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CASE

CASE # 493

COURT OF GENERAL SESSIONS OF THE PEACE
CITY AND COUNTY OF NEW YORK

PART III

Before

Hon. RUFUS B. COWING, J., and a Jury.

1073

-----X
THE PEOPLE

VS.

WILLIAM H. SMITH
-----X

Tried, New York, February 16, et seq., 1905.

Indicted for Assault in the First Degree, as a Second
Offense.

Indictment filed January 6, 1905.

APPEARANCES:

Asst. District Attorney CHARLES C. NOTT, for the People;

HENRY J. GOLDSMITH, Esq., for the Defense.

Frank S. Beard,

Official Stenographer.

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MR GOLDSMITH: On behalf of the defendant, if your Honor please, the defendant desires to move for an adjournment in this case until 2 P. M., in order to prepare his defense. His counsel, Messrs O'Hare & Dinneen are not in court. Your Honor has assigned me, and I desire that much time to acquaint myself with the facts.

THE COURT: This is the third time it has been on, and yesterday, Messrs O'Hare & Dinneen were here, and asked to have it put down for to-day, saying that they would be here to try it, or otherwise, other counsel would be employed. I do not see the necessity or propriety of adjourning it any further. The defendant will have a fair trial. I will see to that.

MR GOLDSMITH: Of course, I know that; but the defendant has no witnesses in court. He is taken at a disadvantage.

THE COURT: Well, if it turns out that there are any absent witnesses when the People's case is closed, I will adjourn the case to enable you to get the absent witnesses here.

MR NOTT: Yes, sir. And, when it comes to the side of the defense if it appears that any witness is absent who should be here I shall join in the application for

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an adjournment, and do everything in my power to facilitate the obtaining of the defendant's witnesses.

THE COURT: Yes. The trial must proceed.

(The jury is sworn.)

MR GOLDSMITH: Before you open, Mr Nett, I move that all witnesses be excluded, in this case, on both sides.

THE COURT: Motion granted.

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OPENING ADDRESS FOR THE PEOPLE

of

ASSISTANT DISTRICT ATTORNEY CHARLES C. NOTT.

If the Court please:

Mr. Foreman and Gentlemen of the Jury:

This defendant has been indicted by the Grand Jury of this County for the crime of assault in the first degree, that is to say, an assault with intent to take life.

The law of our State has a provision, the wisdom of which, I think, no one will be disposed to question, that, where a man has been previously convicted of a felony, and, after that, commits another felony, he may be indicted, as it is called, as for a second offense, as a second offender; and, after the

People have proved his prior conviction against him, and then, in addition, proved the crime against him, with which he is charged on the present occasion, that fact is taken into account, if conviction follows the second time, in the matter of sentence.

Now, this defendant has been indicted by the Grand Jury as for a second offense; and the People

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will prove, therefore, his first conviction, namely, that he was convicted by a jury of the crime of attempted grand larceny in the second degree, and served a term, and underwent punishment for that crime. After having proved that, we will proceed to the proof of the crime charged in the present indictment, upon which he is on trial before you.

This defendant is one of the proprietors of a certain place, known as 23 Bowery in this city. It is a saloon, nearly opposite Pell Street, on the easterly side of the Bowery.

I wish you, gentlemen, could, as I have done, go over and look at this place, and see it thoroughly; and by a few glances about it I am sure you could learn more about the character of the place than from any amount of testimony.

It is a long, narrow saloon, and at this time, in contravention of law, there was a sort of private hallway built into it, a partition inside of the saloon, which gave a sort of private entrance to the saloon; that is to say, the saloon had a main door, going into the saloon proper; and then, right inside of the main door, there was another door, which led into this narrow hallway, which had been taken out of the

space of the saloon.

So that, a person going in the side door would not go into the saloon directly, but into this private hallway; and, by going down that private hallway, and through a rear door, he would get into a small room, opening into the saloon. On the uptown side of the building, there was a door leading into the main hallway of the building.

Overhead, were bedrooms, rented to an extremely temporary class of occupants.

MR GOLDSMITH: I object to that remark and take an exception to it, if your Honor please.

MR NOTT: I am describing the general character of the place in which the crime was committed, and the place run by the defendant.

THE COURT: I think I will allow that.

MR GOLDSMITH: And your Honor will give me the benefit of an exception to that?

THE COURT: Yes.

MR NOTT:

I should have said that, when you get to the end of the hallway, you enter the saloon through that door; and, when you get to the rear of the saloon, there is another sort of intermediate room, and, back

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of that there are two or three steps that go up; and then comes a screen, hanging, shutting off the rear room from the view, although the screen does not take up all of the space there, but it is in the middle there.

And then there is the rear room, where there are tables, and a kitchen fenced off, and, last, but not least, a piano, which is devoted to the amusement of the patrons of this resort.

That is to say, we have the saloon in front, with the little hallway by its side, and this intermediate room, and then the steps leading up to a room in the rear, where there are tables and the piano.

This defendant was the proprietor, or one of the proprietors, of that place, since last May.

One of the habitués of that place was a man by the name of O'Brien, William O'Brien; and this man O'Brien is a man who has been convicted times without number. He was one of the frequenters there.

In the month of May an occurrence took place there which the People claim is very material to this matter in hand, on the question of motive.

In the early hours of the morning, of a Sunday morning, in May, on the 8th of May, I think, last,

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there was a crowd in this place, and among the members of the crowd was a police officer, by the name of Mallen.

MR GOLDSMITH: One moment. I must interpose an objection to what happened in the month of May, and I object to it on the ground also that the District Attorney is trying to inflame the minds of the jury against the defendant with what has nothing to do with the matter here charged in the indictment. We are dealing only with matters in evidence, and he is referring to matters not material here.

MR NOTT: The People intend to prove, if your Honor please, that the witness, O'Brien, was a witness in December, as to a shooting that took place in that place, in May, and that he testified that certain unlawful acts occurring in this place, and that the trial at which he testified took place in December, and that the defendant shot this witness, O'Brien within a few weeks after. We claim that that is perfectly material on the question of motive.

THE COURT: I will allow it, and allow you an exception, on the question of motive.

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MR NOTT: Yes, sir.

MR GOLDSMITH: I take an exception. And I, also, object to it at this stage, if your Honor please, on the ground that it is too remote.

THE COURT: You may have your exception.

MR NOTT:

On this Sunday morning, while this police officer by the name of Mallon, who was off duty at that time, was drinking and carousing, in the premises 23 Bowery, he got into a dispute with a young man named Brennan, and, after a fight that occurred in that place, these parties got out to the sidewalk, and this officer shot and killed this young fellow.

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O'Brien was a witness of that occurrence. The officer, Mallon, was not tried until the month of December, 1904.

In that month, he was tried, and O'Brien was one of the important witnesses called by the People of the State of New York to testify against this officer, Mallon; and, in that trial, these acts that had been done in the place of this defendant were testified to.

That officer, officer Mallon, was convicted.

MR. GOLDSMITH: Just a moment. Your Honor gives me an exception to the entire statement of the District Attorney, on this subject matter?

THE COURT: Yes. I give you an exception to his entire statement, to everything that he has said.

MR. GOLDSMITH: Yes, sir.

MR. NOTT: On the 29th of December, 1904, about a month after this conviction of Mallon, this man O'Brien again went into the place kept by this defendant.

He was in there early in the evening, about 10:30, I think it was, and a fight took place there then, or a disturbance, and he then left.

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He came in later in the evening, and what happened then will be detailed to you by three eye witnesses of the occurrence.

The time at which it happened was between three and four o'clock in the morning, and this place had no right to be open.

There was a doorkeeper employed there to let people in, to look them over and let them in; and people that went in found the place running, and the piano going, played by a colored man, who went under the name of Maude, and a number of women in this back room, many of them in a state of intoxication, and a number of the male frequenters of the place.

The People's witnesses will be two boys, one employed by the Postal Telegraph Company, and a friend of his, who were evidently minors, under the age of eighteen, and yet they were served in this place, the defendant being there, with drinks, which was also in contravention of law.

They went in there, and went into this back room, and sat down at a table against the northerly wall there. They went in there to see what such a place as that was like, and, before the night was over, they saw.

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Another witness named Donevan, was in the saloon earlier in the evening, and came back there, later, and he saw these occurrences.

There is very little dispute as to what the facts were that these witnesses saw.

A woman, named Sadie Ennis, was sitting there. She was a woman that had been in this row, earlier in the evening, and the defendant Smith appeared there.

The defendant Smith and O'Brien stood at the top of this flight of steps, which led from the back room down into the centre of the room, and Smith and O'Brien were heard talking, and their talk grew loud, and their talk grew angry, and O'Brien was heard to apply violent language to Smith, was heard to call him a son of a bitch; and then he called him a steel pigeon for the police.

Smith shouted out some retorts, and O'Brien turned to leave the premises.

O'Brien went down these two steps, and walked across diagonally to the door that went into this little private hallway.

As he did so, Smith drew a revolver, and shouted after him, calling him a son of a bitch, and said,

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"I'll go to the chair for you," and just as O'Brien turned around to open the door, and go out, Smith fired at him, being then at a distance of some ten or twelve feet from him.

The bullet struck O'Brien fairly in the body, and made a very serious wound in the abdominal region.

O'Brien hurriedly closed the door, and got outside, leaving his hat there.

Some man in the place took his hat out to him, and he was then helped across the street to a drug store, where numerous police officers soon appeared.

The two boys followed him, and I think the man Donovan did, and saw him go over to this drug store.

And they saw Smith leave the place, with his revolver.

And they saw another man there, a waiter, named Kelly, whip out his revolver, at the same time that Smith did.

And then the place was cleared, and they ordered the persons inside out, two by two, being led out in that way by the barkeeper, and the place was

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closed, and, when the police arrived, Smith had departed.

Now, that is the testimony that will be detailed to you by these three witnesses.

They are perfectly disinterested witnesses, and who, in spite of the fact that they were in such a place, at this time, I think you will regard with favor, when you see that they are far above the usual character of the people who go there.

They are disinterested witnesses, and it is for you to say whether they are telling the truth.

As so frequently happens in cases of this sort, where crime is committed in such a place, the People will not be able to have the benefit that they ought to have of all the testimony of those who really saw the crime committed, but you can appreciate whether the people there would tell what they really saw.

And I shall call, and put on the stand before you, this witness O'Brien.

I have told you before very frankly that he is an ex-convict, and may be called a professional criminal; and O'Brien, as you will see, will refuse to remember what occurred there. As he says,

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he has been up against it once before, and does not want to be up against it again, and that once is enough for him.

But it is for you to say whether that is not an intentional lapse of memory, and whether the three People's witnesses, who were eye-witnesses, are not telling the truth.

And it will be, then, for you to determine whether the defendant, with intent to take O'Brien's life, did not fire this revolver at him, and strike him with the bullet in a vital part, intending to kill him.

O'Brien's life was given up, for some time, and he was in the hospital for a long time, and has been laid up by this injury ever since.

And it is for you to say whether the prior occurrence in that place, that I have detailed to you, had anything to do with the shooting.

And it is for you to say whether this man, who has been allowed by the police to run this place, without molestation, even after the facts in the Mallon case became public, and when charged with being a steel pigeon for the police, it is for you to say whether he had any motive, or whether that was

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the particular motive, for shooting the man whose testimony was extremely important in convicting a police officer, and in revealing the character of his own place.

If you believe that the People's witnesses are telling the truth, as we say they are, and that this man did shoot O'Brien, even though O'Brien is of the character that I have told you, it is for you to say whether this defendant has not committed the crime of assault in the first degree. But, if you do not so believe on the testimony, then, I am sure, you will promptly acquit the defendant.

THE COURT: I think, Mr. District Attorney, on your opening, that the case can be very much simplified, by confining yourself, first, to the occasion of the shooting. It may not be necessary to travel all over this ground. I think I would confine myself, now, to the occurrences at the time of the shooting, and the second offense. On cross examination, it may become necessary to prove a motive.

But I think we can simplify it, and possibly out out a great deal of matter which you have out-

lined here, and which, possibly, might be admissible on the question of motive, and for no other purpose. There may not be any necessity for going into that branch of it. Make it as simple as you can, and I think it will be then easier for the jury to determine it. Did he shoot him, and under what circumstances did he shoot him? That is the question at issue here, leaving out very largely everything that does not bear directly on that question. If they want to discover any motive on cross examination that may or might exist, let them do so.

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MR GOLDSMITH: Now I ask your Honor for the withdrawal of a juror on the ground that the statements made by the District Attorney are calculated to prejudice the defendant, and that it will be impossible for him to obtain a fair and impartial trial.

THE COURT: No; I will not do that./

MR NOTT: You say that this jury cannot give this man a fair trial?

MR GOLDSMITH: That is my motion, addressed to the Court. You may oppose it, if you like.

THE COURT: No. My suggestion was that we might simplify the case; that was all.

MR GOLDSMITH: Your Honor denied my motion?

THE COURT: Yes.

MR GOLDSMITH: I take an exception.

THE PEOPLE'S TESTIMONY.

J O H N P . B R O P H Y , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR NOTT:

Q What is your name, please, sir? A John P. Brophy.

Q What is your occupation? A Deputy Clerk, Court of General Sessions of the Peace of the City and County of New York, and Clerk of Part III of said Court.

Q Have you, at my request, produced from the office of the Clerk of the Court of General Sessions of the County of New York the minute book, covering the dates of December 12th to 18th, 20th and 24th, 1901, of Part IV ? A I have. I have here the official record of the Court of General Sessions of the Peace, Part IV, from the 6th of May, 1901 to the 28th of February, 1902.

Q And that is produced from the office of the Clerk?

A From the office of the Clerk of the Court of General Sessions of the Peace.

Q And as Clerk of that Part you identify the record?

A Yes, sir.

Q Now, will you turn to the record of December 12, 1901?

A December 18th is the date you wish, I think.

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MR NOTT: Yes, December 18th. That is the indictment.
Have you that record?

A I have, sir.

Q Is there anything in that record as to one William H. Smith? A There is, sir.

MR NOTT: Well, now, I offer that, to be marked for identification.

(It is marked People's Exhibit 1 For Identification.)

THE COURT: Let him read the record, Mr District Attorney.

MR GOLDSMITH: No. I object to it. The book is not in evidence.

THE COURT: It is part of the record of this Court, and the Court will take cognizance of its own records; and I will let him read it, and I will give you an exception.

MR GOLDSMITH: Thank you, sir, I will take the exception.

THE WITNESS: "Wednesday morning, December 18, 1901.
The People of the State of New York against William H. Smith, on trial for grand larceny in the second degree. December 7, 1901. Feloniously to steal the sum of \$30 in lawful money of the United States of America, goods, etc. of one Frank L. Hewes. Filed, December 12, 1901. James J. Walsh, for the People. Hugh O. Pentecost, for

the defendant."

"Jurors balloted and sworn: John C. Fischer, George C. Sieburg, Daniel Sternberg, Gerson Stein, Adolph Verzi-miner, Joseph Schwartz, Maurice Regan, Jacob Halstead, Louis Werner, Herbert S. Kellogg, John H. Ray and Henry W. Rising."

"People's evidence: Frank L. Howes, George Delatour, William J. Burns-- Defendant's evidence: Frank Davey, George King, Nellie Stander, and William H. Smith."

"Officer sworn. The jury returned to the bar, and say they find the defendant guilty of an attempt to com-mit the crime of grand larceny in the second degree."

BY MR NOTT:

Q Now will you turn to the---

BY THE COURT:

Q That was against one, William H. Smith? A Yes, sir.
I so read.

BY MR NOTT:

Q Now turn to the 20th of December and see if there is an entry in the same case? A Yes, sir.

Q Please read it? A "Tuesday morning, December 24, 1901--"

MR GOLD SMITH: One moment. The same objection.

THE COURT: Yes, the same objection and the same ruling.

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He is reading from the record of the court, and the Court will take judicial notice of its own records.

MR GOLDSMITH: I take an exception to the reading of it.

A (Continued) "The People of the State of New York against William H. Smith, on conviction by verdict of an attempt to commit the crime of grand larceny in the second degree, goods, etc. of one Frank L. Hewes. Filed December 12, 1901."

"The defendant having nothing further to say, etc., judgment, in the penitentiary of the County of New York, for the term of eleven months." By his Honor, Judge Cowing, now presiding.

MR NOTT: Now, I offer those two entries in evidence, if your Honor please.

MR GOLDSMITH: I object.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

(They are marked People's Exhibits 1 and 2.)

BY MR NOTT:

Q I show you a paper and ask you where that is produced from? A This indictment is produced from the official records of the Court of General Sessions of the Peace of the City and County of New York.

MR GOLDSMITH: I object to that as a conclusion of

the witness.

THE COURT: Objection overruled. I will allow you an exception.

MR GOLDSMITH: Exception.

BY MR NOTT:

Q Will you tell me whether or not that is the indictment referred to in the entries from the records that you have read?

A Yes, sir. This indictment is the indictment referred to in the records as just read.

MR NOTT: It is offered in evidence, if your Honor please.

MR GOLDSMITH: Objected to on the ground that it is improperly proven.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

(It is marked People's Exhibit 3.)

MR NOTT: Whatever part, if your Honor please, that Mr Goldsmith wishes to read, of course he can read. I will read the face of the indictment to the jury:

(Mr Nott reads to the jury.)

MR GOLDSMITH: No questions. I move that the entire testimony given by the witness be stricken out, and the jury instructed to disregard it.

THE COURT: I deny the motion.

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MR GOLDSMITH: I take an exception.

WILLIAM J. BURNS, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR NOTT:

Q Are you a member of the Municipal Police Force of the City of New York? A Yes, sir.

Q And how long have you been such? A Going on nine years.

Q And did you hold--what position do you hold on the Force? A Roundsman, at the present time.

Q Were you on the force during the month of December, 1901? A Yes, sir.

Q And prior thereto? A Yes, sir.

Q What position did you hold then? A Precinct detective.

Q Were you a witness in the case of the People against William H. Smith, which was tried in Part IV, December 18, 1901, in this court?

MR GOLDSMITH: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

BY THE COURT:

Q Were you a witness in the case of William H. Smith, which was tried in this court on the 18th of December, 1901, before

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Rufus B. Cowing, City Judge? A I am not quite certain, sir, about the date. I was in that case; yes, sir.

BY MR NOTT:

Q Well, were you the officer in the case? A Yes, sir.

MR GOLDSMITH: I object to that, sir, until the witness gets his entire answer on the record.

THE COURT: I will allow it.

MR GOLDSMITH: Exception.

BY MR NOTT:

Q In the case of the People against William N. Smith?

A Yes, sir.

Q And were you present at the trial? A Yes, sir.

Q And did you testify as a witness? A Yes, sir.

Q And did you see the verdict rendered? A Yes, sir.

Q And will you state whether or not you saw the defendant in that case in court? A Yes, sir.

Q Point him out? A There is the man (indicating the defendant).

BY THE COURT:

Q The prisoner at the bar? A Yes, sir.

BY MR NOTT:

Q Did you see the verdict rendered? A Yes, sir.

BY THE COURT:

Q Did you hear the verdict rendered? A Yes, sir.

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MR GOLDSMITH: One moment. I object to your Honor's statement, the prisoner at the bar. Under the code, he is a defendant at the bar.

THE COURT: I will give you an exception.

BY MR NOTT:

Q And were you present in court when he was sentenced?

A Yes, sir.

Q And do you remember what the sentence was? A Eleven months.

Q In the Penitentiary? A Yes, sir.

Q Now, you say that you are not certain, or quite certain, as to the date? Have you your memorandum book here?

A Yes, sir.

Q Can you refresh your memory by looking at that?

A Yes, sir.

Q Will you kindly do so?

MR GOLDSMITH: One moment.

BY MR GOLDSMITH:

Q When did you make the memorandum? When did you make that memorandum? A This was made a long while ago.

Q When? A I can't say when this was made.

Q This morning?

BY THE COURT:

Q Was it made about the time of the trial? A Yes, sir.

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This is a copy made from a book, made at the time of the trial.

MR GOLDSMITH: May I cross examine the witness?

THE COURT: Yes.

BY MR GOLDSMITH:

Q When did you make that memorandum? A The one I have got in my hand?

Q Yes. A About a month ago.

Q About a month ago? A Yes, sir.

MR GOLDSMITH: Now, I object to it.

THE COURT: Why do you object?

MR GOLDSMITH: On the ground---

BY THE COURT:
if

Q Now, you can look at that memorandum and then swear, independently from that, when it took place, I will allow you to do so. Can you do so? A I can do so.

Q You can do so? A Yes, sir.

Q Then do so?

MR GOLDSMITH: Objected to.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

BY MR NOTT:

Q Now, what was the date of that trial? A Well, from my memorandum---

Q No. From your memory, refreshed from the memorandum?

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A I haven't got the date of the trial.

BY THE COURT:

Q You haven't got the date of the trial? A No, sir.

BY MR NOTT:

Q Have you got the date of the sentence? A Yes, sir.

Q When was it? A December 24, 1901.

BY THE COURT:

Q And do you remember that independent from any memorandum?

A Yes, sir.

BY MR NOTT:

Q And were you a witness in the Court of General Sessions against any other William H. Smith in that month? A No, sir.

Q And that Smith against whom you testified, and who was sentenced on the 24th of December, 1901, is this defendant?

A Yes, sir.

MR GOLDSMITH: No questions. And I ask your Honor to strike out the entire evidence given by this witness.

THE COURT: Motion denied.

MR GOLDSMITH: I will take an exception.

MR NOTT: Now, if your Honor please, I understand that Mr Goldsmith has no objection to the introduction in evidence of this plan, and I ask to have it marked in evidence.

THE COURT: The plan of what? Where the alleged shoot-

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ing took place?

MR NOTT: Yes, sir.

THE COURT: It may be corrected if there any corrections to be made in it, by either side. It may go in evidence by consent.

(It is marked People's Exhibit 4.)

J O S E P H M c G I V E R N , a witness on behalf of the People, being duly sworn, testified as follows:

MR NOTT: I will ask permission of the Court to--at least I will ask the Court to ask the jury in case they do not understand anything about that plan, to kindly ask the Court, and we will straighten it out.

DIRECT EXAMINATION BY MR NOTT:

Q Now, Joseph, I want you to speak up so that the last two gentlemen here can hear you. They have got to hear you just as much as the first two? A Yes, sir.

Q How old are you, Joseph? A Seventeen last November.

Q Seventeen last November? A Yes, sir.

Q Where do you live? A 3 West 102nd Street.

Q Do you live with your parents? A Yes, sir.

Q What do you do for a living? A Messenger boy.

Q Messenger? A Yes, sir.

Q Who are you employed by? A Postal Telegraph.

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Q And how long have you been working for the Postal Telegraph? A A year and a half.

Q Are you working for them now? A Yes, sir.

Q Do you know a boy named Kelly--Brady, I mean? A Yes, sir.

Q Now, tell the jury whether or not you and Brady went to the premises, 23 Bowery on the night of January 26th, or the early morning of January 27th?

MR GOLDSMITH: That is objected to, on the ground that it is leading.

MR NOTT: I have got the date wrong. December 29th, I meant.

MR GOLDSMITH: If your Honor please, we are in a court of justice, and we want witnesses to testify, now. Now, I object to this on the ground that it is leading, as it is stating to the witness the answer, yes or no.

THE COURT: The question is, on the 29th of December, was he in this place?

MR NOTT: Yes, sir.

THE COURT: What year?

MR NOTT: 1904.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

A Yes, sir.

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BY MR NOTT:

Q That was 23 Bowery in the County of New York? A Yes, sir.

Q Now, what time did you and Brady get there? A Fifteen minutes past three.

Q In the afternoon or early morning? A In the early morning.

Q After midnight? A Yes, sir.

Q At about 3 A. M.? A Yes, sir.

Q And what door did you go in by? A There is the saloon, and then there is a door at the left of the saloon.

Q Now, on which side of the Bowery is the saloon? East side or west side? A East side.

Q And you say that as you go in there is a door on the right hand side? A Yes, sir.

Q That is, on the downtown side? A Yes, sir.

Q And did you see anybody at the door when you went in? A No, sir.

Q Well, this door that you went into, what did that let you into? A There is a hallway there, a long hall.

Q And did you go through the hallway? A Yes, sir.

Q Then where did you go? A There is a door at the end of the hallway, into a room, a small room. There is a partition there, on top of three steps.

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Q Now, when you got in there were there any other people there? A Yes, sir.

Q Many or few? A Quite a few; about two dozen.

THE COURT: Was this room in the rear of the barroom?

MR NOTT: At the rear of the hallway, before you got to the steps there, sir.

BY MR NOTT:

Q Now, where did you and Brady go then? A To a tablecover in the corner there (indicating).

Q Was it a table before you got to the steps, or after you went up the steps? A After we went up the steps.

Q And what was up at the top of the steps? A Why, this room here, and there was a lot of tables and chairs, and there was a stove at the top of the steps.

Q And was there anything else there? A A piano; over in the corner.

Q And were there any people in that room? A That's where the people all were.

Q Well, about how many were there, as near as you can put it? A About two dozen; both men and women.

Q And what were they doing? A Drinking and smoking. And one man was playing the piano.

Q Was the man playing the piano a white man or a colored man? A A white man.

Q And did you see any one else play the piano? A No, sir.

BY THE COURT:

Q Was he a colored or a white man? A A white man.

MR GOLDSMITH: What was your Honor's question?

THE COURT: I asked him whether he was a white or colored man. I didn't hear his answer to the District Attorney's question.

MR GOLDSMITH: Yes, sir. And then there was no other man playing the piano that he saw.

BY MR NOTT:

Q Did you hear anybody sing? A Yes, sir.

Q Who? A A colored man went up and sang a song.

Q Now, were the people in this room all men or all women, or men and women? A Men and women.

Q How many women were in there? A About ten or eleven.

Q Now, down in front of the steps, alongside of this hall, what was there? A I don't understand you.

Q Before you came to the steps, what was in the front part of the building? A Oh, there was an entrance to the saloon.

Q The bar? A Yes, sir.

Q Now look at People's Exhibit 4. Does that represent the premises? Here is the bar, or the front of it (indicating), and here is the hall, and the little room and the big room.

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Does that represent the premises? A Yes, sir.

Q Now, I want you to take a pencil and mark, as nearly as you can, where the table was that you and Brady sat down at, if the rear room? A There's where I sat and there's where Brady sat (indicating)

Q Well, this circle that you make, with two dots at it is the table and the chairs? A Yes, sir. And there was a bench there (indicating).

Q You say there was a bench running along this jog, right close against the wall? A Yes, sir.

Q Now, is Brady older or younger than you, that you know of? A Not that I know of.

Q What? A I don't know his age.

Q Well, is he a young fellow or an old man?

MR GOLDSMITH: Oh, I object to it. If you have got Brady, produce him before the jury.

BY MR NOTT:

Q Well, I ask you whether he is an old man or a young man?

MR GOLDSMITH: Objected to as incompetent.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

A About my own age.

BY THE COURT:

Q About your own age? A Yes,, sir; about my own age.

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Only a little larger.

Q About your own age only a little larger? A Yes, sir.
BY MR NOTT:

Q Now, after you and Brady sat down there, at three o'clock in the morning, what did you do? A We sat around for about five minutes, and then we ordered drinks.

Q What did you order? A Beer.

Q Were you served with it? A Yes, sir.

Q And did you drink it? A Yes, sir.

Q And what you were served with, was that beer? A Yes, sir.

Q And did you pay for it? A Yes, sir.

Q Now, did you see the defendant there? Did you see this man there (indicating the defendant).

MR GOLDSMITH: I object to the District Attorney pointing to anybody.

BY THE COURT:

Q Did you see the defendant there?

MR GOLDSMITH: One moment. Will your Honor give me a ruling?

THE COURT: As to what? As to his question? I will allow the question, did he see the defendant there.

MR GOLDSMITH: One moment. I desire to have the record straight. I object to the District Attorney pointing to a person at the counsel table and asking him whether he

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was that man, the defendant there.

THE COURT: Well, I will allow the question. He did point, and you may accept to that.

MR GOLDSMITH: That is what I desire the exception to.

THE COURT: Yes, I will allow the question, did you see the defendant there.

MR GOLDSMITH: I will take an exception to your Honor's ruling.

THE COURT: Exception to what? You say you object to the District Attorney's pointing to the prisoner?

MR GOLDSMITH: Yes, sir.

THE COURT: And I will give you an exception to that.

BY THE COURT:

Q Did you see the defendant there? A No, sir, I can't remember seeing that man there.

BY MR NOTT:

Q You didn't identify the man then? A No, sir, I didn't.

Q Now, look at the man standing there at the table (indicating). Did you see that man there? A Yes, sir.

Q What time was it?

A That was about a quarter past three A. M.

BY MR NOTT: Will you admit on the record that the person called

up answers to the name of William O'Brien?

MR GOLDSMITH: Yes.

THE COURT: The complainant referred to in the indictment?

MR NOTT: Yes, sir.

BY MR NOTT:

Q Now, will you tell the jury what first attracted your attention to this man O'Brien and any other man? A Well, from loud talking.

MR GOLDSMITH: Now, I object to this, if your Honor please. There is no evidence here that the defendant was there at the time.

THE COURT: What is that?

MR GOLDSMITH: There is no evidence here that the defendant was there at that time? Whatever happened there, or was said or done in his absence--

THE COURT: You cannot prove a case all in one word. Supposing they can prove that he heard a wordy discussion. I do not know what is is, going on between this man O'Brien and some other man?

MR GOLDSMITH: Would that have any bearing on the defendant?

THE COURT: And supposing that they should prove that that other man was the defendant, and that that other man, the defendant, shot O'Brien in the head, wouldn't that be admissible? They cannot connect him with it all at once. If they do not connect this defendant with the case, you will not suffer one particle.

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MR. GOLDSMITH: But must I raise my objection, and protect my client from the legal testimony going in?

THE COURT: Well, I will give you an exception to it. We want to get at this case, in some way or another.

MR. NOTT: To clear matters up, I say that I offer this on the promise to identify the other party to this conversation and transaction, as the defendant.

THE COURT: Yes. The District Attorney says he will connect the defendant with this other person.

MR. NOTT: Perhaps I ought to have called the two witnesses who identify him first, but I will connect it all right.

BY MR. NOTT:

Q Now you say you heard loud conversation? A Yes, sir.

Q And where was it taking place? A A little further down from where we were sitting, on the same side of the room, right near a door. I believe it was a toilet. I am not sure.

Q Now, was that before or after this colored man sang?

A That was after the colored man sang.

Q How long after? A I guess, about five or eight minutes. I am not positive.

Q Now, when your attention was attracted to this noise,

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you say you heard the noise down by the toilet?

A Yes, sir.

Q This toilet that appears here on this plan (indicating)? A Yes, sir; right about there (indicating).

BY THE COURT:

Q In front of the toilet? A Yes, sir.

BY MR. NOTT:

Q In front of the men's or women's toilet? A In front of the men's toilet.

Q You say you heard this conversation in front of the men's toilet? A Yes, sir.

Q And state whether or not you saw that man O'Brien there? A I know O'Brien. I seen him there.

BY THE COURT:

Q And was he one of the men engaged in this altercation?

A Yes, sir.

BY MR. NOTT:

Q And did you see anybody else there, with him?

A Some other gentleman and a lady.

Q Then there were O'Brien, another man and a woman?

A Yes, sir.

Q Could you identify that woman, if you saw her?

A Yes, sir.

Q Do you see the woman here? A Yes, sir.

Q Is this woman who just came in the woman (indicating)?

A Yes, sir.

Q And you say that she was standing with those men, with the man O'Brien and the other party, right in front of the men's toilet? A Yes, sir.

MR. GOLDSMITH: Objected to. I object to any question being put to this witness, while you bring in a woman for identification.

THE COURT: Well, I will give you an exception to that. He identifies this woman as being the person in front of this closet, talking to these two men.

BY THE COURT:

Q Do you do that, Witness? A Yes, sir.

MR. NOTT: Now, on my promise to connect, and show that the other man of these two men was the defendant, by two other witnesses, I will ask the witness for that conversation, and the subsequent occurrences.

THE COURT: Very well.

BY MR. NOTT:

Q You say you can't identify the other man that was talking there positively? A No, sir.

Q Well, go ahead and state what was said there?

MR. GOLDSMITH: I object.

THE COURT: On the statement of the District Attorney that he will connect the defendant, as being one of the two men engaged in that conversation there, at the time, I will allow it.

MR. GOLDSMITH: Exception.

A O'Brien was talking first.

BY THE COURT:

Q And what did O'Brien say, and what did the other person say? A Well O'Brien was talking kind of loud, and he pointed to different saloons around there, and he called him different names.

Q He pointed to the different saloons around there, and called him different names? A Yes, sir.

BY MR. NOTT:

Q Well, show how he pointed? A He pointed over in that direction (illustrating).

Q Now, just tell the jury how he said it? A He said, "That son of a bitch over there, and that bastard over on that corner, and some fellow down there, he would get square on the whole bunch of them."

BY THE COURT:

Q O'Brien said that? A Yes, sir.

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BY MR. NOTT:

Q Go on. A And he said, "And you, you stool pigeon, I'll get you, too."

BY THE COURT:

Q And he said "you, you stool pigeon, I will get you too?"

A Yes, sir.

BY MR. NOTT:

Q Now go on, and tell what was said by them, after that?

A I didn't hear the other man speak at all.

Q Did you hear the woman say anything? A She said they were good friends, and they shouldn't quarrel.

BY THE COURT:

Q She said, they were good friends, and they shouldn't quarrel? A Yes, sir. And O'Brien spoke up and said, "You are sticking up for all of the whops".

Q Well who said that? A O'Brien.

Q O'Brien said that this other man was sticking up for all the whops? A Yes, sir; and didn't care for his own ~~firm~~ friends at all.

Q And didn't care for his own friends, at all?

A Yes, sir. And he went to go out of the door, then, and he went over on this other side of the partition.

BY MR. NOTT:

Q Now just wait. After O'Brien made that remark

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about the whips, what did O'Brien do, if anything? A He went over towards that door.

Q Now, which door did he go over toward? Look on the plan here? A There is a partition right here (indicating), and a little opening right there; and he went down through this space (indicating), and over toward this door here (indicating).

Q Now just make a mark at the door that you mean, just put an X at the door towards which he went? A Yes, sir (indicating).

Q And he went down this space (indicating), and over towards that hall door? A Yes, sir.

BY THE COURT:

Q That is the door leading out into the hall, isn't it?

A Yes, sir.

BY MR. NOTT:

Q Into the little side hall? A Yes, sir.

Q Now had O'Brien, up to that time, done anything to this other man? A No, sir.

Q And when O'Brien started down this space, and diagonally across toward that little hall door, what did the other man do? A I didn't notice him at the time. I was watching O'Brien.

Q And what did O'Brien do? A Well, he went down those steps (indicating), and I ran over to see this other man down them three steps (indicating), with the revolver in his hand. He had a revolver in his hand.

Q Now you say you ran over. You had been sitting at that table? A Yes, sir.

Q And where did you run over to? A Over to that partition there (indicating).

Q Toward the head of the steps? A Yes, sir.

Q Now tell the jury, whether there was, at that time, anything across there, in front of the steps (indicating)?

A Yes, sir.

Q What was it? A A partition, a big wooden partition.

Q Well, a partition or a screen? A Well, it is built of wood, like a fence.

Q And that runs across there (indicating)?

A Yes, sir.

Q And does it go all the way across? A No, sir; there is two openings.

Q On either side? A Yes, sir.

Q And to which opening did you go? A This side, where O'Brien went down (indicating).

Q So that you were over there (indicating), near that

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wall, and near the head of the steps? A Yes, sir.

Q Did you look around through that opening?

A Yes, sir; I looked down that little place there (indicating).

Q Now when you looked down, what did you see?

A I seen this gentleman fire a shot.

Q You saw this gentleman fire a shot? A Yes, sir.

Q And where was O'Brien standing, at the time?

A Standing by that door, where the X is (indicating).

Q That is the door leading into the hallway?

A Yes, sir.

Q And how far away from him was this other man?

A About that entrance there into the bar (indicating).

Q About that entrance there into the bar? A Yes, sir.

Q Into the main bar? A Yes, sir.

Q That is, O'Brien was at this door (indicating) and the other man was about in front of this entrance (indicating)?

A Yes, sir.

Q Well, now, did you hear the other man say anything, at the time, or just before he fired the shot? A No, sir.

Q You say you saw him -- well, go on, and tell in your own language what happened, when you looked down there?

A O'Brien wanted to get behind the door, after the shot was

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fired.

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Q No. Before the shot was fired, tell what happened?

MR. GOLDSMITH: Objected to, as already testified to. I don't see why the witness should be asked to repeat what he has already testified.

THE COURT: Allowed.

MR. GOLDSMITH: Exception.

A O'Brien was standing, holding the knob of the door like, and he turned as if to say something again, and this gentleman fired the shot.

Q Now this gentleman, was that the same man who had been talking to O'Brien? A Yes, sir.

Q With this woman? A Yes, sir.

Q And, at the time he fired the shot, you say he was about in front of the door into the main saloon?

A Yes, sir.

Q And, when he fired the shot, what did O'Brien do?

A Well, O'Brien, he tried to edge in between that door like, and then this fellow that had the gun, he said, "Come from behind there, and I'll give you another shot."

BY THE COURT:

Q He said to O'Brien, "Come from behind there and I'll give you another shot? A Yes, sir.

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BY MR. NOTT:

Q Did he say anything else? A Not at that time, no. Some people got in there, and interfered with him, from shooting again, I don't know who they were, and O'Brien went out.

And then this fellow made a break to go into the saloon, and he said, "He as much as called me a stool pigeon."

Q Now where was O'Brien, when this other man said to him, "Come from behind that door, and I'll plug you again"?

A O'Brien was in behind the door.

Q Well did the man say anything to O'Brien, then?

A No, sir. O'Brien went out.

Q Did he say anything about the chair? A Well --

MR. GOLDSMITH: I object to leading the witness, if your Honor please, unless the witness has exhausted his memory.

BY THE COURT:

Q Can you remember anything else that he said?

A Yes, sir. He said, "He as much as called me a stool pigeon," and then he said he would go to the chair for that fellow.

BY MR. NOTT:

Q Now where did this other man go to, after he made that

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remark, and O'Brien went into the hall? A Well, I followed O'Brien. I didn't see where this other man went to.

Q Where did you follow O'Brien? A I went out on the Bowery, and O'Brien had run out before I did, and he was in Pell Street.

And he came back to the corner of Bowery and Pell, and he said, "He shot me in the stomach."

THE COURT: No. Strike that out, what O'Brien said. And I instruct the jury to disregard it. Do not give any conversations unless the defendant was present.

BY MR. NOTT:

Q Did you see anybody give anything to O'Brien?

MR. GOLDSMITH: I object to that as immaterial, irrelevant and incompetent and improper.

THE COURT: Allowed.

MR. GOLDSMITH: Exception.

A Some gentleman brought his hat to him.

BY THE COURT:

Q Some gentleman brought his hat to him?

A Yes, sir.

BY MR. NOTT:

Q And gave it to him? A Yes, sir.

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Q And where was O'Brien, when that hat was handed to⁴⁹ him? A In a saloon in Pell Street.

Q On which side of the Bowery? A Uptown.

Q Uptown, in Pell Street? A Yes, sir.

Q And on which side of the Bowery? The same side as 23, or the other side? A No, sir; the other side of the Bowery.

Q The other side of the Bowery? A Yes, sir.

Q And then what did O'Brien do? A I ran up to the elevated station then, and I didn't see O'Brien after that.

BY THE COURT:

Q Did this party, whoever it was, who fired this pistol, fire more than one shot? A No, sir.

Q One shot? A Yes, sir.

BY MR. NOTT:

Q Did you ever know this defendant? A No, sir.

Q Had you ever had any trouble with him of any sort?

A No, sir.

Q Did you ever know O'Brien before that night?

A No, sir.

Q Did you ever see him before that night?

A No, sir.

Q You are not a friend of his? A No, sir.

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BY THE COURT:

Q How far was O'Brien from this man who shot? Indicate here, in thereon, the distance, to the jury. How far they were apart, at the time this man shot O'Brien, shot at him? A From where I am, about, to the District Attorney.

THE COURT: How many feet is that, gentlemen? Can you agree upon that?

BY MR. NOTT:

Q You mean Mr. Appleton, here (indicating)? A Yes, sir.

THE COURT: Would that be ten feet, gentlemen of the jury, from where he sits to where Mr. Appleton is sitting, there?

THE SIXTH JUROR: About twelve feet.

THE COURT: I want to get the record straight.

THE THIRD JUROR: About twelve feet.

MR. NOTT: Well, this diagram is drawn to a scale, and the jury can figure it out. He has located the two parties on the record, and, by calculating the scale, you can get it better, gentlemen.

THE COURT: Well, I only want to get it on the record, whether they were touching each other, or there was some appreciable space between them.

CROSS EXAMINATION BY MR. GOLDSMITH:

Q Were you working that day, McGivern? A Yes, sir;
I was working.

Q What time did you go to work? A Four o'clock in
the afternoon.

Q And what were your hours? Four o'clock until two.

Q And where did you work? At what office?

A 104th Street and Columbus Avenue.

Q And was Brady employed in the same office with you?

A No, sir.

Q Eh? A No, sir.

Q Where was he employed? A I don't know where he was
employed.

Q How long do you know Brady? A Well, he had worked
up in our office, during that summer, about four months.

Q Had you seen him any time previous to the morning
in question? A Why, yes.

Q Where? A He used to come around to the office,
every night.

Q Was he around at the office between four o'clock
that afternoon and two o'clock that morning? A He reached
there about 12 M.

Q And you were still on duty? A Yes, sir.

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Q And did you have a conversation with Brady?

A Yes, sir.

Q Were you out on any calls? A Sir?

Q (Question repeated) A No, sir.

Q You didn't leave the office that time? A No, sir.

Q Was Brady in the office too? A Yes, sir; he came in the office.

Q How long was he in the office? A About two hours.

Q From what time until what time? A From about 12 o'clock until I got off, at 2, the time I was off.

Q 12 midnight until 2 A. M.? A Yes, sir.

Q He waited there for you? A Yes, sir.

Q And you lived, as I understand, at 102nd Street?

A Yes, sir.

Q And you lived with your father and mother?

A Yes, sir.

Q Now had you been out with Brady, before this time? A The night before I was down at the same place with Brady.

Q But it wasn't the first time that you had visited this place that you were in? A No, sir; the second time.

Q Had you been in any other place along that street?

A No, sir.

Q This was the only place that you had visited, the

night before? A Yes, sir.

Q Were you in Pell Street? A Walked through Pell Street that night, before we went there.

Q Any other street that you walked through?

A No, sir.

Q Did you have any money with you? A About a dollar.

Q How much did Brady have? A He didn't have anything.

Q What? A He didn't have anything.

Q Brady was broke? A Yes, sir.

Q You were taking Brady around, eh? A He brought me around, and I had the money.

Q He was taking you around, and you were spending the money? A Yes, sir.

Q In other words, he said, "Come along down there, McGivern, and I'll treat you with your own money"? Is that the idea? A Yes, sir.

MR. NOTT: He furnished the capital, and Brady furnished the experience.

BY MR. GOLDSMITH:

Q Brady had no trouble in getting into places he wanted to get in; had he? A Yes, sir. He wanted to get in No. 9, but they wouldn't let him in.

Q Now when did you intend to go home? A I wanted to go

to Chinatown.

Q Weren't you there, the night before? A Yes, sir; but I wanted to see it again.

Q You haven't been there since? A No, sir.

Q You were in the House of Detention; were you?

A Yes, sir.

Q How long? A Saturday night I went there, and I got out on Tuesday.

Q Were you taken to any court? A Essex Market.

Q Did you make a statement in that court? A Yes, sir.

Q Was this defendant there? A I didn't see him there.

Q When was the first time that you saw this gentleman (indicating the defendant)? A This is the first time I saw him, to recognize him, to know him again.

Q This is the first time you ever saw him, ain't it?

A Yes.

Q Sure about that? A Yes.

MR. NUTT: He says, to recognize him. I object to that.

BY MR. GOLDSMITH:

Q Weren't you taken into the Tombs Prison? A Yes, sir.

Q And wasn't this man brought out to you? A Yes, sir. He was amongst a bunch of men, if he was there. I didn't

recognize him.

Q You didn't recognize him? A No, sir.

Q Now you got into this saloon about 3 o'clock in the morning; didn't you? A Yes, sir.

Q How many drinks did you have? A One.

Q Did you have any before you got there? A No.

Q Did Brady have any? A No.

Q Do you know whether Brady had been fired out of that place, about two months before that, or two nights before?

A No, sir.

Q He hadn't told you about that experience that he had?

A No, sir.

Q And, all told, how long were you in this place?

A About twenty-five minutes.

Q You saw everything that went on, or tried to?

A Well, in that time; yes.

Q In that time? A Yes, sir.

Q You were awake? A I certainly was.

Q And you went down to see everything, and you did see everything? A I seen everything I could; certainly.

Q Now you say that no colored man played the piano?

A Not while I was in there, no.

Q During the twenty-five minutes? A No, sir.

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Q A white man played the piano? A A white man played the piano.

Q Now, how did you recognize O'Brien? A Well, he was doing all the loud talking, and I seen him, and I recognized him then; and when they brought me to Gouverneur Hospital, I recognized him, and now I recognize him.

Q Now you had your eyes wide open, and were wide awake? Now can you say that the defendant was there, or not?

A His back was turned to me. I didn't notice him.

Q Well, you ran over to see where this trouble was?

A Yes, but other people were there too; I was watching O'Brien all the time.

Q But you could see the other people? A Sure.

Q Could you recognize the man that fired the shot, when you saw him, if you saw him again? A No.

Q Why not? A Because I didn't get a good look at him.

Q Because you didn't get a good look at him?

A No, sir.

Q The only man that you got a good look at was O'Brien?

A That's all.

Q And the woman? A This woman, I seen her, the night before there.

Q This Sadie Ennis? A Yes, sir.

Q Now, after this O'Brien had been shot, did you and Brady go out? A I went out alone. Brady stayed there.

Q What did you say to Brady? Anything? A I told him I was going to beat it..

Q You were going to beat it? A Yes, sir.

Q In other words, you were going to get uptown?

A Yes, sir.

Q Did you stake your friend Brady? A No; he didn't ask me for no stake.

Q He had no money? A No, sir.

Q And you were his friend? A Yes, sir.

Q And you were going to beat it? A Certainly.

Q And you did beat it? A I did beat it.

Q And you got out on the street? A Certainly.

Q And you took the elevated, for yours? A For mine, yes.

Q Eh? A Certainly.

Q And you went right home? A Right home.

Q And when was the next time you heard anything about this thing? A In the newspapers.

Q Well, you read it in the newspapers? A Next day.

Q Did you go to work, the next day? A Certainly.

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Q And, after you went to work, did anybody call on you? A No.

Q Eh? A No, sir.

Q Who took you to court? A Some detective came up after me.

Q When? A Some detective came up after me.

Q When? A New Years Eve.

Q New Years Eve? A Yes, sir.

Q And when did this happen? A The 29th of December.

Q The 29th of december? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. NOTT:

Q Oh, did you hear any name given to that colored man, who sang a song there? A They called him Maude.

MR. GOLDSMITH: What was that? I didn't catch that answer.

MR. NOTT: He says they called him Maude.

JAMES J. BRADY, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. NOTT:

Q Now, Brady, just lift your voice, and remember that these two gentlemen have got to hear every word you say. How

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old are you, Brady? A 16 years of age.

Q How old? A 16 years.

Q And when were you 16? A July 19th.

Q Last July? A Yes, sir.

Q Where do you live? A 252 West 133rd Street.

Q And what is your business? A Messenger boy.

Q Who are you a messenger boy for? A Postal Telegraph.

Q And what office? Were you working in December last?

A Yes, sir.

Q In what office? A In 30th Street and Broadway.

Q Did you know the other boy, McGivern? A Yes, sir.

Q Now, tell the jury whether or not you went anywhere with McGivern, on the night of December 29th, or the early morning hour? A Yes, sir.

Q Where did you met him? A I met McGivern at 104th Street and Columbus Avenue.

Q Did you go up there? A Yes, sir.

Q And what time was it when he got through working there?

A He got out at 2:10.

Q In the morning? A Yes, sir.

Q And then where did you and McGivern go? A Went on the 9th Avenue elevator, and then we took the 3rd Avenue elevator around to Chatham Square, and we got off, and went

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into 23 Bowery.

Q So that you came right down from McGivern's office, right down to this place, 23 Bowery? A Yes, sir.

Q Were either of you in uniform? A I wasn't. McGivern was.

Q He had his uniform on? A Yes, sir.

Q Well, do you remember which door you went into, into the place? A Yes, sir.

Q Which? A 23 -- in the saloon part. But next to the saloon there is a door.

Q Into this hallway (indicating)? A Yes, sir.

Q Now, after you went into the hallway, where did you go? A Right back into the rear room, up three steps, and sat at a table in the corner.

Q Well, now, this table, was it on the uptown or downtown side of the room? A Well, it was on the left hand side, over in that corner, like that (illustrating).

Q The left hand side, as you went in? A Yes, sir.

Q Now, this place is on the east side of the Bowery, isn't it? A On the east side.

Q 23 is on the easterly side of the Bowery?
A Yes, sir.

Q And so it was on the left hand side as you walked back

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from the street? A Yes, sir.

Q And were there any other people in that place, at that hour? A Yes, sir.

Q Were there many or few? A Oh, quite a lot.

Q Were they all men? A Old men?

Q I say, all men? A No, sir; there was most women.

Q Women and men? A Yes, sir.

Q Was there any music going on, in that place?

A Yes, sir.

Q What kind of music? A A piano.

Q Was the place lighted? A Yes, sir.

Q Was the saloon in front lighted? A A dim light, it was.

Q But the back place was lighted? A Yes, sir.

Q Was there any screen across, near those steps?

A Yes; a partition.

Q Well, you call it a partition? A Yes, sir.

Q And how near the top of the steps was that partition?

A On the top step.

Q And did it go all the way across? A No, sir.

Q Was there a space at either end? A Yes; on both ends.

Q On both ends, you could go around? A Yes, sir.

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Q As you came up the steps, there was this screen or partition as you call it, and you could go on either side of it, to get into the back room? A Yes, sir.

Q Did you hear anybody sing there? A Yes, sir.

Q Who sang? A A man they called Maude.

Q White or colored? A Colored.

Q Now, after you had been there a while, did anything attract your attention? A Yes, sir.

Q Before I come to that. What did you do, when you get into this back room? A We sat down there for about two or three minutes, and then McGivern called the waiter, and asked him for a glass of beer, and I said, "The same."

Q Well did he furnish you a glass of beer?

A Yes, sir.

Q Did either of you pay for it? A The both of us paid for it.

Q And did you drink it? A Yes, sir.

Q Now, after that did anything attract your attention?

A Yes, sir.

Q What? A An argument.

Q And where was the argument going on? A Right near the partition.

Q Near this partition, near the steps (indicating)?

A Yes, sir.

Q And who was in the argument? A Smith and O'Brien and a woman.

Q When you say Smith, who do you mean? A I mean that man there (indicating the defendant).

Q The defendant? A Yes, sir.

Q Had you ever seen him before? A Yes.

Q When? A The night before that.

Q You had been in the same place? A Yes, sir.

Q The night before? A Yes, sir.

Q And you had seen the same man? A Yes, sir.

Q And a man named O'Brien? A Yes, sir.

Q Have you seen him since? A No, sir; I never saw him before.

Q I say, have you seen him since that time?

A Yes, sir.

Q Bye the bye, did you have any money with you, that night? A I had -- no, I didn't have any money.

Q Well, where did you get the money that you paid for the drinks with? A Off Joe McGivern.

Q Now tell the jury what this argument was. Give all you heard pass between this O'Brien and this defendant, Smith?

A Well, what drew our attraction was these two men's

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argument and talk, and they were speaking to each other, and all what drawed our attention was Smith said, "I'll get even with you," naming cursing names in the place, and pointing to three places.

Q Who was it said that? A It was O'Brien said that.

Q Well now, tell what he said and how he pointed.

Just show the jury. A He pointed up that way (illustrating), and he said, "I'll get even on you," and he cursed, and said a bad word, and he said, "I'll get even on that man down there, and I'll get even on you, Smith, you God damned stool pigeon."

Q And what did Smith say? A Well, Smith said -- let me see, now.

Q Was there any one else there?

MR. GOLDSMITH: No; I object to that. I ask that the question be put to the witness, and the witness allowed to answer.

MR. NOTT: All right.

BY MR. NOTT:

Q Did you see Smith do anything there?

A Yes, sir.

Q Well, what did he say, first? A He said, "You will?" And he put his hand in his hip pocket, and he drawed this

revolver.

BY THE COURT:

Q Who said that? A Smith.

Q He said, "You will?" And put his hand in his hip pocket, and drew a revolver? A Yes, sir.

BY MR. NOTT:

Q Now was there anybody else near these two parties at the time? A Yes, sir.

Q Who? A A woman.

Q Have you seen her since? A Yes, sir.

Q Would you identify her, if you saw her again?

A Yes, sir.

MR. NOTT: Just ask her to step in.

BY MR. NOTT:

Q Well, now, go on. Did you hear this woman say anything, in this discussion? A Yes, sir.

Q What did she say? A She said to O'Brien -- no, it was to Smith -- she said, "Don't argue. You know that he is your best friend."

BY THE COURT:

Q Who said that? A The woman said that.

Q What did she say? A "Don't argue. He is your best friend."

BY MR. NOTT:

Q And what else did you hear said then? A And O'Brien said --

Q Is that the woman that you saw there (indicating)?

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1 A Yes, sir.

MR NOTT: I would like it to appear on the record that this is the same woman that was identified by McGivern.

THE COURT: Yes.

BY MR NOTT:

Q Well, go on. What did you hear said then? A And he says, "You are all the cause of it," and pushes--

Q Who said that? A O'Brien said that to the lady.

Q What did he say? A "You are all the cause of it," and pushes this lady right away.

Q Then what did you hear said, if anything? A And then it was the argument, and Smith drewed the revolver.

Q Now, before the revolver was drawn, did you hear anything else said that you remember? A I might, but I don't remember now, unless the question was put to me.

Q Did you hear anything said about Whops?

MR GOLDSMITH: Objected to as immaterial, incompetent and leading.

THE COURT: Allowed.

MR GOLDSMITH: Exception.

A Yes, sir.

BY MR NOTT:

Q Who said anything about that? A Well, O'Brien said to Smith, "You stick up for all these whops around here".

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BY THE COURT:

Q O'Brien said to Smith, "You stick up for all these whops around here"? A Yes, sir.

Q O'Brien said that to Smith? A Yes, sir.

BY MR NOTT:

Q And, after that remark was made, what did O'Brien do?

A O'Brien?

Q Yes. Did he stay there or go anywhere, or what did he do? A Well, he walked slanting and went down three steps.

Q And what did Smith do? A He went down on the opposite of it.

Q Of what? A Of the partition.

Q That is, you say O'Brien went down on the side of the partition nearest the toilet, on that side (indicating)?

A Yes, sir.

Q And Smith went--- A No, sir. Smith went on that side.

Q O'Brien went over to the side of the partition toward the wall? A Yes, sir.

Q And went down? A Yes, sir.

Q And Smith went through the other side? A Yes, sir.

Q And what did you do? A Then I followed him right up to the top of the steps.

Q Did you follow Smith or O'Brien? A I was on the side

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of O'Brien.

Q That is, the side next to the wall? A Yes, sir.

Q Did you look around the partition? A No, I didn't.

Q Well, did you stand behind the partition, or did you get so that you could see down the steps?

MR GOLDSMITH: He said he was standing right alongside of O'Brien.

THE WITNESS: No, I didn't say that. I said I went in back of him, followed him down.

BY MR NOTT:

Q I mean, did you get where you could see between the partition and the wall, what was going on down the steps?

A Yes, sir.

Q And what did you see? A I see Smith draw the revolver, and fire a shot at him.

Q And where was Smith at the time he pulled the revolver and fired the shot; at that time? A He was down on the steps.

Q At the bottom of the steps? A Yes, sir.

Q Where was O'Brien? A O'Brien was at the bottom.

Q Well, at what part, near the bottom, was O'Brien at, with reference to the hall? A He was near the door.

Q The door going into the hall? A Yes, sir.

Q And how far away from him was Smith? A About as far as from here to you (indicating), this distance.

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Q Roughly speaking, about ten or twelve feet? A Yes, sir; ten or twelve feet.

Q And was that the time that he fired? A Yes, sir.

Q And who did he aim at, when he fired? A He aimed at O'Brien.

Q Now, up to that time, had O'Brien done anything to Smith? A No, sir.

Q Except--I mean anything except the argument? A No, sir.

Q Or what he said to him? A No, sir; he didn't hit him or nothing.

Q Did O'Brien have anything in his hands? A No, sir.

Q Now, did Smith make any remark, at the time, or about the time he fired this shot? A Yes, sir.

Q Well, what was it? A He says, "Stand out, until I get another shot at you", he says.

Q And where was O'Brien when Smith made that remark? A Behind the door. There is the door, and he was standing like that, with the door covering him (illustrating).

Q Was that after the shot? A Yes, sir; after the shot had hit him.

Q Does that door swing in or out? A It swings in.

Q As shown in this plan here (indicating)? There is the hall (indicating)? A There is the hall (indicating).

Q Now, there is the hall door (indicating)? A Yes, sir.

Q And there are the steps (indicating)? A Yes, sir.

Q And does the door swing into the room, or out into the hall? A Well, I couldn't remember that.

Q Well, where was O'Brien? Was he in the hall or in the room? A In the room.

Q Behind this door you say (indicating)? A Yes, sir.

Q And he said what? A "Stand out until I get another shot at you. I will go to the chair for you."

Q And what did O'Brien do then? A He kind of staggered, and ran out of the door.

Q And what did Smith do? A Smith took the pistol and put it in his hand and went behind the bar.

Q Into the front part? A Yes, sir.

Q And at that time did you see anybody else with a revolver there? A Yes, sir.

Q Who? A An old man with a gray beard. He said, "For God's sake, put it away."

Q Who did he say that to? A To Smith.

Q And what did Smith do then? A He put it in his hand, and put it behind the counter.

Q Behind the bar? A Yes, sir.

Q Well, what became of McGivern? A McGivern?

Q Yes. A Well, after this was all done, and he put the pistol away, he run out of this hall door, and he run up on the

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elevated station.

Q McGivern did? A Yes, sir.

Q Now, what did Smith do, after he put the revolver in behind the counter? A I couldn't tell you what he done.

Q Well, what did you do? A I went out with McGivern.

Q And what did you do then? A I went right over to follow O'Brien.

Q And where did you see him? A I think it was at Pearl Street, if I aint mistaken. I aint familiar with the streets down there.

Q What was he doing when you saw him? A He was staggering, and he said, "Oh, my"--

Q Never mind what he said. What happened then? A Two men brought him into the drug store.

Q Where was it? The drug store? A On the opposite side, near Chatham Square.

Q And did you go in there? A No, sir. But I wanted to talk to the officer about it, and he chased me away.

Q Where did you go, when he chased you away? A I went over to the main office of the Postal Telegraph.

Q And where is that? A 253 Broadway.

Q And did you go back to 23 Bowery? A After that, yes, sir.

Q Well, was that before you went over to the main office,

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or afterwards? A After.

Q Well, what did you do over at the main office? A Oh, I went back to 23 Bowery.

Q Before you went to the main office? A Yes, sir.

Q And what did you say after you got back to 23 again?

A Well, I went back there, to see could I see anything else; and this man named Kelly was putting men out by twos.

MR GOLDSMITH: Oh, I object to that, if your Honor please.

BY MR NOTT:

Q Who is Kelly? A He was the bartender.

Q Had you seen him in there before the shooting?

A Before the shooting, yes, sir.

Q And while the defendant was there? A Yes, sir.

Q He was the bartender in the place? A Yes, sir.

Q And you saw him, you say, putting men out, by twos?

A Yes, sir.

Q Did you go inside? A Yes, sir.

Q And how long were you there before you went out again?

A About three--about five minutes.

Q Were there any women in there, when you entered the second time? A No, sir.

Q What did Kelly do with them? A Put them up in a room. There was a door on that side, on the side of the toilet (in-

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