case.

MR. LEVY: The Code provides that insanity may be proven under a plea of not guilty. But if you require it, if his Honor requires it, the additional plea may be entered upon the record, claiming insanity at the time of the commission of the offense, but I did not think it was necessary under the provisions of the Code.

THE COURT: I am inclined to agree with Mr. Levy, that it is not necessary to specifically plead insanity.

MR. MOSS: Well, I merely wanted to call it to your Honor's attention, and address it to your Honor's judicial discretion.

THE COURT: I do not think it is necessary.

MR. MOSS: Now, your Honor will perceive that the State has had no notice, until this case was called for trial, that the defendant would interpose a plea of insanity. It has come to us as a surprise. I do not ask for any adjournment on that ground, but I ask the counsel for the

CASE #1402

3
defense, and the defendant, through counsel, whether they will permit a physical examination of the defendant to be made by professional gentlemen, nominated by us, and to be conducted in the presence of their own experts, if they desire. Will you permit that, Mr. Levy?

MR. LEVY: I have just this to say, that I decline, at this time, to make any agreement as to that proposition. As the case develops, if it becomes necessary, I will make a statement as to my attitude on that subject, but I make no statement now, and I object to any comment being made upon that subject now before the jury.

THE COURT: Well, there is no comment whatever being made.

MR. MOSS: No, I am not commenting upon it at all. But I merely say that, as the People have no constitutional right to invade the privacy of the defendant, I make that request in open court.

THE COURT: Well, you have made that request, and you have been answered, Mr. Moss, and the incident is closed.

MR. MOSS: yes, sir, I have been answered.

THE COURT: And now you say that you want to examine Dr. Schultze, and, to oblige you, I will take his testimony, and, to oblige Mr. Levy, I will then adjourn.

MR. LEVY: Thank you very much, sir.

CASE #1402

OPENING ADDRESS FOR THE PEOPLE

of

ASSISTANT DISTRICT ATTORNEY FRANK MOSS

May it please the Court

and you, Gentlemen of the Jury:

I shall take but little time in my opening in this case, because you know a great deal now about the nature of the case, and the respective claims of the People and the defendant, and I never like to put any coloring in a case of this gravity at this time, in my opening.

This is a composite jury that I am addressing. I have seldom seen a jury gathered together as you have been. We have examined ninety-six talesmen to get you twelve men, and there are men here from all the different parts of this court, who are associated together for the first time.

This will be an experience in your lives, gentlemen; and I want you, gentlemen, as we shall all of us do, to put your best thought, your best effort, your truest selves, into this case.

The case is of the first importance. The offense charged is always, in itself, an interesting subject, and it requires careful attention from the standpoint of the People as well as from the standpoint of the defendant, especially where it is of an emotional character, as when

0020

CASE #1402

002

temporary or emotional insanity is pleaded.

You will have the pleasure of sitting under one of the ablest Judges in the State of New York, perhaps in our entire country, in the trial of criminal cases. He is an able, experienced Judge, who rules promptly on all questions, and keeps us counsel down in our proper places; and I am sure you gentlemen will have no exhibitions of pyrotechnics, or fireworks, from counsel. Mr. Levy and I have known each other for many years, and have crossed swords when in opposition, and have been associated in the trial of other cases, and, if we stray inadvertently from the path of true gentility, it will be our fault, and certainly not that of the learned gentleman who presides.

And now I ask you to put aside everything that does not belong in this case; all thoughts of our business or social engagements, all temptations to frivolity or joking, because we have a serious business before us. And remember that the greatest interests of the State of New York are before you for determination, and likewise the greatest interests of the defendant.

Now, you have the facts that the People expect to present before you in substantiation of their charge against the defendant, the shooting of William Krugman by this defendant, in the way that I have outlined them to you, during the examination of the jury, and you have also the de -

CASE #1402

6
fendant's answer to the People's charge; and I will not
spend another moment in the opening of the case; because
perhaps jurors pay more attention to witnesses, when they
do not have too much by way of the opening address, because
then you are listening intently to see what the witness
will say next, because it is all new to you.

0023
CASE #1402

7

THE PEOPLE'S TESTIMONY.

OTTO H. SCHULTZE, Coroner's Physician, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Doctor Schultze, how long have you been a Coroner's Physician? A In the County of New York, in 1896 and 1897, and in the Borough of Manhattan since December 1902.

Q I believe you have performed some thousands, many thousands, of operations by way of autopsy, to determine the cause of death? A I have.

Q And besides those duties, you have been a practicing physician for a good many years? A Yes, sir.

Q And have a knowledge, as a physician, of diseases, of the human body and its diseases and accidents and injuries, and causes of death, etc.? A I have.

MR. MOSS: You will admit that he is a qualified expert, Mr. Levy?

MR. LEVY: Beyond any doubt.

BY MR. MOSS:

Q Now, did you perform an autopsy upon the body of William Krugman? A I did.

Q When? A On the 30th of April, 1911.

Q Where? A At the Morgue, in this city, Borough of Manhattan, foot of East 26th street.

CASE #1402

Q And was that body identified to you as the body of William Krugman by three witnesses, to wit, John Krugman, John Angier and Peter W. Bertrand? A Yes, sir, it was.

Q And you have seen those persons in court to-day?
A I have; some of them.

Q Now will you tell us first, or give us, in a few words, a description of the body that you examined? A The body was that of a man of medium height, of good muscular development, and probably 200 pounds in weight. There were four --

Q About the age of? A About the age of fifty, I believe.

Q Now, what injuries, if any, did you find on his body?
A There were four bullet wounds.

Q Where? A One entered on the right side, in a line dropped perpendicularly from the back fold of the right arm pit, and just below the tenth rib.

Another entered just in front of the back fold of the right arm pit, at the level of the seventh rib (illustrating).

Another entered between the lower angle of the shoulder blade and the back fold of the right arm pit, at the level of the sixth rib (illustrating).

And another entered four inches to the right of the spine, in the back (illustrating), just below the tenth rib.

The one that entered on the right side, just below the tenth rib, in a line perpendicular to the back fold of the right arm pit, passed through the right lung, the liver, the aorta,

CASE #1402

UNCLASSIFIED

0021

9

and the left lung, and was removed from below the fifth rib, in a line perpendicular to the back fold of the left arm pit, on the left side (illustrating).

Q Was it removed by you, doctor? A Yes. I have it in my possession now. The line of the direction of that track was across from left to right, and upwards at about an angle of 40 degrees to the floor, if the man was standing.

The one that entered just in front of the back fold of the right arm pit, at the level of the seventh rib, fractured the fifth rib, in a line corresponding to the front fold of the right arm pit, went through the right lung, and through the cartilage of the second rib on the right side, and the track was traced to an open wound that was immediately below the notch of the of the breast bone. That bullet I didn't find. But there was a wound of entrance, and a bullet track to an open wound.

The one that entered --

Q An open wound of exit? A No, of operation, an incised wound.

Q A wound of operation, an incised wound? A Yes, sir.

Q You mean by that a surgeon's wound? A A surgeon's wound. The bullet had entered on the right side of the spine, and underneath the tenth rib, went in a direction -- I followed the track -- upward and inward, and was found imbedded in the right transverse process of the tenth dorsal vertebra. That would be at a slightly higher level than the wound of entrance.

CASE #1402

That bullet I have.

The bullet that entered between the lower angle of the right shoulder blade and the back fold of the right arm pit, took a direction upwards, inward and forward, and was found lodged against a broken bone of the shoulder blade, just below the surface, where it articulates with the right arm. Those three bullets I have with me now.

MR. MOSS: Mark them for identification, please.

THE WITNESS: That is the one that traversed both lungs and the aorta.

BY MR. MOSS:

Q What is that, doctor? A This is the one that traversed both lungs and the aorta (indicating).

(It is marked People's Exhibit 1 for identification).

THE WITNESS: This is the one that was lodged against the shoulder blade (indicating).

(It is marked People's Exhibit 2 for identification).

THE WITNESS: And this is the one that was lodged against the right transverse process of the tenth dorsal vertebra.

(It is marked People's Exhibit 3 for identification).

BY MR. MOSS:

Q Dis you form an opinion as to the cause of the man's death? A I did.

Q What was it? A. Bullet wounds of both lungs, aorta and

CASE #1402

liver. Both the pleural sacs in which the lungs are contained were filled with blood.

Q And those are the bullet wounds which you have described? A Yes, sir.

Q Now you saw the fourth bullet in the possession of Officer Bertrand; did you not? A I did. It was exhibited to me at the time of the autopsy, by Peter W. Bertrand. And he pointed to the wound in the chest, and he said that he saw it removed from there.

MR. LEVY: I object.

MR. MOSS: No, don't state that. I consent to that being stricken out.

BY MR. MOSS:

Q Did you make any mark on that bullet, Bertrand's bullet?

A The one he exhibited to me?

Q Yes? A No, sir, but I think I can recognize it.

Q Did you make an entry upon your record? A I did.

Q The entry to which I call your attention is in your handwriting, and was made immediately after the autopsy? A It was.

(It is marked People's Exhibit 4 for identification).

MR. MOSS: Now, Mr. Levy, do you wish to ask any questions?

MR. LEVY: I have no questions to ask.

THE COURT: Gentlemen, do not talk about this case,

CASE #1402

nor permit any one to talk to you about it; nor form nor express any opinion thereon, until the case shall be finally submitted to you.

Shall we meet at ten o'clock in the morning, gentlemen?

MR. MOSS: Yes, at 10 o'clock.

THE COURT: Is that agreeable, Mr. Levy?

MR. LEVY: Well, I would prefer 10:30, if your Honor please. I have to travel quite a distance in the morning. A half hour would not make any difference. I shall be economical of time.

THE COURT: Well, we are all busy, and we want to get through with the case. It is coming to the beginning of the summer vacation. Then we will meet at the usual hour, gentlemen, 10:30.

(The trial of the case was then adjourned to Friday, June 23rd, 1911, at 10:30 o'clock).

CASE #1402

TRIAL RESUMED.

New York, June 23rd, 1911.

MR. MOSS: By consent, if your Honor please, witnesses on both sides will be excluded, except the professional witnesses.

THE COURT: Yes, they may go out, and remain out, until called.

PETER W. BERTRAND, of the 29th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

THE COURT: I take it we need not spend much time over the shooting and the death, Mr. Moss?

MR. MOSS: No, that will not take very long, your Honor.

THE COURT: Then put it in as rapidly as possible, please.

MR. MOSS: I will, sir.

DIRECT EXAMINATION BY MR. MOSS:

Q You were a police officer attached to the 29th precinct, at the time of the shooting of William Krugman, were you not?

A Yes, sir.

Q What first attracted your attention at that time?

A A citizen told me that a boy had been run over.

Q And when you had that information, what did you do?

A I run down.

CASE #1402

Q Where? A To 346 East 48th Street.

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

Q And what did you find there? A I found a brewery wagon standing in front of 346, with the driver sitting on the seat.

Q Yes; go on; what did you do? A Well, when he seen me, he got off his seat, and he said, "What's the matter?"

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

THE COURT: Strike it out.

BY MR. MOSS:

Q Well, you spoke to the driver and he got down off his seat? A Yes, sir.

Q And what else did you find there? A A crowd.

Q Did you find the child there? A No, sir.

Q The child was not there when you arrived? A No, sir.

Q But the driver was there, and got off his seat, and you had him there on the street? A Yes, sir.

Q And what did you do with him? A I said to him --

Q Never mind that. And what did you do with him? A I was about to take him around the corner and investigate.

Q Well, did you walk away with him from the scene? A Yes; about 75 foot.

Q Did you go as far as the corner? A Pretty near to the corner.

Q Pretty near to the corner? A Yes, sir.

CASE #1402

Q The corner of what avenue? A First Avenue and 48th Street, and then I said --

Q Don't tell your conversation. And then did you go back? A Yes, sir.

Q You took him back to the wagon? A Yes, sir.

Q And in taking him back to the wagon, was the crowd still around the wagon? A Well, they went with me, they followed us to the corner, and went back with me and him to the wagon.

Q They followed you to the corner and went back with you to the wagon? A Yes, sir.

Q Now, you had some conversation with him at the corner? A Yes, sir.

Q And then you went back to the wagon? A Yes, sir.

Q And as the result of the conversation, what did the driver do? Did he get up on the wagon? A Yes, sir; he got up on the seat of the wagon.

Q So that William Krugman got up on the wagon, and sat down? Did he sit down? A Was just about to take a sitting position, didn't sit down.

Q And was the horse still attached to the wagon? A Yes, sir.

Q And just as he was sitting down what happened?

A He just raised his hand to take the lines when I seen a man on the right side of the wagon

CASE #1402

Q How close to the wagon was the man when you saw him?

A He was pushing his way through the crowd, and he walked right up to the right wheel, on the right side of the wagon.

Q Now, do you see that man here? A Yes, sir.

Q Who is he? The defendant? A Yes, sir.

Q Now you saw him push through the crowd, and go to the right wheel of the wagon? The forward wheel? A Yes, sir.

Q Now, just state what he did, and state this carefully, because it may be important? A He raised his right hand, in which he had a revolver, and fired one shot. As he did, I turned around --

Q Now, wait a minute. Was he standing on the street when he fired? A Yes, sir.

Q Yes. Go ahead? A I turned around, and run around the back of the wagon, because there was so much of a crowd in front, and, before I got around to the right side of the wagon, he had fired five shots.

Q Did you see him firing the other shots after the first shot? A No, sir.

Q You saw the first shot fired? A Yes, sir.

Q But you heard the reports of the others? A Yes, sir.

Q And when he fired the first shot, he was on the ground?

A Yes, sir.

Q And when you got around to where he was, where was he?

A He was in a running position, as I just got around the

CASE #1402

back of the wagon.

Q He was running then? A He had just started away.

Q Well, did he run? A He did.

Q Where did he run? A He run to the sidewalk.

Q Yes? A In front of 344.

Q Did you follow him? A I did.

Q Did you call to him? A No.

Q Just followed him? A I followed him.

Q Well, go on, and tell us now carefully what occurred after that? A And he stopped, and turned around, and pointed the revolver at me, and pulled the trigger.

Q Yes. You heard the click? A I heard the click.

Q Of the trigger? A Of the trigger; yes.

Q Now, how far was he away from the wagon when he turned around and pointed the revolver at you, and pulled the trigger; how far from the wagon, about? A Well, from the front wheel to the hind part of the wagon.

Q From the front wheel where he had started from?

A Yes; about 15 to 16 feet.

Q And what further did you do? A Well, I kept right on after him, and there was five or six women standing in the doorway, and he pushed his way through.

Q That is, at 344? A Yes, sir. And I went in right after him, and as he got in the crowd of the women, he dropped the revolver, but I didn't stop to pick it up; I run right

CASE #1402

into the hall and got him at the back door of the house leading into the yard.

Q Did he run all the time? A He run all the time.

Q Now, when you got hold of him, what did he do or say?

A He got my left thumb in his mouth.

Q Yes? A And I started to wrestle with him, and he fell on the floor.

Q You say he got your thumb in his mouth? A Yes, sir.

Q Well, did he bite it? A Well, just started to bite.

Q Then you had a fight with him, did you? A I did.

MR. LEVY: I would not call that a fight.

BY MR. MOSS:

Q Well, what was it? A It was a fight.

Q Describe it, please. A Well, I got ahold of him and he got ahold of me, and we started to wrestle, and I tried to subdue him, and I couldn't, and I hit him on the forehead with the back end of the gun, the butt end of it.

Q Yes. And then what did you do with him? A Well, then we got up from the floor again together -- we both fell in the wrestle, and, as we were wrestling around, I just took a glancing blow with the back end of the gun, and caught him in the back of the head, when he tripped me, and he fell, and I took him by the back of the neck, and dragged him up behind the cellar door, and told him to stay there.

CASE #1402

Q Did he hear you then? A Yes, sir.

Q And did he mind you then? A Yes, sir.

Q And during this time did he speak to you?

MR. LEVY: One moment. I move to strike out, "Did he mind you".

MR. MOSS: Well, I consent to that question being stricken out.

BY MR. MOSS:

Q And when you told him to stay there, did he stay there? A Yes, sir.

Q Did he stand up? A No, sir; he sat on a small water can, about a 12-inch water can.

Q Did he look about him when he sat there? A No, sir; he just had his head down, and was bleeding (illustrating).

Q Where you had struck him? A Yes, sir.

Q What did you do with him then? A I waited there awhile until somebody came. I was there about five minutes when I seen another officer come in.

Q What happened then? A Well, when he come in, I told him to watch the man --

MR. LEVY: Objected to.

BY MR. MOSS:

Q Never mind what you told him. What did you do?

A I left the man in charge of the other officer.

CASE #1402

Q Yes? A And went out to look for the gun, and the gun had been gone.

Q The gun was gone by that time? A Yes, sir.

Q When did you take the man to the station house, you and the other officer? A We didn't take him then.

Q What did you do? A I went outside, and went over to see the deceased.

Q To see William Krugman? A Yes, sir.

Q And where did you find William Krugman? A Laying on the northwest corner of 48th Street and First Avenue; near that corner.

Q He was not then on the wagon? A No, sir.

Q Did you see what happened to Krugman when he was shot? A No, sir.

Q Your eyes were upon the defendant, were they?

A Yes, sir.

Q And when you saw William Krugman there, was he alive or dead? A He was dead.

Q You had seen him alive, and had arrested him? A I didn't arrest him.

Q Well, you took charge of him in some way? A I just took him around to investigate, to see how bad the child was hurt.

Q Exactly. You were investigating? A Yes, sir.

CASE #1402

Q And did you see the child there at all at any time while this proceeding was going on that we have spoken of?

A No, sir.

Q The boy had been taken away? A Yes, sir.

Q Well, after you had seen Krugman's dead body, what did you do? A Well, Dr. Bottsford was there, and he removed the bullet from a wound in the upper part of his chest.

Q You saw him do that? A Yes, sir.

Q And have you the bullet there? A Yes, sir.

Q Dr. Bottsford was the ambulance surgeon, was he?

A Yes, sir.

Q The ambulance came in charge of Dr. Bottsford?

A Yes, sir.

Q And this is the bullet which you saw Dr. Bottsford remove from the chest of William Krugman? A Yes, sir.

(It is marked People's Exhibit 5 for Identification.)

Q Did you afterwards see the body of William Krugman at the Morgue, in the presence of Dr. Otto H. Schultze, the Coroner's physician? A I did.

Q At the time that Dr. Schultze began the autopsy?

A Yes, sir.

Q And that is the person that you have testified to as the driver of the brewery wagon? A Yes, sir.

CASE #1402

Q Well, ultimately you got the defendant to the station house; did you? A The reserves come down later, and we took him up.

Q What time did you get him to the station house; how long after the shooting? A Oh, at about twenty minutes or half an hour; around six o'clock we got to the station house.

Q Would you recognize this garment which I show you (indicating a cardigan jacket)? A Yes. There's my signature. I put a tag on it.

Q Yes; did you recognize a garment, with a paper attached to it, with your signature on it? What is that?

A A cardigan jacket.

Q Why did you put your name on it? A I got it at the Morgue.

Q Well, what was it? A It was wearing apparel.

Q Whose wearing apparel? A Mr. Krugman's.

Q That is what I am trying to get at. Is this the cardigan jacket that William Krugman wore at the time he was shot? A Yes, sir.

Q And you identify it by the mark which you put upon it? A Yes, sir.

(It is marked People's Exhibit 6 for Identification.)

MR. MOSS: You may cross-examine, Mr. Levy.

CASE #1402

CROSS-EXAMINATION BY MR. LEVY:

Q When you got to the scene first, were there many people about? A I should judge about 300.

Q Where were they? Scattered about or all in one spot? A Around the wagon.

Q Grown people, at least, and children, I take it? A Yes, sir.

Q Men and women? A Yes, sir.

Q Were there many Italians around there? A Mostly all Italians.

Q Was there much excitement? A yes, there was.

Q Did you look to see whether a child had been run over? A No, I didn't look.

Q Did you look on the ground? A No.

Q When you say you didn't see the child, you don't know whether the child was there or not? A Well, Mr. Krugman told me the child --

Q No; never mind what he told you. You don't know whether the child was on the ground or not? A It wasn't on the ground when I went down there.

Q Did you look around the ground? A On the way down, I did.

Q On the way down to where? A Down to the wagon.

Q And you say there were about 300 people around? A Yes, sir.

CASE #1402

Q And you couldn't see down to the ground there; could you? A I could see down in front -- in the street.

Q What part of the street could you see, if there were 300 people there? A The middle of the street.

Q The middle of the street? A Yes, sir.

Q Do you know whether the child was under the wagon?

A The child was not under the wagon.

Q Do you know whether the child was under the horses or the horse? A The child wasn't under the horse.

Q Did you make any effort to see where the child was?

A No, sir.

Q Now, just answer my questions. I'm not trying to find fault with you at all. Now, the first thing you did was to try to get the driver off the wagon? A I didn't get him off. He got off himself.

Q Was he holding the reins at the time you got there?

A He was.

Q Was there a whip in that wagon? A I didn't notice.

Q Did you notice whether the wagon was empty or loaded?

A There were several barrels on it.

Q Beer barrels, I suppose? A Yes, sir.

Q Whether full or empty, you don't know? A I don't know.

Q Did you notice whether or not the deceased had in his hand a book of any kind? A No.

CASE #1402

Q Did you subsequently find a book at or near the scene of the run-over? A No.

Q Who besides yourself assisted in the transaction? What police officer, I mean? Who was the first police officer who came there after you got there? A James Trainor.

Q Any other officer that you can call to mind? A Well, the reserves come down. There was fifteen or twenty.

Q Can you remember the name of the officer who was put in charge of the defendant, when you went up there? A Yes, sir; James Trainor.

Q Now, the first thing that you noticed about this defendant was his pushing his way into the crowd; is that right? A Yes, sir.

Q But before that you had taken the driver from the wagon, a little way up the street? A Down the street; towards First Avenue.

Q Down the street? A Yes, sir.

Q Did the crowd follow you? A Yes, sir.

Q How much of a crowd followed you and the deceased? A Sixty or seventy-five people.

Q Were they doing anything at the time, the sixty or seventy-five people, so far as the deceased was concerned, towards him or against him? A No, they weren't doing anything.

Q Making no outcry against him? A No; they were sim-

CASE #1402

ply following me around.

Q. When you -- how much time elapsed from the time you took him from the wagon until the time that you returned to the wagon? A. About three minutes.

Q. And how soon after you returned to the wagon did you first see the defendant? A. Well, about, just about ten seconds, I should judge.

Q. Ten seconds? A. Yes, sir.

Q. Did you hear the defendant say anything? A. No.

Q. Did he make any outcry at all? A. No.

Q. Did you notice his appearance? A. I noticed him, yes; I noticed his appearance.

Q. Now, did you look at his face? A. Yes; his face looked kind of --

Q. Yes or no. Did you look at his face? A. Yes, sir.

Q. Did the man wear a hat? Was he fully clothed? Did he have a coat on? Describe that? A. He had a coat and hat on.

Q. And he had a hat on? A. Yes, sir.

Q. Now, will you describe his face as you first saw it?

A. He was sort of pale.

Q. Pale? A. Yes, sir.

Q. Did he seem to tremble? A. No, sir.

Q. Did you see his eyes? A. I did not take notice to his eyes.

CASE #1402

Q How far from him were you when the first shot was fired? A The distance of about five feet.

Q But you were on the other side of the way? A I was on the left and he was on the right.

Q And in between you was the horse and wagon and the hundreds of people around? A Between me was just the horse and wagon. There was no crowd between us. There was a big circle around (illustrating) and a wagon was in the center, and I was on the left-hand side and the defendant was on the right side.

Q Now, didn't you say in your testimony in the Coroner's Court that there must have been from five hundred to a thousand people? A There might have been that many.

Q Now, when you caught him, he was trying to push his way in through the women, past the women, into 344; is that right? A No, sir.

Q Where was he? At what particular spot was it that you finally got your hands on him? A Right in the door leading from the house into the yard.

Q Did you ascertain where it was that the defendant lived? A Not until I got to the station house.

Q Well, have you since found out where he lived then? A Yes, sir.

Q If so, where? A 335 East 48th.

CASE #1402

Q And how far was that from the scene of the tragedy?

A It was on the opposite side, about four or five houses up the street.

Q Well, you mean diagonally opposite the scene where this took place? A Yes, sir; it was on the north side of 48th Street, about five houses up from where the wagon was standing.

Q Now, just tell me the exact spot where the wagon was standing? A In front of 346.

Q East 48th Street? A Yes, sir.

Q And that was on the north side of the street; is that right? A No, it was five feet from the ^{south} ~~inside~~ side of the street, from the curb on the south side of 48th Street.

Q But I want to know whether it was on the avenue or the street that this occurred? A It was on the street, in front of 346.

Q I see. Where did you first see the child, if you saw the child? A I ^{have} never seen the child.

Q Did you look to see whether there were blood marks or stains around the wagon?

THE COURT: Mr. Levy, is all this necessary?

MR. LEVY: Absolutely necessary, in order to --

THE COURT: Let me understand it, if I do not.

There is no question at all, I take it, about the killing of the deceased by the defendant?

CASE #1402

MR. LEVY: Oh, no.

THE COURT: And while, of course, these inquiries of yours are germane and relevant, they would seem to me to be unnecessary, if you are going to concede, or not dispute, rather, the killing. Your defence, you have intimated, is one of insanity, and, therefore, the killing being conceded, it would seem to me that we could go right to that defence, and introduce evidence ^{tending} to show the sanity or insanity of the defendant.

MR. LEVY: If your Honor wishes me to state the purpose of this, I will do so.

THE COURT: Oh, no, not at all.

MR. LEVY: It is entirely material, as your Honor will see, when the case develops.

THE COURT: Well, then, we are going to take your word for it, and you may proceed.

MR. LEVY: And I will say now, there is no dispute that William Krugman came to his death from a pistol shot wound, from a pistol in the hands of this defendant, but these circumstances are necessary to properly present the condition of the defendant in the circumstances which accompanied the shooting.

THE COURT: I perfectly understand that, to a certain extent, you must have the surrounding circumstances

CASE #1402

brought to the jury's attention, but I do not know that you need have them in very much detail.

MR. LEVY: It is only preliminary, getting a word picture of the situation, that is all. I will ask that my last question be repeated, Mr. Stenographer.

(It is repeated by the stenographer.)

A I did not.

BY MR. LEVY:

Q Now, let us go back to the defendant. You finally got him, you say? A Yes.

Q And struggled with him, you say? A Yes.

Q Is that right? A Yes, sir.

Q And in the struggle with the man, did you observe his face then? A No, sir.

Q Did you see whether or not the man was panting?

A No, sir.

Q Or breathing heavily? A I didn't take notice.

Q Or trembling? A He wasn't trembling.

Q Did he seem to be laboring under great excitement?

A No, he just had his head down (illustrating).

Q I'm not talking of the time after you hit him, but of his condition before he was hit. Did he seem to be breathing heavily? I want you to describe the condition of the man, how it impressed you, how it struck you? A It struck me as if he was perfectly rational; just like any ordinary

CASE #1402

man being in a fight.

Q Well, was he perfectly cool and calm? A No, sir; not calm. He got hold of me and I got hold of him, and we started to wrestle.

Q Now, when you finally subdued him, you told him to sit down, or was he sitting down? A He was laying down.

Q Did you help him up? A No, sir; I dragged him.

Q You dragged him? A Yes, sir.

Q And how did he get to this stool that you say he sat on, or the pail? A I dragged him.

Q You dragged him? A Yes, sir.

Q And threw him on that? A I didn't throw him on.

Q Well, how did you put him on? A I told him to sit there.

Q Now, how did he sit there? A And he sat there, with his head down and his hand like this (illustrating), his left hand covering his forehead.

Q And what was he doing with his right hand? A He had it hanging on his right knee.

Q He had it hanging on his right knee? A Yes, sir.

Q Where was he bleeding from? A I couldn't tell you.

Q As matter of fact, was he bleeding from his forehead?

A I don't know. He was bleeding from all over his face. I don't know where he was cut.

Q How many times did you strike him? A Twice.

CASE #1402

Q Where? A The first time in the forehead, and the second time in the back of his head.

Q How long did he sit in that attitude, with his hand up to his head? A About ten minutes, I should judge.

Q How long were you in his presence while he sat in that attitude? A About six minutes.

Q Did he make any outcry or remark? A -No.

Q Did he moan? A No.

Q Did he make any sound at all that you could hear?

A No, sir.

Q Sat perfectly quiet? A Yes, sir.

Q And during the whole time had his hand to his forehead? A Yes, sir.

Q Now then you went out, did you? A Yes.

Q How long were you gone? A About five minutes.

Q You had put Trainor in charge? A Yes, sir.

Q And when you returned where was the defendant? A In the same place.

Q Sitting upon the same pail? A Yes, sir.

Q In the same position? A In the same position.

Q With his hand to his head? A Yes, sir.

Q Did he say anything then? A No.

Q Now, would you say that his hand covered his eyes or his forehead? A Well, I couldn't tell you that. He had

CASE #1402

his hand there, and he had his other hand down. I don't know whether he had the hand over his eyes or not. It was like above his forehead.

Q Now, Officer, let me ask you. You spoke about his sitting on a pail. What do you mean by a pail? A A water pail.

Q Well, that wouldn't be more than a foot high, would it? A Well, that's just about the height of it.

Q And he's rather a tall man, isn't he?

A Yes, sir.

Q Well, were his legs sprawled out?

A No, his legs were up like that (illustrating).

CASE #1402

Q And where did he rest his elbows? A On his knees.

Q Just show us the position. This way (illustrating)?

A Yes; his knees would be up like that, see, and he was sitting on a low can and he had his head like that.

Q So that during that entire time you did not get much chance to observe his face? A No.

Q Have you been able to ascertain where the gun went to?

A No; I have not.

Q Did you make any investigation in that direction?

A Yes, sir.

Q And got no information? A Yes, sir.

Q Was the defendant taken to the station house in the patrol wagon? A No.

Q How did he get there? A He walked there.

Q And who took him over there? A I did.

Q Alone? A No; I had an officer Sheehan, with me.

Q Give me the name, please? A James Sheehan.

Q Sheehan? Yes. A 29th Precinct.

Q Who else? A There were five or six reserves, that surrounded us.

Q But those who were immediately next to you becomes of importance. It becomes of importance to us to know who had the defendant immediately in charge? A Well, I left him in charge of Trainor.

Q I am talking of the time you were walking to the station house? A Just Trainor and myself.

CASE #1402

Q The men that had hold of him? A Trainor, Sheehan and myself.

Q On the way to the station house was the defendant's head bleeding? A Yes, sir.

Q Was there any --- how long after the shooting was it that he was taken to the station house? A I should judge about ten minutes, - ten or twelve minutes.

Q Ten or twelve minutes? A Yes, sir.

Q Was there anything done to stop the flow of blood? A When we took him to the station house he had his handkerchief up against his forehead (illustrating).

Q I see. On his way to the station house did he say anything? A He didn't say nothing to me.

Q On the way to the station house did you hear him say anything? A No.

Q Was there any question asked him by any one? A No.

Q In the station house was he arriagned before the lieutenant? A He was.

Q Was there anything asked him there? A Just his pedigree.

Q Did he make answer? A No, he didn't make answer.

Q Well, who asked the questions of him? A An Italian. I don't know his name. He was used as an interpreter.

Q You knew what questions were asked him? A No, I don't know; he asked him in Italian.

CASE #1402

3

Q Well, were you there when he was arraigned in front of the desk? A Yes, sir.

Q Did you hear him answer any questions? A I heard him answer the questions of the Italians, and he told the lieutenant.

Q Well, then he did answer through the interpreter?

A Yes, sir.

Q What was asked him? A Just his pedigree.

Q You mean his name and age? A His name and age and address, nationality, married or single, white, and his occupation.

Q To which he made answer? A Yes, sir.

Q Now, was there anything else asked him besides that?

A Not that I heard.

Q Anything asked him concerning the shooting? A I didn't hear nothing.

Q You were there? A Yes, sir.

Q If anything was asked, you would have heard? A Well, I didn't hear it.

Q You didn't hear it? A No, sir.

Q When was it that you next saw him? A We took him in the back and we had his head dressed.

Q By the ambulance surgeon? A Yes, sir, Dr. Bottsford.

Q The same ambulance surgeon who had found the bullet that you spoke about? A Yes, sir.

CASE #1402

Q And after the man's head was dressed, what was done with him? A Put in a cell.

Q And how soon after that was he arraigned in court?
A The following morning.

Q And that occurred, this tragedy occurred, at what time? A About five thirty.

Q About five thirty p. m.? A Yes, sir.

Q Was it a light day --- I mean --- what month was it in?
Well, it was in April. We will agree upon that.

MR. MOSS: April 29th.

A April 29th.

BY MR. LEVY:

Q Was it a clear or rainy day, or what? A It was a clear day.

Q And so we have it understood that you got to the station house after six o'clock; is that right? A It was around six o'clock.

Q Were you there while he was being treated by the ambulance doctor? A I was making out my report, yes.

Q Did you overhear any conversation between the ambulance doctor and the defendant? A No.

Q Was there any question asked him by the ambulance doctor?
A I didn't hear any.

Q Now, was there any change in the appearance of the defendant between the time when you first saw him push through

CASE #1402

the crowd, with a pistol in his hand, and his appearance as you saw it when he was arraigned before the desk, and the lieutenant asked his pedigree? Did you notice any change in his appearance, excepting, of course, the cut in the head? I wish you would tell us what you observed? A Well, just the bandage on his head, and he was crying, and his eye was a little swollen then.

Q He was crying? A Yes, sir.

Q Well, when did you first see him cry? A In the bank when the doctor started to dress him.

Q Not before? A No, sir.

Q And how long did he continue to cry? A Well, he would have a short spell of a minute or two, and then stop, and then have another one.

Q A sort of spasmodic crying? You know what I mean by that? A No, sir.

Q Well, by fits and starts, eh? A (No answer).

Q Well, did he cry continually? A No, sir; he would cry for about a minute and a half and stop, and wipe his tears off, and then start to cry again.

Q Did he say anything while he was crying, or moan, or do anything of the kind? A No, sir, not that I heard.

Q You didn't see him cry in the house at 344 East 48th street? A No, sir.

Q Nor did you see him cry in the station house? A No,

CASE #1402

sir, not until then.

Q Did he or did he not cry, as matter of fact, on the way to the station house? A I couldn't say. He was wiping his forehead off, and there was blood on his forehead. I didn't see him cry then. He was just wiping his forehead off, where the blood was coming down from his eye.

RE-DIRECT EXAMINATION BY MR. MOSS:

Q Where was the station house? A 163 East 51st.

Q Did he walk all the way? A Yes, sir.

Q Did you observe any hesitation in his walk? A No, sir.

Q Waslkd straight along? A He did.

Q He didn't reel or stagger? A No, sir.

Q Just the ordinary walk? A The ordinary walk.

Q Did he then have a full beard, as he has now? A No.

Q When you first got to the wagon, you were on the left side of it, and then, seeing the defendant, you walked all the way around the wagon, did you? A I ran around.

Q You ran around? A Yes, sir.

Q So that you circled the wagon? A Yes, sir; the hind part of the wagon.

Q And when you chased this man did you go in front of the horse, or did you go in the rear of the wagon, again? A When I went around the wagon, I was on the side of the defendant,

CASE #1402

and I didn't have to go around the wagon again.

Q Now, having encircled the wagon in the way you say, you say you didn't see the child's body at any time, did you?

A No, sir.

Q And you told Mr. Levy that it wasn't necessary for you to look for the child. What did you mean by that? A Because the crowd had said that the child had been taken around the corner.

MR. LEVY: I object to that and move to strike out the answer as hearsay.

THE COURT: Motion granted.

MR. MOSS: But he stated to Mr. Levy, if your Honor please, and it remains in the record, that it was unnecessary to look for the child.

THE COURT: Well, then, suppose we strike that out, too.

MR. MOSS: Well, I don't like to strike it out. I would like to have an explanation of it.

THE COURT: But Mr. Levy objects to it being explained.

THE COURT: Well, he drew it out, and, if he objected to it, he should have asked to have it stricken out then.

MR. LEVY: I have no recollection of having drawn it out.

MR. MOSS: Oh, yes, you did.

CASE #1402

BY THE COURT:

Q Well, answer. What did you mean?

MR. LEVY: Objected to.

THE COURT: Allowed.

MR. LEVY: Exception. Pardon me, your Honor, I object to it as immaterial, irrelevant and incompetent.

THE COURT: I heard your objection.

BY THE COURT:

Q Now answer the question, what did you mean? A The driver when he got down told me that the child ---

Q Never mind what was said to you by the driver. What did you mean by saying it wasn't necessary to look for the child? A Because the child had been gone.

BY MR. MOSS:

Q The child was gone? A Yes, sir.

MR. LEVY: Now, I move to strike that out as irresponsible and incompetent. The witness has said that he did not know except from hearsay.

THE COURT: I will let it stand, denying your motion.

MR. LEVY: An exception, please.

BY MR. MOSS:

Q When you arrived how far from the curb was the wagon standing? A About five foot from the southerly curb of 48th street.

MR. MOSS: That's all.

CASE #1402

BY MR. MOSS:

Q Oh, - how was the wagon facing? A The horse was facing towards First avenue.

RE-CROSS EXAMINATION BY MR. LEVY:

Q Oh, before you go, I want to know what kind of a horse that was. Was it a large brewery horse? A Yes, it was a large brewery horse.

Q It was a large brewery horse? A Yes, sir; I should consider him large.

Q One of these big, heavy brewery horses? A Yes, sir.

Q Now, look at that picture for a moment, officer, and see whether you recognize it (indicating the ^{marked later} photograph in evidence)? A That looks like the wagon, but I couldn't swear that it was the same wagon.

MR. MOSS: Well, I offer this as the wagon in question, I offer this picture in evidence, subject to any question that may be necessary hereafter.

MR. LEVY: Very good. I have no objection.

It is marked People's Exhibit 7 in evidence.)

BY MR. LEVY:

Q Officer, when you said in answer to Mr. Moss that the child was gone, you mean that that was the information which you received, but not the result of your own investiga-

CASE #1402

tion? A I looked around, and there was no child there, and the crowd said the child was around the corner, and the driver told me he was around the corner.

MR. LEVY: I move to strike that out there, as hearsay.

THE COURT: But did you not call for hearsay by your question, Mr. Levy?

MR. LEVY: No, sir; I think not.

THE COURT: Repeat the question, Mr. Stenographer.

(The question is repeated by the stenographer.)

THE COURT: Well, he might have answered that yes or no. He may answer the question again. Strike out the previous answer.

(The question is repeated by the stenographer.)

A Yes, sir.

BY MR. MOSS:

Q But you had looked around the wagon sufficiently to know whether or not there was a child there, had you not?

A Yes, sir.

MR. MOSS: That is all, Officer. You may go.

And you may, also, retire, Mr. Krugman. You need not remain in the room. The corpus delicti is practically conceded, I believe, Mr. Levy?

MR. LEVY: Oh, yes.

CASE #1402

street before the trouble began? A Yes, sir.

Q Can you state whether the horse was running or walking? A No, I don't know -- no, he wasn't running.

Q He was not? A No, he was not.

Q Now, did you see the child struck by the wagon? A No, sir; I saw the horse kick the child, but I didn't see the wagon pass over the child.

Q You didn't see the wagon pass over the child? A No, sir.

Q Where were you standing when it occurred? A Right in front of the wagon.

Q Were you in the middle of the street, or on the sidewalk? A I was on the sidewalk, with the baby carriage.

Q Were you on the side of the street that the child was? A The wagon was in the middle of the gutter, and I was on the east side.

Q When you saw the gutter, do you mean the mud gutter? A I mean the mud gutter.

Q Well, was it in the mud gutter, or in the middle of the street? A Right in the middle of the mud gutter.

Q Well, what do you mean by that? You mean the space between the two curbs? A Yes.

Q You call that whole part of the street the mud gutter; do you? A Yes, sir.

MR. LEVY: No, she doesn't say that, I think.

CASE #1402

MR. MOSS: Then it will not be necessary to call Mr. Krugman as to the identity of the body?

MR. LEVY: Oh, no.

DELLA MURPHY, of 338 West 49th Street, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. MOSS: Before I ask any questions of the lady, by arrangement with Mr. Levy, if your Honor please, Mr. Levy will concede that, if Dr. Bottsford were present, he being now in a distant city, that he would testify that he is the Dr. Bottsford mentioned by Officer Bertrand, and saw the decedent and pronounced him dead, at the time that the officer testified about; and that he, Dr. Bottsford, removed from the portion of the decedent's body described by the officer this bullet, marked People's Exhibit 5 for Identification.

MR. LEVY: Quite right. And that may appear on the record.

DIRECT EXAMINATION BY MR. MOSS:

Q Where do you live, Mrs. Murphy? A I live in 338 West 49th.

Q On the 29th day of last April you were on 48th Street, East 48th Street, where the shooting occurred? A Yes, sir.

Q And did you see the brewery wagon coming down the

CASE #1402

MR. MOSS: Yes, she does. I have seen a number of these witnesses, and I know how they look at that.

BY MR. MOSS:

Q Now, I want you to speak of that portion of the street where the horses run. Is that what you mean by the mud gutter?

A Yes, sir.

Q The whole of it? A Yes, sir. That's what I mean.

Q Now, considering the portion of the street in which the horses run, where was the wagon, what part of that?

A Why, it was nearer to the curb than it was to the middle of the gutter.

Q Nearer the curb than the middle? A Yes, sir.

Q But did it touch the curb? A No, sir.

Q How far from the curb was it? A Oh, quite a distance; about from here to there (indicating).

Q From the corner of the stenographer's table to the corner of the jury box? A Yes, I should judge about that.

MR. MOSS: About five feet, Mr. Levy?

MR. LEVY: Yes, about five feet.

BY MR. MOSS:

Q Now, did you hear anything in connection with the child's being run over, any noise? A No, only the child's scream:

Q You heard the child scream? A Yes, sir.

Q But you didn't see what happened? A No, sir.

CASE #1402

Q When the child screamed, do you know whether the wagon went on, or stopped? A Oh, yes; the driver stopped immediately. He didn't go on.

Q And what did the driver do? A He jumped off the wagon, to pick up the child, but another man picked up the child.

Q Now you saw the driver get off the wagon, and go towards where the child was? A Yes, sir.

Q And you say you saw another man pick up the child before the driver could get to him? A Yes, sir. And then I saw the man run to the drug store with the child.

Q The man who had picked it up? A Yes, sir.

Q He ran to the drug store with the child? A Yes, sir.

Q And where was the drug store? A Right at 49th Street and First Avenue.

Q So that the child was taken away? You saw that? A Yes, I saw that.

Q Well, what happened then? A Well, then I saw the man come back, and my sister fainted, and I brought her --

Q Wait a minute. The man who had taken the child away, came back? A Yes, sir.

Q And then your sister fainted? A Yes, sir; and I brought her around to the drug store.

Q And what happened then? A And I saw the child, but there was no marks on its body of blood at all. I saw it

CASE #1402

undressed in the drug store.

Q And then what did you do? A And then I came back, and I saw the officer with the driver that had run over the child, and the driver said to the officer --

Q Never mind what he said? A Then the officer took him back to the wagon then.

Q Then the officer took him back to the wagon? A Yes, sir.

Q And what happened then? A Then the driver got up on the wagon, and was about to take up the reins when this Italian came out of the house, and took the revolver out of his back pocket, and fired five shots at the driver.

Q Yes; you saw the Italian come out of his house?

A I don't know whether it was his house or not, but it was on the opposite side to where the driver was standing.

Q He came out of one of the houses on the opposite side of the street? A Yes, sir.

Q And you saw him take the revolver out of his back pocket? A Yes, sir.

Q And what did he do with the revolver? A Why, he shot five bullets.

BY THE COURT:

Q How do you know that he shot five bullets? A Because I counted, one, two, three, four, five, just as quick as I could.

CASE #1402

BY MR. MOSS:

Q And you saw him do that; did you? A Yes; and I saw the man fall off the wagon, off the seat.

Q Now, how did the Italian man get to the wagon? A Why, he came over easy, and stood by the side of the horse, and pointed the revolver up to the driver, and shot him (illustrating).

Q You saw him do that; did you? A Yes.

Q Well, after the Italian had shot the driver, as you testified, what happened then? A Why, then, the officer went to run after him, and he turned the revolver on the officer, and, you know, it clicked, but no bullets came out of it.

Q Yes? A It didn't shoot the officer, because it didn't go off. And then the officer followed him in the hall, and then he got him.

Q Now, do you recognize the man here (indicating the defendant)? A Well, he was like that, but he didn't have none of this here (indicating the chin).

Q He had no beard, you mean? A No, sir.

Q But otherwise he appeared to be the same man?

A Yes, sir; that's the man.

MR. MOSS: You may cross-examine.

CROSS-EXAMINATION BY MR. LEVY:

Q Where were you when you saw the wagon coming along?

CASE #1402

A I was with my sister.

Q Where were you standing, or walking, what place?

A We were walking from First Avenue to Second Avenue. We were coming from the baker's.

Q On which side of the street, the uptown or downtown side? A On the uptown side.

Q And in which direction was the horse and wagon coming? A From Second Avenue.

Q Towards First Avenue? A Yes, sir.

Q And when you heard the child scream, how near the horse and wagon were you? A Right opposite it, because we walked up to see.

Q You walked up to see what the screaming was about?

A No, no. I seen the child on the mud gutter.

Q Now, where did you see this child? Playing in the mud gutter? A Well, now, there was other children with him, and I don't know whether they were playing or not, but there was a crowd together.

Q A crowd of children together? A Yes, sir.

Q And how near the curb was the child playing? A Well, he wasn't playing near the curb. He was playing nearer to the wagon than he was to the curb.

Q Well, now, how near to the curb, is my question, Mrs. Murphy, was the child playing? A Well, I should judge about two feet from the curb.

CASE #1402

Q About two feet from the curb? A Yes, sir.

Q And there were quite a number of other little children playing around? A I guess there were four.

Q Four? A Yes, sir.

Q Did you notice the child that was killed? A No, sir; I didn't.

Q Was there anything about the appearance of that child that attracted your attention? A No, there wasn't.

Q Can you tell the jury how the child was dressed? A Let me see now. Why, yes, he had a dress on.

Q A dress? A Yes, sir.

Q He wore one of those little frocks? A Yes, sir.

Q And you say you noticed the horse and wagon come down the street? A Yes, sir.

Q Was there anything about it, about the way it was going, that attracted your attention, Mrs. Murphy? A No, nothing more than the children playing there, and I said to my sister, "My God! That's the way lots of children get killed, by playing around like that."

Q I see. Now, did you see the child knocked down?

A Yes, I saw the horse kick the child, and the child roll.

Q Did you see what part of the child was kicked?

A Well, I think it was the stomach, the bottom of his little stomach.

Q Now, when the child was kicked, and roaned --

MR. MOSS: Rolled, was the word.

MR. LEVY: Oh, rolled?

BY MR. LEVY:

Q What was the driver doing? A I saw him immediately get down from the wagon.

Q Now, before the child was struck by the horse, did you see the driver on the wagon? A Yes.

Q Did you see what he was doing? A Yes. He yelled, "Get out of there".

Q He yelled at the child? A Yes.

BY THE COURT:

Q Who yelled? A The driver.

BY MR. LEVY:

Q Now, did you see the driver have a notebook in his hand? A No, sir; I didn't.

Q Do you see where the reins were? You know what I mean by the reins? A When he got down off the wagon?

Q No, no, when he was sitting on the wagon. The lines, the horse lines, the reins? A Why, he had dropped them.

Q He had dropped them? A Yes, sir.

Q Did you see whether or not there was a whip sicket on that wagon, as they call it, with a whip in it? A I didn't notice that.

Q You didn't notice that? A No, sir.

Q Did you notice whether the horse lines or reins were

63
tied around the whip socket? A No, I didn't.

Q Well, are you able to say that your eyes could take in the whole thing; that you could see the children on the ground, and you could hold a conversation, and you could see what the driver was doing at the same time; do you mean to say that you could see all those things at once? A Why, of course I could see that the children were on the sidewalk while the wagon was coming, or in the mud gutter. I could see the children on the street while the wagon was coming down.

Q But I am talking about whether you could see what the driver was doing, and at the same time see the horse kick the child? A Well, I am telling you that, when the horse kicked the child, he went to get off the wagon, and he didn't have no note-book in his hand.

Q When did you see it in his hand? A He didn't have it in his hand at all. I seen it in his pocket.

Q That was before his death? A Yes, sir; when the officer had him; he had nothing in his hand when I saw him on the wagon, except the reins, at first.

Q Now, a great big crowd gathered almost instantly around there? A Yes, sir.

Q Hundreds of people? A Yes, sir.

Q And what did you do? Stay on the sidewalk, or did

0000

201-1402

you go over into the crowd? A I went over into the crowd.

Q What became of your baby and the carriage on the sidewalk? A Well, there was two girls took my two babies and my sister's two babies, over to the house.

Q And then you went over into the crowd? A Yes, sir.

Q And had the policeman then taken the driver away, when you got over into the crowd? A No, when I went into the crowd, that was when I left my sister in the drug store; when the officer had the driver back again.

Q Now let's get this right. When the child was kicked, and rolled over, a man came along and picked up the child, and went to the drug store; is that right? A Yes, sir.

Q Now, how far away from the spot where the child was kicked by the horse was the drug store? A Oh, well, he had to go down to the corner, just down to the first corner; not very far.

Q Was the drug store on the corner of 48th Street?
A 49th Street.

Q So that it was really about a block, or a little more, he had to go to the drug store? A Yes, sir.

Q And where was your baby, in the carriage? A On the sidewalk.

Q Did you take it around to the drug store? A No, sir; I left it right there. My sister had fainted, and I took her with me. I didn't go to the drug store when the baby was

11
b5
taken. I went to the drug store when my sister fainted. I took her around with me to the drug store.

Q And was it after the shooting that your sister fainted?
A Yes, after the shooting.

Q After the whole thing was over? A Yes, sir.

Q Now, when you got to the drug store, was the child dressed or undressed? A No, sir; it wasn't undressed. The mother took the dress up; it only had on a dress, as I seen, and she had that up.

Q And do you mean to say that the child was not bleeding?
A No, sir; not one stain of blood did I see on that boy.

Q And was the child alive or dead? A Yes, the child was alive, and it was alive when the mother passed the dead man, and I heard him saying, "Oh, Mamma, oh, Mamma", just like that, when she was passing the dead man.

Q And the child said, "Oh, Mamma"? A Yes, sir. And in the drug store he said it, too.

Q Now, who accompanied the child to the drug store; do you know? A Well, there was a whole crowd of men, and the mother was yelling.

Q Do you know the mother of the dead child? A No, sir; only the woman that carried it. Some people said it was its grandmother, and more people said it was his mother, but I

CASE 27-1402

know the woman is outside now.

Q Do you know where this Italian, as you call him, this defendant, lived? A No, sir; I don't.

Q Well, did you see from what house he came out? A Well, I saw him -- let me see now. It was on the downtown side of 48th Street, in a little black house, a two-story house.

Q On the downtown side? A Yes, sir; that's right. It was on the downtown side.

Q And how near the corner of First Avenue? A Well, it was quite near.

Q Well, now, when the child was run over, and it was picked up and carried around to the drug store, did you stay on the scene, or did you walk on? A No, sir; I stayed there.

Q With your baby? A Yes, sir.

Q And your sister? A Yes, sir.

Q And how long did you stay there before you saw the Italian come out of the house across the street? A Well, it wasn't --

Q How long, Madam, about? A Well, I couldn't judge. Maybe in five minutes, because it was when the driver --

Q Please answer me. According to your best recollection, how long did you stay there before you saw the man come out of the house? A Maybe three minutes.

Q Three minutes? A Yes, sir.

Q What were you doing during that time? A I was just standing there, to see if the baby would come back, or what would happen. I don't know why.

Q Is that the reason that you stood there? A I just stood there. I don't know. There was a crowd standing around, and I stood, too.

Q Can you give me an idea as to how many people stood around there at the time? A Oh, why, I don't know.

Q Well, there were a good many, weren't there? A Oh, yes; there may be over a hundred people.

Q And they blocked up the street, didn't they? A Yes.

Q And you stood on the sidewalk all the time? A Well, I was in the street, too, by the wagon.

Q Well, when was it that you went over by the wagon in the street; at what particular part of this affair was it when you went over to the wagon? A When I saw the driver get up on the seat.

Q Well, why did you go over into the street then?

A Well, because I thought the officer was going to get up too, and was going to lock him up. I thought he was going to drive him to the drug store. I don't know why I went over.

Q Did you see the officer at that time, Mrs. Murphy?

A Yes, sir; he was at the spot.

Q Did you see the officer walk away at any time with

58
the driver? A Yes, sir; I saw him go to the corner, to arrest the driver, and then the driver said he had beer on the wagon.

MR. LEVY: No; I move to strike that out.

THE COURT: Motion granted. Strike it out.

BY MR. LEVY:

Q And I only want to know what they did. Then they returned from the corner to the wagon? A Yes, sir.

Q And the driver got up on the wagon, and sat down?

A Yes, sir.

Q And then I suppose you saw the Italian come out of the house? A Yes, sir.

Q Did he walk or run out of the house? A Well, I can't say that.

Q Well, why not? A Well, I'll tell you why. Because there was a crowd between the house and the curb.

Q Well, how do you know that he came out of the house? A Well, I know that he came out of that house, because that's the house he went into.

Q Is that the reason you say he came out of the house, because he went into the house after the shooting? A Yes. And I heard all the people around there say that, too.

Q Well, but you must not tell us what the people said, but only what you just actually saw. I want to know whether, as matter of fact, you saw the man come out of the house, or is it something that someone told you? A No, I seen the

man with the revolver.

Q That part is all right. We are not talking about that. But what I want to know is, did you actually see the man come out of the house, or is it something that someone told you, that the man came out of the house? And please answer me. I am trying to make my questions plain and clear. Now, as a matter of fact, did you, with your own eyes, see that man come out of the house? A No, sir; I didn't; I didn't see him come out of the house.

Q That was something that someone else told you? A I saw him take the revolver out of his pocket, though.

Q But that was something that someone else told you? A No, sir; that wasn't; that I seen.

Q Not the revolver, but the coming out of the house. You say you didn't see him come out of the house with your own eyes? A No, sir; the house was blocked with a whole lot of people in front of it.

Q Now, there were a great many Italians in that neighborhood, were there not? A Yes, sir; lots of them.

Q And that neighborhood is pretty well populated by Italians, is it not, Mrs. Murphy? A Yes, sir.

Q Did you see the man with the revolver -- withdrawn. What particular part of the street did you see the man with the revolver in his hand, for the first time? Do you under-

stand me? (No answer.)

Q Now, if you don't, let me explain, so that you will understand me, Mrs. Murphy. You saw the man with the revolver in his hand? A Yes, sir.

Q Now, I want to know when you first saw the man with the revolver in his hand. Where was that man, at what part of the street? Was he on the curb or in the gutter, or in the middle of the street? I want you to tell us as best you can remember the exact spot that you first saw him? A Well, he was getting off the curb when I saw him put his hand to his back pocket, and take out the revolver (illustrating).

Q Just answer my question, please. As he was getting off the curb? A Yes, sir.

Q The curb on the uptown or downtown side? A Well, on the side -- on the downtown side, yes.

Q On the downtown side? A Yes, sir.

Q As he was getting off the curb to go into the street; is that right? A Yes, sir; that's right.

Q And how far from that curb was the horse and wagon?

A Right to the curb, right again the curb.

Q So that the man didn't have to take more than two steps? A Yes, sir; that's all.

Q Just to get right to the ~~wagon~~ wagon from the curb?

A Yes, sir.

Q And the next thing you heard was the shots? A Yes, sir.

Q And saw the pistol pointed up? A Yes, sir.

Q Can you tell us how quick those shots came together?

A Oh, I don't know. They came just as quick as --

Q As quick as he could pull the trigger? A As he could let them go.

Q And there were five of them? A Yes, sir.

Q You counted them, you told the Judge? A Yes. There was five shots fired.

Q When did you see the man fall from the wagon? At what shot? A I think it was the fourth shot.

Q The fourth shot? A That I won't be sure of.

Q And after the shots were fired, you saw the defendant start to run away, the defendant? A Yes, sir.

Q And in which direction did he run to? A He went to run around the wagon, and the officer ran after him.

Q Well, I mean did he run to the opposite side of the street? A No, no.

Q Or the same side of the street where the horse and wagon stood? A Yes, he went back to the sidewalk that he came from.

Q He went back to the sidewalk that he came from?

A Yes, sir.

Q Now, did you follow the officer and the man, the defend-

ant, or look after them? A No, I stood on the sidewalk.

Q Which sidewalk? A On the same sidewalk as the man ran.

Q Well, there were a good many people there; weren't there? A Yes, sir.

Q And they blocked the sidewalk; didn't they? A Yes, they did.

Q And were they up against the house into which he ran? A Yes, some of them were.

Q And some were standing in the street? A Yes, sir.

Q And some at the curb? A Yes, sir.

Q And some were in the gutter? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, did you follow this man and the officer with your eyes, while they ran, or were you busy watching the driver fall; which were you doing? A No, I couldn't see the driver, so many people gathered around him, but I saw, as the officer went to get ahold of the man, that it was right at the door, at the step of the door of the house --

Q And did you see the officer struggle with him? A Yes, sir.

Q Now, what did you see about that struggle? A I saw that the man turned and pointed the revolver at him, at the officer.

Q And did they grapple? A Yes, sir.

Q Put their hands on each other? A Yes, sir.

Q And where did that happen? On the street? A No, sir; right by the house, when he went to run away.

Q Inside or outside of the house? A Right at the stone, right at the step of the door.

Q Did you see any women standing by that door? A Yes, I think so.

Q Did you see this man push these women away? A Well, I don't know whether he did or did not. They were all getting around them, and the officer was pushing, too, to get in.

Q Well, that's what I want to know. Could you see what he was doing with the officer, and the officer was doing with him, if there was so many people around the door? A Well, the officer got him by the shoulder, and he pulled back, and the officer lost his grab on the man, and he turned the revolver on the officer, and then he run into the hall, and the officer after him.

Q Well, but you didn't see them actually roll over the ground, did you? A No, sir. The officer fell once, but I didn't see the man fall at all.

Q Did you see the officer fall? A Yes, sir; he did fall.

Q Where did he fall? A I guess he must have tripped

over the stone of the house, the step. I don't know.

Q Now, is that a low-stoop house or a high-stoop house?

A No, it isn't, not a high-stoop house. Just one step, you know.

Q One step? A Yes, sir.

Q One step up from the street? A From the street.

Q I see. Now, when you got to the drug store, Mrs. Murphy, and saw that child there, did you see anyone else there whom you knew? A No, only my sister.

Q Well, your sister fainted. What did you do? Carry her around to the drug store? A Yes, sir.

Q Who carried her around? A I did.

Q Is she a woman grown? A Well, she's younger than I am.

Q Well, but she's a grown woman? A Yes, sir.

Q Did you carry her a block and a half? A Yes, I carried her.

Q How did you carry her? A Carried her in my arms.

Q Just lifted her up and carried her? A Yes, sir.

Q Did any man around there assist you? A No, sir; no one helped me. I carried her myself.

Q Do you know the name of the druggist? A No, sir; I don't know. My sister knows, and she will be here, and she'll tell you.

Q How long after that did your sister recover? A Quite some time after.

Q And didn't you remain with her while she was being cared for? A No, sir; I left her in the drug store with the doctor and some other man, who was telephoning, and he told me --

Q No, don't tell us what he said. You left her there and came back? A Yes, sir.

Q And what is the first thing that you did? What did you do when you came back to the scene? A I seen the man laying out on the sidewalk.

Q And did you go over to him? A Yes, I was right beside him.

Q And how long did you stay there? A Until he got taken away in the patrol wagon.

Q And how long was that afterwards? A About half an hour or so.

Q And why didn't you go back to your sick sister in the drug store? A Because I couldn't.

Q Why not? A The cops wouldn't let me pass. There was a crowd, and they kept the crowd back.

Q And how soon after that did you go back to the drug store? A My sister had gone home; her husband went and took her home.

Q Now, one other matter, Mrs. Murphy, and then I shall let you go. You told Mr. Moss -- this gentleman here is Mr. Moss (indicating Mr. Moss) -- you told him that the defendant took the revolver out of his back pocket, and walked over to the wagon. Is that right? A That's right.

Q Did he run over to the wagon? A No, I didn't see him run. He didn't have far to run, anyway.

Q Well, please just answer my questions. A I didn't see him run.

Q Did he walk over quietly, easy? A Well, I don't know how easy he walked.

Q Well, you say you were there? A Well, I don't know how easy or how fast he walked. I didn't notice that. But I seen the man come out, and step down off the curb, and he stood by the side of the horse, and raised the revolver, and shot.

Q And you saw that, did you? A Yes.

Q And of course then you must have had a view of the defendant's face? A Why, I know the man.

Q You do know the man? A Why, I can indentify the man.

Q I know. But you must have got a view of his face, as he was holding the pistol towards the driver? A Yes, sir.

Q Now, will you please tell his Honor and the Jury what you noticed about this defendant's face, while he was point-

67
ing the revolver at the driver? A What I noticed?

Q Yes? A I didn't notice anything on him at all.

Q Nothing unusual? A (No answer.)

Q Do you understand what I mean by that? A I don't know. I didn't notice.

Q Now, just let's see. Did the man seem to you to be excited? You know what excited means, don't you? A Yes, I know.

Q Well, did he seem to you to be excited? A Well, yes, he was excited, I guess.

Q Well, how did he show that excitement; in what way?

A Well, he didn't show it in any way; only looked very pale.

Q Looked pale? A Yes, sir; that's all I noticed.

Q Well, did you notice, for instance, Mrs. Murphy, his eyes? A Oh, I didn't notice his eyes.

Q You didn't notice whether his eyes were staring or glaring, or anything like that? A No, sir.

Q Did you see whether the man was trembling or not?

A No, sir; I wouldn't say that he was trembling at all.

Q Well, was he trembling or not? Now, do you mean to say that you didn't see him trembling? A No, I didn't see him trembling.

Q And was his hand shaking when he held up the pistol?

A No, sir; it seemed as though he held the pistol very solid.

Q He didn't shake at all? A No, sir.

Q Did his hand shake? A No, sir.

Q Now, did you see any men in that crowd struggle with the defendant; any other men than the officer struggle with this defendant in that crowd? A Yes; there was quite a few men there went to get ahold of him, tried to catch him.

Q Now, what did you see him do to those men, or those men do to him? A No more than he was trying to get away from them; that's all.

Q Well, you know what I mean by struggling, don't you, Mrs. Murphy? A Yes, sir.

Q Well, did they struggle very hard? A No, sir; they didn't.

Q Did you see him bite any man? A No, sir.

Q Or did you see any man hit him or punch him? A Yes; I saw quite a lot of fists raised to the man.

Q You saw what? A Yes; I saw quite a lot of men raise their fists to the man, but I didn't see him bite anybody.

Q Well, did you see any of them get him down on the ground? A No, sir.

Q You didn't see that? A No, sir.

Q Now, Mrs. Murphy, I won't keep you unnecessarily, only I want an explanation of one matter. I want you, in your own way, to tell his Honor and the jury, these gentlemen, the exact position that you were standing in, where you were standing, at the time that you say you saw this defendant

take the revolver out of his pocket. Now, do you understand that question? Don't be in a hurry now, to answer.

If you don't understand my question, I will try to make it clear. Now, do you understand it? A Yes.

Q Now, then, tell it in your own way? A I was standing with my face toward the curb, on the downtown side, when the man shot the driver.

Q Now you see you misunderstand me. Not when he shot the revolver, but when he took it out of his pocket. You told the District Attorney that you saw the man take it out of his back pocket; you remember that? A Yes, sir.

Q Now, at that particular time, I want you, if you can recollect, to try to tell just where you were standing, and in what position you were standing. You understand me, Mrs. Murphy? A Yes.

Q Now, take your time, and let's have your answer? A I was standing at the head of the ~~halk~~ horse on the right-hand side, when --

Q At the head of the horse? A Yes, sir.

Q On the right-hand side? A Yes, sir.

Q On the right-hand side of the wagon? A Yes, sir.

Q Now, that horse was facing towards First Avenue?

A Yes, sir.

Q So that the head of the horse was towards First Avenue? A Yes, sir.

Q And the right side of the horse would be towards the First Avenue side? A Yes, sir.

Q Is that right? A Yes, sir.

Q And between you and the head of the horse and where the man was, when he put his hand in his pocket to take out the pistol, were there any people standing? A No, there wasn't. The people were all round (illustrating).

Q What? A No, sir; the people were not; they weren't near the horse as the fellow came with the revolver.

Q Do you mean to say that there were no people standing around? A Yes, but not right beside the horse and wagon.

Q Well, were there any people in front of you? A No, sir.

Q Were you right next to the curb? A No; I was just on the side of the curb, to the right of the curb.

Q And do you mean to say that there were no people there at all? A Well, there were none in front of me.

Q Well, did the man pass right by you? A No, sir; he didn't have to pass right by me.

Q Well, how far from you was the man when he passed you; two or three steps? A Yes, sir.

Q And do you mean to say that, for two or three steps, there were no people? A No, sir; there was not. There was a line of people like that (illustrating), but they were no nearer than I was to the horse.

Q Well, where was your baby carriage? A On the other side of the street.

Q And you had come across the street?

A Yes, sir.

0000

CASE 321402

Q I am talking of the time when the man put his hand in his pocket, and took out the pistol? A Yes; there was two girls that live in the house with me, had taken the baby.

Q Please listen to me. At that time there were no people between you and the man? A No, sir, not in front of me. Of course, there were the people on the sides, but not in front of me.

Q And were there any people standing by the horse's head? A Yes, there were people standing at the horse's head, on the side that the man was on, with the revolver.

Q And were there people standing alongside of the wagon? A Yes, sir.

Q Alongside of the seat of the driver of the wagon? A Let me see.

Q Now, Mrs. Murphy, here is a photograph of what is said to be the wagon that ran over the child. Look at it please, will you? Does it look like that wagon? A Yes, it was that kind of wagon.

Q That was the kind of wagon? A Yes, sir.

Q Now you see that, over the driver's seat, there is a sort of canopy? A Yes.

Q Now, looking at this photograph, I want to know whether you saw people standing at the front wheel? A Yes, there was people there.

Q And alongside of the shafts and next to the horse?

CASE 1402

72
The horse isn't here, you see, in the photograph (indicating)?

A Yes, I see it. There were people all around there (indicating).

Q Now we will suppose, for this question, that this is the sidewalk (indicating). Now between you and where you saw the man take the pistol from his pocket, were there any people standing? A Yes, sir, but --

Q Please answer me. A Yes, there were people standing there.

Q And how far away from that wagon were you at the time it happened? A Right here (indicating).

Q Not when the shooting happened, but when he took the pistol out of his pocket? A Yes, I was right by the horse (indicating).

Q By the head of the horse? A Yes, sir.

Q I see. And then the man shot from the side of the sidewalk? A Yes.

Q And not from the other side? A No, sir.

Q And when he started to run, did he run around the back of that wagon to cross the street? A Well now, I couldn't see that, because the crowd all followed. But the officer ran around the back of the wagon.

Q Well then you didn't see what happened after he ran across the street? A He didn't run across the sidewalk. The officer ran around the wagon, the back of the wagon.

Q But I am talking of the defendant. Which way did he run? A He run through the crowd.

Q Didn't cross the street at all? A No, sir, I didn't see him cross the street at all.

Q And where was the officer? A Standing by me, by the wheel.

Q He was ~~standing~~ opposite you on the street? A Yes, sir, right at the wheel.

Q Near the head of the horse? A No, sir, about opposite the side.

Q Now when the defendant started to run away the officer ran around the back? A Yes, sir.

Q That's your explanation; is it? A Yes, sir.

MR. LEVY: Perhaps the jury had better look at this photograph, for the purpose of illustrating these questions.

MR. MOSS: Certainly.

BY MR. LEVY:

Q Now, Mrs. Murphy, I hope you will pardon my asking you these questions, but I have to do it. As matter of fact, did you see him take the pistol out of his pocket, or did you see the pistol in his hand? A No, sir, he had it some place-- I don't know whether it was in his pocket or not -- but he put his hand back, behind his back, and got it (illustrating). And there was nothing in his hand when he come, until he put

his hand behind him. When he came out of the house, he had nothing in his hand.

Q Well, but there was such a crowd there, how could you see what he was doing? A Well, I seen him push into the crowd, and there was nothing in his hand until he put it behind him, under his coat (illustrating).

Q I understand. Now, with whom have you talked about the case, and what you know about it? A Some man upstairs.

Q And how many times have you talked with the man upstairs? A Once.

Q Just once? A Yes, sir.

Q Did you make any statement to officer Bertrand?

A (No answer)

Q En? A I don't know who the officer is, I don't know his name.

Q Well, the police officer you saw therepn that day, that arrested the driver. Did you make any statement to him? A No, sir.

Q Sure about that? A Yes.

Q Whom did you first tell what you knew about this case? A The District Attorney's assistant.

Q Well, do you know how they got your name and address?

A Well, my sister gave her name.

Q To whom? A In the drug store, when she came to. her
Some man asked there her name, and she gave it.

CASE # 1402

Q I see. And through your sister, they got you?

A Yes, sir.

Q I understand. Now have you, since the happening, since the killing of that poor driver, have you since met the family of the driver? A No, only to-day, in the --

Q No, I mean before to-day? A No, sir.

Q Never before? A No, sir.

WILLIAM J. BURKE, of 848 First avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Now, Mr. Burke, on April 29th of this year were you in the neighborhood of 348 West 48th street? A Yes, sir.

Q When something occurred in that street? A Yes, sir.

Q Now I want you to speak so loudly that all these gentlemen can hear what you say. Will you try to do that?

A Yes, sir, I will.

Q Now please sit up straight, and talk out loud.

Now did you see the brewery wagon coming down the street?

A No, sir.

Q Did you see the child run over? A No, sir.

Q Did you see the wagon just before the child was run over? A No, sir.

Q What was the first that you saw? A The first I saw,

2041402

the wagon was stopped, and the child had been run over.

Q Yes. Now where were you, exactly? Just locate your position? A Well, I was between the corner house and the house that the child lived in.

Q Do you know the number of the house? A Yes.

Q What is the number? A I believe the number is 344.

Q You were nearly in front of 344? A Yes, sir.

Q And you heard the outcry, did you; you heard somebody scream? A I heard the hollering, yes.

Q At that time you looked up, and, as I understood you to say, the wagon was stopped? A Yes.

Q Had you noticed the wagon before that at all? A No, sir.

Q The first thing you heard was the cry, and you looked up, and the wagon was standing still? A Yes, sir.

Q And then what did you see? A I see the driver get off his wagon, and walk around it.

Q Did you see what he did when he walked around it? A No, sir, I couldn't. The crowd gathered there, and I didn't see exactly what he was doing.

Q Now when you saw the driver go back to the front of the wagon, what happened then? A Well there was a man with me, and he jumped out and held the horse, and then I seen two men come down through the house, this butcher house.

1402

CASE #1402

MR. LEWY: You must keep up your voice. I've got to hear what you say.

A (Answer continued) I saw two men come down out of this butcher house, and step in front of this horse, and tell the man that was holding the horse to leave it alone. They were two Italians, young men. And then I saw the driver walk across the street to where the child had been taken, and then I walked back to the railing, thinking nothing more of it, only a child being run over.

Q Did you see the police officer, officer Bertrand, come then? A No, sir.

Q When did he get there? A He was there about fifteen or twenty minutes after that, when I seen the policeman come, five or ten minutes after, any how, I seen the policeman. And he come up, and I think he put the driver under arrest, at least he took the driver, and he was walking down towards First avenue with him.

Q And did you see them come back? A No, sir, I didn't see them come back.

Q Well, what was the next thing you observed? A Well, the next I see was four or five was walking together, and I seen two or three men running down towards where the brewery wagon was.

Q Two or three? A Yes. And the wagon had moved then about 15 or 20 feet, or may be a hundred feet from where it

CASE 22-1402

was, down towards First avenue, and I looked around to see what it was, and I see a man put his foot on the spokes of the wheel, and fire five shots at this driver.

Q Yes. Now, did you see those shots fired by the man?

A Yes, sir.

Q And did you see what happened to the driver? A Yes, sir.

Q What happened to him? A He fell forward (illustrating), right across the horse, like.

Q Did you see what the man did who did the shooting?

A Yes.

Q What did he do? A He started to run between the wagon that he was on, and --

Q You say he put his foot on the spoke? A Yes, and grabbed the middle bar of the railing with his left hand (illustrating); that I seen; and then I seen him fire the shot, and seen the revolver in his hand.

Q Did you see the officer pursue him? A Yes, sir.

Q What did the man do who fired the shots when the officer pursued him? A Well, as he got to the railing of the house where he ran, there was several women there, and whether he pushed them or not I don't know, but one of them fell.

Q One of them fell? A Yes, sir. And, as he put his foot on the first step, he turned on the officer with the re-

0911

CASE 77-1402

79
volver, and snapped it four or five times, three or four times, any how, because I could hear it click.

Q And then they went into the hallway? A Yes, sir; the policeman was almost on top of him then.

MR. MOSS: You may cross examine.

CROSS EXAMINATION BY MR. LEVY:

Q What do you say your name is? A William Joseph Burke.

Q I see. Mr. Burke, you live where? A 848 First avenue.

Q Do you keep house there? A No, sir.

Q With whom do you live? A I board there. I stop there with the Murrays.

Q With what? A With a friend of mine by the name of Murray.

Q What's ~~that~~ that? A tenement house? A A tenement house.

Q What part of it do you occupy? A Well, a sofa, sometimes.

Q And the floor, other times? A Well, yes.

Q And the hallway, sometimes? A Yes, sometimes.

Q And the stoop, sometimes? A Well not as a rule.

Q Not as a rule, of course. It is an unpleasant place to occupy, as a rule. Now, Mr. Burke, you are somewhat of a

100

207173 E3A1

drinking man, too; aren't you? A Well not heavy; no.

Q Well what do you mean by heavy? A Well, I don't get drunk enough to get locked up, or anything like that, and I don't stagger around or get boisterous, or make any nuisance of myself, or anything like that. I take a beer when I want it.

Q You drink considerable; don't you? A Well no, not exactly.

Q What? A Not exactly. I am a painter, and I don't see how I can drink so much, doing scaffold work. It's kind of dangerous, if you are drunk.

Q How long is it since you have been working?

A This last job was seven weeks.

Q What's the name of the concern? A T. J. McMahon, 48th street and Second avenue.

Q What kind of a job did you do? A Painting.

Q And what time of day did you say that the shooting took place? A Well, it was the afternoon, between five and six o'clock, I should judge.

Q Can't you tell me more accurately what the time was?

A Well, no. I don't carry no watch, and I couldn't tell you exactly the time.

Q Well, you weren't working on that day? A No, sir, not in the afternoon. In the morning, I worked.

Q And were you on this same job of McMahon's at that

time? A No, sir.

Q What job were you on? A I was helping a man named Casey.

Q And where does Casey live? A In the Bronx. I don't know his number.

Q And what were you helping Casey on? A I was helping rubbing in.

Q Where? A In 49th street.

Q What number? A I can't tell you. It was Horton's.

Q Horton's? A Yes, sir.

Q Well, had you been drinking that day? A Well, I might have had a few beers.

Q You have a lot of friends around the neighborhood where this happened, haven't you? A Well, I don't think so.

Q You were not popular there? A Not very.

Q Well, did you work the growler, that day? A No, sir, I don't work no growler.

Q You didn't send out the can? A No, sir.

Q Well, how many beers do you think you had before this tragedy took place? A I might have had half a dozen.

Q In the afternoon? A Yes, sir.

Q Who were you with at the time? A I was standing there with Murray; five or six of us were together.

Q In front of a saloon? A No, sir, outside; between the railing off the saloon, on the corner, ~~at~~ just and this

butcher house.

Q Now you were near enough to the saloon so that, if you wanted a drink, you wouldn't have far to go? A Well, there is half a dozen saloons there, for that matter, and we could take any of them.

Q Well, how many times had you been in the saloon, that day? A Five or six times, likely.

Q And how many beers had you drank? Had you drank any? A Yes.

Q You had drank considerable? A Yes.

Q Well how much? A Well, five or six beers are ^{not} considerable. I've often drank that much, and more, too, and worked hard, too. That ain't much.

Q Now, Mr. Burke, you know some of the coppers around that neighborhood; don't you? A Well, I know two or three.

Q Well, which copper have you been talking to about this case? A None of them.

Q Not a soul? A Outside of the officer in charge.

Q Well, how many times have you talked to the officer in charge? A Every time he would speak to me, around the court here, for the last two days.

Q Never before? A Once I met him in the Coroner's office, and I met him upstairs in the District Attorney's office.

Q Burke, you don't get along with the Italians in that neighborhood; do you? A I ain't got no grievance against no Italian, because I worked with a good many of them.

Q Well, you don't like them; do you? A Well, I ain't got no likes or dislikes with them, as long as they don't bother me I don't bother them.

Q I see. You are willing to get your beer, and get along peaceably? A Why certainly. I've done it for 40 years.

Q Now from which direction was the wagon coming?

A From Second avenue.

Q And how near to the corner of First avenue did it get to before it stopped? A Well, I think it must have been about 200 feet, first off, and then it went 100 feet more.

Q Now you want the jury to understand that it stopped about 200 feet off the corner, first? A Yes.

Q And then went on for 100 feet? A Yes, sir.

Q And did you see the driver get off the wagon? A Yes, sir.

Q And how soon after did you see him get back on the driver's seat? A Well, I should judge it was about 25 or 30 minutes or 50 minutes. It might have been half an hour or three quarters of an hour.

Q Oh, come. That won't do. You must be a little more accurate. 15, or 30, minutes, or three quarters of an hour? Which was it? A Well, I can't say exactly. I can't judge

1402

CASE 33402

exactly the time.

Q Can't you judge time? A Well, it wasn't very long. Something like that, like half an hour, say.

Q Now something like that won't do. A Well, about half an hour. It stood there fully thirty minutes.

Q Now you are sure about that? A Yes, sir.

Q Before it started to go on again? A That I couldn't swear to exactly.

Q Well, didn't you say, a minute ago, that it drove on about 100 feet more? A Yes, sir.

Q And it waited there on the one spot for thirty minutes? A Yes.

Q And then was driven 100 feet more towards First avenue? A Yes. But there was no driver on it. It was driven by somebody on the street.

Q Some one leading the horse? A Yes, sir.

Q In front of what house were you standing? A I was standing between the two houses.

Q What number? A 346.

Q Who was with you at the time? A Well, I know some of their names. There was three or four.

Q Well, tell me some of the names that you remember? A Peter Kenney, and three or four more that belong to the Ash Department. I don't know their names.

Q To the Ash Department? A Yes, sir.

Q Now how soon after the wagon was stopped, did you see the driver climb back to the driver's seat? A Well, I see the officer taking the driver down --

0610

2071-23-ES-402

Q Won't you answer my question? A Well, it must have been about forty-five minutes -- about forty-five minutes.

Q You stick to that, forty-five minutes? A Yes, sir.

Q And all that time that wagon was on that street, forty-five minutes, before the driver got back on his seat again? A Yes, sir.

Q Is that right? A Yes, sir.

Q Did you see what it was that stopped the wagon, the first time? A I did not; no, sir.

Q Did you hear any screams? A No, sir.

Q Did you hear any sound at all like the cry of a child? A No, sir.

Q Did you see the child run over? A No, sir.

Q Where was the spot, opposite which house, where the wagon stopped, the first time? A It was opposite 344.

Q Right almost in front of your eyes; isn't that so?

A No, sir; towards up further. The horse was about in front of the doorway of 344.

Q Now, won't you please pay heed to my question? I'm talking of the time the wagon was brought to a stop, the first time? A Yes, sir.

Q You were standing between 344 and 346? A Yes, sir.

Q And I ask you where the wagon was when it first stopped, in front of which house? A Well, towards 344.

1402

CASE 1402

Q Opposite 344? A Not exactly opposite; more towards Second Avenue.

Q Well, next to 344 is 346? A Yes, sir.

Q Was it between those two numbers? A No, sir; between 42 and 44.

Q The next house to where you were standing? A Above it, yes; the next house above it; yes.

Q So that ^{when} ~~if~~ the wagon came to a standstill, it was right directly opposite you? A No, sir; it wasn't.

Q How far away from you was it? A Well, it must have been fully twenty-five feet, the width of the house.

Q Well, could you see the head of the horse? A I certainly could, yes.

Q Did you see the driver climb down from the seat? A Yes.

Q Did you see any other people around the horse? A Yes, there was hundreds of men and women around.

Q At the time it first stopped? A Yes.

Q Did you go over to find out what it was that made the horse and wagon stop? A No, sir; because I heard --

Q Never mind what you heard. Did you go over to ascertain why this big crowd gathered around the horse and wagon? A No, sir.

Q Well, weren't you interested at all? A Well, I heard it.

Q And didn't you go over at all? A No, sir.

Q And you were about twenty-five feet away from where it stopped? A Yes.

Q Did you see a child picked up? A No, sir.

Q Did you see a child carried towards First Avenue, towards the drug store? A No, sir.

Q What did you see the driver do, during the thirty minutes? A Well, when I seen him get off the wagon, I see him go around the face of the horse, towards the north side of the street.

Q Did he cross the street? A Yes, he went towards the north side from the wagon.

Q How far did he go across? A Well, that I couldn't exactly say.

Q Was he alone? A He was alone.

Q How long after the wagon came to a stop first did you see a policeman first? A (No answer.)

Q In other words, how long was that wagon standing there before a policeman came on the scene? A I should think about fifteen minutes.

Q And during those fifteen minutes, what was the driver doing? A He was among a whole crowd of people.

Q Could you see what he was doing? A No, sir; but I know they hemmed him in, across the street.

Q Who hemmed him in? A I know there were men and women, Italians; they all gathered around him.

Q Well, how long after the wagon stopped did you see the shots fired? A Well, it must have been fully forty minutes.

Q Did you see where the man came from that did the shooting? A No, sir.

Q Did you -- Now, as matter of fact, those houses, the entrance to those houses, is directly from the street or sidewalk; is it not? A Well, there is a step up.

Q One step? A Yes, sir.

Q Any stores in the buildings there? A Yes, sir.

Q Now, in the building 344, what stores were in that building at the time? A There was a butcher store there.

Q It's a double store, is it not? A No, sir; it's a single store.

Q And were you standing near the entrance of 346? A Yes; very near to it.

Q Well, how near would you say? A Well, about forty foot. The house was 25 foot.

Q Now, how far from where you were standing -- show to these gentlemen -- how far the entrance of 346 was from you? A I was standing as far as that gentleman with the straw hat (indicating).

MR. LEVY: Well, what would you say that was, Mr.

O'Malley? About 20 or 25 feet?

MR. O'MALLEY: Yes.

MR. MOSS: All right.

BY MR. LEVY:

Q Did you leave the sidewalk at all? A Yes.

Q Where did you go to? A When I heard the policeman had the man under arrest, we walked out to the gutter, into the gutter, two or three feet.

Q Did you see the policeman walk away with the man?

A I think I did; yes.

Q You think you did? A Yes; he did walk away.

Q And you saw him go up towards Second Avenue? A No, sir; up toward First Avenue.

Q And how long was he gone? A Maybe four or five minutes.

Q And then he came back again? A Yes, sir.

Q Now, did you see the child brought back? A No, sir.

Q Now you are sure you saw this man jump up on the wagon, this defendant? A Yes, sir.

Q Eh? A Yes, sir.

Q Get right on top of the wagon? A No, sir.

Q Are you sure that he didn't stand down on the street, and point his pistol up? A No, sir.

Q Well, how far up on the wagon did he get? A Well, he put his foot upon the -- when I seen him his foot was

on the spoke of the wheel.

Q Did he lift himself up? A Yes, sir.

Q How high up did he lift himself? A About two foot up from the ground.

Q And his feet were not on the ground when he started to shoot? A No, sir; he was hanging on the wagon.

Q He was hanging on the wagon? A Yes, sir.

Q Now, when you saw him shoot, did he seem to you to be excited? A Well, that I couldn't say, because I wasn't close enough to him.

Q Did you walk over to see him, after the shooting?

A The minute we heard the first shot, we went right out to the gutter, and there was only the width of the wagon, about two or three feet, and there was the space right there of about 18 inches, between one wagon and the other (illustrating).

Q What do you mean by between one wagon and the other?

A Well, there was one wagon standing up against the curb, and another wagon out from it, about the middle of the street.

Q Now, I haven't heard about that wagon before. There was another wagon standing on the street? A Yes, sir.

Q Where was that other wagon standing? A Towards the saloon door.

Q Now, how near the spot? What is the number of the saloon, what is the number of the house? A 346.

Q And how near that wagon that was standing next to

91
the curb did the brewery wagon stand? A Well, within 18 or 20 inches.

Q And a person, in order to get off the sidewalk, to get to the brewery wagon, would he have to pass by the other wagon standing there? A He would, yes.

Q Did you see that man pass by? A No, sir, but I seen him run between the two wagons.

Q Run or walk? A No, he run.

Q Where did he run from? A Between the two wagons, after he dropped off the wheel.

Q Oh, you are talking of after the shooting? A Yes, sir.

Q I'm talking of whether or not you saw him approach the wagon? A No, sir.

Q Didn't you see anything before the shooting commenced? A No, sir.

Q Now, how far from the entrance, again I ask you, of 346 were you standing when the man ran away, followed by the policeman? A I was in the curb gutter, about three or four yards.

Q About three or four yards? A Yes, sir.

Q How many times did you say you heard him snap the pistol at the policeman? A Well, two or three times.

Q More than once? A Yes, I'm sure of that.

Q Now, did you see the man drop his pistol? A No, sir.

Q Did you see what became of the pistol? A No, sir.

Q Did you see the man, the defendant, struggle with any person? A Only with the officer and two or three women at the door.

Q I'm talking of men; did you see him struggling with any men? A No, sir.

Q Let me ask you this. Did you see into the hallway? A Yes.

Q As they entered? A Yes.

Q Was the door of the hall open? A Yes.

Q Well, how could you see into the hallway from where you were standing? A Well, because the whole bunch of us ran up towards the door. The policeman was so close to this man that the minute --

Q Did you know that policeman before that day? A No, sir.

Q By the way, before I go on: You have been receiving some money to come down here, haven't you? A No, sir.

Q Have you been asking for any? A No, sir.

Q What? A No, sir.

Q Didn't you refuse to come down here, unless you got some money? A No, sir.

Q Didn't you say that you wanted your fare paid you? A No, sir.

Q And your time paid for? A No, sir.

Q To anyone? A No, sir.

Q Hasn't any promise been made to you by anyone that you will get some money? A No, sir.

Q That you positively swear to? A Yes, that I positively swear to; that I never got a cent from no one.

Q Now we will come back to 346. Did you follow into the hallway? A No, sir.

Q Did you see what happened in the hallway? A Yes.

Q Was it light in the hallway or dark? A Yes, at the beginning of the hall there was a vestibule, and in the vestibule I saw this officer and this man struggling, and then I seen another man by the name of Kenney jump right in on to him.

Q What's Kenney's name? A Peter.

Q What? A Peter.

Q A friend of yours? A Well, he's on this trial.

Q Well, a pal of yours? A No, sir; no pal of mine.

Q Well, you had been standing there talking? A Yes, sir.

Q And had been taking several drinks together? A Yes.

Q And what did you see Kenney do? A I seen him follow the officer into the hall, when the officer follows the man in the hall, and I see Kenney holding the door open, to give the policeman light in the inner hall.

Q Now, how long after that did the policeman come out?

10
A That I don't know, sir.

Q Did you see him come out? A No, sir.

Q Did you see the man struck? A No, sir.

Q Or the man fall? A No, sir.

Q Did you see the policeman fall? A No, sir.

Q Did he fall at any time while he was running after the man? A No, sir; not that I noticed.

Q Sure about that? A Yes, sir.

Q Now, during the shooting of the five shots, did the man remain on the wagon during the entire five explosions?

A Yes.

Q All that time? A Yes, sir.

Q And when the fifth shot had been exploded, he jumped off? A No, sir; he didn't.

Q What did he do? A When the first shot was fired at him, he turned that way, (illustrating) on his right, as though he was trying to save himself, and then his head toppled over towards his left side, like that (illustrating).

Q Now, I'm talking about the man that did the shooting. He jumped off before or after the five shots were fired?

A After.

Q Jumped off the spoke of the wheel? A Yes, sir.

Q After the shooting? A Yes, sir.

Q Now, one matter further, and then I am done with you. That wagon that was at the curb -- A Yes, sir.

Q Had it a horse attached to it? A That I couldn't say.

Q What? A That I don't know.

Q Well, did you see it there at all? A Yes, I saw the wagon there, but I couldn't tell you.

Q Well, do you know what kind of a wagon it was? A Well, I think it was a mineral water wagon.

Q And you don't know whether there was a horse attached to it? A Well, I suppose there was, or it wouldn't be there. I don't know whether there was one horse on it or two.

Q Well, but there was a horse on it? A Yes; there was a horse on it.

Q But you don't know whether it was a team or a single horse? A That's what I mean.

Q Now, there was a mineral water wagon standing there? A Yes, sir.

Q And the brewer's wagon? A Yes, sir.

Q Now, how did they stand? Alongside of each other or behind each other? A Well, the brewery wagon was furthest toward Second Avenue.

Q Perhaps I don't make myself clear to you. For instance, if I draw a straight line, like that, that represents the mineral water wagon? A Yes; and back that way, back of where your hand is (illustrating).

Q Now, let me take these two hats. We will call this the mineral water wagon, and this the brewer's wagon (illustrating); now how were they? A Back towards that way (illustrating).

Q Towards this way (illustrating)? A Yes.

Q So that the head of the brewer's wagon got to the tail of the mineral water wagon? A No, it was further up about the middle.

Q Oh, then, let us put it this way. So that the head of the horse of the brewer's wagon was about the middle of the mineral water wagon? A Yes; that's just about the way they were.

Q And between these two wagons there was a space? A Yes, a space long enough to give the man room, 20 inches or more; there was a space for a man to run through it.

Q Not much more space? A No, sir; not much; just about the width of a man's body to run through it.

Q Now, then, from which direction did you see the man who did the shooting come, and jump on to the spoke of the wheel? From the front of the mineral water wagon, or from the back of the mineral water wagon? A I didn't see him get on the wheel at all.

Q What? A I didn't see him get on the wheel at all.

Q Well, in which direction did you see him run, after he jumped off? A Towards First Avenue, and then up towards

his house.

Q Around the head of the horse? A Yes.

Q Attached to the mineral water wagon? A Yes, sir.

Q Is that right? A Yes, sir.

Q Now, when that happened, where were you? A I was in the gutter.

Q Whereabouts in the gutter? A Well, about three feet from just where you had those hats (illustrating).

Q Now I will take those hats again? A Well, I was right about where your hand is (indicating).

Q That is, by the brewery wagon? A Yes; I could almost touch it with my hand.

Q And were there any other people around you? A There must have been other people, because the street was crowded, but I didn't look around to see who was there, because I was nervous when I heard the shots. I was looking out for myself, at the time.

Q Now, if you say you stood in the gutter, how could you see what was going on at the door of 346? A Why, all I had to do was to turn around.

Q And did you turn around? A Yes, I certainly ~~did~~ did, when I saw this man jump off and run, and I stood out at the curb.

Q Did you see the policeman follow him? A Yes, sir.

Q Did he pass through that space (indicating)? A No,

Q 110

CASE 1402

98-
sir; he come around the tail of the wagon.

Q Of the brewer's wagon? A Yes, sir.

Q And ran over towards the sidewalk? A Yes; going about that way (illustrating).

Q I see. At what particular spot was it, as you remember it, that you saw the man snap his gun at the policeman; where was the man? A The man was on the hub of the wheel, on the spoke of the wheel.

Q When he snapped the gun at the policeman? A (No answer.)

Q Now, ~~you~~ understand my question? A Yes. Oh, at the policeman?

Q Yes. Where was he then? A One step up from the sidewalk, at the door.

Q And where was the policeman? A Right at the edge of the railing, about three feet away from him.

Q Whom did you give your name to, as being a witness in this case? A It was Murray or the policeman, ~~xxxxxx~~ -- at I couldn't exactly tell you which -- the beginning of it.

Q I want to take that address of Mr. Murray.

MR. MOSS: I will call him, if you like.

MR. LEVY: I wish you would.

BY MR. LEVY:

Q Is that the man that you say you were living with?

A Stopping with.

204177
CASE 77-1402

Q Is that the man that you say you worked for? A No, sir.

Q Whom did you work for? A McMahon, a painter on Second Avenue, is the man I worked for.

Q I see. Now, during the whole, the entire forty-five minutes that you say the wagon stood there, up to the time the shooting took place, was there continually a large crowd of people around the street and around the wagons?

A Yes.

Q The crowd increased as the time went along; didn't it?

A Yes.

Q Will you give me an idea of how many people were gathered there, according to your idea? A Oh, there must have been over a thousand, because 48th Street is a --

Q Is a what? A A pretty thick place for people.

Q Pretty thickly populated? A Yes, sir; it is very well populated with people.

M I C H A E L M U R R A Y, of 848 First Avenue, a witness called in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MOSS:

Q Mr. Murray, what do you do for a living? A I drive a truck; truck driver.

Q And do you know William J. Burke, who has just been on

CASE #1402

the stand here? A Well, I ain't much acquainted with him.

Q But you know him? A I know him.

Q Now, on April 29th, were you standing with Burke and some other men on 48th Street, at the time there was some trouble there on the street? A Yes, sir.

Q Did you see that brewery wagon? A I certainly did.

Q Did you see it before the child was hurt? A I seen it coming down from Second Avenue, and the child went behind the left hind wheel.

Q And how fast was the wagon going? A Going slowly; he couldn't go any slower; just creeping along.

Q And when the child was run over, what happened?

A Well, I'll tell you what happened.

Q Now, let's see if I can direct your attention.

Now, when the child was run over, did the wagon go on, or stand there? A No, the poor old man stood there.

Q Well, you mean the driver? A Yes. I'm a driver myself, but I call him a poor old man. He stood still.

Q Now, before the officer came, just as quick as the wagon stopped, and the child was hurt, did the driver remain upon the wagon? A Sat right on his seat.

Q Did he get off? A No, sir; he was afraid to get off.

Q Now, tell us what happened? A And, when the officer went to take him to the drug store, corner of 49th Street and First Avenue, and was bringing the man around to see the child, this man runs up deliberately and grabs the side of the truck this way (illustrating), and pulled it out, and give him the five shots. That's all I've got to say.

Q Q You saw the five shots fired? A Yes, I certainly did see it.

Q And you say the man's foot was on the wheel when he fired? A On the hub.

Q On the hub? A Yes.

Q And do you see the man who did that here? A Yes, certainly I know the man. That man right there (indicating the defendant.)

Q Well, where did the defendant come from to fire the shots? A Out of 342.

Q Did you see? A I certainly did.

Q Did you see him come out of any house? A I certainly did.

Q You saw him come out of a house? A Yes, certainly.

Q And at that time when he came out of a house, where was the child? A The child was in the hospital --- no, the ambulance came there, and the mother wouldn't let it go to the hospital in the ambulance, the mother wouldn't. And she tried to kick the poor old man when he was dead, and I am the one that put the sheet on the old man.

MR. LEVY: Well, I suppose that ought to be stricken out.

MR. MOSS: Yes, I consent to that.

BY MR. MOSS:

Q Well, the child was not on the street when the shots

were fired? A No, sir.

Q He was in the drug store, or somewhere? A Yes, sir, in the drug store, I believe.

CROSS EXAMINATION BY MR. LEVY:

Q Tell me about Mr. Burke, how long have you known him?

A I know Mr. Burke about nine or ten years.

Q Yes. Well, where does he live? A He lived in 848 one time.

Q Who did he live with? A He lived with some woman on the top floor. I couldn't tell you her name.

Q How long did he live there? A Oh, he lived there a couple of years.

Q And where do you live? A I live in 848 First avenue.

Q Well, did he ever live with you? A No, he never lived with me.

Q Never? A No.

Q Ever sleep in your house? A He might have slept in my mother's house; he never slept in my house.

Q He never slept in your house? A No, sir.

Q Well, tell me. Had you been in the company of Mr. Burke that day long? A Certainly.

Q How long had you been with him that day? A That day he was alongside of me when it happened.

I know, but I want to know how long you and Burke

103
were together on the day of the shooting? A Q, before that?

Q Yes, sure? A A couple of hours.

Q And how did you spend your time in that couple of hours?

A Spent our time?

Q Yes. A Why, chewing the rag. What else would we do. We couldn't buy even a pint of peanuts, because we didn't have money to buy them, I guess.

MR. MOSS: Now, just answer the questions, Murray.

THE COURT: Just answer the questions respectfully and quietly.

BY MR. LEVY:

Q And during those couple of hours did you get any drinks together? A No, sir.

Q Not one? A No, sir, not one. We didn't have the price to get a drink. That's the whole thing in a nutshell. I am telling you the truth and I am not telling you no lie. I can't tell you any different.

THE COURT: No, no. Answer the questions.

THE WITNESS: I did answer it.

THE COURT: But you are making speeches, here. Just go on, Mr. Levy, when you are ready.

BY MR. LEVY:

Q Did you get the price of a kettle of beer, that day?

A No, sir.

Q Not a drink that day? A No, sir.

Q You were perfectly sober? A Yes, sir, I certainly was.

Q And so was Burke? A I was sober.

Q How about Burke? A Well, he was about as sober as myself, I guess.

Q Yes. Now, where were you standing when you saw the truck stop? A Right at 342 East 48th street.

Q 342? A Yes, sir.

Q Right in front of the door, Mike? A A couple of feet away from the doorway. I didn't have no rule to measure it.

Q Well, about how many? You can tell me. A Well, I am telling as far as I can give.

Q How far from the entrance were you standing? A I wasn't five feet away from it.

Q And when I speak of the door I am talking of the door that you say you saw the man coming out of? A Well, you was talking about the truck before that, wasn't you?

Q I am talking about what? A You was talking about the truck before that, weren't you?

Q I don't quite understand. I want to know where you were standing when you saw the man come out of 342? A Where was I standing?

Q Sure. A I was standing at 346. That's only a door above like. 344 and 346 is different.

Q There were two houses between you and --- A Between the

two houses, yes.

Q Now where were you standing when the truck came to a standstill? A Why, right alongside of the gentleman, the poor man that's dead.

Q Won't you tell me the number of the house in front of which you were standing? A 344.

Q And the truck came to a stop in front of 344? A Yes, and not as far as 346, before he got killed. And that's the limit, that's all I got to tell you, now.

Q Now, just tell me a little more, will you? A That's all I've got to tell you.

Q Now, did you see the man get off the truck, and then the truck go along, a distance of about one hundred feet?

A No, sir; the man only got off the truck when the officer took him to the drug store; and, when the officer brought him back to put him on the truck, to bring him around, this man here pulled out and shot him, and give him five bullets. That's all I got to say.

Q How long was the man off his truck before he climbed back to his seat? A Well, he couldn't be ten minutes, could he, to walk from 48th street to 49th street?

Q How long was the wagon standing in that street before the man was shot? A Twenty-five minutes or so.

Q No longer? A No, sir.

Q Did you see the child lifted up? A I certainly did.

Q It was bleeding, wasn't it? A I seen that man's wife carrying that child to the drug store, and she refused to let it go on the ambulance.

Q Yes, you told me that. Did you see the child bleed? A No, sir, the child never bleed.

Q What was it that injured the child? A The left hind wheel.

Q You didn't see the horse kick the child? A No, sir; the horse never touched the child.

Q You didn't see the child kicked in the stomach and then rolled over? A No, sir; no, sir.

Q Now, will you tell me how the left hind wheel hurt the child? A Now, I'll just tell you? A Any child can run in between the forward wheel and hind wheel.

Q Did you see the wheel pass over the child? A Yes.

Q Well, did the child scream? A No, the child wasn't able to.

Q Did you hear any one make any outcry? A Only the people in the neighborhood hollered out, and the poor man was afraid to pass the Wop saloon there.

Q A Wop saloon? A Yes, that a ginea, - that's an Italian saloon. That's all I got to say.

Q Did you see the driver --- withdrawn. Did you see any more children in the street? A Any more children?

Q Yes. A Oh, there's thousands of them around there.

107
Q Now, did you see this little child -- this little boy before he was injured? A No, sir, I didn't.

Q Did you see whether he was playing with any other children? A No, sir, he wasn't playing. But he walked between the forward and hind wheels.

Q (Question repeated) A No, sir, he went out in the gutter to look for a stick or a ball.

Q And how big was the boy? A Oh, he was a stem-winder, I call them, not very big.

Q How old? A I should judge about two years and a half.

Q And what did the child wear at the time? A A pair of skirts, the same as a woman would wear.

Q Now, did you hear the driver holler out to the children to get out of the way? A No; the only thing he hollered out ---

Q Now, will you answer my question? A Yes, he hollered, and when he ran over the child he stopped, and he said, "Go and get an officer."

MR. LEVY: Now, I object to that, if your Honor please, and I ask that the answer be stricken out.

THE COURT: Yes, strike that out. Now answer the question directly and don't waste the time of the Court. Our time is valuable if yours is not.

BY MR. LEVY:

Q Now, was there another wagon on that street? A No, sir there was not.

107
O I I

CASE 1402

Q Now, in what building was there a saloon at that time?

A 341-1/2, they call it.

Q Well, its between 342 and 244, is that right? A Yes.

Q Now in front of which did the brewer's wagon stop?

A In front of 344.

Q Now was there a wagon in the street besides the brewery wagon? A No, sir.

Q Are you sure? A I am certain.

Q Now was there a wagon standing in front of the saloon?

A No, sir.

Q I suppose that --- A No, sir, no sir.

Q I suppose --- A No, sir.

Q Now, one moment. I suppose you would recognize the mineral water wagon, when you saw it wouldn't you? A Well, I certainly would.

Q Well, did you see a mineral water wagon standing in front of the saloon? A No, sir.

Q Was there a mineral water wagon standing --- hold up. Don't answer so quick. Was there a mineral water wagon standing between the brewery wagon and the curb of the sidewalk? A No, sir, no.

Q Are you sure about that? A I am certainly sure of it.

Q Now, what do you say about whether or not there was a wagon there, with a space between the brewery wagon and the mineral water wagon, just wide enough for a man to go through?

CHIEF

103

7041 37 1402

109
Is that so? A No, sir; no, sir; no, sir.

Q Why, of course, you also saw the defendant, this man here (indicating) point a pistol at the officer, didn't you?

A Sir?

Q You saw this man point a pistol at the officer? A Yes.

Q And try to shoot him? A Yes.

Q And where was he then? A In 344, in the hallway.

Q Inside of the hall? A Yes, sir.

Q How far in the hall? A Right behind the cellar door, when the officer got him, and if there had been another bullet in it this officer would have been dead. And now that's all I have got to say, see?

Q Now, were you in the hall? A I was alongside of him.

Q When? A When it happened.

Q In the hallway? A Yes.

Q When he aimed the pistol at the officer? A Yes, sir; he was behind the cellar door.

Q Now, you are sure it was behind the cellar door he aimed the pistol at the officer? A No, going in by the door he turned to blaze away at him, and there was nothing else in it.

Q Where did he point the pitol at him, in the house or at the outside door?

A Behind the cellar door. You know what a cellar door is as well as I can tell you.

CASE #1402

THE COURT: Mr. Witness, you are not to talk back to Mr. Levy you are to answer his questions.

BY MR. LEVY:

Q I want to know whether the man pointed the pistol at the officer --- He certainly did.

Q Inside or outside of the building? A Going into the hallway, he turns around and points the gun at him (illustrating).

Q Now, when you speak about the cellar door, you mean the door on the sidewalk that leads down into the cellar; is that what you mean?

A No, I don't mean no door on the sidewalk, that leads into the cellar at all.

Q Well, what do you mean?

A Well, back of the stairs. You know what a hallway is, don't you?

Q Yes.

A And so do I.

Q Now, will you tell me whether it was in the back of the hallway, at the cellar door, in the back of the hall that you saw the man here point a pistol at the policeman, and pull the trigger? A No, going in. The officer got him behind the cellar door. The cellar door is right level with the floor of the hallway.

Q Well, we will pass by that, and get along further.

A Go ahead.

Q Now, the defendant was running into the hall, and the officer was following after him? A Yes.

Q Is that right? A Yes, it's right.

Q Did you follow him after the policeman? A I certainly did.

Q And who besides you? A A whole lot. And, if there was another bullet in the gun, he would have shot the officer, he would have killed the officer. Now, that's all I've got to say.

THE COURT: Now, see here, Witness. You stop this flippancy and answer the questions briefly and properly. Do you understand?

THE WITNESS: Yes.

THE COURT: I want you to understand that you are here in a court of justice as a witness.

THE WITNESS: Yes, sir.

THE COURT: And due respect must be shown to the

CASE 271402

counsel and the jury. If it is not, you will be committed for contempt. Proceed, Mr. Levy.

BY MR. LEVY:

Q I want to know how many men followed in after the officer, into the hallway? A Four.

Q Now give me their names? A They are right out there.

Q Give me the names? A There is Kenney, Driscoll and a couple more of them.

Q Give me the other names. A Kenney and Driscoll and a fellow named McCabe.

Q Did Burke go with you? A Yes, Burke was on the job, too.

Q You went right in, into that hallway, after the policeman? A Yes, sir.

Q Into the back, where the policeman finally caught him, at the cellar door? A Yes, sir.

Q Is that right? A Yes, sir.

Q Well, did you hold the door open for the policeman to go in there? A No, sir, Mr. Kenney held the door open. He's outside now.

Q And I suppose he held the door open so as to throw light into the hall? A I couldn't tell you about that part.

Q But you went in? A Yes, I certainly followed in.

Q Well, what did you see the policeman do? A He didn't

do nothing to the man.

Q He didn't touch him? A No, only put him in under arrest.

Q Now didn't you see the policeman club him? A No, sir, I didn't.

Q Did you see the policeman hit him with the butt of his revolver? A No, sir.

Q Did you see him knocked down by the policeman with a blow of the revolver? A No, sir.

Q You were right there? A No, sir; I didn't see the policeman hit him at all.

Q You were there, I say, when the man was placed under arrest? A Yes, sir, but he wasn't hit there. He was hit in Second avenue, as far as I understand.

Q Well did you see it done? A No, sir.

Q Then don't tell me what you didn't see. I'm talking of the hallway. Did you see the man sitting on a little stool or a little pail? A No.

Q What became of the man when he was placed under arrest? A He walked up quietly with the officer.

Q Well, didn't another officer come into the hallway? A Yes.

Q And how long were they in the hallway together? A About ten or fifteen minutes.

204173
CASE 371402

Q What were they doing in the hallway? A Looking after the man, I suppose.

Q Were you in the hallway all the time? A No, I got chased out.

Q Did you see the gun in the man's hand in the hallway?
A No, sir, I won't swear to that. No, sir, I didn't see the gun in his hand. No, no, I didn't see the gun in his hand.

Q Were you there when the man was taken to the station house? A Yes.

Q Did you see him taken by the police to the station house? A Yes.

Q Are you sure about that? A Yes.

Q Was the man bleeding? A No, sir.

Q Was there any blood coming from the face of this man when he was being taken to the station house? A No, sir, not at First avenue and 48th street, no.

Q Are you sure about that? A Yes, certainly.

Q Did you see the man take a handkerchief out of his pocket, and try to staunch the blood that was flowing from a wound in his head? A No, sir, I didn't.

Q And he walked along very quietly? A Yes. All that I got to say is the man walked along quietly, walked along very quietly, walked along nice.

THE COURT: Would you prefer to suspend here, Mr.