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COURT OF GENERAL SESSIONS OF THE PEACE

City and County of New York, Part V.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

JAMES MULCAHEY.

Before

HON. JOSEPH F. MULQUEEN, Judge. and a jury.

New York, January 9, 1918.

The defendant is indicted for murder in the first degree.

Indictment filed July 9, 1917.

APPEARANCES:

For the People: ASSISTANT DISTRICT ATTORNEY BROTHERS, ESQ For Defendant: C. B. F. BARRA, ESQ. and JOSEPH ROSALSEY, ESQ

THE CLERK OF THE COURT: James Mulcahey, if you desire to challenge and individual juror you must do so when he appears on the stand and before he is sworn. Do you waive the further giving of this notice?

MR. BARRA: We do, yes.

A jury of twelve men, after having first been examined on the voir dire, is duly sworn.

THE COURT: Gentlemen of the jury, you may come back at two o'clock.

Remember in the meanwhile that the law forbids you to talk about the case in any way with anyone. You must not discuss the fact that you have been impanelled

nor talk about any developments of the case at any time with anyone. That includes not only the members of this jury, but all strangers. The time for you to discuss it and talk about it is at the end of the case; if the Court submits it to you, and after all the evidence is in and all the arguments have been made, why then it is your duty to retire and discuss it, and not before then. Meanwhile you must keep an open mind on the question of the guilt or innocence of the defendant. Now please bear that in mind and come back at two o'clock.

TRIAL CONTINUED.

Mr. Brothers opens to the jury as follows:

MR. BROTHERS: May it please the Court and Gentlemen of the jury, the defendant, James Mulcahey, was jointly indicted with a man named John Collins, on July 9, 1917, by the Grand Jury of this county. He is accused as well as the other man with killing Michael J. Sweeney, at 258 Hudson Street in this county on the 7th day of June, 1917, last summer. The premises 258 Hudson Street, I believe is an old fashioned dwelling house, the ground floor of which was occupied by some young man who constituted what they called the Pioneer Social Club. These club rooms were entered from the street by going up to a stoop, into a hallway and then

a few feet from the hall door was an entrance into what formerly I presume was the parlor of a dwelling.

On the night of June 7th a number of these young men who lived in the neighborhood were gathered in the Club and were having a beer party. Some of them had gone out and purchased a keg of beer and they were enjoying themselves there and the defendant we are told was one of those present.

The deceased, Michael Sweeney, was a truck driver, twenty odd years of age. He was not a member of this Club but was passing by between ten and eleven o'clock that night with two others, one of whom was Peter Rogers, and the other was Frank Kennedy. When they arrived in front of the Club they stopped and were invited in by a man named Keating, who was in the Club, in and out on the stoop, and they started in. Sweeney, I believe, got into the Club, but according to the witnesses, did not much more than get into the Club when a shot was fired, followed by a couple more in the hallway and Sweeney came staggering out to the street and up a littler ways into a saloon run by a man named Crowley. He fell down there on the floor and it was found that he had been shot three times in the back. He was taken to St. Vincent's Hospital where he died as the result of these wounds.

There is a small stoop in front of the street door of this building, and upon that stoop were sitting two young ladies, Miss Beatrice Gallagher, who lived with her mother in one of the apartments upstairs in the same building, and a friend of hers, Miss Catherine Flynn. They had been around that summer evening in the

neighborhood and they had just gotten there a few minutes before the shooting and sat down upon a couple of chairs and were talking. They had been there perhaps ten or twelve minutes, and during that time that they were sitting on chairs and they both knowing this defendant Mulcahey saw him come to one of the window of the club room that looked out into the street and he invited the girls to come in and dance. They declined the invitation and sat there a couple of minutes when they saw these three men, Sweeney, Kennedy and Rogers, come along, up the stoop, and in a couple of minutes the shooting occurred.

Now, we will be unable in this case, so far as the People's case is concerned, I believe from present indications, to give you any information about anything that transpired prior to the shooting as any reason why it took place. We hope, however, to be able to establish by the witnesses that it was this defendant, aided by the man named Collins, who actually fired the shots. Of course, while it is very helpful in finding out who commits the crime, to know the reason why it was committed, it is not at all necessary that we show any reason or motive in the case, because if you or I should see a man enter this room and fire a shot at one of us here and kill him, we would be satisfied as to who did it without knowing why he did it, although we would be very much interested in knowing why.

The witness Peter Rogers, I think is a man around twenty years of age, who had known the defendant all his life and who has served a term in the Elmira Reformatory and I am glad that counsel for the defense in examining the jury brought to your attention the necessity of a juror giving a witness, even though previously convicted, a fair hearing, - employing, of course, the fact he has been convicted of a crime as a basis or guide as to whether he is telling the truth about this matter. Rogers did serve a term in Elmira. He did tell us where he and these other young men had been that day and how they came to be at the club on that occasion. He will tell us that as they stood in the doorway or just inside of the doorway of that building he saw Sweeney with the defendant Collins and defendant Mulcahey and saw these two men shooting at him. Mulcahey was arrested two hours later, I believe, and taken into custody.

We will call Dr. Otto Schultze, a physician of many years experience, who is attached to our office as medical examiner and he will tell you about these wounds and the cause of death. It is not necessary for me to make any extended statement about the case, except to say that the charge here is murder in the first degree, embracing of course the other grades of homicide, murder in the second degree, and manslaughter in the first and second degree. If the evidence of the People, as you listen to it, satisfies the jury that the defendant was one of the men who shot, if you are satisfied of

that beyond a reasonable doubt, you will be obliged to determine what grade of crime was committed, and at this point I want to call your attention to the essentials of murder, so that as our evidence is produced you can see whether the testimony as it goes along is supplying any of those requirements of the law.

For instance, to be murder in the first degree there must be an intentional killing of the person, not an accident; not a shooting without any design to kill, but it must be an intentional killing, and it must be the result of some reflection, that it was planned, even though a moment before, before it can be murder in the first degree. And there must be before it can be murder in the second degree, an intent to kill. If there is no intent to kill but the defendant did the shooting, but did it without intending to kill anyone, under circumstances where they were excited, - impulsive, - why, it would be manslaughter. I call your attention to this at this time so that you will have it in mind all through the case, that there were three shots fired at the back of this man, all taking effect, because upon that a jury would be justified in saying, - if you shoot a man in the vitals in the back three times, - that there is the necessary proof that the individual doing that shooting certainly intended to kill, because he took no chances, he did not shoot once, but he shot several times. I went you, in listening to the case, as you said you would, to be patient and listen carefully and try to

remember the evidence. Do not miss anything but get it all. Give everybody a fair hearing, even though witnesses have been previously convicted, because many times crimes are committed in places where it would be impossible to get a witness who had a clean reputation. The enforcement of the criminal law largely depends in this jurisdiction as we as in others upon the testimony of witnesses that are not reputable, but it depends upon the individual, and you have got to listen to him carefully and search out his testimony to find out whether he is telling the truth at this time or whether he has invented. I think if you give it careful attention, as I am sure you will, you will have no difficulty in deciding the issue.

HENRY J. HAGGERTY, an officer of the Tenth Precinct, called on behalf of the People, having been duly sworn, testified:

MR. BROTHERS: I offer in evidence, if the Court please, upon consent of the defendant's counsel, a diagram showing the floor plan of the ground floor of the premises 258 Hudson Street, in this City and County, drawn to a scale of three-eighths of an inch equaling one foot measure, drawn June 12, 1917, by Mr. McGuire, a draftsman.

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mr. Haggerty, you are a member of the police force of the City of New York?

A I am .

Q How long have you been a member of it?

A 24 years.

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Q On the 7th of June, 1917, you were serving in the Tenth Precinct, were you?

A Yes sir.

Q As a patrolman?

A As a patrolman.

Q And dos that take in premises 258 Hudson Street?

A Yes sir.

Q And those premises are in the City and County of New York?

A Yes sir.

Q Was your attention attracted at any time on that evening, on that day, to those premises?

A Yes.

Q When you first learned that anything occurred there, where were you?

A Watt Street.

Q 258 Hudson Street is in what part of the city?

A Two doors from the corner of Dominick Street, south of Dominick Street.

Q And Hudson Street is where?

A Hudson Street is --

Q In relation to Broadway?

A It runs parallel with Broadway, beginning at Chambers Street and running north to Abingdon Square.

Q The numbers, of course, run from the south?

A Yes, they begin at Chambers Street and run north.

Q How far from 258 Hudson Street would Watt Street be?

A That is two blocks south.

Q Did you hear any shots fired?

A I did not.

Q To what place did you first go after learning that something had happened in that vicinity?

A In the saloon on

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the corner.

Q Whose saloon?

A A man named Crowley owned it at that time.

Q And that saloon is locate where, with respect to 258?

A Two doors north of it, on the corner.

Q On the same side of the street?

A On the same side of the street, two doors north of the clubroom where the shooting took place.

Q And on the same side of Hudson Street?

A On the same side of the street.

Q Whom did you see in the saloon?

A Well, one man that called me to the saloon door was Clancy, a man named Clancy. He said, "In this way, Officer".

Q Never mind what was said; you were called in by a man named Clancy?

A Yes.

Q When you got inside whom did you see; did you see any injured man?

A I saw a lying on the floor.

Q What was the matter with him?

A No one could tell me until I examined him.

Q Having examined him what did you find?

A I found that he was shot in the back.

Q Did you know the man by sight or by name?

A I did not.

Q What did you do with him?

A I sent for an ambulance right away.

Q To what hospital was he taken?

A St. Vincent's.

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Q Did you find out that night who he was?

A I did.

Q What was his name?

A Michael Sweeney.

Q Did you learn where he lived?

A Not that night.

Q Later on you did?

A Yes.

Q Where did he live?

A 87 Vandam Street.

Q Did you see his wife?

A Not that night.

Q You saw her the next day?

A Yes sir.

Q And she is here to-day?

A She is here to-day.

Q Did you see Sweeney's body again after he had died?

A I did.

Q Where?

A In the morgue.

Q On what date, do you remember; was it the 9th of June?

A The 9th of June.

Q And did you there identify his body to Dr. Otto H. Schultze?

A I did.

Q That was the same body, the body of the man you had seen I Crowley's saloon, shot in the back?

A Yes.

Q Ad when you saw him in the morgue he was dead?

A Yes.

Q Now, did you visit premises 258 Hudson Street there after going to Crowley's saloon?

A After the body was taken away.

Q Did you see anybody in the club room on the first floor when you got there?

A No.

Q Nobdoy there?

A No.

Q Were the lights burning when you got there?

A No.

Q Are you familiar with those premises?

A I am now.

Q Was that your post; did that come in your post, that

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Building?

A Yes.

Q You had passed by there many times, had you?

A Yes sir.

MR. BROTHERS: I think that is all for the present, Mr. Barrs.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Do you know Peter Rogers, Officer?

A I do, now.

Q Was Peter Rogers put in the House of Detention immediately after the shooting?

MR. BROTHERS: I don't think that is proper cross-examination. Rogers will be here.

MR. ROSALSKY: I am laying a foundation.

THE COURT: I will allow it.

A I believe he was. I did not put him there. I did not bring him there.

Q Was Peter Rogers in the custody or under the control of the District Attorney at the time he testified in the Coroner's Court?

MR. BROTHERS: That is objected to as calling for an opinion.

MR. ROSALSKY: If he knows.

THE COURT: How can he tell if he was in the custody of the District Attorney or under this control; that will assume something.

Q Well, do you know where Peter Rogers was at the time, on July 6, the date of the Coroner's inquest?

A Not from my own knowledge.

BY THE COURT:

Q Well, from hearsay, do you know.

A Yes, I know where he was, from hearsay.

BY MR. ROSALSKY:

Q Well, where was he?

MR. BROTHERS: I object.

THE COURT: I will allow it.

A I believe he was in the House of Detention.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all.

BY THE COURT:

Q Are the saloon and the clubroom in the same building, Ofifcer?

A No sir, it is two doors away. There is one building between the clubroom building and the saloon.

Q The saloon is on the street floor and the club is upstairs?

A They are different buildings. The saloon is a corner building, then there is a littler private stoop house and next to it the clubroom, the next building to that, right upon the stoop, the stoop floor.

Q The club has the whole house?

A No, just that floor.

Q The first floor?

A Yes sir, the first floor at the stoop.

MRS. AUGUSTUS SWEENEY, of 553 Greenwich St., called as a witness in behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Mrs. Sweeney, were you the wife of Michael Sweeney, who died soon after the 7th of June, 1917?

A Yes sir.

Q Where were you living at that time?

A 91 Vandam St.

Q How long had you been married?

A About a month.

Q How old are you?

A Seventeen.

Q Are you employed anywhere?

A Yes sri.

Q Where? A 2 Duane Street, Frank McLane Brothers.

Q What work did your husband do?

A He drove in the market, a driver.

Q Did he drive a truck?

A Yes sir.

Q About how old was he?

A About twenty-six. Twenty-five or twenty-six, I am not sure.

Q Do you remember the night that he was shot?

A Yes sir.

Q Did you see him at any time that evening?

A Yes sir.

Q About what time?

A About nine o'clock.

Q Where did you see him?

A In the house.

Q At your home?

A Yes sir.

Q Had he been home that day?

A Well, he left the house about one o'clock, saying he was going down to Staten Island.

Q Then you next saw him about nine o'clock that night?

A Yes.

Q And when he came in how long did he remain before going out?

A Well, about fifteen or twenty minutes.

Q Then you did not see him again?

A No.

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Q Until you saw him in the hospital?

A I did not see him in the hospital. I went up there and I did not see him until he was brought home to the house.

Q When he was brought home he was dead?

A Yes sir.

Q And of course you attended his funeral?

A Yes sir.

Q Did he have a brother named Thomas Sweeney?

A Yes.

Q Did he live at 288 West Houston Street?

A Yes sir.

MR. BROTHERS: That is all, you may inquire.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Mrs. Sweeney, did you see a revolver on the 7th of June in the possession of your husband?

A No sir.

Q Did you have any talk with him about a revolver that evening?

A No sir.

Q That he better leave his revolver home when he was going out?

A No sir.

MR. ROSALSKY: That is all.

MR. BROTHERS: Your Honor, Dr. Schultze was detained uptown. He promised to be here at two o'clock. Of course this proof is a little out of order but we are doing the best we can.

THE COURT: Well, I will allow it.

PETER ROGERS, of 331 West Houston Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q How old are you?

A Twenty years old.

Q You live with whom?

A My father and mother.

Q Have you any brothers or sisters?

A Yes sir.

Q How many?

A I got five brothers and two sisters.

Q You are at present retained as a witness in this case, are you?

A Yes.

Q And have you been since what day?

A Since June 12.

Q Before that were you working anywhere?

A Yes sir.

Q For whom?

A For my father.

Q In what business?

A Contractor.

Q What work did you do?

A I drove a truck for him.

Q How long had you done that?

A For the last six years.

Q Do you know this defendant James Mulcahey?

A Yes sir.

Q How long have you known him?

A For the last ten years.

Q Where were you living on the 7th of June?

A 331 West Houston Street.

Q Did you know where Mulcahey lived?

A He lived right across the way, - I think it is in, - I don't know the number.

Q On the same street?

A Yes sir, on the same street.

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Q Do you know him that length of time because he was a neighbor?

A Well, yes, he lived around Varick Street with me. He was a neighbor of mine on Varick Street.

Q Peter, you at one time were convicted of attempted burglary, were you?

MR. BARRA: Objected to as incompetent. This is a matter for cross examination. We object on the ground he is attempting to contradict and impeach the credibility of his own witness.

THE COURT: I will allow it.

MR. BARRA: Your Honor will note our exception.

Q Is that right?

A Yes.

Q The crime of attempted burglary, and you went to Elmira?

A Yes sir.

BY THE COURT:

Q When was that?

A I got convicted June 12th and I went away June 17th, 1915.

BY MR. BROTHERS:

Q Were you convicted of any other crime at any time or any offense, and locked up?

A No sir.

BY THE COURT:

Q Before or after that?

A After this crime?

Q I mean that is the only conviction you had had?

A Yes sir.

Q And how long did you stay in Elmira?

A For 13 months and 20 days.

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Q And since you came out you were working?

A Yes.

Q And before you went in you were working?

A Yes.

Q Did you ever work for any one but your father?

A No sir.

Q You always worked for your father?

A Yes sir.

BY MR. BROTHERS:

Q Did you know Michael J. Sweeney?

A Yes sir.

Q How long had you known Sweeney?

A I know him about a year.

Q What did he do for a living?

A I could not tell you what he did for a living.

Q Where did you know him?

A I knew him from around Charleton and Greenwich Streets, from the boys around there.

Q Do you remember the 7th of June last year?

A Yes sir.

Q That was the night Sweeney was shot, was it?

A Yes.

Q Were you with him that day?

A Yes sir.

Q Did you at any time while you were with Sweeney go to 258 Hudson Street?

A Is that the club rooms, sir?

Q Yes, the Pioneer Social Club.

A Yes sir.

Q About what time of the day or night was it that you got there?

A I could not exactly tell you the right time. It was about ten o'clock or half-past ten.

Q How long had you been with Sweeney that day?

A I was with him since about twelve o'clock noon.

Q Who else was with you when you and Sweeney go to

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the Club?

A Frank Kennedy.

Q Who is Frank Kennedy?

A He is a fellow, a friend of mine and Sweeney's.

Q A Young man?

A He is about 25 or 26 in my judgment.

Q Where were you and Sweeney and Kennedy going when you turned to this club?

A We were going to look for bail for William Hogan.

Q Were you going up Hudson Street or down Hudson?

A When we left that saloon at Charleton and Greenwich we went down to a friend by the name of Harry Wiggins, trying to get him not to prosocute against Hogan. From there we were looking for some fellow up in the Huron Club, in Canal and Hudson streets. He went upstairs and came down there.

Q To make it brief, you and your friend were looking for bail bonds for a man named Hogan?

A Yes.

Q And you had been going around most of that day on that errand?

A No, we were down Staten Island with the intention of trying to get brother out. He got sentenced down Staten Island and when we came back from Staten Island we went to try to get Hogan out on bail.

Q When you came along Hudson Street between ten and eleven o'clock that night you passed by the clubl rooms of the Pioneer Social Club?

A Yes.

Q Did you belong to that club?

A No, sir, I did not.

Q Do you know whether Sweeney did?

A I hadrly

think so.

Q How about Kennedy?

A No, he did not belong.

Q Did you know any of the members of that Club?

A Yes, I knew some.

Q Do you know whether Mulcahey belonged to it?

A Yes sir, he belonged to it.

Q When you came to this Club did you see anybody there?

A I seen Joseph Keating standing on the stoop.

Q Joseph Keating is also known as Mickish Keating?

A Yes.

Q Where was he?

A He was standing on the stoop, and there were two girls sitting on the stoop.

Q Out in front of the Club?

A Out in front of the Club, yes sir.

Q Were you intending to go into the Club?

A Yes, I was intending to go into the Club.

Q Did you go in?

A No sir.

Q What happened? Did you go to the stoop of the Club?

A Yes sir, Joe Keating was standing on the stoop and he said, "Hello".

MR. BARRA: We object to that.

THE COURT: Strike out what he said.

Q Keating said something to you?

A Yes, he invited me into the Club rooms.

Q What did you then do?

A I went down. I said.

"I got two friends with me, invite them in, too." I went down to this here Michael Sweeney and Frank Kennedy. I said, "Come on in." They said, "All right." We goes up on the stoop.

Q Look at the plan, People's Exhibit 1 in evidence, is this the stoop our here in front (indicating)?

A Yes.

Q Then there are some steps, five steps?

A Yes.

Q You went up on the stoop and spoke to Keating?

A Yes.

Q And you left your two friends down there on the sidewalk (indicating on plan)?

A Yes.

Q He asked you to come in and you went down and told them to come in?

A Yes.

Q Then did the three of you go up the steps?

A Yes.

Q What did you do?

A As soon as we went on the steps Mulcahey came out and he said, "Come on in." The there of us went in. Mulcahey said, "Come on in." They walked into the Club rooms and I stood out on the stoop there.

Q Who went into the Club?

A Sweeney.

Q Ad Mulcahey; the defendant, do you mean by that?

A Yes.

Q Did anyone else go along with him?

A Joseph Keating.

Q What became of Kennedy?

A I don't know where he went. I think he went inside. I could not exactly swear he went inside.

Q When they went into the Club can you show us how

they got into the Club?

A Yes, they walked up to the stoop here (indicating) and walked right into the Club, and they went inside (indicating).

Q This blue part represents the floor of the hall?

A Inside.

Q No, this is the hallway here. There is a hallway there (indicating).

A Yes.

Q And some stairs going upstairs?

A Yes.

Q This is a doorway here and this is a doorway and there is a doorway there (indicating)?

A Yes.

Q They went into the hall?

A Yes.

Q Did you see where they went?

A They walked right in here (indicating) and went into the Club room.

Q They went into the first door they came to in the hall, turned to the right?

A Yes sir.

Q When you saw them pass through the door did you lose sight of them for the moment?

A Yes.

Q Where did you stand then?

A I stood right on the end here, (indicating) on top of the stoop.

Q These heavy black lines show the wall of the building.

A Yes.

Q That is the brick work. Those are the walls.

A Yes.

Q This is doorway here and those are intended to be windows (indicating).

A Yes.

Q Here is the stoop (indicating).

A Yes.

Q Now just where did you stand?

A Right here (indicating).

Q On the stoop?

A Yes (witness putting a cross mark).

Q Will you put your initials, P. R., there? Now while you were standing there did you observe any other persons on the stoop?

A When I went up on the stoop I seen the two girls.

Q Did you know them?

A No sir, I did not know them, not to talk to.

Q Have you seen them since?

A No sir.

Q As they went into the Club you lost sight of them andy you continued to stand there on the stoop?

A Yes.

Q While you were standing there did you see any other people on the stop?

A No sir.

Q What were you doing?

A IU was just standing there. When they went inside and I got excited.

Q How long had they been inside before you heard a shot fired?

A About a minute, as soon as they went inside there.

Q When you heard the shot where did you look?

A I looked right into the hall.

Q Then what was the first thing you saw?

A I seen some fellow coming gimping, limping he went like, and some fellow came out and grabbed him and he went back again.

Q Did you know either of those persons?

A Yes.

Q Who were they?

A I seen that fellow up in the District Attorney's office about the 15th of June, if not later, by the name of William Egan.

Q William Egan, was he the one that pulled the man in or was he the limping one?

A He was the limping one.

Q They went back into the Club?

A Yes.

Q Then what else did you see?

A I heard that shot. Then I seen that fellow come back, I seen this Mulcahey and Busto Collins walking out with Sweeney. They came out of the Club room and into the hall.

Q What did you see them do?

A I seen Sweeney wanted to go out to the street, and they wanted to get him in the back, and Sweeney broke away from them to go out to the front. I seen Busto Collins fire shots and I seen Mulcahey fire shots.

Q When they came out of the Club room door into the hall did the men have hold of each other?

A Yes.

Q How did they hold him?

A They had him under each arm, taking him.

Q Who had who?

A Busto Collins and Mulcahey had Sweeney.

Q Was he between them?

A Sweeney was between them.

Q Did you see them clearly?

A Yes sir.

MR. ROSALSKY: I move to strike that out as calling for a conclusion, -
Motion denied and exception taken.

Q In which direction did Sweeney start to walk when he came out of the doorway?

A He wanted to go towards the Street.

Q As he started, he came towards you?

A Yes.

Q What did you see the defendant and Collins do at that moment?

A He had a gun and started firing shots at him. I did not see him pull the gun out. I just seen the gun firing the shots.

Q Who did you see have a gun?

A Mulcahey and Collins.

Q Then you saw two guns?

A Yes.

Q What was Sweeney doing when those two men fired at him

A Sweeney broke away and run to the street.

Q Toward where you were?

A Yes.

BY THE COURT:

Q You mean his back was towards them?

A Yes.

Q Then they fired at him?

A Yes.

Q He was facing you?

A Yes.

BY MR. BROTHERS:

Q As they fired at him did they remain standing there or follow after him?

A They remained standing there.

Q Whereabouts were they in the hall when they were shooting?

A At the end of the door, coming out.

Q Can you indicate on the plain again, People's Exhibit 1 in evidence, where?

A They were standing right here (indicating).

Q Just put two crosses representing Mulcahey and Collins.

A (Witness indicating).

Q And Sweeney was passing towards this way (indicating)

A Yes.

Q How many shots do you recall hearing fired in the hall?

A I could not exactly tell how many. It was about ten or eleven, I should think.

Q There were a h whole lot of shots?

A Yes.

Q You heard one to begin with?

A Yes.

Q And that sounded as coming from what place?

A From inside the club room.

Q How many shots did you see fired in the hall?

A I seen Mulcahey fire two and this Busto Collins five or six.

I could not say how many.

Q What did you do while this shooting was going on?

A I was standing out on the stoop.

Q Were you looking in the hall?

A Yes sir.

Q When you saw them shooting at Sweeney did you stay there or leave?

A I stood there until Sweeney went past me.

Q What did Sweeney do outside?

A He ran down toward the corner there.

Q Did you see where he went?

A He went into the saloon there.

Q Which saloon?

A On the corner, Dominick and Hudson.

Q Do you know whose saloon it is?

A I think it is Crowley's saloon.

Q Did you go with?

A No sir.

Q Where did you go?

A I went down to a saloon on Charleton and Greenwich, Horgan and Cummings.***

Q Did anybody follow Sweeney out of that hall?

A I didn't see nobody follow him up.

Q Did you see where Mulcahey and Collins went after they shot?

A No sir, I did not.

Q Did you see them again that night?

A No sir, I did not.

Q Do you remember any other person that was in the hallway at the time of this shooting?

A No sir, I do not.

Q When you got around to that saloon at Charleton and Greenwich Streets you stayed there for how long?

A Well, about ten minutes.

Q Then where did you go?

A I went home.

Q Did some policeman pick you up later on?

A Five days afterwards.

Q Who was the policeman?

A Officer Collins.

Q Hmes Collins?

A James Collins.

Q Had you ever been inside of this club?

A No sir, I was not.

Q I do not mean that night, but had you been in there at any time?

A No sir.

Q Did you see what became of the young ladies who were on the stoop?

A No sir, I did not.

Q As you saw Sweeney going out of the hall and up the

street to the saloon did you notice how he went along?

A He went staggering along.

Q Did he say anything as he came out of the hall?

A He said, "They got me."

Q Did you hear anything said by either Collins or Mulcahey at the time of the shooting?

A No sir.

Q And before you heard that first shot did you hear any sound from the Club room?

A No sir.

Q Did I ask you whether you saw where Collins and Mulcahey went?

A No sir.

Q Did you see where they went?

A No sir, I did not.

Q When you went away from the club did you go in the direction of Crowley's saloon or in the opposite direction?

A I went in the direction of Crowley's saloon, and to Charleton and Greenwich Streets.

Q So that you passed by where Sweeney went in?

A Yes sir.

Q Did you notice or see where Joe Keating was at the time of the shooting?

A I did not see him after the shooting. I seen him before the shooting.

Q At the very moment that these shots were being fired in the hallway, did you notice Keating?

A No sir.

Q Did you see him anywhere about?

A No sir.

MR. BROTHERS: You may inquire.

CROSS EXAMINATION BY MR. ROSALSKY:

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Q Rogers, where were you born?

A I was born in Ireland, I think.

Q How old were you when you came here?

A I don't know, sir.

Q Did you go to school in New York?

A Yes sir.

Q How old were you when you started to go to school?

A I could not tell you that.

Q What school did you go to?

A I went to several schools. I went to King Street school and St. Anthony school and I went to St. Veronica's school.

Q Any other school?

A I was at the Catholic Protectory school.

Q When were you in the Catholic Protectory school?

A 1909, - 1911, I don't remember just.

Q What was the cause of your going to the Catholic Protectory school?

A My father me there.

Q You knew Mulcahey at that time, did you not?

A Yes sir, I did.

Q And were you ever a witness against Mulcahey when Mulcahey was charged with burglary in 1909?

A I know I was arrested about nine or ten years ago.

Q Were you a witness against Mulcahey nine or ten years ago?

A I was arrested with him.

Q Was Mulcahey arrested on the statement which you had made to a police officer?

A I could not just remember. It was so long ago. It was ten years ago, almost.

Q But do you remember at that time, about in April, 1909, do you remember telling a policeman something that Mulcahey had stolen something?

A I don't remember, sir.

Q Do you remember that you were a witness before the Grand Jury against Mulcahey?

A I know I was a witness. I know I came down in this building but I could not remember anything from that on.

Q And at that time when you were down here you were a witness against Mulcahey?

A I was a witness on Mulcahey, yes.

Q Against Mulcahey?

A Yes sir.

Q Do you remember what the Grand Jury did with that case?

A I don't remember.

Q Don't you know that the Grand Jury - -

MR. BROTHERS: That is objected to.

MR. ROSALSKY: I want to show malice; he testified against him.

THE COURT: He said that he testified as a witness against him on that occasion.

Q Then you were sent to the Catholic Protectory?

A Not in that case.

Q Now what case were you sent to the Catholic protector?

A My father put me there for not going to school

Q Did you steal a bicycle?

A Yes sir, a bicycle.

Q And you went to the Catholic Protectory because you stole a bicycle?

A No sir, not on that case,

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I don't think so.

Q What became of the case where from stole the bicycle?

A I can't remember. It is ten years ago. I was not ten years old. I can't remember that long.

Q You did steal a bicycle at one time?

A I think I did steal a bicycle.

Q Do you remember what was done with you for stealing the bicycle?

A No sir, I don't remember.

Q Were you sent away?

A I tell you I don't remember.

Q That is the best answer you can make?

A Yes sir, that is the best answer I can make.

Q Now besides being in the Catholic Protectory were you at any other institution?

A I was to Elmira Reformatory, the State Reformatory.

Q I mean before going to Elmira were you in the House of Refuge?

A No sir, I was not.

Q Were you at Hart's Island?

A I was not.

Q Did you ever do any other time of any kind?

A No sir, I did not.

Q Did you?

A Never.

Q How old were you when you left school?

A When I came out of the Catholic Protectory I was about 14 years old, I suppose.

Q How long did they keep you in the Catholic Protectory?

A About two years.

Q After leaving the Catholic Protectory did you work

A I came out of the Catholic Protectory and I went to St. Veronica's school. I stayed in there a while and then went to work for my father.

Q While working for your father did you work steady?

A I think so.

Q How did you get mixed up in this burglary?

A It happened to be I had a littler misfortune that night and I was intoxicated and I wanted to go and do something that night. It was a saloon.

Q How old were you when you went to Elmira?

A About 17 years old.

Q And you were intoxicated then?

A Yes sir, I was.

Q Had you been drinking before you were 17?

A Yes sir, I was.

Q And have you been drinking since?

A I was, sir.

Q Now you have been in the House of Detention since when?

A Since June 12, 1917.

Q Have you been out any night since you have been in the House of Detention?

A Yes sir, I have been out a couple of time for a walk.

Q With whom have you been walking?

A Officer Collins and officer Haggerty.

Q They are the officers in this case?

A Yes sir, they are.

Q Were you out on an average of once a week?

A No

sir, on an average of once a month.

Q But you did go out?

A I certainly did .

Q While you were with Officers Haggerty and Collins did you talk about this case?

A I did not.

Q They never spoke anything about it?

A They never spoke about the case.

Q When did you for the first time say anything against Mulcahey I connection with this shooting?

A When I got called to the District Attorney's office.

Q When?

A on June 12, 1917.

Q You did not appear before the coroner, did you?

A I did not.

Q Do you know whether Sweeney had a pistol with him they day he was killed?

A No sir.

Q Where did you meet Sweeney that day?

A I met him at Charleton and Greenwich, in Horgan & Cumming's saloon.

Q You were not working that day?

A No sir, I was not.

Q You say you have been working for six years for your father. Do you on and off?

A You can take a day off once in a week.

Q Did you take a day off frequently?

A Once in a while. I never would have taken that day off, only I wanted to see what we could do to get my brother out down on Staten Island.

Q What was your brother charged with?

A He was charged with petit larceny first and they changed it to disorderly

conduct after that, attempted petit larceny.

Q Did you say "he" or "we"?

A He.

Q Was Sweeney working on that day?

A No sir, he was not.

Q Were you drinking with Sweeney on that day?

A Yes sir, I was.

Q How many drinks did you have?

A I could not tell you.

Q What time of the day did you meet Sweeney?

A About twelve o'clock, noon.

Q You met him in the saloon?

A I did, sir.

Q How long did you remain in the saloon?

A For about twenty minutes.

Q How many drinks did you have in that saloon?

A I could not tell you.

Q Did you have more than one?

A I had about one or two; I can't just remember.

Q What did you drink?

A Beer.

Q Do you know whether you had more than two?

A I could not remember.

Q From that saloon where did you go?

A I went down to the house and put on a collar and tie and got dressed to go with them in an automobile to Staten Island.

Q Who got the automobile?

A Sweeney.

Q Where did you go with the automobile?

A We went to Staten Island.

Q Did you stop at any saloon on the way down?

A Yes

sir, we stopped at one down at the ferry.

Q Did you have any drinks?

A We had about two drinks there.

Q What did you drink?

A Beer.

Q What time of the day was that?

A About one o'clock.

Q That was about two o'clock.

A One o'clock.

Q Did you stop on the way to Staten Island after leaving the saloon near the ferry?

A Yes, we stopped in another saloon down there.

Q At what time?

A When we got over the ferry it must have been, - it takes half an hour to get over the ferry, -about a quarter to two when we stopped in another saloon.

Q Did you have any drinks there?

A Yes, I had about two drinks there.

Q How many were in that party?

A There were six of us and a chauffeur.

Q That was about two o'clock when you got on the other side?

A A quarter to two.

Q After getting on the other side of the ferry and after leaving the saloon on the other side where did you next go and make a stop?

A We stopped in a saloon down there in Staten Island, on the Richmond road somewhere.

Q Was that another saloon on Staten Island?

A We stopped in one saloon on our way down to Staten Island, in Staten Island.

Q Was that the one you referred to when you had two drinks on the other side of the ferry?

A Yes sir.

Q Did you stop in any other saloon?

A No sir, until we were on our way down to Staten Island; then we went to the hospital where my brother was.

Q Before going to the place where your brother was, did you stop in any other saloon?

A No sir, that is the only one we stopped in.

Q Altogether you stopped in one saloon on Staten Island?

A Yes.

Q What time did you arrive at the place where your brother was?

A Near two o'clock, I could not exactly tell the right time. I can't remember the right time. I did not have no watch.

Q Before starting on your way back to New York did you stop I any other saloon?

A Yes, we stopped in a saloon down at Staten Island.

Q This second saloon in Staten Island?

A Yes.

Q About what hour of the day was that, was it on your way back?

A Yes, on our way back.

Q How many drinks did you have in that saloon?

A I can't quite remember.

Q Did you have any drinks?

A I can't remember.

Q Do you mean you can't remember the number of drinks you had or you can't remember whether you had any at all?

A I think I had about two or three in that saloon.

Q About what time of the day was that?

A That was at night time.

Q About what time?

A About eight o'clock.

Q Did you stop at any other saloons before you reached the ferry on your way back?

A No sir.

Q You say two or three; might it have been more than two or three?

A No sir, two or three. When I say two or three it is two or three.

Q When you say two or three you mean two or three?

A Yes.

Q You don't mean four or five or six?

A I would not say it if I did.

Q Why did you say at first you could not remember how many you had?

A I could not remember, two or three; I can't exactly tell. Maybe three, maybe two.

Q Now when you reached the New York side of the ferry did you stop at any saloon?

A After going up to the girl's house, I stopped in one saloon after that.

Q When you reached the New York side of the ferry on your way back did you stop at any saloon?

A Yes, one up in 13 and Hudson.

Q You mean number 13 Hudson?

A 13th and Hudson.

Q How many drinks did you have there?

A I had about one drink in there.

Q What do you mean by about?

A One dirnk.

Q What did you drink?

A Beer. I always drink beer.

Q Was Sweeney with you?

A Yes sir, he was.

Q Then from the saloon and 13th Street and Hudson Street where did you go?

A Went down to Charleton and Greenwich to Horgan & Cumming's.

Q Is that a saloon?

A Yes sir.

Q What street is that on?

A Charleton and Greenwich.

Q Whose saloon is that?

A Horgan & Cumming's

Q Sweeney was with you?

A Yes.

Q How many drinks did you have there?

A I had one drink there.

Q How long did you remain in there?

A About fifteen minutes or twenty minutes, I can't remember.

Q And you had only one drink during the time you were there?

A Yes.

Q From this saloon where did you go?

A Went to look for bail for William Hogan.

Q Did you stop at ay saloon while looking for bail for William Hogan?

A No sir.

Q Were you in the automobile during all this time?

A No sir. After leaving 13th and Hudson we paid the chauffeur off at Charleton and Greenwich and let him go.

Q Who paid the chauffeur?

A Sweeney and James McGinn.

Q They had gone to see about your brother?

A After coming from Staten Island. We were down there with the intention

of looking after the brother.

Q Was Sweeney interested in your brother?

A Yes sir.

Q You went to some girl, you say?

A Yes.

Q Who was the girl?

A Gertrude Thompson.

Q Did you have any drinks at Gerturde Thompson's?

A No sir, I did not.

Q What did you do after leaving Gertrude Thompson?

A I did not leave her. I went there to meet her and she was not in.

Q Where did she live?

A 12 Barrow Street.

Q And Sweeney was with you all this time?

A Yes.

Q Where did you go from there?

A To 13th and Hudson Street.

Q A saloon?

A Yes sir.

Q Did you have any drinks in that saloon?

A I had one drink in that saloon.

Q And that is the second time you were there?

A No, that is the first time. As soon as I came from Staten Island I went to see my girl and she was not in and I went from Barrow Street to 13th and Hudson.

Q Are you keeping company?

A Yes sir, I am.

Q After leaving 13th Street and Hudson you went where?

A To Charleton and Greenwich.

Q The saloon you metioned before?

A Horgan & Cumming's.

Q Sweeney was with you all the time?

A To Horgan's

& Cumming's.

Q Was Peter Hendrick with you?

A Who is Peter Hendrick?

Q Oh, Peter Kennedy.

A Frank Kennedy?

A Was he with you all this time?

A Yes.

Q He was drinking too?

A Yes.

Q After leaving Horgan & Cumming's saloon where did you go?

A I went to look for bail for William Hogan.

Q Did you stop at any saloon while you were looking for bail?

A No sir, I did not.

Q What next did you do?

A I went to look for bail and we stopped around at Renwick Street, looking for Mrs. Wiggins. From Charleton and Grenwich we went down Greenwich Wiggins. We went up and he was not there. Somelady by the door said he might be around his mother-in-law's house. We went there and some lady by the name of Mrs. Brown, his mother-in-law, - we asked where was Harry Wiggins she said she don't know, he just left his wife. While talking there Mrs. Wiggins comes around, Harry Wiggins' wife.

Q Well, did you stop at any saloons while going around to these different palces?

A No sir.

Q after you left Wiggins' place where did you go?

A To the Huron Club, Canal and Hudson Street.

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Q Is there any saloon there?

A There is a saloon there, but we did not stop.

Q Did you have any drinks at the Huron Club?

A No sir.

Q Sure about that?

A Yes sir. I was not inside the Huron Club.

Q Where did you go after leaving the Huron Club?

A I went up Hudson Street to this Pioneer Club.

Q You had no drinks until you reached the Pioneer Club?

A I did not have no drinks when I reached the Pioneer Club.

Q But you had them already?

A Yes, but I did not get none in the Pioneer Club.

Q You carried all you had pretty well without showing it. It did not affect you?

A It did not affect me.

Q How many beers can you drink a day?

A Well, about twenty beers, I guess.

Q Without any effect?

A Without any effect.

Q You have done that more than once?

A I often drink that much.

Q About how many beers it is necessary for you to drink before it take effect? Were you ever intoxicated?

A Well, I was intoxicated.

Q How many beers must you drink before you get feeling that way?

A I didn't ever count them.

Q In other words, your capacity is very good for drinking

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Beer?

A I don't understand.

Q What don't you understand about that?

A I ain't got such a very good education. Explain them words, please.

Q Do you know what capacity means?

A No.

Q About how many drinks can you stand?

A I can take an average of about fifteen or twenty and it wont take much of an effect on me.

Q You came along Hudson Street, is that right, with Kennedy and Sweeney?

A Yes sir.

Q What direction were you walking, north?

A When we came around Hudson Street we were walking uptown.

Q North?

A Yes sir.

Q Were you walking three abreast?

A Yes sir.

Q Who was in the middle?

A I think I was in the middle.

Q And when you got in front of the Pioneer Club who was on the stoop?

A There were these two girls sitting on the stoop and this Mickish Keating.

Q Who stopped you?

A Mickish Keating said, "Hello*** Pete." I said, "Hello". So he invited me up.

Q When he said Hello and invited you up, did you go upstairs?

A I went up on the stoop.

Q How many steps are there about, do you remember?

A Well, about five or six.

Q Where did you leave Sweeney and Keenedy?

A Down on the street there, when I went up on the stoop.

Q Right at the foot of the stoop?

A No, they were a little way from the stoop.

Q Then what did you do?

A I said, Hello to Mickish Keating and he said Hello. He said, "Come on in, there is plenty of beer in here." I said, "I got two friends with me." He said, "All right, take them in." I went down and told them and they said all right, and they came up the stoop.

Q So the three of you were then on the stoop?

A Yes.

Q Where did you remain?

A On the stoop.

Q Was there anything going on at the Pioneer Club that night?

A I don't know. There must have been a dance or something there. I was not inside.

Q Did you hear a lot of noise, a rumbling noise there?

A No sir.

Q Were there many people in the club room?

A I don't know, I was not inside.

Q Did you hear a piano playing?

A I did not hear no piano playing.

Q Did you hear any piano lay while you were on the stoop?

A No.

Q Did you hear any piano play at the time of the shooting?

A I did not hear no piano playing at all.

Q When you reached the stoop, the top of the stoop, after you had invited Kennedy and Sweeney to go in, what became of Keating?

A When I walked up on the stoop Keating stood there, and Mulcahey walked out and the three of

them walked in together.

Q Who walked in together?

A K Sweeney, Mulcahey and Keating.

Q Walked into the Club room?

A Yes sir.

Q What became of Keating?

A I don't know where he went.

Q You remained standing on the stoop?

A Yes sir.

Q Talking to the girls?

A No sir.

Q What were you doing on the stoop?

A Standing there.

Q Looking in what direction?

A Looking towards the Club room, looking in the hall.

Q Was there a light in the hall?

A Yes sir. The light of the Club came through the hall door.

Q Was there any light lit in the hallway?

A I did not look to see if there was a light. I know it was light enough to see in the hall.

Q Did you see any light lit in the hallway?

A I did not see no light. There was a light there, but I don't know where it was coming from. I didn't take notice to look on the ceiling to see if it was there, or was the effect of the light coming from the club room.

Q You say the light was coming from the doorway?

A I don't know where it was coming from. It might have been in the hall or in the Club room.

Q Can't you tell whether a room is lighted with a light or whether there was a reflection of a light?

A It might

have been a reflection but I could not see. I did not take notice.

Q How well was the hallway lit?

A It was lit pretty bright.

Q But you don't know whether it was lit with gas light or not?

A No sir.

Q You don't know whether the light out there was the light which came from the hallway?

A I could not tell you which it was. It looked as if it was in the hall there.

Q What do you mean?

A It looked as if the light was in the hall. I did not look up and take notice whether it was in the hall, but it was a bright light there.

Q About how far from where you were standing was the door?

A The Club room door?

Q Yes.

A I could not tell you exactly how far. It must have been eight or ten feet.

Q You were invited to go in, and have a drink?

A Yes.

Q You did not go in however?

A No.

Q You remained on the stoop?

A Yes.

Q And Keating and Sweeney and Mulcahey went in?

A Yes.

Q You know Egan, don't you?

A I did not know him until I seen him in the District Attorney's office.

Q Do you know James Regan?

A I never heard the name.

Q Did you ever have a fight with Regan, or stab a fellow named Regan?

A I don't know no Regan.

Q In the month of April, 1917, at 23rd Street and

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Eighth Avenue, did you have a fight there?

A No sir, I did not.

Q Did you stab any fellow named Regan?

A No sir, I never stabbed nobody.

Q You remained standing outside, you day, and Keating and Sweeney and Mulcahey went inside?

A Went inside.

Q How long after Sweeney went inside did you hear a shot?

A About a minute.

Q What do you mean by a minute?

A As soon as he went inside, he went in there, - it was not a minute until I heard a shot. Then I sen some fellow come out, gimping out.

Q You heard a shot?

A Yes.

Q At the time you heard a shot were you looking intohte hallway?

A Yes sir.

Q Ad you saw someone coming out, gimping?

A Yes sir.

Q And he went by you?

A No, he did not go by. He came out to the hall and some fellow came out and he went back again.

Q Weren't you frightened when you heard the shot?

A I was not exactly frightened.

Q You were still standing looking into the hall after you heard a shot?

A Yes.

Q Did you run into the Club room to see what was going on?

A No. I am telling I am telling I was not in the Club room.

Q Now, how soon after Egan limped out did you see Sweeney come out?

A About a minute after that; when they

took this Egan back to the Club room, they tried to take this Sweeney out, as soon as he went in to the Club room.

Q Did you see Sweeney coming out into the hall?

A I seen him come out of the club room hall door.

Q Was it light enough for you to distinguish the face?

A I could see the face, yes sir.

Q You don't know whether the light was good or not?

A I did not take notice. There was a bright light. I could not swear it was in the hall or from the reflection of the Club room.

Q You saw Sweeney leave the Club room?

A Yes sir.

Q Was he alone?

A When he came out of the door after Mulcahey left him go, when he broke away, he was alone.

Q Who was holding him?

A Mulcahey and Busto Collins.

Q Holding him in the doorway?

A Coming out of the Club room they held him.

Q For how long a time did they hold him?

A How do I know?

Q You were there.

A They came right out of the Club room.

Q They pulled him in?

A Yes, this Keating and Mulcahey brought him in to the Club room and Busto Collins and Mulcahey brought him out of the Club room.

Q How far from the door, leaving the Club room, did you see them go before they separated?

A Just coming right out of the doorway to the hall.

Q On what side was Mulcahey?

A On the left hand side.

Q What side was Collins?

A On the right side.

Q Did Sweeney tussle to get away?

A Yes sir.

Q How did they hold him?

A Under each arm.

Q At the time they had hold of him under each arm did you run to this assistance?

A No sir, I did not.

Q Did you see him break away?

A I seen him try to get away them. Then they tried to walk him into the back like. I seen him try to break away and he walked out then.

Q Did you see anything in the hand of Collins while he had Sweeney by the arm?

A I did not see nothing, till Sweeney broke away from him, then I seen the gun.

Q When you saw Sweeney break away, did you see the gun first or did you hear the flash or report first?

A I did not see a gun until Sweeney broke away, until he was running out.

Q When Sweeney broke away you saw a gun in whose hand?

A Busto Collins; then I seen it in Mulcahey's.

Q How soon after you saw Sweeney break away from Busto Collins did you hear the report?

A When he broke away and wanted to go out, he was not a foot away, only a little ways away, then I seen the gun; then I heard a report.

Q You heard a report?

A Yes.

Q Were all those shots fired before Sweeney got out of the hallway?

A Yes sir.

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Q Then you say you heads one shot?

A Before.

Q And you heard five or six shots; Busto Collins fired five or six shots?

A Yes.

Q And you were looking into the hallway while the shots were going off?

A Yes.

Q Did you see who was firing them?

A I seen these two firing.

Q And you looked in the hallway while these shots were coming around you?

A I told you I seen two of them firing shots.

Q You were looking into the hallway?

A Yes.

Q And Sweeney was running towards you?

A Sweeney was coming out toward me.

Q And they were fired at Sweeney?

A Yes.

Q You kept looking into the hallway while the shots were going off?

A Yes, there was light a little partition there and I could stand there and they could not come out near me. There is a litter partition on the scene there.

Q You were looking into the hallway while the shots were going off?

A Yes.

Q And you saw the shots being fired?

A Yes sir, There is where I was standing, here (witness indicating).

Q Was this a stone wall? (indicating on plan People's Exhibit 1 in evidence)?

A Yes.

Q Were you looking through the wall?

A No, can't.

you look out through here (indicating in entrance doorway).

Q This is the hallway, is that right (indicating)?

A Yes.

Q When you saw Sweeney break away from Busto Collins and Mulcahey, you were standing on the side here (indicating)

A Right there (indicating).

Q You were not looking into the hallway?

A I am telling you I was looking into the hallway.

Q Did you have your head beyond the post, beyond the entrance?

A Looking in. Explain this a little different. I can't understand you.

Q When you were looking into the hallway were you standing in front, looking in?

A No, I was standing right alongside there (indicating).

Q For instance, were you standing about where you were sitting?

A I am standing there, and I am looking in.

Q This place is the hallway here. This is the hallway leading into the Club room. Where were you standing?

A By that little partition here (indicating). Standing right there looking in.

Q You were looking in; in other words you had your body on the side and you were looking in?

A I am telling you I was standing right where that partition is, looking in. I could see everything.

Q When you say looking in, was your head inside the hallway?

A No it was not inside of the hallway. I

was just looking in like that (witness indicating).

Q Could you see straight down or could you see only at an angle?

A I could see straight.

Q How far out were you from this entrance?

A From this little partition, - I was right next to it.

Q Did you have any part of your body sticking out beyond this littler partition?

A I was standing like that, halfway, looking in that (indicating).

Q You were looking in?

A Yes.

Q And you were looking in while the shots were coming at Sweeney?

A Yes sir.

Q And that is what you want this jury to understand, there were six or eight shots fired, and while these shots were being fired you were looking in and you saw who was firing the shots?

A I seen who was firing them shots, yes.

Q You saw Mulcahey firing these shots?

A Two shots.

Q And you saw Busto Collins fire six shots?

A Five or six.

Q How many shots did Busto Collins fire before you saw Mulcahey fire the shots?

A I could not tell you?

Q About how many?

A About two, - two or three.

Q You heard Busto Collins fire two or three shots?

A Busto Collins fired first and I sen Mulcahey firing.

Q Did Mulcahey have his pistol out before Busto Collins fired any shots?

A I did not see it until Busto

Collins fired two or three shots, then I seen Mulcahey's pistol.

Q Now you are not certain about that?

THE COURT: He said it plain enough, Mr. Rosalsky. It does not make any difference who fired the first shot, and believe that he died as a result of one of the shots fired under those circumstances, it is a crime.

Q Where any shots fired out into the street?

A I did not see any shots fired out in the street.

Q You remained standing on the stoop while all these shots were fired?

A Yes sir.

Q You did not run away?

A Until Sweeney run out.

Q After Sweeney went out, what became of you?

A I walked down to the saloon, Charleton and Greenwich streets.

Q Where Sweeney was?

A Not where Sweeney was.

Q Where who was?

A I just walked down to the saloon at Charleton and Greenwich and Sweeney walked into the saloon at Dominick and Hudson.

Q You didn't go to your friend's assistance, did you?

A Sweeney's assistance?

Q Yes.

A No, I did not.

Q Isn't it a fact that after you heard the first shot fired that you ran away?

A No sir, I did not.

MR. ROSALSKY: That is all.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Did you have any supper that night?

A No sir, I did not.

Q Do you remember when you were in Charleton and Greenwich Streets saloon that Sweeney left you for a few minutes?

A He went out, I don't know where he went. I think he went out by the door.

Q When you came to the Club at 258 Hudson Street did any of these men call Sweeney by name?

A No sir. This Keating was on the Stoop, as I told you before, and he invited me in.

Q Did he ask you whether that was Sweeney, or did anybody mention Sweeney's name at any time?

A No.

Q The shooting in the hall did it come quickly or was there some pause. Did it take up lots of time?

A Egan came out of the hall to go back into the Club room, after hearing the shots, I seen this Mulcahey and Busto Collins --

Q I want to know whether Mulcahey and Collins, when they fired the shots, whether they fired them quickly?

A Yes sir.

Q One right after the other?

A Yes sir.

MR. BROTHERS: That is all.

RE CROSS EXAMINATION BY MR. ROSALSKY:

Q Did you have any lunch that day?

A I told you I did not have no supper.

Q Did you have anything to eat around twelve o'clock?

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A Yes, I had my dinner down at my house.

Q All the drinks you are talking about having was after you had your dinner at twelve o'clock?

A Yes sir.

BY MR. BROTHERS:

Q Were you drunk or sober that night?

A I told you before it would take about twenty beers to get me drunk.

MR. ROASLSKY: Objected to as calling for a conclusion.

THE COURT: He may tell the jury. I will allow it. Exception taken.

Q Were you drunk or sober at the time of the shooting?

A I was sober.

Q Were you drunk that day at all?

A No sir, I was not drunk.

Q These several drinks you had were had from twelve o'clock to ten o'clock at night?

A Yes.

Q And you were riding and walking around all day?

A Yes.

Q it was a summer day and warm day?

A Yes.

MR. BROTHERS: That is all.

OTTO H. SCHULTZE, the medical assistant to the District Attorney's office, called as a witness in behalf of the People, having first been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR BROTHERS:

Q You are a physician and surgeon, are you?

A Yes sir.

Q And you have been for how many years?

A Since June, 1889.

Q You have occupied the position of Coroner's physician for a number of years?

A In the County of New York in 1886 and 1887 and in the Borough of Manhattan from --

MR. BARRA: We will concede the doctor's qualifications.

Q Doctor, during that time you performed hundreds and thousands of autopsies to ascertain why people died and testified about it in court?

A Yes sir.

Q You are now Medical Assistant to the District Attorney's officer of New York County?

A Yes sir.

Q Did you perform a post mortem examination on the body of one Michael J. Sweeney on the 9th of June, 1917?

A I did, on the 8th of June, 1917.

Q That was at the City morgue, was it?

A Yes sir.

Q Who identified the body to you?

A The body was identified for me by Officer Henry J. Haggerty and also by the brother of the deceased, Thomas J. Sweeney, or Thomas S.Sweeney.

Q Do you know where he lived?

A 288 Hudson Street.

Q Is it West Houston Street. Have you got your report with you?

A (Looking at report) Yes sir, 288 West Houston Street. I confused it with 258 Hudson Street. The address of the brother of the deceased, Thomas J. Sweeney, in my memorandum is 288 Wst Houston Street.

Q (Mr. Brothers directs Officer Haggerty to stand up in the courtroom.) Is this Officer Haggerty. Is that the man that identified the body?

A Yes.

Q This was the body of a male?

A Yes.

Q Will you tell us what you saw upon examining him?

A He was 5 feet 8 inches in height and probably weighing 200 pounds, very stout, with muscles well developed. There were three bullet wounds of entrance in his back. One of them was 1/2 inch to the left of his third lumbar spine, that is in the small of his back. Another was placed half an inch to the right of the ninth dorsal spine. The third bullet wound of entrance was on the left side of the back under the tenth rib. The track of the bullet that passed from the back, entering half an inch to the left of the third lumbar spine passed forward through three wounds of the small intestine, and the bullet was removed from the belly wall, three inches to the right of the navel, and one inch above the level of the navel. That was a leaden bullet, 32 calibre.

The bullet that entered on the right side, half an inch to the right of the ninth dorsal spine in the back passed through the

right ninth rib, through the lung and liver, and was removed from the front of the chest wall in the space between the sixth and seventh ribs, at the junction of the side and front of the chest on the right side.

The track of the bullet that entered in the left side of the back below the left tenth rib ranged forward into the wall of the belly, did not penetrate the cavity of the belly, nor did it come out through the skin. That bullet was not found. The first and second bullets that I have mentioned I have here (witness producing two leaden bullets).

Q What calibre are those bullets?

A These are 32-calibre. The actual measurement by the micrometer is .303 to .309 for one and .303 to .311 of an inch for the other; so they are practically .32 of an inch in diameter.

Q By micrometer do you mean the diameter of the bullet?

A Yes, in hundredths of inches.

The right side of the chest was filled with blood, fluid and clotted, over two quarts in amount. The cavity of the belly was filled with fluid and clotted blood from the one small intestine.

The cause of death was a bullet wounds of the right lung and liver, a bullet wound of the small intestine and there was also a third bullet wound that passed into the chest wall and belly wall, entering from behind on the left side.

Q His general condition was good, was it?

A Yes sir.

MR. BROTHERS: We offer these two bullets in evidence

as one exhibit.

MR. BARRA: We object on the ground it has no probative force, and is incompetent, irrelevant and immaterial.

THE COURT: If that is the only objection you make, I will allow them in.

MR. BARRA: Your Honor will note my exception.

THE COURT: If you object as to the identification of the bullets I will allow further proof.

MR. BARRA: We do not object on that ground.

THE COURT: Do you concede these are the bullets that were found in the body of the deceased?

MR. BARRA: Yes, no dispute about that.

THE COURT: Then I will allow them in evidence.

Of course, in allowing them in evidence I do not pass upon the weight to be given them. That is a question of fact for the jury to determine, for them to take in connection with all the other evidence in the case. They are simply admitted as an item of evidence for their consideration.

MR. BROTHERS: I ask to have this coat marked People's Exhibit 3 for Identification.

The coat is marked People's Exhibit 3 for Identification.

Q Now, Doctor, will you examine this coat, People's Exhibit 3 for Identification, and tell us whether upon the back of it you find any bullet holes?

A Yes sir, there are three.

Q The three bullet holes that you find upon that exhibit, do they correspond generally to the position of the bullet, do they correspond generally to the position of the bullet wounds you described upon Sweeney's body?

A They do.

Q Look at one of those holes that is surrounded by discoloration; can you tell us what that discoloration is from, from your experience?

A That is a burn.

Q Caused by what?

A Caused by the flash from the muzzle of the revolver.

MR. BARRA: This line of examination is objected to as incompetent, irrelevant and immaterial and no proper foundation laid.

THE COURT: Do you mean as to his qualification?

MR. BARRA: Yes.

THE COURT: There has been no testimony about this exhibit, this coat being the coat of the deceased. If you desire to offer proof on that point I will allow you to recall the officer, or you may stipulate, if you wish, that that was the coat worn by the deceased.

MR. BARRA: There is no objection as to that. I am objecting because the District Attorney has not shown Dr. Schultze is qualified to express an opinion upon the matter concerning which he was interrogated.

MR. BROTHERS: I will ask some questions on that.

Q Have you had any experience with firearms?

A Yes.

Q Have you in your years of experience made any tests with pistols to see what affect the discharge of them near

fabrics would have?

A Yes sir.

BY THE COURT:

Q About how many times have you made such experiments?

A Many times; I could not tell exactly.

Q Hundreds of times?

A Well, a great deal.

Q We want some definite idea?

A In the Patterson case such experiments were made.

MR. BARRA: I object to the witness mentioning any names of any case.

THE COURT: I will sustain the objection as to that. I merely wished to know the extent of this experience and knowledge.

Q Was it more than a hundred times, Docotr?

A No.

Q Many times?

A Yes.

Q But you would not like to say it was a hundred times?

A Oh no, not that.

A hundred is a great number.

BY MR. BROTHERS:

Q Now, in these experiments were pistols loaded with cartridges and bullets discharged at paper and at clothe at various distances from them?

A Yes.

Q And then it was observed what if any discoloration appeared upon the cloth paper, and measurements were made to see far the muzzle of the gun was from the fabric?

A Yes.

Q Then you observed the marks upon the paper?

A Yes.

MR. BARRA: That is objected to as incompetent, irrelevant

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and immaterial.

THE COURT: I will allow it.

MR. BARRA: Your Honor will note an exception.

Q You did that?

A I did.

THE COURT: I do not know what force it has. Whether it has any force or weight I cannot say and I do not presume to say.

Q Examining the exhibit, People's Exhibit 3 for Identification, have you any opinion as to the distance that the pistol was held from the cost when it was discharged and made the hole in it; that it, the one surrounded by the discoloration?

MR. BARRA: Objected to.

THE COURT: I will let him answer yes or no.

A Yes.

Q What is your opinion, with reasonable certainty, as to that distance?

MR. BARRA: Objected to as incompetent, irrelevant and immaterial, no proper foundation laid.

THE COURT: I overrule the objection.

MR. BARRA: We note an exception.

Q Assuming it to be a 32-calibre pistol?

MR. BARRA: I object to that, unless it is placed in the form of a hypothetical question; I object to it as calling for the opinion of the witness.

THE COURT: I will allow it.

MR. BARRA: Your Honor notes an exception.

A The burn surrounding the hole of the cloth resembles those obtained by experiment with a 32-calibre pistol, with the muzzle held at a distance of about one inch from the fabric.

Q And that opinion is based upon what?

A Upon the burn and its extent. The burn is nearly three inches in diameter.

Q Does the size of the burn, that is, its diameter, indicate the distance?

A Yes, distance. That is, if the muzzle is taken further and further away from that cloth, the burn around the hold will be smaller, and eventually, after six inches, there would be little or no burn at all.

Q At these other holes the pistol was held at a greater distance?

A Yes, there is no flash from the muzzle that struck the cloth. This one (indicating) was at about the lower part of the thorax, and this one (indicating) corresponded to the small of the back, and this one (indicating) to the junction of the back and the thigh.

MR. BROTHERS: That is all.

MR. BARRA: We concede that coat was worn by Sweeney.

MR. BROTHERS: I offer it in evidence.

MR. BARRA: I object to it as incompetent, irrelevant and immaterial and having no probative force.

THE COURT: But there is no objection to its identity?

MR. BARRA: No objection to that.

THE COURT: It is merely admitted for such consideration as the jury may deem proper to give it.

MR. BARRA: Your Honor will note an exception.

The cost is marked in evidence as People's Exhibit 3.

CROSS-EXAMINATION BY MR. BARRA:

Q Doctor, do I understand you to say that the bullets you found in the body of the deceased were what are commonly known as 32-calibre bullets?

A Yes sir.

Q And that the marks you observed on the cost which has been marked in evidence as People's Exhibit 3, that whoever fired the shots --

THE COURT: There is only one burn there?

THE WITNESS: There is only one burn there.

Q Well, that particular shot, whoever fired that shot, must have held the revolver at least within one inch of the body of the deceased?

A Yes sir.

Q And the other at least six inches away?

A I said that that burn resembled an experiment made with a 32-calibre.

BY THE COURT:

Q Well, that is your opinion?

A Yes.

BY MR. BARRA:

Q That is your opinion?

A Yes.

Q And the other holes that you see in that cost, there are no powder marks at or near them?

A No.

Q They do not show any?

A No.

Q So it is your opinion that whoever fired the shots held the revolver at least about six inches or more away?

A More than six inches. It must have been more than that,

more than six inches.

MR. BARRA: That is all.

BY MR. BROTHERS:

Q It might have been twenty feet away?

A It might have been.

BY MR. BARRA:

Q Doctor, I understood you to say that you were an expert on firearms as well?

A Yes sir.

Q You have an instrument with which you measure the calibres of different bullets?

A Yes sir.

Q What is the name of that instrument?

A A micrometer.

Q Will a bullet from a 22-calibre cartridge fit a 32-calibre pistol; could it be discharged?

A You mean could a bullet of 22-calibre be discharged through a 32-calibre revolver, - yes, provided the shell fitted the barrel.

Q But does a 22-calibre cartridge fit into a 32-calibre pistol?

A No, it would be quite loose.

Q And could a 32-calibre bullet be discharged from a 22-calibre pistol?

A No sir, it would be too large.

Q And it would not fit the chamber?

A That is it, and moreover it could not pass a 22-calibre chamber and remain a 32-calibre bullet.

Q It would be lengthened and distorted?

A In the first place it could not be used for such a pistol. In the second place, assuming that it could, the bullet as we find it could never have passed, - for instance, these two bullets,

Through a 22-calibre gun.

Q The original shape or size of these bullets were 32-calibre?

A Yes. The micrometer measurements are given as .303 to .309 and the other one .307 to .311, so that they never could have passed through a 22 cylinder.

MR. BARRA: That is all.

MISS BEATRICHÉ GALLAGHER, of 258 Hudson Street, called as a witness in behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Miss Gallagher, where do you live?

A 258 Hudson St.

Q With whom do you live at that address?

A My mother and father.

Q Your age is what?

A Twenty years.

Q Where are you employed?

A The Automobile Insurance Company.

Q Where is that?

A 82 Beaver Street.

Q What kind of work do you do?

A Secretarial.

Q For whom?

A Mr. Gilfoyle.

Q Is he the general manager?

A Yes.

Q Do you know the defendant here, James Mulcahey?

A Yes.

Q How long have you lived at 258 Hudson Street?

A Four years.

Q What kind of a building is that?

A A private house.

Q How many floors are there?

A Three, including the

first floor.

Q Which floor do you occupy?

A The top, third floor.

Q What is there on the ground floor?

A A clubhouse.

BY THE COURT:

Q What is the name of the club?

A The Greenwich Pioneer.

BY MR. BROTHERS:

Q The Pioneer Social Club?

A Social and political.

Q Do you remember the night of June 7th last summer?

A I do.

Q What time did you leave your home that evening?

A Seven o'clock.

Q Where did you go?

A When I left the house at first

I went to a shoe store with my young sister.

Q Well, you were gone away from the house for a couple of hours, were you?

A Yes.

Q When you returned to your home were you alone?

A No.

Q Who was with you?

A You mean the last time I returned?

Q Yes?

A Miss Catherine Flynn.

Q About what time was it when you got to your home?

A About twenty minutes of eleven.

Q When you came to the house with Miss Flynn what did you do?

A We stood at the foot of the steps for a few moments, and then one of the fellows from the club brought us out chairs and we sat on the chairs.

Q What was his name?

A Eddie Anglin.

Q Where were the chairs placed?

A On the top of the

Stoop, the front of the stoop, facing the street.

Q Which side of the stoop was it that you sat?

A On the right side.

Q As you were facing the building?

A As you faced the street.

Q Where did Miss Flynn sit?

A To the left.

BY THE COURT:

Q You mean to the right of the doorway?

A We sat right in front of the door.

Q That is the entrance to the hall?

A Yes.

BY MR. BROTHERS:

Q While you were sitting there did you see any persons passing in and out?

A Yes.

Q Did you see anybody go in carrying a keg of beer?

A Yes.

Q Who was that?

A McCaffrey, or Caffrey, and Maloune and A1 Jennings.

Q You were there when the shooting took place, were you?

A Yes.

Q How long had you been there up to the time of the shooting?

A Altogether about ten or twelve minutes; about fifteen.

Q While you were sitting on the chairs did you see this defendant James Mulcahey?

A Yes.

Q Where was he?

A I just saw him coming to the window and he spoke to one of the fellows that was talking to us. He

asked the men that we were talking to to invite us in for a dance. I saw him no more after that.

Q What window would that be?

A The window nearest us.

Q Do you see it on this plan, People's Exhibit 1?

A This one here (indicating).

Q Mark it with a cross?

A (Witness marking with a cross.)

BY THE COURT:

Q You mean he put his head out of the window?

A Yes.

Q You had a good view of him?

A Yes.

Q How long have you known him?

A Just since they have been in the club, since they have occupied it, about six months.

Q You knew him before that night?

A Yes, I had seen him before that night.

BY MR. BROTHERS:

Q You had seen him more than once?

A Yes, going in and out of the club; I saw several of the fellows.

BY THE COURT:

Q You have not any doubt in your mind that you saw him that night put his head out of the window and ask the young man to tell you and the other girl to come in to dance?

A Yes.

Q And that was about what time?

A About five minutes to eleven, right before the shooting.

BY MR. BROTHERS:

Q Did you go in as requested?

A No, we ignored the question entirely.

Q After Mulcahey spoke from the window did you see some

other persons come up the steps and go into the club?

A Those fellows had gone in. Three fellows had passed and went into the club.

Q Did you know any of those three men?

A No.

Q Have you seen any of them since then?

A No, I have not.

Q What was the next thing that happened there?

A Why, one of those three fellows came along, - we were talking to Joe Kesting and one of them said, "Joe, can I see you a moment?" He said yes. So this fellow went up into the hall with him and they spoke for a few moments and the fellow went down again to the two he had left on the sidewalk and they had a few words, and they finally went up into the club, the three of them together. The other two went back with him to the club. Then Joe Keating walked back with them to the door of the club and then returned to the stoop to us.

Q And as you sat there on these chairs which way were you facing?

A The street.

Q While sitting there facing the street did you hear any noise?

A Well, the noise seems to be coming out of the club, in a sort of shuffling in the hall. Somebody called him back; Mickish Kesting walked back towards them and as he did the shots were fired and we run.

Q How many shots did you hear?

A Four.

Q Where did they sound from?

A In the hall.

Q How long after you saw Mulcahey inviting you two to

dance from the window was it you heard the first shot?

A About five minutes.

Q And when you heard these shots did you look into the hall to see what was going on?

A I heard four shots.

Q Did you look into the hall?

A I looked around as I run, but all I saw was a group of fellows and Joe Kesting's back.

Q Did you distinguish any other person in the hall besides Kesting?

A No, I did not.

Q As you sat there did you get up first and then look into the hall or did you look before you got up?

A I heard the four shots and looked around and as I did I heard a fellow moan and I ran. I was so excited I did not stop to look.

Q You did not take a good look then, did you?

A No, I did not.

Q As ran from the place did you see what Miss Flynn did?

A No, I did not. I run and Miss Flynn stopped.

Q What direction did you run?

A Straight up Hudson until I came to a restaurant there. I met this Eddie Anglin that had given us the chairs. He asked me what had happened. I told him I did not know.

Q Did you see Miss Flynn again that evening?

A Yes, I crossed that street and she was behind me. She said she happened to look back.

MR. BROTHERS: You may inquire.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q At the time you run out, about twenty minutes to eleven, was there a light in the hallway?

A No.

Q The light was turned out?

A Yes.

Q And the hall was dark?

A Yes.

Q At the time Eddie Anglin brought the chairs out to you and Miss Flynn, there was no light in the hallway?

A No.

Q Who was talking to you at the time Mulcahey invited you to dance?

A Joe Keating.

Q Do you remember the man that talked to Joe Keating about that time?

A Petie Rogers.

Q You know Petie Rogers?

A I don't know him, from the description I was given of him I presume it was Petie Rogers.

Q Did you know those men?

A No, I did not.

Q Did you know Sweeney?

A No, I did not.

Q Did Petie Rogers and his two companions go into the club?

A Yes.

Q They went by you?

A Yes.

Q They went into the hallway?

A Yes.

Q Did they go into the clubroom?

A Yes.

Q You saw that yourself?

A Yes.

Q At the time the shots were fired you were sitting facing the street?

A Yes.

Q And you turned?

A Yes.

Q Did I understand you to say that you were sitting on

the stoop, on chairs?

A Yes.

Q Will you indicate with a cross mark where the two chairs were; make zero where your chair was, disregarding the marks that are there now?

A I was sitting there (witness indicating).

Q Where this "X" is?

A Yes.

Q Then put your initials there?

A Yes (indicating by initials).

MR. BARRA: For the purposes of the record, there is a mark made by the witness Peter Rogers. There is no dispute about that, Mr. Brothers?

MR. BROTHERS: No.

Q You say you were sitting where the crossmark is?

A Yes, and Miss Flynn was sitting here.

Q On the other side?

A Yes (indicating).

Q Make another "X" mark and put your friend, Miss Flynn's initials there?

A (Witness indicating).

Q During the time you were sitting on the stoop was there anyone standing behind your chair?

A Yes.

Q Who?

A Mickish Kesting. He was standing behind a chair. He was standing on top of the stoop.

Q Pointing out where Keating was standing?

A Right there in the doorway (indicating).

Q In the doorway?

A Yes.

Q At any time while you were on the stoop was Peter Rogers standing behind your chair?

A Yes. When Mickish Called

Him up and said he wanted to speak to him a moment he walked in and they were standing in the hall, not behind my chair, but in the hall.

BY THE COURT:

Q Well, that was behind your back, in back of you?

A Yes, in back of me.

BY MR. ROSALSKY:

Q Did Petie Rogers remain standing in back of your chair?

A No, he walked down to the fellows and spoke to them and then the three of them walked up together.

Q From the time that Petie Rogers walked into the hallway, into the club room, until you heard the shots, was Petie Rogers standing behind your chair on the stoop?

A No.

Q The moment you heard the shots and you turned, was Petie Rogers on the stoop?

A He was not on the stoop, no.

Q Are you sure about that?

A Positively.

Q You are positive about that?

A The only people on the stoop were Miss Flynn and myself at the time the shots were fired.

Q And the shots came in succession?

A Yes.

Q Rapidly?

A Yes.

Q In rapid succession?

A Yes.

Q How many shots did you hear?

A Four.

Q From the time the first shot was fired until the fourth shot was fired will you indicate by counting how fast they went?

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A One, two three, four.

Q The moment you heard the first shot what did you do?

A They went together. When the last shot was fired I turned around, I heard someone moan and I run off the stoop.

Q Did you see who came out of the hallway?

A No, I did not.

MR. ROSALSKY: That is all.

BY MR. BROTHERS:

Q He said the light was not burning in the hall, is that right?

BY MR. ROSALSKY:

Q Pardon me: At the time you heard the shots, where was Keating?

A He had just walked back away from us. His back was facing us.

BY THE COURT:

Q You mean he walked into the hallway?

A Yes, into the building.

BY MR. ROSALSKY:

Q You say the light was turned out in the hallway?

A Yes sir.

Q Could you distinguish a person's face in that hallway?

A No.

Q Was it possible to distinguish a person's face in that hallway?

A I guess it was, but I turned so quickly I could not see.

Q Was there any light in that hall?

A The door of the

club was open.

Q Did that throw out light?

A Yes, quite a little. It threw the light right out on them.

Q With the door closed would it throw out any light?

A No.

THE COURT: That is immaterial; she said the door was open.

BY THE COURT:

Q There was a light coming from the room into the hall?

A Yes.

MR. BARRA: Exception, if your Honor please.

BY MR. HOSALSKY:

Q Did that light light up the hallway or just a portion?

A Just a portion of it.

BY MR. BROTHERS:

Q There was plenty of light right in front of the doorway coming into the hall from the club?

MR. BARRA: I object to the form: As incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A If you were in the hall and anybody was going to speak to you you could readily define who they were.

Q The lights in the club were burning at the time of the shooting?

A Yes.

Q There was lots of light in the club?

A Plenty.

Q When you heard the shots you were excited, somewhat

frightened?

A Yes.

Q As you jumped up, you took a hurried look through the hall?

A Yes.

Q Did you take pains to see who was on the stoop?

A No, there was nobody on the stoop then but Miss Flynn and myself.

Q How do you know that?

A I know it.

Q Who was in the hall?

A The only one I saw was Mickish Keating. He was first one when I turned around and saw his back.

Q How many men did you see in the hall?

A A group.

Q How many were in the group?

A I don't know.

Q Where was the group?

A Right at the door of the club.

Q The light was shining on them?

A Yes.

Q Could you tell who they were?

A No.

Q Did you know any of them?

A No.

BY THE COURT:

Q You did not look carefully, is that the reason?

A No, I did not.

MR. BARRA: I object to that question.

Q Is that the reason why you could not tell, because you did not look carefully?

MR. BARRA: I object to you characterizing it that way.

THE COURT: The jury will understand the Court is not expressing any opinion, but is simply desirous of bringing out the fact.

MR. BARRA: Exception to your Honor's remarks.

THE COURT: It is for the jury to determine what weight they will give to her answers.

BY MR. BROTHERS:

Q As you left the stoop did you see what Miss Flynn did?

A No, because I did not turn around as I left the stoop.

Q As you ran off the stoop you did not see what Miss Flynn did?

A No.

Q Where were you when you first noticed her again, after the shooting?

A Across the street.

Q So that you were not paying any attention to her at all?

A Nobody.

Q You still say that you and she were the only two on the stoop?

A Well, as we went off the stoop I knew she was with me, but there was nobody on the stoop but ourselves.

Q Did you look around to see?

A I was in position to look ; as I looked around I could take in the whole stoop.

Q Did you see Peter Rogers in the hall?

A No, I told you I could not define who was in the hall.

Q You had been going up and down those steps in that hall for a number of years?

A Yes.

Q Did they ever have a light in the hall?

A Yes.

Q What kind of a light is it?

A Electric light.

Q What kind of light did they have in the club?

A Electric light.

Q Did you ever go into the club room?

A When they first

came there I went into the club, yes.

Q You were not in it anywhere the time of the shooting?

A No.

Q Did the light from the club shine out onto the street?

A From the windows: you could see that there were lights in the club.

Q Was the light strong enough so that it lit up the sidewalk?

A No.

Q Is there any street light near there?

A No, on the corner.

Q That is about 50 feet away?

A Yes.

Q When these men passed you into the hall did you watch to see where they went?

A No, I did not.

Q Simply assumed that they went into the club because they went in that direction?

A Yes.

Q Did you look into that hall at any time while you were sitting on the stoop before the shooting?

A No.

Q The first look you took into the hall or in the direction of the hall was after you heard the shots?

A Yes.

BY MR. ROSALSKY:

Q How much time elapsed from the time you saw Petie Rogers and his friends pass by you and go into the hallway until you heard the shots?

A About five minutes.

Q Did you ever talk to me about this case?

A No.

Q Did you ever see me before?

A No.

Q Or talk to Mr. Barra about this case?

A No.

Q You did speak to someone in connection with the District Attorney's office; you have been to the District Attorney's office before to-day?

A Yes.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all.

CATHERINE FLYNN, of 109 Charlton Street, called as a witness on behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Miss Flynn, how old are you?

A Twenty-one.

Q Are you employed somewhere?

A Yes sir.

Q Where?

A William L. Sherry, Feature Film Company.

Q Where is their place of business?

A 729 Seventh Ave.

Q That is near where?

A 49th Street.

Q What kind of work do you do?

A Secretarial work.

Q You are not an actress?

A No sir.

Q Do you know Miss Beatrice Gallagher, who was the last witness?

A Yes sir.

Q Were you with her on the night of June 7, 1916?

A Yes.

Q Did you go with her between ten and eleven o'clock to her home, 258 Hudson Street?

A I went as far as the stoop.

Q When you came to the stoop will you please tell us what you did and what you saw and what you heard?

A When we got to the stoop they were taking in a keg of beer.

Q Did you know the men who were carrying the keg of beer

In?

A One of the fellows was McCaffrey and he had two other fellows with him.

Q Did you sit down on a chair on the stoop?

A Yes sir.

Q Do you remember which side of the door you sat?

A On the left hand side.

Q As you face the street?

A Yes sir.

Q While you were sitting there what happened?

A There fellows came along and one of them said to Mickish, "Mickish, can I see you", so he went up on the stoop and spoke to Mickish and came down in a few minutes and brought the other two fellows into the club.

Q Do you know this defendant Thomas Mulcashey?

A Yes sir.

Q Did you see him there?

A While we were sitting on the stoop he came to the window and he said to Mickish, "Why don't you ask the girls in for a dance?"

Q Did you see him yourself?

A We turned around, yes sir.

Q He was in the window?

A Yes.

Q Is that the window of the club?

A Yes.

Q Did you go in there?

A No.

Q Was the time you saw the defendant in the window before or after these three fellows came along?

A Before.

Q After the three men came did you see what happened?

A We were sitting there.

Q One of them spoke to Keating, you said?

A Yes. Then he went down and brought the other two fellows in.

Q Did you watch to see where they went?

A They passed me

right in, but I did not turn around.

Q Didn't you watch them in the hall?

A No sir.

Q What is the next thing you noticed?

A We were sitting there, and some one from the window yelled, "Come here," then Mickish turned around and the next thing I heard, the shots fired.

Q Where were the shots?

A They came from the Club.

Q How many shots did you hear?

A Four.

Q Did you look to see what was going on?

A First I jumped up from the stoop, I turned around but I did not see who was in the hall.

Q Did you see anybody in the hall?

A There were a group of fellows in the hall.

Q Did you know any of them?

A No sir, I could not recognize any of them.

Q Did you stand and look into the hall or just take a glance in?

A I took a glance in as I jumped up from the stoop.

Q Where did you go?

A I run up to the next corner.

Q Who did you see there?

A When I got to the next corner I was with Anglin, the fellow who gave us the chairs. He was standing up by the restaurant.

Q Did you know any of these three men that came along?

A No sir.

Q None of their faces were familiar?

A I did not take much notice of them.

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Q Did you take much notice of anything there up to the time of the shooting?

A No sir.

Q How long do you think you were sitting there altogether?

A Between ten and fifteen minutes.

MR. BROTHERS: That is all.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Miss Flynn, will you talk up loudly please. You say you sat on the left hand side of the stoop?

A Yes sir, the side that the Club is on.

Q Nearest to the window?

A Yes.

Q And Miss Gallagher sat on the right hand side?

A Yes sir.

Q Were you sitting facing Miss Gallagher?

A Our chairs were tilted.

Q Facing to Miss Gallagher?

A Yes sir.

Q Do you remember the man who talked to Keating?

A Yes.

Q And his two friends going into the place, passed you by going into the hallway?

A Yes.

Q From the time that they passed you and went into the hallway until you hard the first shot, now much time elapsed about?

A I don't know, I don't think it was five minutes.

Q Approximately five minutes?

A I don't think it even was five minutes.

Q Did the man who spoke to Mickish or Keating:- Keating and Mickish are one and the same persons?

A Yes.

Q The man that spoke to Keating did he remain standing behind the chair of Miss Gallagher on the stoop?

A When the fellows went in he went into the Club with them.

Q Was there any man standing behind Miss Gallagher's chair?

A When?

Q From the time that the three men went by you into the Club room until heard the shots?

A He went in with them and then came out again.

Q Who?

A Mickish.

Q Outside of Mickish?

A No sir, I didn't see any others.

Q Mickish was standing in the hallway?

A Yes, right behind us.

Q By Mickish you mean Keating?

A Yes.

Q You are positive about that, are you?

A Yes, I didn't see anyone else.

Q Now were the four shots fired in rapid succession?

A Yes.

Q Will you count in numbers how rapidly the shots were fired?

A One, two three, four.

Q Miss Flynn, did you ever see me before?

A No sir.

Q Or Mr. Barra?

A No.

Q Did you talk to us about the case?

A No.

Q You spoke to the District Attorney's representative. You were to the District Attorney's office before?

A Yes.

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Q And you told them all you knew?

A Yes sir.

MR. ROSALSKY: That is all.

Mr. BROTHERS: That is all.

THE COURT: Gentlemen of the jury, the Court will take a recess now until tomorrow morning half-past ten. Meanwhile you will remember the instruction I gave you today. You must not discuss this case with any one, nor among yourselves. You must not talk about it until the case is submitted to you at the end of it: that is the time to decide it and not before that. You must keep an open mind and listen to all the evidence, and do not make up your minds on the question of the guilt of the innocence of the defendant until the end of the case after you retire to discuss your verdict.

The Court adjourns until 10:30 o'clock, January 10th, 1918.

PEOPLE vs. MULCAHEY.

TRIAL CONTINUED. January 10, 1918.

JOHN J. O'CONNELL, an officer of the Second Branch Detective Bureau, a witness called on behalf of the People, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. BROTHERS:

Q You are a member of the Police Force of the City of New York?

A I am.

Q Attached to the detective bureau?

A I am.

Q Do you belong to the force how long?

A Going on now 13 years.

Q On the night of June 7, 1917, did you go to the premises 258 Hudson Street?

A I did.

Q What time did you arrive there?

A About 11:15 P.M.

Q You went to the premises, did you?

A I did.

Q You went into the club room?

A Yes.

Q And searched around, did you?

A Yes.

Q Did you go into the yard in the rear of the premises.

A I did.

Q Do you recognize this plan of the premises, People's Exhibit 1 in evidence?

A I do.

Q Where is the entrance that leads into the yard?

A Right here.

Q Back of the stairs?

A Yes.

Q When you went out that way did you have to descend

some steps to get to the grounds?

A I did.

Q Tell us something about the height of the steps to the front stoop on Hudson Street.

THE COURT: How is that material?

Q What is anything did you find as you went out in the back door?

A After descending the steps and walking about the yard, retracing my steps about three feet east of the bottom step and two feet south, I found a 32 calibre U.S. revolver containing five empty shells.

Q Did you smell of it?

A I did.

Q What was the result of that?

A It smelled of gun-powder.

Q What did that indicate to your mind?

A MR. BARRA: Objected to as incompetent and immaterial.

THE COURT: You have not laid any foundation for that.

Q During your experience, - how many years on the force did you say?

A Going on 13.

Q Have you had experience with fire-arms?

A I have had.

Q And instruction in shooting and loading them?

A Not instruction. - Well, instruction at Headquarters, in the shooting gallery.

Q Did you ever observe after shooting a revolver that there is any peculiar odor about it after shooting it

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off?

A I have.

Q What is that odor?

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

THE COURT: Objection overruled.

MR. BARRA: Exception, please.

A There is a smokey smell of powder.

Q How long does that smell last about the fire-arm.

A After shooting it off -

MR. BARRA: Objected to a incompetent and immaterial, no proper foundation laid.

Objection overruled and exception taken.

A For hours.

Q If five shots were discharged would there be more smell?

MR. BARRA: Objected to as a purely hypothetical question, incompetent and immaterial, no proper foundation laid.

Objection overruled and exception taken.

A There would be.

Q When you smelled this revolver that you found in premises 258 Hudson Street and smelled burnt powder did you form an opinion as to whether it had been recently discharged?

A I did.

Q What opinion did you form?

MR. BARRA: Same objection on the same grounds

and no proper foundation laid.

Objection overruled and exception taken.

A That it had been recently discharged.

Q Will you examine this revolver and tell me if that is the one you found?

A It is.

MR. BROTHERS: We offer it in evidence.

MR. BARRA: Objected to as in competent and immaterial, no proper foundation laid.

Objection overruled and exception taken.

Revolver marked in evidence People's Exhibit 4.

Q What is this calibre?

A 32.

Q Will you examine the shells in this revolver and tell me whether those are the shells which you abstracted from People's exhibit 4 in evidence?

A Yes, here.

MR. BROTHERS: We offer them in evidence.

MR. BARRA: Same objection upon the same grounds.

Objection overruled and exception taken.

Shells marked in evidence as People's Exhibit 5.

Q Now, officer, did you make any observation as to the light in the Clubrooms?

A I did.

Q Where were the lights situated in the Clubroom; were they on the walls or from the ceiling?

MR. BARRA: Objected to unless the witness knows that the same condition existed at the time of the shooting as when he examined. I submit this question as incompetent, immaterial and improper.

THE COURT: It is within half an hour, according to the testimony. I will allow him to state where the fixtures were. Exception taken.

A There was one fixture in what I would call the front room of the Club house, to the front, and also in same room there was another fixtures.

Q What part of the room, on the ceiling?

A From the ceiling, on the ceiling. And one to the back of the same room.

Q How many fixtures are there?

A I observed two from the ceiling.

Q You mean hanging from the ceiling?

A Yes.

Q Chandeliers or brackets?

A With a sort of electric light attachment.

Q How many lights were there in the fixtures?

A I observed one in each.

Q One bulb?

A Yes.

Q Are there two doors leading from the room to the hall?

A Yes.

Q Where were the two electric lights in that room situated with respect to the doorway?

A Can you mark it on the plan where the first one was? A Yes (marking). About in this position from the first door. The other one was practically near the rear door (marking) in the center of the room.

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Q That is in the front in the ceiling?

A Yes.

Q How far is that first door from the Street?

A About 11 feet.

THE COURT: Is that agreed upon?

MR. ROSALSKY: Yes.

THE COURT: The first door opens from the Clubroom, to the hallway, was about 11 feet from the street door?

MR. BROTHERS: Yes sir.

THE COURT: And the second door was where?

MR. BROTHERS: About 12 feet from the first door: about 23 feet from the street door.

THE COURT: Where these girls said they were?

MR. BROTHERS: Yes, in other words, the second door is twice as far as the first door.

THE COURT: Those figures are agreed upon by the defense and the People, I understand.

MR. ROSALSKY: Yes.

MR. BROTHERS: Yes, there are taken from the plan.

Q Now, while you were there that night did you observe whether or not the lights in the Clubroom as you have indicated here upon the plan, threw any light out into the hallway?

A They did.

MR. BARRA: That is objected to on the same ground, incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

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Q And that light was thrown into the hallway through the open door?

MR. BARRA: Same objection on the same grounds.

Same ruling and exception.

A Yes.

MR. BROTHERS: That is all.

CROSS-EXAMINATION BY MR. ROSALSKY:

Q Was there any light thrown into the hallway from the rear light of the room?

A I observed the first light as regards the first entrance.

MR. ROSALSKY: I move to strike out the answer as not responsive.

THE COURT: It is not strictly responsive but I will allow it to stand.

Q Did you observe the second light; did that throw any light into the hallway?

A I did not observe the second light as regards throwing light into the hallway.

Q Did you observe whether the first light threw any light into the hallway?

A I did.

Q In what condition was the first door when you entered at 11:15?

A Open.

Q In what condition was the second door?

A Closed.

BY THE COURT:

Q You mean closed and locked?

A I could not say whether it was locked. I did not go in or out the second

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door.

Q You do not know whether that door could have been opened or not?

A No.

BY MR. ROSALSKY:

Q When you were there the door was locked?

A To my observation it appeared as if the door was closed, shut.

Q Did you see a piano there?

A Yes, I did.

Q Where was the piano?

A Pretty near to the second door.

Q Was it up against the second door?

A I could not say.

MR. BROTHERS: I am informed that the second, the rear door was closed and nailed tight so that it could not open up.

THE COURT: Then eliminate that.

MR. BARRA: That is correct; that is conceded, your Honor.

BY THE COURT:

Q So that if there was any light in the hallway, the only place it could have come from was the front door?

A Yes.

Q If the door was open?

A Yes.

BY MR. ROSALSKY:

Q This large room was somewhat like a double-room?

A It was not divided. It was a large room.

BY THE COURT:

Q It was one large room as shown there on the plan, with two doors leading from it to the hall, and the rear door was nailed tight?

A Yes.

Q But the other door was near the street and that was in use?

A Yes.

BY MR. ROSALSKY:

Q The light you talk of in the hallway was a reflection of the door being open?

A Yes, from the light from the front of the room. It was a ray of light.

Q Did that light from the front room light up the whole hallway?

A No.

Q Did it light only a small portion of the hallway?

A A little, as far as I observed that particular portion of the hallway covered by the entrance.

Q Now, did you make an examination of the hallway?

A I looked round the hallway to see if I could find a pistol.

Q Did you look into the hallway to see if you could find any pistols in the hall?

A I did.

Q Did you find any?

A I did not.

Q How many times were you in those premises?

A That was my first and last.

Q Have you been there since?

A Not since the night and morning.

Q You were only there once?

A Yes, sir, but I went out and came back.

BY THE COURT:

Q You made two examinations for bullets and found none?

A I did not find any.

BY MR. ROSALSKY:

Q Do you know whether there was any pistol found on Sweeney or not?

A I do not.

Q You did not make an examination of Sweeney's clothes?

A I did not.

Q Who was the first officer that went to Sweeney's aid, if you know?

A I do not know.

Q Was the pistol warm?

A Which pistol?

Q The pistol you found in the yard?

A No.

Q What time did you find the pistol?

A I should say about 11:15.

Q Was it any later than 11:15?

A It might have been one or two or three minutes.

Q Now, officer, you have had experience with fire-arms, is that right?

A Yes.

Q Don't you know as a matter of fact that after discharging a fire-arm or pistol, it will keep warm for an hour or more?

A I do not, but in this particular instance where this pistol was found it was found on what I would call a heap of garbage, upon of newspapers, and other garbage material that filled that yard. The paper there

was damp, and resting upon a damp piece of paper was this revolver when I picked it up.

Q But it was on paper?

A On an old piece of paper.

Q How long will a pistol remain warm after being fired from the knowledge you have of fire-arms?

A I should say an hour.

Q Isn't it sometimes more than an hour?

A It could be.

Q This pistol was not warm at all?

A Not that I recollect.

BY MR. BROTHERS:

Q The length of time that a pistol retains the heat from the explosion depends upon where it is?

A Correct.

Q If it is lying outdoors, subject to the air it would cool quicker?

A Yes.

Q If it was put into your pocket it would remain warm longer?

A Yes.

Q Just like any other warm article?

A Yes.

BY MR. ROSALSKY:

Q Have you ever experimented with leaving a pistol exposed to the air?

THE COURT: Is that material?

MR. ROSALSKY: There is a dispute as to whom the pistol belonged to.

THE COURT: There is no proof that it belonged to anyone.

MR. ROSALSKY: And it might have been there for a long time, that pistol.

THE COURT: That is for the jury to determine.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all.

THE COURT: You may recall the officer for further cross-examination along that line if you think it is necessary, if it should develop in your opinion, to be necessary.

JAMES J. COLLINS, an officer of the First Branch Detective Bureau, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Are you a member of the Police Force of this City?

A I am.

Q Did you arrest this defendant?

A I did.

Q At what place?

A I arrested him at his residence, 322 Wet Houston Street.

Q What was the date?

A On June 12th, about 12:30 A.M.

Q That was the early morning of that day?

A Yes sir.

Q Was he in bed when you placed him under arrest?

A He was.

Q Did you search his premises?

A I did.

Q And having searched his premises did you have any conversation with him about anything that was in the premises?

MR. BARRA: I object to that as incompetent, irrelevant and immaterial unless it relates to the charge made in this indictment.

THE COURT: I will sustain the objection to that extent.

Q What if anything did you find in his home?

A I found a revolver in a bureau drawer.

Q Will you say if it is in that package (handing package to witness)?

A Yes sir, that is the revolver.

Q Did you speak to the defendant about that revolver? After you found it?

A I did.

Q Did you ask him whose it was?

A I did.

Q What reply did he make?

A He told me that a stranger came into his room there one day and he jumped up quick and this person who came in his window was a man and he ran out and dropped that revolver on the floor and he picked it up.

Q Did he say that he kept it ever since that day?

A Yes.

Q Did you examine it to see whether or not it was loaded?

A I did.

Q What did you find?

A I found four loaded cartridges and two empty chambers.

Q By empty chambers, you mean the chambers in the cylinder had no shells in at all?

A Yes sir.

Q Not exploded shells but absolutely empty chambers?

A Yes.

Q Did you retain the shells?

A Yes.

Q And are they here?

A Yes sir (producing shells). Those are the shells.

Q What calibre is this pistol?

A I believe it is an 18.

Q Is it marked in any way?

A No sir, there is not any calibre on it.

Q But is it smaller than a 32, is it not?

A Yes sir.

MR. Brothers: We offer the pistol in evidence and the bullet

MR. BARRA: Objected as incompetent, irrelevant and immaterial.

THE COURT: I do not see how you have connected that pistol. I will sustain the objection.

MR. BROTHERS: I offer it for identification.

Marked People's Exhibit 6 for Identification.

(Pistol and Bullet).

MR. ROSALSKY: Will you instruct the jury to disregard what this witness testified to concerning that revolver, to eliminate it from their minds?

THE COURT: I do.

MR. BROTHERS: Of course, it is connected in this way, that it was in the defendant's possession five days after the shooting when he was arrested.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. ROSALSKY:

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Q Officer, was Mrs. Mulcahey there at the time?

A She was.

BY THE COURT:

Q Who is Mrs. Mulcahey?

A The wife of the defendant.

Q Did you know the defendant before this time?

A No sir, I did not.

BY MR. ROSALSKY:

Q Did Mrs. Mulcahey call your attention to the window being nailed since this man came?

A No sir, she did not.

Q Are you sure about that?

A Yes, I am.

MR. ROSALSKY: That is all.

THE COURT: If further evidence on that point is not introduced I will grant the motion and strike the testimony of the officer from the record. I have already instructed the jury to disregard that, at Mr, Rosalsky's request but it has not been stricken from the record before.

FRANK CAFFREY, of 113 Watts Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q How old are you?

A Twenty-four.

Q Are you employed anywhere?

A Yes, with John White, as truckman.

Q Do you belong to the Pioneer Social Club, 258 Hudson Street?

A Yes sir.

Q Do you know the defendant, James Mulcahey?

A Yes sir.

Q Were you in the Club house on the night of June 7, 1917?

A Yes sir.

Q What time did you get there?

A Around 7 o'clock.

Q What time did you leave?

A Around half-past ten.

Q Were you there, do you remember the shooting?

A I was in the back.

Q You were in the Club house when the shooting took place, is that right?

A I was in the back and I heard a shot and I ran out.

Q In the back of what?

A In the back of the Club.

BY THE COURT:

Q How many rooms are there?

A Three.

Q Where are they, point them out on that diagram?

A There is a cloak room in the back and a bedroom.

Q Were you in the large room or the coat room or the bed room?

A I was in the rear of the room. It was two rooms.

Q There is a front room and a bedroom and a coat room?

A Yes, I was in that middle room, in the beer room.

Q There is a big room?

A Yes.

Q Then there is a door goes into another room in the back?

A Yes. Back of that is the coat-room.

Q Which of these three rooms were you in?

A In this rear room (indicating).

Q Were you in the bedroom?

A Yes sir.

Q You were in the bed room?

A Yes sir.

Q Not in the front room?

A No.

BY MR. BROTHERS:

Q That is the room I had my finger on, indicated here as the rear room on the plan?

A Yes.

Q What was going on in that room?

A Drinking beer.

Q Was the beer being drawn from a keg?

A Yes sir.

Q Did you see Mulcahey in the Club that evening?

A I seen him sitting down by the piano.

Q How many kegs of beer were brought in that night?

A Two.

Q What time was the second one brought in?

A Around ten o'clock.

Q Did you help to bring it in?

A Yes sir.

Q When you brought it in did you notice whether Mulcahey was still in the Club?

A Yes, he was sitting down by the piano.

BY THE COURT:

Q When you say you brought them in, you brought them in through the front door, back to the bed room?

A Yes.

BY MR. BROTHERS:

Q Now, when you were in this rear room serving beer, and drinking it, you heard some shots, did you?

A Yes.

Q How many shot do you recall hearing?

A I heard one and jumped out of the window and ran out through Dominick Street.

Q Which way did you go out?

A Through the yard.

Q Not the front door?

A No.

Q What window did you jump out of?

A The coat room.

Q The back window here (indicating)?

A Yes.

Q How did you go out of this yard into the street?

A Through that little space.

Q A little alley way?

A Yes.

Q Did any other person go out through the yard at the time you did?

A Me, Jennings, Buddie and Maloun and Eddie Clark.

Q Are those the only persons that went out through the back with you?

A That is all I know.

Q Did you see any of the other men that were in the Club come out that way?

A No sir.

Q What street did that lead you on to?

A Dominick Street.

Q Did you see Mulcahey again after the shooting?

A No sir.

Q Did you see the shooting?

A No sir.

Q Did you know who was shot?

A No sir.

Q The first shot that you heard was fired where?

A I don't know where it was fired.

BY THE COURT:

Q Don't you know who was shot, now?

A I know Sweeney was shot.

Q You mean you did not know then?

A No.

Q Had you seen Sweeney in the Club house that night?

A No sir, I did not know Sweeney at all.

BY MR. BROTHERS:

Q So far as you know he is not a member of the Club?

A I do not know.

Q Was Mulcahey a member?

A Yes sir.

Q Was the first shot that you heard fired in the Club?

A I don't know where it was fired. I was in the back drawing beer.

Q Did it sound near where you were as though it was indoors or out in the street?

A I don't know where it was.

Q Then why did you run away?

A I jumped out of the window and ran out through Dominick Street.

MR. BARRA: Objected to as calling for a conclusion.

Objection overruled and exception taken.

Q Were you afraid when you ran out of being hurt?

A I run out. I didn't want to get shot myself.

Q Did you see anybody with a revolver in the Club that night?

A No sir.

BY THE COURT:

Q How many people were in the Club room that night?

A There was only about six of us.

Q And you had two kegs of beers?

A Yes sir.

Q Were there any festivities going on or *** it

just a usual nightly performance?

A We got a keg of beer once in a while.

Q There was no party, - no girls there?

A No sir.

Q There was no meeting?

A No.

Q Just an ordinary evening in the life of the Club?

A Yes sir.

BY MR. BROTHERS:

Q Were the same man there that evening or did some go away and others take their places?

A Anglin went away.

Q Are you sure there were only six men there?

A That is all I know.

BY THE COURT:

Q Well, there were four in your place?

A Yes.

Q And Mulcahey was not in with you, was he?

A He came in after.

Q How do you mean after?

A Around nine o'clock.

Q Weren't you in the front room in any of that time?

A I only brought a couple of beers out.

Q But you brought beer in you say and carried a keg?

A Yes.

Q Where did you get it?

A I got it down at Crowley's me and Bauer got the first keg.

Q That was what time you got the first keg?

A Around half-past eight.

Q And the second about ten, you said?

A Yes.

Q You are not sure about the second time, are you?

A No sir.

Q But you and he carried the second keg in?

A Me, Buddie Malone and Clarkie.

Q Three of you carried it in?

A Yes.

Q And you carried it up the front stoop?

A Yes.

Q And in the first door?

A Yes.

Q And through the room?

A Yes.

Q When you went in with that second keg into the front room how many people were there?

A I did not see no people there.

Q You did not see anyone?

A No.

BY MR. BROTHERS:

Q Didn't you see Mulcahey there?

A He was standing by the piano.

Q Who was with him?

A I don't know.

Q Didn't you see anybody there?

A No.

Q Was anybody on the front stoop?

A Two girls.

Q Who were they?

A Katie Flynn and Beatrice Gallagher.

Q How long after you got in with that keg was it you heard the shooting?

A About five minutes.

BY THE COURT:

Q Did you see Rogers there?

A No sir.

BY MR. BROTHERS:

Q Do you know Rogers?

BY THE COURT:

Q Did you see a man named Keating there?

A I seen Keating.

BY MR. BROTHERS:

Q Do you know John Collins, sometimes called Buster?

A No sir.

Q Do you know him?

A No sir.

Q You don't know him at all?

A No.

BY MR. ROSELSKY:

Q Did you see Mulcahey have a pistol that night?

A No sir.

Q Where was Mulcahey? Where did you see Mulcahey, at the time the shot was fired?

A He was sitting in the Club.

Q Did you see him?

A I seen him when we came in with the beer.

Q Did you see where Mulcahey was at the time that the shot was fired?

A No sir.

MR. ROSALSKY: That is all.

BY THE COURT:

Q How many shots did you hear altogether?

A I heard one shot and ran out and jumped out of a window.

Q You did not hear any more?

A No.

BY MR. BROTHERS:

Q Did you make any noise going out of the window?

A I broke a couple of windows.

Q Did you four men go out of the same window?

A Yes.

MR. BROTHERS: That is all.

LAWRENCE CLANCY, of 257 Hudson Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your age, Mr. Clancy?

A 52 next birthday.

Q Where do you live?

A 257 Hudson Street.

Q What place is that?

A James Dugan, undertaken.

Q Do you remember the night of June 7th, 1917, when some shooting took place in Hudson Street?

A I do.

Q Did you hear the shots fired?

A I heard the reports.

Q Where were you at that time?

A I was sitting inside of the saloon at the corner of Hudson and Dominick Street.

Q Is that Mr. Crowley's place?

A Yes, it was at that time.

Q When you heard the shots did you take note of the number of them?

A No, I did not.

Q About how many do you remember?

A Well, there may be three or four. I did not count them.

BY THE COURT:

Q There was more than one?

A Yes, your Honor.

Q But the exact number you do not know?

A No.

BY MR. BROTHERS:

Q A little later after the shots were fired, did you see a man staggering to the saloon?

A I did.

Q What happened to his when he got in there?

A He

raised his hands up and he said. "Oh, I am dying, I am dying," and he went down quite a ways and he fell in the center of the floor. He became unconscious right away.

Q Did you know him?

A No sir.

Q Did you see Officer Haggerty there sending him away in the ambulance?

A There was quite a crowd gathered around and I walked out to the door, and I met Officer Haggerty and I told him there was a man unconscious inside on the floor.

Q He was taken away to St. Vincent's Hospital?

A Well, sometime after there was an ambulance came there and he was removed.

MR. BROTHERS: That is all.

MR. ROSALSKY: No questions.

MR. BROTHERS: I think is the People's case. We rest.

MR. BARRA: Your Honor, please, the defendant moves that your Honor takes from the consideration of the jury that part of the indictment which charges murder in the first degree, upon the ground that the People have failed to establish the allegation required to make out that crime, and also the crime of murder in the second degree, and to submit this case to the jury upon the question of manslaughter.

THE COURT: If I submit the case at all I will submit it on the question of murder in the first degree,

but I would like to hear argument on the sufficiency of the evidence. I think, Mr. Brothers, that there is very grave reason for taking this case from the jury.

MR. BROTHERS: Your Honor's judgment is always good, but I think the evidence of Rogers is very clear on direct examination.

THE COURT: It is contradicted positively by two of your own witnesses who said he was not near the place where he says he was.

MR. BROTHERS: The evidence is that he was behind them at one point.

THE COURT: You agree that the case stands or falls so far as the case is concerned on the testimony of Rogers?

MR. BROHERS: Oh, absolutely, yes.

MR. ROSALSKY: If you take Rogers' testimony at its best, how can any man with any reasonable amount of sense believe the story of Rogers, which seems to be so improbable on his own statement. Here is a man coming within ten feet from the two people, in back of the firing, and he said he heard two shots and he was still looking and two shots were fired by Collin he said. Then he said in the meantime Mulcahey took *** a pistol and started shooting also and that he was

looking in and that those shots came toward him.

THE COURT: I think that is a question for the jury to determine.

MR. BARRA: There is a flat contradiction. The two young women come into court and contradict absolutely and unqualifiedly the testimony of Rogers, so that he could not have been in the place where he said he was.

THE COURT: Mr. Brothers claims they do not contradict. They admit he passed behind them, but they deny he was standing behind their chairs.

THE COURT: I will deny your motion and let the matter go to the jury.

MR. BARRA: I move to strike out the testimony of Officer O'Connell.

THE COURT: I will strike it out.

MR. BROTHERS: Except as to the time of the arrest, the arrest of the defendant. I consent to strike out about the finding of the revolver.

THE COURT: That tends to charge the man with the commission of a crime not connected with this case, the finding of the 18 calibre revolver.

MR. BROTHERS: I consent that part about the finding of the revolver goes out, that is, the testimony of the police officer about the finding of the revolver, but about the arrest I want to leave that in.

MR. BARRA: Will your Honor give us an adjournment for about half an hour?

THE COURT: Gentlemen of the jury, we will take a recess until 12 o'clock. In the meantime remember the admonition I have given you, that the law forbids you actually to discuss this case, not only among yourselves but with any stranger. You must not talk about it to one another and you must not from nor express any opinion on the question of the guilt or innocence of this defendant until you hear all the evidence that is to be presented by both sides and until the matter is submitted to you by the Court. You must keep an open mind on that question. Do not decide it until it is given to you to decide at the end of the case.

TRIAL CONTINUED.

12 o'clock.

MR, BARRA: If your Honor please, the defence rests and we renew the motions made at the close of the People's case. We move that your Honor advise this jury to acquit upon the ground that the People have failed to establish the allegations in the indictment that go to make up murder in any of its degrees, or manslaughter, by competent legal proof beyond a reasonable doubt.

By consent of the District Attorney and Counsel for the defense the case is reopened for further examination

of the witness Peter Rogers.

PETER ROGERS, recalled to the stand.

BY THE COURT:

Q How old are you Rogers/

A 20 years old.

Q Were you a member of this Club?

A No sir, I was not.

Q How many times have you been in the Club rooms?

A I was never in that Club-room.

Q You were never in that Club room?

A No sir.

Q How long have you known Keating?

A About 14 years, I suppose, when I was a child; when I lived around Vandam Street he lived at Greenwich and Vandam.

Q How did you happen to be in front of the Club room that night?

A It was my misfortune to go around there with them fellows.

Q But when did you first meet Sweeney that day?

A In the saloon at Charleton and Greenwich.

Q At what time?

A Along 12 o'clock.

Q In the daytime?

A Yes sir.

Q You were in his company all that day?

A Yes sir.

Q What were you doing?

A We were down Staten Island. We were visiting my brother down at Staten Island jail. He was in jail down there for disorderly conduct.

Q Was Sweeney working that day?

A No.

Q What day of the week was it?

A It was a Wednesday, or a Tuesday.

Q It was not Sunday?

A No sir.

Q Sure of that?

A Yes sir.

Q It was a working day?

A Yes.

Q And you were not working?

A No sir.

Q Did you have a position that day?

A Yes sir, I worked for my father.

Q What work did you do for your father?

A I drove so ash cart for him.

Q Who was driving the ash cart that day?

A He had one of his men working.

Q You did not drive the ash cart every day?

A Well, every day I was working.

Q Every day you felt inclined to drive, you drove, is that it?

A Yes.

Q If you did not feel like driving it you did not drive it?

A No sir.

Q On this day you had your day off?

A Yes.

Q Was that a frequent occurrence with you?

A I don't understand.

Q Do you have many days off, or was this an unusual thing?

A It is very seldom I would take a day off, once in a while.

Q Did you meet Sweeney by appointment that day or accidentally?

A I met him by appointment because he was down to Staten Island the day before.

Q When did you make the appointment with him?

A The night before I left him. This happened on a Tuesday.

Tuesday night I left him. We are down Staten Island. That night I left him at the house. He said, "I will see you tomorrow."

Q You were down Staten Island the day before the shooting of Sweeney?

A Yes.

Q What did you do down there?

A Trying to get my brother out.

Q Then you were going to get your brother out.

A Yes.

Q Was it your cousin or your brother?

A My brother.

Q How could Sweeney get your brother out?

A I don't know; he took an interest in my brother and wanted to see what he could do for him.

Q What did Sweeney do for a living?

A Sometimes he drove a truck, and worked on the dock, I think.

Q That day he went down Staten Island, he was not working, and you were not working?

A No.

Q You were drinking I suppose?

A Yes sir.

Q And when you came back to the City you continued drinking?

A Yes.

Q You and Sweeney?

A Yes sir.

Q And when you parted you agreed to meet in the barroom next day at 12 o'clock?

A Yes.

Q And you did meet?

A Yes.

Q Did you start in drinking then?

A I had one drink then, of beer.

Q You went down to Staten Island?

A Yes.

Q What time did you get back from Staten Island?

A We reached New York about 5 to 9. I reached my girl's house about 9 o'clock from South Ferry.

Q And you left Sweeney?

A Yes. - not for the girl's house I did not leave him. From the girl's house I went to 13th and Hudson with him and had a drink, and paid the chauffeur off at Charleton and Greenwich Street.

Q You had an automobile that day?

A Yes. We had one the day before, too.

Q Was anyone else with you besides Sweeney?

A Yes, Frank Kennedy, and James McGin, a fellow named Charles Underwood from Staten Island and Frank Faber from Staten Island and Sweeney and I.

Q They all went with you to this woman's house?

A We left Faber down Staten Island, Faber and Underwood.

Q Who came up from Staten Island in the machine?

A Frank Kennedy, Sweeney, Jimmie McGin and I.

Q Describe your movements after you came back from Staten Island.

A We went up 13th and Hudson Street went in there and had a drink and from there went down to Greenwich and Charleton, went in there and Sweeney and this McGin paid the chauffeur off.

Q You said something about a visit to a young lady.

A That was after I left the young lady's house. I did not see her. She was not home. I gets out of the car.

Q The car and your companions went with you to call

on this woman?

A They were going twelve me there, but my woman was not in at that time, - my girl. They were going to leave me there.

Q Were you living with her?

A No, I only kept company with her.

Q Your relations were perfectly honorable?

A Yes.

Q Why did you speak of her as your woman?

A I thought I understood you to say woman. I corrected myself.

Q You did not mean anything by that expression, - "your woman"?

A No sir.

Q When you went back with them to another barroom and the chauffeur was dismissed.

A From my girl's house to this barroom at 13th and Hudson Street, then from there we went to Charleton and Greenwich and paid the chauffeur off at the saloon and let the chauffeur go. Jimmie McGin went with the chauffeur to his girl's house.

Q You, Kennedy and Sweeney remained together?

A Yes. From there we went over to the Huron Club, 13th and Hudson Street. He went upstairs, Sweeney, and came down again, he said, "Come on." We walked on the other side, and we passed this Club room, and then as soon as we came to the door Mickish Keating was standing on the stoop.

Q Where were you going?

A He was going, looking for some bondsmen to get this Hogan out of jail, Sweeney was.

Q Didn't you say your brother was in trouble?

A Yes,

but after we came from Staten Island; my brother got sentenced that morning, so when we came back to New York we were in the saloon drinking at Charleton and Greenwich and Mulligan said, How about Hogan, he is in hail. I think it was \$5,000 bail he was under. This was in New York. And then Sweeney wanted to get Hogan out on bail so we were going with the intention of looking for a bondsman to get Hogan out on bail.

Q And you were passing this Pioneer club?

A Yes, and got invited in.

Q Did you speak to Keating first or did he speak to you first?

A Yes, I spoke to him, I said, "Hello, Mick". He said "Hello." I walked up on the stoop. He said, "come on in here." He said, "There is plenty of beer." I said, "I got two friends". He said, "All right, bring them in with you".

THE COURT: Does the defense object to this conversation?

MR. BARRA: No, your Honor.

A (continued) So I went down off the stoop to Kennedy and Sweeney.

Q Did Keating say anything about Kennedy and Sweeney?

A No sir.

Q Did he ask you who your friends were?

A No. I said, "I got two friends with me." He said, "Bring them in."

Q He could see them?

A Yes, he seen them walking

with me.

Q You had been drinking continually that day.

A That day I had about 15 beers that day.

Q Who else was on the stoop?

A There were two girls sitting on the top step of the stoop.

Q Were they sitting on the step?

A Yes, on the step.

Q On the flag stone?

A On the flag stone.

Q They were sitting on the stones?

A Yes sir.

Q They were not on chairs?

A No sir, I did not see them on any chairs at all.

Q You did not see chairs at any time that night?

A No sir, I did not.

Q Now supposing that the table there is the top step, show this jury how they were sitting. How many steps up were they?

A About five or six steps up.

Q Then there was quite a wide step at the top?

A Yes, like a flag stone.

Q The way steps generally are?

A Yes, that was the top step.

Q Was there a step up from that to the hall?

A There was a step up to the hall door, too, but this is where the girls were sitting, they had their legs on the other step down below.

Q How were they sitting with reference to the doorway leading in?

A Each one was sitting on each side of the step so people could get through them.

Q Those girls were sitting on each side of that step?

A Yes.

Q Leaving a passageway into the house?

A Yes.

Q Are you sure they were there when you came along with Kennedy?

A Yes.

Q What did the girls say to you?

A They did not say anything to me.

Q You did not say anything to them?

A No.

Q Was there a railing there on that stoop?

A Yes sir, an iron railing.

Q On both sides?

A Yes sir.

Q There was no other stoop adjoining it?

A No sir.

Q The stoop stands alone there?

A Yes sir.

Q The stoop of the next house, is that near it?

A No sir.

Q What did you hear those girls say while you were there?

A I did not hear them say a word.

Q They sat there mute?

A Yes.

Q You never heard them speak to Keating or anyone?

A No sir.

Q After you spoke to Keating you went down the steps again?

A Yes.

Q And you spoke to Kennedy and Sweeney?

A Yes.

Q What did you say to them?

A I said, "Come on in." He said. "It is all right." I said, "Yes, Mickish said it was all right ***.

Q What happened when you got up on the stoop? Who went first?

A The three of us went up together and two went in and I stood out on the stoop there.

Q When did you go into the building?

A I did not go inside of the hall at all. I was on the stoop there.

Q You never went into the hall?

A No sir, I did not. I did not go into the hallway at all. I stood right on the stoop there, and Sweeney, Mulcahey and Mickish went inside.

Q And that left what people on the stoop?

A I don't know where Kennedy went; I did not take notice if he went inside or went down off the stoop.

Q What did the girls do when you three came along?

A They sat there I think.

Q You think?

A I was not paying any attention to the girls.

Q You sat on the stoop and paid no attention to the two girls?

A No sir, I don't know the girls.

Q Was this a warm night?

A Yes, the 7th of June.

Q You did not pass any comments on the weather with them?

A No.

Q You were entirely sober at this time?

A Well, I was feeling a little good, not exactly drunk.

Q You had been drinking continually all day?

A At the rate of a bout 12 beers and 15 beers; between 12 and 15.

Q You did not keep count, did you?

A No sir.

Q Why did you not go into the Club house?

A I don't know, sir. I seen these two walking in together and at first, just for the moment I stood outside.

Q You were asked to bring them up?

A Yes. He said, "Come on bring them in".

Q Keating was your friend?

A Yes, as much as anybody else. He is a friend of Frank Kennedy's and Sweeney, as I heard. They are supposed to be friends.

Q You never heard of any trouble between Keating and him?

A I don't think Keating liked Sweeney. They never did agree.

Q Then why did you ask Keating if Sweeney could go in?

A I said, "Is it all right?" He said, "Yes, bring them in."

Q All right for what?

A To bring them in.

Q Why you should you bring up a that Club house that night?

A We just happened to pass there and we were invited in.

Q You spoke to Keating?

A Yes.

Q You spoke first?

A Yes, I said. "Hello".

Q What did Keating say?

A He said, "Come on inside, there is lots of beer."

Q You did not know there was any beer there?

A No sir.

Q You are very fond of beer?

A Yes.

Q Why did you not go in to get some beer?

A I had two friends with me.

Q But there was lots of beer there.

A I told him I got two friends and he said, "All right, bring them in."

Q He could see your two friends?

A Yes.

Q After he said it was all right to bring them in, why didn't you bring them in?

A I went down and I told them.

Q You went as far as the top step?

A After Mickish said it was all right I went down to tell my friends.

Q Then you went back with your friends?

A Yes.

Q But you carefully stayed on the top step?

A Yes.

Q Why did you not go in to get beer?

A I don't know; it was just at that moment I did not go in, I don't know why. I did not have any suspicion of nothing.

Q Had you suddenly lost your thirst or your love for beer?

A No.

Q Had you ever refused a drink that day before?

A No, -- I was going to go in.

Q You drink every chance you get?

A Yes.

Q *** here was free beer and you had been buying your beer all day?

A Yes.

Q And the others?

A Yes.

Q You had plenty of money?

A Yes.

Q Even if you were not working?

A Yes; they had the money. I did not have no money.

Q Then here was a chance to get plenty of beer and you did not go in?

A Yes.

Q You let them go in?

A Yes.

Q How near to that door did you go? Tell us that.

A There is like on this plan a little partition from the door to the stoop.

Q You mean a regular door jamb?

A Yes.

Q There is a door way there?

A Yes.

Q A wooden door?

A Yes.

Q And there is a frame for the door?

A Yes.

Q That is what you mean by the partition?

A Yes.

Q You say there was a stop leading up to that?

A Yes.

Q And there was a flat stone for the top step of the stoop and then right in the doorway there was another stone I suppose?

A No sir.

Q Or was it flat with the top step?

A Flat with the top of the stoop.

Q There was no rise at all?

A No. There was one rise before yo go into the doorway.

Q From the top step?

A No. Here is the flagstone and then before you go into the door there is another step like.

Q Which one were you standing on?

A On the top, way at the top, before you go into the door.

Q Was that in the doorway?

A Yes, it was in the doorway like.

Q You know what I mean by the doorway?

A Yes.

Q Do you know what the jamb is?

A No sir.

(At the request of the Court the officer opens the court room door and points to the door jamb).

Q That is the jamb of the door. Do you see where his hand is?

A Yes.

Q That is the jamb; do you understand that?

A Yes, where you go into the doorway, yes.

Q There are wooden sides for the door to come into, and where the lock is set in?

A Yes, like the frame work.

Q How deep were these sides, as deep as those?

A No.

Q Show the jury about how deep.

A About that wide (witness indicating about 10 inches).

Q What was the color of that door?

A I couldn't exactly tell; I think it was black, if I ain't mistaken.

Q Are you sure it was dark, or was it light?

A I could not swear.

Q I want to know where that jamb rose up on the sides of the door; - was there a rise from the top step clear into the room or hallway, or was it just a flat fact?

A After you go up on the stoop, onto the stoop there is a flag like. Then you go into the doorway and there is another little step.

Q And that is like in the doorway?

A Yes.

Q Which of those steps were you standing on?

A Like alongside of it.

Q You are sure you were on the step?

A On the stoop.

Q You were standing on the same place where the girls were sitting?

A They were sitting on the edge of the stoop and I was back on the stoop, like where that partition comes, the jamb.

Q I want to know whether you were in the doorway along the stoop?

A In near the doorway there, like. I was not in the doorway, no.

Q You are quite sure you *** never went inside of the doorway?

A No sir, not inside the doorway.

Q How long did you and those two girls remain on the stoop?

A I did not take notice how long those girls sat on the stoop.

Q How long did you stay on the stoop; - the girls were there before you?

A Yes.

Q They were there when you came there?

A Yes.

Q And they did not go away?

A I did not notice that.

Q You were on this small stoop there but you did not notice whether the girls went away or not?

A No sir.

Q You are quite sure no other man was there on that stoop?

A I did not see any other man.

Q You could not help but see if there was one there?

A No.

Q The stoop was only about five feet wide?

A About that.

Q Do you know how much five is?

A No sir.

Q Show us with your hands what you think five feet is,

about.

A That is not five feet, that table. (pointing to stenographer's table).

Q Mark out a space as big as the stoop was.

A About from here to there (indicating defendant's counsel's table, which after measuring with a tape measure is found to be 52 inches long).

MR. ROSALSKY: The inside measurement is 3 feet, one inch, but that is the door.

Q Just show us, assuming that is the stoop, the place you have marked, show us where each girl was sitting.

A Down here is the flag like, and at the end of this flag there is like a top step. They were sitting on the top step there, right on top of the flagstone.

Q Just put Mr. Cardoni and Mr. Brothers in the position where the girls were. Can you locate the girls?

A I did not see them until yesterday.

Q Let us say Mr. Cardoni is one of those girls. Show on about what part of the stoop they were sitting.

A They were sitting on this side, one girl here, (indicating) and one on this side (indicating) so that you can leave a passageway. They were just sitting down like that (indicating).

Q And about that much space between them?

A Space enough to let you in.

Q How much space between them?

A About that much (indicating about 3 feet space). I stood right behind their backs here.

Q You did not stand behind both?

A No, I was behind one of the girls.

Q You are quite sure they did not have chairs?

A Yes sir, I am quite sure they did not have chairs.

Q At any time that night while you remained there?

A Not while I remained there.

Q And you never left that stoop from the time you were there until the shooting?

A Yes sir, never left there until after the shooting. Until I seen Sweeney running out, then I left.

Q What were you doing when you heard the first shot?

A I looked into the hallway. Then I seen a fellow coming out gimping.

Q What were you doing when you heard the first shot?

A I was out on the stoop.

Q What were you doing on the stoop?

A I just stood there.

Q And you never said a word?

A No sir.

Q You stood there leaning against the house or standing there?

A Standing right here. I was not right exactly leaning, standing there, looking into the hall.

Q You stood with your back to those girls then?

A Yes.

Q All the time looking into the hall?

A Yes.

Q Will you state to the jury why you did that when your friends went in and you remained standing with your back to the girls, looking into the hall?

A I would

have went into the place, only I just stood there for that minute. As soon as Sweeney went inside I heard the shot.

Q Yesterday you said it was five minutes, did you not?

A No sir.

Q One minute?

A A minute.

Q Just as quick as that?

A Yes.

Q And you heard no noise?

A Until I heard the report of the gun.

Q And heard no quarrel?

A No.

Q There was no loud talking inside?

A I did not hear none.

Q Well, you could have heard it?

A If it was loud enough. It must be very loud talking for me to hear it on the stoop.

Q The doorway was only 10 or 11 feet from the stoop?

A About 10 feet.

Q That is the door from the room?

A (No answer).

Q And the windows were open?

A I don't know.

Q How many windows were in the club house, looking out on the stoop?

A Two windows, I think.

Q You don't know whether they were open or not?

A No, I did not take particular notice.

Q The night was warm?

A Yes.

Q You heard no excitement?

A No.

Q The first thing you noticed was that you heard a shot?

A Yes.

Q You were looking into the hallway?

A Yes sir.

Q Hadn't you observed anyone coming into the hallway, if you were looking in?

A No, I was on the side of the hall.

Q You told me you were looking right into the hallway.

A Yes.

Q When you first went up was there anyone in that hallway?

A Only Mickish Keating was standing in the hall like.

Q In what part of the hallway?

A On the top of that step like.

Q He was in the doorway?

A Yes.

Q And you don't remember when he went away?

A When Sweeney, Kennedy and I came up on the stoop, he went in.

Q So that when you were standing in behind the two girls with your back to them and looking into the hall there was no one in the hall at that time?

A No.

Q How soon after that did anyone appear in the hallway?

A As soon as I went up on the stoop with Frank Kennedy and Sweeney, Keating was standing there. Then I believe Mulcahey came walking out, They said, "Come on in." They brought him in like. They had him under each arm.

Q Mulcahey came out?

A Yes.

Q Came out to the stoop?

A Yes.

Q And they dragged him into the Club room?

A Yes.

Q I want to know when they reappeared in that hallway?

A When they came in the hallway again?

Q Yes. A I seen Mulcahey and Collins come into the hallway again and when Sweeney was going out, when they

fired the shot at him.

Q You told me it was a shot that called your attention to him in the hallway.

A Yes.

Q Did you see anyone in the hallway before you heard the shot?

A Not before I heard the shot.

Q If you were looking into the hall how is it you did not see them come from the Club room into the hallway?

A I did not see anybody come out until I heard the report of the gun.

Q You told me you stood with your back to the girls looking into the hallway from the time you got there?

A Yes, I seen Mulcahey come out.

Q That is when you first went up?

A No, when me, Sweeney and Kennedy went up.

Q When you three went up they went in, Sweeney and Kennedy went into the hallway?

A I don't know if Kennedy went in. I seen Sweeney, this here Mickish Keating and this Mulcahey go in with Sweeney.

Q You don't know where Sweeney went?

A He went into the Club room I know.

Q You do not evidently understand my question. They went into the hall and they went from the hall into the Club room?

A Yes sir.

Q You know the difference between the hallway and the Club room, don't you?

A Yes.

Q Then the hallway was empty, wasn't it?

A Yes, when

they went in.

Q And you were looking into the hallway all the time?

A Yes sir.

Q How soon after they went in did anyone come out into the hallway?

A About a minute, at the most. As soon as he went in I *** heard a shot.

Q You heard a shot fired in the room?

A In the room, yes sir. Then I seen the fellow coming out gimping and go out into the street.

Q Who was that?

A This Egan, as I say, he came out. Some fellow came after him and dragged him back and just as they brought him back I seen Mulcahey and this Collins coming out with Sweeney, as soon as they brought Egan back into the room.

Q What did you do after the shooting?

A After Sweeney ran passed me and said, "They have got me." he ran past me down to the corner into the saloon. Then I went down Charleston and Greenwich street.

Q You didn't go the same saloon he went to?

A No, I went down Charleton and Greenwich.

Q Then you were arrested?

A Five days after the shooting.

Q You were charged with this crime yourself, weren't you?

A No sir, I don't know. They did not tell me I was charged with it.

Q What did they tell you?

A They told me I was with

Sweeney the night of the shooting and asked me if I knew about and I told them.

Q Have you eve had any trouble with Mulcahey?

A Yes sir, about 10 years ago we got into some little trouble. I can't remember everything that happened then. It was May 10 years ago.

Q But recently have you had any trouble?

A No, I never had no trouble with him.

THE COURT: Any more questions, Mr. Brothers?

MR. BROTHERS: None, your Honor.

THE COURT: Mr. Barra, have you any question?

MR. BARRA: None, your Honor.

Q Who went off the stoop first, you or these girls?

A I don't know. I didn't see them after Sweeney ran out. They must have went away as soon as he went into the place.

BY MR. BARRA:

Q Before the shot was fired they were away, you mean?

A I told you I don't know if they went away before the shots. I turned my back and paid no more attention to them.

Q Before Sweeney came out the girls left the stoop?

A When Sweeney went past I did not see the girls on the stoop. When Sweeney passed me I was on the stoop. He ran past me down the stoop and I did not see no girls then.

Q Why didn't you go with Sweeney?

A He went past me staggering like.

Q Why didn't you go with Sweeney? Didn't you know he

was seeking help?

A I seen the shots and I was afraid of getting shot myself.

Q But the shooting was all over?

A No, they kept firing shots when he went out of the hall.

Q When you went down to the sidewalk did they keep on firing shots?

A I did not see them come out to the sidewalk after that.

BY MR. BROTHERS:

Q Why didn't you go into the saloon to help Sweeney, or go along with him?

A I was afraid of getting shot when they were firing shots.

BY THE COURT:

Q You kept looking in where they firing?

A Yes.

Q You were in the line of firing?

A No.

Q And you never moved?

A No, I let him pass and after he passed me I told the fellows in Charleton and Greenwich Streets, in the saloon.

Q Why didn't you go along with Sweeney to the corner saloon?

A I don't know. I did not go along with him.

Q You were not concerned in the shooting itself, were you? You did not take any part in it?

A No sir.

Q You did not bring Sweeney there to have him shot?

A No sir, I did not.

Q Is that the first time you were in that Club house?

A Yes.

Q It was a mere accident you were there?

A Yes.

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Q How long have you known Mulcahey?

A For about 10 years, I guess, or 11.

Q What was the trouble you had with him 10 years ago?

A I was a child about 10 years old, and there was a shoemaker at Varick and Canal Streets. I remember taking a bicycle out of there and I got arrested for taking it.

Q You remember stealing the bicycle?

A Yes.

Q By taking you mean stealing it?

A Yes.

Q What did Mulcahey do?

A I don't know. He got arrested and I was brought into the Criminal Court building.

BY MR. BARRA:

Q I Didn't you say he was the one that stole it, and you did not steal it, before the Grand Jury? Isn't that the charge you made?

A I stole the bicycle I said.

Q You said you did not steal it but that Mulcahey did steal it.

A I don't remember saying that.

Q You tried to get out of it yourself by putting it on Mulcahey?

A No sir, That was ten years ago. I don't remember that.

Q Did Mulcahey ever refer to that in the ten years?

A No.

Q There was no reference ever made to that?

A No.

Q How ever did you remember it so well?

A I happened to be thinking when you asked me was I ever arrested with Mulcahey, that was the first time I was arrested.

Q You and he were charged with that crime.

A MR. BROTHERS: I think three boys were arrested.

Q Do you know where Keating lives?

A 16th Street.

Q You have known him, and met him, since those ten years?

A Keating and Mulcahey.

Q Mulcahey?

A Yes sir.

Q You never had any fight with him?

A No sir.

Q About this matter?

A No.

Q You never referred to it?

A No.

Q You never made any threats against him?

A No sir.

Q Did you ever hear Mulcahey say or do anything to Sweeney before this night?

A I never seen him do anything or hear of him doing anything.

Q You never talked to Mulcahey about Sweeney?

A No sir.

Q Did you ever hear Sweeney say anything about him?

A No, until next day down in the bungalow.

Q Before this shooting, your mean?

A No sir.

Q How about Kennedy?

A No sir; Kennedy used to hang out with Sweeney.

Q You say you sent to Elmira?

A Yes.

Q You were a friend of Kennedy's also?

A Yes.

Q Were you a very intimate friend of Kennedy?

A Just as I am to Sweeney, to Mulcahey and Keating.

Q Don't you know Kennedy was an ex-convict also?

A Yes, I knew that.

Q He had been sent to State's prison?

A Yes.

Q For what?

A I think it was stealing a load of goods.

Q A horse and truck?

A Yes.

Q He was a truck thief?

A He must have been when he went away to Sing Sing.

Q Didn't you know that?

A I never knew he stole a truck.

Q You saw him steal it, did you?

A No, I heard of it.

Q Is that the time he was sent to prison?

A No sir, another time.

Q That made no difference to you; he was a good friend of yours notwithstanding the fact he had been convicted?

A Not that he was convicted. I took him as a friend as I would take anybody else that was convicted.

Q How long had he been out of prison on June 7th?

A I don't know. I know he was in Sing Sing prison for stealing a load.

Q That is not very long ago.

A I don't remember when he came out.

Q You were with him all day on the 6th of June, you say?

A Kennedy was not with us on the 6th of June. He was with us the 7th of June.

Q You went down alone on that day?

A No, me and Sweeney and Jennie and Sweeney's wife were down to Staten Island the first day.

Q Was Sweeney ever in prison?

A Not that I know of.

Q Kennedy, you know he went to prison?

A Yes.

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motions made at the close of the People's case and at the close of the entire case.

THE COURT: I will deny the motions.

MR. ROSALSKY: Exception.

THE COURT: In view of the circumstance, if you wish to re-open the case and put your defense in, I will allow you to do so.

MR. ROSALSKY: No, the defense rests.

Both sides sum up the jury.

The court charges the jury.

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Q You know his reputation?

A Yes.

Q He went with you on the 7th of June?

A Yes.

Q Don't you know how long he had been out of prison?

A No sir.

Q Didn't you ever hear any discussion about a witness against Kennedy?

A No sir.

Q You never heard of any plot to kill Sweeney?

A No sir.

Q You are quite sure of that?

A Yes sir.

THE COURT: Is there any other line of investigation?

MR. BARRA: No.

MR. BROTHERS: We have nothing further.

THE COURT: I think we will take a recess until two-fifteen P.M.

THE COURT: Gentlemen of the jury, we will take a recess until 2:15 P.M., in the meanwhile you will be careful not to discuss this case with anyone, and you must not form nor express an opinion as I have told you, concerning the guilt or the innocence of the defendant until the matter is submitted to you by the Court, if it should be submitted to you. The time for a decision is when you retire, after the case has been submitted to you, and not before that. Keep an open mind on that question until then and come back at 2:15

AFTER RECESS. 2:15 P.M.

MR. ROSALSKY: The defendant *** renews his

PEOPLE vs. MULCAHEY.

CHARGE OF THE JURY.

THE COURT: Gentlemen of the jury the indictment in this case charges the defendant with the crime of murder in the first degree.

It is alleged that this defendant and one other person, in the County of New York, on the 7th of June 1917, with force and arms made an assault upon one Michael J. Sweeney, wilfully, feloniously and of their malice aforethought; and that they pointed at and discharged at said Michael J. Sweeney a pistol wilfully, feloniously and of their malice aforethought and did thereby inflict a wound upon the said Sweeney and that wound was a mortal wound of which the said Sweeney died on the 8th of June, 1917.

And so the Grand Jury of this County charge that Mulcahey and the other person named, the said Michael J. Sweeney in the manner and form and by the means aforesaid wilfully and feloniously of their malice aforethought did kill and murder against the form of the statute in such case made and provided and against the peace of the People of the State of New York and their dignity.

You understand that the indictment is the charge that is made against the defendant. It is not to be

regarded as any evidence of guilt. The fact that the defendant has been arrested and indicted must not be given any weight by you in determining the question of his guilt or his innocence. That must be established by evidence. This Court is established by law to hold the investigation or trial which results from the indictment. The indictment, therefore, being simply a written accusation, must be kept in mind by you merely for the purpose of letting you know what the charge is.

The Statute referred to in the indictment are very clear.

Section 1942 is defined as follows:

"Homicide is the killing of one human being by the act, procurement or omission of another."

Section 1043 defines the different kinds of homicide.

"Homicide is:-

1. Murder; or,
2. Manslaughter; or,
3. Excusable homicide; or,
4. Justifiable homicide."

Section 1044 defines murder in the first degree.

"The killing of a human being, unless it is excusable or justifiable, is murder in the first degree, when committed:

1. From a deliberate and premeditated design to effect the death of the person killed or of another."

There are other circumstances under which murder in the first degree may be committed, but that is the only part of the statute that concern this case, so that I shall not burden you by reading the others.

Under our law, where an indictment is returned charging a man with murder in the first degree it is within the power of the jury, if the evidence warrants it, to acquit him of the crime of murder in the first degree but to find him guilty of some lower degree of the crime, so that I shall call your attention to Section 1046 which defines murder in the second degree.

"Such killing of a human being is murder in the second degree, when committed with a design to effect the death of the person killed, or of another, but without deliberation or premeditation."

Section 1049 defines manslaughter as follows:

"In a case other than one of these specified in Section 1044, 1046 and 1047, homicide not being justifiable or excusable, is manslaughter."

Section 1050 defines manslaughter in the first degree.

"Such homicide is manslaughter in the first degree when committed without a design to effect death:

1. By a person engaged in committed or attempting

to commit a misdemeanor, affecting the person or property either of the person killed or of another.

2. In the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon."

I shall not, unless counsel for the defendant requests it, call your attention to manslaughter in the second degree. You must either find the defendant guilty of murder in the first degree or murder in the second degree or manslaughter in the first degree or not guilty.

Section 1041 provides as follows:

"No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of the killing by the defendant, as alleged, are each established as independent facts; the former by direct proof and the latter beyond a reasonable doubt."

The first thing that the People are obliged to prove in a case of this kind is the killing of the deceased, -- the death of the person alleged to have been killed, and they have called your attention to the testimony of Dr. Schultze and of the officer and the other persons who saw Sweeney before and after he was shot, as it is said by the People, Dr. Schulze testified as to the cause of death by gunshot wounds, such as he described. That is known as the corpus delicti the killing.

That has been proved by direct testimony, by eyewitnesses, by people who saw Sweeney alive and people who afterwards saw him dead, so that the defendant's attorney in summing up said there was no dispute that Sweeney had been killed and killed in the manner alleged by the People, - that is by pistol shot wounds inflicted by the hand of some person.

The People claim that they have further proved the killing by the defendant by evidence sufficient to satisfy you of that fact beyond a reasonable doubt. The mere proof of the killing by the defendant would not be sufficient to constitute a crime, because there are some kinds of homicides that are excusable or justifiable. In this case the defense is a denial that the defendant had anything to do with the killing. The killing would be justifiable if committed in self-defense, or pursuant to the judgment of a competent court or by an officer in the performance of his duty.

Section 1045 defines excusable homicide:

"Homicide is excusable when committed by accident and misfortune, in lawfully correcting a child or servant, or doing any other lawful act by lawful means, with ordinary caution, and without any unlawful intent."

The People here claim that there is not evidence that this homicide was excusable or justifiable, and there is no evidence that it was done in self-defense and that therefore it was a crime and must be regarded either as

murder in the first degree, or murder in the second degree or manslaughter.

If you find, therefore, that Michael J. Sweeney was killed by the defendant and that the killing of him constituted a crime, was not excusable or justifiable, you must fix the degree of the crime. In the first place you must establish whether the killing constitutes murder or manslaughter, and the essential difference between those two crimes is that in murder there must be an intent to kill, Manslaughter is a killing without the intent to kill. If you find that the killing was an intentional one it will be murder in the first degree or murder in the second degree. The difference between those two degrees of murder is that murder in the first degree, as the statute says, is murder as the result of a deliberate design and a premeditated design. Murder without deliberation and premeditation would be murder in the second degree.

The question arises as to what constitutes premeditation and deliberation. Well, those are old terms that have been adopted by the statute from the Common Law, the old law, which existed before the present statute defining murder was in force. The law does not require that such deliberation and premeditation shall exist for any great length of time before the crime is committed. In the case of *Leighton v. The People*, the Court said:-

"If, therefore, the killing is not the instant effect of impulse, if there is hesitation or doubt to be overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder."

In the People v. Majone, the Court said:

"Under the statute there must be not only an intention to kill, but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time; but the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for the choice to kill or not to kill, and for the formation of a definite purpose to kill. And when the time is sufficient for this it matters not how brief it is. The human mind acts with celerity which it is sometimes impossible to measure, and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case."

That is, it must be determined by the jury. You must find from all the evidence in the case whether there was a deliberate and premeditated design to kill Sweeney. If you find that there was, and that he was killed in the carrying out of that design, why his killing would be murder in the first degree, and whoever was concerned

in it, whoever counselled or advised, aided or abetted in the killing in that manner whether he actually fired the shot which caused death or not, would be guilty of murder in the first degree.

If you have a reasonable doubt as to whether there was premeditation and deliberation in this case, it will be your duty to acquit the defendant of that degree of the crime and then to consider the next degree, murder in the second degree, which is a killing with intent to kill, but without deliberation and premeditation.

The question may arise as to what is meant by "intent". Intent is the operation of one's mind. It cannot be seen itself: only its physical manifestation can be seen. If a man placed a loaded revolver in close proximity to the person of another and intentionally pulled the trigger and drove the bullet into the body of the man who dies in consequence of the act, our law is that you may find from what the man did, he did it with an intent to kill, because the killing or death would be the ordinary, natural and reasonable consequence of such action. If you saw a man come up to another on the street and drive a dagger into his heart and the man who was stabbed should die, you would be justified logically and legally in finding that the man who did that killing intended to do just that thing, that he sought the death of the person killed. So that if you believe that this

defendant or anyone else fired the shots from revolvers in the manner testified to in this case in close proximity to the body of Sweeney, that these revolvers were deadly weapon and that Sweeney was killed in that way, that is evidence as to the intent of the persons who did the shooting; and if that intent was not accompanied with premeditation and deliberation, if the assailant acted without deliberation and premeditation, that killing would not be murder in the first degree, but murder in the second degree. On this question of intent it was said in the case of *The People v. Conroy*, page 77, 99 N.Y.:

"It is suggested that the defendant had no motive for killing Keenan. To this it is sufficient to say that he had no apparent motive for killing anyone, and there is no evidence tending to show that he intended to kill some other person or that he did not intend to kill the person whom he actually killed. The existence of malice is to be inferred from the perpetration of the deed. The corrupt disregard of the person and his life of another is precisely the dole of malice, the depraved and wicked purpose which the law requires and is content with.

In capital as well as in other cases it must be held that a person intends that which is the natural and necessary consequence of an act done by him, and unless the act was done under circumstances which preclude the existence of such an intent, the jury have a right to find

from the result produced an intention to effect it. Whenever intent is made an element in determining the character of an act, it is in accordance with our general observation and experience to infer its existence by reference to the laws which have usually or generally been found to control human conduct. Indeed, this is the only method by which the intent can be made to appear. The intent formed is the secret and silent operation of the mind, and the only visible manifestation is in the accomplishment of the thing determined upon. The individual whose intent is sought to be ascertained may remain silent or if he speaks, may be probably will if he has a crime to conceal, speak untruly; and thus the mind is compelled from necessity to revert to the actual physical manifestation of the intent exhibited by the result produced as the safest if not the only proof of the fact to be ascertained. This rule is always applied, unless from the circumstances of the case, it affirmatively appears that the will of the actor was subordinate to some controlling and irresistible cause precluding the existence of any voluntary mental action."

In other words, if a man be in possession of his faculties you may infer that he intended to do the thing that he did. If he killed a man and the circumstances showed that the death was the natural and almost inevitable

result of his act, why you have a right to find that he intended to kill him unless his mind were overwhelmed by passion or so affected by intoxication that he could not form an intent, and then the killing would not be murder, but manslaughter.

There is no evidence in this case as to the mental condition of Mulcahey. You may find that he was in possession of his faculties unless from the evidence produced before you and the circumstances established by the evidence there is a reasonable doubt as to that fact. Insanity or intoxication are circumstances which must be established by evidence. There is no evidence on that point in this case, and in the absence of evidence you may find that he intended the natural consequence of his act.

The word "motive" had been used in some of the selections that I read to you, and also by the defendant's attorney in his summation. It is claimed that this defendant had no motive to kill Sweeney. Well, the law does not require the People to show whether he had a motive or not. The law does not recognize any right on his part to kill Sweeney except in self-defense, but there is no evidence here that this killing was done in self-defense without evidence. No man has a right to take the life of other under the circumstances testified to in this case. Now, what the law concerns itself with is his

intent. If it be clearly proved that he intended to kill him, the law does not care what his motive was. However, the People may always prove motive, if they can, because it may throw some light on the existence of intent, or the non-existence. Proof of motive may aid in deciding the question of intent, or the absence of motive may help you in determining whether or not there was intent to kill. But, if the identity of the person who did the killing is clearly established the question of motive is not material except as an aid in deciding the question of intent. But if there is sufficient evidence of intent, notwithstanding the failure to prove a motive, that is all the law requires. In other words, you should not declare the defendant not guilty, merely because the People failed to prove motive. Whether or not Sweeney had offended his assailants or whether they disliked Sweeney for any reason, the law gave them no right to be his executioners, - you understand that. They may have thought they were doing a splendid thing in killing Sweeney or they may have sought revenge, but that would not justify the killing. I do not say this defendant killed him, you understand; I merely say the law forbids such killing and calls it murder or manslaughter as the case may be. The question of motive and intent were discussed in the famous Molineaux case by a great Judge, Judge Werner, who said:

"In the popular mind intent and motive are not infrequently regarded as one and the same thing. In law there is a clear distinction between them. Motive is the moving power which impels to action for a definite result. Intent is the purpose to use a particular means to effect such result. When a crime is clearly shown to have been committed by the person charged therewith the question of motive may be of little or no importance. But criminal intent is always essential to the commission of crime."

That is, if a man hates another and seeks revenge against another that constitutes what we call a motive that induces men to commit acts of certain kinds. And then if that motive causes a man to make up his mind to kill another and he takes a revolver for the purpose of killing and discharge that revolver at him in order to kill him, why that is what we call the intent, shooting for the purpose of killing, no matter what the motive may be. We read in the paper the other day that a father shot his daughter dead in Jersey. When he took that revolver and discharged it at her he intended to kill her. That was his intent. The law did not give him any right to do that, no matter what his motive was. His motive was we assume, to save her from a life that he considered worse than death. He thought that her conduct would lead

her to life of misery, degradation and shame, and as a father he would rather have her dead, as any decent father would. But the law did not him any right to kill his daughter. Do not think that I wish you to believe that the law approved his act. I merely wish to illustrate to you the difference between motive and intent. When he pulled the trigger and shot his daughter, and killed her, that was his intent to kill. His motive was not harsh. Hi motive was to remove her from misery. His motive may have been love, you understand that. I am simply trying to illustrate the difference between motive and intent.

Now, in this case no motive has been established. That is not fatal to the People's case. If the identity of the person who did the killing is clearly established no proof of motive is required, but the jury may consider the failure to provide a motive on the question of whether or not this defendant did the killing, or secondly, as to what his intent was when he killed, if the evidence satisfies you that he did the killing. If you are satisfied after weighing all the evidence that he did kill Sweeney, or was one of those who killed him, that he did intent to kill, then he was guilty of murder and if there was deliberation and premeditation as well, it would be murder in the first degree; if a deliberate and premeditated

design has not been established, the crime would be murder in the second degree.

If you have a reasonable doubt as to the intent of those who shot Sweeney, why the killing would be manslaughter and not murder.

According to our law, after a man has been indicted and brought to trial the presumption is that he is innocent and not guilty. The burden is on the People to prove his guilt beyond a reasonable doubt: and if they fail to provide him guilty beyond a reasonable doubt he must be acquitted. The rule is that the evidence produced by the People must be strong enough to overcome the presumption of innocence, and to do that it must be strong enough to satisfy the jury of his guilty beyond a reasonable doubt. Now what is meant by reasonable doubt? It is doubt that is based on reason, a reason connected with the evidence or lack of evidence in the character of the witnesses, the failure to clearly establish all the elements required by law to your satisfaction, so that you cannot say that you are fully convinced to a moral certainty that the defendant is guilty. If your minds are in that state, then your minds are in a state of reasonable doubt. The rule as to reasonable doubt does not justify a juror in being swayed by sympathy or prejudice or caprice, or by a desire to avoid doing a disagreeable

thing. All such thoughts should be banished from the minds of the jurors. You swore that you would render an honest verdict, that you would take the law from the Court, that you would not consider the consequences of your verdict, that you would merely truthfully say what you think of the evidence, and then your responsibility ends. It is a very great responsibility and on the manner in which juries view their responsibility and discharge their duties, the safety of the State rests just as surely as our own National safety and honor depend largely on the bravery of our sons. So that the juror who would be swayed by any thought other than the desire to do his duty would be false to the most important trust that the State can ever give him. He would be an enemy to society. It would be a great crime for you to say that this man was guilty unless the evidence satisfied you that he was guilty beyond a reasonable doubt. If, because you did not like to inflict pain or you were prejudiced for any reason against any of the persons connected with this case, you said he was not guilty, whereas in your heart you knew he was guilty, that would be an equally great crime. All the law asks you to do is to be calm, cool and neutral. You are not lawyers. You are not obliged to look after the interest of one side or the other. You are to hold the scales of justice even. The Court has a comparatively unimportant part to play. The court merely decides

on the legal questions that arise from time to time, and if there be a conflict between the attorneys to decide it. The Court must also instruct you in the principles of law that would guide you, and I have tried to make them absolutely plain; and then the Court's work is done. The Court has no power to find any verdict and you will agree with me that I have not expressed any opinion whatever as to the guilt or the innocence of the defendant.

There is only one way that facts can be proved. They must be found by the jury from the testimony of the witness produced here before us or from testimony in the form of Exhibits such as have been introduced in evidence. They jury must coolly, calmly, as I said, neutrally without any bias, without any thought except the desire to do their duty, weigh all that evidence, and then each juror will know in his heart what impression is produced on his mind; And if that impression is a moral certainty that the defendant is guilty, that is what is meant by proof beyond a reasonable doubt. The law requires proof to a moral certainty, not to an absolute certainty. Absolute certainty cannot be found in worldly affairs. Scientists may think they are absolutely sure of things, and perhaps in mathematics there are some things that we may regard as absolutely certain. We know that two and two make four, but when we go much beyond that there is no such thing as absolute certainty. Everything connected with human life is

problematical. You deal with the future. You have business questions to solve and you consider the different reasons why you should or should not do a certain thing in your business, whether you should embark on an enterprise or not, and you try to convince yourselves of the right thing to do and you make up your minds as to what is the right thing to do, and you produce what we call moral certainty in your minds. If the evidence in this case is strong enough to produce that degree of moral certainty in your mind that the defendant is guilty of any crime, then he is guilty and you should say so. If the evidence falls short of that for any reason, if it fails to satisfy you to that extent, to produce that moral certainty in your mind that he committed a crime, then your minds are in a state of reasonable doubt and he is entitled to the benefit of that doubt. If you are convinced beyond a reasonable doubt that he did commit a crime you must fix the degree of the crime. If you have a reasonable doubt as to the premeditation and deliberation he would not be guilty of murder in the first degree; but you might find him guilty of murder in the second degree, if you find that he killed Sweeney with intent to kill, or was concerned in the killing. If you believe there is not proof sufficient to satisfy you that there was any intention to kill Sweeney, why then his guilt would be manslaughter since there is no evidence in this case that

the killing was either justifiable or excusable. The killing of Sweeney, it is admitted by the defense, was a crime, but they claim that this defendant was not concerned in it. As I told you, facts can only be proved by witnesses. You must not speculate as to facts. The facts must be found from the words that fall from the mouth of witnesses produced here before you and from no other source. The statements and comments of counsel, the arguments that may have taken place between counsel, and the remarks of the Judge on those motions or discussions do not concern you at all. They relate to matters of law. They are not intended to influence you and they should not influence you. You weigh the witnesses and decide which of them in your opinion are worthy of belief, if any of them are. In other words, you have the great power of passing on the credibility of witnesses. Every witness that appears in a court room is not entitled to be believed merely because he or she takes the stand and swears to tell the truth. It is for the jury to say whether they tell the truth, the whole truth or any part of the truth. In other words, you may reject all the testimony of any witness as incredible and unbelievable in your opinion, as unworthy of belief, or you may believe it all, or you may reject part of it and believe part of it just as you think the witness told the truth. A witness may tell the truth or a witness may tell what is not true, and yet a witness even

when telling what is not true may absolutely believe in the truth of his or her statements. In other words, they may be honestly mistaken. Of course, if you think a witness made a mistake, even if he or she intended to tell the truth, you can ignore that part of the testimony and believe the rest. If a witness deliberately testifies falsely on a material point in the case, knowing that he or she so testified falsely, then that witness would be guilty of perjury and you might reject all of the testimony of such a witness, although even in that event you would not be obliged to. Some of the statements made by the witness might be true. So you see how broad your powers are. You are the absolute, sole and exclusive judges of the facts. Your opinion on the evidence is the only one that counts. The Court has not expresses any opinion and you know the Court has not sought to sway your judgment in any way in this case. Your judgment of the credibility of the witnesses is the only one that counts. The Court has expressed no opinion on the credibility of the witnesses. The Court merely desires to bring out the truth.

In this particular case there appears to be a contradiction as claimed by the defense between three witnesses called by the People which was largely on the question of the position of Rogers at the time of the alleged shooting. You will remember Rogers swore that he was on the stoop. The girls swore that he was not.

Now the presence of Rogers on the stoop is not a material point in the case. The question here is the killing of Sweeney: was Sweeney killed and how was he killed and who killed him, and were the persons who killed him animated by a design to kill him? Did they have a deliberate and premeditated design and intent to kill him or not. Those are the material points in the case. If Rogers knows who killed him, if he saw the killing, whether he was on the stoop or not when the killing took place, you would be justified in believing his story. If Rogers did not see the killing, did not see the shooting, why then he committed perjury. I hope I make that point clear to you. The question whether Rogers saw the shooting or not is material. He say he saw it. He describes it. He is the only one who has been called here who saw the shooting. Now, if he did see the shooting, the place from which he saw it is not a material point in the case, - if he had the opportunity of fully observing the occurrence and if he has told you truthfully what he saw, if he lied about his whereabouts at the time, you may consider that he told a lie on the question of his credibility: you may consider whether or not such lie was the result of a desire to shield himself or some other person, and to place the blame for the killing on Mulcahey. If the girls knew that Rogers was on the stoop and they deliberately testified

that he was not, they liars but they were not perjurers; because as I said that is not a material point in the case. You will recall that they said that Rogers went into the house. If they were honestly mistaken on that point, of course, you can ignore their testimony as to that point and consider their testimony concerning the coming of Sweeney to the place, the manner of his coming; the fact he went into the Club room and the fact that Mulcahey was there. That is all they testified to. If they saw who did the shooting and they said they did not, they were perjurers and you may ignore their testimony, although you are not obliged to. It is for you to determine whether or not they have told the truth. So that while it would very materially effect the credibility of Rogers if you believe these girls that he was not on the stoop, still that in itself would not be fatal to the People's case: if you believe that Rogers saw the things that he testified to, no matter where he was standing when he saw them. I hope I make myself perfectly clear to you on that point. If Rogers was not standing on the stoop but saw the shooting from another point, he is a liar and he may have had a motive for his lying which has not been developed. It is for you to say whether he lied on that point or not. But you might still believe the rest of his testimony as to the shooting, if, as Mr. Brothers claims in summing up, his testimony is corroborated by

the testimony of Dr. Sohultze, and by the silent testimony of the pistol wounds and the coat, which it is claimed cannot lie. As said to you by a counsel on both sides, you should not arbitrarily in rejecting the testimony of any witness. You should proceed with great deliberation and caution. You may consider the motive of a witness in giving his or her testimony, - I have explained fully to you what motive is, - whether the witnesses are friendly or hostile, whether they were led by that friendship or by that hostility to state either more or less than the whole truth to you, or to state things as true which were not true; their relationship to the defendant and the deceased or to the whole case; whether they were afraid to testify; whether they were animated by fear, or whether they had a desire to protect some one else whose identity has not been disclosed. These are only tests. They are not given to you as reason for rejecting it, but merely that you may use the same tests that we ordinarily employ in deciding on the credibility of any person in the ordinary affairs of life. The same rules apply to all witnesses. On cross-examination it is always proper to bring out any criminal, vicious or immoral act in a witness's career. So that the jury may consider that, if he has committed a crime as Rogers had, they may consider him as a drunken, idle, dissolute

fellow, an ex-convict, but the law permits him to testify because the truth often comes from a very foul source, and crimes like this are sometimes committed under such circumstances that only such people have any knowledge of them. If you were to arbitrarily or improperly exclude their testimony why justice would be defeated very often; so that in the interests of justice you must carefully and calmly consider his testimony in relation to all the other facts and circumstances in the case. You may consider his character, his drunkenness, idleness and his conviction and give it such weight as you think it ought to receive. If you think his testimony should not receive any weight why exclude it all and then acquit the defendant. If you think he has told the truth, notwithstanding his character, why it is your duty to find a verdict accordingly. If on his testimony and the testimony of all the other witnesses in the case you are convinced that Sweeney was killed in a criminal manner and that the defendant was concerned in the killing of him, you must find him guilty. The claim having been made by the defense that two of the witnesses for the People contradict Rogers why it is for you to say whether or not they did contradict him, and how much weight you will give to that contradiction. However, it is not on a material point in the case. If they had contradicted

him as to the identity of the person who did the killing that would be a material point and I would not submit this case to your consideration if such were the facts.

In submitting the case to you, you will please understand that I have no opinion as to the guilt or the innocence of this defendant. I leave that absolutely to you. My burden is to see that the defendant is tried according to law, and to properly explain the law to you. You must consider inconsistencies, if any, in the People's case and give them such weight as you think they are entitled to receive. Believe such parts of the testimony as your reason and your judgment tell you are true and worthy of belief and reject the parts that seem to you unreasonable, incredible and unworthy of belief, using your own good sense and judgment. Be animated only by the highest motives to do your duty and if after you have weighed the testimony in that way you are firmly convinced to a moral certainty that Mulcahey killed Sweeney, acting in concert with Collins or any one else, why then he is guilty of a crime, and if that killing was done with the intent to kill, accompanied by premeditation and deliberation, why he is guilty of murder in the first degree. If it were done with intent to kill but without deliberation and premeditation, as a result of a sudden quarrel, then it would be murder in the second degree. If there were a quarrel and no

intent to kill, but the defendant animated by passion and using a dangerous and deadly weapon, and his act resulted in the death of Sweeney, it would be manslaughter in the first degree. Keep in mind the difference. - the dividing line between murder and manslaughter. Murder necessarily implies intent to kill; manslaughter killing without an intent to kill in the way described in the Statute, and which I will read to you again if you have any doubt about it. I do not think you will need it.

If you have a reasonable doubt as to whether Mulcahey was concerned in the killing, that he was merely on the premises the same as others and had nothing to do with the killing, I say if you have a reasonable doubt of that, if that fact is not established to your complete satisfaction beyond a reasonable doubt, why acquit him.

The verdict therefore, should be either guilty of murder in the first degree, or guilty of murder in the second degree, or guilty of manslaughter in the first degree, - only one crime, understand, one verdict, - or on the other hand, not guilty.

MR. ROSALSKY: Will your Honor charge the jury with reference to the defendant's failure to take the stand?

THE COURT: The law is that the defendant has a right to take the stand or not, as he pleases. The fact that he does not take the stand must not be considered

by you at all in considering this case. It is not evidence of guilt. In other words, you decide the case on the evidence, - you understand that. His failure to testify is not evidence, so that you must not consider that in any way whatever. You must not draw any inference of guilt from that. Our law is that his failure to take the stand is consistent with his innocence and must not be considered by you otherwise. The evidence of his guilt must be found in the testimony. Is that clear enough, Mr. Rosalsky?

MR. ROSALSKY: Yes, your Honor. I ask your Honor to charge the jury that there does not appear to be any evidence that any threats were made against any witness and their testimony must be looked upon in that light, unless there is testimony in the case that there were threats made.

THE COURT: I will charge that there is no evidence that any threats were made, but the jury have the right to consider the circumstances under which the witnesses lived, in asking themselves whether or not they had any motive for suppressing part of the testimony, or whether they had any motive for testifying against the defendant. They may always consider the question of motive of a witness on the question of credibility. Of course, if there were direct proof of threats made by the defendant it might be put in evidence, but it would

be very difficult to put that in evidence legally, unless the defendant himself made a threat; the defendant would not have been bound by the act of any one else who made threats, Mr. Rosalsky, and it is no reflection on the defendant that they may have feared injury. There is no evidence that they have, but the jury must consider the motive of each and every witness and determine how much credence they will give to the testimony of that witness. You may take an exception to that, Mr. Rosalsky. It is not what you request.

MR. ROSALSKY: I am satisfied, your Honor.

MR. ROSALSKY: Also the fact that while the jurors were being interrogated before they were accepted as jurors, they were informed that the defendant had been previously convicted of crime.

THE COURT: Jurors would be criminals if they considered that in any way in this case. I cannot make it any stronger than that. What the defendant did heretofore we are not concerned with. If he were a witness it would be proper to consider it on the question of his credibility. He did not take the stand. He exercised a right our law gives him not to take the stand and therefore it is immaterial who he is. I want to make that perfectly clear to you. It is not a question whether Mulcahey is a good or a bad man; the question is

as to the evidence in the case, - whether it shows you that he is guilty or not, - and the fact that he was once convicted for crime we are not concerned with, and it has no logical bearing here, and you must not consider it at all. He is entitled to an absolutely fair trial.

MR. ROSALSKY: May I ask your Honor to charge that if the jury believe that Collins did the killing and that the defendant had no connection with it, they must acquit the defendant?

THE COURT: I so charge; but if he was there holding a pistol in his hand when Collins was shooting, why they will have to determine from their own experience whether he was helping or not. It does not make any difference whether the bullets from his pistol or Collin' pistol killed Sweeney. If he was there aiding and abetting Collins and if Collins did the killing why he is just as guilty as Collins.

THE COURT: Mr. Brothers, have you any request?

MR. BROTHERS: None, your Honor.

THE COURT: Gentlemen of the jury, if there are any further instructions you would like, I will give them to you. If not, I will ask you to retire and render an honest verdict, and that is a vindication of the law. Every honest administration of the law, no matter what the act is, whether you find him guilty or not, if it

is an honest verdict, the verdict is a vindication of the law.

If the jury desires the exhibits is the defendant willing that they should take them?

MR. ROSALSKY: Yes.

(Defendant nods in the affirmative).

THE COURT: The defendant consenting, they may have them if they wish.

The Jury retire at 4:50 P.M.

The Jury return at 5:40 P.M.

THE CLERK OF THE COURT: Gentlemen of the jury have you agreed upon a verdict?

THE FOREMAN: We have, sir.

THE CLERK OF THE COURT: How say you, do you find the defendant guilty or not guilty?

THE FOREMAN: Guilty.

THE CLERK: of what?

THE FOREMAN: Manslaughter in the first degree.

THE CLERK: Harken to your verdict as it stands recorded. You say you find the defendant guilty of manslaughter in the first degree, so say you all?

MR. BARRA: Your Honor, may we have the jury polled?

THE COURT: Certainly.

(Whereupon the jury is duly polled by the Clerk, each and every juror in turn stating that is his verdict.)

THE CLERK: Harken to your verdict as it stands recorded, you say you find the defendant guilty of manslaughter in the first degree, so say you all?

The defendant's pedigree is taken.

MR. BARRA: Will your Honor be kind enough to defer sentence in this case for a week and we will then make such motions as we may be advised.

THE COURT: Yes sir, all your rights are reserved. You have one week as you request.

Defendant remanded one week for sentence.

New York, January 17, 1918.

The defendant is duly arraigned for sentence before Hon. Joseph F. Mulqueen, Judge.

THE CLERK OF THE COURT: James Mulcahey, what have you now to say why judgment should not be pronounced against you according to law.

MR. BARRA: The defendant moves that your Honor set the verdict of the jury aside, and grant this defendant a new trial, upon the grounds:

First. That the verdict of the jury was against the evidence, against the weight of evidence and contrary to law.

Second. That the Court erred in denying the defendant's motion to advise the jury to acquit at the close of the People's case at the close of the entire

case.

Third. Because the Court admitted illegal and incompetent testimony under the defendant's objections and exceptions, and on the further ground that the Court misdirected the jury upon matters of law *** to which misdirections the defendant duly excepted, and upon the exceptions taken during the trial.

Defendant also moves in arrest of judgment on all the grounds stated in the Code of Criminal Procedure.

THE COURT: The motions are denied.

MR. BARRA: Exception, please.

THE COURT: There is some investigation that I am making in this case that I have not yet completed and I will therefore adjourn the imposition of sentence until January 29th. In adjourning this sentence I do not wish to be understood that I am allowing the arrest of judgment. I am denying all your motions, and I am really adjourning the imposition of sentence until I receive a further report.

MR. BARRA: To your Honor's adjournment of the sentence we have absolutely no objections. In point of fact we welcome it.

Imposition of sentence adjourned until January 29th, and defendant remanded.

COURT OF GENERAL SESSINS OF THE PEACE

City and County of New York, Part V.

THE PEOPLE OF THE STATE OF NEW YORK

against

JAMES MULCAHEY.

Before HON. JOSEPH F. MULQUEEN, Judge.

New York, February 1, 1918.

The defendant is indicted for murder in the first degree.

Indictment filed July 9, 1917.

APPEARANCES:

For the People: ASSISTANT DISTRICT ATTORNEY BROTHERS

For Defendant: C.B. BARRA, Esq., and JOSEPH ROSALSKY, Esq.

The defendant is duly arraigned for sentence before Hon. Joseph F. Mulqueen, Judge.

THE CLERK OF THE COURT: James Mucahey, what have you now to say why judgment should not be pronounced against you according to law.

MR. ROSALSKY: May it please your Honor, the defendant has been convicted of manslaughter in the first degree.

Heretofore the defendant was convicted of burglary and sentenced to State's prison for two years. His first plight was by reason of bad company. The defendant in this case here protests his innocence despite the fact that the jury has convicted him of manslaughter in the first degree.

He has made a statement to the District Attorney, and in that statement he protested his innocence and continue to protest his innocence. He admits he was present on the night of the shooting and that he was in the club, but that he had nothing at all to do with the shooting and did not take any part in it.

The defendant after his release from State prison was in the custody of Father Lynch for about a year, and Father Lynch has spoken very highly of him. The defendant continued to be employed and was employed after his release. He is a married man and father of one child. He was a young wife and an old mother who nee his help.

In view of all these circumstances I ask your Honor to give him the mercy your Honor sees fit in this case.

During the trial of the case, your Honor will recall while there was a question of fact for the jury to pass upon, the question of defendant's guilt is very slim and hangs on *** evidence which is very slim, hangs on evidence that a young man whose reputation is not any too good, gave, and the story which he told was a sort of improbable story.

Your Honor in your charge stated that if he were not on the stoop he was in no position to see the shooting.

THE COURT: I did not state any fact. I said that even if he had testified falsely about his position, if he knew of the trust of the statements he made, if he

Was in any other place the jury might believe that part of the story. I said that because two of the People's witnesses said he was not where he said he was, but they might have been mistaken. I think the case was fairly presented to the jury. He had an opportunity to tell the jury all he knew about the case, but he declined to do it. It is rather late for him now to make statements. That was the time to make them when he was on the stand.

I am going to send him to State's prison for 20 years. I think he was previously convicted of crime so he must get a determinate sentence. That is the maximum, and I think he is very fortunate that the jury did not find him guilty of murder in the first degree. It was a cold blooded murder, and he was in it or he was helping someone else that was in it. If he wishes to suffer for him, all right. He knows all about it. He declined to give the jury any information, and left them to consider the evidence which was before them, and I think they rendered a very merciful judgment. This killing of Sweeney was a wilful and cowardly murder. We cannot allow Mulcahey and others to become the executioners of men they do not like. No one is to blame for his present predicament but himself. That is the sentence of the Court, 20 years in State's prison.

L. Luts.

Official stenographer.