

**START**

3079

**CASE**

CASE #3079

1266

I n d e x

	Dir	Cr	ReDir
NORRIS, CHARLES	2	5	
ORLOWSKY, MICHAEL	6	12	16
MARTIN J. BERGEN	19		

- - - - -

CASE #3079

1267



I n d e x

	<u>Direct</u>	<u>Gross</u>	<u>Redirect</u>	<u>Recross</u>
BERGEN, MARTIN J.		43	49	<u>152</u>
SULLIVAN, BERNARD	52	70		
PORTER, HENRY J.	79	81		
ANDERSON, JOSEPH P.	87	89		
McNAMARA, MICHAEL F.	92	94		
DOWLING, JOSEPH	94	110		
DONOVAN, PATRICK	118	132	136	
● BIRCHALL, NATHAN, JR.	138			

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CASE #3079

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McNAMARA, MICHAEL F.	92	94		
DOWLING, JOSEPH	94	110		
DONOVAN, PATRICK	118	132	136	
• BIRCHALL, NATHAN, JR.	138			

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CASE #3079

COURT OF GENERAL SESSIONS OF THE PEACE

City and County of New York, Part V.

3624

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THE PEOPLE OF THE STATE OF NEW YORK :

-against-

MARTIN BURKE

: Before

: HON. OTTO A. ROSALSKY,

: Judge

: and a Jury.  
:-----

New York, January 5, 1922.

The defendant is indicted for manslaughter in the  
first degree.

Indictment filed October 7, 1921.

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

For the People: ASSISTANT DISTRICT ATTORNEY NEARY.

For Defendant: JOHN R. FITZPATRICK, ESQ.

A jury is duly impanelled and sworn.

THE COURT: Gentlemen of the jury do not discuss this  
case among yourselves nor permit any person to talk with  
you about it nor form nor express any opinion as to the  
guilt or the innocence of the defendant until the case is  
finally submitted to you. Be in your seats, please, at two  
o'clock.

R e c e s s.

CASE #3079



A f t e r n o o n S e s s i o n .

Trial continued at 2 P.M.

Mr. Neary opens his case to the jury.

C H A R L E S N O R R I S, a witness called and sworn on behalf of the People, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q Dr. Norris, you are Medical Examiner of the City of New York? A I am.

Q And it is part of your duty to perform autopsies upon persons who meet death by violence? A It is.

Q Have you performed autopsies upon such persons? A I have.

Q About how many autopsies have you performed in your experience as Medical Examiner? A As Medical Examiner, roughly speaking, a thousand, actually performed by myself.

Q Do you recall performing an autopsy on the body of one Pietro Rumore? A I do.

Q On what day, do you recall? A February 13th at 10.50 A.M., at the City Morgue, 29th Street and 1st Avenue.

Q Who identified the body of Pietro Rumore to you? A Patrolman Michael Orlowsky, and also as to identity by the brother-in-law of the deceased, Pietro Tobaro.

Q Will you tell us what the autopsy disclosed, what the examination of the deceased disclosed? A The autopsy disclosed that there were two bullet wounds of entrance, one situated in the skin of the left temple. This bullet penetrated the bones

CASE #3079



of the skull and passed backwards through the left cerebella hemisphere. The bullet was found imbedded in the tissues of the white matter of the left cerebella hemisphere, namely a 32-caliber bullet. Another bullet wound of entrance situated in the right abdominal quadrant, at the point I indicate here (indicating), 1-3/4 inches to the right of the middle line and about four inches below the hair, situated on the lower part of the abdomen, namely the pubis. This bullet transversed the anterior abdominal wall. It made three penetrating wounds of the small gut, passed through the bladder, in and out of the urinary bladder, and then through the rectum, and the bullet was found in the muscular wall of the pelvis, namely down here (indicating), in the muscle called the levator ani. This was a same caliber bullet, 32-caliber. The abdominal cavity contained blood. The cause of death was shock and hemorrhage. Besides these two wounds I have described he also had two superficial flesh wounds on the right thigh, the external portion, one situated three inches below the prominence you feel here, namely the anterior superior iliac, so-called. Two inches below that was the second one. These wounds only involved the outer cuticle of the skin of the thigh and were not penetrating wounds.

Q What did you say was the cause of death in your opinion?

A The shock and hemorrhage.

Q Produced by what? A Shock, by bullet wounds in the brain which penetrated through the skull cavity and through the brain, and hemorrhage into the abdominal cavity, as the result of

CASE #3079

the one which passed there through three loops of the small gut<sup>4</sup> and the rectum and the bladder.

Q Could you say from your examination, Doctor, and your experience, whether either of these wounds were sufficient to have produced death? A They were, either of them.

Q What type of man was the deceased? A The man was of large frame, 5 feet 8-1/2 inches high, scale weight 183 pounds. He was very well developed muscularly, with rather an abundant fatty layer on the abdomen, also over the skin.

Q I show you one leaden bullet which was contained in this envelope and I ask you if this is one of the bullets you found in the body of the deceased, Pietro Rumore? A Yes, this was the bullet which was removed from the skull cavity, in other words from the left cerebella hemisphere. It is nicked on account of passing through the bones of the skull.

Q Is that bullet in the same condition now as it was when you extracted it from the skull of the deceased Pietro Rumore?

A It is.

MR. NEARY: I offer this bullet in evidence.

THE COURT: Have it marked for identification.

(Bullet marked People's Exhibit 1 for Identification.)

Q Doctor, I show you another bullet which is contained in this envelope and I ask you where you found that bullet? A That was found in the pelvic floor, namely in the muscle called the levator ani. It was the bullet that passed through the abdominal wall.

CASE #3079

Q Is that bullet in the same condition now in which it was when you extracted it from the body of the deceased, Pietro Rumore? A Yes sir.

MR. NEARY: I offer that for identification.

(Bullet marked People's Exhibit 2 for Identification.)

MR. NEARY: I think that is all; you may examine.

CROSS-EXAMINATION BY MR. FITZPATRICK:

Q Doctor, that one found in the right side, what direction did that bullet take? A The distance between the bullet wound, as I tried to describe here in the right abdominal quadrant, and the position in which the bullet was found, namely in the lavitaeani of the left side was 8-1/2 inches. The direction was therefore backwards and slightly downwards.

Q And what direction did the bullet take on the side of the scalp? A Directly backwards.

Q Straight back? A Yes, straight back.

Q Were there any markings on the body? A There were no markings on the body, except those two areas that I have described as flesh wounds on the external portion of the right thigh.

Q In your opinion those wounds could have been produced by one man facing the other, is that so? A Which wound?

Q The one on the right hip? A They were produced by a man, I should say, standing at the side.

Q The one here, I mean (indicating)? A In the abdominal cavity, oh yes, from the side.

CASE #3079



BY MR. NEARY:

Q The two wounds you have described in the limb, from the course of those bullets, would you say those bullets were discharged by someone standing at the side of the deceased? A Yes.

Q The bullet that entered the skull of the deceased, was that found in the skull of the deceased? A Yes sir.

MR. NEARY: That is all.

MICHAEL ORLOWSKY, Shield No. 6051, a witness called and sworn on behalf of the People, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q Officer, you are connected with the municipal police force of the City of New York? A Yes sir.

Q And how long have you been a member of the police force? A The last three years.

Q On the 12th day of February, 1921, to what precinct were you attached? A The 18th.

Q And where is that located? A At West 20th Street, between 7th and 8th Avenues.

Q Were you on post on the afternoon of February 12th, 1921? A Yes sir.

Q Where was your post? A My post was on 9th Avenue. Two posts; Nos. 32 and 33, on 9th Avenue from 17th to 24th Street.

Q Did you cover the east side of the avenue or the west side? A Both sides of the avenue.

Q On the afternoon of February 12th, 1921, at about 3.30

CASE #3079



7  
were you in the neighborhood of 19th Street and 9th Avenue?

A Yes sir.

Q Were you going north or south about that time? A South.

Q When you came to 19th Street and 9th Avenue did anything attract your attention? A Why, I saw a lot of young men standing there and acting in a disorderly manner.

Q Where were they? A On the southwest corner of 19th Street and 9th Avenue at the saloon.

Q Did you see the defendant, Martin Burke, there? A I don't remember.

Q That is the third man from the end here (indicating defendant)? A I don't remember.

Q Did you say or do anything to the men standing on that corner? A Yes sir.

Q Then did you proceed south on 9th Avenue? A Yes sir.

Q What afterwards attracted your attention to the corner of 19th Street and 9th Avenue? A I heard two shots.

Q What did you do? A I turned back and I saw the deceased lying on the corner of 9th Avenue and 19th Street.

Q When you first came down 9th Avenue and came to 19th Street and saw these young men standing on the corner, did you see the deceased standing with them? A No sir.

Q Did you know who the deceased was? A I did, by sight.

Q Now, when you came back you say you found the deceased lying on the street? A Yes sir.

Q Where was he lying? A He was lying in the front of 145

1276  
CASE #3079

9th Avenue, about 20 feet from the southwest corner of 19th Street and 9th Avenue.

Q Was he on the sidewalk or in the gutter? A On the sidewalk.

Q Was he up near the house line? A His head to the stoop.

Q Was it against the stoop? A No, towards the stoop, right in the middle of the sidewalk.

Q Was he lying across the sidewalk with his feet extending out towards the gutter and his head towards the house? A Yes sir.

Q Did you observe the condition of the man you saw lying there? A Yes sir.

Q What was his condition? A He had a wound in the left side of his forehead.

Q Did you notice any other wounds? A No sir, not at that time.

Q What did you do, Officer? A Why, I immediately tried to get information from the people there as to who done the shooting, which all denied.

MR. FITZPATRICK: I object to that, your Honor.

THE COURT: Strike out the words "which all denied".

Q What did you do in relation to the man you found lying on the sidewalk? A I notified the detectives of the 18th Precinct.

Q Was the man lying on the sidewalk able to speak to you?  
A No sir.

Q Was he conscious or unconscious? A Unconscious.

MR. FITZPATRICK: I object to that. How can he tell that?

CASE #3079

1277

9

THE COURT: If you claim he was simulating, that is another matter. A witness may testify as to the appearance of a person.

BY THE COURT:

Q What was he doing? A He was lying on his back.

Q Were his eyes open or closed? A Closed.

Q In what position were his hands? A Sideways (indicating).

Q How long did you look at him? A Just as soon as I looked at him I notified the detectives of the 18th Precinct.

Q When you returned did you see him in the same position?

A Yes sir.

Q Did he move or were his eyes open? A No sir, he was only breathing.

BY MR. NEARY:

Q Were you there when the body was taken away? A Yes sir.

Q Was it an ambulance that took him away? A Yes sir.

Q And did you go with the body? A I did.

Q And where did you go? A To Bellevue Hospital.

Q When that body was elevated into the ambulance did you observe the sidewalk near where this body was lying? A I did.

Q Did you see anything on the sidewalk there? A No sir, only blood.

Q When did you next see the body of this man which you had seen on 9th Avenue near 19th Street? A About 10 A.M. of February 13th in the City Morgue.

CASE #3079



Q And was Dr. Norris, the Medical Examiner, there? A Yes.

Q And you were there when Dr. Norris was there? A Yes sir.

Q Did you identify this body to Dr. Norris? A I did.

Q And was the body which you identified to Dr. Norris the same body you had seen at 19th Street and 9th Avenue? A Yes sir.

Q And have you since learned the name of that man? A Yes.

Q And what was the name? A Pietro Rumore.

Q What did you do with the clothing that Pietro Rumore had on? A I was directed by the desk lieutenant to take it up to the District Attorney's office.

Q Did you take those clothes to the District Attorney's office? A Yes sir.

Q What did you do with them? A I took them up in the storeroom.

Q Did you mark them or put any tags on them? A I put my initials on them.

Q I show you this coat with a tag attached to it and ask you if you recognize that coat? A Yes sir.

Q Is that the coat that the deceased Pietro Rumore had on him? A Yes sir.

Q Is that the coat you brought to the District Attorney's office and marked? A Yes.

Q Did you put these tags on them? A I did.

Q Is that coat in the same condition now as it was when you took it to the District Attorney's office? A Yes sir.

Q Is it in the same condition now as it was when it was taken

CASE #3079



from the body in the Morgue? A Yes sir.

Q With the exception of tags and marks which you put on in the meantime? A Yes.

Q I show you a shirt and ask you if you saw that shirt before? A I did.

Q Is that the shirt you took from the deceased and brought to the District Attorney's office? A Yes sir.

Q And those tags on are tags bearing your handwriting? A Yes.

Q And the mark on the shirt is a mark put there by you? A Yes.

Q Is that in practically the same condition as it was at that time? A Yes sir.

Q I show you a pair of trousers and ask you if you saw that pair of trousers before? A I did.

Q Is that the trousers that the deceased Pietro Rumore was wearing? A Yes.

Q Is that trousers in the same condition as it was at the time you brought it to the District Attorney's office? A Yes.

Q With the exception of the marks put on by you? A Yes sir.

Q I show you a vest and ask you if that is the vest that you took from the body of Pietro Rumore or that was taken from the body of Pietro Rumore? A Yes sir.

Q And is it in the same condition as it was at the time, excepting for the tags and the marks which you have placed upon it? A Yes sir.

CASE #3079

MR. NEARY: I would like to offer this clothing in evidence.

MR. FITZPATRICK: I have no objection.

(The clothing is marked as one exhibit, namely, People's Exhibit 3 in evidence.)

MR. NEARY: I think that is all; you may examine.

CROSS-EXAMINATION BY MR. FITZPATRICK:

Q Officer, how long before the time that you were going south on 9th Avenue had you been in that vicinity; you say you first went south on 9th Avenue and saw these young men standing on the corner? A Yes.

Q And you spoke to them? A Yes sir.

Q And you continued on your way south, is that correct? A Yes.

Q How long before that occurrence had you been in that vicinity? A After I left these men?

Q No, before you came down on that occasion south on 9th Avenue, how long before that had you been there? A I was on from 8 A.M.

Q Had you been at 9th Avenue and 19th Street at any time prior to the time you spoke to these young men and continued south? A Yes, about half an hour before.

Q When you spoke to these young men they walked away, is that so? A Yes.

Q And you continued on your way down south on the west side of 9th Avenue? A Yes sir.

CASE #3079

Q How far south from 19th Street and 9th Avenue were you before you heard these shots? A I was in the middle of the block between 17th and 18th Street, continually going south.

Q And when you heard these shots you immediately turned around? A Yes sir.

Q And I take it you ran back? A Yes sir.

Q And when you got there what did you see? A I saw the deceased lying on the sidewalk.

Q Before you arrived there did you see anything? A I seen the people from different directions coming towards the deceased.

Q What is the corner address of the southwest corner of 19th Street and 9th Avenue? A 145 or 147.

Q Isn't it a fact it is 147? A Yes, it is.

Q There is a doorway at that saloon on that corner, isn't there? A Yes.

Q And a vestibule in it? A Yes sir.

Q How near that vestibule was this deceased when you arrived? A About three feet.

Q Away from the vestibule of that saloon? A Yes sir.

Q And in which direction was his head? A Towards the saloon.

Q You say his head was towards the saloon? A Yes sir.

Q And his feet were out towards the gutter? A Yes sir.

Q You say you immediately notified the detective bureau?

A Yes sir.

CASE #3079



Q Did you wait there until the officers arrived? A Yes sir.

Q What were the names of those officers that arrived?

A Detective Anderson, and I do not know the other fellow's name, the other detectives' names.

Q Was there an Officer Mack there? A I can't remember now.

Q How many officers altogether arrived there? A There were half a dozen, I think.

Q I mean plainclothes men? A Half a dozen; about six. Some of them from Headquarters passing in an automobile.

Q What were the names of these men? A I do not know. I know Anderson. That is all I know.

Q You just knew one of them? A Yes sir.

Q Did you search the clothing of the man lying on the sidewalk at that time? A Yes sir.

Q Did you find anything in it? A Yes sir.

Q What? A I found a card bearing his name and address, and a razor.

Q Where did you find the razor? A In the right side coat pocket.

Q In the coat pocket, you say? A Yes sir.

Q What did you do with the razor? A I took it to the hospital.

Q You took it to the hospital? A Yes, with the deceased.

Q What did you do there? A Turned it over to the hospital authorities.

CASE #3079



Q Do you know to whom you turned it over? A I don't know the name of the nurse.

Q Did you get a receipt for it? A Yes sir.

Q Do you know what happened to the razor after that?

A Why, it was given back to the deceased's family.

Q Have you seen the razor since? A I did.

Q When? A About two months ago.

Q Have you seen it any later than two months ago? A No sir.

Q Where did you see it two months ago? A At the deceased's family.

Q I show you this razor and ask you if this is the one you saw at the home of the deceased's family (handing razor to the witness)? A Yes sir.

Q And is that the razor that you found in the right hand coat pocket of the deceased? A Yes sir.

MR. FITZPATRICK: I offer this razor in evidence.

MR. NEARY: We have no objection.

(Razor marked in evidence Defendant's Exhibit A.0)

Q What were you doing at the home of the deceased's family two months ago? A I was directed by Assistant District Attorney Hennis to bring the razor to him.

Q To whom did you first tell that you found a razor in the clothing of the deceased? A The Assistant District Attorney.

Q How long after the death of the deceased? A About two months ago.

Q Did you tell the police officers who arrived on the scene

CASE #3079

16  
about having found a razor in the deceased's pocket? A I don't remember now.

Q Did they ask you what you found in his pocket at that time? A I don't remember now.

MR. FITZPATRICK: I think that is all.

REDIRECT EXAMINATION BY MR. NEARY:

Q Officer, when you went up to the body, the body was lying on the ground? A Yes.

Q Was the deceased lying on his back or on his side? A On his back.

Q And you searched the pockets of his clothing? A Yes sir.

Q When you found this razor in the coat pocket which coat pocket was it in? A In the right hand pocket of his coat.

Q Will you show us how that razor was when you took it from his pocket; was it open or was it closed? A It was found in this pocket (indicating).

Q When you put your hand in the right hand coat pocket of the deceased and felt that razor, was that razor open or closed?

A Closed; exactly as it is now.

Q Do you know what this man's business was? A Yes sir.

Q What was it? A He had a barber shop.

Q And where was the barber shop? A 165 9th Avenue, which is between 19th and 20th Street.

Q When you passed there on your post, had you often seen that man in his barber shop? A Yes.

CASE #3079

Q How long, if you know, did he have the barber shop there?

A I don't know because I was only a new man in that precinct.

Q How long had you been in the precinct? A About two months at that time.

Q The first time you were on that post you saw the barber shop there, owned by this man? A Yes.

BY MR. FITZPATRICK:

Q Was there any hat near or upon the body of the deceased when you arrived? A Yes.

Q What kind of a hat? A A peak cap.

MR. FITZPATRICK: I think that is all.

JOHN J. O'DONNELL, of 2626 Broadway, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q Mr. O'Donnell, are you connected with the office of the District Attorney of New York County? A Yes sir.

Q And in what capacity? A As engineer.

Q You are a civil engineer, are you? A Yes sir.

Q As part of your duties as an employee of the District Attorney's office, is it your duty to make diagrams of scenes where acts of violence take place? A Yes.

MR. FITZPATRICK: I will concede the qualifications of Mr. O'Donnell and also concede that this is a correct diagram of the place.

CASE #3079



MR. NEARY: I offer this diagram in evidence.

(Diagram marked in evidence as People's Exhibit 4.)

Q Now, will you look at this diagram, People's Exhibit 4 in evidence and explain, please, to the jury what these different markings are? A This is a diagram of the intersection of West 19th Street and 9th Avenue. Here is 19th Street, indicated by this space here (indicating), and 9th Avenue by the space between the curb lines and building lines. This is the building line as marked. This is the west curb (indicating). Here is the east curb and east building line (indicating). The black squares are the posts supporting the elevated structure on 9th Avenue, and on the east side are circular cross-sections. On the southwest corner of 19th Street and 9th Avenue there is a saloon which I have marked, and adjoining the saloon is a bakery. There is a covered entrance through the saloon indicated by the square, and the word "Entrance". The southerly side of 19th Street is 14 feet 7-1/2 inches. That is the sidewalk adjoining the saloon (indicating). The width of the roadway between the curb lines is 30 feet, and the width of the northerly side of 19th Street is 14 feet 10 inches. At a distance of 164 feet and 2 inches from the northerly boundary is the barber shop which was run by Rumore. The width of 9th Avenue is broken into the several measurements. From the easterly curb to the northbound car track is 22 feet 11 inches. The distance between the two rails of the northbound track is 5 feet 1 inch. Then the distance between the northbound

CASE #3079

track and the southbound track is 4 feet 5-3/4 inches. The distance between the rails of the southbound track is 5 feet 1 inch. The distance from the southerly track to the west curb is 22 feet 5-1/4 inches. The westerly sidewalk of 9th Avenue is 19 feet 9-1/2 inches. There is an electric light post at the southwest corner of 19th Street and 9th Avenue which is indicated by a green circle and two letters E.L. On the northeasterly corner there is also an electric light. These small black circles indicate water hydrants.

Q What scale is this diagram drawn to? A 1/8 inch equal to one foot.

MR. NEARY: I think that is all; you may examine.

MR. FITZPATRICK: I have no questions.

MARTIN J. BERGEN, of 513 West 19th Street, called as a witness on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q What is your business, Mr. Bergen? A I am a chauffeur for P.H. Kehon.

Q And how long have you been a chauffeur? A About three years.

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

Q How long have you known the defendant Martin Burke?

A For about nine years.

Q Do you live in the same neighborhood in which he lives?

CASE #3079

A Yes sir.

Q And do you know him fairly well? A Yes sir.

Q On the 12th day of February, 1921, in the afternoon, do you recall the occasion when you were in a baker shop which is a little west from 19th Street and 9th Avenue? A Yes sir.

Q Who was there with you? A With me were some fellows, but I don't know just what their names are. I forget their names just now.

Q Who owned the baker shop at that time? A I don't know the name of the person.

Q What other young men were in the baker shop with you?  
A There was Joseph Dowling.

Q Who else? A I could not think of anybody else.

Q Was there a young man named Kearney with you? A No sir.

Q Was there a man named Troy with you? A No sir.

BY THE COURT:

Q Can you give the name of any person who was in the baker shop? A Only Joseph Dowling; that is the only one I know.

Q How many persons were in the baker shop whose names you do not know? A About six persons in the baker shop.

BY MR. NEARY:

Q Do you know a young man named Joseph Troy? A Yes sir.

Q Was Joseph Troy in the baker shop? A No sir, I don't remember.

Q Do you know a young man named Patrick Donovan? A Yes sir.

1289  
CASE #3079



MR. FITZPATRICK: I object to this.

MR. NEARY: I am trying to refresh his recollection.

Objection overruled. Exception.

- Q Do you know a man named Patrick Donovan? A Yes sir.
- Q Was he in the baker shop with you? A No sir.
- Q Do you know a man named Flanagan? A Yes sir.
- Q Was he in the baker shop with you? A No sir.
- Q Do you know a man named Courtney? A Yes sir.
- Q Was he in the baker shop? A No sir.
- Q Do you know a man named Kondrup? A Yes sir.
- Q Was he there? A I believe he was there.
- Q Do you know a boy named James Dowling, a brother of Joseph Dowling? A Yes sir.
- Q Was he in the baker shop? A No sir.
- Q You were in the baker shop and had a bite to eat? A I had a cup of coffee.
- Q And while you were there an Italian by the name of Pietro Rumore came in? A Yes sir.

THE COURT: Why do you refer to him as an Italian?

MR. NEARY: No particular reason.

THE COURT: Well, let us refer to him by his name, the same as you referred to the other men.

- Q Did you say anything to Pietro Rumore? A No sir.
- Q You had no conversation with him at all? A No sir.
- Q Did you hear anyone else say anything to him? A No sir.

1290  
CASE #3079

Q How long did you stay in the baker shop? A Before Rumore came in?

Q Yes. A Well, I was in there for about twenty minutes.

Q And how long did you stay in there after Rumore came in?

A I was just going out as Rumore came in the baker shop.

Q Did you leave the place immediately after Rumore left?

A No sir, I left before Rumore.

Q Where did you go? A I went out and stood on the corner of 19th Street and 9th Avenue, southwest corner.

Q Did you stand on the northwest corner or the southwest corner? A The southwest corner.

Q And what building is right on the southwest corner?

A There is a tenement house.

Q Where is the saloon? A On the ground floor. It is on the side street, too.

Q There is a saloon on that corner, Rogers' saloon? A Yes.

Q When you went and stood on the corner there, did any young men join you? A No sir.

Q You were standing there all alone? A Yes sir.

Q Did you see Pietro Rumore come out there? A No sir, I did not see him come out at all.

Q Did you see him come near that corner where you were?

A Only when he got on top of me.

Q You saw him when he got on top of you? A Yes.

Q Were there many people in that neighborhood that day?

CASE #3079

A On the avenue there were three fellows but I did not know them.

Q You did not see this man Rumore until he was right on top of you? A Yes sir.

BY THE COURT:

Q What do you mean by on top of you? A I just happened to turn around and he was alongside of me.

Q Well, that is not on top of you? A No sir, -- just about three feet away from me.

Q On what avenue was this? A 9th Avenue.

Q And what street? A 19th Street.

BY MR. NEARY:

Q How far away was Pietro Rumore when you first saw him?

A About three feet.

Q Will you indicate the distance by naming some point as the distance from where you are sitting that Rumore was away from you when you first saw him? A About from here to the end of the railing (indicating).

Q And did you say anything to him? A No sir.

Q Or did he say anything to you? A No sir.

Q What happened? A I just turned around and he made a spring for me.

Q What is that? A When I turned around he made a punch for me. I said, "What is the matter with you?" He said, "Are you one of them tough guys?" I said no. He said, "You ain't?" and with that he made another punch for me. I threw my coat off

CASE #3079



and I got out and he punched me on the jaw and I punched him on the jaw. Then he muttered something and walked up 9th Avenue.

Q You say he punched you where? A On the jaw.

Q And you punched him? A Yes sir.

Q He punched you first? A He did.

Q You say he punched you first? A Yes sir.

Q And then you struck him? A Yes sir.

Q How many blows were exchanged? A Only one blow, one for him and one for me.

Q What did Rumore do? A He just muttered something. I could not understand him and he walked up towards 20th Street and 9th Avenue.

Q Did he say, "All right, I got enough"? A No sir.

Q How many others were with you there when Rumore and you were striking at each other? A I guess after we started to punch at each other everybody started to crowd around.

Q Who did you see crowd around you? A Nobody that I know of. They just crowded around me.

Q There is nobody that you knew? A No sir.

BY THE COURT:

Q Did you say everybody started to punch you? A No sir. Only the two of us were punching, Rumore and myself. I said they started to crowd around Rumore and myself.

BY MR. NEARY:

Q You did not know any of those that you say crowded around

CASE # 3079

you? A No sir.

Q And then Rumore went up the avenue, did he? A Yes.

Q Did you see Burke before Rumore went up the avenue?

A No sir.

Q You say you did not see Burke when Rumore went up the avenue? A No sir, I did not.

Q Did you go away from the corner then? A Yes sir, I walked down through 19th Street towards 10th Avenue.

Q How long were you away from the corner of 19th Street and 9th Avenue? A About ten minutes.

Q Did you come back then? A Yes sir.

Q When you came back again to the corner of 19th Street and 9th Avenue who did you see there? A Some fellow there, I don't know who he was. He walked over to me and said, "Rumore has gone down to 18th Street and 9th Avenue".

Q Did you see Burke, the defendant, then? A No sir, I did not.

Q Do you recall making a statement to Assistant District Attorney Hennis in the 20th Street station house on the evening of February 16, 1921? A Yes sir.

Q Do you remember making this answer to a question that was put to you (reading): " Well, as Rumore walked away I went down the block and when I came back Burke was gone off the corner and about ten minutes later Burke came down". Do you recall that?

A No sir, I do not.

Q Will you say you did not make that answer to the question?

CASE #3079

A No sir.

26

MR. FITZPATRICK: That is objected to as endeavoring to impeach his own witness.

THE COURT: Well, he has a right to endeavor to refresh his recollection.

MR. FITZPATRICK: He has already refreshed his recollection and he said he does not remember.

MR. NEARY: This is a statement taken by the stenographer attached to the Homicide Bureau on an examination conducted by Mr. Hennis.

THE COURT: I am assuming the District Attorney is asking those questions with a view of refreshing the recollection of the witness. Of course he is not obliged to simply confine his efforts to a single question. I will allow it.

MR. FITZPATRICK: Well, I take an exception.

THE COURT: It is unlike the De Martini case.

Q And you did not say, continuing that answer (reading):

"And when I came back Burke was gone off the corner and about ten minutes later Burke came down and said 'I got a gun'"? A No sir.

Q You don't remember saying that? A No sir.

Q (Reading) "And I said 'yes', and he said (referring to Burke) 'yes', and so Rumore came down the avenue then and as he did Pat Donovan said, - "Here comes Rumore down; he might have a gun on him' and so I said, 'I am going down the block'." Do you remember saying that? A No sir, I don't remember saying that.

1295  
CASE # 3079



MR. FITZPATRICK: To save getting up, I take an exception to each question along this line.

BY THE COURT:

Q You say you never made any such statement? A No sir. I was all excited, your Honor.

Q The question is, did you say that? A No sir.

Q You say you were all excited? A Yes sir.

Q The question is, do you remember whether the District Attorney put to you the questions which Mr. Neary has read to you, and that you made certain answers to those questions?

A No, your Honor, I don't remember.

Q You say you were excited? A Yes sir, your Honor.

Q Who was present when the statement was made by you?

A There were six detectives in the room, the District Attorney and his stenographer.

Q You say no such thing occurred, or you have no recollection of it? A No sir, I have no recollection.

Q Do you remember what you did say to the District Attorney? A No, your Honor, I do not.

Q Is your memory clear as to what happened that day; is it clear to-day as to what happened then? A Yes sir.

Q Do you remember what you said to the District Attorney? A No sir.

Q Not a question? A I might remember, if he asks it.

Q How long did he have you under examination? A I could not say that.

CASE #3079

Q For an hour? A No, your Honor; not an hour. About half an hour.

BY MR. NEARY:

Q And your answer continued; this may refresh your recollection; did you also state, "So I walked down the block and when I came up again Rumore was standing and Pat Donovan had hold of him, so I went over, and standing by him and Burke, I guess he did, because he was the only one that had the gun, he ran up and fired the shot and I ran across the gutter at the first shot and when I was running down the block I heard the other three shots and I run half way down the block and walked the rest of the way". Do you recall making that statement? A No sir. Rumore was not on the corner when I went up. When I got back to the corner Rumore was at 18th Street rather than to 19th Street when I was on the corner.

Q Did you see any part of the shooting? A No sir; all I seen Rumore grabbed for Burke's throat and as he did he put his hand to the back pocket and I heard shots.

Q Where were you then? A At the lamp post, the electric light.

Q You say Rumore took hold of the defendant where? A By the lapel of the coat.

Q And then how far away were you at that time? A About nine feet.

Q And were you looking at both? A Yes.

CASE #3079

Q And you saw Burke do what? A I did not see Burke do nothing.

Q Didn't you say you saw Burke put his hand to his pocket?  
A No sir.

Q Who put his hand to his back pocket? A Rumore.

Q Did you see him do that? A Yes sir.

Q What did Burke do? A I could not see Burke. Rumore had Burke in the doorway.

Q You were nine feet away? A Yes sir.

Q Were you facing Burke? A No sir, I was facing Rumore.  
Rumore's back was to me.

Q You said he put his hand to his back pocket. What pocket? A Back hip pocket.

Q Not the coat pocket? A No sir.

Q Had he hold of Rumore? A Nobody had hold of him at the time.

Q Who had hold of Burke? A Rumore.

Q And you were nine feet away, you say? A Yes sir.

Q What interfered with your view? A Rumore's back was to me and Burke was in front of Rumore in the doorway.

Q And then you heard the shots? A Yes sir.

Q Did you see any person with a revolver? A No sir.

Q How many shots did you hear? A I heard four shots.

Q Did you move away from the place? A Yes sir, I ran as soon as I heard the first shot.

CASE #3079



Q Where did you run to? A Across the street and half way down the block and then I walked.

Q You said there was no one had hold of Rumore? A Yes sir.

Q Let me try to refresh your recollection by reading this.

MR. FITZPATRICK: I object to that as endeavoring to impeach the witness.

THE COURT:

Objection overruled. Under the case of People against Kelly, 113 N.Y., the District Attorney is within his rights.

MR. FITZPATRICK: This man has stated what occurred there.

THE COURT: He has a right to refresh his recollection. The mere fact that the District Attorney reads something is no proof that the witness gave any such testimony.

MR. FITZPATRICK: I take my exception, your Honor.

Q May I direct your attention to this (reading): "Q Where were Rumore's hands when Donovan was searching him? A I just don't know. He was pushing the fellows away, I guess. Q What did you see him do? A I did not see him do nothing. Q I mean with his hands? A I don't remember that part. I did not look close enough to see what he was doing with his hands". Did you make this statement to the District Attorney? A If I may make it clear to you I will tell you.

Q Did you make that statement? A Yes sir, I made that last statement.

Q That you did not look close enough to see what Rumore

CASE #3079

was doing with his hands; did you say that in the 20th Street station house? A There is two answers to the question. I don't know what you mean, whether about Burke or Donovan, who was doing it.

Q I am speaking about Rumore. It says, - "And you didn't see anything in Rumore's hand at the time of the shooting?

A No". Is that correct? A Yes sir.

Q And you made that answer, "No"? A Just now?

Q In the station house? A I don't know.

Q The question was put to you, where were Rumore's hands when Donovan was searching him and your answer was, "I just don't know, he was pushing the fellows away, I guess". Did you make that answer; do you remember that? A No sir.

Q Do you remember this (reading): "What did you see him do (meaning Rumore)? A I did not see him (meaning Rumore) do nothing". Does that refresh your recollection as to what you said? A When he was with Donovan?

Q Yes. A No sir, I did not see Rumore do anything when he was with Donovan.

Q That is, when Donovan had hold of Rumore, standing a little distance from this defendant in front of Rogers' saloon you did not see Rumore do anything then? A No sir.

Q How far was Burke, the defendant, standing from Rumore? A About five feet.

Q Where was Donovan standing in relation to Rumore?

A Rumore and Donovan were standing together talking.

1300

CASE # 3079

Q Were they face to face? A Yes sir.

Q That is, Rumore and Donovan were standing face to face?

A Yes sir.

Q And Donovan said something to Rumore? A Donovan said to Rumore.

Q He said something, did he? A Yes sir.

Q Where was Burke when Donovan was talking to Rumore?

A Burke was in the doorway at the time.

Q Was he in back of Donovan? A No sir. He was in back of Donovan towards 18th Street.

Q I mean was he standing behind Donovan as I am standing behind Mr. Fitzpatrick (indicating)? A No sir.

Q Was he standing facing Donovan? A No sir, Burke was not near Donovan. Burke was in the doorway.

Q Was Donovan's back towards Burke? A Yes sir.

Q He was over to the right of him, but his, Donovan's, back was towards Burke? A I don't know whether his back was to him or his face to him at the time.

Q Did you hear the sound of any shot? A Yes sir.

Q How many shots did you hear fired? A I heard four shots.

Q Did you see where those shots came from? A No sir.

Q Did you see the flash of a gun? A No sir.

Q Where did the sound of the gun come from? A From the direction of BURKE.

Q You say you did not see the flash of the gun? A No sir.

CASE #3079



Q Was there anyone in between you and Burke? A No; Mr. Rumore was.

Q Rumore was in between you and Burke? A Yes sir.

Q And you did not see the flash of the gun? A No sir.

Q Are you positive of that? A Yes sir.

Q There was nobody in between you and Burke, was there?

A Rumore was in between me and Burke. I was nine feet away from Rumore and Burke and Rumore's back was to me which made it difficult to see the flash of the gun.

Q Was there anyone between Burke and Rumore? A No.

Q And they were only about five feet apart, Rumore and Burke? A When the shots went off Rumore had hold of Burke by the lapel of the coat.

Q How far were they apart when the shots went off?

A About five feet.

Q Did you see any smoke there? A No sir.

Q Did you see any smoke come from the storm doors of Rogers' saloon on that day? A Yes sir, I seen some smoke there.

Q Did you see that smoke at about the time of the discharge of the pistol shots? A Yes sir.

Q Can you tell us where that smoke came from? A It just came from right in the doorway.

Q Who was nearest the place where the smoke came from?

A Martin Burke and Rumore were the nearest to it.

Q What did you do after you heard these shots? A I ran to the other side of the street and ran half way down the block

CASE #3079

and then I walked down.

Q Did you come back there again that day? A Yes sir.

Q How long did you stay in that neighborhood that afternoon? A I was in that neighborhood that afternoon all day and night.

Q Did you stay there after that night? A Yes sir; do you mean in my own house?

Q Yes. A Yes sir.

Q Did you stay in your house continually from that time?

A No, I went out working and came back again.

Q Did you continue to live at your own house? A Yes sir.

Q Did you have any conversation with this defendant Burke on the corner of 19th Street and 9th Avenue after Rumore and you had sparred around and Rumore had gone to his barber shop?

A No sir, I did not.

Q Now are you positive of that? A Yes sir.

Q Could I refresh your recollection on it, do you think?

A I don't know.

Q You made this statement to Mr. Hennis on the 16th of February, 1921, four days after this occurrence, did you not?

MR. FITZPATRICK: I object, that he made a statement to the Assistant District Attorney after the occurrence.

Objection overruled. Exception.

THE COURT: Of course the People are bound, as I have said, by the witness's answers. You know the rule in the

1303

CASE #3079

case of People v. De Martini. Our law is different in this respect from the laws of the State of New Jersey. You see in New Jersey they have an entirely different system, and until you get relief from the Legislature the rules of law must be followed. Where a witness states that he has no recollection the District Attorney has no power to prove what the witness said on another occasion, but the District Attorney has the right to call to the witness's attention certain statements purporting to have been made by him. It is only when he acknowledges that he made those statements, to the jury, that they have the right to consider them, but where the witness states he has no recollection the People are bound by the witness's testimony, and the jury have no right to draw any inference that the witness made the statement read by the District Attorney. I cannot deprive the District Attorney of the right of trying to refresh the recollection of the witness as to what he did say to the Assistant District Attorney.

MR. FITZPATRICK: The witness said he did not say certain things, and the Assistant District Attorney endeavors to read questions to him supposed to have been taken at another time, and that is an effort to impeach this witness.

THE COURT: I do not think so. The objection is overruled.

Exception.

Q Did you see the flash of the gun when the first shot was

CASE #3079



fired? A No sir, I did not.

BY THE COURT:

Q Did you see any of the flashes? A No sir, I did not.

Q What if anything did you see Burke do? A I seen the way Rumore run to Burke and grabbed him by the lapel of the coat and as he did he put his hand to his back pocket and they were struggling in the vestibule, whatever you call it, for a moment, and then I heard the report of the shot.

Q Did you hear any words between Burke and Rumore? A No sir.

Q Did you have any words with Rumore? A No sir. Only we did not speak at all, just that he punched me and I punched back at him.

Q Did you go out to get Burke afterwards? A No sir.

BY MR. NEARY:

Q When you ran down the street, whose house did you go in?

A To no house. I walked down the street and up to 10th Avenue and to my mother's.

BY THE COURT:

Q Did you see any controversy of any kind, or hear any words passed between Burke and the other man, Rumore? A No sir.

Q When you came to the corner the second time did you see Burke? A No sir, I did not.

Q What directed your attention to Rumore and Burke? A The fellow on the corner said that Rumore went to 16th Street. As I looked down I seen him coming back and I stood to the lamp post

CASE #3079

with my back to him and as he came up Pat Donovan said, "What is the use of you fighting with a kid like that; you are a man with better sense".

Q Did you see Burke when Rumore came back? A No. When I turned around I seen Burke in the hallway.

Q Did Rumore pass you? A Yes sir, he went about five feet past me.

Q When he passed you what did you do? A I stood there.

Q Didn't you look where he was going? A No sir.

Q Weren't you afraid he might strike you? A No sir.

Q You had words with the man? A Yes sir.

Q And you did not look back? A No sir.

Q How soon after Rumore passed you did you notice Rumore and this defendant grappling with each other? A I should say about three minutes.

Q And you never looked back? A No sir.

Q You were how many feet away? A From Burke?

Q Yes. A I was about nine feet from Burke.

Q Were you standing in front of the saloon? A Yes, in front of the saloon. I was out towards the curb under the electric light.

Q And you were only nine feet away? A About nine feet.

Q And you kept your face in the opposite direction from Rumore? A Yes.

Q Are you a licensed chauffeur? A Yes sir.

CASE #3079

Q What is your number? A I have not got my card with me.  
I have it in my old clothes.

Q You do not know your number? A 164,110, I believe,  
but I would not give it to you; it might be wrong.

Q And your true name is what? A Martin James Bergen.

BY MR. NEARY:

Q There is outside of Rogers' saloon a sort of wooden  
storm door? A Yes sir.

Q On the 12th of February, 1921, was there any door set up  
in that partition, or were the doors swung back? A No sir,  
they were swung back, open.

Q What kind of a door was there leading into Rogers'  
saloon? A I never took notice.

Q Have you ever been in Rogers' saloon? A No sir.

Q You have passed there often? A Yes sir.

Q Is it an ordinary door with glass panels in it? A I  
could not say that.

Q Was Rogers' saloon open that day? A I do not know.

Q Had you seen anyone coming in or out there? A No sir.

Q How long were you standing there? A Standing on the  
corner about five or ten minutes.

Q You do not know whether that saloon was open or not on  
that day? A No.

Q When Rumore came up the street were you standing right  
on the corner? A Standing right at the storm door of the  
saloon.

CASE #3079



Q And inside of the storm door, or outside? A On the outside of the storm door.

Q And Burke was standing outside of the storm door with you, or just inside? A Burke was not there at all with me.

Q But you did see Burke there a few minutes after? A I seen Burke there when Rumore came back from 18th Street.

Q Didn't you see Burke at all before Rumore came up the street? A No sir.

Q When Rumore came up the street how far was Rumore from you, when you first saw him come up the street from 18th Street? A I should figure about four feet. He was walking up 9th Avenue.

Q In which direction were you looking? A I was looking east from 9th Avenue.

Q You were looking up through 19th Street towards 8th Avenue? A Not exactly on the corner. I was looking on the other side.

Q Were there some people you knew across the street? A No sir, not that I know of.

Q Was there anything in particular to keep your attention fixed across the street? A No.

Q So you did not see Rumore until he was five or six feet from you? A I seen Rumore come from 18th Street. I turned around and looked to the other side of the street and did not see him until he talked to Pat Donovan.

Q You saw Rumore when he was coming from 18th Street, and then you turned and looked away and then you did not see Rumore

CASE #3079

again till he was talking to Pat Donovan? A Yes.

Q The first time you saw Rumore, before you turned your head away, where was Rumore? A Returning from 18th Street.

Q How far from 18th Street? A I do not know.

Q Was he 25 feet from 18th Street? A I could not say.

Q Well, give us some idea? A Well, say about 100 feet away from 18th Street.

Q And how far from where you were standing? A I don't know the length of the street.

Q Can you indicate it by something in this room?

A No sir, it is too short.

Q Rumore when you saw him first was a distance from you greater than the length of this room? A Yes, a little further.

MR. FITZPATRICK: I object to that as repetition.

THE COURT: I think so.

Q Well, when Rumore came up and was within three or four feet of you, did you hear him say anything? A No.

Q When you walked towards the defendant Burke did Burke turn around and walk into the saloon? A No.

Q Did Burke turn around at all? A No sir.

Q He just stood there facing Rumore? A Yes sir. Rumore came on him so quick he did not know what.

Q He stood there facing Rumore? A Yes sir.

Q Did he put his hand back and try to open the door behind him? A I don't know.

Q You were looking at him? A I was nine feet away.

CASE #3079

Q And you can see nine feet? A Yes sir.

Q Did you see the defendant Burke put his hand back and try to open the door behind him? A No sir.

Q Did he do it? A No sir.

Q And then you say Rumore came up towards Burke and grabbed Burke by the lapel of his coat? A Yes.

Q When he grabbed Burke by the lapel of his coat what hand did he grab Burke with? A With his left hand.

Q What did he do with his right hand? A Put it in his back pocket.

Q Which pocket? A Right here (indicating right hip pocket).

Q In his rear hip pocket? A Yes sir.

Q He did not put it in his side pocket but his rear hip pocket? A Yes sir.

Q Are you sure? A Yes sir.

Q Did Burke punch him with his hands? A No sir.

Q Did Burke pull himself away and wrestle with him?

A No, he could not pull away.

Q Did he try to? A Yes sir.

Q Did he trip him? A No sir.

Q How long after he seized him by the lapel of the coat with the left hand was it before you heard the first shot?

A About a minute and a half or two minutes.

BY THE COURT:

Q Did you see Rumore's hand leave his pocket before the shot was fired? A No, your Honor, I could not say that I did.

CASE #3079



Q At the time that Rumore held his hand on the back pocket had a shot been fired? A I just could not give you the exact time of that. I don't remember whether the shot was off before he pulled his hand from his pocket.

Q Was it simultaneously? A I don't know what you mean.

Q At the same time? A I could not say.

Q Did you see Rumore remove his hand from his pocket?

A I just could not tell you. I don't remember.

THE COURT: Gentlemen of the Jury, do not discuss this case among yourselves nor permit any person to talk with you about it nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you.

Please be here at eleven o'clock, gentlemen, tomorrow morning.

Adjourned to 11 A.M., January 6, 1922.

L. LUTZ,  
Official Stenographer.

CASE # 3079

The PEOPLE v. MARTIN BURKE  
- - - - -

New York, January 6, 1922.

TRANSCRIPT OF STENOGRAPHER'S MINUTES

L. LUTZ,  
Official Stenographer.

CASE #3079

January 6, 1922.

Trial continued pursuant to adjournment.

MARTIN J. BERGEN resumes the stand and testifies  
as follows:

DIRECT EXAMINATION CONTINUED BY MR. NEARY:

Q Yesterday the Judge asked you if you saw Rumore remove  
his hand from his pocket and you said, "I could not tell you,  
I don't remember"? A Yes sir.

Q When you first saw Burke after coming back from the  
corner was Burke standing inside the storm doors of Rogers'  
saloon? A Yes sir.

Q And that was the first time you saw him after you came  
back to the corner? A Yes.

Q Now, you had seen Burke before you left the corner,  
hadn't you? A No sir.

Q What was Burke doing when you first saw him standing in  
the storm doors of Rogers' saloon? A Just standing there.

Q Did you talk to him? A No sir.

Q How far away were you from Burke then? A About 9 feet.

Q You did not say a word to him? A No sir.

Q Was that the first time you had seen him that day?

A Yes sir.

Q Didn't you say hello to him? A No sir.

Q Weren't you on friendly terms with Burke that day? A Yes.

CASE #3079



Q And you did not speak to him? A No sir.

MR. NEARY: I think that is all.

CROSS-EXAMINATION BY MR. FITZPATRICK:

Q You said you have known the defendant Burke a number of years, is that so? A Yes sir.

Q You were not an associate of his, were you? A No sir.

Q You simply knew him from his having lived in that neighborhood, to say hello to him? A Yes sir.

Q Now when were you taken to the station house as a witness in this case? A I was working that day and I was taken off my car about half past three in the afternoon.

Q Taken by whom? A By Officer McNamara, I guess his name is.

Q Where were you taken to? A To West 20th Street station house.

Q What was done with you there? A When I went upstairs I was put into a toilet and from there they started to question me. Much questions, I don't know what they asked me, so they told me they were going to beat me up if I did not answer.

Q Whom do you mean by "they"? A The officers.

Q How many officers? A Two of them were in the room when I went in.

Q And they started to talk to you? A Yes sir.

Q What did they say? A I just don't remember what they said. They asked me questions, who done the shooting and all

CASE #3079

and I told them I did not know. So they told me if I did not tell them they would beat me.

Q How long did you remain in the station house? A Till twelve o'clock that night.

BY THE COURT:

Q What time did you go there? A Three o'clock in the afternoon or half past three.

Q Did you tell the police anything after you were beaten, as you say? A No sir.

Q You did not? A No sir.

Q Did you tell them anything about the case? A No sir, not that I know of.

BY MR. FITZPATRICK:

Q Were you beaten at all? A No sir.

Q By the way, Bergen, your brother is a police officer, isn't he? A Yes sir.

Q Is he attached to that precinct? A Yes sir.

Q And at twelve o'clock that evening what happened?

BY THE COURT:

Q Did the police officers know that your brother was a police officer? A No sir, he was just, - I don't know what you call it, - just coming out of the school at the time.

Q You say the police threatened to beat you? A Yes, your Honor.

Q Did anyone assault you? A No sir.

CASE #3079

Q And you made no statement to any police? A No, your Honor.

BY MR. FITZPATRICK:

Q At twelve o'clock that night what happened? A I went home; that is all that happened.

Q Did you have a talk with anybody besides the police officers? A Yes, I talked to Mr. Hennis.

Q Who was present? A Four or five officers, but I do not know their names.

BY THE COURT:

Q Who is Mr. Hennis? A Assistant District Attorney.

Q What time did you speak to him? A I don't know that hour.

Q What day did you speak to him? A Yes sir, I spoke to Mr. Hennis that night.

BY MR. FITZPATRICK:

Q What time was it? A I don't know what time it was.

Q In the evening or afternoon? A In the evening.

Q Who was present at the time you spoke to Mr. Hennis?

A Mr. Hennis and a stenographer and four or five detectives.

Q Were there any of the other witnesses in the station house? A I seen a couple come in but they were not in the room with me. I was in a room by myself.

Q Did witnesses come in; - what witnesses came in? A I seen Joseph Dowling and Patrick Donovan come in.

Q At the time, or shortly before the shooting occurred on

CASE #3079



9th Avenue and 19th Street you saw the deceased, did you? A Yes.

Q How was he dressed? A He had a shirt on. I think he had a black derby hat and a collar and black tie, I think it was.

Q Did he have an overcoat on? A No sir, not that I know of.

Q You first met him in the baker shop, isn't that so?

A Yes, he was walking in the baker shop as I walked out.

Q Did you talk to him at all while he was in the baker shop?

A No sir.

Q And you came out of the baker shop before he did?

A Yes sir.

Q Where did you go? A I just stood on the corner by that storm door of Rogers' saloon.

Q How long after you had walked out of the baker shop did the deceased come out? A I should say about ten minutes.

Q What did the deceased say, if anything, then? A He just walked up to me. I did not see him coming to me until he was about three or four feet away from me. With that he punched me.

Q Did he say anything to you? A No sir.

Q And you punched him back, did you? A Yes sir.

Q How many times? A Just once.

Q What happened; did he fall? A No sir.

Q What did he do then? A After he punched me I said, "What is the matter with you?" He said, "Are you one of them tough guys?" I said, "No, I ain't tough". With that he made another punch and I threw up my arm and blocked him and as I did I

CASE #3079

punched him. He muttered something and walked up 9th Avenue towards 20th Street.

Q Was he very pleasant when he left you? A No sir.

Q Where did you go? A I walked down through 19th Street and then returned to 9th Avenue. My mother told me to bring some buns back for supper and I returned to 9th Avenue.

When

Q/ You came back to 19th Street and 9th Avenue where were you standing? A By the lamp post, by the electric light.

Q Where is that? A Right on the corner of 19th Street and 9th Avenue.

Q On the southwest corner, is it? A Yes sir.

Q In front of the Rogers saloon? A Yes sir.

Q And which way were you facing? A Facing east.

Q When did you next see the deceased? A I seen him walking from 18th Street.

Q Did he come over towards you? A No sir.

Q He passed by you? A Yes sir.

Q I understood you, when his Honor was questioning you, to say that you turned your head a little bit as he passed by? A I just kept the way I was till I seen him speak to Pat Donovan and I turned around and I seen him there and Pat Donovan was talking to him and he seen Burke and he made a lunge for Burke.

Q He stepped around the side of Donovan and went towards Burke? A Yes.

Q That is the first time you saw Burke? A Yes sir.

CASE #3079

BY THE COURT:

Q You say he made a lunge; describe that lunge? A He just made a run for Burke.

BY MR. FITZPATRICK:

Q When he made that lunge towards Burke your attention was attracted to Burke then? A Yes sir.

Q And you watched pretty carefully what happened? A Yes.

Q What did he do when he reached Burke? A He grabbed him by the lapel of the coat and as he did he put his hand to his back pocket, in the back pocket here (indicating), the right hand back pocket, and then the shot went off and as soon as I heard shots I run down the other side of 19th Street and walked down.

Q How were you dressed? A Black derby hat and gray overcoat.

Q Do you know what Burke had on? A Black derby hat. I could not tell you the color of his overcoat.

REDIRECT EXAMINATION BY MR. NEARY:

Q What color overcoat did you have on? A I had a gray overcoat.

Q You saw clearly all that happened when this man Rumore came up towards Burke, didn't you? A Yes.

Q And you watched him particularly when you saw Rumore walk towards Burke? A I seen him make a lunge towards Burke.

Q Didn't you glue your eyes on him? A Yes sir.

1319  
CASE # 3079



Q You stood watching him? A Yes sir.

Q And you saw all that happened? A Yes sir.

Q And you saw Rumore grab him by the lapel of the coat?

A Yes.

Q And then the shots went off? A Yes. He had his hand in his back pocket when the shots went off.

Q He had one hand in his pocket and one hand he had defendant by the coat with? A Yes.

Q And just as soon as he grabbed him by the coat, as soon as Rumore grabbed Burke by the coat you say the shots went off?

A I don't know when the shots went off, just.

Q When did they go off? A I just could not tell you the moment the shots went off.

MR. FITZPATRICK: I object to him cross-examining his own witness.

Objection overruled. Exception.

A (Continued) I don't know whether Rumore had his hand in his pocket or out.

Q Will you indicate by clapping your hands when the gun went off. Now, Rumore grabbed him as I grab my coat. Now, will you clap your hands when I grab my coat, to show how quickly the shots went off? A Just like that (clapping hands).

Q That is the first shot? A Yes sir.

Q Was there any intermission between the first and second shot? A No, I could not tell you.

CASE #3079

Q Did it go off almost immediately, after the first shot?

A Yes sir.

Q And the third shot? A They all went off in a row.

Q Just clap your hands and show us how fast they went off, one after the other? A (Witness indicating).

BY THE COURT:

Q You heard four shots? A Yes sir, your Honor.

BY MR. NEARY:

Q Did you see Burke when you ran down 19th Street immediately after that shooting? A No sir, I did not.

Q Who did you see? A I saw nobody. I run on the other side of the street.

Q You did not see anyone at all? A No sir, I did not.

MR. NEARY: I think that is all.

J O S E P H D O W L I N G, of 157 9th Avenue, called as a witness on behalf of the People, having been duly sworn, takes the stand.

(The witness is withdrawn from the stand.)

B E R N A R D S U L L I V A N, of 417 West 19th Street, called as a witness on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q What is your business, Mr. Sullivan? A Bartender.

Q And are you married? A Yes sir.

Q And you live where? A 417 West 19th Street.

CASE #3079

Q Do you know the defendant Martin Burke? A Yes sir.

Q And how long have you known him? A Ten years.

Q Does he live in your neighborhood? A Yes sir.

Q Have you associated with him from time to time in that neighborhood? A Not since about four or five years ago.

Q Up to four or five years ago you knew him pretty well and went around with him? A Yes.

Q On February 12, 1921 about half past three were you in the neighborhood of 19th Street and 9th Avenue? A Yes sir.

Q You had been in the store in that neighborhood on an errand? A Yes sir.

Q After leaving the store did you see a number of young men on the corner of 19th Street? A Yes sir.

Q Who were in that group that you saw there? A Joe Dowling, Bergen, Matty Kearney and Mike Kearney. There were a dozen or more.

Q Hugh Breslin, was he there? A Yes.

Q Was Arthur Weldon there? A I can't remember.

Q Was Chick Devlin there? A I can't remember.

Q Tell me every one you saw there; name every one you saw that afternoon? A Breslin; I can't remember.

Q Can you give me the names of the people who were on that corner that afternoon when you came along there? A There were the two Kearney brothers, I remember.

Q Who else? A I can't remember them.

CASE #3079



Q Have you tried to remember as well as you can? A I can't remember.

Q Have you seen anybody in the corridors of this court who were there that afternoon? A Marty Burke was there.

Q Marty Burke is the defendant. He was there? A Yes sir.

Q Have you seen any men outside in the corridor of this building who were there? A No sir.

Q Was Joe Dowling there? A I said that before.

Q Was Pat Donovan there? A Yes, he was there.

Q Now, did you know a man named Pietro Rumore? A No sir.

Q Who had a barber shop in that neighborhood? A No sir.

Q Do you ever remember seeing a man named Pietro Rumore who had a barber shop in your neighborhood? A On that afternoon, yes.

Q Where did you see him that afternoon? A 19th Street and 9th Avenue.

Q What was Rumore doing at 19th Street and 9th Avenue that afternoon when you saw him? A Standing on the corner arguing.

Q Arguing with whom? A With Bergen.

Q And that is Martin Bergen? A Yes sir.

Q Was anybody else standing near them while they were arguing? A The whole crowd was around there.

Q The whole crowd of people you have mentioned just now?

A More than that. I could not think of the names.

Q Were they talking or were they fighting with one another

CASE #3079

with their fists? A Just conversation; I did not hear the conversation.

Q Did you pass that group of men? A Yes sir.

Q And where did you go? A Right down the house.

Q After you had been in the house for a little while did you come out again? A Yes sir.

Q When you came out where did you go? A I crossed cata-corner from over the house right over 19th Street, on the same corner.

Q Which side of 19th Street is your house on, uptown or downtown side? A Uptown.

Q And how far from 9th Avenue corner is the house?

A About half a block.

Q Do you know where Rogers' saloon is? A Yes sir.

Q You had occasion, then, when you came from your house to pass Rogers' saloon? A Yes.

Q When you passed by Rogers' saloon after leaving your house did you see a group of men there? A Yes sir.

Q Who was in the group then? A Bergen and Dowling and Marty Burke was there.

Q Marty Burke, the defendant, and who else? A The two Kearneys and Pat Donovan.

Q When you crossed the street how far did you pass away from the group of men that was where the defendant Marty Burke was? A I had to pass right through there. The street was blocked up.

CASE #3079

Q Did you see Rumore there? A Yes, I seen him there.

Q Now, where was Rumore? A Standing in the gutter.

Q Was that the second time you saw him that afternoon?

A Yes sir.

Q And who was near Rumore? A The whole crowd was near him.

Q Were they in front of him or were they some in front and some in back? A Nobody in back of him at all.

Q They were in front of him? A Yes sir.

Q Where was Burke standing, in front or in back of Rumore?

A Burke was in the crowd.

Q Where was he in relation to Rumore, how far away from him? A About three in the back.

Q That is, there were two persons in between Rumore and Burke? A Yes sir.

Q Now, did you see Pat Donovan there? A Yes sir.

Q What was Pat Donovan doing? A Standing there.

Q What else was he doing? A Trying to pacify them.

Q Did he say anything? A I did not hear nothing.

BY THE COURT:

Q How do you know he was trying to pacify them? A I seen by the motions that he was making.

BY MR. NEARY:

Q Did he have his hands on Rumore? A I did not see them.

Q Was Pat Donovan doing anything to Rumore when you passed

CASE #3079



by there? A No sir.

Q And did you see Dowling? A Yes sir.

Q What was he doing? A Holding Bergen's coat when I passed there, but when I came back I seen Dowling was in the back in the crowd.

Q You passed the crowd once and went up to the house? A Yes.

Q When you passed that crowd you said they were arguing?

A Yes.

Q Was that the time you say Dowling was holding Bergen's coat? A When I first passed.

Q Before you went home? A Yes sir.

Q Bergen had his coat off and Dowling was holding it?

A Yes.

Q Did Bergen have his hands up to the Italian man, Rumore?

A Yes.

Q Did Rumore have his hands up? A No sir.

Q Then you went home and came back? A Yes.

Q When you came back did Bergen have his coat on? A Yes.

Q Did he have an overcoat on? A Yes sir.

Q Who was in the crowd; you say the defendant, Martin Burke, was in the crowd? A Yes.

Q And you said there were two people in between Burke and Rumore? A Yes.

Q What was Pat Donovan doing when you came out of the house and saw him in the crowd about Rumore in front of Rogers'

CASE #3079

saloon? A Just standing there.

Q What was he doing besides standing there? A Trying to pacify the Italian.

Q Did he touch the Italian? A No sir; I did not see him.

Q Did he have his hands on him? A No sir.

Q What did Bergen do while you were watching him there in the crowd? A Just talking.

Q Did he do anything else? A I did not see nothing.

Q Well, did he go forward into the crowd? A No sir.

Q He did not? A I did not see him.

Q Did you notice where Marty Burke was standing? A Yes, he was in the crowd, in the back.

Q You said there were two people between him and Rumore?  
A Yes sir.

Q Was Donovan just in between Burke and Rumore? A Donovan was further back.

Q What happened as you came up towards that group of men standing there? A What do you mean, what happened?

Q Tell us what you saw take place there? A When I was passing there?

Q Yes. I had to wait till the crowd dispersed so I passed there. In the meantime I heard this Italian say, "You're think you are tough guys, you have your gang"; that is all and the crowd dispersed and as I was passing shots went off and that is all I remember.

1327  
CASE #3079

BY THE COURT:

Q To whom was Rumore addressing those remarks? A To the crowd that was there.

Q To the crowd, you say? A Yes sir.

Q What did he say? A He said, "You'se think you are tough guys, you have your gang there".

Q Did you see who fired the shots? A No sir, I did not.

Q How far were you from Rumore at the time? A 20 feet.

BY MR. NEARY:

Q How far did you say you were from the crowd at the time?  
A 20 feet.

Q I thought you just said a moment ago you had to wait till the crowd dispersed so that you could walk through? A I was 20 feet when the shots were fired.

Q You mean 20 feet past the place? A Yes sir.

Q Do you recall making a statement to Mr. Hennis, the Assistant District Attorney in the 20th Street station house?  
A Yes sir.

Q What time of the day or night did you make that statement? A I was there about from about half past one to ten that night.

Q There were a number of other witnesses there, weren't there? A Yes.

Q Now we are trying to refresh your recollection on some of your testimony. We were speaking about the deceased, Rumore. Do you remember these questions and these answers (reading):

CASE #3079



"Q Did you see anything in the Italian's hand, at that time when they were sparring? A No sir, I did not. Q Did you see blows actually struck? A No sir, I did not see any blows". And a little further on you said in answer to this question (reading): "Q Did you see any blows actually struck? A No sir, I didn't see no blows. I came out of the house on the up-town side of the street. I came up through 19th Street and I crossed toward 8th Avenue. There was a bootblack right near the corner. I crossed catacorner there and as I was in the middle of the curb they were arguing there and this Italian, he was back toward the extension, that is toward the storm doors of Rogers' place on the corner of 19th Street and 9th Avenue and the whole crowd was gathered around there and he was backing up all the time and last he backed right into the storm doors inside and the crowd was all around him and I noticed especially as I was coming across, as I got to the lamp post they started searching him." Do you recall making that answer?

MR. FITZPATRICK: I make the same objection to the testimony along this line as I did yesterday.

Objection overruled. Exception.

Q Didn't you tell Mr. Hennis that you noticed these men were searching this Rumore? A I don't remember.

Q Don't you remember speaking to me upstairs the other day when I read you this statement and I asked you that and you said they were all trying to search him? A I did not say that at all.

Q You did not say that at all? A No sir.

CASE #3079

Q Didn't I read you the statement to you upstairs and give it to you to read? A Yes sir.

Q And you read it then? A Yes sir.

Q Did you then tell me you did not remember what you said?  
A I can't remember now.

Q You did not tell me the other day that you did not remember this, did you? A I read it.

Q And you did not say you did not remember it, did you?

Same objection. Objection overruled. Exception.

THE COURT: The District Attorney has a right, under the case of The People v. Kelly, to probe this witness and try to refresh his recollection.

MR. FITZPATRICK: But in that Kelly case that was done simply for the purpose of adding to the testimony, not by way of contradiction.

THE COURT: Oh no, it was done to refresh his recollection.

MR. FITZPATRICK: But here is an effort made to impeach the witness.

THE COURT: The jury can only consider the testimony as given by this witness, not what he said on another occasion, excepting if he reaffirms and redeclares here what he said there. If he says he does not remember, the jurors are bound by his answer and they cannot draw any inference from the nature of the questions, or from the questions

CASE #3079

themselves as propounded by the District Attorney.

MR. FITZPATRICK: I take an exception.

Q I direct your attention to this question asked you by Mr. Hennis on the 16th of February, 1921 in the 20th Street station house (reading): "Q. Who was searching him? A Pat Donovan, he was". Does that refresh your recollection as to what took place on that day? A No sir, I don't remember.

Q You did not tell me you did not remember making that answer when you read that statement upstairs the other day?

A I was not asked that. You never asked me anything about that.

Q You read the statement? A Yes sir.

Q And you spoke to me after that outside in the corridor of this building, yesterday? A Yes.

Q Did you tell me then you were not sure of your statement? A I don't know.

Q You spoke to me about some other matters. Why didn't you tell me then? A I did not think it necessary to tell you.

Q Was Pat Donovan searching him, - does that refresh your recollection? A I don't remember seeing him.

Q Does that statement that you made on the 16th of February bring back to your mind the picture you saw of Pat Donovan searching Rumore? A I could not say he was searching him at all.

Q Was anybody searching him? A I did not see any hands on him at all.

Q You say Bergen stood right still there. You say that

CASE #3079



now. Try to get this well in your mind, the crowd of men around Rumore and see if this will refresh your recollection (reading):

"Q Somebody said something to whom? A To Bergen, and he burst right in the crowd. Q Bergen did? A Yes sir. And there were three shots fired and then two more". Does that refresh your recollection? A No sir.

Q Does that bring the picture of the occurrence back to your mind? A No sir. I never said that at all.

\* You never said it at all? A No sir, I did not.

Q Do you remember this question being asked you then (reading): "Q Where were his hands (referring to the hands of Rumore)? A They had his hands down there and they were feeling him all around like that". Does that refresh your recollection now that a number of men had their hands on this Rumore? A I did not see any hands on Rumore at all.

Q Did you make that statement to Mr. Hennis (reading): "Q Where were his hands? A They had his hands down there and they were feeling him all around like that"? A No sir.

Q You did not make the statement either to Mr. Hennis that Pat Donovan was searching him? A No.

Q When did Marty Bergen burst right into the crowd? A I can't remember.

Q Did you make that statement? A I can't remember.

Q Do you remember being asked this question (reading):

"Q How close to the Italian was Marty Burke" and your answer, "He was behind Donovan"; did you make that statement? A No sir.

CASE #3079

Q Don't the questions and answers I have read bring back a picture to you of the different positions of these men?

A There were so many there I can't remember.

Q But you knew them all, didn't you? A I knew most of them.

Q You knew them pretty well? A Most of them.

Q You knew Marty Burke and Bergen and Donovan and Dowling?

A Yes.

Q Doesn't that bring the whole occurrence back to your mind so that you can tell us what took place there? A No, I can't remember.

Q Did you see Burke run away from there? A With the crowd, yes sir.

Q Did you see Burke run away, yes or no? A Yes sir.

Q Who ran away when Burke ran away? A Everybody ran away.

Q Name some of them that you saw run? A Dowling, Bergen, Breslin and the two Kearneys.

Q When you heard the shots what did you do? A I went down 9th Avenue.

Q You continued walking down 9th Avenue, you did not stop and look around, did you? A Yes, I stopped to look around when I had passed the crowd.

Q How far beyond the crowd do you say you were when the pistol was discharged? A Down by the barber shop.

Q How far from the corner of 9th Avenue and 19th Street?

CASE #3079

A Well, about a quarter of a block.

Q How many shots did you hear? A Four.

Q Was there any length of time between the shots?

A A second or so.

Q A second between each shot? A Yes sir.

Q When you saw Rumore there and the crowd standing around him where were Rumore's hands? A They were down.

Q Down where? A By his side.

Q Stand up and show us the way he was standing? A This way (witness indicating by letting his hands hang at his sides).

Q And all these men were standing around him? A Yes sir.

Q They did not have hold of Rumore, did they? A No sir.

Q Did Rumore have hold of any of them? A No sir.

Q They were just talking? A Yes sir.

Q And he said, "You think you are tough guys, you got your gang"? A Yes.

Q Wasn't the remark, "You think you are tough guys, you got your gang" made the first time you passed the crowd and not the second time? A The first time, yes sir.

Q That was before you went into the house? A Yes sir.

Q After you came down from the house you saw Rumore and these men again, didn't you? A Yes.

Q I am directing your attention to the second time you saw him, after going into the house and coming back, you came back; is that the time you say the men were standing hear him?

A Yes.

CASE #3079



Q Is that the time he was standing with his hands by his side? A Yes.

Q Did you see his hands? A No, I could not see his hands.

Q Did you see the arms down beside him? A I could not see that. I did not see them up.

Q So they were down, because you did not see them up?

A Yes.

Q Did you go in among the crowd and pass by, or did you pass by in the gutter? A No, I passed right through the crowd.

Q And how far from this man Rumore did you pass? A About 15 feet.

Q And how wide is that sidewalk; you were on the sidewalk, - you walked on the sidewalk, did you? A Yes sir.

Q And you passed 15 feet from Rumore? A Yes sir.

Q Well, where was Rumore? A The second time, you mean?

Q Yes, I am speaking about the second time? A Between the storm doors.

Q Rumore was in the storm doors? A Yes sir.

Q And where was Burke? A Burke was in the crowd.

Q Rumore was in the storm doors of the saloon? A Yes.

Q And Burke was in the crowd? A Yes sir.

Q Was Burke out towards the gutter? A He was in the back.

Q Was he near the gutter? A Yes sir.

Q There were some people between Burke and Rumore? A Yes.

Q And Rumore was in the storm doors of Rogers' saloon? A Yes.

CASE #3079

Q Now, did you hear Burke say anything to Rumore at that time? A No sir.

Q Did you hear Rumore say anything to Burke? A No sir.

Q Did you hear anything said then? A I did not hear a word said at all.

Q This was on the second time you passed the crowd? A Yes.

Q You did not hear anything said at that time? A No sir.

Q And you mean to say these men were just standing there saying nothing and doing nothing? A They might have said something but I never heard it.

BY THE COURT:

Q Did you say that Rumore was within the storm doors?

A Yes.

Q Was anyone near him? A The whole crowd was near him.

Q How far was the crowd from Rumore at that time when you say Rumore was in the storm doors? A I guess it must have been about three or four feet.

Q How far was Burke away from him? A Burke was, I guess, -- I guess there were five or six fellows in front of Burke.

Q How far was Burke from Rumore at that time? A About five feet.

Q Burke was not near the curb, was he? A No, he was not exactly near the curb.

Q What is the width of the sidewalk at 19th Street and 9th Avenue? A It must be about 15 feet, I guess.

CASE #3079

Q You said before that Burke was near the curb; how near the curb was he? A I guess about four feet from the curb.

Q And about five feet from Rumore? A Yes sir.

BY MR. NEARY:

Q There were one or two people in between Burke and Rumore, you said? A There were more than that.

Q More than one or two people between Burke and Rumore?

A Yes sir.

Q How many people were there between Burke and Rumore when you saw them? A He was about five people away from Rumore.

Q Burke was about five people away from Rumore? A Yes.

Q Did you ask any of the men in that crowd what was going on? A No.

Q And you went right through them? A I have to go to work at four o'clock.

Q You passed right in between the members that formed this crowd, you walked through them? A There were others standing by. I wasn't just exactly passing in that crowd, but there were women back there.

Q You moved among the people? A Yes sir.

Q Did you pass between Donovan, Burke and Rumore, in between them? A No.

Q Did you pass in back of Burke? A I was away in back of him.

Q But you were still on the sidewalk? A Yes sir.

Q Did you see what happened to Rumore after you heard the

CASE #3079



shots? A No sir.

BY THE COURT:

Q Where were you when you heard the shots? A By the barber shop.

Q How far away from where they were? A That is a quarter of a block from the corner.

Q When you heard the first shot? A When I heard 1-2 --- 1-2.

Q You were then away about one-quarter of a block? A Yes.

BY MR. NEARY:

Q What store were you in front of? A In front of the barber shop, downstairs.

BY THE COURT:

Q Did you turn around when you heard the first shot?  
A Yes sir.

Q What did you see? A I seen everybody running through 19th Street.

Q Did you see Burke? A Yes, he was there in the crowd.

Q And what was he doing? A Running.

BY MR. NEARY:

Q Well, now, did you see this man Rumore stagger after he was shot? A No sir.

Q You turned around, didn't you? A Yes sir.

Q And you saw the crowd run? A Yes sir.

Q Let me see if I can refresh your recollection. Will this

CASE #3079

help refresh your recollection (reading): "Q How many feet would you say he was from Rumore? A Donovan was right in front of the Italian and Burke was right on the side, right behind him all the time". Do you recall making that statement? A No.

Q Does that refresh your recollection and bring the picture back to you? A No sir.

Q Do you recall this statement being asked you by Mr. Hennis (reading): "Q Did you see this fellow Rumore fall? A No sir, I didn't see him fall." Do you remember being asked that? A Yes.

Q (reading) "Q What did the Italian do then? A The Italian must have staggered." A He must have staggered, yes.

Q Do you remember saying that to Mr. Hennis? A Yes.

Q And it brings the scene back to your mind a little better? A Yes sir.

Q (Reading) "Q Did you see the Italian fall there? A No sir. I saw him staggering right against the door and I kept on going". Do you remember that question being asked you and that answer given by you? A No sir.

Q Does that bring the scene back to your mind that you turned and saw this Italian staggering there? A I did not see him stagger at all.

Q You did not see him fall? A No sir.

Q Did you see anyone with a gun there that afternoon? A No sir.

M.R NEARY: That is all.

CASE #3079

## CROSS-EXAMINATION BY MR. FITZPATRICK:

Q You were taken to the station house in connection with this case, weren't you? A Yes.

Q When? A On the next afternoon.

Q Who took you there? A Officer McNamara, and I don't know the other fellow; some tall fellow.

Q Where did he take you from? A From the store.

Q Where is the store? A 56 9th Avenue.

Q You had known the officer before this, hadn't you?

A No, I had not known him personally.

Q But you had seen him before? A Yes sir.

Q Hadn't he been in the store? A Before that I had not seen him in the store.

Q They took you up to the station house? A Yes sir.

Q What happened up there? A I was taken into a room there and was under all threats.

Q What did they say? A That I was there and I did the shooting.

Q They said you were there and you did the shooting?

A Yes sir.

Q Who said that? A Someone.

Q Which one, do you know, who said that? A I don't remember.

Q What else was said to you? A That if I signed a statement in self defense I would be all right.

CASE # 3079



Q What did you say? A I said I did not do it.

Q What happened after that? A I stayed there about three hours.

Q What time were you taken there? A Half past one.

Q In the evening? A Yes.

Q And how long did you remain there? A To half past ten that night.

Q Were you questioned by anyone else during those hours?

A This officer Carmody.

Q Anyone else? A Yes, that other officer outside there, Porter, I guess his name is.

Q In all, how many different people asked you questions that afternoon? A About half a dozen.

Q Do you remember seeing Assistant District Attorney Hennis there? A Yes sir.

Q And he asked you some questions? A Yes sir.

Q How many people were present at that time? A About fifteen.

Q Who were they; do you remember any of them? A I could not say who they were.

Q Were they citizens or officers? A I guess they were officers.

Q Now, at the time of the shooting you came from your home at 417 West 19th Street, that is on the upper side of the street? A Yes.

CASE #3079

Q And you walked east toward 9th Avenue, is that correct?

A Yes sir.

Q And then you walked south toward Rogers' corner? A Yes.

Q At that time how many people were standing on the corner? A About twenty-five or thirty.

Q And where were they standing, in 19th Street or out on 9th Avenue? A Some were on the avenue and some were in 19th Street.

Q Do you remember seeing Rumore, the deceased in this case? A Yes sir.

Q And where was he? A When I came out of the house?

Q Yes, the first time you came out; did you come from the store first and go in the house? A Yes.

Q You only came out of the house once? A Yes.

Q I want to refer to the time you were coming from the store; you came north on 9th Avenue then? A Yes.

Q Were you on the west side of 9th Avenue? A I came out of the store and crossed west, that is to 19th Street.

Q Well, did you cross to Rogers' corner? A Yes sir.

Q Then you went through the crowd that time, did you?

A Yes sir.

Q Where was Rumore then? A Standing on the curb then.

Q Right on the curb, - in 19th Street, or 9th Avenue?

A On the avenue, on the crossing.

Q And how many people were there then? A About 25.

CASE #3079

Q And were they all up on the sidewalk? A Some of them were and some of them were against the store.

Q That is against the storm door of Rogers' saloon? A Yes.

Q And you claim you saw Burke there then, the defendant in this case? A At that time I did not take notice of him.

Q You are not sure whether you saw Burke or not at that time? A No.

Q Now, you returned, after having been in the house, and came up east on the north side of 19th Street and then crossed to the southwest corner, didn't you? A Yes.

Q And you saw the deceased again standing on the corner? A Yes sir.

Q Where was he, still on the curb? A He was not on the curb then.

Q Where was he then? A He was in the storm doors then.

Q Where was Burke then? A Burke was in the back of the crowd.

Q Where, on the 19th Street side or 9th Avenue side?

A 9th Avenue.

Q How many people were there altogether? A I could not just say how many were there; there must have been about twenty-five or thirty people.

Q You knew Burke pretty well, didn't you? A Yes.

Q You talked to him if you met him? A Yes.

Q Did you have anything to say to him? A No sir.

CASE #3079



Q Did you ask him what the trouble was? A No sir.

Q How near did you pass Burke when you were going down that time? A I was far away from him that time.

Q As you were passing the crowd when Rumore was near the store door, Burke was out in the middle of the sidewalk then?

A Yes.

Q And you had to pass him? A Yes sir.

Q How close did you pass him? A About three people away from him.

Q Did you ask anyone what the trouble was? A No sir.

Q You continued on your way? A Yes sir.

Q And when you arrived at the barber shop, which is, I take it, about three doors south of the corner, is that correct?

A Yes sir.

Q You heard the shots ring out, is that right? A Yes sir.

Q Did you go back to see what happened? A No sir.

Q What did you do? A I just turned around and seen everybody running through 19th Street.

Q And as you passed the crowd and were going south you were not in a position to see where the deceased's hands were, were you? A No sir.

Q There were two or three people between you and the deceased, and you did not know where his hands were? A No.

Q And when you said you thought his hands were at his side, you just took for granted that they were there? A Yes.

BY THE COURT:

CASE #3079

Q Are you guessing or are you testifying as to what you observed? A Because I did not see them up.

Q When you said you saw Rumore's hands at his sides, were you guessing at that, or were you testifying to what you observed? A Guessing.

Q You were guessing? A Yes sir.

Q Are you guessing now? A No sir.

Q Are you sure now? A Yes sir.

Q Why were you guessing before and not guessing now?

A I did not see them up.

Q Well, are you sure now what you had observed? A Yes sir.

Q What did you observe? A I did not get you.

Q With respect to the hands of Rumore, what did you observe; what did you see? A I could not see his hands, where they were.

Q Didn't you describe to the District Attorney; did you not stand up and put your hands to your sides? A He was standing there.

Q Did you not put your hands alongside of your thighs and describe in what way you saw Rumore's hands to his sides? A Yes.

Q Why do you say now you were guessing? A That was the first time I came up from the house.

Q Was that the first time? A The first time I came up from the house his hands were down, but the second time I could not see where his hands were at all.

CASE #3079

BY MR. FITZPATRICK:

Q The second time, I am referring to, - when you passed, going on your way to work you did not see his hands up, is that correct? A Yes sir.

Q And therefore you say his hands were down; is that your line of reasoning? A Yes.

BY THE COURT:

Q Did you see in what condition his hands were; did you notice where his hands were at that time? A At the second time?

Q Yes. A No sir.

BY MR. NEARY:

Q Did he have hold of Burke at that time? A No sir, I did not see him.

Q When you heard these four shots go off, will you indicate how they went off by clapping your hands? A (Witness indicates by clapping his hands.)

Q They went off (counsel clapping his hands) in pairs?  
A Yes.

Q A short space of time between the second and third shot?  
A Yes.

Q Did you turn around after the first two shots went off?  
A I did not have a chance to turn.

Q Did you, yes or no? A No sir, not the first time.

Q Now, are you sure of that? A Yes sir.

Q Try to get your mind back to the occurrence and see if

CASE # 3079



you can refresh your recollection on that; do you remember being asked this question by Mr. Hennis (reading): "Q You bursted right in the crowd, - Bergen did? A Yes sir, and there were two shots fired and then two more. The first two were fired and nobody moved but the next two they all ran. They turned around and run down towards 10th Avenue and 19th Street." Did you make that statement to the District Attorney? A Yes sir.

Q Does that bring it back to your mind, you turned after you heard the first two shots, and nobody moved, is that right? A Yes sir.

Q When there were two shots more fired off and everybody ran? A Yes sir.

Q So that when the last two shots were fired you were looking back towards 9th Avenue and 19th Street? A Yes.

Q And did you see where the flash of the pistol came from? A I did not see the flash.

Q Did you see which side of the street it came from? A No.

Q Did you see the crowd break and run? A Yes sir.

Q Did you see the defendant Burke run? A I did not notice him running.

BY THE COURT:

Q Did you not testify before that you saw the crowd running and that Burke was also running? A Burke was running at that time, yes sir.

Q Did you see him run or are you guessing at that? A I seen the man.

CASE #3079

Q Are you sure of that? A Yes sir.

BY MR. NEARY:

Q When Burke started to run did you notice where his hands were; did he have them by his side or pulled up? A I did not notice.

Q Did you notice anything in his hands when he started to run? A No sir.

Q When Rumore was standing up in the storm doors of the saloon,--say this railing is the saloon, - Burke was standing somewhere near where I am, is that so? A Yes.

Q And back of him was the curbstone of 9th Avenue? A Yes.

Q And 9th Avenue is how wide, would you say? A About 15 feet.

Q The avenue is about 15 feet wide? A The sidewalk.

Q I mean the avenue, from curbstone to curbstone? A I could not tell you.

Q Is it wider than this room from where you are sitting to the end of the room? A Yes, I guess it is.

Q And above the curbstone is about 15 feet wide? A Yes.

Q There was no building right in back of Burke, was there, no structure of any kind? A The elevated.

Q And then 19th Street running up towards 8th Avenue?  
A Yes sir.

Q How far from the corner of 9th Avenue and 19th Street was Burke standing? A From the curb?

Q No; how far from the corner, the intersection of the

CASE #3079

corner of 9th Avenue and 19th Street was Burke standing; how far south from 19th Street? A About by the lamp post.

Q And how far would you say that is from the corner?

A It is right on the corner.

Q It is a few feet from the corner? A From 19th Street corner.

Q Will you show us how far from where you are sitting?

A From about here to that second post (indicating about five or six feet).

HENRY J. PORTER, an officer of the 18th Precinct Detective Division, Shield No. 848, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q Officer Porter, you are attached to the municipal police force of the City of New York? A I am.

Q And how long have you been on the police force? A Going on nine years.

Q Do you know the defendant, Martin Burke? A I do.

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

Q And do you know where he lives? A Yes sir.

Q Did you place him under arrest? A I did.

Q On what date? A On September 11, 1921.

Q You are attached to what precinct, did you say? A 18th Precinct detectives.

CASE #3079



Q Do you recall the killing of one Pietro Rumore being reported to your station? A I do.

Q And were you assigned to work on that case? A I was.

Q What was the date of the death of Rumore? A February 12th, 1921.

Q After that you were assigned to duty on that case?

A Yes sir.

Q Did you visit the premises at which this defendant, Martin Burke lived? A I did.

Q And when did you make your first visit to those premises? A About four days later.

Q That would be about the 16th of February? A Yes sir.

Q Did you find Martin Burke there? A I did not.

Q Did you inquire where Martin Burke was employed? A I did.

Q Did you find out where he was employed? A I did not.

Q Did you go to the last known place of employment of Martin Burke? A I did not.

Q How often did you visit the home of Martin Burke from the 16th of February down to the date of his arrest? A About half a dozen times.

Q And when was the last time you visited his home; how long after the shooting, about? A About two weeks after the shooting.

Q Could you find Martin Burke there? A I could not.

Q When did you next hear about Martin Burke? A I received information, —

CASE #3079

81  
Q No. When did you see him next? A The day of the arrest.

Q That was when? A On September 11th, 1921.

Q From the 12th day of February, 1921, up to the day in September when you arrested him were you frequently in the neighborhood of this defendant's home? A I was.

Q And did you constantly have in mind that you wanted to find Martin Burke? A I did.

THE COURT: I will strike that out. I will sustain objection to that question and strike out the answer.

MR. NEARY: I withdraw the question. That is all.

CROSS-EXAMINATION BY MR. FITZPATRICK:

Q Officer, you were assigned to the 18th Precinct in plainclothes? A Yes sir.

Q You were assigned to investigate the alleged crime on the day of this shooting? A I was.

Q What was the first thing you did? A The first thing I did is my partner, Detective Anderson, went there on a call that there was a man shot in 19th Street and 9th Avenue. He telephoned over.

Q Did you go with him? A No sir.

Q I want to know the first thing you did? A The first thing I did was go to Bellevue, to the autopsy.

Q When the autopsy was performed? A Yes sir, the following day.

Q Did you see the first officer on the case there? A I did.

CASE #3079

Q Did you interrogate him with respect to the clothing?

A I did.

Q Did you ask him whether he had the clothing of the deceased? A Yes sir.

Q You instructed him what to do with the clothing? A Yes.

Q To take it to the District Attorney and mark it? A Yes.

Q Did you make inquiry as to the contents of the clothing?

A I did.

Q What did you say to him with regard to what was found in the clothing? A I asked him did he have all the property belonging to the deceased and he said he did.

Q Did you ask him what the property was? A I did not.

Q Why not?

Objected to as immaterial. Objection overruled.

A I did not think it was necessary.

Q Isn't it part of your duty as a police officer to find out what the contents of the clothing of the deceased are when you are assigned to investigate under those circumstances?

A Detective Anderson originally had the case. He was assigned to the case and I was his partner.

Q You were assigned to the case also? A As a partner to Detective Anderson, but Detective Anderson took the case.

Q You were present there at the time of the autopsy, weren't you? A Yes.

Q And you were there and saw that the other officer was there also to make the identification? A Yes.

CASE #3079



Q You were also there to instruct the officer as to what to do with the clothing? A I told him to take it to the District Attorney's office, the Property Clerk. That is all I had to say to him.

Q When was the first time you ever asked him if he had the contents of the clothing? A I did not ask him about the contents. I heard there was a razor in this case.

Q When did you hear there was a razor? A The day that Burke was indicted, the day of his arrest.

Q The day of his arrest? A Yes sir, I heard there was a razor.

Q What did you hear about a razor? A I heard that the deceased tried to cut the defendant.

MR. MEARY: I move that be stricken out.

THE COURT: Strike it out; that is hearsay.

Q You did hear that there was a razor found on the deceased? A Yes sir.

Q What did you do with respect to that razor? A In fact, I did not see the razor yet.

Q I say, what did you do with respect to that razor?

A Nothing at all.

Q You did not do a thing about it? A No sir.

Q You did not think it worth while to find out where the razor was? A Yes.

MR. MEARY: I object to the form of the question.

THE COURT: Objection sustained.

CASE #3079

Q You made no effort to find the razor, is that correct?

A It was understood that the razor, --

Q I do not care what was understood. You made no effort to find out about that razor or where it was? A I asked about the razor.

Q Whom did you ask? A I asked Patrolman Orlowsky. He said that the razor was in the Property Clerk's office.

Q He told you that? A Yes sir.

Q When did he tell you that? A The day of Burke's arrest.

Q And that was some seven months afterwards? A Yes sir.

BY MR. NEARY:

Q You did not search the clothing of the deceased, did you?

A No sir.

Q You merely went to the Morgue the next day? A With my partner, Detective Anderson.

Q On the night of the death of Rumore did you go down to 19th Street and 9th Avenue? A I did.

Q At what time? A About 4 P.M. or 4.30.

Q Had the body been removed from there? A Yes sir.

Q And you did not see it that afternoon? A No sir; I saw it that night, the body, at Bellevue.

Q Is it part of the police routine that the officer on post who is the first officer to reach the body of the person meeting death by violence, take charge and notify the detective bureau, is that so? A Yes.

Q Then the patrol officer who is on that post takes

CASE #3079

possession of the clothing? A He does.

Q It is he who is expected to make search and take care of the property and bring it to the Property Clerk's office, and not the detective bureau? A That is right.

Q So that you did not search the clothing at any time?

A No.

Q And you have not seen that razor yet? A I have not.

BY MR. FITZPATRICK:

Q Is it part of the detective's duty to find out all about the case? A Yes.

Q And if there is anything found in the clothing of the deceased he ought to know that, the man in charge, the detective?

Objected to as calling for a conclusion.

Objection overruled.

A There was nothing mentioned about any weapon or any razor or knife on the deceased. We just inquired about the property, - "Have you got all his property", and "Put the property in the Property Clerk's office".

Q Didn't you tell me that the officer told you it was found the day you appeared at the Morgue? A No sir, the day of the arrest of Burke.

Q By the way, you arrested Burke? A I did.

Q Where? A At West 20th Street station house.

Q Isn't it a fact that Officer Shevlin arrested Burke?

A No sir.

CASE #3079



Q Did Burke walk into the station house? A No sir.

Q How did you arrest him in West 20th Street station house?

A Detective Shevlin detained Burke at the West 20th Street station house.

Q As a matter of fact Shevlin brought him to the West 20th Street station house? A To West 68th Street. Detective Heydt brought him from West 68th Street to the 18th Precinct in West 20th Street. Detective Anderson was on his vacation and I was notified at my own home that Burke was in the station house.

Q He was under arrest before you got there? A Well, I had his name put on the blotter making the arrest.

BY MR. NEARY:

Q You mean he was not technically under arrest, and his name was entered on the blotter of the station? A Yes.

Q Officer Shevlin is not attached to that station?

A No sir, to the Charles Street station.

Q And he saw this defendant in the 9th Avenue elevated near 66th Street? A Yes.

Q And he took him from the 66th Street elevated station and brought him over to the station in West 68th Street? A Yes.

Q And brought him down to the station house in West 20th Street? A Yes.

Q And he was booked there? A I booked him.

Q That is the first time you know about his being in the city? A Yes.

CASE #3079

MR. NEARY: That is all.

THE COURT: Gentlemen of the Jury, do not discuss this case among yourselves nor permit any person to talk with you about it nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Be in your seats at five minutes after two, please.

(Adjourned to 2.05 P.M.)

R e c e s s .

A f t e r n o o n S e s s i o n .

Trial continued at 2.05 P.M.

J O S E P H P. A N D E R S O N, an officer of the 18th Precinct, Shield No. 463, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q You are a member of the municipal police force of the City of New York? A Yes sir.

Q How long have you been a member of the municipal police force of the City of New York? A Nine years.

Q To what precinct are you attached? A 18th Precinct detectives.

Q Are you at present a member of the uniformed force or are you a plainclothes man? A Plainclothes.

Q Were you assigned to duty to investigate the case of the cause of death of Pietro Rumore? A Yes.

6206  
CASE #3079

Q About what date were you assigned to that task? A February 12th, 1921.

Q In your investigation did you go to the home of the defendant, Martin Burke? A I did.

Q And where is that house? A It is at 318 West 19th St.

Q Did you inquire for Burke there, yes or no? A I did.

Q How often did you go to his home? A I should say about five or six times.

Q And when was the last time you went there? A About the 18th of February.

Q And did you learn of any other places that the defendant Martin Burke frequented, yes or no? A Yes sir.

Q Did you learn that he sometimes went and visited some people living in Perry Street? A Yes sir.

Q Did you inquire about him down there? A I did.

Q Do not state any conversations; just tell us yes or no; did you find him there? A No.

Q Your duties are in the neighborhood of what streets?  
A 14th Street to 27th Street, from 5th Avenue to the North River.

Q And during the day and night are you frequently out through those streets? A Yes sir.

Q And from the time you were first put on the investigation into the death of Pietro Rumpre down to what date was it that you saw the defendant? A I did not see the defendant until

CASE #3079



after the arrest when he was arraigned in the 2nd District Court.

Q Did you ever have any conversation with the defendant, yes or no? A I did not.

MR. NEARY: I think that is all.

CROSS- EXAMINATION BY MR. FITZPATRICK:

Q Officer, what was the first thing you did after having been assigned to investigate the death of the deceased in this case? A I rode to Bellevue Hospital in the ambulance with the deceased, in company with Patrolman Orlowsky.

Q What else did you do? A And I made an investigation at the scene of the crime, tried to get as many witnesses as possible. I went to Bellevue Hospital and stayed there several hours waiting for the deceased to gain consciousness.

Q Did you have any talk with Officer Orlowsky with respect to the crime? A I did.

Q Did you have any talk with the officer with respect to the contents of the clothing? A I did.

Q Did the officer tell you that there was a razor found in the clothing of the deceased? A Yes sir.

Q What did you say about that, if anything? A I informed the patrolman at that time to take precautions to secure the clothes and put them in a bag and deliver them to the Property Clerk's office.

Q Did you tell him to do that with the razor also? A No sir.

Q What did you tell him to do with the razor? A I told

CASE #3079

him nothing about the razor. I told him to secure all the articles that belonged to the deceased.

Q Didn't he tell you that there had been a razor found in the pocket? A I seen the razor in Orlowsky's hand in the hospital.

Q The same day of the death of the deceased? A At the bedside of the deceased.

Q And did you instruct the officer about the razor?

A I did.

Q What did you tell him to do with it? A I told him to take care of it, it belonged to the uniformed force.

Q Well, you were in charge of the investigation, weren't you? A We take care of the investigation but we are not allowed to touch the body. The first officer on the scene, it is the rule in this department, attends to that, and no other man handles that body other than the patrolman assigned.

Q I am not talking about the body. I am talking about the contents of the clothing of the deceased? A The contents of the clothing of all decedents implicated in crime are always handled by the uniformed force.

Q And you gave no instructions whatsoever with regard to that razor? A It is an understood fact that each patrolman is instructed on that one point. Nobody is to touch the body.

Q What is the instruction with respect to the contents of clothing of deceased persons?

MR. NEARY: I object. We had the razor in court.

CASE #3079

THE COURT: The People, I understand, do not dispute that there was found a closed razor on the person of the deceased.

MR. FITZPATRICK: There is no dispute about that, but I would like to find out why so much time elapsed with respect to that.

THE COURT: I think it is immaterial. The razor is here and it was found by another witness. If that fact had been suppressed then this testimony would be important.

MR. FITZPATRICK: That testimony was not brought forth until the cross-examination of the first witness.

THE COURT: I do not see how it is material, in view of the fact that you brought out from Officer Orlowsky that he found the razor on the person of the deceased, which razor had been closed at the time that it was found by the officer. The District Attorney then produced a razor and it was offered in evidence. I cannot see the materiality of your line of cross-examination.

MR. FITZPATRICK: Well, I take an exception.

Q Were you present at any time when any of these witnesses were brought into the station house? A I was.

Q What witnesses? A Bergen, Sullivan, Dowling, Patrick Donovan. I believe there is another man named Troy.

Q That was the night of the alleged crime, is that so?

A No sir.

Q When was that? A That was about the third day after the

CASE #3079



crime.

Q Were you present on the evening of February 12th when some of these witnesses were taken to the station house? A I was not.

Q How many other officers were present there? A I believe there were three or four of the members.

MR. FITZPATRICK: That is all, Officer.

MICHAEL F. McNAMARA, an officer of the 18th Precinct Detective Division, Shield No. 169, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q Are you a member of the police force of the City of New York? A I am.

Q Do you know the defendant, Martin Burke? A I do.

Q How long have you known him? A Since the day of the arrest.

Q That is, since some time in September last? A Yes.

Q You are attached to what precinct? A 18th Precinct Detective Division, 230 West 20th Street, between 7th and 8th Ave.

Q Were you in the station house when the defendant Martin Burke was brought there? A Not when he was brought in; afterwards.

Q Did you see him there afterwards? A I did.

Q What other officers were there? A Detectives Porter and Heidt.

CASE #3079

Q Just answer this yes or no; did you have any conversation with the defendant? A I did.

Q Please do not tell me what you said to him, but tell me what he said to you? A He told me on the day in question, at the time this crime was committed, that he was at the home of a girl named May Waters at 127 or 137 Perry Street, engaged in a game of cards.

Q Who said that? A The defendant Burke.

Q Did you make an investigation after a report came to your precinct about the death of Pietro Rumore? A I did.

Q Did that investigation bring you in the neighborhood of the defendant's home? A It did.

Q Do you know where the defendant lived? A Yes sir.

Q Did you go there? A I did.

Q Did you make inquiry there for this defendant? A Yes.

Q And did you make inquiries at any other place for the defendant? A I did.

Q Where? A 137 Perry Street.

Q Were you frequently in the neighborhood of 9th Avenue and 19th Street and in the neighborhood of 338 West 19th Street where this defendant lived, since the day of the death of Rumore? A Mostly daily.

Q Did you see the defendant from the time you first were assigned to this case until the night of his arrest? A The first time I saw him was on the evening of September 11th.

Q Do you know where this defendant was employed? A I do not.

1363  
CASE #3079

Q Did you find out where he was employed? A No sir.

MR. NEARY: I think that is all; you may examine.

CROSS- EXAMINATION BY MR. FITZPATRICK:

Q You never saw this defendant before the day he was brought into the station house? A I did not.

MR. FITZPATRICK: No further questions.

JOSEPH DOWLING, of 167 9th Avenue, recalled to the stand on behalf of the People, testifies as follows:

DIRECT EXAMINATION BY MR. NEARY:

Q What is your business? A Chauffeur.

Q By whom are you employed? A Samuel Warwick.

Q Where is his place of business? A 8 Beach Street, New York City.

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

Q How long have you known him? A About seven years.

Q Does he live in the neighborhood in which you live?

A Yes sir.

Q During the past seven years have you associated with him from time to time? A No sir.

Q Is he a member of the group of men that you associated with? A No sir.

Q On the 12th of February, 1921, were you in the baker shop at 9th Avenue near 19th Street? A Yes sir.

Q Who else was in the baker shop with you? A Kondrup, Troy.

CASE #3079



Q Was Marty Bergen with you? A Yes sir, Bergen.

Q Who else? A And Sullivan.

Q And some others? A Yes sir.

Q And were you seated at a table having something to eat?

A Yes sir.

Q Did you see a man by the name of Pietro Rumore come into the bakery? A Yes sir.

Q Did he speak to you? A He said, "Hello".

Q And you knew him, didn't you? A Yes sir.

Q Did he have a shop in the neighborhood? A Yes sir.

Q What kind of a shop did he have? A A barber shop.

Q Have you frequently gone into his barber shop? A Yes.

Q He did the barbering for you? A Yes sir.

Q And you frequently played cards with him there? A No.

Q Did you ever play cards with him there? A Yes sir.

Q How often did you play? A Twice.

Q Did anybody else that you have mentioned as being in the baker shop play cards with him? A No.

Q When he said hello to you, did anyone else speak to him?

A No sir, not that I heard.

Q Did anybody say anything at all to him, or make any remarks to him? A Not that I heard.

Q Did you see Rumore leaving the bakery? A Yes sir.

Q Did you leave right after Rumore? A No sir.

Q Who did? A Bergen.

Q Did you see Bergen leave after him? A Yes sir.

CASE #3079

Q What happened when Bergen and Rumore got into the street?

A When Bergen and Rumore got into the street I was finished with my coffee and went out. I went outside and there was a fist fight in progress.

Q Who was fighting? A Rumore and Bergen.

Q Did Bergen have his coat on or off? A I don't remember.

Q Did all the men that were at the table with you and Bergen then come out into the street while Rumore and Bergen were fighting? A No sir.

Q Did you strike at Rumore? A No sir.

Q Where did Rumore go after he had this fight with Bergen? A He went up towards his shop.

Q Towards what direction, what street? A Towards 20th Street and 9th Avenue.

Q Where did you go? A I stood on the corner.

Q Did you meet anybody that you knew on the corner?

A Only those that were around.

Q Who were they? A Donovan and Bergen.

Q What Donovan? A Patrick Donovan.

Q And Martin Bergen? A Yes sir.

Q Were any of the Kearneys there? A I did not see them.

Q Was Flanagan there? A No, I did not see Flanagan on the corner.

Q Was Courtney there? A No.

Q Was Sullivan there? A No sir.

CASE #3079

Q Was Joe Troy there? A No sir.

Q When you saw Rumore and Bergen fighting did Rumore have anything in his hands? A No sir, not that I saw.

Q What were they hitting each other with? A With their fists.

Q Did you see Rumore come back from the shop? A Yes sir.

Q Where did he go? A When he came back from the shop he walked to 18th Street.

Q Were you there when the police officer came along in uniform? A Yes sir.

Q Where did you go when the police officer came? A I stood right where I was.

Q Where did Bergen go? A I did not take notice where Bergen went.

Q Where did the man Rumore go? A He walked down towards 18th Street.

Q Did you see him stop when he got to 18th Street?  
A Yes sir.

Q Did you see him coming back? A Yes sir.

Q When he came back did he say anything to you? A No sir.

Q Was Bergen there? A I don't remember seeing Bergen.

Q Who else was on the corner when Mr. Rumore came back from 18th Street? A There were quite a few longshoremen on the corner.

Q You did not know any of them, did you? A No.

Q Tell me who were there that you knew? A The only ones

CASE #3079



I knew were there when Rumore came back was Martin Bergen, -  
no, not Bergen, but Burke.

Q Martin Burke, this defendant? A Yes.

Q And who else? A Burke and Donovan are the only ones  
I saw there that I can remember.

Q You did not see Courtney, Flanagan or Sullivan there?

A No sir.

Q What did Rumore do when he came back? A Rumore when  
he came back walked over towards Donovan and Donovan started  
talking to him.

Q His Patrick Donovan? A Yes sir.

Q And how far were you standing from Pat Donovan when  
Rumore began to talk to him? A From about from where I am to  
that chair (indicating).

(Counsel estimates the distance as 12 to 15 feet.)

Q Did you hear what Donovan said to Rumore? A Yes sir.

Q Where was the defendant Burke standing when Donovan  
was talking to Rumore? A In the vestibule of the beer saloon,  
in the hallway of the beer saloon, in the door.

Q Who was there? A Burke was in the doorway of the  
saloon.

Q Was Burke standing in back of Donovan? A He was stand-  
ing a little in the back of him.

BY THE COURT: Q You say Burke was in the doorway of the saloon?

A Yes sir.

Q Was his back to the doorway or did he face the doorway?

CASE # 3079

A His back was towards the doorway.

Q Do you know whether that doorway, or one of the doors leading to the saloon, was open or locked? A I can't remember. The front doors were open but I don't know about the inside doors. They had them storm doors, I think.

Q Where was Burke, in the storm door or in the door leading into the saloon? A He was right where the storm doors were closed back, standing there.

Q At the door of the storm door? A Yes, the storm doors were open; they were open and Burke was standing there. You had to go into another door to get into the saloon.

Q Was the storm door open? A Yes sir, the outside door, yes sir.

Q Are you sure of that? A Yes, sir.

CASE #3079

Q And Burke's back was in the doorway? A Yes, sir.

Q Was he inside of the doorway or outside of the doorway? A He was just standing right there.

Q With his back to the doorway? A With his back towards like the entrance to the saloon.

BY MR. NEARY:

Q When Rumore came back from the corner of 18th street and Ninth avenue, did you hear him say anything? A No, sir, I did not hear him say anything.

Q Did you hear any of the men gathered around you say anything? A No, sir.

Q Did you see Patrick Donovan there? A Yes, sir.

Q Where was Patrick Donovan standing? A He was standing a few feet away from Burke.

Q Was he facing Burke? A No, sir.

Q Was Donovan facing towards Burke? A No, sir, he was not facing towards Burke.

Q Did he have his back towards Burke? A He was standing in a position with his back towards Burke, a little on the side.

Q Something like I am standing in back of Mr. Fitzpatrick (illustrating)? A Yes, sir, something like that.

Q Did you talk to Burke, the defendant? A No, sir, I did not.

Q When you saw Rumore come back there, did you hear anyone say "Watch out for a gun." A No, sir.

CASE #3079



Q When Rumore came back from 18th street you say Patrick Donovan spoke to him? A Yes, sir.

Q What did Patrick Donovan say to him? A He said, "You are a peacefulman now, like a man of sense now, why don't you be peaceful and go on your way, go home."

Q Did Patrick Donovan touch Rumore at all? A No, sir, not that I saw.

Q Were you watching him? A I was not exactly watching him.

Q When Rumore walked back from 18th street, after having had a fight with Bergen, Donovan walked up towards him, did he? A No, the Italian came towards him.

Q They came close to each other? A Yes, sir.

Q Then Donovan said something to him? A Yes, sir.

Q Did Donovan place his hands at all to Rumore? A I did not see him.

Q Do you remember speaking to Mr. Hennis in the station house in 20th street? A Yes, sir.

Q On the 16th of February 1921? A Yes, sir.

Q Do you remember Mr. Hennis asking you questions (reading):

"Q When he came back (meaning Rumore) where did he go then? A He (meaning Rumore) walked right into this Bergen, walked in to the fellows again. They were standing on 19th street and Ninth avenue, outside the ginmill, and walked right into them, but I could not hear what he said because I was

CASE #3079

on the outside then, near the curb, and the first thing I know someone hollered, "Watch out for a gun," so they put him up against the wall and began searching him." Do you remember making that statement, yes or no? A No, sir.

MR. FITZPATRICK: I make the same objection to this line of testimony.

Objection overruled. Exception taken.

BY THE COURT:

Q Did you make any such statement to the Assistant District Attorney? A I don't remember making it, no, sir.

Q You have no recollection of it? A No, sir.

Q Do you remember talking to the District Attorney?

A Yes, sir.

Q And he asked you certain questions? A Yes, sir.

Q And you made certain answers? A Yes, sir.

Q You state you have no recollection of having made this answer? A I don't remember, your Honor.

BY MR. NEARY:

Q Do you remember this question being asked you at the same time (reading): "Q Who was searching him? A The only one I saw searching him was Donovan, and he said, 'No, he ain't got no gun.'" Did you make that answer to that question?

A I don't remember anything about Donovan saying about a gun or searching. All I remember, Donovan was trying to pacify the man.

CASE #3079