

BY MR. SULLIVAN:

Q Could you tell us what effect, if any, the shock this patient underwent would have on his powers of observation at the time the shooting occurred?

MR. ELY: I object as to the form. That calls for an absolute statement of fact and he cannot tell that.

Objection sustained.

Exception.

M A R Y A. B O Y L E, called as a witness in behalf of the People, duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q Are you a widow? A Yes sir.

Q What was the name of your husband? A James Joseph Boyle.

Q When next, after the night of the 27th of June, 1906, did you see your husband, James Boyle -- do you understand that question? A No, you better put it a little plainer.

(Question repeated.)

A In the hospital.

Q What hospital do you talk about? A New York Hospital.

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Q Whereabouts in the New York Hospital was he?

A Ward I.

Q When did you see your husband James Boyle in Ward I of the New York Hospital? A The first time?

Q Yes. A About a quarter to two that morning.

Q A quarter to two in the morning of the 28th?

A The morning that he was shot.

Q Then, do you remember what bed he was in then?

A He was away down at the end.

Q In the last bed on the end? A The last bed.

Q Did you go there from time to time after the 28th of June, 1906? A Yes.

Q At any time between the time that you went there and the 16th day of August, 1906, did you see him in a different bed? A Yes sir, he was at the other end, on the same side.

Q The other end was what end, just as you come in the door? A Going in the door was the last time I saw him in the bed.

Q It was the first bed after you went in the door?

A The first bed on the right hand side going into the ward.

Q After you get through the door? A Yes sir.

Q And in that bed was your husband James Boyle the last time you ever saw him alive? A Yes sir.

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Q What was the last day that you were at the hospital when you saw him alive? A The last Thursday.

Q That was Thursday the 16th? A 16th.

Q Was Saturday the 18th? A Yes sir.

Q And Sunday was the 19th? A Yes sir.

Q Of August, 1906? A Yes sir.

Q After the 16th of August, 1906, did you ever see him alive? A No sir.

Q When next after the 16th of August, 1906, did you see him? A Dead, on Sunday the 19th.

Q Do you know where he was brought from? A From the New York Hospital.

Q Where was he delivered to? A 450 West 29th Street, my mother's home.

Q Is that where you were living? A Yes.

Q That is where he had been living in his lifetime? A Not always.

Q But on the 28th of June, 1906, where did you and he live together? A At my home.

Q At 450? A Yes.

Q I show you this article, People's Exhibit 2 for identification, and I ask you to please look at that and tell me whether you know whose garment that is or was?

A Yes sir.

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Q Whose garment was that? A My husband's.

Q Was that the coat he had on on the night of the 27th of June when you last saw him? A Yes sir.

MR. ELY: I offer the coat in evidence.

MR. SULLIVAN: I object to it being received in evidence upon the ground it is not shown to have been sufficiently identified, and not shown to have been worn by him at this particular time. The last time she saw him he had it on.

THE COURT: The last time was on the night of June 27th, 1906.

MR. ELY: Yes. And he was shot on the morning of June 28th and you will recollect the testimony of Goehle on this head, with respect to this garment, that he assisted in disrobing the then injured person and from the examination of the garment and certain marks on it, according to his best recollection, that is the garment and here is the testimony that this was the garment of the injured man Boyle, the deceased, which was worn by him according to the testimony of his wife, on the night he received the fatal wound.

MR. SULLIVAN: The testimony of the doctor becomes very important because he testified that he had

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no independent recollection of this garment on that night. He says he has no recollection of it, that he cannot identify them; he does not pretend to identify them. He says he did not even notice any injury on the coat and the attempt of the District Attorney to have him identify this coat on the ground there was a hole in it, was simply to appeal to his recollection to compare it with the injury of the man, but he says he has no recollection of this garment at all or having examined it or seeing any hole in it.

THE COURT: I will exclude the offer for the present with leave to renew.

BY MR. ELY:

Q How late did you see your husband on the night of the 27th? A At eleven o'clock.

Q You saw him at eleven o'clock at night? A Yes sir.

Q Did you ever see him again from eleven that night until you saw him in the hospital? A No.

Q And at eleven o'clock at night he had on this article? A Yes sir.

Q You know that? A Yes sir.

MR. ELY: I renew my motion.

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THE COURT: There is nothing here to show where these clothes came from at all.

MR. ELY: It does not make any difference where they came from -- their last custody, I can show that.

BY MR. ELY:

Q Where did this come from into my possession?

A From my home. I got it from the hospital.

Q From the hospital, the New York Hospital? A New York Hospital.

Q And as one of the articles belonging to your husband? A Yes sir.

Q And you got it personally from the hospital and you sent it to me? A No, the undertaker got it when he got his body.

MR. SULLIVAN: Then I object to it as hearsay.

Q What is the undertaker's name? A Mr. Joseph Singer.

Q This, however, you sent to me? A Yes sir.

Q I show you People's Exhibit 3 for identification and I ask you to look at that and I ask you if you know whose that article was? A Yes, also my husband's.

Q Was that the shirt he had on when he left you at

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eleven o'clock on the night of the 27th of June, 1906?

A Yes sir.

Q When did you next see that shirt after your husband left you on the night of the 27th? A The same morning in the hospital laying on a chair alongside of the bed.

Q You saw that? A Yes sir.

Q And you recognized that? A Yes sir.

Q Laying alongside of whose bed? A My husband's bed.

Q You saw that in the hospital yourself? A Yes sir lying on the chair.

Q Did you see People's Exhibit 2 for identification there at that time? A Everything he had.

Q State yes or no with respect to that? A Yes sir.

Q You saw that lying on the chair? A Yes sir.

THE COURT: That is the coat.

MR. ELY: People's Exhibit 2, the coat.

BY MR. ELY:

Q You saw this coat lying on the chair by your husband's bed? A Yes sir.

Q And you saw People's Exhibit 3 for identification, a shirt, lying on the chair next to your husband's bed?

A Yes sir.

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Q And you recognize People's Exhibit 2 for identification, this coat, and People's Exhibit 3 for identification, a shirt, as being the articles that were worn by your husband when you last saw him on the evening of the 27th of June, 1906?

Objected to as leading.

Objection overruled.

Exception.

A Yes sir.

Q And the next time you saw these two articles, People's Exhibit 2 for identification, a coat, and People's Exhibit 3 for identification, a shirt, you saw them by the bed of your husband in the New York Hospital? A Yes sir.

Q On the morning of the 28th of June, 1906? A Yes sir.

MR. ELY: Now I offer them in evidence.

THE COURT: I will receive them.

People's Exhibit 2 for identification, a coat, is received in evidence, and so marked.

The shirt, People's Exhibit 3 for identification is also received in evidence and so marked.

BY MR. ELY:

Q I show you this article which is marked People's Exhibit 4 for identification and I ask you if you know what

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article that is? A This is the undershirt of my husband.

Q Was this the undershirt your husband was wearing on the 27th day of -- the night of the 27th of June, 1906, when he left you? A Yes sir.

Q And did you see this undershirt again on that same night or in the early morning hours of the 28th of June, 1906? A That was also with the rest of the clothes.

Q The answer is yes, if you did? A Yes sir.

Q Well me where you saw this undershirt on the early morning, or about the time you saw it? A On the chair by his bedside.

Q Where? A New York Hospital.

Q About what time? A At two o'clock I seen that,

Q You recognize that as his undershirt that he had on that night? A Yes sir.

Q And you saw it in the hospital by his bedside?
A Yes sir.

Offered in evidence.

People's Exhibit 4 for identification is received in evidence and so marked.

CROSS EXAMINATION BY MR. SULLIVAN:

Q You were living at what number? A 450 West 29th Street.

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Q What did your husband do for a living?

MR. ELY: I object as immaterial, and furthermore, it is without the scope of the direct examination entirely and he is making the witness his own for that purpose.

THE COURT: He may do that.

MR. ELY: Certainly I do not object to that but I want it clearly understood and, it is not proper to call her at this time, she should be reserved for his case.

THE COURT: No, proceed.

(Question repeated.)

MR. ELY: I object as outside of the direct examination and I ask your Honor to intimate that if that question is propounded, it is propounded to the witness as a witness for the defense.

THE COURT: No.

BY MR. SULLIVAN:

Q (Repeated)? A He was a printer by trade.

Q Was he working at his trade in the month of June?

A Not at the time he was shot.

Q Were you living with him in March? A In March he was at 450 29th Street.

Q In February? A Back February?

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MR. ELY: February of what year?

BY MR. SULLIVAN:

Q 1906.

BY MR. ELY:

Q Yes or no.

THE WITNESS: No I was not.

BY MR. SULLIVAN:

Q How long had you been separated from him? A Well, eighteen months.

Q Where was he during those eighteen months?

Objected to.

Objection overruled.

BY MR. ELY:

Q If you know.

THE WITNESS: Yes I do know.

BY MR. SULLIVAN:

Q Where? A He was in the Tombs.

MR. ELY: I ask to have it stricken out as incompetent, irrelevant, and immaterial. It makes no difference; a great many decent people have been in the Tombs.

THE COURT: I will let it stand. Objection overruled.

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BY MR. SULLIVAN:

Q When did your husband work at his trade as a printer?

A Well I couldn't say when.

Q How long have you been married? A Six years this coming September.

Q Could you tell the jury out of those six years how many have been in prison?

Objected to as incompetent, irrelevant and immaterial.

THE WITNESS: I could not tell anyhow.

MR. ELY: Do not answer it. It is assuming something that is not in evidence.

Objection sustained.

Exception.

C H A R L E S S O F S K Y, called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Police officer.

Q For how long a period have you been connected with the police department of the City of New York? A Twenty-two months.

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Q What precinct, if any, were you attached to on the 23rd of June, 1906? A The 19th Precinct.

Q Did you know a person by the name of James Boyle in his lifetime? A Yes sir.

Q For how long prior to the 23rd of June, 1906, had you known James Boyle? A About two days.

Q Did you see James Boyle on the 23rd or the morning of the 24th of June, 1906? A Yes.

Q Where did you see Boyle at that time? A 28th Street and Seventh Avenue.

Q Was he accompanied by anybody or was there anybody with him at the time you saw him, James Boyle, on the morning of the 23rd or the morning of the 24th of June, 1906? A He was all alone.

Q Did you subsequently -- this is the 23rd and the 24th, mind you, of June, 1906? A Yes, I did see him.

Q Was he alone then or was anybody with him? A He was with an officer and the defendant.

Q Do you see the defendant here now? A Yes sir.

Q Where is he? A Sitting right there (indicating the defendant at the bar).

Q About what time was this, late in the night of the 23rd of June or early in the morning of the 24th of June, 1906? A About 12:30, after midnight, the 24th of June.

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Q What morning was that? A Sunday morning.

Q Did you have any conversation with the deceased in which this defendant participated, yes or no? A Yes sir.

Q Give that conversation?

MR. SULLIVAN: I object as incompetent, irrelevant and immaterial and hearsay. If the court please, this, of course, if it goes to the jury --

MR. ELY: Let us have the jury out of the room if he wants to make an argument.

MR. SULLIVAN: I am willing.

THE COURT: Yes, the jury will retire to the jury room.

The jury retire from the court room.

MR. SULLIVAN: The objection, in its present form, in which it appears before the court, the court cannot really justly decide it.

MR. ELY: If the jury is out I do not mind having the whole thing stated.

MR. SULLIVAN: The District Attorney may bring out what he seeks to introduce and I would like to be heard on the question of its admissibility as evidence.

MR. ELY: The District Attorney has propounded

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a question to the witness and counsel for the defense has objected.

THE COURT: It is a difficult thing before a line of questions has been introduced to tell just exactly what the object of those questions are and what answers they are for the purpose of eliciting. If it is for the purpose of showing some motive or intent, even though its apparent connection be not close with the first answer, that is no reason for excluding it, if the District Attorney will say that he is asking these questions for the purpose of establishing a motive or showing an intent. They cannot be excluded if that is the reason.

MR. ELY: That is what we are introducing it for.

MR. SULLIVAN: If it should appear -- this evidence is introduced to show malice and intent, as your Honor suggests -- to show the state of mind of the defendant -- if it should appear that all the evidence, by the education of witnesses --

MR. ELY: I object to that.

THE COURT: Has there been anything here to indicate that. If anything has struck me with regard to that, it is the absolute want of any such

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thing as you suggest.

MR. SULLIVAN: I say to make a suggestion to a witness who is on the stand and has not testified --

MR. ELY: No suggestion has been made to this witness.

MR. SULLIVAN: We are about to --

MR. ELY: We have made absolutely none. I said, what is the conversation. That does not show any attempt to lead or suggest under any circumstance.

MR. SULLIVAN: If it should turn out that this witness makes a statement here in reference to a conversation, in which the deceased made charges against the defendant and the defendant denied them, now of course that would be hearsay, that would not be admissible to go before the jury.

THE COURT: While you may refer to an altercation, misunderstanding, you may not go into the details of it. It would be time enough for you to interpose the objection when the details of any such transaction comes out, but if he simply refers to a transaction or a conversation between the two, without going into the details of the thing, he is certainly within his rights.

MR. SULLIVAN: The question is for this witness

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to state what was said by the deceased to this defendant, when the officers were present; to narrate that conversation and that occurrence. Now, if it appears that the deceased was making a charge of crime against this defendant and this defendant was denying it; that the deceased was trying to have him arrested, would that be prejudicial -- the defendant denies the accusation and consequently there is no legal significance to the situation, and would you say upon that mere accusation and denial of the defendant, that that shows malice upon this defendant's part. But, the purpose of this is to go into the intellectual fibre of the jury and create a prejudice -- I mean intellectually -- the real scope of this is to create in the minds of this jury a view that will be prejudicial when we come to examine the residuum of legal proof. Suppose they should go further -- if they should show that the deceased struck the defendant and they failed by any act or word or deed on his part, would you permit this quarrel to go to this jury at this stage of it, on the promise of somebody that they are going to connect it afterwards? This is a circumstantial case and when we come to

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the critical circumstances of it, they may turn up to be very misleading in a case of this kind, where there is no direct evidence, and on the critical situation, it is important to keep the minds of the jury as free from all kinds of prejudice as possible and so compel the District Attorney to lay his foundation first, in order that this jury -- he has already made statements here that are really of highly prejudicial character -- but we will now try and see the situation as best we may on that proposition. I say if this District Attorney is going to show malice or intent, he must show an act or deed of the defendant for that purpose, and cannot show it by the acts of the deceased, or the words of the deceased.

MR. ELY: As I said before, the purpose of this testimony is to show motive and intent, and if it should appear that the testimony of this witness was to the effect that the deceased endeavored to have the defendant arrested and at the same time the defendant said "Oh no, he is a thief himself and we have had a quarrel and he is sore on me" -- very well -- suppose for the ~~sake~~ sake of illustration that all did occur, and then they did

go around to find the complaining witness on whose account this deceased had made the complaint against the defendant; did not find her, and they both separated and went their several ways, but that on the next day that was alleged as a cause for his antipathy to the deceased and he said "We have had a quarrel and he tried to get me pinched and I will do him" or words to that effect. I cannot turn the case upside down and begin by putting on a witness that testifies to something that transpired afterwards. I must go along in the chronological order, and this is for the purpose of showing motive and intent and I propose to clinch it by the direct statements of this defendant.

THE COURT: I will overrule the objection.

MR. SULLIVAN: I except.

THE COURT: Bring the jury back.

The jury are returned into the court room and take their seats in the jury box.

Q (Question repeated)? A I saw the deceased and the defendant in company with a police officer walking from the west side of Seventh Avenue to the east side and I walked over and there was a crowd following them and the officer says to me --

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Qx Mevermind -- did you understand my question?

A Yes.

Q You answer my question and do not give us a history of your life or your pargrenations from the time you were on the police force. A The deceased says "This man stole some clothes of a woman in 27th Street.

MR. SULLIVAN: I object.

BY THE COURT:

Q Accused him of it? A Yes.

Objected to.

Objection overruled.

Exception.

THE WITNESS: (continuing) I said to the deceased, are you the complainant in this case and he said no, but he said I will get the complainant.

BY MR. ELY:

Q What did the defendant say? A He said "Officer, I haven't done anything at all; we were in a crap game and I won some money off him and here is the money in my hand and he punched me and I run away and he ran after me." I said "You get the complainant and I will lock this man up for you." While walking over to get this complainant officer McCormick also attached to the 19th Precinct -- it was on his post where this complainant was supposed to

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live -- and we walked over together and the deceased looked for the complainant and could not find her.

Q That is Boyle? A Yes sir. He said "oh well, leave him go, I will pinch him some other time.

BY MR. SULLIVAN:

Q Who said that? A The deceased.

BY MR. ELY:

Q What did the defendant say? A Didn't say anything. They walked away. He said "This fellow is sore on me".

Q Who said that? A The defendant said "This fellow is sore on me."

Q Referring to whom? A To Boyle.

Q Is that to the best of your recollection all that was said then, practically, between the defendant and the deceased? A Yes sir.

Q Do you recollect for the purpose of refreshing your recollection -- do you recollect anything being said about anybody's impersonating an officer? A Yes sir.

Q What was said about that? A The deceased said "This fellow is going around saying he is a cop and shaking women down.

BY MR. SULLIVAN:

Q Who said that? A The deceased.

BY MR. ELY:

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Q What did the defendant say? A "This fellow is sore on me".

Q Did you see the deceased from time to time, from the 24th of June, 1906, until the morning of the 28th of June, 1906? A Yes.

Q Just answer this question catagorically, that is, by yes or no; from the 24th day of June, 1906, until the morning of the 28th of June, did you have any conversations with the deceased, yes or no? A Yes.

Q What tour were you doing on the morning of the 28th of June, 1906? A Doing the late tour, 12 midnight to 6 A. M.

Q You were then connected with the 19th Precinct?
A Yes sir.

Q And are you still connected with the 19th Precinct?
A Yes.

Q What was your post on the morning of the 28th of June, 1906? A Seventh Avenue from 23rd Street to 28th Street.

Q Which side of the block? A On the east side of Seventh Avenue, from the southeast corner of 28th Street to the northeast corner of 23rd Street and Seventh Avenue.

Q That is on the side towards -- this is Seventh

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Avenue (indicating)? A Yes.

Q That is on the side towards what -- towards which Avenue? A East.

Q The east side would make it toward which avenue?
A The east side of Seventh Avenue.

Q That would be towards Sixth Avenue? A My post was only on Seventh Avenue.

Q But on the east side of Seventh Avenue? A Yes.

Q From 23rd to 28th Street? A Yes.

Q Did you see the deceased, Boyle, on that morning or on that evening? A On that morning.

Q Can you recollect about how long after you came out -- you came out on post at 12 o'clock midnight?

A Yes, about 12:15.

Q That was on the morning of the 28th of June, 1906?

A Yes.

Q How long after you had come out on post did you see the deceased James Boyle? A About ten or fifteen minutes after I came out.

Q Where did you see the deceased James Boyle when you saw him about 25 minutes or 20 minutes of 1, on the morning of the 28th of June, 1906? A 28th Street and Seventh Avenue.

Q And 28th Street and Seventh Avenue is in New York

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County? A Yes sir.

Q Do not give me any conversations. Answer me as to whether or not you did have any conversation with James Boyle when you saw him about 20 or 25 minutes of one on the morning of the 28th of June, 1906, on Seventh Avenue and 28th Street? A Yes.

Q And did you at that time see the defendant? A No sir.

Q Did you at any time on the night of the 28th of June, 1906, or the morning of the 28th of June, 1906, see the defendant? A No.

Q Did you know a person by the name of William Harris? A Yes.

Q How long before the 28th of June, 1906, had you been acquainted with William Harris, by name? A I never spoke to him.

Q Had you seen him about and did you know him by name? A Yes.

Q You knew him by sight? A Yes.

Q Now how long had you known him by name and sight before the 28th of June, 1906? A About six or seven days.

Q You say you had known him for five or six days? A Just by name and sight.

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Q Sight and name -- now did you see William Harris on the night or on the morning of the 28th of June, 1906? A Yes sir.

Q At the time that you say you were at the corner of 28th Street and Seventh Avenue talking to the deceased James Boyle, did you see William Harris? A Yes sir.

Q Where was William Harris at that time? A Talking to James Boyle.

Q Was he talking to James Boyle at the time that you were talking to James Boyle? A No.

Q Try and pay attention to my questions; the question was did you see William Harris on the morning of the 28th of June, 1906, at the time that you were talking to the deceased James Boyle? A No sir.

Q Now how long did you remain in conversation with the deceased James Boyle on the morning of the 28th of June, 1906, according to your best recollection? A I should judge about three or four minutes.

Q Then what did you do? A I was going over my post, going south.

Q Did you see what the deceased James Boyle did then? A Yes sir he walked down as far as 27th Street with me and then he left me and crossed over to the west side of Seventh Avenue. I didn't pay much attention which way

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he went but he went west across the avenue.

Q He went west across the avenue? A Yes.

Q Where did you go? A I went patrolling my post and kept walking south.

Q After James Boyle had left you there at 27th and Seventh Avenue, am I right? A Yes.

Q And crossed over to the west side? A Yes.

Q Of Seventh Avenue? A Yes sir.

Q You lost sight of him? A Yes.

Q As you patrolled down yourpost, you were going in a southerly direction towards 23rd Street? A Yes.

Q On the easterly side of Seventh Avenue; is that right? A Yes.

Q Did you hear anything? A I heard a shot.

Q What did you do when you heard a shot? A I run in the direction where I thought the shot had come from.

Q Where did you run to? A 28th Street and Seventh Avenue.

Q And when you got to 28th Street and Seventh Avenue, what if anything did you see? A I saw the deceased lying on his back.

Q And whereabouts was the deceased?

MR. SULLIVAN: I object to the word "deceased" being used.

MR. ELY: Scratch out the word "deceased".

He is dead, and I can connect it all, and it is a manifest slip of the tongue of the officer for the minute.

THE COURT: Strike it out.

BY MR. ELY:

Q Call him Boyle, do not call him the deceased until we get after the 18th.

THE WITNESS: I saw James Boyle lying on his back.

Q About where was he if you recollect? A Between the entrance of 158 and 160 West 28th Street.

Q Have you ever seen this paper before Exhibit 5 in evidence? A No sir.

Q Look at it and see if you understand it and if you do not understand it, do not attempt to use it -- do you see what that says? A Yes.

Q Do you recognize what that is? A Yes.

Q Do you recognize what this is? A Yes.

Q Do you recognize what that is? A Yes.

Q What street is this? A This is west 28th Street (indicating).

Q What street is this? A This is 7th Avenue.

Q And what street is this? A 27th Street.

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Q And looking at People's Exhibit 5 in evidence, can you point out there about where on West 28th Street you say you saw James Boyle lying when you ran up after hearing this pistol shot ring out -- do not make a big mark (the witness makes an X on the diagram and the stenographer places a circle around the letter X and the letter B inside the circle with his initial C. W. O. underneath the circle, outside.)

BY MR. FLY:

Q When you say that you found Boyle there between 158 and 160, after hearing this shot, who else if anybody was there? A Willie Harris.

Q What was Willie Harris doing? A Holding James Boyle's head in his lap, in a kneeling position, with James Boyle's head in his lap.

Q The defendant was not there? A No sir.

Q Do not give me any conversation, you understand me?

A Yes.

Q Did you say anything to Boyle? A Yes sir.

Q Did Boyle say anything to you? A Yes sir.

Q At or about the time that Boyle said something to you, had anybody else come up? A No sir.

Q Do you know officer Cammeyer? A Kleinmeyer.

Q Kleinmeyer? A Yes sir.

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Q When did officer Kleinmeyer come up if at all?

A About two minutes after I got there.

Q Before the arrival of Kleinmeyer had you said anything to Boyle, yes or no? A Yes.

Q Had Boyle made a reply to you? A Yes.

Q After you had said something to Boyle and Boyle had said something to you, what did you do? A I run into the hall with officer Kleinmeyer, of 158 West 28th Street.

Q There is 158 West 28th Street (indicating)?

A Yes.

Q You ran in this hall through this hallway? A Yes.

Q How far did you go? A I run upstairs -- looked in the yard first -- went back to the yard.

Q You ran through the hallway into the yard? A Yes.

Q What did you do when you got into the yard?

A Looked all around the rear buildings there; you can go from one yard into another. Then I came back into the hall of 158 and went upstairs; searching all the floors and roofs. I went through the building of 158 and went up on the roof and looked over all the roofs; all roofs are all the same size all along the line and searched the building of 156 and 154 and could not find him.

Q Were you looking for anybody specially? A Yes sir.

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Objected to as incompetent, irrelevant and immaterial.

Objection overruled; exception.

Q Did you find anybody on that night? A No sir.

Q After searching through the premises at 158 and 160 and the roofs and so forth as you have testified, what did you do? A I came back where James Boyle was lying.

Q What did you do then? A Got an ambulance.

Q And from what place did you get the ambulance -- did you get the ambulance? A No, some other officer got the ambulance.

Q Nevermind then -- then you went back to where James Boyle was lying? A Yes.

Q Did any wagon or vehicle drive up there that evening or that morning after you were there, when Boyle was lying in front of 158 and 160? A Not that I noticed any.

Q Do you know what an ambulance is? A I would call it an ambulance; I wouldn't call it a vehicle.

Q Is that a vehicle? A I would call it the ambulance.

Q Isn't it a vehicle? A Yes.

Q It has four wheels? A Yes.

Q And it is drawn by some motive power, either horses or electricity? A Yes sir.

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Q I ask you, did any vehicle come up there?

A Yes sir.

Q What vehicle was it that came? A New York Hospital

Q Ambulance? A Ambulance.

Q What if anything was done with James Boyle when this vehicle which is designated as an ambulance from the New York Hospital, came up to the place on 28th Street where Boyle was lying? A removed to the New ~~Xerox~~ York Hospital.

Q Who if anybody went with the ambulance? A I did.

Q Did you go in the ambulance? A Yes.

Q Did you ever see before in your life that person who was sitting in a chair and is called Dr. Goehle?

A Yes.

Q You saw him when you were brought in this morning when ~~you~~ I called you in this morning? A Yes.

Q Did you see him on the night or morning of the 28th of June, 1906?

A Yes.

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Q Did you see whence he came from? A He came on the ambulance.

Q And did you see whither he went? A Yes, sir.

Q Where did he go? A He went to the hospital.

Q On the ambulance? A Yes.

Q What did he have in the ambulance when he went back to the hospital? A He had James Boyle.

Q And you? A Yes.

Q When you got to the hospital, New York Hospital, what happened there? A The doctors and attendants stripped James Boyle of his clothing.

Q In your presence? A Yes, sir.

Q You saw this Dr. Goehle? A Yes, sir.

Q You had known Boyle for how long a period before the time that you saw him there on the street, 28th Street, between 158 and 160? A About a week.

Q You knew the person whom you found on the sidewalk there to be James Boyle? A Yes, sir.

Q You do know and can state as a fact that it was James Boyle whom Dr. Goehle took in the ambulance of the New York Hospital, to the New York Hospital on the morning of the 28th of June, 1906? A Yes, sir.

Q Do you know where the body of James Boyle was conveyed after he was taken to the hospital, New York Hospital, on the morning in question? A It was taken into

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the ante room first and stripped.

Q And then where was he taken? A He was removed to one of the wards, Ward I, I think, I am not sure.

Q Ward I? A I am not positive of that.

Q That is according to your best recollection?

A Yes, sir.

Q That person that was removed to the ante room and stripped and thereafter was removed to Ward I, as you now recollect, was James Boyle? A Yes, sir.

Q Whom you had known for over a week before the 28th of June, 1906? A Yes, sir.

Q You state that positively? A Positively.

Q Is that about all you know about this case?

A About all I know, yes.

MR. ELY: If your Honor please, reserving the right to ask this witness one further question, if I may deem it proper, to suggest the question to him, it being one for a name, I will turn the witness over now for cross examination.

CROSS EXAMINATION BY MR. SULLIVAN:

Q I understood your beat to run down to 23rd Street?

A Yes, sir.

Q And to 28th Street on Seventh Avenue? A Yes, sir.

Q Where on Seventh Avenue were you at the time that

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you heard the pistol shot? A On the northeast corner of 27th Street and Seventh avenue.

Q Had you not left Boyle just upon that corner?

A Yes.

Q He went across to the west side of the avenue?

A Yes.

Q You were at that time on your way down to 23rd Street? A Yes.

Q You and Boyle, as I understand it--

MR. ELY: Have you any objection, Mr. Sullivan, to permitting the photographer to identify two pictures before you proceed with your cross examination?

MR. SULLIVAN: No objection.

MR. ELY: Then this witness with the Court's permission will step aside for a few minutes so that I can put the photographer on and he will only be here a minute and then he need not come again.

H A R O L D L . C O E , called as a witness in behalf of the People, being duly sworn and examined, testified as follows:

DIRECT EXAMINATION BY MR. ELY:

Q What is your business? A Photographer.

Q You have been in business as a photographer for how

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long? A About seven years.

Q On the 13th of September, 1906, did you, pursuant to instructions, go up to 28th Street and make a photograph of certain premises on 28th Street and Seventh Avenue? A I did.

Q Did that photograph give a correct picture, or make a correct picture of the premises that you attempted to photograph there? A It does.

Q I show you a card and ask you if you have ever seen that before? A I have.

Q I ask you if you know what that purports to be a picture of? A Yes.

Q I ask you if you know who took that picture?
A I made it myself.

Q I ask you what premises that picture purports to show? A The front of 158 and 160 West 28th Street.

Q And the corner? A And to the corner of Seventh Avenue.

Q Is that a correct representation of the buildings as they were on the day that you took the picture? A It is.

MR. ELY: I offer it in evidence.

MR. SULLIVAN: I have no objection.

(The photograph is received in evidence and marked People's Exhibit No. 7.)

C H A R L E S S O F S K Y , resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. SULLIVAN:

Q As I understand it, you state to this jury that you and Boyle were walking down Seventh Avenue, and when you got to the corner of 27th Street and Seventh Avenue, Boyle crossed to the west side of Seventh Avenue, is that right? A Yes.

Q And did you continue on down your course to 23rd Street? A Yes.

Q How far down did you go? A As far as 23rd Street.

Q You went down as far as 23rd? A Yes.

Q Did you see Boyle ^{from} at the time you left him until you saw him at the time he was shot? A Yes.

Q Where did you see him at that time? A Standing in conversation.

Q You had a second conversation with him? A No; standing in front of the station with Willie Harris.

Q You saw him talking to Willie Harris? A Yes.

Q Where was that? A Between 158 and 160 West 28th Street.

Q Between 158 and 160 West 28th? A Yes.

Q Where were you at that time? A Corner of 28th Street and Seventh Avenue.

Q You had come back from 23rd Street? A Yes.

Q And 28th Street was the northern limit of your beat?

A Yes, sir.

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Q Had you at that particular time on your return trip, had you been talking to Boyle yourself? A No.

Q So you walked your beat back again? A Yes, sir.

Q And how far did you go? A To 23rd Street.

Q This second time? A Second time.

Q You went away down to 23rd Street again? A Yes, sir.

Q That is after you saw Harris and Boyle talking?

A Yes.

Q Did you see Boyle again from that time, before you saw him lying at 28th Street? A Yes, sir.

Q You returned again to 28th Street? A Yes.

Q And you saw him again? A Yes.

Q Did you have any conversation with him then?

A No.

Q Was anybody talking to him at that time? A Yes.

Q Where was he then? A The same place.

Q Still standing over there in that place? A Yes.

Q Saloon on the corner was open? A No, sir.

Q Lighted? A Well, may have been lit.

Q You did not see anybody going in at that hour? Well, anyway, you did not see Boyle at that time? A No.

Q You went back again? A Yes.

Q And it was on this trip south that you heard a shot?

A Yes, sir.

Q How far south were you when you heard it?

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A One block.

Q Were you on the south side of 27th Street?

A The north side--

Q The north side? A Northeast corner of 27th Street.

Q You were on the edge of the sidewalk, ready to step into the street? A On the corner.

Q Were you walking? A No, sir.

Q Standing still? A Yes, right there.

Q You were in the act of walking when you heard this shot? A Yes.

Q You were walking south? A Yes.

Q You did not get across 27th Street? A No.

Q When you heard the shot you stopped? A Yes.

Q You did not

Q And you could tell of course that the shot was somewhere in the rear, in the rear of you? A It sounded that way to me.

Q When you heard the shot when you walking, you stopped as soon as you could? A Yes.

Q Listened to locate the sound? A I did not stop to listen. I run just as soon as I heard the shot.

Q You had to stop walking? A Yes.

Objected to as immaterial.

Q When you stopped, could you tell just exactly the place where the sound came from? A No, sir.

Q So you looked, did you not? A I looked up

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Seventh Avenue, yes.

Q To get a line on the people in the street to see where it came from? A I did not stand there. I did not stand at all.

Q You did not stand there any--

Objected to.

MR. ELY: Let him answer the question. He has a right to finish his answer.

BY MR. SULLIVAN:

Q Did you stand there? A No, I did not stand there.

Q You were on your feet? A I ran as soon as the s I heard the shot, where I thought I heard the shot come from.

Q You turned around? A Yes.

Q You have told the jury when you turned around you looked north on Seventh Avenue? A Yes.

Q You looked north to get a line on the people in the street? A No, I didn't see people.

Q In other words, when you looked north on Seventh Avenue you did not have any purpose in view at all? A No.

Q Then you ran north to the corner of 28th Street, is that right? A Yes.

Q Then you turned the corner and ran over to the place you have marked on this diagram? A Yes.

Q What number is that? A Between 158 and 160.

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Q You claim them--

MR. ELY: I object to the form of the question.

He makes no claim. He has testified.

BY MR. SULLIVAN:

Q You testify here that you found Boyle lying in front of what is known here as a restaurant on 28th Street? A yes.

Q Is that right? A Yes.

Q Did you find him in front of the door? A No, sir.

Q Leading into the restaurant? A No.

Q How many feet from the door? A Oh, I can't say exactly. He was laying right on the sidewalk there. There was a light in the window of the restaurant.

Q He was lying right near the door to the restaurant?

A He was lying right near there.

Q About a foot or two? A I can't say how far, but he was lying there.

Q Approximately-- I do not care about you measuring it, but approximately, right near the door? A Yes, near the door.

Q Of 158? A Yes.

Q And when you went into this building, you went into 160? A No, sir, 158.

Q You went into 158? A Yes.

BY MR. ELY:

Q Are you familiar with Seventh Avenue and 28th Street,

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between Sixth and Seventh Avenues? A Not very much.

Q Not very familiar? A Not very familiar, no, sir.

Q Look at People's Exhibit 6 for Identification and see if you are sufficiently familiar with this People's Exhibit 6 for Identification to state whether or not this diagram correctly shows the portion of 28th Street between Sixth and Seventh Avenues, that is, purports to show upon the night or morning of the 28th of June, 1906?

MR. SULLIVAN: I object.

Objection sustained.

MR. ELY: When I traverse a locality and know it--

THE COURT: He says he is not very familiar with it.

MR. ELY: I ask him if he is sufficiently familiar to say, and that simply calls for an answer yes or no, after looking at the diagram. It may be that he is not, and if so, he can state so. He went down there and saw it, and knows that locality, as far as I want to introduce this diagram in evidence, for he was there on the night. It is simply unnecessary delay and unnecessary formal proof.

THE COURT: It is quite possible to find persons who are absolutely familiar with that and who know whether any changes of importance have taken place in that locality from that date up to the date of the

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taking of the picture.

MR. ELY: Will your Honor now adjourn and will you direct the witness on the stand not to talk about the case with anybody?

THE COURT: I have thought of that in particular.

MR. ELY: I do not want to talk to him and I do not care to have him talk to anybody else.

MR. SULLIVAN: May I ask one question?

THE COURT: Yes.

BY MR. SULLIVAN:

Q Do you mean to say to this Court and jury, in relation to the conversation which was had, that you have narrated here as having taken place, that the defendant said he was sore on Boyle? A Yes.

Q Or that Boyle was sore on him? A No, the defendant said, "He is sore on me, officer."

BY THE COURT:

Q That is, that Boyle was sore on the defendant?

A Yes, and the defendant said that to me, that Boyle was sore on me.

THE COURT: I want to caution you, officer, and I think that we can rest assured that the advice of the Court will be followed. You are not to open your lips to any human being between now and the time when you come on the stand again, about your testimony; because,

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others have been excluded that they might not know what you have said, and you have been excluded that you might not know what others have said, and the Court demands that you observe complete and absolute silence either directly or indirectly, by word of mouth or by letter-- to say nothing to anybody. And, you, gentlemen, of the jury are admonished that it is your sacred duty to maintain silence also; that you shall not discuss this case among yourselves or with others, nor anything connected with the trial, and not form or express any opinion until it is finally submitted to you. We will take an adjournment until half past 10 tomorrow morning.

Court adjourns until half past 10 o'clock, tomorrow morning, March 5th, 1907.

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New York, March 5th, 1907.

TRIAL RESUMED.

MR. ELY: If your Honor please, certain matters have been brought to the attention of the District Attorney which have been referred to the Court and which would seem to warrant an application for an adjournment of this case until to-morrow morning. I understand that in the application of the District Attorney, counsel for the defendant joins.

MR. SULLIVAN: I do. I join in the application for an adjournment.

THE COURT: Well, Gentlemen, you are admonished that it is your duty to refrain from any conversation amongst yourselves or with others concerning any subjects connected with this trial. You are not to form or express any opinion until it has been finally submitted to you. The motion of the District Attorney, consented by the attorney for the defendants is granted, and the Court takes an adjournment until to-morrow morning at half past ten.

(The Court then adjourned the further trial of the case until to-morrow, Wednesday morning, March 6th, 1907, at 10:30 o'clock.)

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New York, March 6th, 1907.

TRIAL RESUMED.

MR. SULLIVAN: If your Honor please, I have made the suggestion, and I have submitted the facts to the District Attorney and to your Honor. The defendant is prepared to tender a plea in this case, if your Honor will accept it -- a plea of murder in the second degree.

MR. ELY: Under the circumstances of this case, it seems to me that the interests of justice will be satisfied by accepting the plea which is now tendered, of murder in the second degree.

THE COURT: The plea may be so accepted.

MR. ELY: I ask that the defendant be remanded for sentence until the 15th of March.

(The defendant is remanded for sentence.)

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