

START

2846A

CASE

0967

CASE #2846A

INDEX.

	Direct	Cross	Redirect	Recross
William J. Raphael	2			
Benjamin Schwartz	3	7		
John Devereaux	10	22		
Arthur Williams	23	37		
Francis McGee	40	45		
Grace Shore	45	53		
Henry Bensen	55	66		
patrick Slevin	83	85		

CASE #2846A

0969

INDEX.

Witness	Direct	Cross	Re-D.	Re-C.
Henry Bensen,	86	89		
James Morrissey,	91	93	111	
Edward Nolan,	111	115	120	
Thomas Curran,	121	124		
George Lewis,	128	135	142	
Edward B. McMahon,	151	153		
Nathan Burchall, Jr.,	158	161		

CASE #2846A

0969

3389

COURT OF GENERAL SESSIONS OF THE PEACE.

CITY AND COUNTY OF NEW YORK, PART V,

-----X
THE PEOPLE OF THE STATE OF NEW YORK;

Before:

-against-

; HON. THOMAS C. T. CRAIN, J.,

G E O R G E L E W I S .

; and a jury.
-----X

New York, June 28, 1920.

Indictment filed September 19, 1919.

Indicted for murder in the first degree.

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY GEORGE N. BROTHERS.

FOR THE DEFENDANT: MESSRS. ROBERT M. MOORE and JOSEPH V. O'LEARY

Peter P. McLoughlin,

Official Stenographer.

0970
CASE #2846A

The panel of special jurors was called by the clerk.

THE CLERK: George Lewis if you desire to challenge an individual juror you must do so when he appears and before he is sworn. Do you waive the further giving of that challenge.

MR. MOORE: We do.

WILLIAM J. RAPHAEL, a juror being duly sworn as to his qualifications, testified as follows:

(The juror states that he lives at 600 West 157th street.)

THE COURT: I think now if it is agreeable to both sides I will adjourn the trial of this case until the morning of Friday, the 25th at half past ten o'clock. The members of the special panel are admonished not to converse among themselves upon any subject connected with the trial.

(The Court then adjourned the further trial of the case until Friday morning, June 25, 1920 at 10.30 o'clock.)

0971
CASE #2846A

New York, June 25, 1920.

(The jurors were severally called, examined and sworn.)

(The Court admonished the jurors and adjourned the further trial of the case until Monday, June 28, 1920, at 10.30 A. M.)

New York, June 28, 1920.

Trial resumed.

Mr. Brothers opened the case on behalf of the People.

BENJAMIN SCHWARTZ, a witness called on behalf of the People, testified, after having been duly sworn, as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your occupation? A Physician.

Q You have been a physician, Dr. Schwartz, for how long?

A Since 1907.

Q Graduated from what place? A Cornell Medical College.

Q Practicing constantly since then in this City, have you? A Yes.

Q Do you hold an official position? A Yes sir.

Q What is that? A Acting Deputy Medical Examiner of the City of New York.

Q Were you also, before the institution of the Medical Examiner, attached to the Board of Coroners? A Yes sir.

CASE #2846A

L

4

Q As Examining Physician? A Yes sir.

Q Doctor, did you examine the body of Thomas Smith?

A Yes sir.

Q Do you recall when that was? A July 27, 1919.

Q Where did you first see his body? A At the Marginal Club, 129 Eighth avenue.

Q In this city? A Yes sir.

Q Was there any person there who at that time identified his body to you? A Yes sir.

Q Who was that? A His brother, Patrick Smith.

Q Any policeman there at that time? A Yes sir, there was; I believe Officer Holland.

Q Then did you make some examination of his body there at the club? A Yes sir.

Q When was it you saw ^{it} at the club? A Shortly after one o'clock of July 27th.

Q What did you see about his body at that time? A I saw a bullet wound on the body and blood about his face and clothing. Stiffness had not set in the body showing that it had died recently.

Q What wounds did you see? A There were two bullet wounds of entrance on the back and one bullet wound of exit on the left side of the chest in front. There were two bullet wounds at the right side of the chest in front. There were two bullet wounds at the right side of the chest in the front and -- one of entrance and one of exit.

0973
CASE #2846A

Q You found two bullets which penetrated his back, one of which had come out in front? A Yes sir.

Q You found another bullet had gone in the front?

A Yes sir.

Q So that the bullets had gone in his body altogether?

A Yes sir.

Q Well, doctor, did you examine the body at the morgue?

A Yes sir.

Q And there you opened it, did you? A Yes sir.

Q Can you tell us what you found upon opening the body with reference to the wounds? A One bullet entered the left side at the back and about one inch to the left of the central line and on a level with the eighth rib; this bullet went through the eighth rib and penetrated the lung, the left lung, both the upper and lower lobe; the lung itself was filled with blood, over a quart of blood. This bullet made its exit on the left side of the chest in the front, after having gone through the third rib, and this exit was 4 and 1/4 inches below the collarbone and 4 1/2 inches to the left of the middle line. The second bullet entered on a level with the 12th rib in back, on the left hand side, just to the left of the middle line, and this bullet went through the 12th rib, went through the diaphragm, that is the partition muscle between the chest and the abdomen, went through the small intestine, about two feet from the end of the stomach, went

0974
CASE #2846A

through the large bowel, through the left kidney, and then I extracted a .38 calibre lead bullet which was markedly deformed. The third bullet entered the top of the chest at the right side at the fourth rib all the way over to the side of the chest. And this bullet had a track beneath the skin which was superficial. There was a bullet wound of exit located half an inch below the level of the bullet wound of entrance and three inches further behind.

Q You didn't find but one bullet? A I found one bullet, two had made their exit.

Q Tell me whether this is the bullet which you extracted and which you produced on the former trial? A Yes, sir.

(Marked People's Exhibit 1, in evidence.)

Q You say a bullet penetrated the small intestine about two feet from the stomach -- you mean the whole of that intestine? A Yes, sir.

Q If you stretched them out it measured that distance from the exit of the stomach? A Yes, sir.

Q What condition did you find his vital organs which you described that were affected by the wound?

A Normal.

Q Did you form an opinion, Doctor, as to the cause of his death? A Yes, sir.

Q What was that opinion, Doctor?

A Hemorrhage, bullet wound of the left lung, bullet wound of the

0975
CASE #2846A

small intestines, the large intestine and the left kidney.

Q From your examination of those wounds can you say that death would follow soon after the infliction of those wounds?

A Yes, sir.

Q Would a person or would Smith have been able to have moved about somewhat before he died? A Well very little.

Q What is that? A Very little.

Q He would succumb very soon? A Yes, sir.

Q About how big a man was he? A He was about five feet seven inches in height and weighed about 170 pounds.

Q About thirty years old? A Yes, sir.

Q When you made your examination at the morgue you dictated notes of what you saw, did you not? A Yes, sir.

Q They were reduced to writing by a stenographer? A Yes, sir.

Q So that you are not depending entirely upon your recollection? A No, sir.

CROSS EXAMINATION BY MR. MOORE:

Q Doctor, these two wounds of entrance described as found in the back were about how far apart? A One was over the eighth rib and the other over the twelfth rib, a difference of four ribs.

Q In inches that would be about how much? A That would be about three inches.

Q Now will the officer step up here. Will you indicate with your two hands just about where those two wounds were? A (Witness

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indicates this would be the level of the one bullet.)

Q That is the eighth rib? A No, sir, that is the twelfth rib and the eighth rib would be about here (indicating)

Q About three inches apart? A About.

Q One was almost directly under the other? A No, sir, they were about three-quarters of an inch --

Q But one was, you say, about an inch to the left of the median line and the other a quarter of an inch? A Yes, sir.

Q The wound there under the eighth rib -- do you recall or did you make a note of whether it struck the center of the rib or the upper or lower side of the rib? A It went through the rib, I did not make any note; I believe it went through the center of the rib.

Q You are able to say, Doctor, or have you formed an opinion as to whether the rib had deflected the bullet? A Well, bone may very readily deflect a bullet.

Q Is that true also of the wound of entrance at the 12th rib? A Yes, sir.

Q Then it would depend somewhat on just how it struck the rib whether it would deflect it upward or downward, would it not? A Well bones may deflect in almost any fashion.

Q But if it should strike in the right way it would deflect upwards? A How?

Q Suppose it should strike it on the upper side of the rib it would be more likely to deflect it upwards? A That is hard to say.

0977
CASE #2846A

Q At any rate you are unable to state now whether they were deflected but it is your opinion that those bullets were deflected? A Bone can deflect bullets.

Q That is not quite what I want. In your opinion -- putting your mind back to the autopsy -- were both bullets deflected?

A No answer.

Q I ask you now, Doctor, if at the time you had arrived at any conclusion as to whether either of those bullets had been deflected? A No, sir, they were not necessarily deflected in this case.

Q Now I am not say exactly -- did you form an opinion as to whether they were or were not? A Well the course they took in this case was the same as if they had not been deflected; they might have been deflected slightly; that is hard to mention mathematically.

Q In your opinion if deflected at all they were slightly deflected? A Yes, sir.

Q Did you make measurements of the two wounds of entrance in the back? A Yes, sir.

Q Are you able to say what, relatively, the measurements would be one and another? A The same, 3/16 of an inch.

Q Did you make measurements of the bullet you found that entered the chest? A Yes, sir.

Q Are you able to state what it was? A 3/16 of an inch.
The same measurement.

0978
CASE #2846A

Q All the bullet wounds were apparently made with the same calibre of bullet? A I wouldn't say that.

Q Well apparently exactly the same sized hole? A Yes, sir.

Q In the cadaver? A Yes, sir.

BY MR. BROTHERS:

Q This is a 38 calibre bullet, isn't it, Doctor? A Yes, sir.

Q It does show that it is somewhat mistaken -- it struck something hard? A Yes, sir.

Q It is not perfect? A No, sir.

J O H N D E V E R E A U X, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a police officer attached to the 18th Precinct.)

MR. BROTHERS: I offer in evidence, by consent, a plan of the rooms occupied by the Marginal Club at 139 Eighth Avenue in the City and county of New York, Second floor, drawn to a scale, the measurements upon the plan being a quarter of an inch equivalent to one foot. Prepared by Edward McGuire of the District Attorney's office.

(Marked People's Exhibit 2.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a member of the Police Force of this City, are you? A I am.

Q You have been for how long a time? A Fourteen years.

Q Did you know Thomas Smith who was called Tamer Smith? A I did.

CASE #2846A

Q In what precinct were you on July 26th, 1919? A The 18th.

Q Your post of duty on that night was where? A Eighth avenue from 14th to 23rd street.

Q You were doing patrol duty? A Yes, sir.

Q Did you know where the Marginal Club was? A I did.

Q Where was it? A 129 Eighth avenue.

Q That is two doors north of West 16th street? A Yes, sir.

Q On the West Side of 8th avenue? A Yes, sir.

Q One flight up? A Yes, sir.

Q Is there a store on the ground floor? A A 5 and 10 cent store.

Q Had you ever been in the club room prior to the night of Smith's death? A No, sir.

Q But you knew it was there? A Yes, sir.

Q As you passed by there on your patrol? A Yes, sir.

Q Prior to the shooting did you observe that there were people there? A I did.

Q That was a Saturday night? A Yes, sir.

Q Did you see any men sitting up there as you walked by?
A I did.

Q Was there anything unusual happening in the club that night before you learned of the shot? A No, sir.

Q All was quiet? A Yes, sir, everything quiet.

CASE #2846A

Q You saw people walking up and down the street there on 8th avenue? A Yes, sir.

Q Everything as usual? A Yes, sir.

Q About what time was it that you learned that something or another happened at the club? A About after eleven o'clock -- about a quarter after eleven.

Q At that moment where were you? A I was near 19th street.

Q On 8th avenue? A Yes, sir.

Q You were told that there had been some shooting? A Yes, sir.

Q You went down? A No, sir. I saw a crowd on the sidewalk, when I got to 17th street I was told that there was a man shot.

Q But you heard no shooting? A No, sir.

Q You were told something? A I was, yes, sir.

Q Did you go up into the club? A Yes, sir, I called first an ambulance.

Q From what place? A From the drug store at 17th street and 8th avenue, the southeast corner.

Q That took you a few minutes? A It did.

Q Then you went to the club? A Yes, sir.

Q When you entered the club what did you see? A The first thing was the body of a man on the floor inside the door.

Q In what part of the place was that he lay? A That was-- it would be between the two rooms.

Q You found, did you not, that there was a frontroom,

CASE #2846A

that there was a window on 8th avenue and then a back room immediately behind with an opening between them? A Yes, sir.

Q Look at the plan Exhibit 2. You have seen this plan before, Officer? A Yes, sir.

Q 8th avenue is at your end? A Yes, sir.

Q You came up these stairs, did you? A Yes, sir, I did.

Q You came up these stairs? A I did.

Q Will you point out where you went? A I came into this door (indicating.)

Q Indicating the door to the rear room? A Yes, sir.

Q Where was the man? A I saw a man lying here between those two doors.

Q Will you mark where the man lay? A Here and lying in this direction, more this way (indicating.)

Q His head was towards 8th avenue? A Yes, sir.

Q His feet to the west? A Yes, sir, towards this way (indicating.)

Q Was there any other person in the room? A Two policemen.

MR. BROTHERS: The witness draws a straight line across a space which indicates, as we claim, a doorway leading from the front into the rear room.

Q Did you see any other person there? A Two policemen there and when I went up there a citizen --

Q And a citizen? A Yes, sir.

Q Couldn't you recall now who the citizen was? A No, sir, I do not. I asked the other policeman who was there and he said he

CASE #2846A

said he went up with them.

THE COURT: Strike that out.

Q What I am trying to find out is whether you knew the other person? A No, sir, I did not.

Q Or whether you since came to know him? A No, sir, I did not.

Q How was this man lying on the floor, how was he lying face up or on his back? A Lying on his back.

Q Did you make any examination of him. Did you look at him?

A Yes, sir.

Q Did you know him? A I did.

Q Who was he? A He was a man I knew as Tanner Smith.

Q Where had you known him? A I had known him from when I went to that precinct; when he lived on 23rd street and 10th avenue.

Q You know what his business was before he died? A Mostly he was in the trucking business handling beef on the dock before he died.

Q His real name was Thomas? A Yes, sir.

Q Do you know any of his brothers? A I did.

Q What was his name? A Pat.

Q Did Pat come there that night? A I didn't see him.

Q Well was he alive or dead when you saw him? A Apparently he was dead.

Q Did any ambulance come there? A Soon after.

Q And the doctor said he was dead? A Yes, sir.

Q Do you remember Doctor Schwartz, the medical examiner, was he there while you were there that night? A No, sir, I did not

CASE #2846A

see him there.

Q You saw the body of Smith a day or two later, at the City Morgue? A Yes, sir, I did.

Q You identified Smith to Dr. Schwartz? A Yes, sir.

Q As the body of Tanner Smith? A Yes, sir.

Q Will you describe what you saw in the rooms as to furniture or anything else you observed as you went around? A There was a round table in the center of the front room, facing this room -- facing 8th avenue and there were chairs around it and some of them were upset and there were cards on the table as if they were playing cards.

Q Now that table was in the front room? A Yes, sir.

Q Was it nearer to the window that went out on 8th avenue or nearer to where Smith was lying, right in the middle of the room?

A About the center of the room.

Q And Smith lay from the side walls? A And Smith laid on the side wall.

Q Were the lights burning in this room? A Yes, sir, there were.

Q Did you observe any piano there? A I did.

Q Where was that? A Facing 8th avenue, which would be on the righthand corner.

Q What corner? A Yes, sir.

Q Now it appears on the plan, Devereaux, a little room at the front with a doorway into the hall and a doorway into the front

CASE #2846A

room where the card game was. Did you go into that room? A I did not go into that room; that room was dark. I was at the door.

Q The doorway was open? A Yes, sir.

Q You could have walked in? A Yes, sir.

Q And in the back at the head of the stairs there is a toilet? A Yes, sir, there is.

Q And then in the back room there is an entrance into a smaller room like a hall room? A Yes, sir.

Q Did you go in there? A No, sir, I didn't go in there; that was also dark.

Q Were there lights in the hall? A Yes, sir, there were lights in the hall.

Q Did you find a pistol there or see a pistol? A Yes, sir, I saw a pistol.

Q Where was that? A It was in the front room at the corner, that would be going between the room.

Q Near the partition alongside of the hall? A There was a window along by that wall.

Q Now this doorway which the draughtman has made here that is the back of the front room, that would go out into the hall, that was closed off, wasn't it, by a bench? A Yes, sir; that was closed off, the bench stood alongside.

Q Did you see the bench there? A Yes, sir.

Q You could not get out that door? A No, sir.

Q Was it near that door you saw the pistol? A Near that bench.

0985
CASE #2846A

Q Did you pick it up? A No, sir, I did not.

Q Did you see anybody pick it up? A I did.

Q Who picked it up? A Detective McGee.

Q Was it this pistol or one like it he picked up? A It looked like that.

Q This is a 25 calibre colt automatic, isn't it? A It looked like that.

Q This one I am showing you is a colt automatic 25 calibre?

A Yes, sir.

MR. BROTHERS: Any objection to putting this in evidence now?

MR. MOORE: It is conceded that that is the one that belonged to the deceased Smith.

(Marked People's Exhibit 3.)

Q Did you see any shells or cartridges anywhere? A I found one empty shell.

MR. BROTHERS: I think before I get to that I would like to have marked where you saw the pistol.

A (Witness marks with the initial D.) at the piano here (witness marks a capital E indicating the spot where he saw the pistol, an automatic pistol.)

Q Now did you say that you saw a shell somewhere on the floor? A I did.

Q Mark that. A About here (witness marks D2) as indicating where the shell was.

Q What kind of a shell was it, loaded or empty? A An

CASE #2846A

empty shell.

Q What did you do with the shell after picking it up?

A I gave it to Detective McGee.

Q Can you tell by looking at any of these here whether it was one of those or similar to those (handing shells)? A About that size; it looked like one of those.

Q You did not mark that? A No, sir.
just

Q You/turned it over to McGee? A Yes, sir.

Q Did you examine the walls of those rooms to see whether any bullet mark was on them? A I did.

Q Did you see any marks which, in your opinion were caused by bullets? A I did.

Q Where were they? A They were in the front room and on the partition that would be between the front and the rear rooms.

Q What partition? A That would be between the front and rear rooms on the south side of the building.

Q Will you indicate again with a pencil where that would be?
A It would be on this partition.

(Mr. Brothens indicating the division wall between the front and rear room that is at the south side.)

THE WITNESS: Yes, sir.

Q On the side of the partition facing the front room?

A Yes, sir, on the side of the partition facing the front room.

Q How many marks did you see there? (Witness marks diagram D3 as the point where the bullet struck.

CASE #2846A

Q You saw three marks? A Yes, sir.

BY THE COURT:

Q How high from the floor? A About waist high.

Q What is that? A Four and a half feet or three feet.

Q Indicate with your hand? A Witness does so.

BY MR. BROTHERS:

Q Were they fresh on the wall? A Yes, sir.

Q Did they appear fresh on the wall? A Only one appeared to be fresh; the others looked old.

Q You found no bullets there on the floor? A No, sir.

Q Do you know this defendant George Lewis by sight? A I know him by sight.

Q Do you remember seeing him that night at any time? A I don't remember seeing him that night.

Q Did you see him down 8th avenue seeing a crowd on the street, on which side of the avenue was the crowd or did it extend to both sides? A No, sir, on the east side of the avenue.

Q Did you notice any people on the sidewalk in front of the club? A I did not.

BY THE COURT:

Q Which side of the avenue did you come down? A The east side.

Q Were you on the east side of the avenue when you heard that someone had been shot? A I was.

BY MR. BROTHERS:

CASE #2846A

Q Had you learned that before you arrived near the club?

A I came down the avenue and I saw the crowd and I went back and I passed 17th street and someone said, "There is a man shot up there, get an ambulance."

Q You were in the block there? A Yes, sir, on the other side of the avenue.

Q Did any person come forward out of that crowd as you approached the club to speak to you other than the one who said somebody had been shot? A No, sir.

Q Did any person come forward and give their name to you, officer, as a witness in the case? A No, sir.

Q Or give you any information as to how the shooting had happened? A No, sir.

Q Nor who had done it? A No, sir.

Q You got no information? A No, sir, I did not.

Q Now when the detectives arrived they took charge of the case, did they? A Yes, sir, they did.

Q Where did you go then? A I remained there until the ambulance arrived and then I went to the station house to report the ambulance case.

Q Your tour of duty was up at 12? A Yes, sir, at 12 o'clock.

Q Do you recall how Smith was dressed? A He had dark pants and a colored shirt was all he wore.

Q He had no coat or vest on? A No, sir.

Q Were you there when photographs were taken? A I was.

CASE #2846A

Q At the time that the photographs were taken was the room and the position of the furniture in the same condition as when you first entered? A It was.

Q Nothing had been moved or disturbed? A Nothing.

BY THE COURT:

Q When was the photograph taken? A About a quarter past twelve or twenty minutes past twelve that night, some time shortly after 12.

BY MR. BROTHERS:

Q Now looking at this and holding it so that nobody else sees it. Does that photograph plainly and correctly represent the condition of the rooms as you saw them upon your entrance that night? A It does.

Q That is the picture looking from the rear room through the doorway into the front room towards 8th avenue, is it?

A Yes, sir.

Q And it correctly and fairly shows the position of the furniture and chairs, their position on the floor, is that it?

A Yes, sir, it does.

MR. BROTHERS: We offer that in evidence.

MR. MOORE: I want to object to it on the ground that it is entirely immaterial. The purpose of it is to create possibly sympathy upon the part of the jury. There is no question of dispute but that Smith was sitting there and there is no necessity for introducing exhibits.

I think Judge Wadhams sustained an objection to it.

CASE #2846A

THE COURT: Is that the only objection you have to it?

MR. MOORE: I don't see any materiality of it.

Objection overruled. Exception.

(Marked People's Exhibit 4.)

CROSS EXAMINATION BY MR. MOORE:

Q How long did you say you had known Tanner Smith? A Twelve or thirteen years.

Q At the time of his death he was a stevedore? A He was.

Q He hadn't always been a stevedore during the time you knew him, had he? A No, sir.

Q How long about had he been a stevedore? A About three years, I believe,

Q Before that what was his business? A He was in Texas for a while.

MR. BROTHERS: I move to strike that out as not responsive.

MR. MOORE: That may go out.

Q Before that he was the head of what was known as the Tanner Smith gang on the lower West side?

MR. BROTHERS: I object to that. There is no contention here that this shooting was done in self-defense.

MR. MOORE: We are going to show that he was killed by another man as the result of trouble and that he himself was a gunman.

THE COURT: It may possibly be competent as a part of the defense. I am not able to say now. I think I will allow

CASE #2846A

it. It would only obviate recalling this witness.

Q(Repeated)? A I believe he was.

MR. BROTHERS: I move to strike that out. He only believes.

BY MR. MOORE:

Q Why, don't you know it. How long have you been in that neighborhood as a police officer? A Fourteen years.

Q You knew it, didn't you? A Only from hearsay.

Q Tanner's repute in the neighborhood, is that what you mean?

A That is what I mean, yes, sir.

ARTHUR WILLIAMS, a witness called on behalf of the People, being duly sworn, testified as follows:

'The witness states he lives at 264 Broadway, Brooklyn.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q How old are you, Mr. Williams? A 23.

Q What is your occupation? A Chauffeur.

Q Do you drive a motor truck? A Yes, sir.

Q For whom? A John Wilson.

Q Where is his place of business? A 482 Bushwick avenue.

Q What kind of business is he in? A Valves, pipe fittings.

Q In July of last year you were also a chauffeur, were you?

A Yes, sir.

Q You were driving pleasure cars? A Yes, sir.

Q In the renting business kept by Paul

A Yes, sir.

CASE #2846A

Q Where was the garage? A 41st street.

Q Do you remember Saturday night July 26th, 1919, whether you had a call with a car? A Yes, sir.

Q Who sent you out from the garage that day? A Daniel

Q To what place did you go? A Chambers street.

Q What else? A Chambers and Worth street.

Q That is the lower west side of New York City? A Yes, sir.

Q What time did you get down there? A Around eight o'clock.

Q About eight o'clock? A Around eight.

Q Still daylight? A Yes, sir.

Q Whom did you pick up? A Picked up three men.

Q Who were they? A Well I can't remember their names.

Q Do you remember Lewis, George Lewis, the man on trial. Was he one of them? A Yes.

Q And Robert Shore was he another? A Yes, sir.

Q The third man you did not know his name? A No, sir, I don't know him.

Q He was a young man, wasn't he? A Yes, sir.

Q What place did you take those three men to? A 8th avenue and 16th street.

Q What place was that? A It was a cafe.

Q What corner was that? A The southwest corner.

Q Those are the three men you picked up at Worth and Chambers street? A Yes, sir.

CASE #2846A

Q Did they go into this cafe? A Yes, sir.

Q How long did you wait for them? A Waited about fifteen minutes.

Q When they came out did they come alone or have others with them? A Came alone; a couple of more men with them.

Q Did they all get into the car? A Yes, sir.

Q Where did you take them to if you can remember? A Well, I don't know; it is so long ago I cannot remember now.

Q Do you remember going over to Second avenue and First street on the East Side? A Yes, sir, I remember going there.

Q Do you remember who suggested going there? A No, sir.

Q What did you do when you got to Second avenue and 1st street? A Pulled up alongside the curb.

Q Did anybody get out there? A Yes, sir.

Q Who? A They all got out.

Q What did they do? A They were talking on the sidewalk.

Q How long did they remain there talking? A About five minutes.

Q Then what did they do? A They went back.

Q Into the car? A Yes, sir.

Q Did anybody give you directions as to where to go? A No, sir.

Q Didn't anybody tell you to -- A Somebody, I don't know who it was, one man told me to pull back to 8th avenue.

Q Did you go back to the same saloon? A Yes, sir.

CASE #2846A

Q What happened there then? A I went over and got a shave and then I left the car standing outside.

Q Now when over at Second avenue and First street did you see anybody go near a restaurant in front of which the car stood?

A It was in a front of a restaurant where I stopped.

Q Did any of those men get out and go into the restaurant?

A No, sir.

Q Nor look into the restaurant? A No, sir; they didn't go in; I don't know whether they looked in or what they done; I know they got out.

Q After you returned the second time to the saloon at 16th street and 8th avenue you say you waited there some time, got shaved in the meantime? A Yes, sir.

Q Now did you take these same men elsewhere? A Yes, sir.

Q From there? A Yes, sir.

Q And that included Lewis and Shore and several of those other men, is that it? A Yes, sir.

Q Where did you go then? A I went to the garage.

Q Why did you go to the garage? A Well their time was up.

Q How much time had you been hired for? A Three hours, I was supposed to get the car from seven o'clock.

Q What is that? A The time was going on from seven o'clock.

Q So it was nearly ten when you started back? A About half past nine.

Q When you got to the garage what was done? A Well,

CASE #2846A

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they got out and they were talking to Daniel

Q Who talked with
remember.

A I don't know, I don't

Q Did you get instructions to take them again? A Yes, sir;
told me the money part was all right for that time and I took
them down to 8th avenue -- 10th avenue -- stopped at 10th
avenue.

Q Whereabouts on 10th avenue did you stop? A About 29th
street.

Q What was done there? A They went into a cafe there.

Q Did they all go in? A Yes, sir.

Q Shore, Lewis and the others went in the cafe, did they,
on 10th avenue? A Yes, sir.

Q How long did they remain there? A About 10 minutes.

Q Did they come back into the car? A Yes, sir.

Q Where did you go then? A Shore got on the car and started
to drive it then.

Q Before he started to drive it did you go to any place?
A No, sir.

Q Do you remember going to a house on 10th avenue near
35th street? A I remember stopping at some house but I don't
know what time it was.

Q Before Shore started to drive the automobile do you
remember that they asked you to stop on 10th avenue in front of
a house and they went into the house? A Yes, sir.

CASE #2846A

Q Who went into the house? A I don't know; they got out of the car; I was sitting in the car.

Q Was it Shore or Lewis that went in? A I don't know; they got out; I stopped in front of the door; I don't know who went in.

Q You saw them go into the house? A I did not exactly see them going in the house, I saw them going towards the house.

Q How long were they gone? A About ten or fifteen minutes.

Q Do you remember what they had on their heads when they went in? A Straw hats.

Q When they came back to the car what were they wearing?
A Caps.

Q Now that was Shore and this defendant Lewis? A Yes, sir.

Q Now did somebody take a package out of your car and take it into that barber shop that was right next to the house in which they had gone? A Well that man did take that package in the house when they came down the avenue and left it in the barber shop.

Q Who did that? A The other fellow.

Q One of the other men? A Yes, sir.

Q Where was this cafe on 10th avenue where you saw Shore begin to drive your car? A About 19th street.

Q And this other place was up in the 30's, wasn't it?
A No answer.

Q Wasn't it -- A No answer.

Q Where was the saloon? A About 19th street.

Q Do you know the name of the saloon? A No, sir.

0997
CASE #2846A

Q Did you hear a shot fired in that saloon while you were there? A I heard a noise, I don't know whether it was in the saloon or not.

Q It sounded like an explosion? A Sounded like a blowout.

Q How did it happen that Shore began to operate your car?

A I was standing on the sidewalk and he got in the seat.

Q What kind of a car was it? A A Packard.

Q An open car? A Yes, sir.

Q A seven-passenger car? A Yes, sir.

Q Now how was Shore at that time as to being sober? A He was intoxicated.

Q He did actually run the car, didn't he? A Yes, sir.

Q Did the other people, including Lewis, get into the car? A Well I don't know; it was a bunch in the car and it was somebody else sitting next to Shore and he would not let me turn the switch off. I wanted to turn the switch off while he was running it; while Shore was running the car.

Q Do you mean that you wanted to stop the engine? A Yes, sir.

Q Were you sitting upon the front seat? A No, sir.

Q As he was driving? A, No, sir.

Q Where were you sitting? A I had one leg in and one leg out.

Q You were partly in the car and partly on the running board?

A Yes, sir.

CASE #2846A

Q Through what streets did Shore operate the car? A Through 10th avenue.

Q Then did he go to 16th street? A Yes, sir.

Q Over to 8th avenue? A Yes, sir.

Q How far through 16th street did he run the car? A Up to 8th avenue.

Q What happened at 8th avenue? A He skidded and blew out a shoe.

Q Where did the car go? A He ran it down to the middle of the block on 16th street.

Q Did you notice at what speed he was running the car?

A About 40 miles.

Q Very rapidly, was it? A Yes, sir.

Q Now after he had blown out the shoe or tire what was done? A They went into a cafe in 16th street to call up my boss.

Q Who did? A Shore did.

Q Did you go with him? A I didn't go with him.

Q Now at this time you were trying to get rid of this party? A Yes, sir.

Q Were you ordered to put the extra tire on? A Yes, sir.

Q I am doing this to save time and as there is no dispute about it. You interposed an excuse that you didn't have any jack? A Yes, sir.

Q You said you couldn't do it? A Yes, sir.

Q The car was driven down into 16th street somewhere to

CASE #2846A

f

31 - 35

a garage? A I drove it down to this garage to get a --

Q Near what avenue? A I pulled in to the garage and the bunch left me; I don't know where they went.

Q Whereabouts is that garage? A 16th street between 9th and 10th avenue.

Q Then this party of men left you? A Yes, sir.

Q Did you see where they went? A They went around towards 9th avenue; I don't know where they went then.

Q You were between 9th and 10th? A Yes, sir.

Q They went towards the east? A I don't know where they went; I didn't watch them; I went down to the garage.

Q They went away and left you? A Yes, sir.

Q Now what is your recollection of the time that they left you? A Well I arrived in my garage at a quarter past ten.

Q You mean after this second trip? A Yes, sir, after this second trip; half past ten.

Q In the meantime you had put on the spare tire, had you?
A Yes, sir.

Q And driven from 16th street to 41st street? A Yes, sir.

Q Your recollection is it wasn't later than 10:30 when you reached there? A It wasn't later than 10:30.

Q Did you make any other trips that night? A No, sir.

Q Did it rain some that night? A When I got to the garage it started to rain, very light, just started.

Q Well was it raining while you were driving Lewis, Shore and these other gentlemen around? A The streets were wet, I

CASE #2846A

don't remember whether it was raining.

Q What is your recollection as to whether or not you had the top up on your car? A I had the top up?

Q So that you were shielded from the rain, if it did rain? A Well I had the top up when I started out.

Q Did it continue up or was it put down at any time? A I don't remember if it was put down; I know it was up.

Q Did anybody suggest your going to any other place than you have told us about? A In the early part of the night they wanted to go to Rockaway.

Q Who was it suggested Rockaway? A That was before we took them to the garage.

Q Was that after you had been over at Second avenue? A Yes, sir.

Q Somebody suggested Rockaway Beach? A Yes, sir.

Q Is that it? A Yes, sir.

Q They were going there? A When I first got them that was their intention to go to Rockaway.

Q When down at Worth and Chambers street? A Yes, sir.

Q Somebody said to go to Rockaway Beach? A Yes, sir -- well they were saying it all the while, that they wanted to go to Rockaway.

Q Now was Lewis drunk or sober or didn't you pay any attention? A I don't remember.

Q Have you since learned that the third man's name was

CASE #2846A

Birmingham that you had with you? A I don't know him.

Q Have you seen him since in court on the other trial?

A No, sir.

CROSS EXAMINATION BY MR. MOORE:

Q This car when Shore started driving it he drove it very rapidly, did he not? A Yes, sir.

Q You say about forty miles an hour? A Yes, sir.

Q Do you remember testifying upon the other trial that it was 50 miles an hour? A How fast?

Q 50 miles an hour? A Well around forty to fifty.

Q Well now upon the other trial you stated it was 50 miles. At any rate it was an exceedingly rapid speed? A Yes, sir.

Q He was much intoxicated? A Yes, sir.

Q Now from the time you were driving up to the time that the car skidded and had the blow out the places that you stopped at, excepting the house between 35th and 36th street on 10th avenue, had been saloons, weren't they? A Well not exactly outside of 2nd avenue --

Q You observed some of the men drinking in the saloon, didn't you? A Sir?

Q You observed some of them drinking in the saloons, did you not? A Yes, sir.

Q Did you observe that this man Lewis or Shore was not drinking? A I don't; I don't remember.

Q Did you notice that one of these men at the time the car skidded was in with you? A Yes, sir.

1002
CASE #2846A

Q Now at that time were there not four men in the car instead of three? A I think there was half a dozen.

Q What is that? A I think there was a half a dozen.

Q I don't want what you think, there had been seven or eight in the car -- didn't you drop off some of them so that there were only four then? A Yes, sir.

Q These men after seeing your boss up there at that time stopped at the house of a young lady, as you understood it, wanted to go to some beach did they not? A Yes, sir.

Q Hadn't they discussed the beach that they were going to? A All I can say is that one of them said Rockaway Beach.

Q When the tire blew out you were within a block or less than a block of 16th street and 8th avenue, were you not? A Well about on the corner when they stopped, when I had the blow out.

Q You had the car turned around and went back into the middle of the block? A Yes, sir.

Q And Shore was quite insistent that you fix up the car that they will go to this beach, wasn't he? A Yes, sir.

Q Now his companions outside of Lewis were pretty drunk then, weren't they? A Well I know quite a few of them was; I couldn't say everybody there.

Q You didn't want to drive them? A No, sir.

Q Particularly after Shore had insisted upon taking the wheel and driving the car himself? A No, sir.

Q Shore went in the saloon on 9th avenue and 16th street, did he not? A Yes, sir.

CASE #2846A

f

39

Q Take you in there? A Yes, sir, he went in first and he came out and he called me.

Q He wanted you to talk to the boss about getting another car and taking it? A No answer.

Q Getting them to send down another car so that you could go to the beach? A Yes, sir.

Q You discovered a jack in your bag, did you not? A Yes, sir.

Q You did not repair the car until they left? A No, sir.

Q Now do you remember when they left that the defendant Shore was the one who went into a saloon there on the corner and the other two men went another way? A Well, I remember they split up, I don't know who.

Q But Shore and Lewis they separated -- the other two men went another way, do you remember that? A I know they split up some way.

Q Don't you remember that Shore and Lewis went into a saloon there at 9th avenue and 16th street? A 9th avenue and 16th street?

Q (Repeated)? A Well that is where I lost sight of them.

Q You lost sight of them in front of the saloon? A While they were stopping in front of the saloon I went down to the garage.

Q You did have the tools to repair if you wanted to, didn't you? A Yes, sir.

CASE #2846A

F R A N C I S MCGEE, a witness called on behalf of the People,
being duly sworn, testified as follows:
(The witness states he lives at 639 Fifty-seventh street,
Brooklyn.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q Your occupation now? A I am with the Robert Reis Company
now, a Protection Agency.

Q Where located? A New York office, 19th street and Broadway.

Q You were formerly a member of the New York police Department?

A Yes, sir.

Q Were you not? A Yes, sir.

Q Had been for how many years? A 26 years.

Q You resigned from the Department at what time? A I retired
last September.

Q What was your rank when you retired? A I was a sergeant.

Q In the detective division? A Yes, sir.

Q Do you recall while you were still connected with the
Department going to the Maginal Club at 129 Eighth Avenue on
the night of July 26th last year? A Yes, sir.

Q Which was on the occasion of Tanner Smith having been
shot? A Yes, sir.

Q Did you know Tanner Smith? A Yes, sir.

Q When you entered the premises about what time was it?

A About 11 o'clock.

Q Did you see Tanner Smith there? A Yes, sir.

CASE #2846A

Q Was his body lying as marked in the photograph Exhibit 4. Does the photograph fairly and correctly represent the condition of the furniture in the rooms? A Yes, sir.

Q A pretty good picture of it? A Yes, sir.

Q Now did you see a weapon there? A Yes, sir.

Q Is this the weapon (People's Exhibit 3)? A Yes, sir.

Q Where was the pistol Exhibit 3 when you first saw it on that occasion? A It was lying under a bench about six or seven feet away from the body, at the side of the room.

Q See - was it in the front room? A It was in the front room.

Q On the side towards the hall? A Yes, on the side towards the hall.

Q Did you see any empty cartridges or any loaded cartridges anywhere? A Two or three empty cartridges.

Q Where did you find those? A Picked them up on the floor in the front room.

Q How far away from where Smith was lying if you recollect -- A Oh I should say seven or eight feet.

Q Were they lying together or scattered about? A They were scattered about.

Q Do you remember whether Officer Devereaux the patrolman handed you one? A My recollection is that he did pick up an empty cartridge hallway.

Q You didn't see when he picked it up? A No, sir.

1006
CASE #2846A

(The cartridges referred to are placed in an envelope and marked People's Exhibit 5.)

Q Are these four cartridges ones of a kind of cartridges which would be used in this pistol People's Exhibit 3? A They are 25 calibre cartridges and that is the calibre of that pistol.

Q They are the kind of shells or bullets? A Yes, sir.

Q That could be used in that pistol? A Yes, sir.

Q You are familiar, are you not, with the operation of that kind of a pistol? A Yes, sir, an automatic revolver.

Q When the pistol is discharged the empty cartridges are automatically thrown out of the side of the barrel? A Yes, sir.

Q On to the ground? A Yes, sir.

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

Q Did you look about the room for any bullet marks? A I did.

Q Did you observe any? A I observed some bullet holes in the partition wall between the front and back rooms. ^Q And Officer Devereaux has indicated them with his initials, the position where they were, is that right? A Yes, sir.

MRS. BROTHERS:

[The witness indicates the same spot as Devereaux did.

Q ~~xxxxxxx~~ It was about 11:25 when you got there? A Yes, sir, some time shortly after eleven.

Q Between eleven and midnight? A Yes, sir.

Q Did you examine this pistol Exhibit 3 to ascertain whether

1007
CASE #2846A

f

43 -44

or not it had been recently discharged? A Yes, sir.

Q Did you form an opinion as to whether it had been? A My opinion was that it had been recently discharged.

Q Who was present there in that room when you arrived?

A Officer Devereaux and Detective Carmody went with me and Detective Grill.

Q Were some others there who were not members of the Department? A When we first arrived there.

Q Yes, or immediately after? A There were a number of people in there at the time, uniformed officers, but I don't know just who they were.

Q Did you have charge, and take an active part in endeavoring to find out who had ^{done} the shooting? A Yes, sir.

Q How long did you continue this work upon the case? A Until I retired from the Department.

Q And that was? A September 17th of last year.

Q Well that night did you obtain any information -- just say yes or no -- from any of the citizens who were present as to the identity of the shooting?

Objected to. Objection sustained.

Q These rooms were well lighted, were they? A Yes, sir.

Q You could see clearly? A Yes, sir.

Q Electric lights in the ceiling? A Yes, sir.

Q The front room was somewhat disordered, wasn't it? A The chairs, some of them turned over in a disorderly condition.

CASE #2846A

CROSS EXAMINATION BY MR. MOORE:

Q About how long were you there when the ambulance came?

A Oh, I don't know, probably ten minutes.

Q Not to exceed ten at any rate? A I didn't get that.

Q (Repeated)? A My recollection is that it might have been 15, I would not be sure that is the exact time.

(Conceded that the ambulance came at 11:30.)

Q Now will you tell me how many cartridges the magazine of this gun holds? A NO, sir, I cannot tell.

Q You can't tell by examining it? A No, sir.
one

Q So at the time you examined it there was/undischarged shell in this gun, was there? A Yes, sir.

MR. MOORE: It is a ten chambered gun.

Q How long had you known Tanner Smith? A Oh by sight about two years.

Q You had known him by reputation for how long? A Well, I had heard of him for probably five years.

GRACE SHORE, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states she lives at 325 West 21st street.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live? A 325 West 21st street.

Q Your husband's name is Robert Shore? A Yes, sir.

Q He was nicknamed rubber, wasn't he? A Yes, sir.

Q How long had you known him prior to your marriage? A About

CASE #2846A

three or four years.

Q Are you acquainted with George Lewis, this defendant?

A Yes, sir, I am.

Q You know him how long? A Around the same time.

Q How old was your husband? A 21.

Q What did he work at? A I understood him to be a stevedore and a chauffeur too.

Q He was also a chauffeur? A Yes, sir.

Q At the time of your marriage last July where did you live? A I lived at 442 Tenth avenue.

Q 442 Tenth avenue near what cross street? A Near 34th street.

Q Which side of the avenue? A On the west side of the avenue.

Q The west side of the avenue? A Yes, sir.

Q Near 34th street? A No, sir, on the east side of 10th avenue.

Q How long had you lived there? A About a year.

Q With whom did you live? A A friend of mine.

Q At that time were you employed somewhere? A Yes, sir.

Q What kind of work did you do? A I was doing clerical work.

Q How long before your marriage was it that Robert came out of the Hampton Reformatory? A About two months, he came out May 20th or 21st.

Q On May 20th? A Around that time.

Q Did you see him soon after his release? A Yes, sir, I saw him the next day.

CASE #2846A

Q Did you know Thomas Smith, the young man called Tanner Smith? A Yes, sir, I did.

Q He was a man about thirty years old? A Yes, sir.

Q You had known him all your life, hadn't you? A Yes, sir, I did.

Q For a great many years? A Yes, sir.

Q Had you had any trouble with Tanner Smith during the time that your husband was in prison? A Yes, sir, I did.

Q When was that? A That was around May 10th.

Q Last year? A Yes, sir.

Q Just a few weeks before you saw Robert? A Yes.

Q What trouble did you have with him? A Well, I went to an affair up in the Manhattan Casino and I happened to come home with him, with Tanner Smith and with his friends, a few more, and he took me to my door, and I said good night. and it just happened to be that day or night that the door had been unlocked, and after I walked in the hall he came in and grabbed me around the throat and pulled me only I bit his finger and he released me and I screamed and that brought two or three people down and he ran out.

(At this point the Court admonishes the jury, and took a recess.)

AFTER RECESS.

GRACE SHORE, resumes the stand:

DIRECT EXAMINATION CONTINUED BY MR. BROTHERS:

CASE #2846A

Q Now, Mrs. Shore, the occurrence or little trouble that you had with Tanner Smith you say was on the 10th of last May, a year ago? A Yes, sir.

Q When you saw your future husband Robert Shore, at the end of the month you talked with him about it? A Yes, sir; he had already heard about it.

Q You said he had heard about it? A Yes, sir.

Q Then did you tell him just exactly what happened? A Yes, sir, I did.

Q Did he tell you from whom he had heard about it? A No, sir, he did not.

Q Was he angry at that time? A He seemed to be angry but he promised he would not make any trouble for me.

Q But he wasn't angry at you? A No, sir, not angry at me, but he promised me he would not get into any trouble.

Q With Smith? A Yes, sir.

Q He was angry at Smith? A Yes, sir, he was angry about it.

Q Do you know whether he knew Smith personally at the time? A I think he always knew Smith.

Q Was the subject ever mentioned between you and Robert again? A No, sir, I--

Q Where did Robert go to live after he came out of Hampton? A With his friend George Lewis.

Q This defendant here? A Yes, sir.

Q Where were they living, what street? A 90th street.

CASE #2846A

1012

Q West 90th? A Yes, sir.

Q In this city? A Yes, sir.

Q They lived there with George Lewis' mother? A Yes, sir.

Q Did you see Robert frequently? A Yes, sir.

Q During the month of May and June? A Yes, sir, I did.

Q Did you see George Lewis with him? A Yes, sir.

Q From time to time? A Yes, sir, off and on I did.

Q Now do you remember -- you were married on the 28th of July, were you not? A Yes, sir.

Q On a Monday night? A Yes, sir.

Q Do you remember whether you saw Shore the preceding Saturday which would be the 26th? A Yes, sir, I did see him around -- I saw him say at six or seven o'clock.

Q In the evening? A Yes, sir.

Q Where did you see him? A At the place I was living at 442 Tenth Avenue.

Q Did he come thereto see you? A Yes, sir, he did.

Q Was he alone? A No, sir, I think he was with his friend.

Q Lewis? A Yes, sir.

Q Now what did he and Lewis do when they came into the house that evening? A Well they had bought new straw hats and they left their peak hats there and Bob gave me his money and he walked -- went out again.

Q Robert was working, was he? A Yes, sir.

CASE #2846A

1013

Q He gave you his pay? A Yes, sir.

Q Now your recollection is that they came in with caps?

A yes, sir.

Q Is that it? A No, sir; they had their straw hats on then.

Q And were carrying caps? A Yes, sir; they left two caps in the house.

Q There at your house? A Yes, sir.

Q About how long were they there? A Well they weren't there no more than half an hour.

Q Now while they were there did anybody mention Tanner Smith? A No, sir; they did not.

Q Did Lewis or did Shore say where they had been or where they were going? A I think they intended going to Coney Island or somewhere.

Q Now did you see either of them again that night? A No, sir, I did not.

Q Or the following day which was Sunday? A No, sir, I did not.

Q When did you arrange the date of your marriage? A We had that arranged three weeks before the time.

Q Whereabouts were you married? A St. Mark's church West 34th street.

CASE #2846A

Q1

Q What time? A About 7 o'clock.

Q Did you see Robert Lewis during the day? A No, sir, I did not.

Q You met at the church? A yes, sir.

Q Lewis came there with Robert, did he? A Yes, sir.

Q Who else was present at the ceremony? A Well the girl that stood up with me, Alice Clark.

Q After the ceremony where did you go? A We left the George and my husband on 9th avenue and 34th street saying that they had to go back to work again, they had some work to finish and we went down to 23rd street to eat.

Q That is you and Alice Clark went one way and Lewis and Shore went the other? A Yes, sir.

Q You parted company? A Yes, sir.

Q Immediately after the ceremony was performed? A Yes.

Q Is that right? A Yes, sir.

Q You understood that they were going over to Jersey, did you? A No, sir, I understood that they had some more work to do.

Q Here in the city? A Yes, sir.

Q Now at that time Mrs. Shore you knew of Tanner Smith's death, did you? A yes, sir, I did.

Q You knew at that time that nobody had been charged as yet with the killing of Tanner Smith, didn't you? A No, sir, I did not.

Q You did not? A No, sir.

CASE #2846A

Q Was Tanner Smith-- was his name mentioned among you either before the ceremony or afterward the wedding. Did anybody say anything about Tanner Smith? A No, sir. I never spoke of him.

Q Now, when did you next see George Lewis after Monday night? A I seen him Tuesday afternoon in Jersey.

Q Whereabouts? A At my husband's aunts house.

Q What was the name? A Mrs. Cuff.

Q Cuff? A Well, I don't know how you spell it.

Q Whereabouts did she live? A She lives in West New York. Q You went over there in the afternoon. You had an appointment, did you, to meet them there? A Yes, sir.

Q During the afternoon? A Yes, sir, around two or three o'clock I think.

Q You understood that these young men Lewis and Shore were working in New York, didn't you? A Yes, sir, I did.

Q Did you ask Lewis why he went over in Jersey? A No, sir, I did not.

Q Did he say why he was there? A No, sir, he did not.

Q You were there with them at Mrs. Cuff's house Tuesday? A Yes, sir.

Q Now did you see Shore again before he died? A Yes, sir I did.

Q When? A He had supper with me Thursday night.

Q Was Lewis present then? A I think he was.

Q Was anybody else? A No, sir, not that I know of.

CASE #2846A

Q Where did you have supper Thursday night? A Well, I had it in his aunt's house.

Q So that Lewis was always with Shaw when you saw him after his marriage? A Not always.

Q Well, now when did your husband die? A About around 10 o'clock Thursday night.

Q Thursday night? A I understood about 10.

Q You did not see him before he died, after he had been wounded? A Yes, sir.

Q You got there after he was dead? A Yes, sir, I got there at 2 o'clock the next morning.

Q You saw George Lewis at the hospital after he was wounded? A No, sir, I did not.

Q When did you next see George Lewis after that? A After the supper Wednesday night?

Q Thursday night? A I didn't see him at all after that.

Q Until after he was arrested here in court? A That is all

Q So that your husband died on the 31st of July, is that right, Thursday night? A Yes, sir.

Q Was Robert Shore accustomed to drink pretty heavily?
A Not that I ever knew of.

Q Not that you knew of? A No, sir.

Q He was always all right when he was with you? A Yes.

CROSS EXAMINATION:

Q Now at the time that you say Tanner Smith assaulted you in the hallway there were a number of people who came

CASE #2846A

1017

there, was there not in response to your screams? A Yes, 54
sir, they did.

Q So that there were quite a number of people that knew
of the happening? A Yes, sir.

Q You did not tell Robert of that situation? A No, sir
I did not tell him until after he had mentioned it to me.

Q Now Robert was pretty mad about it, wasn't he?
A Yes, sir; he seemed very angry.

Q That his friend-- to use his own expression-- was
double crossing while he was away, did he say that to you,
in substance? A No, sir, he did not.

Q Anything like that? A No, sir, just seemed very
mad and he was mad enough too-- he couldn't talk at all about
it, he was so mad.

Q Now you husband you say died on the 31st, he
was shot and died, as the result of a gun shot wound?
A Yes, sir, he did.

CASE #2846A

Q At that time the defendant was shot in the back as you understood? A Yes, sir, I understood that.

Q It was in Jersey that they were shot? A Yes, sir.

Q Your husband and the defendant had been living in Jersey for several weeks before that, hadn't they? A Yes, sir, I understood they were living there for three weeks before it happened.

Q Now, in response to Mr. Brothers question you said you didn't know the reason-- had you heard that some detectives been to George's house making inquiry about him, and he was afraid they would make him trouble, and that is the reason they went to Jersey to live? A Yes, sir, I heard talk like that.

Q You heard some talk? A Yes, sir.

HENRY BENSON, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 1569 Avenue A.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Benson how old are you? A 24.

Q Were you born in this city? A Yes, sir.

Q Lived here all your life? A Yes, sir.

Q Married? A Yes, sir.

Q Have you any children? A One.

Q What kind of work do you do? A I am working now down at the Ficker Company, the Stock Quotation Company.

Q Where is their place of business? A 3 Front street.

Q Where is it? A 3 front street.

Q What kind of work did you do last year? A 'Longshore work, on the docks.

Q Before the killing of Tanner Smith? A Yes, sir.

Q Had you known Tanner Smith? A Yes, sir.

Q Did you work for him? A Yes, sir.

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Q That was alongshore loading beef, was it? A Yes, sir.

Q At the pier? A Yes, sir.

Q How long had you been acquainted with him before the shooting of Smith? A About five or six weeks, something like that.

Q Now did you know that Smith was associated with a man by the name of Harry McCormack, in business, a stevedore and truckman? A Yes, sir.

Q Did you occasionally visit the Marginal Club at 129 8th avenue? A Yes, sir.

Q The men who went there who were they, not their names, but what kind of work were they engaged in? A They generally handled beef.

Q They were men who worked with Smith? A Yes, sir.

kind of
Q Smith was the man who took care of the club? A Yes.

Q Paid the rent, didn't he? A Yes, sir.

Q How often would you go there? A Saturday and Sunday.

Q Were you in the club on the night of July 26th, 1919?

A Yes, sir.

1020
CASE #2846A

Q Do you remember what time you were in there? A Around 9 or 9.30 I am not sure.

Q That was Saturday night? A Yes, sir.

Q When you went in what was going on at the club?
A A card game.

Q In which room? A The front room.

Q Was Tanner Smith there when you first entered? A Yes.

Q Was he playing? A Yes, sir.

Q Can you give us the names of the other men who were playing cards when you first came in? A Tanner Smith, Redmond, Maher, Nolan, McMahon, Morrissey and myself.

Q Do you remember a man named Curran? A Yes, sir, James Curran.

Q Was there a man named Curry there some time during the evening. Do you remember Lefty Curry? A Wesley Curran.

Q Was he there? A Yes, sir.

Q What game was being played? A A game called Twenty-one.

Q We have a picture here, Mr. Bensen, Exhibit 4, that shows a table towards the window, is that where you were playing cards? A Yes, sir.

Q Now as you sat there who sat on your left? A My left?

Q On your left? A McMahon.

Q Who sat on your right? A Maher.

Q Do you remember where Smith sat with respect to you?

CASE #2846A

A Smith sat next to McMahon.

Q So that between you and Smith was a one man, McMahon?

A Yes, sir.

Q As you sat at the table which way did you face? A I faced towards the window, the 8th avenue window like.

Q Now, Mr. Bensen will you draw a circle on our plan to indicate the table. Put a B where you sat, B is your initial.

A Yes, sir.

Q Where was Smith. Put an S for Smith. A Yes, sir.

(Witness does so.)

Q Now as you sat here where B is you faced over towards the piano? A Yes, sir, like this here (indicating).

Q You looked more towards the window? A Yes, sir.

Q These other men all sat around? A Yes, sir.

Q Now was there a light there? A Yes, sir, right over the table.

Q Did you notice whether the window here that looked out into 8th avenue was open or closed? A The windows that looked out into 8th avenue were open or closed? A They were open; it was a hot night.

Q Do you know whether this rear room which is at the head of the stairs -- the entrance to the card game--whether that doorway was open that night? A This doorway here?

Q From the front? A This doorway was open.

Q How about the door out into the hall? A I don't know whether it was unlocked that night or not.

1022

CASE #2846A

Q Now was there any shooting done there that night?⁵⁹

A Yes, sir.

Q Did you remain at the card game from the time you first came in up to the moment of the shooting? A Yes, sir.

Q Did any of the players leave the game before the shooting? A No, sir.

Q Do you recall whether any others came in and joined the game? A No, sir.

Q Before the shooting? A No, sir.

Q Do you remember whether any people were in the room before the shooting watching the game, sitting on other chairs or benches? A They were sitting by the window looking out the window; that is all.

Q Do you remember who they were? A A fellow named-- I don't remember his name now, he is very seldom coming up, he was just sitting there.

Q He didn't come there very often? A Just happened to come up to find out about work; he happened to stay there a few minutes.

Q Did you know a man by the name of Robert Shaw? A Yes.

Q How long had you known him? A About five or six weeks

Q What, if anything, did you notice a few minutes before the shooting? A What I noticed? I noticed Robert Shaw standing around the end of the table; he was standing there watching the game for awhile.

Q Whereabouts was he standing? A He was standing right

1023

CASE #2846A

behind Redmond.

Q Well, can you give us any idea where Redmond was sitting? A Right about here (indicating)

Q Well, put a mark where you saw Shaw "R. S." ; that is where he was when you first saw him? A Yes, sir.

Q What was he doing? A He was standing there watching the game.

Q Did you hear him say anything? A Not until after he walked around. He said he was going to a party.

Q Walked around to what place? A Back of Tanner Smith.

Q As he walked around there you heard him say what?
A He said he was going to a party.

Q To a party? A Yes, sir.

Q At that moment did you see anybody else standing there? A Yes, sir, I saw Lewis standing around behind Smith, by the door.

Q That is this boy here on trial? A Yes, sir.

Q Now where was Lewis when you first noticed him in the club? A Standing by the door.

Q Which door do you mean. Put G. L. A Yes, sir.

Q Had you seen either Shaw or Lewis come into the club room? A I did not see them until they got around to me, they got in front of me, because my back was to the door.

Q Were they walking when you first saw them? A Yes, sir; walking around.

Q Did I understand you to say that as they went around

1024
CASE #2846A

this table Shaw stopped. where you put the initials R. S.?

A Yes, sir.

Q And Lewis went around more towards the door? A Yes, sir towards there (indicating).

Q Do you remember whether any other persons came in?

A No, sir, I did not notice anybody else.

Q Now when Shaw walked around towards where Lewis was and said, "I am going to a party, what was the next thing happened? A Well, I heard a shot fired.

Q Now, tell the jury just how the shooting was done, will you? A I heard a shot fired and I looked up and seen Robert Shaw backing up with a gun under his coat like (illustrating) backing towards the window on the 8th avenue side; no more than he got back in that line this fellow Lewis walked up and fired another shot, and the place was upset and everybody started to run out. I ran behind a partition there, behind a closet and stood there, everybody ran out, shots were firing and I seen this Tanner Smith stagger around, falling around, he ran out and started to fire shots downstairs and he ran back and fell down there, and I ran out and got an ambulance for him and the officer tried to help him as much as I could, and then I notified his mother.

Q Where did Smith live at that time? A West 14th street.

Q Was there any fight before the first shot? A No, sir; no fight.

Q Did you hear Smith say anything either to Lewis or

1025
CASE #2846A

Shaw? A No, sir nothing.

Q Were there any blows struck? A No, sir.

Q Did anybody attempt to strike anybody? A No.

Q The game as I understand it was being played --

A Just between the members.

Q Did you see Shaw draw a pistol before the first shot?

A I seen-- no, sir, I did not see until I got around and he fired the shot and I seen him backing up with the gun.

Q I wanted to know whether you actually saw the first shot go off or whether you only heard it? A I just heard it; just looking up.

Q As you looked up after the first shot what was the first thing you saw? A I seen him backingup towards the window.

Q That you saw? A Yes, sir, with the gun like under his coat.

Q Did you see the gun? A He did like that, stuck it under his coat, backing up.

Q Could you see it? A Yes, sir.

Q What was Lewis doing then? A When he backed up Lewis came forward.

Q What did he do? A He fired a shot.

Q At whom did he fire it? A Towards Tanner Smith's back.

Q Did you see what Smith did as Lewis fired a shot at his back? A He tumbled over, he fell or bent over like.

1026

CASE #2846A

Q Was he seated on a chair? A yes, sir, seated on a chair.

Q He fell over on the table? A yes, sir, he fell over on the table.

Q Did you see then whether or not he got up? A Yes, sir. He tried to get up from the table and fell over the table then.

Q At what time did you run behind the partition? A After the shots were fired.

Q How many shots had been fired? A Two in the club.

Q How many shots did you heard fired inside the room?

A In the room two.

Q Now this partition behind which you went, will you point that out on the diagram, Exhibit 4? (Witness indicates.)

Q Pointing to the place where this chair is? A yes, sir, right here.

Q Was there a little closet there? A Yes, sir.

MR. BROTHERS: He indicates this place next to the closet.

Q When you were behind that closet could you see into the front room? A No, sir, you could not.

Q As you were behind that closet did you see anybody going out of the club? A I seen Robert Shaw run out.

Q Did you see Lewis leave? A No, sir, I did not see him leave.

Q Did you see the other men going out? A They all ran

CASE #2846A

1027

out that way, yes, sir.

Q At what point in the proceedings did Smith go into the hallway? A When I was standing behind the partition, after he fell down, he got up and ran out into the hall, Smith did.

Q Did you see him when he was about to run to go out, Smith? A Yes, sir, I was standing by the partition when he got up and ran out towards the door and started firing shots.

Q Did you see Smith with a pistol? A Yes, sir.

Q When did you first notice that pistol? A When he ran towards the door.

Q Was he shooting it off? A Yes, sir, he shot downstairs.

Q When he came back he fell on the floor? A Yes, sir; he fell.

Q Did he reel about, did you say? A He reeled all around the floor.

Q Did you see what became of this pistol? A He had it lying on the floor there.

Q What kind was it? A A black automatic.

Q This one people's Exhibit 3? A Yes, sir.

Q Is that the kind of a pistol it was? A Something like that.

Q Now had you ever seen Lewis in the club room before that night? A Once or twice, very seldom.

Q Did you ever see him in conversation with Tanner Smith?

CASE #2846A

1028

A No, sir, not that I know of, no, sir.

65

Q Or see him in his company? A No, sir, not that I know of, only standing in the corner.

Q About how many shots do you think were fired out in the hallway? A About five or six shots.

Q Was there any confusion there after these shots were fired at the table? A After he fired? He fired downstairs.

Q I mean the shots that you saw Shaw and Lewis fire. Was there any confusion there in the room? A Everybody ran out, that is all.

Q Chairs knocked over? A Yes, sir, chairs and tables.

Q Anybody shout out anything? A No, sir, they all started to run out.

Q Were there any lights burning in the hall? A There was when we came up but they were out after the shooting.

Q Do you know who put them out? A No, sir, I do not.

Q Was Smith still alive when you went over to him?

A Yes, sir.

Q You took some things he had in his pockets? A A fountain pen and paper and stuff.

Q You took them down to his house? A yes, sir; to his mother.

Q When you went back did you go into the club room?

A Yes, sir, when I got the ambulance for him.

Q When you came back to the clubroom did you see the police there? A Yes, sir, I seen the officer and I told the

CASE #2846A

1029

officer, yes, sir--

Q Did you notice what Shaw and Lewis had on their heads at the time they were in the club? A I don't remember.

Q Was it a warm night? A Yes, sir, a very warm night.

Q Sitting in your shirt sleeves? A Yes, sir, had our coats off, yes, sir.

CROSS EXAMINATION BY MR. MOORE:

Q How old are you? A 24.

Q Your sight is not very good, is it? A No sir.

Q In fact it is very bad? A yes, sir.

Q You have had trouble with your eyes since you were a small boy? A Yes, sir.

Q You could not recognize a person across the street, could you? A No, sir.

Q How long did you say you had known Tanner Smith?
A A little over a year.

Q A little over a year? A yes, sir.

Q Haven't you worked with him for a year and three months? A Yes, sir.

Q Known him before you went to work for him, didn't you? A No, sir, I didn't know him before I went to work for him.

Q You remember testifying at the former trial you had known him two years? A I said about a year and a half, to two years.

Q Is that right? A Yes, sir, around that a year and a

1030
CASE #2846A

half to two years, I am not very sure.

Q Do you remember you said upon the former trial you had known him a year and a half or two years? A Yes, sir.

Q You have shortened that period this time? A Well, I said a year and a half or two years; I am not positive.

Q Here you said to Mr. Brotherton about a year, and to me you said a little over a year? A A year and a half or two years.

Q Why didn't you say that in the first place today? A I am not very sure of it how long I know him.

Q You remember my cross examination as to Tanner Smith upon the other trial? A About ^{year} a and a half or two years.

Q (Repeated) A Yes, sir.

Q Now didn't you shorten the time today to avoid that cross examination this time? A No, sir I --

Q What is that? A No, sir, I ain't shortening nothing; I say I am not positive.

Q You know about two years before Tanner Smith he was shot he was in Sing Sing prison, don't you? (No answer.)

Q Did you know that? A I heard he was in there; I didn't know it.

Q You were also convicted and sent to Sing Sing prison were you not? A Yes, sir.

Q When did you get out of Sing Sing prison? A 1916 or 1917, sometime.

Q Now don't you know that you and Tanner Smith were in

CASE #2846A

Sing Sing together? A No, sir, I never remember meeting him at all.

Q On my cross examination of you upon the former trial you said to me that was where you met him? A Yes, sir; I didn't meet him in prison.

Q You remember my asking you if that wasn't where you first met him? A Yes, sir.

Q You were out of there in 1917, weren't you about? A Around that time, yes, sir.

Q That was about three years before Tanner Smith was killed, wasn't it? A About two years, yes, sir.

Q Well, very soon after you got out of Sing Sing anyhow you and Tanner Smith became fast friends, did you not? A No, sir; I went to work some place else.

Q What is that? A I didn't go near Tanner Smith after I came out; I didn't know Tanner Smith from there: I had nothing to do with Tanner Smith.

Q At the former trial you said you knew him a year and a year and a half or two years? A I said I didn't go with him.

Q You knew him before you went to work with him? A I knew him before I went to work with him about two or three weeks; that is all.

Q Now upon the former trial do you remember the question "How long have you been acquainted with him (referring

to Tanner Smith) A I know Tanner Smith about two years--
a year and a half or two years--

A Yes, sir, that is what I said.

Q You remember making that answer? A Yes, sir.

Q Were you asked this, "How long have you been in their
employ(that is referring to Tanner Smith and Harry McCor-
mack) and you said about a year and three months? A Yes, sir.

Q And then you had known him for some considerable
time before you went to work for him? Didn't you? A No, sir;
not for some considerable time.

Q Is this a mistake? A A year and a half or a year and
three months I worked for him.

Q I know you told us almost directly after you had
known him two years or a year and a half-- hadn't you known
him some several months before you went to work for him?

A Well, I only came out of Sing Sing and I went to work --
that wasn't to work with him-- I knew him from the time I went--
about a year and a half or two years.

Q Did you got to work for him very soon after you came
out of Sing Sing? A No, sir.

Q Did you work for anybody before you worked for him?
A Yes, sir.

Q Who? A I don't remember now.

Q What were you convicted of when you were sent to Sing
Sing? A Assault.

Q With a gun? A Yes, sir.

CASE #2846A

1033

Q Anybody with you? A No, sir.

Q Any other persons convicted in that assault? A There was somebody else convicted, yes, sir.

Q That was a gun fight, wasn't it, you and another man were convicted? A No, sir.

Q An assault? A Yes, sir.

Q The other man have a gun? A No, sir.

Q Was that an assault upon a policeman? A Yes, sir.

Q You shot a policeman? A Yes, sir.

Q He was attempting to arrest you? A Yes, sir.

Q For some crime? A No, sir, I was drunk.

Q Wasn't he arresting you for some crime that you were then committing? A No, sir, I didn't commit no crime; I was just drunk.

Q How old were you then? A I was seventeen or eighteen years old.

Q Where did you get the revolver? A Found it.

Q While you were drunk did you find the revolver? A yes.

Q You were carrying it, weren't you? A No, sir.

Q Weren't you even at that time one of Tanner Smith's gunmen? A No, sir.

MR. BROTHERS: I object to that.

THE COURT: Objection sustained.

Q Long before you knew Tanner Smith you heard he was the leader of the gang of gunmen on the west side? A No, sir.

1034
CASE #2846A

Q You went out and got drunk and were fortunate enough⁷¹ to find a revolver and shoot a policeman? A Yes, sir.

Q You and another man? A Myself.

Q Another man was convicted with you, wasn't he? A Well, I don't know what he done.

Q Don't you know whether you and another man were both jointly charged? A No, sir.

Q You don't know a thing about it? A No, sir, I was drunk.

Q You were sober when you were tried, weren't you?
A Yes, sir.

Q Don't you know whether another man was with you?
A No, sir; he was not tried with me; I didn't know how he was arrested.

Q Was he indicted with you? A Not that I know of.

Q Don't you know whether ~~you~~ was indicted together or he had a separate trial? A No, sir, I didn't know nothing.

Q Do you know who the man was? A I heard it, yes.

Q You know him too, don't you? A Yes, sir.

Q You knew him? A A fellow named Hayes.

Q You knew him, didn't you, before that? A Yes, sir, I knew him.

Q You didn't hear of it afterwards, you knew him before that? A Yes, sir, I knew him yes, sir.

Q Now have you ever been convicted of any other crime?
A Yes, sir.

1035
CASE #2846A

Q What is that? A Fighting.

Q Fighting? A Yes, sir.

Q With what? A With my hands.

Q What did you get for that? A Sixmonths.

Q Where? A Blackwell's Island.

Q You got six months for fighting? A Yes, sir, in the Workhouse.

Q How old were you then? A About sixteen.

Q Wasn't that also another gun case? A No, sir.

Q How many men were in that fight that you speak of now, and you got six months for? A Two of us.

Q Another other convictions? A No, sir.

Q Sure? A Positive.

Q Upon the former trial you were not positive, were you?

Objected to.

A yes, sir.

Q Do you remember me asking you if that was all, and you said that is all that you remember? A Yes, sir; that is all I remember.

Q Do you remember my asking you the question about the time you got six months? (page 72) "Haven't you got a conviction before that and sentence suspended on you.", and did you answer, "Not as I know of, because I haven't no suspended sentence."

Q Is that what you said before? A yes, sir, I said I don't remember reporting to anybody on a suspended sentence.

CASE #2846A

Q Did you make that answer? "Not as I know of"? A Yes, sir; something like that; I wasn't sure.

Q Was that followed with this question, "Do you know whether you are on a suspended sentence? A. I don't know at that time I had a suspended sentence on me". Did you make that answer? A Yes, sir, I said I don't remember having a suspended sentence on me.

Q Did you make that answer that you had a suspended sentence? A Yes, sir.

Q Was that followed by this question, "You ought to know if you did have"? A Yes, sir.

Q "Well in that case you have a parole on a suspended sentence"

A Yes, sir, I didn't have.

Q That is the way you answered before? A Yes, sir.

Q Do you know a man by the name of Eddie Madden? A Yes.

Q Do you know where he is? A No, sir.

Q Do you know where he was at the time Tanner Smith was shot? A No, sir, I do not.

Q Don't you know he was in prison? A No, sir.

Q Were you working at the time Tanner Smith was shot?
A Yes, sir.

Q Were you not in hiding at that time from the police authorities of the City of New York? A No, sir.

Q By reason of some statements that Eddie Madden had made with reference to you? A No, sir.

CASE #2846A

1037

Q Did you know that he had made certain statements with reference to you after he went to Sing Sing? A No, sir, I don't know anything about it.

Q I didn't ask you if you don't know anything-- I asked you if you don't know that he made certain statements? A No, sir.

Q He was sent there for robbing the United Cigar Stores, wasn't he? A I don't know what he was sent there for.

MR. BROTHERS: I object to that as incompetent.

Q Do you know where Eddie Madden lived before he went to prison? A No, sir. I just knew him that's all.

Q You didn't get acquainted with him in prison, did you? A No, sir.

Q Now do you know what he went to prison for? A No.

Objected to. Objection sustained.

Q Now, don't you know -- weren't you in hiding at that time because of certain disclosures Eddie Madden made to the police? A No, sir, I was not in hiding at nobody, working in New York City all the time and going home every night. I was not in hiding.

Q Where did you live in 1918? A 1918?

Q A year before this shooting? A I lived over in the East Side.

Q Whereabouts? A 25th street.

Q And what avenue? A Third avenue.

Q When did you leave the East Side? A I don't remember

1038
CASE #2846A

when I left it.

Q I want you to put your memory to work, when did you leave? A I don't remember.

Q Well, I want you to tell me as near as you can ?

A Well, I am not sure, I don't remember when I left there.

Q You have told me that three or four times, but you remember-- as near as you can remember? A Well, I can't remember.

Q You were there in 1918, was it in 1918 or 1919 that you left there? A I couldn't tell you.

Q Wasn't it in July, 1919 that you left there? A I couldn't tell you when I left there.

Q Can't you tell me anything about it, it is only a year ago, July, 1919? A No, sir.

What

Q Did you live with over there on 26th street on the east side? A With my wife.

Q You lived there with your wife, didn't you? A Yes.

Q Did your wife go with you when you first moved from there? A Yes, sir.

Q What is that? A Yes, sir; my wife was always with me.

Q Now can't you tell whether that was within the last year that you moved, or about a year ago? A No, sir. I could not tell you.

Q Can't you set your mind to work and tell us about that? A No, sir, I don't remember when I moved away from

1039
CASE #2846A

there.

Q I don't want the exact day or the exact week, but I want some time, you must certainly be able to tell something? A Well if I could tell I would tell you, I don't know; I am not sure.

Q From there where did you go to to live, when you left there? A From there I lived over on the west side.

Q Whereabouts? A 13th street.

Q Now don't you know how long you had lived in 13th street, when Tanner Smith was shot? A I lived there about seven or eight months.

Q Now did you live there as long as seven or eight months? A Something like that I am not sure how long.

Q Don't you know it was less than seven or eight weeks? A No, sir.

Q What is that? A No, sir, it was not seven or eight weeks. I think it was longer than that.

Q How long before you moved had you seen Eddie Madden? A How long before I moved there?

Q Before you moved away from 26th street and 3rd avenue? A I don't remember when I seen him last, I seen him on the avenue, I don't know how long ago it is.

Q Now let us get to this shooting as you have described it. Tell us where Smith was when you first saw him? A He was sitting at the table playing cards.

Q When you heard the first shot fired where was Mr Shaw?

CASE #2846A

A Standing right behind Smith.

Q With his arm extended? A Yes, sir, he was just going back like that (illustrating).

Q So that his arm was about how close to Tanner Smith's back? A About that far away (indicating about two feet)

Q Did he fire one shot? A Yes, sir.

Q You say that he had a revolver in his hand? A Yes.

Q And after firing as you say, one shot he backed away? A Yes, sir, he backed towards the 8th avenue side.

Q When he fired the shot did you notice where Lewis was? A He was standing by the door at the side.

Q About how far away? A About from here to there, a little further away (indicating).

Q Further than that wasn't it? A A little further away.

Q Don't you remember upon the other trial testifying it was nearly as far away as the window? A Not that far away, no, sir, from there, from the table to that door there.

Q You say Smith backed up and this defendant walked forward, and shot him? A Smith didn't--

Q I mean Shaw? A Yes, sir; Smith was sitting down.

Q Now, when you say Shaw fired you say that Lewis was some eight or ten feet away? A Behind the table, back of Smith, I don't know how many feet it was.

Q Did you indicate upon the former trial of this case

1041
CASE #2846A

how far he was away? A Yes, sir.

Q Will you it again? A Yes, sir.

MR. BROTHERS: Will you mark that with an X.

A (Witness indicates).

Q When you saw Lewis actually fire the first shot he walked up close to Smith, didn't he? A Yes, sir.

Q You want this jury to understand that Shaw fired one shot? A Yes, sir.

Q Backed away and that this defendant walked that distance from nearly the partition wall to the table and fired the second shot? A Yes, sir.

Q Smith during all that time had not gotten up from the table yet? A No, sir; it was done rapidly.

Q This man had to walk a distance of nine or ten feet in order to get from where you saw him when the shot was fired to the time you saw Lewis fire, didn't he? A It is right very close; it wouldn't take no time to walk a step; only two or three steps.

Q Do you remember this question: "Q. Can you tell me about how far that was from the table where Smith was sitting?

A. About from here to that corner there (indicating) right at the corner of this partition here. " Didn't you point to that corner? A Yes, sir, right here I pointed.

Q That isn't the corner. Do you remember Mr. Brothers saying, "About eight or nine feet? (No answer.)

Q Now isn't it a fact that you said Lewis was standing

1042

CASE #2846A

eight or nine feet away? A I don't know how many feet it was.

Q Did you upon the former trial say, "About from here to that corner" indicating right at the corner of the partition here, right over at that corner? A I was pointing to the corner here.

Q You didn't say to that corner, did you? A No, sir.

Q You didn't say to that corner? A No, sir.

Q Then wasn't it to that corner? A I don't know what corner it was; I don't remember what corner.

Q You realize, of course, that you are here under oath?
A Yes, sir.

Q To give us your best understanding? A Yes, sir.

Q Think a moment and see what you meant when you said he was at that corner? A He was right behind Smith: I couldn't tell you exactly how many feet it was.

Q I don't ask you that. You do remember answering the question as I have stated it, "About from here to that corner". Now which corner did you refer to? A I don't remember which corner.

Q Don't you remember as well what you said under oath to me last January as you do what took place in that room in July last? A I remember what happened, but I don't remember what corner I pointed to; I know about the distance.

Q And Mr. Brothers said, "eight or nine feet" doesn't that refresh your memory. You claimed he was as far away as the corner? A I don't remember saying eight or nine feet.

1043
CASE #2846A

Q Well, he had to walk some considerable distance to put that second shot into Smith? A About two or three steps; that would be about all.

Q Two or three steps? A Yes, sir.

Q You now say that when Lewis fired the shot his hand that held the revolver was within fifteen or twenty feet of Smith's back? A Yes, sir.

BY A JUROR:

Q If I am not mistaken you said that when you left Sing Sing you did not remember where you worked, is that correct? A Yes, sir.

Q What did you mean when you said you did not remember where you worked? A After I came out of Sing Sing I don't remember.

Q You don't remember the name of the firm? A No, sir.

Q What sort of work was that if you don't remember the place, what sort of work was it? A Well, I could not tell you, I think I was sent there from the parole Board; I don't remember.

Q What kind of work did you do when you first came out of Sing Sing prison? A Well, I don't remember now.

Q For whom did you work when you first came out of Sing Sing prison? A I don't remember.

BY THE COURT:

Q Were you engaged in doing any work when you came out

CASE #2846A

of prison? A Yes, sir.

Q You say that you got a job through the parole board at the prison? A Yes, sir.

Q What job did they get you? A I couldn't remember now.

Q Did you have more than one job that they got you?

A Did I hold it?

Q Did you have more than one job that they got you, the parole board? A No, sir, only one.

Q How long did you work at it? A (No answer.)

Q Whereabouts in the city was it? A I couldn't tell you, your Honor, I don't remember now.

Q Did you actually have the job? A They got it for me.

Q How long did you work at it? A I worked there a couple of months; I am not sure now.

Q Where were you working at the time Smith was killed?
A I was working in the moving pictures, that was during the strike and I couldn't work.

Q There was a strike on then? A Yes, sir, I did work and I took a job for about two weeks until the strike was over.

Q What kind of work were you doing in the moving picture place? A Tending to the door.

Q Did you work there that Saturday night? A yes, sir, I worked until the time I left there, and I went to the club.

BY MR. BROTHERS:

Q Can you look up the place, what job it was you had

1045

CASE #2846A

when you first came out of Sing Sing? A Yes, sir.

Q When were you married? A Married four years now.

Q How long is it since you left Sing Sing? A 1917, 1916 or 1917. I was married shortly after I came out of Sing Sing.

Q About how wide was the top of the table upon which you were playing cards? A A big, large round table.

Q Was it larger than the stenographer's table? A Yes.

Q About how much larger? A About that much larger (indicating)

Q Nearly twice as big? A Yes, sir, a big, round table covered with a green cloth.

Q This is the table in this picture? A Yes, sir, a big, round topped table.

Q Now the bench that was along the wall ran all the way up to the door of this room in front? A The bench is here (indicating)

Q Now, Mr. Moore asked you about your eyesight being bad. Did you have any trouble recognizing George Lewis in that room that night? A No, sir. I seen no more than he was in front of me.

Q Do you have any trouble in recognizing him now? A No, sir, I can see him now.

Q Where is he? A Sitting right there next to Mr. Nolan. I admit having bad eyesight, but when a man is on top of me I can see him.

Q Have you any doubt in your mind that you saw George

Lewis there that night shoot at Tanner Smith's?

Objected to.

*A No, sir, I am positively sure I seen him there.

Q Now did you see him before the shots were fired?

A Yes, sir, before..

Q Did you see him after the shots were fired? A No, sir we started to run out; I do not know where he ran to.

MR. BROTHERS: I would like to bring to the attention of the Court that this room in which the table was located is only fifteen feet wide, and in view of the cross examination as to the distance which Lewis walked the room is only fifteen feet wide and that would be cut down by these tables and the bench about four feet wide so there was not much space to walk around.

BY MR. MOORE:

Q How long had you been working as a longshoreman or working on the river front before working in this moving show? A Just the week the strike was on they told me there was no work, and I said I will get work some place else for awhile until it is over.

Q So you went to this other job for the week? A Yes.

Q Was that about at the same time you heard they were looking for you on some pick-ups? A No, sir.

PATRICK J. SLEVIN, a witness called on behalf of the people, being duly sworn, testified as follows:

1047
CASE #2846A