

START

630

CASE

1692

CASE 630

COURT OF GENERAL SESSIONS OF THE PRACE,

City and County of New York, Part III

-----X
: THE PEOPLE :
:

-vs-

: B e f o r e :
:

: Hon. Otto A. Rosalsky, J.
:

: And a Jury.
:

GABRIELE MAGGIORE, impleaded with:
James O'Brien :
-----X

Tried, New York, February 19th, 1907.

Indicted for Assault in the First Degree.

Indictment filed December 14th, 1907.

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

Assistant District Attorney, Keyran J. O'Connor, for
the People.

Charles E. Le Barbier, Esq., for the Defense.

Frank S. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

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

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Mr. Weinberg, if you don't understand me, say so, please. What is your business? A Candy store.

Q A candy store? A Yes sir.

Q And where is your place of business, or where was your place of business, on the 6th of December, 1906?

A 2091 Second Avenue.

Q Speak a little louder please. Where was your place of business on December 6th, 1906? A 2091 Second Avenue.

Q In the County of New York? A Yes sir.

Q What business did you conduct there? A Candy, soda water, stationery.

Q And who lived with you there? A Nobody; my wife.

Q Your wife? A Yes sir.

Q And did you have your candy store in the front of the

-- A In front, in Second Avenue.

Q And did you live at the rear? A Yes sir.

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Q Say yes or no? A Yes.

Q Now, did you see the defendant, on the 6th of December, 1906? A Yes sir.

Q What time of the day or night did you see him?

A About ten o'clock.

Q At night? A Yes sir.

Q Where did you see him? A In the store.

He bought some goods.

Q Well was he in your store? A Yes sir.

Q Now did he say anything to you, while he was in the store? A He said to my wife -- he hit my wife before.

Q Were you present there when your wife was in the store with him? A Yes; I was in the back.

Q You were in the back? A Yes sir.

Q Now did you hear anything that he said to your wife? A Yes.

Q Now what did you hear the defendant say to your wife? Now, before that, did he buy anything? A He bought cigarettes.

Q He bought cigarettes? A Yes sir.

Q And after he bought the cigarettes, what did he do? A He wants to go out, and my wife asked him for the money, and he give her a punch right in her heart, and she faint right on the floor, and she holler, and I went in, and

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I say, "What for you hit my wife?" And he pushed me right outside in the street, and hit me.

Q Where were you when he struck you? A Me?

Q Yes? A I was running inside in the store.

Q And what did you do when you got into the store?

A I asked him what for he hit my wife, and he said, "You God damn Sheeney, I kill you, tonight."

Q He said, "You God damn Sheeney, I kill you tonight."

A Yes sir.

Q And what did you do then? A What can I do? He's too strong for me. He hit me, and I run inside and closed the store.

Q Did you get out into the street at all? A He pushed me outside, right near the door of my store.

Q One moment. Now, if you don't understand the English language, you can get an interpreter here who can speak your own language. Do you understand? A Yes sir.

Q Now you got into the store? A He pushed me outside in my store; he pushed me to the door.

Q And you say that the defendant pushed you?

A I asked him what for he hit my wife, and he hit me inside, and he pushed me outside, and hit me hard, right near my door.

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Q Did you fall down? A Sure I fall down.
And I run in the station house, too.

Q Now, you fell down? A Yes sir. And the people
take me in the store, and help me to close up.

Q When you got in, what did you do? A I closed the
store up.

Q Did you stand inside of the door? A Yes sir.

Q Well, what kind of a door is it? A A wooden door,
with glass in it.

Q And where was your wife at the time, when you got
inside the store? A She was inside the store.

Q And what else occurred there? And, about half
past eleven o'clock at night, I hear knocking at the door,
and O'Brien knocked with his hand on the door-window, and I
see him, and I shall holler "Police", "Police", and ~~he~~ run
inside the undertaker's place.

Q Who did? A O'Brien. He comes back, about 12
o'clock. I see him when he lifts up the two stones (il-
lustrating).

MR. LE BARBIER: I object to what he claims
to have seen O'Brien doing then.

THE COURT: Objection sustained.

MR. LE BARBIER: I move to strike out that
portion of the answer.

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THE COURT: Motion granted.

THE ELEVENTH JUROR: We can't understand him, at all, your Honor.

MR. O'CONNOR: Yes sir. I don't think this man understands the English language, your Honor.

THE COURT: Then, Mr. Interpreter, please interpret.

(The last question of the District Attorney is repeated through the official interpreter, Mr. Fisher.)

A At 12 o'clock at night.

Q Twelve o'clock at night, when the window was broken by O'Brien, I saw Maggiore, the defendant, and he was shooting four times with a revolver.

BY MR. O'CONNOR:

Q And what happened to you then? A Afterwards, the police detectives arrived, and he was arrested.

Q Well, now, one moment. You say that O'Brien broke the window.

MR. LE BARBIER: Now I move that that be stricken out.

MR. O'CONNOR: I will make the connection, may it please your Honor.

MR. LE BARBIER: No; we don't want any connec-

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tion made here in that respect, and I object, and I move now that anything referring to O'Brien be stricken out.

THE COURT: Objection overruled. Motion denied.

MR. LE BARBIER: Exception.

BY MR. O'CONNOR:

Q Now where was the defendant at the time you saw O'Brien throw the stone, as you claim? A He stood outside, with the pistol in his hand.

Q And how near was he to O'Brien? A I couldn't tell exactly. He wasn't very far from him.

Q Well, about how far? A About two feet. He had a sweater on and a coat.

Q And what did O'Brien do at the time? A He threw the stone through the window, then ran away.

Q And what did Maggiore do, when O'Brien threw the stone at the window? A After the window was broken, Maggiore shot four times into the window.

Q And where did he shoot at? A He shot inside, on the fountain, which was standing there, and the fountain fell down.

Q Now, did you see the pistol in Maggiore's hand?
A Yes sir.

Q How many shots did he discharge from that pistol?

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A Four shots.

Q And where were you and your wife, at the time?

A I was on the other side of the window. As soon as I hear the shots, I ran back into the hall, and started to shout.

Q Now where was your wife? A She was with me.

Q Where did she go to? A She also ran out in the hall, and took my child along, took the child out of the bed.

Q Where did you and your wife go to then? A We stood outside. People came. There was quite some shouting.

Q And where was the defendant? A I don't know where he was then. He was in the undertaker's store. The police detectives found him in the undertaker's store.

Q Where is the undertaker's store? A Two stores away from mine.

Q Had you known Maggiore before this night? A Yes; he always bothered my wife. Whenever I left the store, he always bothered her.

Q Now how wide is your store?

MR. LE BARBIER: I object, and I move that that be stricken out, that he always bothered his wife.

THE COURT: Strike it out. Motion granted.

A It isn't a large store; about four or five feet wide.

BY MR. O'CONNOR:

Q About four or five feet wide? A Yes; from where I am sitting to the wall. (indicating the side wall of the court room.)

Q Well, that is about 12 feet? A A very long store.

Q And where is the soda water fountain? A By the window.

Q And have you a counter there? A Yes sir.

Q And shelves in the back? A Yes sir.

Q And what have you on the shelves? A Cigarettes, stationery.

Q Now, have you anything on your counter? A A showcase, just now, on it, which has been broken by the shots.

Q Now, there is a door leading to your store?

A Yes sir.

Q And that door is made of wood, with glass? A Yes sir.

Q And was there a plate glass window in your show window -- plate glass in your show window? A Yes.

Q And which window was broken? A The large show window.

Q And then where were you standing at the time the

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shots were fired? A I was standing on the side, where the door is, where the window of the door is, and I saw when he was firing the shots, and I ran in the back.

Q Where was he standing when he exploded the pistol, which caused the bullets to come from it? A He stood outside, about four feet away from the door -- from the window in the door.

Q And you saw these bullets strike the soda fountain?
A Yes sir.

Q Was he arrested, the same night? A Yes sir.

CROSS EXAMINATION BY MR. LE BARBIER:

Q Were you behind the soda water fountain when the shots were fired, as you claim? A Yes; I stood on the other side of the counter, near the door with the glass in it .

Q Isn't it a fact that, about two weeks after this alleged occurrence, the same thing happened to you again?

A Somebody broke a window again. I was all alone in the store at the time.

Q And did somebody fire any shots? A No.

Q Not then? A No.

Q On this occurrence, some two weeks afterwards, did you see how many people were outside of your store?

A There wasn't many people. It was a quarter after 12 in the night time.

Q Well how many? A dozen? A Only the people from my own house, five or six.

Q Now, on the night in question, December 6th, when you say O'Brien came up there, and hurled some stones through that window, how many people were with O'Brien? A Nobody was with O'Brien at the time.

Q How many stones did O'Brien fire through that window? A Those two stones which I have in my hand (indicating). They were in the station house.

Q When the defendant came into your store, in the early part of the evening, was O'Brien with him? A He was not. Some one was with him, some one else, a boy.

Q How long after O'Brien fired the shots -- fired the stones through the window -- was it that you saw the defendant, Maggiore? A As soon as the window was broken by O'Brien, I immediately saw the defendant, and he was starting to shoot.

Q If I understood you correctly, I thought you said you had gone back into your rooms, and that you were awakened by some one firing stones through the window; is that so?

A No; I was awake; I wasn't asleep.

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Q Well, but where were you, if you were awake?

A I was inside of the store. I was afraid to go to sleep, as there was some knocking on the door by O'Brien, previous to that.

Q Where were you at the time when the stone came through the window? A I was standing by the door, looking through the window of the door, and saw O'Brien throw the stone.

Q And were you looking out into the street?

A Yes sir.

Q When looking out in the street, did you see anybody with O'Brien? A There was some one there, but I couldn't see him.

Q How many people? A Only one.

Q How far from the window was O'Brien? A About four or five feet.

Q Could you look at O'Brien? Could you identify him?

A Yes.

Q Was this other person right near O'Brien? A I saw the other one in the distance.

Q How far distant? A He was on the sidewalk.

Q On the other side of the street, or what?

A He was on the same side where my store is.

Q Well, probably not exceeding six feet; was he?

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A I can't remember exactly.

Q It is very necessary, I submit, that you should remember? A About two or three feet.

Q From you? A No, from O'Brien.

Q And how far from you then was this other person? Indicate here by the gentlemen of the jury? A He was near the curb (indicating).

Q Will you kindly illustrate the distance to us? A From where I am sitting to the window there (indicating the side window.)

MR. LE BARBIER: Indicating about ten or 12 feet?

MR. O'CONNOR: Yes; about ten or twelve feet.

BY MR. LE BARBIER:

Q While this other person was about ten or twelve feet away, was it then that O'Brien threw the stones through the window? A Yes; I saw him do it.

Q Now, while he threw the stone through the window, what did this other man do? A Nothing, he ran away.

Q The other man ran away? A I didn't see the other man any more.

Q I understood you -- I may be wrong -- say that there were only two men there, ~~an~~ O'Brien and this defendant, and now you say the other man ran away. What do you mean? A The third man also has been arrested.

Q Well, now, you have a third man. Where was the third man? A He was with O'Brien.

Q And how far from you was this third man? A He was on the sidewalk, not far away from O'Brien.

Q (Repeated). A From where I am sitting to the window, (indicating the side window).

Q Estimating ten or twelve feet. Then this third man was with the other man that ran away; is that so?

A Yes.

Q And these ^{two} men, some ten or twelve feet away from you, run away when O'Brien threw the stones through the window? A Who says two men? There was only one.

Q I asked you, a moment ago, didn't you say there was another man? A I meant the same man whom I testified about before.

Q I asked you very carefully and very slowly, and I asked you, when O'Brien threw the stone through the window, you said there was another man, about ten or twelve feet

away, who ran away when O'Brien threw the stones through the window? A Yes; that's true.

Q I asked you then, if there was anybody else there, and, if I understood you correctly, you said there was another man. I asked you where, and you said about the same distance, estimating ten or twelve feet. And you also said that he was with this other man? A It was the same man. I meant this one man.

Q Well, did you see this one man double? A I don't know the man.

Q At what stone did this other man run away; was it at the first stone that O'Brien threw, or the second stone? A I can't tell that; I can't remember.

Q Why not? A All I know is that I didn't see him again.

Q Why not? A I can't remember.

Q Why not? A When O'Brien run away, the other man run away, and he was found, later.

Q I understood you to say that the moment O'Brien -- Question withdrawn. How long a time was there between the throwing in of the two stones? A One after the other.

Q And did O'Brien have a stone in his hand? A Yes.

Q Each hand? A Yes.

Q So he took up one with the right hand, and one

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with the left hand, and threw one with the right, and one with the left? A Threw the first stone with the right hand, and then changed the other one from his left to his right, and threw it again.

Q And they both came into the shop, one right after the other? A Yes, sir.

Q And you stood behind the door in your shop?
A Yes. Then I ran away.

Q Where did you run? A Into the rear.

Q How long did you remain in the rear? A We immediately ran to the hall.

Q The hall outside of your store? A Yes, sir.

Q Who ran into the hall? A Myself, my wife and the baby.

Q How far back in the hall did you run? A Near to the window -- to the door; and was shouting.

Q Well, the door leading into the street? A Yes.

Q Then there was a partition between the store and the hall, was there not? A Yes.

Q And at this time you were outside of your shop, in the hall, on the other side of the partition; is that correct? A Yes, sir.

Q Now, is that all that happened? A That's all.

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Then detectives came.

Q Did you see O'Brien run away? A Yes.

Q Did you see him run away with anybody? A The man that I testified about.

Q That is, the one who was on the other side of the street? A Yes.

Q Why don't you look at me, and let me see your eyes? You stated to the learned Assistant, if I have you correctly, that, at the time O'Brien threw the stones, the defendant was outside, with his pistol, and fired in at the fountain; is that correct? A Yes, sir.

Q And that's correct, notwithstanding that, when the stones were thrown, and immediately when they were thrown, you and your wife and baby rushed back, and rushed out into the hall? A We ran away when the shooting started.

Q The shooting was fired, as I understand you to say, at the soda water foundatin? A Yes, sir.

as soon

Q Just as the stones were thrown, I understood you to say that you ran back, and ran out into the hall, with your wife and baby? A No; after the shooting, then I ran out.

Q Well, you didn't say that, a moment ago, Mr. Witness. A I did say so.

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Q You said, a minute ago, and I was very careful to ask you that, when the two stones were thrown into the window, you immediately ran back with your wife and baby, and ran out into the hall. Now, which is correct?

A I testified that, as soon as the shooting began, when we saw the fire, then I ran in the back and started to shout.

Q When you saw the fire? A Yes, sir.

Q Was the fire of the shot the first thing that attracted your attention? A Yes, sir.

Q That is to say, you saw the flash? A Yes, sir.

Q Everything else was black, but the flash?

A Yes, sir.

Q And if I -- Question withdrawn. How many flashes did you see? A I saw the four of them.

Q You saw what? A The four of them.

Q Flashing towards the soda fountain? A Yes, sir. He hit the fountain and the show case.

Q Was it very dark outside? A Yes; it was at night.

Q Why do you speak of a flash of a shot? Why do you say flash?

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MR. O'CONNOR: I object to that. Mr. LeBarbier put the word into his mouth. He said he saw the fire, and Mr. LeBarbier asked him if it was a flash, and the interpreter put the interpretation on that of "boom, boom", to him.

BY MR. LeBARBIER:

Q Now, which is it? Did you see the flash of the pistol shot? A Yes, sir; I saw the fire.

Q You mean by that the light, the flash? A Yes; I saw the burning of the powder.

Q Now, just this moment, when you saw -- how long was it after the throwing in of these stones that you saw this burning of powder? A Immediately the window was broken, the shooting started.

Q Immediately the window was broken, you ran back, did you not? A Sure.

Q Immediately the window -- How long between the breaking of the window and the burning of the powder?

A How can I remember? It is over three months ago.

Q Why not? A I can't remember how long it took.

Q You mean after this occurrence, your window was broken again, you stated. Why can't you remember two

weeks before? A It was broken, but I don't know who broke it then.

Q Were you standing at the window, when it was broken the second time? A No, I was asleep. It was two o'clock in the morning. I heard knocking.

Q How far were you down your little store, after the immediate breaking of the window from the stones, when you saw the flashes from the burning of the powder?

A Not far away; near the door.

Q How far away from the window in feet? Estimate it? A About two feet.

Q Did you turn back then and run? A When I saw the fire, I ran.

Q And how many burnings of powder, or fire, did you see? A Four.

Q Aimed at the fountain? A Yes.

Q On the other side of the place from where you were? A Yes, sir.

A N N I E W E I N B E R G, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. LeBARBIER: May it please your Honor, I respectfully move to strike out all of the testimony

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of the last witness, on the ground that it is incompetent, immaterial and irrelevant, and not under the subject matter of the indictment. It is distinctly sworn to by the witness that he was on one side of the room, and the shots were discharged at the fountain, which was on the other side of the room. He has repeated and reiterated that, and it strikes me at this stage, that --

THE COURT: Of course, I observed and remarked to Recorder McAvoy, who was sitting with me at the time, that the attention of the witness should have been directed to this testimony by the District Attorney. He did testify that the shots were fired at the soda water fountain, I think.

MR. O'CONNOR: But he testified that he was within two feet of the fountain, and, if the defendant was fortunate enough to hit the soda water fountain, instead of the complainant, that's not his fault, but his luck.

THE COURT: But he must shoot at somebody, some human being, to sustain the allegation in the indictment.

MR. O'CONNOR: I have to assume, your Honor --

THE COURT: You should have shown in what condition the complaining witness was in regard to the soda fountain. Now, assuming, for instance, the revolver

was discharged only for the purpose of attracting attention, what offence would be committed?

MR. O'CONNER: The soda water fountain is back of the counter, and that is close to the door, and the complainant was a few feet from the counter, at the time of the firing, and the defendant, earlier in the evening had said, "You God damn sheeny, I will kill you, tonight," and he comes back about an hour afterwards, and fires four shots in the direction of where the complainant was.

THE COURT: I do not recollect any testimony to that effect, but you may call the complaining witness, if you desire.

MR. O'CONNER: I will recall him.

MR. LeBARBIER: Shall I renew my cross-examination first, if your Honor please?

THE COURT: Yes, if you wish to do so, you may continue your cross examination.

ABRAHAM WEINBERG, being recalled:

CROSS EXAMINATION CONTINUED BY MR. LeBARBIER:

Q I understand you to say, that, when the stones came through the window, you were by the door, in your shop? A When I heard the stones fall, I ran to the door.

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Q You ran to what? A I ran to the door.

Q Did you get behind the door? A By the door.

Q Did you get behind the door? A There is no way to go behind the door. The door was closed.

Q Now, we will assume a position.

MR. O'CONNOR: I object to the assumption of a position.

MR. LeBARBIER: On the statement of facts.

MR. O'CONNOR: I think the proper way is to ask the complainant where he was standing, and to describe the situation, and where the defendant was standing.

MR. LeBARBIER: I have no objection. I will accept the suggestion.

BY MR. LeBARBIER:

Q How far from you was the soda water fountain?

A About two feet.

Q Which side of you was it? A The right side.

Q When the stones were thrown through the window, how far were you from the soda water fountain? A Very near to the fountain.

Q How far? Give us the distance? A About one foot.

Q About one foot? A Yes, sir.

Q One foot sideways from the fountain? A Yes, sir.

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Q Did the stones come in your direction? A Not far away from me; on to the show case.

Q The stones go between you and the soda water fountain? A Yes; into the store.

Q Then, if I understood you, you said you went to the door? A It isn't far from the fountain to the door.

Q How far? A Well, about one foot.

Q And you got right up behind the door? A Yes.

Q Did you get up close to the door, touching it?
A About two feet away I was from the door.

Q The door was the other side of the window, away from the window, wasn't it? A Yes, sir; about two feet away.

Q Were you behind the door? Now wait. Were you? Yes or no? A Yes.

Q Were you behind the door at that time, because of the fire you had -- No. Not because of the fire you had--
Question withdrawn. But were you behind the door because of the stones having been thrown through the window?

A Yes; I was afraid.

Q Afraid of what? A I was afraid that the stones

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might kill me.

Q You said, a moment ago, that the first and second stones was thrown, and that immediately one O'Brien and another ran away. Now, is that true or false? A Yes; that's true.

Q And why do you now say to the Court and jury that you were afraid the stones were going to kill you? A Because I have been asked now. I wasn't asked before.

Q Well, is that what you mean to say? A Yes, sir.

Q Now, see the situation. A man is outside your window, and has thrown two stones through the window, and you see this man and the other man run away; and now you say that you were afraid you would be killed by the stones. Who else out there was there who had any stone in his hand? A Nobody.

Q Then what do you mean? A I meant, at the time stones were coming in, I went to the window.

Q And you ran behind the door, because you were afraid of the stones? A Yes, sir.

Q And while you were behind the door, you saw these shots go over towards the fountain? A Yes, sir.

Q Yes or no? A Yes.

Q In an entirely different direction from where you

were? Yes or no. A Not far away from where I was.

Q In an entirely different direction from where you were? A It was alongside of the window, where I was standing.

THE COURT: Is it your contention, Mr. LeBarbier, that the defendant did discharge a loaded revolver at that time, but, because he was not an expert shot, and did not hit the complainant, that that relieves him from responsibility here?

MR. LE BARBIER: Oh, no, sir; not at all. I contend that he didn't shoot at all, and that he was not there to shoot, at all, at that time.

BY THE COURT:

Q Was there any one else in the store, at the time the shots were fired, besides yourself? A Yes, sir; my wife and child.

Q And had the defendant said anything to you before, on that night, or earlier on that evening? A He said, "this night, I will kill you."

MR. LeBARBIER: I object to that, and I move to strike out the testimony of this witness. I renew my motion to strike out his testimony.

THE COURT: Motion denied.

MR. LeBARBIER: Exception.

A N N I E W E I N B E R G, being recalled to the stand
by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q Where do you live, Mrs. Weinberg? A 2091 Second
Avenue.

Q You lived on the 6th of December, 1906, at 2091
Second Avenue? A Yes, sir.

Q In the County of New York? A Yes, sir.

Q And with whom did you live there? A With all
Italian people.

Q No, what was your family there? A I was living
with my husband there.

Q And did you have a child there? A Yes, sir.

Q How long did you keep the candy store there?

A For a couple of months.

Q For a couple of months? A Yes, sir.

Q Did you know Maggiore, the defendant? A Yes.

Q Now, how long had you known him? A Since I am
living there.

Q Now, on the 6th of December, 1906, did the defen-
dant come into your store? A Yes, sir.

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Q About what time of the day and night did he come in there? A He came in about -- I couldn't tell you exactly the time; if it was ten or half past ten.

Q Between ten and half past ten at night? A Yes, sir. He came in and asked for a package of cigarettes, and he took the package of cigarettes, and asked me for a glass of water, and then he took what I give him, and he want to go out, and I said, "Why don't you pay me?" And he said, "Yes, I pay you this and this." I am ashamed to tell you that. I can't tell you that.

Q Yes; you must tell us. A And he said, "Yes, I will pay you. You can fuck yourself, you Sheeny bastard, I kill you tonight." And, of course, I was hollering to my husband. He grabbed me by my breast, (indicating). He thought my husband wasn't in. He always bothered me.

MR. LeBARBIER: I object to that, if your Honor please, that he thought her husband wasn't in, and that he always bothered her, and I ask to have that stricken out.

THE COURT: Objection sustained. Motion granted.

A (Answer continued) And my husband came out from the back, and he said, "I told you many times that you

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should stay out of here," and he got excited and punched me in the stomach.

Q He punched you in the stomach? A Yes, sir; and I fainted. I fell back by the fountain, where I was standing behind the counter, I fell back and fainted, and people came in from the street, and they picked me up, whatever they did.

Q And where were you taken to then? A I was sitting in the front of the store, on the other side; I was behind the counter; and then they took me, you know, just like here, right next, and they wake me up; and, after that, I had the chills; I was feeling awful bad, and my child was right next to me. And they told me I should close up the store, and we did close the store; and my husband went with me in the back, to make anything warm for me, because I had terrible chills after that. And it didn't took but a quarter of an hour, and we heard one knock after the other. And I didn't want my husband to go out, because they are awful excited people. If I had been with my people, I could have had help.

MR. Le BARBIER: I object to that, and I move to strike that out, if your Honor please.

THE COURT: Objection sustained. Motion granted.

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THE WITNESS: And we heard some knocks on the window.

BY MR. O'CONNOR:

Q What did you and your husband do, if anything?

A I didn't want to leave my husband go out.

Q Well did he go out? A Listen. I didn't let him go. He shouldn't get excited, because them people is awful excited people. But he did went, he went to the show window.

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A No, sir; on this side (indicating). He went by the door, and Mr. O'Brien and that fellow (indicating the defendant), and another fellow was outside, and that gentleman sitting right there (indicating) --

Q The defendant? A Yes, sir; that gentleman was there. And he said, he holler in, "I must kill you, Sheeney, to-night. I have to kill you Sheenies to-night", and we didn't answer, of course, and I held my husband, because I got frightened that they would kill him.

And one knock after the other came in, stones; and, then, of course, I started to holler, and my husband went right there.

We had a partition from the store, and he was standing by the door, like this (illustrating), and looked into the

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window, and he saw that fellow standing there (indicating the defendant).

Q Did you see him? A I saw him before, but, that time, I didn't see him. I was very excited.

He insulted me a couple of times before this. He took even a knife to me. He said, "I stick your belly with that knife."

He always did insult me. And my child was sick for three months. I just took my child out from the hospital.

THE COURT: Strike out the alleged threats made by the defendant against this witness. You did not object, Mr. LeBarbier. And strike out, also, the alleged attempt, on one occasion, to commit an assault upon her.

MR. O'CONNOR: Yes, sir; I consent.

BY MR. O'CONNOR:

Q Now, Mrs. Weinberg, I appreciate the condition you are in, and, therefore, I don't want to excite you. Did you see the defendant shoot a pistol? A I couldn't say that. I heard the shot, and I got excited, and I fainted, because I am a woman in a mother's condition, and detectives and everybody could prove it, which they find me, in what kind of condition.

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CROSS EXAMINATION BY MR. LeBARBIER:

Q How do you feel, to-day, Mrs. Weinberg? A Thank God, I feel better what I did.

Q Well, you feel better? A Yes, sir.

Q Did you walk down, or come down in the subway, to-day?
A I come down in the car. I couldn't walk down so far.

Q Did you come down in the surface car; did you?
A What do you mean, surface car?

Q In the street car? A In the car, like everybody is going.

BY MR. O'CONNOR:

Q She means elevated or -- A No; I take the car.

BY MR. LeBARBIER:

Q Tell me, Mrs. Weinberg, how large is the store?
A The store?

Q Yes? A Well, I couldn't tell you how large it is. It's a big store.

Q It's a big store? A Yes, sir.

Q Now listen. I mean, how wide is it? A It is only a single store. How broad? I couldn't tell you that either. I didn't measure it.

Q I know, of course not. But six or seven feet?

A I couldn't tell you that. I'm not so smart on that. I

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know it is a single store; that's all.

Q Ten or twelve feet broad? A I couldn't tell you.

Q Or fifteen feet broad? A I couldn't tell you that.

Q Or twenty feet broad? A I couldn't tell you that; because I never was in court, and I never know so much as this before.

Q Well, now, please don't talk so much. If you can't say whether it was 10 or 12 or 15 or 20 feet broad --

A No, sir.

Q And you had a soda water fountain there, didn't you?

A Yes, sir.

Q A nice fountain? A Certainly, it is a nice fountain.

Q With little figures on it? A Yes, sir.

Q Like statues on it? A With looking glass on it. It is a nice, big fountain.

Q A big fountain? A Yes, sir.

Q And then there is a window, and you can look in the window and see the fountain; can't you? A Yes.

Q And on the other side of the store is a door; is there not? A Yes, sir.

Q Do you know how far that door is from the fountain?

A How far? It is right next to the fountain. I couldn't tell whether it is a yard or what. It's right next.

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Q Well, it is the other side of the window; isn't it?

A Yes.

Q Did you see the stones thrown through the window?

A Certainly we did.

Q Did you see them thrown through? A Mr. O'Brien did it.

Q (Question repeated) A Yes.

Q Where were you? Back in the store? A No; when we heard the knocks, we went in the store.

Q Now, Mrs. Weinberg, will you kindly listen? Where were you at the time -- A When we --

Q Now kindly wait. At the time the stones were thrown through the window? A Where I was?

Q Yes? A Inside in the store.

Q In the store? A Yes, sir.

Q Forward or back? A I was behind the door, and that came through the window.

Q Away from the fountain, on the other side? A Yes; I was on this side, and the fountain was on the other side.
(Illustrating)

Q And you have a little baby? A Yes, sir.

Q And the little baby was with you? A Yes.

Q So that nobody was on the side of the fountain? A No,

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sir.

Q Your husband wasn't there? A My husband, I couldn't tell you where he was, because I was excited.

Q Now, Mrs. Weinberg, Mrs. Weinberg, will you kindly listen? Where was your husband -- A I couldn't tell you.

Q At the time -- won't you kindly wait until I get through my question? At the time the stones were thrown through the window, where was your husband? A I couldn't tell you which place he was; I don't remember that. I was too much excited.

Q But the stones hadn't yet been thrown? A Well, the stones came through the window. I had a very big damage. Everything was destroyed.

Q That's not the question. At the time the stones were thrown through the window, where was your husband? A He was in the store; he ran in the store.

Q Where? A I couldn't tell you which place he was, because I was excited.

Q Was he near you? A I couldn't tell you that. I was too much excited.

Q How far away from you was he? A I couldn't tell you, because I was too much excited. I fell in a faint there.

Q Was he within a few inches away from you? A Maybe he was more. I couldn't tell you that. As soon as the

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stones were coming, we started to holler.

Q Did you feel faint? A We run inside through the back, out. We heard the first shot, and we ran, you know; and then I fell back, and I was fainting, whichever it was. I couldn't tell you the rest.

Q Well, when you say you were fainting, what do you mean? Did you fall down? A Yes; I fall down.

Q Where were you when you fell down? A We were in the store, when we heard the shots.

Q But, you have told me that a dozen times.

Question repeated.

A In the store.

Q Where? A We were behind the door.

Q Behind what door? A The front door. People came down to go out in the hall. Next, we run in the back hall, and heard people coming down.

Q Now Mrs. Weinberg was your husband standing by the soda water fountain when the stones were thrown in the window?

A No, sir.

Q Now, that's an answer. A No, sir.

Q Now wait. A He was standing behind the counter, back.

Q He was away from there? A Yes, sir.

Q Was your husband standing in front of the window,

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when the stones were thrown in? A No, sir; he couldn't stay there.

Q Was your husband standing by the soda water fountain, when the shots were fired? Yes or no? A I couldn't tell you. I don't know that. I was too much excited. I couldn't tell you. I was feeling awful bad.

Q Was your husband standing in front of the window, when the shots were fired? A When he would be standing in front of the window, he would be killed.

Q Now listen to me, Mrs. Weinberg. Was -- where was he standing? A I couldn't tell you. I was too much excited.

Q Now did you see him standing in front of the window, when the shots were fired? A Who? My husband?

Q Yes, Abraham? A No, he wasn't.

Q Now, that's an answer. Steady there. That's an answer. A No, sir.

RE-DIRECT EXAMINATION BY MR. O'CONNOR:

Q Now, Mrs. Weinberg, we will get a description of that store. Now, here is the wall (indicating)? A Yes, sir.

Q And what was up against the wall? A My soda fountain.

Q And was the soda fountain as wide as that table?

(Indicating the stenographer's table.) A It may be so,

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or it may be a little wider.

Q And then there was a space from the fountain to the counter? A Yes, sir.

Q How wide? A About that wide (illustrating).

Q And then there was a counter in front of that?

A No, sir.

Q Then you could walk right from the fountain here to the door? (Illustrating) A Yes.

Q Nothing could stop you from walking to the door?

A No, sir.

Q You had to pass the window? A Yes.

Q And you say about there was the door? (Indicating)

A Yes.

Q And that door is about as wide as from here to where the foreman's chair is?

MR. LeBARBIER: Objected to. She says that she couldn't say whether it was 10 or 20 feet away.

BY MR. O'CONNOR:

Q How many stores are there in that house? A Two stores.

Q And there is a main entrance to the building, between the stores? A Yes, sir.

Q And it is a five or four story building? A Two or

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three; I don't know. I never was upstairs.

J O H N F L A N A G A N, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. O'CONNOR:

Q You are an officer of the Police Department of the City of New York? A Yes, sir.

Q Attached to the 29th Precinct? A Yes, sir.

Q Now, on the early morning of December 6th, 1906, where was your post? A From 101st to 106th Streets, and Second Avenue.

Q And was your attention attracted to these premises in question, 2091 Second Avenue? A Yes, sir.

Q And what attracted your attention to the premises?

A I heard four pistol shots.

were

Q And where were you standing at the time, or walking, when you heard the report of four pistol shots? A I was standing at the southwest corner of 106th Street and Second avenue.

Q And how far is that from the house in question?

A A block and a half.

Q And where is that number located? A It is on the

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west side of Second avenue between 107th and 108th streets.

Q That wasn't on your post; was it? A No, sir.

Q And you were standing at the southwest corner of 106th street and Second avenue? A Yes, sir.

Q Now, what did you do, when you heard the report of the four pistol shots? A I went on --

MR. LeBARBIER: Objected to.

THE COURT: Overruled.

MR. LeBARBIER: Exception.

A (Answer continued) I went on up to where it was, and, when I was going up, there was a man --

Q No. When you got up to the store, did you see anybody? A Yes, sir; I saw Mr. Weinberg and his wife.

Q And did you talk to them? A I talked to Mr. Weinberg.

Q Where was Mr. Weinberg, at that time? A He was standing in the doorway leading from the store into the room behind the store.

Q And, after you had a talk with him, then, did you go into the store? A Yes; I went into the store.

Q Now did you examine the windows there? A I seen the window was broken.

Q Which window? A The window that was opposite the counter; the light of glass.

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Q And how wide is that house, about? A About 9 feet.

Q The store, you mean? A Yes, 9 or 10 feet wide.

Q And did you see where the soda fountain was?

A Yes. It was inside of the plate glass window, inside of the counter.

Q Near the wall? A Yes; standing up on the stand there.

Q Now where was Mrs. Weinberg? Did you see her? A Yes.

Q Where was she? A She was laying on the floor.

Q Lying on the floor? A Yes.

Q Of the store? A Yes; right alongside of the door in the partition.

Q And what did you do then? A Well, I came right out, and there is a man next door, a shoe store, next door, and he said the fellows --

MR. LeBARBIER: Objected to.

THE COURT: Sustained.

BY MR. O'CONNOR:

Q Never mind what he said. Was the defendant there?

A Not then.

Q Well, the man talked to you in the shoe store?

A Yes, sir.

Q Now, after talking with the man in the shoe store,

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what did you do? A I went in search of the prisoner . I went upto the roof; next door, thinking he had gone up the stairway.

MR. LeBARBIER: I object to that, if your Honor please, and move to strike it out.

THE COURT: Objection sustained. Motion granted.

A (Answer continued) And I come back down again, and he said, "He has gone in back of the undertaker's shop."

MR. LeBARBIER: I object to that, if your Honor please, to what some one said, and move to strike it out.

THE COURT: Objection sustained. Motion granted.

BY MR. O'CONNOR:

Q And where did you go after the man in the shoe store spoke to you? A I went up to the roof again.

Q And you came down again, and you went to the shoe man again? A Yes.

Q And he talked to you again? A Yes.

Q And what did you do then? A I went to the undertaking shop.

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Q And how far is that from where Mrs. Weinberg's candy store is? A In the next building.

Q In the next building? A Yes, sir.

Q And how did you get into the undertaker's shop?

A The front door was open.

Q And what did you do when you got into the undertaker's shop? A There were three men in the rear room, and Mr. Weinberg identified them as being the three men that were in his store.

MR. O'CONNOR: I move that that be stricken out, that Mr. Weinberg identified some one.

THE COURT: Yes. Strike it out.

BY MR. O'CONNOR:

Q Now you had Weinberg with you? A Yes, sir.

Q And you and he went into the undertaker's shop?

A Yes, sir.

Q And who was in the rear room? A The defendant, and O'Brien and another man .

Q Now what did Weinberg say, in their presence? A He said, "There is the three men that were in my store, and assaulted me," and I arrested the three men.

Q And what was the name of the third man? A I forget now, sir.

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