

(The witness states he is attached to the 18th Precinct)

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a member of the Police Department of the City of New York? A Yes, sir.
trailing

Q You have been with the Detective Bureau how long?

A About nine years and a half, sir.

Q Do you know the defendant in this case? A Yes.

Q Did you know the defendant in July of last year?

A No, sir.

Q Do you remember going over to the State of New Jersey in July of last year to see him? A No, sir, that was August first.

Q August first? A Yes, sir.

Q Where in the State of New Jersey did you see him?

A St. Mary's Hospital.

Q In what city? A In Jersey City.

Q You found he had been wounded? A Yes, sir.

Q By a gun shot? A Yes, sir.

Q He remained there, did he not, for some time?

A Yes, sir.

Q Before he came back to New York? A Yes, sir.

Q When was he brought back to the city of New York?

A On September 30th.

Q You brought him in, did you? A Yes, sir.

Q Arraigned him in court upon the charge of having killed Tanner Smith? A Yes, sir.

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Q The charge upon which he is being tried? A Yes, sir.

CROSS EXAMINATION BY MR. MOORE:

Q When was it you brought him here? A September 30th.

Q This year? A yes, sir.

Q On the 31st day of July you heard of his being shot and in the hospital? A No, sir, I didn't hear it until the first day of August, in the morning.

Q Then you lodged what is called a detainer with the people in the hospital, so that he could be removed as soon as he was able to come to this city? A I didn't do that, sir, somebody else did it, some other detective did that.

Q You saw him on the first, did you? A Yes, sir, on August first.

Q At that time he was suffering from a gun shot wound?
A Yes, sir.

Q That gun shot wound was in the small of his back?
A I did not see just where it was; but he told me it was in his back.

MR. BROTHERS: There are one or two things I wanted to look up in connection with Bensen's testimony and have get a record of his work if he can. That will be our case. I can bring that in the morning.

(Mr. Moore opens the case on behalf of the defendant.)

(The Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until tomorrow, Tuesday morning, June 29th, 1920, at 10.30 o'clock.)

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New York, June 29, 1920.

10:30 A. M.

TRIAL RESUMED.

H E N R Y B E N S E N, recalled as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Bensen, after Court adjourned yesterday, did you go to the Parole Board to refresh your recollection? A Yes, sir.

Q As to the places you worked immediately after your discharge from Sing Sing? A Yes, sir.

Q And, having refreshed your recollection, can you tell us the names of the places you worked? A Yes, sir. When I left Sing Sing I worked for the A. Clark Wire Company, in Bayway, New Jersey; the Riley Electrotpe Company, and the American Lithograph, 4th Avenue and 19th Street, New York.

Q And what is your recollection as to the time you worked in those places? A Out in Jersey I worked there two or three months; in the Riley Electrotpe I worked about six or seven months.

BY THE COURT:

Q How do you account for the fact that you had forgotten entirely that you had worked at either of those places? How do you account for the fact, when you were on the stand yesterday, that you were unable to recollect the names of either of the places which you have now referred to? A I found these out last night at the Parole Board.

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BY MR. BROTHERS:

Q Did you go with Office Slevin to the State Parole Board?

A Yes, sir.

Q Where is that located? A 15th Street and Irving Place.

Q And you searched the records there? A Yes, sir.

Q You did not remember the names of these places? A No, sir.

BY THE COURT:

Q What kind of work did you do at the first of those places?

A Out in Bayway I used to work on a wire machine.

Q What was the name of your foreman there? A I don't know.

Q Whereabouts is the other place? A In Bayway.

Q Where is that? A Elizabethport.

Q How long did you work there? A About three or four months.

Q Was that indoor or outdoor work? A Indoor.

Q How long were you out of a job before you got your next place? A About two or three days.

Q And where was your next place? A Riley Electrotape Company.

Q Where is that located? A Fourth and Lafayette Streets, New York City.

Q Who was your foreman there? A A fellow named Mr. Riley.

Q How long did you work at that place? A About six or seven months.

Q What kind of work did you do there? A I was a black leader.

Q What do you mean by that? A Putting black lead on the

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electrotype plates.

Q How much did they pay you? A I was getting \$20 a week.

BY MR. BROTHERS:

Q When you left the first job did you return to the Parole Board? A Yes, I had to go every morning. I had to report when I was out of work.

Q And you reported to the Parole Board for how long a time?

MR. MOORE: I object to that.

THE COURT: I will allow it.

MR. MOORE: Exception.

Q For how long a time did you report to the State Parole Board? A For one year.

Q And when was it that you were discharged from Sing Sing?
A On March 3rd.

Q What year? A 1916.

Q And you continued to report-- A For one year.

Q To the Parole Board? A Yes; and then got absolute discharge.

Q Why did you leave the places where you worked? A There was not enough money for me, and I intended to get married, and I could not get along on that money.

Q How many places were there? A Three places.

Q The last place you left because the salary was not sufficient? A Yes, the first place was too far away. I had to

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be there at eight o'clock in the morning and I had to get a ferry boat and I had to catch a train --

Q Did you have a position each time before you left?

A No, sir; I left the Bayway place, and I went right to another position the second day.

CROSS EXAMINATION BY MR. MOORE:

Q You have told us of two places that you worked. The first one was about three or four months, was it; and the next one was five or six? A Yes, sir.

Q What was the third place you worked? A The American Lithograph.

Q How long did you work there? A About five or six months.

Q Now; let me get that: the first place you say you worked about three or four months? A Yes, sir.

Q How long did you work in the second place? A About five or six months.

Q And how long did you work in the third place? A About the same time; five or six months.

Q So that in the three places you worked for about a year? A Yes, sir.

Q Where did you work after that? A O. J. Banchi, Roller Manufacturers.

Q Where was that place? A Pearl Street.

Q You didn't think of that yesterday? A No, sir.

Q It did not refresh your recollection as to that by anything that you found in the Parole Board, did it? A I had to

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go to the Parole Board--

Q No, but you were discharged then, were you not? A Yes, sir.

Q So, you didn't get that from the parole Board, did you?

A No, sir; I got the first job.

Q How long did you work for O. J. Banchi & Company? A A couple of months.

Q Where did you work after that-- let me see that paper, if you please. A (Witness hands paper to counsel.)

Q Where did you work after that? A After that I think I went working over on the docks.

Q You think you went working over on the docks? A Yes, sir.

Q Then, that was early in 1918 when you went to work on the docks? A 1918, around that time; yes, sir.

Q When you went to work on the docks, who did you work for? A Tanner Smith.

Q So you worked for Tanner Smith about a year and a half? A Yes sir.

Q You left Sing Sing something over four years ago? A Yes, sir.

Q Now, do you say that you didn't see Tanner Smith up in Sing Sing? A No, sir; I did not.

Q You knew he was there, didn't you? A No, sir; I did not.

Q Have you refreshed your recollection as to when you moved from the East to the West Side since yesterday? A No, sir; I didn't find that out.

Q You can't think anything more about that than you did before? A No, I don't remember when I left there.

Q Have you moved since that time that you moved from the East Side to the West Side? A I moved from the West Side. I got married--

Q What? A Yes, sir. I moved again.

Q When? A About a year ago.

THE PEOPLE REST.

THE DEFENSE.

JAMES MORRISSEY, duly called and sworn as a witness on behalf of the defendant, testified as follows:

(The witness stated that he resided at 810 Washington Street, New York City.)

DIRECT EXAMINATION BY MR. MOORE:

Q Mr. Morrissey, where do you live? A 810 Washington Street.

Q How old are you? A Twenty-two.

Q What is your occupation? A Chauffeur.

Q Do you know where the Marginal Club is on 15th Street?

A Yes, sir.

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

Q Rubber Shore? A Yes, sir.

Q And this defendant Lewis? A Yes, sir.

Q Were you in the Marginal Club the night Tanner Smith was shot? A Yes, sir.

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Q Who else was there? A In the game? The card game?

Q What is that? A Do you mean in the card game?

Q Yes. A Myself, Tommy Smith, Curran, Redmond, McMahon, Nolan and Bensen.

Q And Redmond? A Yes, sir.

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

Q Did you at my request try to locate Redmond for me?

A All right, sir.

Q And even before the other trial, did you not? A No, sir.

Q Now, tell us just what you saw the night of the shooting?

A We were playing a game of cards, and in comes Rubber Shore, and he seemed to be half drunk, and he walked around the table, and he said he was going to a party, and he was standing behind Tommy Smith, and he stood behind Tommy Smith for a few minutes, and I heard a couple of shots, and I seen Rubber Shore get up and run, and Tommy Smith trying to get up after him, with his hand in his back, with his hand in his pocket.

Q Did you see this defendant there at that time? A No, sir.

Q Now, will you tell the jury how rapidly these two shots that you say you heard fired, were fired? A Shall I clap my hands?

Q Yes. A (The witness claps his hands.)

Q Where were you sitting at the table at the time? A I was sitting at the east side of the table, at the end of the table.

Q Who was sitting next to you? A I think it was McMahon; I don't remember now.

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Q Where was Smith sitting with reference to you? A Smith was sitting right where that juror is there, away from me.

Q So that you were almost facing Smith? A Yes, sir; I was around the table.

Q And when you first saw Shore, where was he? A When I first saw him?

Q I mean, after the shots were fired? A He was right running away from Smith, just starting to run.

Q And when you first saw him he was back of Smith? A Yes.

Q Do you know Curry? A Which Curry? There was two Curries.

Q One was Curran, wasn't it? A There was two Currans, too.

Q The Curran you mention as being in the game is Wesley Curran, isn't it? A Yes.

Q What was Wesley's condition at that time? A He was paralyzed drunk.

Q Were you examined by anybody in the District Attorney's Office shortly after this crime was committed? A Yes, sir; on August 25th, by Mr. Joyce.

Q And were you put under bonds as a witness at that time?
A No, sir; I was just held for two days. I was turned out then.

CROSS EXAMINATION BY MR. BROTHERS:

Q Have you told us all that you have seen? A Yes, sir.

Q Sure? A Positively.

Q You have not told us anything about riding in the automobile with Lewis? A That didn't happen in the Club. He asked me what I seen in the Club.

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Q Well, you were riding with Lewis in an automobile that night, were you not? A yes, sir.

Q Who else was in the automobile? A Rubber Shore, Lewis, Tommy Curran, Lefty Curran and Leslie Curran, and a big fellow named Birmingham, and some other fellow and myself.

Q Where did you join the party in the automobile? A 16th Street and Eighth Avenue.

Q About what hour? A About eight or half past eight.

Q And what time did you leave the automobile? A About half past nine.

Q Did you leave before the accident to the car? A Yes, sir.

Q Where did you go? A Right up in the Club.

Q And you joined in the game, did you? A Yes, sir.

Q Lewis was perfectly sober, wasn't he? A Yes, sir.

Q You knew Lewis as a chum and friend of Rubber Shore, didn't you? A Yes, sir.

Q If you usually saw one, you usually saw the other, didn't you?

MR. MOORE: I object to what he usually saw.

THE COURT: Objection sustained.

Q Didn't you usually see them together?

MR. MOORE: I object to it.

THE COURT: Objection sustained.

Q Did you ever see them together? A Yes, I used to see them together. I used to see them together just the same as you see anybody else together.

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Q They were very good friends? A Yes, sir.

Q You knew they lived together, didn't you? A No, sir.

Q Well, Lewis was sober that night, you say? A Yes, sir.

Q How long had you been playing cards when you saw Rubber Shore in the Club? A How long was I playing cards? I was playing cards about two hours, I guess, when he came in.

Q About what hour did you see Shore in the Club? A I guess about 20 minutes after 11.

Q He didn't come in alone, did he? A I didn't see anybody coming in along with him.

Q You did not? A No, sir.

Q Through what door did Rubber enter? A Throught the door right at the head of the stairs. It is the only door they ever use.

Q Didn't he come in with some people? A No, sie; he come in by himself.

Q Didn't you hear him talking? A No, sir.

Q Do you remember saying you talked with Mr. Joyce about this in August 1919? A Yes, sir.

Q Do you remember saying in answer to this question, as I will read:

"Q How long after you got up in the Club was it these fellows came up there? A An hour or two; about 20 minutes after 11. "

A I didn,t say fellows. I might have misunderstood.

"Q When they came in who let them in the door? A I didn't

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pay much attention." Do you remember that? A I don't remember; it is so long ago.

Q What? A He may have asked me. I guess he did, when I was down there.

Q And he said, "How many about? A I could not say. I would figure it would be the same as went away." Do you remember that? A No, sir.

Q Then he asked you, "You mean, as they came into the club room, you could hear them talking? A Yes." A The only one I heard in any talking was Rubber Shore.

Q Do you remember saying as I read, "You mean, as they came into the club room, you could hear them talking? A Yes."

A I don't remember that. I was all excited when I was in the man's office anyway.

Q "Q Were they fooling? A Yes. Rubber was talking about the party upstairs." A I think he meant the players fooling.

BY THE COURT:

Q Now, your attention is directed to some questions which are said to have been put to you, and to some answers which it is said that you made, and you are asked whether you remember being asked those questions and whether you remember making those answers? A No, sir; I don't remember them.

Q I will read that last one again. "Q Were they fooling? A Yes. Rubber was talking about the party upstairs." A I don't remember that.

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Q Well, was he talking about the party upstairs? A Yes, sir. When he came in, he said, "I am going to go to a party upstairs. Who is going up?"

Q To whom did he say that? A To us, at the table.

Q Did you look up? A I looked up and I seen him drunk. He kept walking around.

Q Did he stand near the piano? A No, sir; he didn't stand near the piano.

Q Where was he when you saw him? A Standing behind Tommy Smith.

Q Was he standing behind Tommy Smith? A From the time he came in the club he was standing behind Tommy Smith.

Q Which side of the table did he go around? A He come around this way (indicating).

Q Now, he passed around the south side of the table, did he?
A Yes, he passed in back of me.

Q The piano is on the south side of that room, isn't it?
A The piano is right over where the door is here.

Q The piano is in the south corner of that room, isn't it? A Yes.

Q And that is where he walked, is it not? A No, sir; he walked around behind Smith and passed around that way; yes, sir.

Q He passed between the table and the piano? A Yes.

Q Bensen was playing cards there, wasn't he? A Yes.

Q He was playing there that night? A Yes.

Q You saw him? A Yes.

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Q Now, you didn't see anybody do any shooting, did you?

A No, sir; I was looking at my cards, and I heard the shots, and I saw Shore run.

Q Will you come down here and place a mark where you sat. This is the front room (indicating on People's Exhibit 2). You remember that from the last time you were here. And this circle is the table. If you will put your initial outside of the circle, a "M", to indicate where you sat. This is the back, and this is Eighth Avenue; this is uptown and this is downtown. Do you understand that? A Yes. (The witness so marks.)

Q Were you facing the windows on Eighth Avenue? A Yes.

Q Now, as you sat there, you could look right across the table and see Smith there, could you not? A Yes.

Q You were as you and I are almost? A Yes, sir.

Q Just a small card table between? A Yes, sir.

Q And you heard a shot, did you? A I heard a couple of shots.

Q Did you hear a shot? A Not a shot; a couple of them.

Q Well, you did hear the first one, didn't you. You had to hear the first one, didn't you? A They were so fast.

Q They didn't go quite so fast as that, did they? A Yes, they went rapidly like that (demonstrating).

Q Are you trying to have them go fast? Has somebody suggested to you that they ought to go fast? A No, sir.

Q Let us see how fast they went? A (Witness claps his hands.)

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Q Three inside of a second; is that it? A Three or two; I don't remember.

Q Do you believe any man could pull a trigger of a pistol as rapidly as that? A I don't know, sir. I never had a gun in my hand.

Q When you looked up-- you looked up, didn't you? A Yes, I looked up. I pushed my chair back.

Q When you looked up, please tell us what you saw there?
A As we looked up, I jumped up from the table. I seen Rubber Shore run, and I seen Smith right behind him, and I fell on the floor and I lay there. I didn't offer to get up. I didn't know whether it was all over or not, so I laid there, and when I thought it was all over I got up.

Q Well then, the only thing you saw of all this occurrence was Rubber Shore running and Smith trying to pull a gun out of his pocket? A Yes.

Q That was all you saw? A Yes, sir.

Q Didn't you have any opportunity to see anything more?

A No, sir; we were all engaged playing cards and nobody expected any trouble.

Q You would not be able to tell us whether Lewis was there?

A I didn't see him. ^{If} He came in, I am sure I would see him. If he walked in the front room he would have passed me.

Q He would have passed you? A Yes.

Q And you were busy playing cards? A Yes, sir.

Q And you had cards in your hands? A Yes, sir.

Q Did you hear anybody speak besides Shore, saying, "I am going to a party"? A No, sir.

Q How did you know that Smith was trying to pull a gun?

A I always knew that he had a gun in his pocket. He had a permit for a gun.

Q Will you show the jury what he did that made you think he was drawing a gun? A He bent like this; he was bent over, and he had one hand like this (demonstrating).

Q At that moment, as he was getting up that way, where was Shore? A Shore was a couple of steps away from him, starting to run like.

Q Was he behind him, or towards the window? A No, running toward the stairs.

Q He had to get out in the back room to get to the stairs? A Yes.

Q Was he as far back in the room as you were? A No, sir; just a few steps.

Q Well, the table was not any bigger perhaps than this chair down here, was it? A No, sir; it was only a step or two.

Q And Smith was sitting here, and you were sitting about over there, about four feet away (indicating)? A Yes.

Q So you could not help seeing what was happening, could you? A No, sir.

Q Any more than you could help seeing men looking right at me? A No, sir.

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Q Can you tell us anything more? A We were engaged in a game a cards. Nobody expected trouble, and everybody got excited, and they wanted to get under cover.

Q You were excited, were you? A Yes, sir.

Q How old are you? A Twenty-two.

Q Where do you live? A Washington Street.

Q Where did you live before that? A 825 Washington Street.

Q Did you go to school? A Yes, sir.

Q What school? A P.S. 11.

Q What work did you do? A I was doing longshore work at that time.

Q What do you do now? A Chauffeur.

Q And these men that were in this room were negaged in long-shore work? A Yes, sir.

Q They were all/^{young,}strong, healthy, muscular, hard working men?

A Yes, sir.

BY THE COURT:

Q What men were there in the room, if any, that were/^{not}playing cards? I mean to say, before Shore came in? A There was nobody.

Q Was there anybody sitting in the windows of the Eighth Avenue windows? A Along before the crime there was a fellow named Bensen, but he went out about 11 o'clock.

Q At the time the shots were fired, were all the persons who were in the room with the exception of the man who fired the shot, sitting at the card table? A Yes, sir.

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Q Which one of those men were seated on your right? A I think it was Maher; I ain't sure.

Q Which one of those men was seated on your left? A I think it was McMahon. I ain't sure about that neither.

Q Who, if you know, was seated on the other side, next to McMahon? A Bensen, I think.

Q And who, if you know, was seated on that last named man's other side? A I think it was McMahon was on his other side. I think Nolan was on my left side.-- McMahon-- and then came Tommy Smith, as you go around the table, and then Nolan.

Q Suppose you start and tell us, talking so that the jury can hear you, how the men were seated at the table, at the moment when you heard the first shot? A In rotation, as you go around?

Q Start with your right hand side, and go right around the table? A There was Maher, Redmond, Curran, Tommy Smith, McMahon, Bensen, Nolan and myself, I think. I am not sure about it.

BY MR. BROTHERS:

Q Now, of all these men in that club room, who you say were men who worked with their hands, did you see any one attempt to grab Shore? A No, sir; not that I seen.

Q Did you make any effort to stop him? A No, sir. How could I stop him. Suppose he had a gun in his hand, wouldn't he shoot me as well as any one else if I went near him?

Q I asked you if you made any effort to stop him? A No, sir.

Q You knew Tanner Smith very well, didn't you? A Yes, sir.

Q You had known him for a great many years, hadn't you?

A Yes, sir.

Q You were very friendly with him? A Yes, sir.

Q He had a great many friends in that club, didn't he?

A Yes, sir.

Q Did Shore stand behind Tanner Smith's chair and watch the game for awhile? A Yes, sir.

Q You saw that? A I looked up once to see what he was doing and I saw he was drunk. I saw him looking at the card game.

Q And you also observed him drunk? A When he came in I seen that.

Q Wasn't there anything else that you noticed? A No; that is all I noticed.

Q When you had left Shore on the street, some time before, you left him with Lewis, didn't you? A I left him, Lewis, Birmingham, Leslie Curran and some other man together.

Q What did you do when you finally go up on your feet? A I walked over to Tommy Smith, and I looked at him and I said, "Tommy, Tommy!" and he didn't answer me, and I grabbed my hat and coat and walked out of the club.

Q Where was it? A It was laying on the floor.

Q You took your hat and coat and went out of the club? A Yes.

Q Did you see Bensen when you went out? A I think I seen him. I ain't sure.

Q You so testified on the last trial he was in the room with

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Smith? A I think so. I think he came out behind a partition.

Q This partition (indicating on photograph). That is where he was wasn't it? A (No answer.)

Q You didn't do anything for Smith, did you? A No, sir. What could I do.

Q You didn't turn him over to see if he was wounded? A I seen he was wounded. He was lying on his stomach.

Q Did you go for any assistance?

MR. MOORE: I object to that.

THE COURT: I will allow it.

MR. MOORE: Exception.

A I went down to get an ambulance, and as I come out of the club, there was a big crowd there, and I figured that if a cop come after the shooting, he would start shooting at me, too. All the people were looking after me as I walked along from the club, and I walked into a saloon to get my raincoat, and I bought a drink, and I waited until the attention of the people was away from me.

Q You knew most of the people in this crowd? A No, I didn't know who they were.

Q You were not afraid of a crowd of people on Eighth Avenue, were you? A If I started to run around awhile, they might think it was me that done it.

Q Wouldn't you have had to wait there to tell him what you had seen--

MR. MOORE: I object to the question as calling for a conclusion.

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Q Did you wait? A No, sir; I did not wait but I ran down, and as I ran into a drug store, the ambulance turned the corner.

Q Did you return-- or did you tell the police what you had seen? A No, sir.

Q Did you give any information to any one that night? A No, sir.

Q Do you remember that while you were riding in the automobile you went over-- that the party drove over to Second Avenue and First Street? A Second Avenue, and I don't know what street it was.

Q And stopped in front of a restaurant? A Yes, sir.

Q Do you remember Rubber Shore getting out and looking through the front window of a restaurant? A Yes.

Q And then coming back and getting in the car and driving away? A Yes, he said drive back to the West Side.

Q Did he tell you for whom he was looking? A No, sir; when we left Flannery's with him, he said he was going to a party.

Q Didn't you know that Rubber Shore was looking for Tanner Smith that night? A No, sir. Tanner Smith never went over to the East Side that I know of. If he was looking for him, he was in a saloon earlier that night drinking.

Q You knew Tom Smith's habits, did you? A Yes; I knew him well. He was early in the night drinking with me.

Q Where? A In Flannery's.

Q He went out of Flannery's? A Yes, he went home. He had the pay box(?).

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Q Did Shore tell you for whom he was looking over on Second Avenue? A No, sir; he didn't say a word.

Q Did he tell you he was looking for Billy Lustig? A No, sir.

Q The windows of this club were open, were they not? A Yes, sir.

Q Now, when you first looked up, after hearing the pistol explode, do you say that Rubber Shore was then running? A He had like started. He had traveled a step or two.

Q When you last saw him, he was standing directly behind the chair in which Smith was sitting? A Yes, sir.

Q And when you were looking--

MR. MOORE: I object to all this. I ^{think} there is a misunderstanding here.

THE COURT: I cannot allow you to interrupt Mr. Brothers now.

MR. MOORE: Then, I object to this, that the question is not clear as to what he meant by that.

THE COURT: Mr. Brothers, will you kindly proceed.

Q Now, the last time that you saw Rubber Shore, before the shots were fired, was he standing directly behind the chair in which Smith sat? A Yes.

Q And the next time you got sight of him he was running, wasn't he? A He was a foot or two away, yes, sir.

Q Toward the back of this room? A Yes, sir.

Q At that moment he was not behind Smith? A No, sir; there was nobody behind him. They were all pushing away.

Q Do you want us to understand that three shots were fired

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before you raised your eyes? A There were three shots. We had to push away.

Q We don't care about pushing away. We want to know what you saw? A Yes, sir.

Q Please answer only for yourself. Do you want us to understand that two or three pistol shots were fired before you raised your eyes and looked in front of you? A Yes, sir. They were so rapid.

Q Now, which was it? Was it two or was it three? A I am not quite sure. I was all excited.

Q You weren't excited when you heard the shots, were you? A Not when I first heard them. I didn't know whether I was going to get hit or not.

Q All you did do was to raise your eyes? A That didn't come to my head so quick. I wanted to get away from the table and get out.

Q Did you know the shots were being fired right there at the table? A Sure. It was distinct.

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Q Did you hear any more shooting than what you have told the jury about? A Tom Smith ran out in the hall, and I heard a couple of shots then.

Q Where were you at that moment? A Laying down on the floor.

Q Under the table? A Right alongside of the table; not quite under it.

Q Was there any other person under the table with you?
A No, sir.

Q You were the only person hiding under the table? A Yes, sir.

Q And when you got up from under the table, you saw Smith on the floor? A Yes. With his gun in his hand.

Q What is that? A With his gun in his hand. He had his gun with him.

Q And Bensen came from behind the partition? A Yes, sir.

Q You went out and got yourself a drink? A I went out to get my rain coat.

Q At that critical moment, why did you think of your rain coat? A I didn't know what what to think. I didn't realize what happened.

Q You realized that your friend Tanner Smith was probably dying on the floor? A I didn't know what to realize. It was the first time in my life I was ever in anything like that.

Q Don't you think that you ought to have helped him or have gone for a policeman-- A I didn't know what it was. I had to look for my own safety, didn't I?

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Q Were you afraid of anybody that night? A I was afraid if the people started to run after me.

Q You didn't do anything wrong, did you? A No.

Q You didn't know somebody was going to be killed that night, did you? A No, sir; if I did I wouldn't be there.

Q You were thinking of your own safety, were you not?

A Yes, sir.

Q Have you been thinking of your own safety since that night?

A Any time I am in trouble I look out for myself.

Q Are you thinking of your own safety today? A Yes, sir.

Q Is that why you won't tell us all that you saw there?

MR. MOORE: I object to that.

THE COURT: Objection sustained.

Q When you caught first sight of Shore, after you heard the shots, he was a foot or two away from Smith, running, wasn't he?

A Yes.

Q Towards the door? A Yes.

Q Is that correct? A Yes.

BY THE COURT:

Q Did he have anything on his head? A I didn't notice, your Honor, what he had. I didn't pay particular attention.

Q Did you hear Bensen say, as you were looking at Smith, "We had better get an ambulance"? A Yes, sir.

Q It was Bensen said that? A Yes, sir.

Q But you didn't get on e, did you? A I went down---I was afraid of the crowd that was around there. I was afraid they

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would all run after me.

BY THE COURT:

Q Who are you working for now? A Working for the Federal Taxi Company.

BY MR. BROTHERS:

Q Federal Taxi Company? A Yes.

Q Where is their place? A 47th Street and Seventh Avenue.

Q How long have you been working for them? A About two months; since I left the docks.

Q Were you the last person to leave the club room except Smith and Bensen? A Yes, sir.

Q Everybody else had gotten out? A Yes, sir.

Q Did you go downstairs on a run or on a walk? A On a walk.

Q How long did you stay out there in the neighborhood?

A I waited till the ambulance came, and I see the ambulance go away without Tom Smith.

Q Without him? A Yes.

Q You knew he was dead then? A Yes, sir.

Q Did you go back then to see the police or any of the people there? Did you go around to Smith's house? A I did go around to Smith's house the next morning.

Q Who did you see there? A No, it was the next night, --- his mother and his sister and his brother.

Q You saw Smith running out of the club room after Shore, didn't you? A Yes, sir.

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Q There was an awning, wasn't there, over the windows of the store, under the club? A Yes, sir.

Q Did you see anybody go out of that club and off on to that awning and go to the sidewalk? A No, sir.

Q If you went out of the window and got out on to the awning, you would land on the sidewalk, wouldn't you? A If the awning was down you would, if it was up, you wouldn't.

Q Did you notice the expression on Shore's face while he was running, after the shooting? A Yes, he looked as if he was mad.

Q He didn't look so drunk, then? A I don't know whether he looked drunk.

Q Do you know if there was any trouble between Shore and Smith? A Not so far as I know. They were always the best of friends.

Q You never heard of any trouble? A No, sir.

RE-DIRECT EXAMINATION BY MR. MOORE:

Q Now, you were subpoenaed down to the District Attorney's office in an investigation into this case, were you not? A Yes, sir.

Q And you were locked up for a time after you came there?
A Yes, sir.

Q How long? A I was arrested on a Monday morning, and let out on Tuesday afternoon.

EDWARD NOLAN, duly called and sworn as a witness on behalf of the defendant, testified as follows:

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(The witness stated that he resided at 354 West 18th Street, NewYork City.)

DIRECT EXAMINATION BY MR. MOORE:

Q How old are you? A 22.

Q Where do you live? A 354 West 18th Street.

Q How long have you lived there? A About two years.

Q Do you know Tanner Smith, or did you know him in his life time? A Yes, sir.

Q Do you know Rubber Shore? A Just to say Hello. I didn't know him very intimately.

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

Q How long have you known him? A A few months, I guess, previous to this happening.

Q Do you know where the Marginal Club is? A Yes, sir.

Q Were you there the night Tanner Smith was shot? A Yes, sir.

Q What other persons were there at the time? A McMahon, Redmond, Bensen, Morrissey, Maher, Curran---

Q What was Curran's condition as to sobriety? A Who? Curran?

Q Curran. A Curran was very drunk.

Q You were there at the time of the shooting, were you not? A Yes, sir.

Q Tell us what you saw at that time? A A few minutes before the shooting, some one come in. I noticed Shore walk around the table. A few shots rang out, and I looked up, and I seen Shore pull two or three or maybe four shots at Smith, and

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Smith backed up toward the little room, and put his hand in his back pocket, and took out his gun, and fired, I think it was, one shot, and then went out in the hall, and then several more shots were fired.

Q Did you see Lewis there at the time the shots were fired?

A No, sir.

Q Did you observe where Shore was at the time he was firing these several shots that you have mentioned? A A few feet behind Smith.

BY THE COURT:

Q Where were you at the time the shots were fired? A Sitting at the table, playing cards.

BY MR. MOORE:

Q On what side of the table? A On the north side of the table.

Q On the north side of the table? A On the north side of the table.

Q Will you indicate on here just where you were? A (Witness indicates on People's Exhibit 3).

Q Were you facing towards the piano, or was your back to the piano? A Back to the piano.

Q So that you were on the south side? A The south side.

Q Almost facing Smith? A Almost facing.

Q And when you heard the shots fired, you looked up and saw Shore immediately back of Smith? A Yes.

Q How rapidly were the shots fired, can you tell us?

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A Pretty fast in succession.

Q Can you indicate it in some way, by snapping your fingers? A (The witness indicates by snapping his fingers.)

BY THE COURT:

Q Who was seated on your right next to you as you sat at the table? A I don't just remember who was sitting on the right.

Q Who was seated at your left next to you at the table? A I think it was Curran.

Q And who was at Curran's left, next to him? A I could not say. I don't just remember that.

Q Can you tell us how they were seated around the table? A I can't tell you how everyone was sitting. I don't just remember how they were all sitting. I could not say just what places.

BY MR. MOORE:

Q Were you subpoenaed to the District Attorney's office to make a statement in this case? A Subpoenaed to the District Attorney's office?

Q Yes; did you come to the District Attorney's office? A Yes, I went to the District Attorney's office.

Q How soon after the shooting? A A few days after the case.

Q And what Assistants, if you know, did you talk with? A Mr. Joyce.

Q At that time, were you placed under arrest as a material witness? A Yes, sir.

Q And held in what bail? A \$25,000.

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Q And how long were you locked up? A Almost three months.

Q Then was your bail reduced? A Bail was reduced to \$2500 after three months.

Q And are you still under bail? A Yes.

CROSS-EXAMINATION BY MR. BROTHERS:

Q Mr. Nolan, at the time you spoke to Mr. Joyce, do you recall telling him that you didn't see the shooting at all? A Yes.

Q You gave him no information? A No, sir.

Q Although now you say that you did see Rubber Shore fire three or four shots? A Yes, sir.

Q What was your purpose in telling Mr. Joyce that you did not see the shooting? A Well, I thought I would not be mixed up in the case, and that he would turn me out.

Q You knew that Mr. Joyce was a public official, trying to find out who committed this crime, didn't you? A Yes.

Q You have never been convicted, have you? A No, sir.

Q You knew Tanner Smith very well? A Yes, sir.

Q You might say he was a friend of yours, wasn't he? A Yes.

Q Was Rubber Shore a friend of yours? A Just an acquaintance.

Q Smith was a real friend, was he? A He was a pretty good friend.

Q Did you ever work for him? A Yes.

Q He secured employment for you, didn't he? A Yes.

Q Were you working for him at the time of his death?

A Yes, sir.

Q Still, notwithstanding that your friend was killed right

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before your eyes, you would not tell Mr. Joyce who did it, is that it? A Yes, sir.

Q Well, are you sure that you saw the shooting? A Yes, sir.

Q You are now telling the truth, are you? A Yes.

Q You know that Rubber Shore is dead and buried, don't you?

A Yes, sir.

Q You say Shore and Lewis came into the club earlier in the evening, don't you? A Yes, sir.

Q About what hour? A Between seven-thirty and eight o'clock.

Q How long did they remain there at that time? A Only a few minutes.

Q And during that time, Tanner Smith was not in the club, was he? A No, sir.

Q Rubber Shore did not enter the club a few moments before the shooting, alone, did he? A I think somebody was with him.

Q Do you remember testifying upon the last trial just before the shooting, two or three fellows came in, one of whom was Rubber Shore? A Yes, sir.

Q And that the shooting occurred only a few minutes after they entered? A Yes.

Q Can you say what sort of a gun this man Shore was shooting with? A I could not say.

Q Did you see the gun? A I seen the gun.

Q Was it a bright shining gun, or was it a black gun?

A I could not tell you that.

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Q You could not say as to that? A No, sir.

Q Did you state on the other trial,--page 216---"While we were playing cards, sitting down playing cards, a few fellows came in---I didn't notice who they were. During that time I noticed Shore walk around the table. He pulled a gun and fired three or four shots." That is correct, is it? A Yes.

Q Now, are you prepared to say that George Lewis, this defendant, was not one of those two or three fellows that came in?

A I didn't see him there.

Q Are you prepared to say that George Lewis, this defendant, was not one of those two or three fellows who came in at that moment? A I don't think I could say that.

Q You could not say that? A No, sir.

Q Did you speak to Shore and Lewis when they came in there between seven and eight o'clock? A No, sir; I did not.

Q You did not speak to them then? A No, sir.

Q Do you know Lewis? A Yes, sir.

Q How long have you known him? A Only a few months, by acquaintance; just to say hello to him.

Q Where did you live at that time? A 354 West 18th Street.

Q And how old are you? A Twenty-two.

Q These several fellows who came in, came in a very few minutes before the first shot; isn't that right? A Yes, sir.

Q Now, what did you do when you saw this shooting? A I waited for Smith to go out, and after he went to the hall and came back again, I took my hat and coat and went out.

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Q Where did you have your hat and coat? A I know my coat was on the chair. I am not sure whether my hat was on my head or not.

Q You had it on the back of a chair, you say? A I think so.

Q There was not very much space between the back of your chair and the piano, was there? A No, sir.

Q It was very close to it? A Yes, pretty close.

Q Did you see anybody under the table at the time Smith was running out? A No, sir.

Q Was there anyone under the table? A That I could not say.

Q Did you see anybody get up from under the table and go out?
A No, sir.

Q At any time? A No, sir.

Q Did you leave anybody in that front room behind you when you went out? A Yes.

Q Who was it? A There was a few behind me; I don't know just who they were.

Q There were several there? A Several of them.

Q Where was Mr. Smith as you went out of the club? A He was going toward the window.

Q Toward the front? A Yes.

Q Did you pass him? A He passed this side of the table, and I passed that side, going out (indicating).

Q You mean to say, Smith went out, and there was some shooting in the hall, and Smith went into the front room? A Walked back.

Q And went up to the front? A Yes.

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Q When you last saw him was he lying down or--- A He was staggering through the room.

Q To the front? A Yes.

Q Did you speak to him? A No, sir.

Q Did you realize he was wounded? A I didn't realize whether he was wounded. He had his gun in his hand. He was all excited.

Q At any rate, you didn't do anything about it? A No, sir.

Q You went right out and went on your way? A Yes.

Q You didn't say a word to anybody on the street, did you?
A No, sir.

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

Q When you got upon the street, where did you go? A I went to the restaurant.

Q Where is that? A Across the street.

Q And there you secured a cup of coffee? A Yes.

Q You didn't go for any help for your friend and employer, Smith, did you? A No, sir.

Q You didn't offer any information to the police when they came there? A No, sir.

Q Why didn't you?

MR. MOORE: I object to it.

THE COURT: Objection sustained.

Q Now, you remember this case was tried last January, do you? A Yes.

Q Do you remember testifying upon the trial, that until the Friday before you took the stand, you had never given any information

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that you had seen Rubber Shore do this shooting? A No, sir.

Q Isn't that what you testified to? Am I correct in that?

A What was the last question?

Q Did you tell us at the last trial, last January, that you had never told any person that you had seen Rubber Shore shoot Smith until the Friday before you took the witness stand? A Until the trial?

Q Which was last January. A Yes.

Q So that you kept to yourself that you had seen Rubber Shore shoot Smith, from the night of the shooting until the middle of last January? A Yes.

Q Or thereabouts? A Yes.

RE-DIRECT EXAMINATION BY MR. MOORE:

Q That Friday night you saw me, did you not? A Yes, sir.

Q I told you you ought to tell the truth about this thing, didn't I? A Yes, sir.

Q And you volunteered then to come to court and tell what you saw? A Yes, sir.

BY THE COURT:

Q Where are you working now? A Borden's Milk Products Company.

Q What kind of work do you do? A Driving a wagon.

T H O M A S C U R R A N, duly called and sworn as a witness on behalf of the defendant, testified as follows:

(The witness stated that he resided at 3 Madison Street,

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New York City.)

DIRECT EXAMINATION BY MR. MOORE:

Q What is your occupation, Curran? A Longshoreman.

Q What were you doing in July, '19? ^{work} What /were you doing in July, 1919? A Working longshore.

Q How old are you? A 34.

Q Did you know Tanner Smith in his life time? A What was that question, please?

Q Did you know Tanner Smith in his life time? A Yes, sir.

Q Also Rubber Shore? A Yes, sir.

Q And this defendant Lewis? A No, sir.

Q Do you know where the Marginal Club was? A Yes.

Q Were you present at the club at the night that Smith was shot? A Yes, sir.

Q What were you doing? A I was playing cards.

Q And with whom were you playing? A I was playing cards with other members of the club.

Q What were their names? A Frank Maher, James Miller, Benjamin Bensen, Thomas Smith, Edward McMahon, Edward Nolan, James Redmond, and myself.

Q Do you know where James Remond is now? A No, sir; I do not.

Q On which side of the room were you sitting? A I was sitting on the left side of the room, on the down town side, nearest to Eighth Avenue.

Q Can you show the jury just where you were on this plan (People's Exhibit 3)? A (Witness indicates on plan.)

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Q Will you mark that with a C-1?

(The witness so marks.)

Q Where was Smith sitting? A The righthand side of me.

Q Will you mark that also? (The witness marks S-2.)

Q He was sitting next to you? A The righthand side of me, yes, sir.

Q Now, tell us what you saw at the time and heard at the time the shots were fired. A Well, we were playing cards, a game they call black jack---something similar to seven and a half, and at the time we were pretty interested in the game.

Q Pardon me. You said black jack. Is it also known as twenty-one? A Yes, sir.

Q Go ahead. A And Smith and I at the time were showing each other our cards, and deciding among the two of us whether we would draw or whether we would stand, and it was at that time, noticing one another's cards, that the shots were fired.

Q How many shots did you hear fired? A That I don't know. They were rapid shots. There might have been two, or there might have been three.

Q How rapid were they? Can you indicate to the jury by clapping your hands? A Well, I don't know. They seemed pretty fast at the time.

Q Well, will you indicate how rapid they were? A They could not have been fast enough for that (clapping his hands).

Q Go ahead, what next did you notice after that? A I felt myself hit, and I jumped up on the table. I seen all the other

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players running pell mell toward the door, and I ran toward the mantelpiece, and from the mantelpiece to a closet, and from the closet to a little room off to the rear, to the back. I stood there holding my wrist, which was bleeding pretty freely, and when I came out of the room, all the players were gone, and I was the only one in the room, besides Smith, and he was laying on the floor, in a position north and south of the club, being the club runs east and west, and then I went out into the back way, with McMahon and Curran, through the windows, into a house, into 16th Street, and walked around to St. Vincent's, Seventh Avenue and 11th Street, and went in there and had my wrist bandaged, and after having it bandaged, I intended to go to the police station and report it, and it was while being bandaged that three or four detectives came in and put me under arrest and brought me to the 20th Street station.

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

Q Had you seen Shore in there before the shots? A No, sir.

Q You were shot, were you? A Yes, sir.

Q Whereabouts? A In the wrist.

Q Which wrist? A Left.

Q Will you show it to the jury? A (Witness shows his wrist to the jury.)

Q You said you were placed under arrest. How long were you confined? A Confined for three months.

Q As a material witness? A As a material witness; yes, sir.

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Q And what was the amount of your bail? A \$25,000.

Q Did you see Lewis there at that time? A No, sir; I did not.

Q When you heard these shots fired, did you notice what Smith did? A At the time I saw Smith jump up and bend over as if his back was hurting him.

Q Will you just show us how he bent over? A Well, he was passing towards me at the time, because I was raising also.

Q Get out of that chair, if you will, just the same as you saw Smith go. A He bent over this way (demonstrating).

Q Start from the chair, sitting down, and get up, just as you saw Smith get up. A I don't know exactly how he got up. I am only describing him. I saw him when he was bent over.

Q How was that? A He was in this position (demonstrating).

CROSS-EXAMINATION BY MR. BROTHERS:

Q You didn't see anybody in there except those who were playing cards, did you? A That is all; no, sir.

Q You didn't see Rubber Shore come in and walk around the table and stand behind Smith's chair, did you? A No, sir.

Q And, of course, when you heard the first shot, you looked up at once? A What was that?

Q When you heard the first shot fired, you looked up at once? A No, sir.

Q Why not? A When the shots were fired, I didn't know whether it was the first or the second that struck me. At that time I wanted to get away as quick as I possibly could.

Q But you looked up, you say, in time to see Smith fall

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over on the table, and then get up in the position you illustrated? You saw that? A No, sir; as I was raising, Smith was raising, and I turned around at the time.

Q Well, you saw Smith? A As I jumped up; yes, sir.

Q Didn't you see, almost behind him, running towards the back, Rubber Shore? A What is that?

Q Didn't you see Rubber Shore running away from Smith towards the rear of the room? A No, sir.

Q You were looking right in that direction? A Yes, sir.

Q And your eyesight is unusually good? A Yes.

Q You knew Rubber Shore? A Yes.

Q And you knew George Lewis? A No, sir; I never seen him; at least, to know him to talk to.

Q They were riding in the automobile with you earlier in the evening? A Shore was, yes.

Q And Lewis, too? A No, sir.

Q Didn't you see Lewis in the car? A No, sir.

Q Didn't see Lewis in that automobile? A No, sir.

Q How did that happen, that you didn't see him? A That I don't know.

Q You were sober? A Certainly. I can describe just how I was in that automobile.

Q But Lewis wasn't there? A Positively.

Q Positive he wasn't there? A Yes.

Q And you are equally positive he was ^{not} in the club room?

A Yes.

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Q Well, Bensen was sitting there at the table? A Bensen was there; yes, sir.

Q Right across from you? A Somewhere around that way.

Q A little to your right? A What is that?

Q A little more on your right hand, Bensen sat? A He was off towards that way---Bensen sat; Smith was sitting next to me.

Q And McMahon sat next to Smith? A I don't know who sat next to Smith.

Q And then Bensen? A Well, Bensen was playing there. The position he was sitting, I don't know.

Q There is no question about that, is there? A No, sir.

Q Well, you were hurt, and you naturally wanted to get out of the way and go out and get yourself treated, didn't you? A Yes.

Q And that you did? A Yes.

BY THE COURT:

Q On which seat in the automobile were you sitting? A I was seated in the rear.

Q And was there anybody else seated on that rear seat? A Yes, there was two sitting on the rear seat with me.

Q Now, who were they? A There was a man who I learned later, while this case was going on, by the name of Birmingham.

Q Who was the other one? A The other one I don't know.

Q Now, in front of that seat was a small seat? A Yes.

Q Who was seated on those small seats? A There was Morrissey, Curran, Weeley Curran, and Shore.

Q And who was seated, if anyone, alongside of the chauffeur?

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A None that I saw.

Q So that in the car, as you now remember it, there was the chauffeur, and there were three persons on the small seats in front, and three on the back seats? A About that; yes, sir.

Q Were you seated in the middle on the back seat? A No, sir; on the righthand side; on the outside of the car.

Q And who was it that sat on that rear seat right next to you; that is to say, to your left? A That I could not say. I don't remember who was sitting on it.

Q And who sat on the lefthand side of that rear seat?
A The lefthand side of the seat I was sitting on?

Q Yes; that is what I mean. A I don't remember who was sitting on it.

Q As I understand it, there were three of you on the rear seat? A Yes.

Q You were not the middle one? A No, sir.

Q You were at the extreme right? A Yes.

Q Who was at the extreme left? A That was a party I didn't know.

Q And who was in the middle? A There was Birmingham in the middle.

BY MR. BROTHERS:

Q This party got out several times, got out of the car and went into several saloons and got back into the car again, didn't he? A When was that?

Q When you were riding in it? A The time I was riding in

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the car, we went over on Second Avenue, or Avenue B, and Curran was in that car at the time, and pretty well intoxicated.

Q But he had got out of the car? A Sure, got out of that car around Second Avenue, or Avenue B---I don't know where it stood; outside of a bakery some place; and he got out of the car, and he wasn't out of the car a minute or more when he was back again.

BY THE COURT:

Q What did Shore do during that minute? A I don't know. He just stepped out of the car and came back again.

BY MR. BROTHERS:

Q Did you see who he was looking for? A No, sir.

Q Did he seem to be in charge of the party? Did he give all the directions as to where to drive? A No, I could not say that.

Q Then, you were not in the party when they went into these several saloons on Eighth Avenue and Tenth Avenue and had drinks? A No, sir.

Q When they returned from Second Avenue, they came to Eighth Avenue and 16th Street? A Eighth Avenue and 16th Street, and stood west of Eighth Avenue.

Q Did you get out then? A Yes.

Q And you left them? A Yes; left them and went up to the club.

G E O R G E L E W I S, the defendant, duly called and sworn as a witness in his o n behalf, testified as follows:

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(The witness stated that he resided at 112 West 90th Street, New York City.)

DIRECT EXAMINATION BY MR. MOORE:

Q How old are you, George? A Twenty years old.

Q When is your birthday? A July 13th.

Q You will be twenty-one next July? A Next month, yes.

Q Have you ever been convicted of a crime? A I have.

Q What crime? A Larceny and robbery.

Q Larceny and what? A And robbery; two charges.

Q When were you convicted of larceny? A In 1915.

Q What punishment did you receive for that? A Sent to New York State Reformatory.

Q And the second charge? A I was convicted of robbery.

Q When? A 1917.

Q And what happened to you at that time? A Sent to Elmira

Q How long did you serve in Elmira? A Twelve months and twenty days.

Q When were you released from Elmira? A August 20, 1918.

Q Since that time, up to the time of your arrest, where did you live? A 112 West 90th Street.

Q Do you know Tanner Smith? A I do.

Q And Rubber Shore? A Yes, sir.

Q How long have you known Tanner Smith? A I knew since he came out of Sing Sing.

Q That is about how long ago? A I don't know for sure; it was around 1914 or 1915.

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Q How long did you know Rubber Shore? A I knew him for about four years.

Q Did you ever have any trouble with Tanner Smith? A I did not.

Q Always friendly with him? A Yes, sir.

Q Now, coming to this night; do you remember the night that Smith was shot? A Yes, sir.

Q Will you tell the jury, beginning with the taking of the automobile on Chambers and West Street, just what you did that night?

THE COURT: And take your time, and talk so that everybody hears you.

Q That day I had an understanding where to meet Shore, and I met him down where he worked, on Chambers and West Street, at five o'clock. He was up in the office. I went up there, and he was sitting with some other fellows, and we were supposed to go down to the beach, and he called up a car before I got there, and we sat there till the car come. It must have been six or half past six. We got in the car. There was four of us, myself, Rubber, Schreiber, and Birmingham, and from there we went to 16th Street and Eighth Avenue. We went in Flannery's saloon on 16th Street and Eighth Avenue---

Q The saloon on the southwest corner? A We went there. We stayed there for about fifteen minutes or so, and Shore called me over and give me to understand that one of his friends wanted to go over to the East Side, that he wanted to see somebody. I said

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all right. And we got in the car again. We went over to First or Second Avenue, to some place over there, and we stopped in front of a restaurant, and Shore got out, and another party got out, and we went in the restaurant, and we come back in about five minutes, and got in the car again, and we came back to 16th Street and Eighth Avenue, and we left them fellows off, and from there we went up to Rubber's girl's house, on Tenth Avenue and 35th Street, and we left our caps up there. We had bought new straw hats up there, and Rubber left a bundle. He had some clothes in it. We come down again, and we went back to 16th Street and Eighth Avenue, and when we got there, the chauffeur said he would take us up to Rubber Shore's, and he drove us up to the place and he got the girl again. We drove up to the Vaccarelli Garage at 41st Street, between Seventh and Eighth Avenue, and he went out and he spoke to Vaccarelli himself, and he gave him to understand that he could have the car as long as he wanted to. So we drove down Tenth Avenue to Diehlmann's saloon, between 19th and 20th Streets and Tenth Avenue. We got out there, and we went in there and was drinking a while, and Rubber came out, and he jumped on the car, and he grabbed the wheel, and he would not let the chauffeur take it, and we drove down Eighth Avenue, and turned into 16th Street, and as we turned down Tenth Avenue, there was a noise, and we seen our big tire was off. We seen the big tire was off, so we turned around and went down 16th Street, between Eighth and Ninth Avenue, and Rubber went into a saloon down there, and owned by Vaccarelli, and Vaccarelli told him to tell the chauffeur to

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put it in the garage, and he would send a car down and fix it. There was a garage in 16th Street, between Ninth and Tenth Avenue, and we went down there, and the chauffeur went into the garage, and he tried and he said he could not get anything to fix the car. He started to run hard, and I could see by the chauffeur's actions that he wanted to get rid of Rubber, and most of the party was drunk. And he said he could not have it fixed. We left him. There was four of us at that time---

Q Who were the four? A Rubber, Birmingham and Schreiber. We went to Ninth Avenue and 16th Street, and Birmingham and Schreiber left us. Then we went down to Ninth Avenue and 14th Street, and I went into a saloon with Rubber, and Rubber started in to drink again, and I asked him whether he was going home, and he said no. It was starting to rain, and I didn't feel like staying out. I told him I was going home, and I told him I would meet him home. I left him and went over to the 23rd Street ferry and went over on the boat and went to Hoboken.

BY THE COURT:

Q So that you did not go to the Marginal Club that night at all? A I did not.

Q You said most of the party were drunk. Rubber was pretty drunk, wasn't he? A He was.

Q Were you drinking? A I was drinking soda.

Q You were not drinking anything intoxicating, were you?

A No, sir.

Q You don't drink, do you? A No, sir.

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Q Did you have a gun with you that night? A I did not.

Q Did you that night go into the Marginal Club and after Shore had shot one shot into the back of Tanner Smith, did you walk upto him until you got within twenty inches of his back and fire a shot into hisbody? A I did not.

Q When next did you see Shore after that? A I remember him coming in in the morning, but I can't remember just what time it was.

Q Did you have any talk with him at that time? A I don't know whether I was asleep or not. I know I was in a doze.

Q When did you next talk to him? A When he woke up the next morning.

Q What time? A It must have been eleven o'clock or half past eleven.

Q What did Shore tell you at that time? A Before that I had got up out of bed and Shore was still in bed sleeping. I knew the condition he was in the night before, and I didn't bother him. I went out and ate breakfast and I bought a paper, and I was reading the paper, and I come back to the room, and Rubber was still asleep, and I sat there reading, and he woke up, and he says to me, "Is there anything about a shooting match in New York?" And I asked him, "Why?" He says, "I gave it to that punk Tanner Smith last night." I asked him why. And he told me he doubled crossed him while he was in jail and tried to rape his girl.

Q Now, coming along to the Thureday after, the 31st, were

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you in Jersey? A I was in Hoboken.

Q Tell us what happened at the time Shore was shot.

A It was about half past nine, and Shore and myself was walking through Second Street in Hoboken, and we was in the middle of the block, and some shots were fired from behind, and I got shot through the lung on the left side.

Q Whereabouts? A Right over the heart.

THE COURT: How is this material to any issue in this case?

MR. MOORE: I don't know. Mr. Brothert used it in his opening, and I really think it is material to this extent--- I believe if this boy had not been shot, he would not have been under arrest.

MR. BROTHERS: That is an improper statement.

MR. MOORE: That is my theory of the thing. I am going to argue that to the jury.

THE COURT: I can't see that that is material.

MR. MOORE: It is in evidence, anyway.

THE COURT: It is in evidence. You have a right to refer to it.

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CROSS EXAMINATION BY MR. BROTHERS:

Q Did Shore have a pistol? A When?

Q That night? A No, sir.

Q You had been living with him quite awhile, hadn't you?

A Since he come out of jail; yes, sir.

Q How long was that? A It was about seven weeks.

Q And you occupied the same bed, did you? A We did.

Q And one room, in which you kept your clothes? A Yes.

Q And you saw him get up and dress in the morning and undress at night? A I did.

Q Did you ever have a pistol-- A I never seen him--

Q Did he ever have a pistol with him while he was riding in the car? A No, sir; not that I know of.

Q He had on a vest and a pair of trousers? A He had a coat on, too.

Q He didn't have any overcoat on, did he? A Who?

Q Shore? A Just like I am now.

Q And you could not see that he had a pistol in his pocket?

A No, sir.

Q And he never told you before the shooting of Smith that he had known that Smith had insulted his girl? A He never told me nothing about it.

Q You were very close friends with Shore, were you not?

A I was.

Q Did you know him before he was sent away to the Penitentiary, or wherever it was? A I did.

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Q When he came out of the Penitentiary, he came to live with you? A He did.

Q And when you left your home and went to Hoboken to live, he went with you? A He got the room there.

Q And you two young men went over there to live? A Yes.

Q And how long were you living over there prior to the night of the shooting? A Pretty nearly three weeks; about two or three weeks.

Q Do you know Henry Bensen? A I do.

Q Did you have any trouble with him? A No, sir.

Q Or he with you? A No, sir.

Q You say that Shaw was very drunk? A Well, yes; he was pretty well drunk.

Q You didn't feel any alarm about him, being alone in New York that night drunk? A No, sir.

Q He was able to get back to Hoboken safely, wasn't he?

A I wasn't going to drag him back if he didn't want to come back.

Q But he got back to Hoboken in the early morning all right, did he? A Yes.

Q What time did he get up the next day? A Between 11 and half past eleven, I guess.

Q About what time did he return home? A I could not say.

Q Have you no idea? A No, sir.

Q Why did you go over to live in Hoboken? A Well, it was about two weeks previous to that shooting. It was on a Saturday,

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there was some detectives at my house looking for me.

Q Did you see them? A I did not.

Q What were they looking for you for? A I could not say.

Q Had you done anything wrong? A No, sir.

Q Were you working? A I was.

Q Where? A On the dock.

Q For whom? A Cunard Line.

Q You had a good job, didn't you? A Fairly good.

Q You lived with your mother? A I did.

Q You say it was the supposed visit of a couple of detectives that led you to leave your home and go over to Hoboken to live? A I didn't feel like getting arrested.

Q But you hadn't done anything wrong? A You don't have to nothing if you have a record.

Q How long was it you were out of Elmira? A About 11 months.

Q You had received your final discharge? A I had not.

Q Did you report regularly to the Parole Board? A I did.

Q They knew where you were working? A Yes.

Q You were expecting in a very short time to be finally discharged, were you not? A Yes.

Q And do you mean to say that because somebody said a detective was down there that you -- you violated your parole, didn't you, in going to Hoboken? A No.

Q Were not you required to stay in the City? A That's all right.

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Q And report. How often did you report? A Once a month.

Q Did you report during July? A No, I didn't report during July.

Q Well, finding detectives were looking for you, why didn't you go right down to the Parole Office and find out exactly about it? A Why should I?

Q Well, you had done nothing wrong? A I told you you don't have to do nothing if you have got a record.

Q Where were you when you made the appointment to meet Rubber Shore on West and Chambers Streets? A In the room in Hoboken.

Q When? A When he got up that morning.

Q You were not coming over to New York that day? A I was that night with him.

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

Q Did you work any that week? A No, sir.

Q So that you were not really working? A Not since the detectives went over to the house.

Q Since you heard the detectives were there, you threw up the job and went over to Hoboken? A I didn't have to throw up the job. You can have it whenever you want.

Q Why did Shore go over to Hoboken, do you know? A I guess he wanted to live with me.

Q Where were you going with Shore that night in this car?

A Down at the beach.

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Q Which beach? A Midland or Rockaway.

Q Which one? A Either one.

Q Do you know whether Tanner Smith had a bungalow at Rockaway Beach? A You have got no proof that he had a bungalow at Rockaway Beach.

Q Well, do you know that he had one-- A Why do you ask me that foolish question?

BY THE COURT:

Q Don't make remarks, young man. Just answer the question.

A He is trying to put into the mind of the jury that we went to the beach to kill Tanner Smith.

THE COURT: Young man, answer the questions put to you, and if your lawyer, Mr. Moore, thinks a question is not a proper one, he will make an objection, and I will determine whether the question shall be put to you or not.

BY MR. BROTHERS:

Q What time did you meet Shore that afternoon? A About five o'clock.

Q What were you doing between the hour you met him and the time the car came? A I was sitting up in the Union room.

Q Of what Union? A Chambers and West Streets.

Q What is the name of it? A The Market and produce Union.

Q Did you have any supper that night? A I did.

Q Where did you have it? A I had it before I come down to meet Rubber.

Q There was no eating done after you joined Shore? A No, sir.

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Q Was Shore sober when you met him? A No; he wasn't sober.

Q Was he drunk then? A He wasn't very drunk, but he had been drinking.

Q Did he drink anything in your company after you met him before the car came? A Yes.

Q What did he drink? A Whiskey.

Q More than one drink? A Yes, sir.

Q Would you say that he was very drunk at the time the car arrived? A No, not at the time the car come.

Q Had he sobered up a bit? A No, he hadn't sobered at all.

Q Could he walk steadily? A Certainly.

Q Did he talk like a drunken man; is that what you mean?

A He didn't talk. You can tell whether a man is drunk or not.

Q When the car came, it was your intention to go either to Rockaway Beach or to Midland Beach; is that right? A Yes.

Q Rockaway Beach being on Long Island and Midland Beach on the south side of Staten Island? A Yes.

Q And you were then at West and Chambers Street? A I was.

Q Why then did you go up to 16th Street and Eighth Avenue?

A Rubber's friend was up there.

Q It was after seven by this time, wasn't it? A That is all right. There is plenty of time.

THE COURT: Try and keep your voice up so that the jurymen can hear you.

Q Why did you then go at that hour up to 16th Street and

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Eighth Avenue? A Rabber was bossing the car, and he had friends up there, and I guess he went up there to get friends.

Q Did he say whom he wanted to see? A No, sir.

Q You understood, didn't you, that the car had been hired for three hours? A No, sir.

Q You know it now, don't you? A When I heard the chauffeur say it.

Q When you got to 16th Street and Eighth Avenue, you entered a saloon? A We did.

Q And Shore took some more drinks? A Yes.

Q And he got more drunk, did he? A Yes.

BY THE COURT:

Q Were you and Shore the only persons in the car from West and Chambers Streets up to 16th Street? A No, sir.

Q Who else was in the car? A Schreiber and Birmingham.

BY MR. BROTHERS:

Q Schreiber and Birmingham? A Yes.

Q And they are the two men who were with you when you finally left the car at 16th Street? A Yes.

Q And that was the party, wasn't it, that was going to go to the beach? A I could not say.

Q When you got to the saloon there on 16th Street and Eighth Avenue, you didn't go to the Beach from there, did you?
A No, sir.

Q You went over on the East Side, didn't you? A Yes, sir.

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Q And you came back to the saloon, didn't you? A Yes, sir.

Q And there was never any attempt made to go to any beach, was there? A There was attempts made to go there all the time we had the car.

Q What interfered, if anything interfered? A Rubber was bossing the car. I don't know what interfered.

Q Was he the one who paid for it? A I didn't pay for it. He hired it.

Q You didn't know anything about who paid for it, did you? A No.

Q Did he give all the directions? A Yes, sir.

Q Was he working at that time? A Yes, sir.

Q Where? A Chambers and West Streets.

Q In this place? A In the Market and Produce Union.

Q Were you in the Marginal Club, as Mr. Nolan says, between seven and eight on that evening? A I wasn't in the Marginal Club that night at all.

Q Have you ever been in there? A Plenty of times I have been in there.

Q Why was it that you left Shore, as you say, and went home alone? A It was raining hard, and getting late, and I didn't feel like staying out. The car was gone.

BY THE COURT:

Q About what hour did you leave Shore? A Between 10:30 and 11 o'clock.

Q Where did he go when you left him? A I left him at 16th

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Street and Ninth Avenue.

Q On the sidewalk? A No, sir; in the gutter. I took the car.

BY MR. BROTHERS:

Q You and Shore usually went home together when you went out at night, didn't you? A When we was out, yes.

Q You usually went home together? A Yes.

Q Now, the next day was Sunday, and you remained with Shore all day Sunday and Sunday night, didn't you? A Yes.

Q You knew that your friend had killed Smith? A Yes.

Q Did you desire to protect him? A Did I desire to protect him? In what way?

Q You didn't go and give any information against him, did you? A I didn't think it was my duty to do that.

Q You knew, didn't you, that you had an engagement to attend the wedding of Shore and Grace Madden on Monday evening?

A I knew that three weeks.

Q You were at the girl's house on Saturday? A Yes.

Q And you attended the wedding in New York City on Monday evening? A Yes.

Q Were you not at all alarmed about being in the City of New York with this man who had committed murder? A Well, I didn't do it.

Q I ask you whether you were not afraid to come with this man who had committed a murder in the City of New York? A In a way I was, and in a way I wasn't.

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Q You had read in the newspapers about this murder? A Yes.

Q And you were so afraid of these detectives that you ran over to Hoboken? A Yes.

Q And yet you say you were not afraid to come over to New York with this murdered?

MR. MOORE: I object to it.

THE COURT: Objection sustained.

A We were in a closed taxi all the time.

Q What were you afraid of? Were you afraid of Shore? A No, I wasn't afraid of Shore.

Q And you attended his wedding? A I did.

Q And after the wedding you left the bride and her friends and you and Shore returned to Hoboken, didn't you? A Yes.

Q And you remained in his company up until the time he was shot down and killed in Hoboken? A I did.

Q Did you feel any reluctance about remaining-- A Any what?

Q Did you feel you ought not to remain? A I had heard they were looking for me.

Q Who was looking for you? A I said the detectives were up to my house two weeks before the killing.

Q That was the only thing you were afraid of, was it?

A Yes.

Q My question is, didn't you have any feeling that you ought not to remain in the company of Rubber Shore, knowing what he had done? A Where was I going?

Q You could go home? A No, I couldn't go home.

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Q Why not? You had a mother who was working also, didn't you?

A I did.

Q And you were not working? A Not that week .

Q And why couldn't you go home to her and stay if you had done no wrong? A I told you, I didn't feel like being arrested.

Q When you talked with Mr. Joyce, a member of Judge Swann's staff, that week that you were shot, you told him that you were not within the City of New York at all on that Saturday, didn't you? A I told Mr. Joyce nothing of the kind.

Q Do you recollect coming there? A I do.

Q And talking to you in St. Mary's Hospital in the City of Hoboken? A I do.

Q On the 1st of August, early in the morning? A I do.

Q Do you remember that he asked you questions? A He asked me questions about the Jersey shooting. That is all I answered.

Q Do you remember this question that he put to you at that time: "Q How long have you been over here"? And you said, "In the hospital?" And he said "No, over in Hoboken." To which you replied, "For two weeks". Do you recall saying that?

A No, sir.

Q And then he asked you, "Well, you were in New York last Saturday, were you not? A No, sir. " Did you so state to Mr. Joyce? A I did not.

Q Did he say, "You were in the Marginal Club Saturday night, were you not"? And you said, "A ---" A I didn't answer that question.

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Q "Q Didn't you go in there with Rubber and Leslie Curran ?

A I was not in New York Saturday." A I answered no questions.

Q And did he ask you, "Now, wait a minute; you were over in New York on Monday night, because Rubber got married Monday night"? And you answered, "That ain't Saturday night"? A No, sir.

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

Q And then he asked you "And you live where ? 112 West 90th Street, City? A Yes.

"Q But you were over there Saturday night, too? A Home?

"Q You were over in New York Saturday night? A I wasn't in New York Saturday night." A I answered no questions about Saturday night to him.

Q "Q Well, where were you Saturday? A Right in Hoboken.

"Q Who were you with? A Me and Rubber." Did you so state to Mr. Joyce on that occasion? A I did not.

Q Do you recall his asking you this question, "How do you feel?" And you answered, "Pretty bum."

"Q Whose automobile were you in? A When?

"Q Saturday night? A I am telling you I wasn't in New York Saturday night". A I didn't answer any questions.

Q You don't recall that? A No.

Q What had you been doing with your time while you were not working? A Gambling.

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BY THE COURT:

Q The time that Mr. Joyce was over in the hospital and was talking to you, was there a stenographer there? A I could not say. I was in a serious condition. I didn't know what it was.

BY MR. BROTHERS:

Q Well, you were able to understand every question he asked you? A I guess I was.

Q Well, did you recall that you were brought back to New York in October, and you spoke again with Mr. Joyce? That occurred on the 1st of October, on Wednesday in the forenoon in his office, and he asked you a great many questions about yourself and how long you had known Shore and where you had worked? A I told him I would answer him any questions he wants to know when I was on the stand.

Q Well, do you remember among the other questions which he asked you-- "Do you remember on Saturday, July 26th, meeting Sapp, Birmingham and Schreiber? A I don't remember nothing July 26th.

"Q Don't you remember being in Local 202 on that day? A No, sir." Did you say that? A I told him I would answer it when I was on the stand. I will answer it now if you want me to.

Q Did you make the answers which I read? A I did not.

Q Did he ask you "Do you remember being in an automobile on West 16th Street when it broke down? A No, never." A I told him I didn't want to speak to him; I didn't answer him any questions.

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"Q Do you remember going up to 41st Street? A No." Did you so state? A No.

Q "And meeting Vazzarello up there and getting an automobile for the first time for an hour? A No.

"Q Do you remember being in Flannery's saloon? A When?

"Q On that Saturday? A No." Did you so state? A No.

Q "Q Do you remember being in there with Lefty Curran?
A No; I don't remember nothing." You never said any of these things? A No, sir.

BY THE COURT:

Q How many times in your life have you been in the club rooms of the Marginal Club? A Ever since I come out of Elmira I was in there pretty nearly every Saturday night. They had a dance Sunday night-- whatever it was.

Q And how long was it before the shooting of Smith you were last in the Club room? A They stopped the dances about a month before that, and I have not been in there since.

Q I would like you to look at the photograph which is in evidence. Do you recognize that as being the club room? A Yes.

Q Is that a pretty good picture of the club room? A Of the back room, yes.

Q Of the back room? A Yes, sir.

Q Those windows that are shown there in the photograph which you have in your hand-- are those the rear windows, the windows looking out onto the yard, or are they the front windows?

A No, sir; that is the front windows.

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Q The front windows? A Yes, sir.

MR. MOORE: Now, I think, if your Honor please, in view of the cross examination, at this time I should have the right, in explanation of anything they may offer in rebuttal, to show his physical condition that night.

THE COURT: Yes.

RE DIRECT EXAMINATION BY MR. MOORE:

Q Now, you said Mr. Joyce examined you early in the morning of August 1st, in the hospital? A Yes, sir.

Q And on the evening before you had been shot? A Yes, sir.

Q Now, will you tell the jury just where the bullet penetrated?

A It struck me in the back here, right over the heart, and it went through my lung, and broke a rib on this side, and went over and broke another rib on this side, and it lays up here somewhere (indicating). It is still there.

BY THE COURT:

Q About what hour in the morning was it that Mr. Joyce came? A I could not say. I should say it was about half past nine or ten o'clock.

Q What time did you get to the hospital? A Fifteen minutes after I was shot.

Q Was there any doctor at your bedside, or outside, at the time Mr. Joyce was talking to you? A I could not say. There were about 15 men there. I don't know who they were.

BY MR. MOORE:

Q Well, had the doctor given you any hyperdermic of any

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kind before Joyce came there? A He put a needle in my arm.

Q After you came back you were taken to Mr. Joyce's office in this building, were you not? A Yes, sir.

Q Do you remember this question being asked you, "Don't you remember leaving there, Chambers and West Streets, in an automobile" and did you answer, "I told you I would tell you that on the stand. I ain't going to tell nothing about it". A That is the only answer that I gave him.

Q Well, you made that answer, didn't you? A I don't know whether it is that. It is something like that.

RE CROSS EXAMINATION BY MR. BROTHERS:

Q When did they give you the hyperdermic? Very soon after you got in the hospital, wasn't it? A I think it was after the Priest left me.

Q Well, you were perfectly conscious when you were talking with Joyce? A That I know about.

Q You were smoking cigarettes when you were talking with them? A Yes.

Q And he gave you the cigarette, didn't he? A He did not. I would not take them off him.

Q And although you had a bullet in your lungs, you were smoking? A Certainly. You can smoke with a bullet in your lungs.

THE COURT: Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, or to form or express any opinion thereon until the same is submitted to you. The Court takes a recess until 2 o'clock.

Recess until 2 o'clock.

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AFTER RECESS

3 P.M.¹⁵¹

EDWARD B. McMAHON, duly called and sworn as a witness on behalf of the defendant, testified as follows:

(The witness stated that he resided at 209 West 21st Street, New York City.)

DIRECT EXAMINATION BY MR. MOORE:

Q Mr. McMahon, where do you live? A 209 West 21st Street.

Q How old are you? A 31.

Q And in what business are you engaged in? A Laborer.

Q Did you know Rubber Shore in his life time? A I did.

Q And Tanner Smith? A I did.

Q Did you know George Lewis? A I did.

Q Do you know where the Marginal Club is on 16th Street near Eighth Avenue? A Yes, sir.

Q Do you remember the night when Tanner Smith was shot?

A I do.

Q Were you in the club room at that time? A I was.

Q What were you doing there? A Playing cards.

Q And with whom were you playing? A Tommy Smith, Eddie Nolan, Morrissey, Bensen.

Q Redmond? A Redmond was there at that time. He was in the game early.

Q At the time of the shooting he was there, wasn't he?

A I didn't see him at the time of the shooting.

Q Will you show the jury just where you were sitting?

This is the front entrance of the club on Eighth Avenue (showing

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witness People's Exhibit 2). This is the circle which shows the table. A About here (indicating). I was on the hall side.

Q You were on the side towards--- A I was towards 17th.

Q Will you mark these "Mc"? A (Witness so marks.)

Q So that you were sitting so that your back would face the northerly wall? A Yes, sir.

Q Do you remember who was sitting at your right? A Smith.

Q And who was at your left? A Bensen. I ain't quite sure, but I think it was Bensen.

Q Did you see Rubber Shore there? A I did.

Q Now, from the time that you saw Shore, describe what you heard up to the time Shore left. A Shore walked into the club room, and he stood facing me for about a few minutes, maybe five minutes, and he walked directly around the table. I didn't notice him going around the table, but I seen him behind Smith's back, and there were three or four shots fired, and Smith jumped up and Shore run out, and run right past me with a gun in his hand. Smith followed him, and they went out into the hall.

Q When the shots were fired, you looked up, and you saw Shore. Just where was Shore at that time with reference to Smith? A I didn't hear that.

Q (Repeated.) A Right behind Smith's back.

Q Did you see Lewis there at all? A No, sir; I did not.

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CROSS-EXAMINATION BY MR. BROTHERS:

Q How old are you, Mr. McMahon? A 31.

Q And you worked, did you not, at one time, for Smith?

A I did.

Q What are you working at now? A Longshoreman.

Q For whom? A Well, I am doing loading now for ourselves, see? Of course, it is under the heading of longshoreman.

Q Well, you and Smith were very good friends? A We was.

Q You could not be found, could you, after the shooting of Smith? A I sure could. I was around all the time.

Q You remember you testified on the last trial, you knew you were wanted; do you remember that? A I didn't say I knew I was wanted. I told you I knew they wanted to see me.

Q You knew the District Attorney and the police were making inquiries about you? A I was around the neighborhood.

Q Didn't you learn that the District Attorney and the police were making inquiries about you? A No, I didn't exactly learn, but I just heard it sometimes.

Q Did you ever tell any person until the last trial in January of this year that you had seen who shot Smith? A That I had seen who shot Smith?

Q Yes. A No, sir.

Q You never told anybody, did you? A No.

Q And you recall that the trial of the case in January was delayed from day to day while Mr. Moore was endeavoring to serve you with a subpoena? Do you remember that? A Mr. Moore found

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me. I wasn't out of the neighborhood.

MR. MOORE: He was ill at the time. We produced a doctor's certificate.

Q You were ill at the time, were you? A Yes, I was ill.

Q Where were you before that, from July till January?

A Around the same neighborhood.

Q Did you know Lewis? A Did I know Lewis?

Q Yes. A Yes, sir.

Q George Lewis? A Yes, sir.

Q Did you see him in the club? A No, sir.

Q Whoever shot Smith shot him from behind? A Yes.

Q When you heard the first shot, what was the first thing you saw? A They come pretty lively together.

Q What was the very first thing you saw after you heard the shot, if you looked out that way? A I seen Shore behind Smith's back.

Q Did you see him actually shoot? A I heard the reports; I could not see him; my back was the same way Smith's was.

Q Do I understand when you did look around, the shooting was finished? A Yes, sir; the shooting was finished.

Q What did you do? A I jumped up.

Q Where did you go? A I don't know what I tried to do. I tried to get out of the way.

Q What is your recollection about what you did? A I run in the back.

Q What do you mean-- A In the back room.

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Q And from there where did you go? A I come back and come out of the room, and seen Smith come out of the room, and he sank down, and he never answered me.

Q Do you mean you went into this little rear room that is shown on the plan here? A In that room---

Q Where in the rear room, when you saw Smith come back from the hall, were you in this room? A I was in here (indicating).

Q Did you see Bensen there? A No, sir.

Q You knew Bensen? A I did.

Q Didn't you see him there that night at all? A I seen him at the time he was playing cards, at the time of the shooting.

Q Where was Smith when you last saw him that night?

A When I last saw him?

Q Yes; the last you saw Smith that night, where was he?

A Laying in between the two rooms.

Q Was there anybody else in that room at that moment besides you and Smith? A I don't remember nobody; no, sir.

Q Were you the last one to leave? A I think I was; one of the last, anyway. I didn't see anybody else after me.

Q Did you go over to where Smith was laying? A I spoke to him.

Q Then, did you go over to him? A I did.

Q Was there anybody else there when you spoke to him? A No, sir.

Q Didn't you see Nolan or Bensen? A No, sir.

Q You were standing in that room, were you, all the time?

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A In what room?

Q That back room. A When Smith come out, I come over to Smith.

Q As I understand it, when the shooting happened, you ran into that large back room? A Not till after the shooting was over.

Q After the shooting was over, you ran into that large back room, and there you stood after Smith was lying on the floor?

A There was only a few minutes between.

Q No matter what the time was, you remained in the back room until Smith fell down? A Smith come in from the hall and then fell down.

Q Did you remain in the back room all that time, no matter how long it was? A I ran in the back room, and I ran right back again.

Q Did you say you didn't see anybody go over to Smith's body and speak to him? A No, sir, there was nobody near Smith at all, only myself.

Q And you were the last one to go out of that room? A As far as I remember.

Q Where did you go to? A I ran out and tried to get an ambulance.

Q Where did you go to get it? A I didn't get one.

Q Where did you go to get it? A I ran towards 17th Street.

Q Did you expect to find it on the street? A No; I went to the telephone, and there was somebody else in the telephone.

Q Then what did you do? A I ran over to the other place and

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tried to get a telephone. It was raining.

Q Then, where did you go? A I went home.

Q Did you speak to Redmond about it? A No, sir.

Q Wasn't he there? A In the club?

Q Yes. A He was in the early part. I don't remember seeing him in the latter part.

Q Do you remember on the last trial testifying, "Q What did you do when he fell down? A I spoke to him, and he didn't answer me. I said, 'Come.' So James Redmond said, 'We had better get an ambulance'." Q Was Redmond there then? A He was."

Is that right? A I think Redmond come in out of the back room.

Q Isn't your recollection very clear on that? A I remember somebody being there, but I don't just remember who it was.

Q Wasn't it Bensen? A No, it wasn't Bensen.

Q Bensen, wasn't it? Is that your idea of it? A No, Bensen wasn't there at that time.

BY MR. MOORE:

Q You were asked why you didn't go to the District Attorney's office and report what you knew. Had you heard of each one of the boys, as they were brought down here, being arrested and locked up, and being detained as material witnesses? A Yes.

Q And bail of \$25,000 was fixed? A Yes.

Q And you were not anxious to be in jail until this trial, were you? A No, sir; I couldn't afford it. Who is going to support my home?

The defense rests.

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NATHAN BURCHALL, JR., duly called and sworn as a witness on behalf of the People, in rebuttal, testified as follows:

(The witness stated that he was attached to the District Attorney's Office.)

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Burchall, are you a stenographer? A I am.

Q And you have been working as a stenographer for many years?

A For 15.

Q And you have been employed as stenographer in the District Attorney's Office of this County how long? A Twelve years.

Q And you are employed there now? A I am.

Q Did you, in company with Mr. John S. Joyce, Deputy District Attorney, go to the St. Mary's Hospital, Hoboken, New Jersey, on August 1, 1919, and there see the defendant, George Lewis? A I did.

Q Were questions asked of the defendant, George Lewis, by Mr. Joyce, to which the defendant replied? A Yes, sir.

Q Did you take down the questions and answers in shorthand correctly? A Yes, sir.

Q And have you your original notes here? A I have.

Q Will you produce them? A (Witness produces stenographic notes.)

Q Can you tell by referring to them, the time at which this talk was had? A It began at 2:50 A. M.

Q Now, do you find in your original notes at the beginning of the interview, the question, "How long have you been over here?"

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and the answer , "In the hospital?" A Yes, sir.

Q Will you read that and the next question? A "Q How long have you been over here ? A In the hospital?

"Q No, over in Hoboken? A About two weeks.

"Q Well, you were in New York last Saturday, were you not? A No, sir."

Q Now, will you go down several questions-- "You were in the Marginal Club Saturday night, were you not?" A "Q You were in the Marginal Club Saturday night, were you not? A No, sir."

Q Now, the next. A "Q Didn't you go in there with Rubber and Lefty Curran? A I wasn't in New York Saturday."

Q Now, from there go along to, "Now, wait a minute, you were over in New York--"? A "Q Now, wait a minute, you were over in New York on Monday night because Rubber got married Monday night? A That ain't Saturday night.

"Q You were over there Monday night, were you not? A Certainly. He got married.

"Q And you live where? 112 West 90th Street, is it? A Yes.

"Q But you were over Saturday night, too? A Home.

"Q You were over in New York Saturday night? A I wasn't in New York Saturday night.

"Q Well, where were you Saturday night? A In Hoboken.

"Q Who were you with? A Me and Rubber."

Q Now, a little further along, you find the question,

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"How do you feel? A Pretty bum". A "Q How do you feel? A Pretty bum.

"Q Whose automobile were you in? A When?

"Q Saturday night? A I am telling you I wasn't in New York Saturday night."

Q Now, Mr. Burchall, was there another occasion when you were present, October 1st, 1919, when Mr. Joyce questioned the defendant again? A Yes, sir, in the Homicide Bureau, upstairs.

Q And that interview was at what hour? A It began at 10:58 A. M.

Q And did you take down the questions of Mr. Joyce and the answers of the defendant, in shorthand? A I did.

Q And have you the original notes with you? A I have.

Q Do you find in your notes the question, "Do you remember on Saturday, July 29th, meeting Sapp, Birmingham and Schreiber?" A "Now, do you remember on Saturday July 29th, meeting Sapp, Birmingham and Schreiber? A I don't remember nothing July 29th."

Q The next question. A "Q Now, don't you remember being in Local 202 on that day? A No, sir."

Q The next question. A "Q Don't you remember leaving from Chambers and West Streets in an automobile? A I told you I would tell that on the stand. I ain't going to tell nothing about it."

Q A little further, read it at the question, "Do you remember being in an automobile on West 16th Street?"

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A "Q Do you remember being in an automobile on West 16th Street when it broke down? A No, never.

"Q Do you remember going up to 41st Street? A No.

"Q And meeting John Vaccarelli up there and getting the automobile for a further time of an hour? A No.

"Q Do you remember being in Flannery's saloon? A When?

"Q On that Saturday? A No.

"Q And remember being in there with Lefty Curran? A No, sir; I don't remember nothing."

Q There were other questions, Mr. Burchall, and answers made, and other matters unconnected with the shooting of Smith, were there not? A There were; yes, sir.

CROSS EXAMINATION BY MR. MOORE:

Q Mr. Burchall, what time did you say it was when you took the notes of Mr. Joyce's examination of the defendant in Hoboken?

A On Saturday at 2:50 A. M.

Q That was in the hospital? A It was.

Q And the defendant was in bed? A He was.

Q And you understood that he had been shot some time that night; is that it? A Yes.

Q And seriously wounded? A I don't know how seriously he was wounded. I knew he had been shot.

Q Didn't you know there was a question as to whether he was going to live or not? A I didn't know that; no, sir.

Q Did he appear to be suffering much from any pain? A He did not.

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He didn't appear to be suffering any while I was there.
He was smoking a cigarette part of the time.

Q Now, in this examination you have testified to in October, I think it was-- A October 1st.

Q This defendant repeatedly told Mr. Joyce that he didn't want to answer any questions; that he would tell his story when he got upon the stand, didn't he? A He made that answer to several questions; yes, sir.

Q He said that a number of times, didn't he, when Mr. Joyce pressed his question? A He did, yes.

Q Did he use this exact language, "I will tell my story when I get before the jury?" A Words to that effect.

Q Did he say upon another occasion, "I ain't going to tell you nothing about it?" A Well, I would have to refer to my notes to remember his exact language. I know that he used words to that effect, though.

Q Words to that effect? A Yes, sir.

THE PEOPLE REST.

MR. MOORE: Now, if your Honor please, upon the whole case, I ask your Honor to direct a verdict of not guilty, on the ground that there is not sufficient credible, reliable testimony to justify the jury in finding the defendant guilty beyond a reasonable doubt.

THE COURT: Motion denied.

MR. MOORE: Exception.

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(Mr. Moore thereupon summed up to the jury on behalf of the defendant.)

Mr. Brothers thereupon summed up to the jury on behalf of the People.)

THE COURT: Gentlemen of the Jury, you are admonished not to converse among yourselves on any subject connected with this trial, or to form or express any opinion thereon until the case is submitted to you. This Court stands adjourned until tomorrow morning at 10:30.

Adjourned to Wednesday, June 30th, 1920, at
10:30 A. M.

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