

Q And at the time you arrived there was he alive?

A Yes, sir, breathing his last.

Q How soon after you arrived did he die?

DEFENDANT'S COUNSEL: I move to strike out "breathing his last".

THE COURT: Wait a moment. That time did you arrive there?

THE WITNESS: I could not exactly recollect, the exact time, but it was around half past seven; between half past seven and a quarter to eight.

THE COURT: The question is allowed.

DEFENDANT'S COUNSEL: The question, but he was asked the question and he made two answers.

(Question and answer repeated by the stenographer as follows: "Q. At the time you arrived there was he alive? A Yes sir, breathing his last".)

THE COURT: You may strike that out "he was breathing his last."

Q Well, did he die after you arrived or not? A Yes, sir, after I arrived he died.

Q How long after you arrived? A Well, I should imagine about five to ten minutes, not longer.

Q Did you make an examination of him at that time?

A I did, sir.

Q What did you find to be the matter with him?

A The man was in bed, sort of in a comatose condition.

Q A little louder? A The man was in bed in a comatose condition. He was breathing stertorously and his pulse was almost gone. I examined his head and I saw a lump, but I cannot swear if it was on the left or right side, sir; I cannot swear to that.

Q You saw a lump? A A lump, but my memory escapes me whether it was on the right or left side

Q I see. No matter whether it was on the right or left side, about what was the location? A It was between, I imagine, between the temples and the frontal bone, right here (indicating.)

Q Did you find anything else the matter with him?
A No, sir.

Q How large was that lump that you have referred to?
A I should imagine sir --

THE COURT: Now what you imagine.

A (Continued) Well about the size of a small orange. I think the circumference of a small orange, but raised very slightly, about a quarter of an inch raise above the surface of the skin.

CROSS EXAMINATION BY DEFENDANT'S COUNSEL:

Q Doctor, if you please, tell me just where that lump

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that you found was located. I do not mean what side of the head, but whereabouts on the head? A I cannot swear it was on the left or right side, but I know it was about right here (indicating) where the temple and frontal bone meet, up here.

BY THE COURT:

Q Doctor, to the best of your recollection, tell us concerning which side it was? A It was, I think, your Honor, the right side, because he was lying this way (indicating) and I was on his right side, and in my imagination it was ---

Q You tell us why, but you are not giving us your recollection. A How can I give a recollection --

THE COURT: Strike that all out.

The Court thereupon admonished the jury in accordance with section 415 of the Code of criminal Procedure and adjourned until Friday, May 13th, at half past ten A. M.

THE COURT: Bail continued.

New York, way 13, 1910.

TRIAL RESUMED.

TIMOTHY D. LEHANE, M. D., a witness recalled
on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. BUCKNER:

Q Doctor, I want to know as a medical proposition,
assuming that a man at the corner of 158th street and Forrest
avenue, in the Bronx, received a blow on the side of his head
which fractured his skull, if it would be possible for him
to go in that condition to East 117th street and die three
hours after the injury was received?

MR. MURPHY: If the Court please, I object to the
question, on the ground that it assumes facts absolutely
which have not been proven at this trial.

THE COURT: Yes. There is no evidence that I know
of that the man was struck on the side of the head.

MR. BUCKNER: Yes, if the Court please.

THE COURT: Well, if you find that, all right;
the hypothetical question must be asked, if asked at all,
upon matters which were brought out in the evidence and
then when they are brought out, the question is,
assuming them to be true.

MR. BUCKNER: Yes, simply assuming them to be
true.

THE COURT: Now, if you find in the evidence anything

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at all to indicate that there was a blow on the side of the head by this defendant ---

MR. BUCKNER: The witness Savino said he struck him on the head.

THE COURT: No. The evidence as I recall it was that this defendant held the decedent with his left hand back of his neck on his collar and with the right struck him.

MR. BUCKNER: But the witness --

THE COURT: He held him before him with his left hand and struck him with his right.

MR. BUCKNER: But the witness said that he saw him strick him on the head.

THE COURT: Well then, what right have you to assume that he struck him on the right of the head or on the left either?

MR. BUCKNER: Then the evidence of the barber, for what it is worth, as to the contusion on the side of the man's head, but this hypothetical question I am only interested in as a general proposition on the fracture of the skull.

THE COURT: Well, the Court will not allow it. There is also too much speculation in it.

MR. BUCKNER: Well, I will modify the question. Q doctor, is it possible for a man who has been struck

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on the head with force enough to fracture his skull to walk or to go from 158th street and Forrest avenue to 117th street?

Objected to. Objection sustained.

MR. BUCKNER: That is all.

THE COURT: That is altogether too speculative.

MATTEO GIAMATASSEO, being called as a witness on behalf of the People, testified through official interpreter Deville as follows:

THE COURT (Continuing) And again, before you go on, there is not any evidence here that he walked from the place where he was struck to his home. Let that go in as part of the Court's ruling upon the question. There is some evidence that he went away, but that he walked or rode or how he went away, there is no evidence at all as to that.

DIRECT EXAMINATION BY MR. BUCKNER:

Q Where do you live? A 445 Willis avenue, Bronx.

Q Did you know in his lifetime Sabato Basso? A Yes, sir.

Q How long had you known him before his death? A Six or seven years.

Q Did you see him on June 28, 1909? A Yes, sir.

Q Where did you see him? A At 158th street and Forrest

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avenue.

Q In what place? A At the bowling alleys.

Q In what place of business? A It is a saloon and dancing hall and bowling alleys combined.

Q What is the name of the proprietor of the saloon?

A I don't know the name.

Q Well, how long did Basso, or did Basso work in this saloon? A Yes sir.

Q How long had he worked there, if you know?

A Between eight and nine months.

Q How is that? A Between eight and nine months.

Q What did he do there? A He was cleaner.

Q What were you doing there on June 28, 1909?

A I was there to help out Bassao, Sabato.

Q Did you help him out? A Yes, sir.

Q Well, what happened there in the afternoon, if anything?

A Sabato Basso, the decedent went downstairs to get two glasses of beer from the bartender. The bartender refused to give them to him.

MR. MURPHY: If the Court please I object to any questions or answers which may bring in any matters which occurred in this place prior to the appearance of the defendant.

THE COURT: Yes, as to that, objection sustained.

You had better direct the attention of the witness to

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the time or to the particular transaction concerning which you want him to testify.

MR. BUCKNER: Yes, your Honor, if counsel objects I will do it.

Q Now, coming down to the time when you say the defendant Kelly --

MR. BUCKNER: Question withdrawn.

Q Did you see this man Kelly that day? A Yes.

Q Where did you first -- A (Interrupting) I saw him when he placed the deceased under arrest, but I did not know him then. I know him now.

Q All right. Now, beginning right there, where did he place the deceased under arrest? A We went up to the station to purchase tickets on our way home, and he arrested us at the station.

Q What did he do with you after he arrested you?

A He brought us back to the saloon.

Q What then happened? A He brought us back there and he asked some one, he asked the bartender to point out the man who had caused the disturbance.

Q Then what happened? A They left me downstairs in the saloon proper and they took the deceased upstairs.

Q Who took him up? A One flight up.

Q Who took him upstairs? A The officer, the bartender and the proprietor of the premises.

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Q What did you do after they went upstairs? A I remained downstairs in the saloon, in the barroom.

Q What is the next thing that you saw or heard?

A When they brought him downstairs he still had four or five steps to go down before reaching the ground floor, and when the fighting master struck the decedent a blow.

MR. MURPHY: I move to strike that out as not responsive, and it is descriptive of a party, and now we do not know who he is .

THE COURT: Motion denied.

Q Now, tell me in more detail what is the first thing you saw or heard ? A I heard nothing upstairs.

Q Well, what was the first thing that you saw on the stairs?

MR. MURPHY: If the Court please I move to strike out the question. I object to the question upon the ground that what he saw on the stairs can have no bearing on this defendant unless the defendant was there.

THE COURT: Objection overruled.

Q Answer the question. A The first thing I saw was the officer holding the deceased by the arm.

Q And where was he holding him by the arm? A Near the partition on the landing of the stairs. He was holding him against the partition in order to enable the ---

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THE COURT: Strike that out. Beyond that you must not go.

Q Did you see the officer and Basso come down the first flight of stairs?

THE COURT: Objection sustained. Try and get your information without leading.

Q State what you saw if anything on the first flight of stairs, before you speak of the landing?

MR. MURPHY: If the Court please I object to that question, because he says the first thing he saw was on the landing.

THE COURT: Objection overruled. Proceed.

MR. MURPHY: Let us find out if it was --

THE COURT: There is no use arguing the question. The objection has been overruled.

A The first glimpse I had of them was when they had still three or four steps to go down, to reach the main floor of the barroom, and there I saw the officer holding the deceased by the arm.

Q Do you know what I mean when I speak of the landing?

A Yes, I do.

THE COURT (Addressing the interpreter) Now, we cannot have conversation. When the District Attorney asks a question, you repeat that question without any other of your own by way of explanation or anything else.

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Q Well, what do I mean by the landing? A You mean the space that is above the three or four steps previous to ascending upstairs.

Q Did you see Basso and the defendant Kelly before you saw them on the landing?

THE COURT: Objection sustained.

MR. BUCKNER: On the ground that it is leading?

THE COURT: A leading question.

Q Well, after Basso and the officer went upstairs, tell us the first time that you saw them again, if you did see them?

MR. BUCKNER: Now, make that clear, Mr. Interpreter.

A I saw them again when they came downstairs, while the officer was holding the deceased.

THE COURT: Strike out that "while the officer was holding the deceased", strike that out.

MR. BUCKNER: Now, I think I can get to the point.

Q At what point on the stairs did you first see officer Kelly and Basso?

THE COURT: Wait a moment. It might simplify this if you ask him whether after they had left to go upstairs he saw them again before they reached the landing on their way back.

MR. BUCKNER: All right, I withdraw the other question.

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Q After Officer Kelly and Basso and the bartender and the proprietor went upstairs, did you see them before you saw Kelly and Basso on the landing? A No, sir.

Q State exactly what you saw happen on the landing?

A I saw the officer holding the deceased tight by the arm.

Q Did you see the bartender at that time? A Yes.

Q What was the bartender doing, if anything? A I saw the bartender standing still three or four steps above the spot where the officer was standing with the deceased .

Q Did you see the defendant Hayne, over in the corner (indicating)? A Yes. This is the man who was striking --

MR. MURPHY: I move to strike that out.

THE COURT: Yes.

MR. BUCKNER: Well, I will just now ask the question this way: What, if anything, did you see him doing?

Objected to. Objection overruled.

A He was striking with his fist the deceased.

Q What was the officer doing, if anything at the time Hayne was striking the deceased with his fist? A He was holding him, and he was not ~~bethering~~ about the matter at all.

MR. MURPHY: I move to strike out that part and let "that he was holding him" stand?

THE COURT: Yes.

MR. BUCKNER: All right.

Q Did you see the officer try to prevent Hayne from striking the deceased?

Objected to. Objection sustained.

Q How many times did Hayne strike the deceased, if you know? A Between ten and eleventimes.

Q Where were you standing at the time you saw this?

A In front of the door, the door leading to the hall upstairs.

Q What next did you do? A It produced a peculiar impression upon me, and --

MR. MURPHY: I move to strike that out.

MR. BUCKNER: No, we will not even taken it.

With the Court's permission we will not take the answer.

THE COURT: No.

Q What did you do? A I went outside.

Q Did you see Basso leave the saloon? A No.

Q Where did you go when you went outside? A I went with the deceased, but the deceased was put out through another door.

MR. MURPHY: I move to strike out that part that he was put out through another door.

Q Did you see him put out with your own eyes?

MR. MURPHY: One moment.

THE COURT: Repeat that last question and answer.

(Repeated by the stenographer.)

THE COURT: Strike it out.

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Q Through what door of the saloon did you leave?

A Through the door leading into Forrest avenue.

Q When did you next see the deceased after you walked out of the door? A I saw the deceased when he was standing near the door, where he had been put out.

MR. MURPHY: I move to strike out that he was put out.

MR. BUCKNER: Yes.

THE COURT: Yes.

THE INTERPRETER: Will your Honor allow me to eliminate such particulars as I know are improper.

THE COURT: Well, you will have to give the answer as he gives it, and then motion may be made.

Q Did you see the deceased with your own eyes put out of the door? A No.

Q Near what door did you see him, Forrest avenue or 158th street? A I saw the deceased when he passed by the door leading into Forrest avenue.

Q Did you go away with the deceased or not? A Yes, I went as far as 145th street.

Q And then what did you do? A Then I went home.

Q And what direction did the deceased go? A He was walking straight towards Willis avenue.

Q When the deceased left the saloon with you, what direction did you go? A We went straight through Jackson

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avenue up to Third avenue through Third avenue up to Willis avenue.

Q Where is the barber shop kept by Raffaele John Cristiana, if you know? A Yes, I know.

Q Where is it? A Adjoining the barroom premises.

Q In what direction? A The barshop is on the avenue, and it is in the direction of Jackson avenue.

Q Do you know whether it is north, east, south or west?

MR. MURPHY: I object to the question, because he covered --

THE COURT: Objection overruled.

Q Do you know if the barber shop is north, east, south or west of the saloon? A No.

Q If this is 158th street (indicating) if this is Forrest avenue, if this is the saloon on the corner, which side of the saloon is the barber shop? A On this side, next to the saloon (indicating).

Q Is it toward the direction of 157th street or away from it?

THE COURT: Or 158th.

Q (Continuing) Or 156th.

MR. BUCKNER: Yes, all right.

A Towards 157th street.

MR. BUCKNER: All right. Cross examine.

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CROSS EXAMINATION BY MR. MURPHY:

Q Mr Giampatasseo , when you left the saloon with the deceased Basso, you and he walked together and talked together?

A Yes, sir.

Q You were employed by Basso, not by Mr Stillwager? A Yes.

Q Now, when you were left in the saloon by the police officer, just about where did you remain standing? A In the middle of the bar room.

Q Were you standing near the bar? A No, I was rather in the middle of the floor.

Q Were there any tables in that bar room at that time? A Yes, there were tables on the floor.

Q How many were in the bar room, if you knew? A I don't know.

Q Were you standing near a table? A I stood still right in the middle of the floor.

Q And remained standing there all the time, still in the middle of the floor? A I was standing there up to the time they began assaulting the deceased.

MR MURPHY: I move to strike out the assault part .

MR BUCKNER: Consented to.

THE COURT: Strike it out.

Q Das you see the barber in the saloon? A Yes, he

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talked to me.

Q Were you standing near the barber at the time these people went upstairs? A Yes, sir.

Q Now, who stood nearer to the door which led to the hall going upstairs, you or the barber? A We were both in almost the same spot.

Q And the first thing that you saw after the officer, the defendant Kelly here, the deceased Basso, the bar tender, and Mr Stillwagen left the saloon to go upstairs, was what you have described as taking place on the landing, is that right?

A Yes, that is --

Q Yes or no? A Yes, but I had seen also --

MR MURPHY: Now, one minute.

THE INTERPRETER: I think I have to give that.

MR BUCKNER: Yes.

A (Continuing) I have have seen something here which occurred previous to that, when the deceased was assaulted downstairs in the kitchen.

MR MURPHY: Now, we will strike that part out?

MR BUCKNER: Consented to.

THE COURT: Yes, strike it out, and tell him to answer question, and to volunteer nothing.

Q Are you sure Mr Stillwagen went upstairs? A Yes, sir.

Q Was he in the bar room when you came in the bar room with the officer, the defendant here and Mr Basso, the de-

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ceased? A Yes, sir.

Q You saw him there? A Yes, sir. Then he went upstairs with the others.

Q Did you see the defendant Kelly here at any time strike the deceased Basso with a club? A No.

Q You saw everything that took place on that landing?
A Yes.

Q Did Kelly strike the deceased with a club? A I did not see that.

Q Did this defendant Kelly have a club in his hand?
A No.

RE-DIRECT EXAMINATION BY MR BUCKNER:

Q Did you see the policeman push the deceased up against the wall?

Objected to. Objection sustained.

MR BUCKNER: All right, that is all.

THE COURT: Just a moment.

BY THE COURT:

Q When you went out of the barber shop, I mean out of the saloon, had Basso gone out? A Yes, he had gone out through the other door.

Q When you left the saloon after the barber had left it, was the barber still in the saloon? A Yes, the barber.

Q You left the barber in the saloon? A The barber had

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remained in the saloon.

Q Now then, you say that you went with Basso some distance?

A Yes, up to 145th street.

Q How far did you go? A To 145th street.

Q From what street? A From Forrest avenue, where we started, up to 145th street and Willis avenue.

Q What time elapsed between your going out of the saloon and your starting away with Basso to walk? A About 10 minutes or 15 minutes.

Q Where did you spend the ten or fifteen minutes between the time you came out of the saloon and the starting away of the two of you, on your walk? A No, I did not make myself understood. It took us about ten or fifteen minutes to walk from Forrest avenue up to 145th street, to the point where I left him.

THE COURT: Then repeat that other question.

(The stenographer repeated the question as follows:

"What time elapsed between your going out of the saloon and the starting away with Basso to walk?")

A It is a question of minutes or seconds.

Q Minutes or seconds? A Yes, sir.

Q Down what street or avenue did you start to walk?

A Through Forrest avenue to Jackson avenue; through Jackson avenue to Third avenue; through Third avenue to Willis avenue.

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Q On what side did you walk, between the curb and Basso or between Basso and the building line? A I was nearest the street; Basso was between me and the wall.

Q Basso between you and the wall? Passing the barber shop -- did you pass the barber shop of the man who testified here? A Yes, sir.

Q That was the barber shop of the man whom you left in the saloon? A Yes, sir.

Q Do you know whether or not he had come out of the saloon --

THE COURT: Question withdrawn.

Q Do you know whether or not he was in the saloon when you left it again? A He came immediately behind me when I came out.

Q The barber came after? A Yes.

Q So that you passed the barber shop before the barber went into it? A Yes, sir.

Q That is all.

MR BUCKNER: I have another question or two.

BY MR BUCKNER:

Q I ask you again, did you see with your own eyes Basso leave the saloon? A No.

Q _Then how do you know whether Basso left first from 158th street, or whether you left first in Forrest avenue?

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A I saw Basso coming towards the Forrest avenue entrance to the saloon. I saw him pass in front of the saloon. When I saw him I walked out and joined him.

Q If this is the 158th street door (indicating) and this is the Forrest avenue door, where did you first see Basso?

A I saw him going in this direction (indicating).

Q Do you know of your own knowledge exactly where the barber was when you and Basso passed the barber shop?

A He was standing in front of the saloon entrance.

Q Did you look at Basso's face and head?

MR MURPHY: If the Court please, I object to that.

THE COURT: Objection overruled.

A Yes, sir.

Q What did you see? A I saw he had a cut, a wound on the left side of the forehead, above the templ, and one cut on the lips.

RE-CROSS EXAMINATION BY MR MURPHY:

Q Just one question. You have known Mr Basso, the deceased, for some time? A Yes, six or seven years.

Q And this was a cut on his head here (indicating)?

A I did not look close.

BY THE 4TH JUROR:

Q I would like to ask a question. I would like to know where you separated from Basso, when you left Basso? A At

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145th street and Willis avenue.

Q In which direction did Basso go? A Straight down to Willis avenue.

BY THE 11TH JUROR:

Q I would like to ask if you held Basso's arm on the way down, or did Basso walk unassisted? A We were walking side by side. I was not helping him on.

BY THE 6TH JUROR:

Q Were you taken upstairs at any time? A Do you mean inside the saloon?

Q Inside the saloon? A No, I remained downstairs.

Q Where did they leave you, in the saloon, or in a room?
A Inside the bar room.

MR BUCKNER: That is all. The People rest.

MR MURPHY: If the Court please, I move to dismiss the indictment against this defendant, on the ground there has been no evidence offered here to show that any act of his has been responsible for any wounds found upon the body of the deceased, after he was found dead by the Coroner's physician or any other physician.

THE COURT: Motion denied.

MR MURPHY: I move to dismiss the indictment against the defendant on the ground that the People have not made out a case of manslaughter against the defendant,

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beyond a reasonable doubt.

THE COURT: Motion denied.

MR MURPHY: I move on the further ground that there is nothing here to show that if the deceased did receive any wounds or injuries at this place, that his death was caused, or the result of such wounds or such wounds or injuries.

THE COURT: Motion denied.

MR MURPHY: I make the further motion to dismiss the indictment against the defendant, that, assuming that the injury on the temple as described by the doctor did cause the death of the deceased, there is no evidence here to show that this defendant, either directly or indirectly, or any one in his presence or with him, inflicted that said wound.

THE COURT: Motion denied.

MR MURPHY: I move to take away the first degree manslaughter.

THE COURT: Motion denied.

MR MURPHY: I take an exception to each denial.

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THE DEFENSE.

Mr Murphy thereupon opened the case on behalf of the Defense.

LOUIS CALVOR, being called and duly sworn as a witness on behalf of the Defense, testified as follows:

DIRECT EXAMINATION BY MR MURPHY:

Q Mr Calvor, where do you live? A 770 Tinton avenue.

Q Mr Calvor, what is your business? A Bar tender.

Q On the 28th day of June, 1909, were you in the premises owned by Mr Stillwagen at the corner of 158th street and Forrest avenue? A Yes, sir.

Q About 4 o'clock in the afternoon? A Yes, sir.

Q Did you on that day see the defendant Kelly? A I did.

Q When did you first see him? A When he came in with the prisoners.

Q That is, when he came in with the deceased Basso and one of the witnesses here, Mr Giamatasseo? A Yes, sir.

Q Now, Mr Calvor, have you visited the saloon of Mr Stillwagen very frequently? A Yes, sir.

Q And had you done so prior to the 28th day of June, 1909? A I don't understand.

Q Had you visited these premises many times prior to the 28th day of June, 1909? A Yes, sir.

Q And have you visited those premises since? A Yes,

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sir.

Q Do you know the location of, or whether or not there are doors leading from the bar room upstairs? A Yes, sir.

Q Would you give us a sort of description of the location of these doors? A Yes, sir.

Q Will you please do so? A The bar room is about, say 20 or 25 feet long, and to the best of my knowledge about 12 or 15 feet wide, and the end of this bar room, the house is divided, half on the right, standing with the back towards Forrest avenue, half of this leads to the rear of the building; the other half is closed with two doors into the hallway on one side, and on the other side it leads down to the kitchen. That is another part altogether, though. There is two doors leading in from this open space into the hallway, one directly out of the bar room and one at the side part of the bar room, which is not exactly the bar room any more. It is only a passage from the bar room to the rear apartments, the dancing hall, the bowling alleys, and so forth.

Q Mr Calvor, a person standing near the bar, could he see the second door you have described, which leads from the part in the rear to this hall, going upstairs? A Standing near the bar?

Q The second door? A No, sir.

Q Now, what door could a person see standing in the bar room, near the bar? A The one that leads directly out of

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t he bar room in the hall.

Q Now, that door, which way does it swing, does it swing in the hall, or out towards the bar? A Into the bar room.

THE 5TH JUROR: Let him draw a diagram of that?

Your Honor, can I say a word? I cannot follow that witness. I would like him to draw a diagram of these doors and everything. I cannot follow that.

THE COURT: All right, if he can draw one.

(The witness proceeds to mark on paper)

THE COURT: Now, Counselor, whatever suggestion you may have to make, or directions in the drawing, I wish you would come up here and supervise it.

(The witness makes a drawing)

BY MR MURPHY:

Q Now, Mr Calvor, you have drawn, as near as you can recollect a diagram of the bar, the wallway leading upstairs, the door entering the hallway to the stairs and the landing, is that right? A Yes, sir.

Q That is what you have on that paper there? A Yes, sir.

MR MURPHY: Now, if the jury wants to see it, we have no objections to that.

MR BUCKNER: The usual form is to offer it in evidence.

MR MURPHY: I will offer this in evidence, if the Court please, as a sort of descriptive diagram of the lo-

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cation there.

MR BUCKNER: No objection.

Marked in evidence as Defendant's Exhibit B.

MR MURPHY: Of course, with the understanding that it is not a correct diagram of the place.

THE COURT: You know what that diagram means. Try and explain it to the jury now, that is, holding it in their presence as much as possible, and you had better come around to this table here and hold it before the jury as well as possible.

MR MURPHY: (Indicating on Defendant's Exhibit B) This is to represent 158th street; this is Forrest avenue, the compass pointing north this way. The entrance to the saloon, which is a corner building, at 158th street and Forrest avenue, is about over here, that is, on the southern end of the store.

THE COURT: Hold it at an angle so that the jury can see it.

MR MURPHY: (Continuing) The entrance to this, to the store on Forrest avenue, the south end of the store is here. This is the saloon proper. The bar is here, and the back bar. This is the bar where you stand and give your order for a drink. At the end of this bar here there is an opening going in back of the bar, and right in front of here is another door. In this partition,

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which runs from 158th street -- to a distance of about 6 or 7 feet into the saloon from the bar. (Repeating) This here line here represents a partition at the end of the bar, running from the 158th street side to a point in the saloon about 6 or 7 feet out from the bar, and this is a partition going down along the center of the building, leaving a hallway here, which leads into the rear, which leads into the dance hall, the bowling alleys, and so forth.

Now, in this place which is enclosed in this partition, which is represented by this line here, and down to 158th street, is a hallway entry leading to the stairs going upstairs. To get upstairs, as it indicates here, there is a space of about four or five steps, short stairway, which leads to the landing. This represents the landing. After arriving at the landing, then you walk up seven or eight steps more to the top.

MR BUCKNER: You have to turn around to go upstairs.

MR MURPHY: More or less in the form of a "V", except that it is a little bit outside. Now, the door of the hallway leading out to 158th street is about right here, about the center of the hallway between the landing and the partition, between the bar room and this hall.

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THE 6TH JUROR: Does this door here face this landing, what kind of door is that?

MR MURPHY: This is a door about 2 or 2-1/2 feet wide, leading from the bar room into this entry here, and when opened swings back through the bar. It is on hinges.

MR BUCKNER: An ordinary door?

MR MURPHY: An ordinary door on hinges. The bottom of these short stairs which lead to this landing begin at a point directly opposite this bar, which leaves the entire door extending out this way from the bottom of the steps. That is, standing at the bar here, with this door open, looking straight in towards that partition or space here, you can just about see the bottom or the first step of the short stairs leading up to that landing.

MR BUCKNER: But the landing can be seen if you are in the right place.

THE COURT: You had better get the cardinal points on that.

MR MURPHY: Yes, I have, your Honor.

BY MR MURPHY:

Q Now, Mr Calvo, when the defendant Kelly with the deceased Basso and Mr Giamatasseo, entered the liquor store, you were in there at that time, you testified? A Yes.

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Q And was Mr Dewald in the saloon? A No, sir.

Q Who was in there? A A few guests.

Q Was Mr Stillwagen there? A I don't remember whether he was or not.

Q When did the defendant Kelly do when he first came in the saloon, if anything? A He came into the saloon with one of he prisoners in each hand, and asked, "Are these the fellows you are looking for?"

Q Who answered him, if anyone? A Just at that moment Mr Dewald comes down from upstairs through this door which leads direct into the bar room, and he says "That's the fellow", pointing to Basso, and said, "The other fellow don't do nothing, but that's the fellow that done it."

Q What was done then, if anything? A Then the officer, if I recollect, I would not swear to this, the officer asked him, "Where is your wife?" Or "Who is the party he struck?" And he says, "My wife, she is in bed", and then the officer said he has got to bring him up to the lady that he struck.

Q Did the officer, the defendant Kelly, and Basso, and Dewald, leave the bar room then? A Yes, sir.

Q Who left, who was in the crowd / do you know? A As far as I know, Dewald, Basso and the officer. I don't know whether Mr Stillwagen was there or not. I can't well recollect.

Q Well, they left the bar room and went into this hallway?

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A Yes, sir.

Q Did you see where they went after they went into the hallway?
A I seen them start upstairs and then the door was closed.

Q Which door was closed? A This door where they went through.

Q From the bar room into the hallway? A Yes, sir.

BY THE 6TH JUROR:

Q Does that door close by itself? A No, sir.

Q It would remain open if a party would go there and open it?
A Yes, it stays open if you do not shut it.

BY MR MURPHY:

Q Who went in that door first? A To my recollection Mr Dewald.

Q After they went in there and the door was closed, as you testified to, did you remain in the saloon? A Yes, sir.

Q Did anything occur after that to attract your attention?
A Not just that minute. After awhile.

Q Well, after how long a while would you say? A Well, I should say 10, 12, perhaps 15 minutes, something like that.

Q Now, before you go any further, is there anybody in this court room who was in this saloon at the time that you know of? A Yes.

Q Who? A Mr Agostini.

Q This gentleman now standing (indicating)? A Yes, sir.

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Q Did you see anybody else in the bar room who is in court? A I don't know. I am not sure whether the barber was in there or not.

Q Now, you said after a little, something attracted your attention. What was that, how long after that? A Well, as I said before, about 10, 12 or maybe 15 minutes after.

Q After they went upstairs? A After they had left the bar room to go upstairs .

Q What was it attracted your attention? A Bumping like, as if somebody fell.

Q What did you do, if anything? A I said, "What the dickens is that?"

BY MR BUCKNER: No, --

Q No, not what you said, but what did you do? A (No answer)

BY MR MURPHY:

Q What did you do? A Oh, excuse me, I opened the door to look out.

Q Which door? A This door which leads from the bar room into the hallway.

Q You opened that door? A Yes.

Q What did you do then? A I looked out.

Q You say you looked out; where do you mean you looked out? A I opened the door to see what there was, what was the

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cause of that rumpus.

Q What did you see? A I seen then on the stairway leading from the landing upstairs, but on the bottom of this part of the stairway (indicating) I seen lying on his back Mr Dewald.

Q Mr Dewald was lying on the steps right near near the landing, on his back? A Yes, sir.

Q Was he on the landing? A He was partly on the landing. His body was partly on the landing, and partly perhaps on the two bottom steps.

Q What else did you see? A And I seen this Basso over him as if he wanted to strike him.

Q Now, wait. You saw Basso where, over him? A Over him.

Q And Dewald was underneath? A Yes, sir.

Q Anything else that you saw? A Then I went out, went up to the landing and grabbed Basso and turned him away from him.

Q Where did you turn Basso, down the short stairs? A Yes, sir, on the landing.

Q On the landing? A He was standing on the landing.

Q After you took hold of Basso and turned him, where did Basso go? A He stood alongside of me, well, a little bit in front, something like here (indicating) sidewalk, but still a little bit front ways.

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Q What happened then? A At the time I was smoking a pipe. I had my pipe in my mouth, and all of a sudden something flashed in front of me, struck my pipe, knocking my pipe out of my mouth, and as I have very bad teeth, and even it broke part of my tooth off a little bit, and caused a little bit of blood. I let go; this hurted me quite some, just for that little while there, and I put my hand up to my mouth and let go of the man. In the meantime he went down. I went down too and went in the saloon, holding my hand, or my mouth.

Q Up to this time, where was the defendant Kelly?

A I don't know. I didn't see him.

Q You had not seen Kelly up to that time? A Not after he went upstairs.

Q Now, did you find out what struck your pipe? A Yes, sir.

Q What was it? A As far as I could see, I couldn't see what it was, but it was simply a flash, in front of my eyes, and something hard struck my pipe and throwed the pipe out of my mouth.

Q Did you find anything of that character afterwards?

A Yes, sir.

Q What was it? A After all was over I went out looking for my pipe. Instead of my pipe, first I found a razor.

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After, my pipe.

MR MURPHY: Now, I ask the District Attorney if he has that razor in his possession?

MR BUCKNER: We have no razor. It is something I know nothing about. Perhaps the Police Department may have it.

Q What did you do with this razor when you found it, Mr Calvor? Did you see that razor afterwards? A Well, I took the razor and put it in my pocket and showed to in the bar room.

Q Do you know what caused that razor to strike your pipe? A I don't know. I imagined he hit it.

Q Well, never mind. You don't know? A I don't know.

Q Did you testify at the Coroner's Inquest in this case? A I testified before the Coroner.

Q And did you see that razor at that time? A At the inquest?

Q Yes. A No, sir.

Q Now, after the pipe was knocked out of your mouth, you say that Basso then went down the stairs to the floor and you followed him? A Yes, sir, I went down too.

Q And now, what did Basso do after that? A I don't know. I went right into the bar room then.

Q And do you know where Basso was then? Was he left in this hallway, or did he go out, do you know? A I left him

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in the hallway there.

Q Now then, up to the time when Basso left the landing and got down the stairs there, followed by you, Kelly, as far as you know had not come from upstairs? A Not to my knowledge.

Q You did not see him there at all? A No, sir.

Q Now, are you prepared to state here, Mr Calvor, that, or as to whether or Not Kelly had hold of Basso when he was on the landing there? A There was no Kelly there at the landing at all. There was simply Dewald, Basso, myself and Agostini.

Q And Mr Agostini? A Yes, sir.

Q Now, Mr Calvor, when you came out in the bar room after this, did you see Mr Savino, the fruit dealer? A I don't know, not to my knowledge, whether he was there or not.

Q You do not know whether you saw him or not? A No.

Q At that time, you knew Mr Savino, didn't you? A I knew him from being a fruit dealer across the street. I had seen him there, that's all.

Q Now, are you positive whether or not Mr Stillwagen was on that landing? A I am positive that he was not at the landing, when this happened.

Q And you are clear and positive that you have described all who were on that landing at that time? A At that time.

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Q Did you see Savino in the saloon at all on that afternoon? A Not to my recollection.

Q But you would not say he was not there? A Well, no, not directly.

A JUROR: Who is Savino?

MR MURPHY: He is the star witness.

MR BUCKNER: The man that committed murder in Italy.

Q Did you see Basso after you went into the saloon at that time? A I seen him going down Forrest avenue.

Q Who was with him then? A His partner. I don't know his name.

Q This young man (indicating), did you see a party in court here to-day who was with him? A Yes, sir.

Q How close were you to Basso when he went down Forrest avenue? A They were down about three-quarters between 58th and 56th street. There is no 57th street.

Q And were you standing anywhere near him? A No, sir.

Q You just saw him walking down the street? A Saw him from the rear.

Q Did not notice how they were walking? A Walked like every other ordinary man.

Q Side by side going down the street? A Side by side.

CROSS EXAMINATION BY MR BUCKNER:

Q You did not think he was hurt there at all, did you?

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Objected to. Objection sustained.

Q Did you see Hayne strike him?

MR MURPHY: I object to that.

THE COURT: He may answer that.

A No, sir, I did not.

Q Did you hear Hayne testify at the Coroner's Inquest that he struck him to knock the razor out of his hand?

Objected to. Objection sustained.

Q Well, did you hear Hayne testify? A I did, I think I did.

Q You think you did? A Yes.

MR MURPHY: I object to that.

MR BUCKNER: Well, I want to refresh his recollection.

Q You did hear Hayne testify, did you? A To the best of my knowledge, yes.

Q Did you hear Hayne testify that he had a razor in his hand?

MR MURPHY: I object to that.

THE COURT: Objection sustained.

Q You could not be mistaken about it, that you did not see Hayne hit him, is that right? A Repeat the question, please?

Q You could not be mistaken, did not see Hayne strike Basso, is that right? A Not to my knowledge, I did not see

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Hayne strike him.

Q And you did not see Kelly strike Basso, did you?

A No, sir.

Q And you did not see John W. Dewald strike Basso, did you? A No, sir.

Q The first you saw was Basso down on the landing, is that right, or Dewald down on the landing? A Dewald.

Q Which was underneath? A Dewald.

Q Did you hear Dewald testify at the Coroner's Inquest?

MR MURPHY: I object to that.

THE COURT: Objection sustained.

MR BUCKNER: Only for the purpose of refreshing his recollection.

THE COURT: I know, but what effect can another man's swearing at another proceeding have upon this man's oath here? He is swearing as to his recollection, not as to others.

Q I will ask you to think a moment? A On what?

Q On the proposition as to whether or not Dewald was on his back on the landing or not? A Dewald was positively on his back on the landing, part of the body on the landing, and part of the body, perhaps on the lowest step.

Q And that is true, no matter what anybody else says?

A Yes, sir.

Objected to. Objection sustained.

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Q And where was Basso? A Over him, bent over him, very close.

Q Then you rushed out of the bar room? A Yes.

Q You opened the door? A I opened the door, and went out.

Q Somebody shut the door after them, when they went up, is that right? A I don't know, I don't think --

Q You opened the door? A I did.

Q You rushed up and grabbed Basso, is that right?

A Yes.

Q And pulled him off? A Yes.

Q When you found this razor, was it in a case or outside of a case? A Outside of a case, partly open.

Q And the case was there? A No, sir, never seen no case

Q Did you see a case at the Coroner's Inquest? A No, sir. I handed the razor to the Coroner without a case. Up to that time I had it in my pocket.

Q And this razor struck your pipe? A As far as I know, it must have been something; I wouldn't swear as to that, that it was that razor.

Q Did you see Basso strike Dewald with the razor? A No, sir.

Q Did you see Basso strike anybody with the razor? A Not to my recollection.

Q The razor went through the air, you say, did it?

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A It went in front of my eyes.

Q Did you see anybody there that was cut that day?

A No.

Q In that whole saloon? A That razor was down. It was not used.

Q How long had you known Basso? A Since he had been working there.

Q Did you work at that saloon? A No, sir.

Q Where were you a bar tender? A In various places; on Avenue A, on Westchester avenue, several other place, and Terrace Garden.

Q How often were you in Stillwagen's saloon? A Many a hundred of times. I am a friend of the family.

Q You are a friend of the family? A Yes, sir.

Q And you had known Sabato Basso for some time, hadn't you? A Sir?

Q You knew Basso all the time he was there? A As long as he worked there, yes, sir.

Q There for ten months? A About that time, not quite, but I don't know exactly.

Q A peaceable disposition, wasn't he? A Well, yes, when he was sober.

Q Well, did you ever see him fighting when he was druhk?

MR MURPHY: I object to any further questions on this line. We are not putting in any question on Mr Basso's

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character.

MR BUCKNER: No.

MR MURPHY: Well, we withdraw the objection.

THE COURT: Well, objection sustained.

Q Did you ever see him strike anybody with a razor?

A No, sir.

Q Did you ever see him have a razor? A Not in his pocket. I never seen him before having a razor.

Q Did you ever hear anybody say that he had a razor before that? A Before that, no, not before.

BY MR MURPHY:

Q Did you ever hear anybody say since that that he had a razor before that? A Yes, sir.

BY MR BUCKNER:

Q Who? A I don't know his name.

BY MR MURPHY:

Q Is he at court? A Yes, sir.

BY MR BUCKNER:

Q What is his name, where is he? A (No answer)

BY MR MURPHY:

Q Is that the gentleman there (indicating)? A Yes.

BY MR BUCKNER:

Q What is his name? A I don't know.

MR MURPHY: What is your name (indicating a person in the court room)?

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THE INTERPRETER: He says his name is Santo
Wasimo.

Q Now, did you put Basso out of the hall yourself?

A No, sir.

Q Well, just when did you leave? A Where?

Q Just when did you leave this little hallway? A After
the pipe was knicked out of my mouth, which pained me, I
went down, went into the bar room, holding my hand to the
mouth.

Q The pipe being knocked out of your mouth pained you?

A Yes, it pained me on my teeth.

Q Did you leave Basso on top of Dewald? A Certainly
not. I had him off then.

Q Had him dragged downstairs part of the way? A No,
sir.

Q Where did you have him? A Standing up alongside of
me.

Q Down on the floor? A On the landing.

Q Oh, you had got up on the landing? A We were on
the landing. This happened on the landing.

Q You pulled him off Dewald? A Yes.

Q And he was standing up on the landing? A Yes.

Q Then your pipe went out of your mouth? A Yes.

Q And you ran? A Yes.

Q Left him there with Dewald? A Dewald had started

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upstairs.

Q Dewald had started upstairs? A Yes.

Q What became of Basso? A I told you he went down with me.

Q Basso came down the second little flight with you?
A Yes.

Q Then, where did he go? A Outside, I suppose.

Q Went right outside? A I suppose, I didn't see that.

Q Well, at the time you came down this second little landing here, here is the door going into the bar room, right here, say, and here is the little landing (indicating). This little short flight of stairs right here, in this pencil (indicating). Here is the landing right here, and here is the short flight, and you walked down with Basso, did you?
Answer the question? A Yes, sir.

Q You walked down this short flight with Basso, is that right? A I could not say whether Basso was first or whether I was first.

Q But you went down there together? A I don't know that any more.

Q He was not fighting you, was he? A Certainly not.

Q And you walked down that little flight with him?
A Yes, sir, together. I won't say that I am sure whether he was first or whether I was first, I don't know any more.

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Q And Dewald had gone back this long flight upstairs?

A Yes.

Q So that only you and Basso were there? A And Sgostini.

Q Mr Agostini? And he came in from the bar room?

A He was there with me at the same time.

Q Yes, when you started in to the bar room, Basso started out towards this other exit, this door? A I guess so. I don't know whether he did or not, because I went in the bar room.

Q This door is only a few feet away that leads into 158th street? A Well, that ought to be about 10 feet something like that.

Q And when you went in the bar room he was headed in that direction? A Yes.

Q You did not see him go back into the bar room? A Certainly.

Q And that was the only other way to go out? A Outside of the house?

Q Yes. A That was the only entrance to go out except passing the bar room.

Q And a few minutes afterwards you saw him going down the street? A Yes, a little while after.

Q A few seconds, he was with his partner? A Well, a

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few seconds, I guess it might have been about some minutes.

Q And you did not see the boxing master there at all?

A Boxing master? There was a turning teacher there, Mr Hayne.

Q What is that? A Mr Hayne was there, the turning teacher.

Q But I mean in the hallway? A In the hallway was Mr Hayne, yes.

Q I thought only Agostini was in there? A You didn't ask me about the other man.

Q Who else was in there? A That's all to my recollection, these three.

Q Agostini and Hayne? A Hayne was there, yes.

Q Did Hayne go right in with you? A He must have followed me. He was there when I turned around with Basso.

Q And you did not see him rush up and strike this man?

A I did not. My pipe was gone then.

Q Did Agostini and Hayne go back in the bar room with you? A They were in there right after me.

Q Hayne walked in right after you? A Yes, I suppose they came right after me.

RE-DIRECT EXAMINATION BY MR MURPHY:

Q You saw them shortly after you got in the bar room, and you saw Hayne and Agostini? A Certainly. They were

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all standing there.

Q You saw them all right after that? A Yes, certainly. Right after. Immediately after, I might say.

Q Mr Agostini left the bar room with you when you went into this hallway? A Yes, sir, he went directly behind me.

Q And he went upstairs to the landing? A He went a few steps up, perhaps could say he was standing on the second step of this short stairway.

Q When you pulled Mr Basso, the deceased, off Dewald, did Dewald do anything? A No, sir.

BY THE 6TH JUROR:

Q When you opened this door at the landing, did Basso have his face to you or his back to you? A His sides.

Q What? A His side.

Q What do you mean by his side? A I must explain that by saying, here is the door, and the stairway leads the same way up and down. (Indicating) Well, he was right here on the part landing -- part stairway.

Q His right side or left side facing you? A Wait a moment. Then his right side, he was over him.

Q His right side was facing you? A As I grabbed him I pushed him aside.

Q Was it at that time that the razor was thrown in your face? A No, sir, when I picked him up and pushed him aside,

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then it happened, not when Impulled him off him.

J O H N A G O S T I N I , called and duly sworn as a
witness on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR MURPHY:

Q Mr Agostini, where do you live? A 788 East 149th
street.

Q What is your business, Mr Agostini? A My business is
decorator.

Q Decorating business? A Decorating business. Hall
decorator, with flags and bunting and such stuff.

Q On the 28th of June, 1909, last year, were you on that
day in Mr Stellwagen's place, at the corner of Forrest avenue
and 158th street in the Bronx? A Yes, sir.

Q What were you doing there, if anything? A Well,
from the
just I was there to take down my flags, a small dancing hall, and
pack up the bundle and put it in a little room.

Q Mr Agostini, will you kindly speak louder so the jury
can hear you? A All right.

Q Raise it right up. A I have decorations the night
before in hat little hall, so next afternoon about 1 o'clock
I come there and I take all the flags down, packing them up
to put them in a little small room.

Q You were then in the act of taking down the decorations

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and packing them up? A Packing them up, yes.

Q And you were about to take them away? A Take them away, yes.

Q Now, on that day, did you see the defendant Kelly?

A Yes, sir.

Q And where did you first see him? A I saw him coming in the saloon room, or in the bar, Stillwagen's saloon, 158th street, with two Italians there, one on each hand, one on this hand and one on the other hand, walked right in the saloon.

Q Previous to this time had you been in this saloon there often? A Well, certainly, if I got a job to decorate the hall, then I go in to Stillwagen's to decirate the hall.

Q You had been there before? A Yes.

Q Now, when Mr Kelly, the defendant, entered that room in company with the two Italians, what did Kelly do, if anything? A He come in and asked, "These the two fellows?"

Q Well, now, please try and talk a little louder. The jury do not hear you? A Well, he questioned if these Italians is the two Italians, is they the two fellows that do the damage.

Q Kelly asked which one of the two Italians had done the damage, is that right? A Yes.

Q Who did he ask, if you know? A Dewald.

Q Dewald? A Yes.

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Q And did Dewald indicate which one of the two Italians did the damage? A Yes.

Q What did Kelly do then? A Kelly asked, "Do you want to make any charge against him?"

Q Whom did he ask that of? A To Dewald.

Q Dewald? A Yes.

Q And did Dewald answer him? A Yes.

Q What did he say A He said, "Never mind, don't make any charge, he got a wife and children, and let him go, I don't want to get him locked up".

W Did Kelly say anything then? A Yes, he said --

Q What did he say? A He said, "So long as I got him, he got to see the woman what got hurt from this Italian". So Dewald said, "Well, you better go upstairs", and took him upstairs.

Q Dewald said he would take him upstairs? What did they do then? A Then Dewald opened the door. Dewald and the Italian and Kelly.

Q Dewald did what? A Dewald opened that door, the door from the saloon leading on the stairway. Then the Italian got after Walter and Kelly got after the Italian.

Q When you say Walter, you mean Dewald? A Yes.

Q And then Dewald first opened the door, then the Italian, and then Kelly? A Yes.

Q Did anybody else go in after them? A No.

Q Only the three you have just named? A Only those three.

Q Did they close the door or leave it open? A Closed the door.

Q When Kelly, the defendant here/ Dewald and Basso entered that hallway, then the door was closed? A The door was closed.

Q Where did you remain? A I remained down in the saloon.

Q Now, Mr Agostini, can you tell me who was in that saloon at that time? A Well, I tell you according to what I recognized.

Q A little louder, please? A There was Louis Calvor there/ and I. I don't know. There was some outsiders, or some strangers there which I don't know.

Q Did Giamatasseo remain in there? A No.

Q That is the man that officer Kelly brought in?
A Yes, he was in the saloon.

Q He remained in the saloon? A Yes, he remained in the saloon.

Q Did you see the barber in there? A No, not at the time.

Q You would not say he was not in there? A No, he was not there at all about that time.

Q After they went in the place and went upstairs, I

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mean Kelly, Dewald and Basso, did you hear anything up there? A Yes, sir.

Q What did you hear? A Well, I heard just on the stairway, just something fall down on the stairway, bump, bump (illustrating).

Q Yes? A And I said to Louis, "Something else is now up ", and Louis walked outside ahead of me, opened the door, and I go after him, and Louis goes to the first landing, the fifth step, and I see Basso there. There was two, one standing on top of the other, Louis got on top and picked up the Italian by the back and raised him up, and by raising him Walter and them all got up and Walter ran upstairs.

He turned the Italian right against the little landing, or the fifth step. The Italian have one foot placed on there, and he was trying to get Louis, and I was trying to help Oliver, and I couldn't get his hand; he had his hand in the back. In the meantime Hayne come out, and there was one lightening, one second, you know (illustrating), and the hand raised up with the razor and Hayne struck with one hand the razor and with one hand struck him here (indicating).

Q Who held the razor up? A The Italian.

Q Did you see the razor in his hand? A The razor, sure in his hand.

Q You saw the razor in the Italian's hand? A Yes.

Q And Hayne struck his hand? you say? A Yes.

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Q What happened then? A Then the razor fly right off his hand, and he struck a second time, which he struck him right on the jaw. When I saw the razor, then I said "For me, no", and I walked right in the saloon.

Q You got away then?

A Yes, I didn't want to get cut in pieces.

Q Did you see what happened to the razor?

A Well, I didn't see, no, what happened to the razor -- when we was in the saloon this Calver got outside to look for his pipe, and he come inside the saloon and he have the razor in the hand.

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Q Do you know whether or not when Hayne struck this man Basso's arm, did the razor fall? A I know it fell.

Q The razor fell? A Knocked off his hand, sure.

Q The razor fell out of Basso's hand somewhere on the floor, or in the hall, is that right? A Yes.

Q Then you came out of the place? A Yes.

Q Out of the hallway into the barroom? A Yes.

Q When you came into the barroom did you see Savino?
A Yes.

Q Where was Savino? A He was standing right about four feet from the 158th Street door, right close to the bar, and had a schooner of beer in his hand.

Q He was standing up against the bar? A Standing right up against the bar.

Q About four feet from the end of the bar toward 158th Street, you say, having a schooner of beer? A Yes, a schooner of beer.

Q Did you see him coming in that place? A No. When I come from the small door he was standing at the bar.

Q Was he in that barroom before you went into the small door? A No.

Q Are you sure about that? A Sure, I didn't see him there.

Q Would you say he was not in there? A He was not in. I didn't see him there.

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Q And you saw him there when you came out? A I saw him only when I come out.

Q He was standing at the bar there? A Yes, he was standing at the bar.

Q Now, when did you see Mr Basso after you left that hall? A After he left the saloon--I was standing in the saloon.

Q You remained in the saloon? A I remained in the saloon.

Q Did you see Basso afterwards? A I saw just, heard somebody say, "See the way he is going". I go right by the door of 158th Street and I saw him walking down First Avenue, downward.

Q He walked down Forrest Avenue? A Forrest Avenue, yes.

Q When you saw the razor knocked, you got out of there?
A Why, sure.

Q Up to that time had you see Kelly? A No.

Q I mean had Kelly come from upstairs? A From upstairs, yes, before when Hayne struck him, just Kelly was coming down from the top landing.

Q You saw him coming down? A Yes, coming down.

Q But had he got down to the landing yet? A Well, I was already inside.

Q You had gone inside? A I was inside.

Q Did you see Kelly strike anybody there? A No.

Q Did you see him have a club in his hand? A He had no

club.

Q When Kelly brought in the deceased Basso and the other fellow, was Mr Stillwagen in the barroom, if you know? A No, I did not see no Mr Stillwagen.

Q Now, was he in the barroom, do you know? A I don't know. I did not see Stillwagen in the barroom.

Q You did not see him there? A No.

Q You know him very well? A Sure, I know him for about eighteen years.

Q How many were in the barroom at that time, three, four or five or six? A Well, I can't recognize, I never counted how many was there.

Q But you did not see Stillwagen there? A I did not see no Stillwagen.

Q Did you see him afterwards? A No, I did not see no Stillwagen afterwards.

Q Did you see Basso going down Forrest Avenue? A Yes.

Q How close were you to him, Mr Agostini? A I was inside just by the door, you know, fro, 158th, and I see just from there.

Q Did he pass right in front of you? A No, I was not outside.

Q But he passed that point there? A Yes.

Q Were you as close to him as I am to you? A No, about from here to there (indicating), right there.

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MR MURPHY: Six feet?

MR BUCKNER: Eight feet.

Q And he passed down Forrest Avenue? A Yes.

Q And were you standing in front of the door to the saloon? A Standing right in front of the saloon, yes.

Q You saw him pass you? A I saw him passing, going down.

Q Did you see his face? A No, I do not recognize his face, just I saw him walking down Forrest Avenue.

Q You just saw him pass? A I saw him pass.

Q Did he have his hat on? A He had his hat on.

Q Did he walk all right to you? A Yes, sure.

Q Did he look all right? A To me, I did not see no mark on him.

Q Did you see any bruises on his face? A No, I did not.

Q And you were within eight feet of him and the door was opened and you did not see any bruises on his face, did you?
A No.

CROSS EXAMINATION BY MR BUCKNER:

Q How did he go out of the saloon? A I can't tell you how he got out of the saloon. I got inside before he got out of the saloon.

Q You don't know who put him out, or if he walked out?
A No.

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Q Were you at the Coroner's inquest? A Yes.

Q You heard all the testimony there? A Yes.

Q And what you have testified here is your best recollection of just what occurred? A Yes.

Q And you are sure that you saw Babate Basso have a razor in his hand? A Yes.

Q Open? A Open.

Q He was not wriggling to get it out of his pocket?

A What?

Q He was not wriggling to get it out of his pocket in a case, was he? A There was no case, he pulled just the hand out and he held a razor in the hand.

Q Yes, had it right there in his hand? A Right in his hand.

Q You did not see Thomas Kelly strike him at all? A No.

Q Or have hold of him? A No.

Q You did not see Dewald strike him? A No.

Q Or touch him? A No, sir.

Q And the only thing you saw Hayne do was to knock the razor out of his hand? A I see, as you call him Hayne, strike him and knock the razor out of his hand.

Q Did you all talk about the razor right away, as soon as Basso went away? A No. It was only when Galvor came in the saloon, he said, "Look here, I find the razor."

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Q Well, you saw the razor, didn't you? A I saw it, but Calvor came in and he had the razor in his hand that he picked up from the floor.

Q You saw the razor in Basso's hand, did you? A Yes.

Q And you saw Hayne strike his hand? A Yes.

Q And knock it out? A Knock it out.

Q And it knocked it out? A Yes.

Q Then you went away? A Then I went in the saloon.

Q Calvor had already gone in the barroom ahead of you?

A No, Calvor came after me.

Q Oh, he came right after you? A Yes.

Q Do you know how soon Basso went away? A He went away about three or four minutes afterwards. I was in the saloon.

Q The next time you saw that razor was when Calvor came into the barroom with that razor and said, "See what I have found"? A The second time when he come in.

Q You were not all talking about the razor then, were you? A No. He make the remark, "That is just good. I got no razor to shave and I got a razor now."

Q And he said, "See what I have found here", and he showed you this razor? A He showed a razor, yes.

Q You were not surprised to see it, were you?

Objected to. Objection overruled.

Q You expected to see a razor, didn't you?

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THE COURT: That is another question. Let him answer the other? A

A Well, it was not bothering me no more if I see the razor.

Q Well, you recognized this as the same razor? A What?

Q This was the same razor Basso had? A I cannot recognize. I could not see the razor, I see only the blade in the hand. I can't see the razor in my hand if Basso have it in his hand.

Q How long was it before Calvor came into the barroom and said, "See what I have found"? A That was as the Italian was gone already.

Q How long? A Well, about four or five minutes, something like that.

Q Did you go with Calvor in the barber shop after that with the razor? A No.

Q You don't know anything about that? A No.

Q Did you see anybody there that was cut? A No, I didn't see nobody cut.

Q And you got a pretty good look at Basso's face as he went by, didn't you? A Yes.

Q And there did not seem to be anything the matter with him? A No.

Q You did not see any mark here (indicating)? A No, I didn't see any.

Q He didn't have any blood at all on his nose? A No.

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Q His lips were not cut? A No, I did not see no mark at all.

Q He was not hurt at all?

MR MURPHY: I object. He said he didn't see any.

Q As far as you know he was not hurt at all? A No, I didn't see it.

Q Did you see Calvor taking him down this little short flight of steps here?

MR MURPHY: I object to that. He has not testified that Calvor took him down these short steps, and secondly, it is not a fair question.

THE COURT: Objection overruled.

Q Did you see Calvor bringing him down these steps here?

A No, I didn't see Calvor, I see only Calvor taking him off from Dewald, telling him to get away. Dewald tried to get him out.

Q I want to understand one thing. You went back into the barroom and left Calvor in there with Hayne, did you? A Yes.

Q You are sure of that? A Sure.

Q Are you sure that Calvor did not go back and leave you in there? A No, sure, sure, I go in first.

BY THE SECOND JUROR:

Q What do you mean by this razor struck here (indicating)?

A No, I mean Hayne, when the Italian pulled out the razor, I was standing on the first landing and he struck one here, and

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