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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK, PART V.

-----X
:
THE PEOPLE OF THE STATE OF NEW YORK:

-against-

F R A N C E S C O S A N S O N E.:

: Before

: HON. THOMAS C. O'SULLIVAN, J.
: and a Jury.

: #1194
-----X

New York, May 19th, 1910, etc.

Indicted for Murder in the First Degree.

Indictment filed April 21st, 1910.

A P P E A R A N C E S.

For the People,

ASSISTANT DISTRICT ATTORNEY ROBERT C. McCORMICK.

For the Defendant,

CHASE MELLEN, ESQ.

A jury was duly impaneled and sworn.

James E. Lynch,
Official Stenographer.

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dispute resulted in the breaking up of this game.

Then these men, some of them left the saloon and walked east to Mott street, down Mott street to a house about half way between Mott, or between Hester and Canal, on the east side of Mott street, and went in there. One of the men in the crowd who had been playing cards, and who came out and came down to 102 Mott street, was a man named Girolomo Schapolo. Girolomo Schapolo was an uncle or a near relative of the defendant, and Schapolo conducted this house, which was a rear house, where you go through an alley way from the sidewalk, a narrow passage way back into a rear yard, and it was in a building that was built in the back yard where these men, a number of them lived with Schapolo. Schapolo conducted a boarding house, as he calls it, as they all call it, on the ground floor of this rear building. I think he had two rooms there and in these two rooms lived a large number of Italians. Well, they called it a boarding house. They slept there but I believe did not eat their meals there.

Thereafter, the defendant and the man that was subsequently killed by him, Tonaiulo, and four other Italians, walked from this rear building out through the narrow passageway and then proceeded south on Mott street.

Now, mind you, there were six of them. So far as I

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am able to tell, there were six in this crowd. They were walking two by two on the sidewalk. In front were two men whose names I will not try to recollect, but it will come out in the evidence, and I want you to understand, gentlemen, that now I am giving you a mere outline and not attempting to give the evidence by which the People will establish their case.

These six men, as I say, proceeded south on Mott street until they got within about 75 feet of Canal and then the defendant was walking by the side of Tonaiulo, when Tonaiulo turned and said he was going back to 102, that is, the house they lived in, the rear house. It seems that their reason for coming out of 102 was that some one in the crowd, observing that there was bad blood between the defendant and Tonaiulo, had said, "Let us go out and get some coffee," and they were on their way to some cafe for that purpose, the idea of this man being that thereby, any further dispute between these two men could be avoided, and as I say, when they got down on Mott street, Tonaiulo started back and said he didn't want any coffee, and then it was that this defendant pulled a revolver from his pocket, standing near the curb on the sidewalk, and fired, and without any excuse or justification whatever, at Tonaiulo, and then stepped back several steps, Tonaiulo in the meantime staggering, and

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he fired again at him, and then Tonaiulo fell close in to the railing that goes along the inside of the sidewalk, the defendant, Sansone, in the meantime, backing off into the street.

This shooting was witnessed by three police officers and it is upon their testimony largely that we rely for a conviction of this man of the crime of murder in the first degree.

Two police officers were standing about 15 feet north of Canal street. Mind you, this shooting took place 75 feet north of Canal street on the east sidewalk. These two officers were standing on the opposite side of Mott street about say 15 or 20 feet from Canal street, so that they were almost across the street from them. They were there, they explained their presence there by saying they were on another case, looking for some men that they wanted to arrest, and, strange as it may seem, 50 or 75 feet north of where they were on the west side of Mott street was another police officer.

These men, these three officers heard the first shot. They had noticed these six men walking south on the street. / They had noticed that they had stopped, some of them turned to go back, and then they heard the shot. That attracted their attention and all three of them rushed toward the place where the shot had been fired. They saw

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Sansone there with a gun in his hand and they saw the deceased staggering, and at the second shot fall, and they saw the second shot fired.

We contend, having killed this man without any justification whatever, this defendant should be convicted of the crime of murder in its first degree.

F R A N C I S M c G E E, called and duly sworn as a witness on behalf of the People, testified as follows:

BY THE COURT:

Q Now, Officer, speak loud enough to let the last man in that box hear distinctly every word you say, will you remember that? A Yes, sir.

DIRECT EXAMINATION BY MR. McCORMICK:

Q You are attached to the Detective Bureau? A Yes, sir.

Q And you are a member of the Municipal Police Force?

A Yes, sir.

Q On Saturday evening, March 5th, 1910, at about ten minutes after eleven, where were you? A I was on Mott street between Canal and Hester street.

Q How far, or on what part of the street were you?

A I was on the east side of the street, about the middle of the block.

Q Did you hear a shot fired there that night? A Yes, sir.

Q Well, just tell what you saw in connection with the fir-

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ing of that shot? What was the first thing attracted your attention, and then go on? A I was standing in the hallway of No. 101 Mott street. I heard a pistol shot. A little south of me on the opposite side of the street from where I was standing, it was, and I ran in that direction, and I saw the defendant fire a second shot, and I saw the deceased in this case fall on the sidewalk, and just as I arrived there, my two side partners placed the defendant under arrest, and picked up a revolver from the street which he threw away, which I saw him throw away.

There was three other Italians with this defendant who I placed under arrest and we held them as material witnesses.

Q Now, when you heard the shot, you looked in that direction, did you? A Yes, sir.

Q Where was the defendant standing at that moment?

A He was standing on the sidewalk.

Q What part of the sidewalk? A On the sidewalk proper, near the curb.

Q And where was the defendant, or the deceased I mean?

A The deceased was standing nearer the iron fence, next to the building.

Q Was he standing, ot describe it? A When I got there he was lying down. His head was lying in the direction of Canal street and his feet towards Hester street. That is, he was unconscious.

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Q You say you saw a second shot fired, did you? A Yes.

Q Where was the defendant standing when he fired the second shot? A He was standing in front of the deceased, nearer the curb.

Q Well, I know, but you did not see him, or you saw him just after he fired the first shot, didn't you? A I did not see who fired the first shot. I saw the second shot fired by this defendant, but I don't know who fired the first shot. I didn't know at that time.

Q Was any one else standing near either of these two men at that time? A There was five of them altogether.

Q When you first looked? A Yes.

Q What became of these five, did you notice ? A The defendant, the deceased and three others who were placed under arrest, they are witnesses in this case now.

Q Well, did you notice what became of them at the moment of the firing? A They stepped away, and Guarniari and Mc Mahon placed the defendant under arrest, and I the other three witnesses and backed them up against the fence and searched them to see whether they had any concealed weapons or not, and there was not any of them had any.

Q Did you notice whether any of them came close to the body of the deceased? A Officer McMahon took the defendant over to the deceased and tried to get an identification, but he was unconscious.

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BY THE COURT:

Q What? A Asked him if he could identify this man, but he was unconscious.

THE COURT: Strike out that he tried to.

BY MR. McCORMICK:

Q You say you saw the defendant throw a revolver down? How long was that after the second shot was fired? A A lapse of probably two or three seconds, something like that.

Q Where was the defendant when he threw the revolver on the street? A He was just standing on the curb, stepping off the curb on to the street.

Q Didn't you say he had already backed out into the street when he threw it down? A When he threw it down he was just stepping down.. He threw it right alongside the curb.

Q On the street or on the sidewalk? A The sidewalk -- or on the street rather.

Q Who was it first laid hands on the defendant?
A Officer Guarniari.

Q Did you see him? A Yes.

Q How far from the curb was the defendant when that happened? A Probably five feet.

Q Towards the middle of the street? A Yes.

Q What was the defendant doing at that time? A He was backing away from where the body of the deceased lay.

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Q Is that all that happened there at that time?

A We took them around --

Q Did Officer Guarniari hand that revolver to you, did you say? A Yes.

Q And are you able to identify it? A Yes.

Q Where is it, do you know? A Officer McMahon has it outside in that other room.

Q Now what was the condition of this revolver as to being loaded? A It was a 38 calibre.

Q No, as to where it was loaded? A There were three loaded cartridges in the revolver and two empty shells.

Q What kind of revolver was it? A It was a 38 calibre, Harrington-Richardson revolver.

Q Now, did you notice what the deceased was doing at the time the second shot was fired at him? A He was falling.

Q He was staggering? A He was falling back against the fence.

Q And did you notice his hands? A I was not near enough to see his hands at that time.

Q Could you tell whether or not there was anything in either hand? A Well, when I got there there was not, no, sir.

Q Is that the revolver you found there (indicating)?

A Yes, sir.

MR. McCORMICK: I offer the revolver in evidence.

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MR. MELLEN: No objection.

(Marked People's Exhibit 1 in evidence)

Q You have testified that there were three loaded and two unloaded shells in the revolver at the time? A Yes, sir.

Q Are those the shells (indicating)? A Yes, sir.

MR. McCORMICK: I offer them in evidence.

Q How can you identify these? A Well, they are the ones that I put in that case. One of those cartridges I marked with my knife so that I can tell that it has been scratched.

Q And you do identify them now in that way? A Yes, sir.

MR. McCORMICK: I offer them in evidence.

MR. MELLEN: No objection.

(Marked People's Exhibit 2 in evidence).

Q Is that all you saw there at that time? A Yes. Well, I saw another revolver there. Officer Kaufmann of the Sixth Precinct came --

Q He had the revolver, did he? A He picked up the revolver and handed it to me.

Q Did you see him pick it up? A No, sir.

MR. MELLEN: What did he say?

THE WITNESS: Officer Kaufmann picked it up and handed it to me.

Q Now, did you have any conversation with the defendant

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at that time? A Yes.

Q What was it? A Asked him why he did the shooting and he said, "I didn't do any shooting".

Q Do you remember his exact words? A He said, "He no shoot".

Q Now, after that, on Sunday, March 6th, 1910, that is, the next morning, did you have a talk with him? A On the way from Police Headquarters to the Tombs Court here, the defendant, I had him handcuffed to me, coming down, and he asked --

THE COURT: No, strike that out.

A (Continuing) The defendant asked me for permission to buy a pack of cigarettes and I gave him five cents, and he stopped at near the corner of Canal and Centre street and bought a pack of cigarettes and he then said to me, "He no afraid, I shoot the son-of-a-bitch, he all the time make trouble for me and I can no longer stomach him."

Q Did he say anything about going to jail? A He said, "He no afraid, going to jail for him, ^{he} all the time make trouble."

Q And that is all you know about this case? A That's all, yes.

MR. McCORMICK: That is all.

THE COURT: Gentlemen, you are admonished that you are not to discuss any matter connected with this trial, either amongst yourselves or with others, and you are

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not to form or express any opinion upon it, until it has been finally submitted.

Recess until 2 o'clock p.m.

After recess.

TRIAL RESUMED.

FRANCIS Mc GEE, a witness for the People, resumes the witness stand:

MR. McCORMICK: If your Honor please, it is consented that a diagram showing Mott street from Canal street to Hester street in the County of New York, be admitted in evidence.

(Marked People's Exhibit 3 in evidence).

MR. McCORMICK: I would like to recall this officer, whose direct examination I rested, for another question.

THE COURT: Very well.

DIRECT EXAMINATION CONTINUED BY MR. McCORMICK:

Q Officer, I now show you People's Exhibit 3, which is a diagram showing Mott street, and I want you to indicate on this diagram where you were standing when you heard the first shot. Now, examine it carefully before you make any mark, in order that you will be sure to get it in the right place.

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THE COURT: If you care, Mr. Mellen, to see the diagram while the officer marks it, you may do so.

Q Put the letter "M", just draw a circle around it.

A That's where I was standing (indicating with the letter "M" in a circle).

Q Now, make a mark, the letter "X" where the defendant was standing when you first saw him? A (Witness indicates). Well, about there, as near as I can designate it.

MR. McCORMICK: I might state that the numbers of the houses on both sides of the street are indicated on this diagram, and also the numbers of the houses of buildings on the north side of Hester street including No. 189, which was the saloon where they were before the shooting took place.

THE COURT: If that is admitted in evidence, and it is in evidence, you had better show the diagram to the jury with the explanation which you have to make.

MR. McCORMICK: I think I have stated already sufficient for the jury to understand, that these houses have got the numbers marked on them, and also the houses on the north side of Hester street. The letter "X" shows where the defendant was standing when the officer first saw him, and the letter "M" shows where he, the witness, the officer, was standing.

Q Now, just one more question, Officer. What were you

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doing there at the time, Officer? A I was working on another case.

Q That is all.

CROSS EXAMINATION BY MR. MELLEN:

Q Now, Officer, this was about a few minutes after eleven o'clock, was it, at night? A Yes, sir.

Q How was the street lighted there, was it lighted that night? A Yes, it is lighted. There is an electric light in the middle of the block, about in the front of 102 Mott street, very nearly opposite to where I stood. There is an electric light at the corner of each end of that block.

Q Canal street end? A One at Canal and one at Hester, yes, sir.

Q Now, you say the first thing that attracted your attention to the people on the other side of the street from you was a shot? A Yes, sir.

Q Had you noticed these people before that time at all? A I had noticed a number of people going to and fro through the block, and in and out of the hallways of these different tenement houses.

Q How soon after the first shot was fired that you heard, did you start across the street to where they were?

A Immediately.

Q And how soon after that did you hear the second shot?

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A In a lapse of probably five seconds, may be more than that. I couldn't say.

Q It was almost instantaneous, wasn't it? A Almost, yes, sir.

Q Did you start on a run across the street? A Yes, sir.

Q Do you wish to tell the jury that you positively saw the defendant here, Sansone, fire that second shot which you heard? A Yes, sir.

Q What was it that particularly attracted your attention to Sansone in this short interval? A Because I saw him fire the second shot.

Q No, what was it that drew your attention to him particularly so that you could see the second shot? A I saw the shot fired from his hand.

Q Were you looking at him when you started to cross the street on a run? A I was looking at the number of them standing there together, five, I believe.

Q Well, was Sansone standing out there alone, by himself? A When the second shot was fired he was by himself, yes, sir.

Q In this short interval the others had scattered away from him? A The others were beginning to come up Mott street in the direction of Hester street.

Q How far was the deceased standing from Sansone when

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you say you saw Sansone fire this second shot? A I should say five or six feet.

Q And he was standing, the deceased was standing against the railing, was he? A When I saw him he was leaning, falling against the railing, yes, sir.

Q He was falling against the railing? A Yes, sir.

Q The railing runs in front of the factory building on the east side of Mott street at this point? A Yes.

Q Along a distance of about 75 feet or so from Canal?
A Yes, sir.

Q Was it light at that spot? A Fairly. It was not exactly under an electric light, but it was say 50 feet from the electric light.

Q Now, are you sure this revolver you saw was in the hands of Sansone? A Yes, sir.

Q Which hand? A The right hand.

Q What did you see Sansone do with that pistol?

A I saw him throw it in the street.

Q Throw it down or drop it? A Throw it down.

Q In what part of the street? A Right near the curb, right near the sidewalk where he stood.

Q Almost at his feet he threw it? A Probably five feet from his feet.

Q Where was the other revolver that you have mentioned, that was subsequently handed to you, when you first saw it?

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A In the hands of officer Kaufmann.

Q Have you that revolver here? A Yes, sir.

Q Will you kindly produce it? A It is out in that witness room. Officer McMahon has it out there.

(A revolver is produced in court by a court officer).

Q Is this the revolver that was handed you that night (indicating)? at that spot? A Yes, sir.

MR. MOELLEN: I offer that in evidence.

(Marked Defendant's Exhibit A in evidence)

Q Now, how near was that revolver, or was Kaufmann standing to the deceased when he handed you it? A Two feet of the body of the deceased.

Q Did you see him pick it up? A No, sir.

Q You did not see how it came into his possession?

A No, sir.

Q Did you see anything else, any weapon, other kind of weapon picked up that night or taken from the deceased?

A No, sir.

Q You did not examine his body? A No, sir.

Q How long did his body lie there? A I should say about ten minutes.

Q How was he taken away? A Taken away in an ambulance.

Q To what hospital? A Hudson Street, House of Relief.

Q Did you go to the hospital with the body? A I did not

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accompany the body there, no, sir.

Q You went there afterwards? A Yes, sir.

Q Did you see, or were you shown anything else taken from his body or person? A No, I was not shown anything else.

Q Well, you know as a fact that something else was taken? A I have heard that he had a subpoena on him. My recollection is he did have a subpoena on him to appear in some court in Staten Island.

Q Did you hear anything about any weapon that was taken from his body or person? A No, sir.

Q Well now, before you heard and saw this second shot fired, had you noticed the deceased and the defendant together that evening? A No, sir.

Q You had not seen them at all? A I may have seen them but didn't pay any attention to them.

Q Was there anything going on on the sidewalk just before you heard the first shot, the sidewalk of Mott street opposite where you were standing, that attracted your attention in any way? A There was there talking which I didn't understand, probably loud talking, I believe there was.

Q Indulged in by several persons? A Yes, sir.

Q You do not understand Italian? A Some of it, very little.

Q You did not understand what these people were saying?

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A No, sir.

Q You did not hear what they said? A No, sir.

Q Who reached this, who was the ~~first~~ first officer to reach this assemblage? A Joe Guarniari.

Q Did you notice him before this occurrence that evening? A He was with me that evening, yes, sir.

Q Where was he when you were in the doorway? A He was in a doorway on Mott street about 75 feet nearer to Canal street than I was, south of me.

Q The doorway of what building, if you recall? A Some factory building there. I don't know which one.

Q On the east or west side? A The west side.

Q That is the same side with you? A Yes, sir.

Q How many doors away from you? A I should say about 75 feet may be, further down, he was nearer Canal street, but I don't know just which door he was at.

Q Now, when you heard the first shot and left this doorway did you see this officer? A I saw this officer as I started running in their direction, I saw them coming, he and officer McMahon coming up the street.

Q So they were the ones who got there first? A Yes, sir.

Q Both of them? A Yes, sir.

Q What did the defendant do when they arrived, that you saw? A Didn't do anything. Simply placed him under ar-

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rest and took him over near the body of the deceased.

Q He was peaceable and quiet, wasn't he? A Yes, sir.

Q Made no resistance? A No, sir.

Q You say that you did not see the deceased's hands that evening, before he was lying on the ground, I think you said?

A I didn't pay any attention to his hands, no, sir, I didn't notice his hands.

Q You didn't pay any particular attention to him beyond seeing him fall? A Beyond seeing the man fall, I didn't know who it was or what he was doing, or anything else.

Q That is all.

RE-DIRECT EXAMINATION BY MR. McCORMICK:

Q Did you attend the autopsy? A Yes, sir.

Q Where did that take place? A In the House of Relief, Hudson street Hospital.

Q What day, the next day, do you remember? A It was on Monday, the 7th of March.

Q Did you see any physician there? A Yes, sir.

Q Who was it? A The Coroner's Physician.

Q Do you know his name? A I do, but I can't recall it.

Q Is he in this room now? A Yes.

Q Where? A Sitting right back there (indicating).

MR. McCORMICK: (Calling) Dr. Weston, will you

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stand up?

Q Is that the man you saw (indicating)? A Yes, sir.

Q Performing the autopsy? A Yes, sir.

Q Was the body upon which he performed the autopsy the body of the man that you saw lying in Mott street that night, which you have testified to? A Yes, sir.

Q Now, this body, the position of it, you said it was lying along the rail? A Yes, sir.

Q About how far from the railing, on the inside of the sidewalk? A He lay right against the railing.

Q And was his head toward the north or south? A South.

Q Was he lying on his back or on his side or how?

A Lying on his back.

Q Did you hear any conversation there between Sansone and any other person?

MR. MELLER: I object to that.

THE COURT: Between whom?

MR. McCORMICK: Sansone, the defendant, and some one else.

MR. MELLER: I object to that.

MR. McCORMICK: It might probably have been better to ask the question on direct examination, but it is a question I neglected to ask.

THE COURT: I will allow it.

MR. MELLER: Exception.

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A Yes.

Q With whom? A Pasquale LoRusso.

Q What was said?

MR. MELLER: Now, I object, your Honor.

Q Did you hear the defendant say anything?

THE COURT: He may answer that question.

MR. MELLER: Exception.

A No, sir, I didn't hear the defendant say anything.

Q Did you hear any conversation, did you hear any one say anything to the defendant? A I heard Pasquale LoRusso say to him, "You traitor, you traitor".

MR. MELLER: I move to strike that out. It has not very much bearing on the issue.

THE COURT: Yes, strike it out and the jury are directed to disregard it absolutely. You are not to consider it in your ~~xxx~~ investigation of this testimony, gentlemen.

ALBERT T. WESTON, M.D., called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your occupation? A I am a physician.

Q Are you one of the Coroner's Physicians of the County of New York? A I am.

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Q How long have you held that position? A 21 years.

Q 11 years? A 21 years.

Q Did you perform an autopsy on the body of a man on the 6th day of March, on or about the 6th of March at the House of Relief, Hudson Street Hospital? A I did.

Q And was that the body that was identified to you by the preceding witness? A It was.

Q Will you state what the result of that, or you made an examination of the body at first, did you? A I did.

Q What did you discover upon that examination? A I found a pistol shot wound of the head and a pistol shot wound of the neck. The pistol shot wound of the neck was not a wound which involved anything except the skin and muscles. The wound of the head penetrated the head, caused a fracture of the skull, laceration of the brain, which was the cause of death.

Q What did you say was the cause of death? A Pistol shot wound of the head, laceration of the brain.

Q Could you tell how long the man had been dead? Was there any way of telling that? A Why, I could tell a little better by the notes (indicating). The autopsy was performed on the day of his death. He died at 1:10 and it was performed on the same day.

Q 1:10 in the morning? A Yes.

Q What time of day did you perform the autopsy?

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A 11:10 a.m.

Q Was the body identified to you by any one else than this officer? A By the ambulance surgeon and by a relative.

Q Do you remember the name of the relative? A I can refresh my memory by the notes.

Q Yes. A It was Pasquale LoRusso, who said he was a cousin of the deceased.

MR. McCORMICK: That is all.

MR. MELLER: That is all.

J E R E M I A H M c M A H O N, called and duly sworn as a witness on behalf of the People, testified as follows:
DIRECT EXAMINATION BY MR. McCORMICK:"

Q You are a member of the Municipal Police Force, are you? A Yes, sir.

Q Attached to the Detective Bureau at Police Headquarters? A Yes, sir.

Q On Saturday night, March 5th, 1910, about a little after eleven o'clock, where were you? A I was standing in the doorway of 71 Mott street.

BY THE COURT:

Q Just a little louder, officer. A I was standing in the doorway of 71 Mott street.

BY MR. McCORMICK:

Q Well, how far from Canal street was the doorway in

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which you were standing? A About 15 feet, 15 or 20 feet.

Q Now, I show you People's Exhibit 3, and ask you if you can, after examining this diagram, point out where you were standing? A I was standing about here, I think (indicating).

Q Well now, after satisfying yourself just where you were standing, make a mark, make the letter "A". A (The witness indicates on the diagram).

Q You do not know whether that is 71 or not, as a matter of fact, do you? A Well, I think that is the number, to the best of my belief.

Q You are not sure about it? Were you alone when you were standing there? A No, sir.

Q Who was with you? A Officer Guarniari.

Q Make a mark, the letter "G" where he was standing. A Well, he was standing right, he was standing to the north of me.

Q Well, just make the letter "G" there. A (The witness indicates on the diagram People's Exhibit 3).

Q Did you hear a pistol shot while you were standing there? A Yes, sir.

Q What were you doing there? A Well, we were standing in the doorway there, we were watching a couple of fellows that was supposed to --

BY THE COURT:

Q That will do.

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BY MR. McCORMICK:

Q Now, you say you heard a pistol shot? A Yes, sir.

Q And you looked in the direction of the shot, did you?

A Yes.

Q What did you see? A I saw four or five, may be six Italian men, standing on the opposite side of Mott street, about in front of 72 Mott street.

Q When you say 72 and 71, don't you mean 92 and 91?

A Yes, 92, yes, that's a mistake.

Q Well now, just tell what you saw there? A Well, I saw the flash of a pistol shot.

Q Where was the pistol? A The pistol was in the hand of Francesco Sansone.

Q And where was Sansone at that moment? A He was standing on the street just about a foot or two away from the curb on the east side of Mott street.

Q Was he moving or was he standing still? A When I first saw him he was standing still, and a few seconds or a second or so he backed back two or three paces and fired a shot.

Q And fired a second shot? A Yes, sir.

Q So that he had backed out into the street at the time he fired the second shot? A Yes, sir.

Q Did you see or observe any one else there at that time?

A Yes, sir.

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Q Well now, tell just what you saw? A Well, I saw a man stagger and fall to the sidewalk.

Q Could you tell what direction the revolver was pointed in when this man staggered? A Yes, sir. The revolver was pointed in the direction toward the man that fell on the sidewalk.

Q Did you see the man fall on the sidewalk? A Yes, sir.

Q How far from the railing was he when he fell? A Well, he was right up against the railing. There is a curb right outside the railing, and he was partly up against the curb.

Q What did you do as soon as you heard the first shot? A Myself and Officer Guarniari ran toward the defendant.

Q Well, what did you do. Go on, tell just what you did? A Officer Guarniari grabbed hold of him by the right hand I grabbed him by the left hand. When we were about, say about five feet away from him he turned right around to run south on Mott street.

MR. MELLEN: I object to that.

THE COURT: Yes, objection sustained. Strike that out "to run south on Mott street".

Q He turned right around? A Yes, towards Canal and he attempted to put the gun in his right hand pocket --

MR. MELLEN: Objected to and I move to strike it

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out.

THE COURT: Objection sustained. Strike that out about what he attempted to do.

Q Was the gun in his right hand? A Yes.

Q Tell what he did with his right hand? A Threw the gun on the street.

Q Did he do anything before he threw it on the street?

A He fired the shot before he threw it on the street.

Q Well, between the time he fired the shot and the time he threw the gun on the street, did he do anything? A He made an attempt to put the gun in his pocket.

MR. MELLER: Objected to and I move to strike it out.

THE COURT: Objection sustained. Strike out about the attempt.

Q Do not draw your conclusion as to what he was trying to do, state what you saw him do? A He put his hand around towards his hip right hand pocket.

Q Then how long after he did that was it that he threw the gun on the street? A Just a fraction of a second.

Q How long after he fired the second shot was it that he put his hand at his hip? A Just a fraction of a second.

Q Now, just describe exactly how this man acted who fell down by the railing? A Well, after the second shot was fired --

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Q (Interrupting) No, between the first and second shots, I want you to tell what you saw him do.

THE COURT: If he knows.

Q (Continuing) If you know? A Well, he was standing on the sidewalk facing west.

THE COURT: Just a moment.

Q Now, did you see the man who afterwards fell to the sidewalk between the time the first shot was fired and the time the second shot was fired? A Yes, sir.

Q Now, just state to the jury what you saw in that regard? A He was standing on the sidewalk, and after, or between the first and second shot, when the second shot was fired he staggered backwards with his hands partly upwards like that (illustrating) and fell on his back with his head facing south.

THE COURT: That is not responsive to the District Attorney's question at all.

Q How close to the rail was he? A When he fell he was right up against the curb, or right up against the railing.

Q In which direction was his head pointing? A South.

Q How was he lying, on his back or side or what?

A Partly on his back.

Q Now, between the time the first shot was fired and the second shot was fired, did you notice the hands of this man? A Yes, sir.

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Q Was there anything in them? A No, sir.

Q Now, just before he fell, in what direction was his body moving, or was he moving? A Well, he was facing west, and when he staggered, he staggered backward and kind of fell on his back.

Q Now, when he staggered backward, how far, how many feet did he stagger? A Two or three feet, may be four.

Q Staggered back two or three feet and then fell back on his back? A Yes, sir.

Q And you say you saw nothing in his hands? A Nothing in his hands.

Q Now, did you have any conversation with Sansone at that time? A Yes, sir.

Q What was it? A Myself and Officer Guarniari.

BY MR. MELLEN:

Q When was this conversation?

MR. McCORMICK: At the time of the arrest.

Q Immediately? A Right immediately after the arrest.

BY MR. McCORMICK:

Q Go on. A Guarniari asked him what did he shoot this man for.

BY THE COURT:

Q Who asked that? A Officer Guarniari was in company with me at the time.

BY MR. MELLEN:

Q You heard this? A Yes, sir.

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THE COURT: I will allow you to examine at present as to the language used and whether or not this officer understood it.

BY MR. MELLER:

Q What was the name of the officer who asked these questions, you say? A Guarniari.

Q And in what language? A English.

Q The answers were given in what, English? A Partly in broken English.

BY THE COURT:

Q Proceed. A He says "Me no shoot."

BY MR. McCORMICK:

Q Is that all that was said at that time, that you remember? A Well, we questioned him in the morning, the following morning.

Q I mean, I am talking right about there at the scene of the shooting? A Yes, that was about all I remember.

Q Did you see the revolver that officer McGee had at that time, or did you see a revolver there? A I saw officer Guarniari pick up the revolver that this man dropped on the street.

Q That you saw this man drop on the street? A Yes, sir.

Q Is that the revolver (indicating People's Exhibit 1)?
A Yes, sir, that's the revolver.

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Q That's the revolver you saw the defendant throw on to the street? A Yes, sir.

Q What did you do? You say you had the defendant Sansone in your custody? A Yes, sir.

Q What did you do with him? A Well, we took him right over to the body of the deceased, and he lay unconscious at the time. I got hold of one of his hands and felt his pulse and his pulse was pretty ~~strong~~ strong but he was unconscious. So after a few minutes I, in company with officer McGee took Sansone to the Sixth Precinct station house.

Q Did you after that hear the defendant say anything at any time?

MR. MELLEN: I object, if your Honor please, to that. It seems that we have got away now from the time of this occurrence.

THE COURT: It is not quite definite.

MR. McCORMICK: Well, if he had a conversation with the defendant?

THE COURT: You may ask him that, and when and where.

Q Did you have any conversation with the defendant after that, or hear any one else converse with him? A Yes, I heard--

THE COURT: Well now, you have two questions there, or at least they might amount to that.

Q Well, did you have a conversation with him at any time

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after that? A No, sir.

Q Did you hear any one else converse with him? A Yes.

Q Where? A In the cell at Police Headquarters.

Q Who was it that was talking to him? A Officer Guarniari.

Q Will you state to the jury --

THE COURT: In what language, please?

BY MR. McCORMICK:

Q In what language was that conversation? A English.

MR. MELLER: When?

Q When? A On Sunday morning, March 6th.

Q Will you state what that conversation was?

MR. MELLER: Now, I object, if your Honor please, to a conversation the following morning.

THE COURT: If it refers to this transaction it is admissible.

Q Did the conversation refer to this shooting?

A (No answer)

BY THE COURT:

Q Well, was it about it? A Yes, sir.

THE COURT: All right, what was said?

BY MR. McCORMICK:

Q Simply what was said by the defendant or any one conversing with him? A Officer Guarniara asked him in the morning what he shot this man for, and he admitted doing the

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shooting, in the morning.

THE COURT: That is stricken out, about any admission.

Q You must repeat what you heard. A He says "He no afraid to shoot the son-of-a-bitch, he all the time make the trouble for me".

Q Is that all, is that practically all? A That's about all I remember.

CROSS EXAMINATION BY MR. MELLEN:

Q Now, officer, you say you did not see anything in the deceased's hands that night? A Yes, sir.

Q All that you have described here of the occurrence that evening took place almost instantaneously, isn't that so? A Yes, in a few fractions of a second.

Q Had you noticed these people on the opposite side of the street to you before the shooting? A Yes, sir.

Q How many were there? A There was about five or six men.

Q Had you noticed Sansone particularly before? A No, sir.

Q You had not distinguished him from any of the others, had you? A No, sir.

Q Had you noticed the deceased before? A No, sir.

Q You had not distinguished him from any of the others?

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A No, sir.

Q Was there anything particular to call your attention to them? A No, sir.

Q They were just passing along on the other side of the street? A Well, they were standing, they were talking there.

Q Standing? A Standing, yes.

Q Well, now, did you notice whether the deceased was standing there before or not? A Well, the five was --

BY THE COURT:

Q (Interposing) Now, answer the question yes or no.

A No.

BY MR. MELLEN:

Q You did not see him standing there? A No.

Q Was he standing there, that you know --

MR. McCORMICK: He said he did not see him.

Q If you know. A I did not see him.

Q You don't know then whether he was standing there before this or not? A No.

Q Do you know whether Sansone was with him or not before this? A No.

Q You don't know where Sansone was before you saw him fire this shot? A No.

Q How do you know that this was the revolver that Sansone had that night? A Well, I saw him throw it out in the

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street.

Q Well, but how do you identify this particular revolver? A There is a mark right there on the butt, on the end.

Q You put that mark there? A Yes, sir.

Q Did you see this other revolver, Defendant's Exhibit A, that night? A Yes, sir.

Q Where was it when you first saw it that night?

A Officer McGee had that in his hand.

Q In his hand? A Yes, sir.

Q Did you see him pick it up? A No, sir.

Q Did you see it before he picked it up? A No, sir.

Q The first you saw of it was in Officer McGee's hands? A Yes, sir.

Q You don't know how it came in his hand? A No, sir.

Q Now, just describe, will you, where officer McGee and officer Guarniari -- is that his name? A Yes, sir.

Q (Continuing) -- and yourself were standing, where those two officers were standing when you first came there? A Myself and officer Guarniari were standing in a doorway of I think it is --

THE COURT: That is not an answer to the question.

Strike it out.

BY MR. MELLEN:

Q No, I mean when you got across the street? A Myself

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and officer Guarniari ran across the street together. He got hold of Sansone by the right hand and I got hold of him by the left.

Q Did you do that instantly as soon as you got there?

A Yes, sir.

Q How long did it take you to run across the street and grab him? A A couple of seconds, I should think.

Q Were they standing right opposite where you were?

A Yes, about opposite where I was standing.

Q Nearer Canal street or further uptown? A A little further uptown.

Q Now, where was officer McMahon standing, when officer McGee came over? A I had hold of Sansone at the time.

Q When did you first notice officer McGee? A Just a fraction of a second after I got hold of Sansone.

Q Where was officer McGee standing when you saw this revolver, Defendant's Exhibit A in his hand the first time?

A He was standing right near where the defendant done the shooting, on the east side of Mott street about in front of 92.

Q You are sure now the number is 92 and not 72? A Yes, sir, I think I made a mistake.

Q Your memory about that number is clear? A Yes.

Q How long did you stay there after you heard the shot, the first shot? A Myself and officer Guarniari ran --

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Q (Interrupting) No, no, how long was it after the first shot was fired that you left there altogether?

A The very minute we heard the sound of the first shot we ran toward the five or six men.

THE COURT: No, no.

Q You do not understand what I mean, I want to know how long it was after you heard the first shot before you went away from the scene of the shooting that night?

A Well, it may be about ten minutes after.

Q You were there altogether about ten minutes?

A May be about ten minutes.

Q Before you took Sansone to the police station?

A I figure it about ten minutes.

Q Now, Sansone was peaceable, was he?

A Yes, sir.

Q Did not show any resistance? A No, sir.

Q And submitted to arrest? A Yes, sir.

Q Did he appear excited? A A little bit.

Q But he was generally quiet, wasn't he? A Yes, sir.

Q How near was he to the deceased when you saw him fire the second shot? A I figure it out about may be, about four or five feet.

Q Was he at that time backing away from the deceased? A Yes, sir.

Q When you first saw him how near to the deceased was he? A Well, I figure it he was about a couple of feet away, may be two or three feet.

Q They were practically alongside each other? A Yes.

Q Before you heard and saw the second shot fired, after you heard the first shot, did you pay any attention to the deceased? A Yes, I saw the deceased fall down.

Q In that brief interval you saw him fall? A Yes.

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Q It was almost instantaneous, wasn't it, between the first and second shots? A Well, yes, maybe a second or two.

Q One shot followed the other almost as rapidly as could be fired, didn't it? A No, sir.

Q Well, very rapidly? A Well, there may be a couple of seconds between the two shots.

Q A couple of seconds, and during that time you did not see anything in the deceased's hands? A No, sir.

Q You did not see anything lying near his body? A No, sir.

Q When you first saw him on the ground? A No, sir.

Q Well, did you go to the hospital the ~~xx~~ next day?

A Yes, sir.

Q Did you see anything else than this revolver, Defendant's Exhibit A, taken from his body there? A No, sir.

Q Do you know whether or not anything else was taken from his person there at the hospital? A I don't know.

Q You know nothing about that? A No, sir.

Q Have you told now all you know about this thing?

A Yes, sir.

Q And just what you saw? A Yes, sir.

Q And nothing else? A Nothing else.

BY THE COURT:

Q Did McGee go the place of the alleged shooting before

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or after you? A After me.

Q Well, how long after you? A Well, I figure about a fraction of a second.

Q You saw him going there, running across the street?

A Well, he ran right up to where we were standing.

Q He ran right up to where you were standing? A Yes, sir.

Q But he got there afterwards? A Yes, a fraction of a second afterwards.

Q Well, you saw him coming up? A I saw him when he got there.

Q And he came right to where you were standing? A Yes, sir.

Q And then he went away from where you were standing? In what direction, if any? A Well, he was there pretty near all the time.

Q No, he came up to where you were standing while you had hold of the defendant? A Yes, sir.

Q And then what did he do? A Well, I saw him go over and get hold of a couple of other men that were in the crowd at the time.

Q You saw him do what? A Get hold of two other, two or three other men that were standing there at the time.

Q What direction did he go when he went away from you, after coming up to where you stood? A Well, he went a little north of where I was standing.

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Q Did he go toward the body of the deceased or not?

A Well, I can't exactly say.

Q But you saw him go? A Well, I saw him leave there, but I couldn't swear.

Q And you knew where the body of the deceased was?

A Yes, sir.

Q Well, now, why can you not tell us whether he went toward the body of the deceased or not? A Well, I can't exactly remember.

Q But you do remember that you saw a revolver in his hand?

A Yes, sir, he shot--

Q (interrupting) When, now? A Maybe 4 or 5 seconds after, maybe more than that.

Q Now, let us get at that clearly. You were standing there with your brother officer; you had hold of the defendant when McGee came up within a fraction of a second to where you stood? A Yes, sir.

Q Then McGee went away? A Yes, sir.

Q How far had he gone from you when you first saw the revolver in his hand? A He may be gone about 5 or 10 feet.

Q Now, can you not tell us whether he went in the direction of the decedent or not? A Well, I think he went on the sidewalk towards the deceased, but I can't exactly say if he went over to the body of the deceased.

Q Was he standing near the body of the deceased when you

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first saw the revolver in his hand? A He was standing about, I figure about five feet away from the body of the deceased.

Q How far from the body of the deceased was he when he first came to the place where you stood? A About 6 or 7 feet.

Q Six or seven feet? A Yes, sir.

Q And when you first saw him with the revolver in his hand, he was how far away from you, 5 or 6 feet, would you say? A He was about 5 or 6 feet away from the body of the deceased.

Q And how far from you? A Well, he showed me the revolver, then he may be a foot or two away from me.

Q What is that? A He showed me the revolver and he may be about a foot away, one or two feet away from me.

MR. McCORMICK: May I ask which revolver it was?

THE COURT: Yes, I am talking about the second revolver.

MR. McCORMICK: That is Defendant's Exhibit A.

Q Yes, that is the revolver which Officer McGee had?

A Officer McGee had the other revolver in his hand.

Q Well, who picked this revolver up? A I don't know.

Q Did you see anybody with that revolver? A Yes, I saw that revolver after with Officer McGee.

Q Did Officer McGee take it? A Yes, sir, he had it here.

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THE COURT: Mr. Mellen I wish you would examine along those lines yourself.

MR. McCORMICK: I think that will all come out clearly with another witness.

THE COURT: Well, if it does, all right, but there is not any reason why this witness should not be examined with regards to the place, when and where this was seen, and with regards to the distance between the decedent and the man who found the revolver at the time it was found.

MR. MELLEN: Yes, sir.

BY MR. MELLEN:

Q Now, confine your attention solely to this revolver, Defendant's Exhibit A. Tell me again when you first saw that revolver on this evening? A I saw that revolver in the hands of Officer McGee.

Q When, for the first time? A Well, I figure it out, may be about fifteen, may be a few minutes after the shooting. I can't exactly tell you the exact time.

Q Which revolver did you see first, this revolver People's Exhibit 1? A Yes, sir, that's the first revolver I saw.

Q And you saw this revolver Defendant's Exhibit A afterwards? A Yes, sir.

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Q Did you see both revolvers in the hands of Officer McGee? A yes, sir.

Q And you saw neither revolver before that moment, did you? A I saw this one first.

Q And you saw People's Exhibit 1, this revolver first, in the hands of Officer McGee? A I saw defendant throw that revolver on the street.

Q Well, all right, go on with your answer? A And Officer Guarniari picked that revolver up and gave it to Officer McGee.

Q Yes, you saw that? A yes, sir.

Q Now, then, how long after that revolver was picked and given to Officer Magee did you see this second revolver, Defendant's Exhibit A? A A few minutes after.

Q Well, what do you mean by a few minutes? A Well, I can't exactly say. May be one, may be five, may be six or seven minutes, eight minutes or ten minutes.

Q Why, you were only there ten minutes? A Well, it may be five or ten minutes. I didn't take the time. It may be fifteen minutes. It may be between ten and fifteen.

Q Is not your recollection about this occurrence very clear? A yes, sir.

Q It is only two months ago? A That's all.

Q Now, where was Officer McGee standing with respect to the body of the deceased when you first saw this revolver

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Defendant's Exhibit A in his hands? A He was standing on the sidewalk about five feet north of the body of the deceased.

Q Had you seen where he was standing immediately before that, with respect to the body of the deceased? A Yes.

Q Where? A He was standing may be about 7 feet north of the body of the deceased.

Q Now, had you seen Officer McGee before that time near the body of the deceased? A No.

Q Not at all that evening? A No, sir.

Q What other officers approached the body of the deceased? A There were three or four police officers there in uniform.

Q Where was Officer Kaufmann? A There were three or four uniformed policemen there.

Q Tell us the names of them all? A I don't know any of their names.

Q Well, you know your name and you know Officer McMahon's name? A Yes, sir.

Q And you know Officer Guarniari's name? A Yes.

Q And you know Officer McGee's name? A Yes.

BY MR. McCORMICK:

Q Well, what is your name? A McMahon.

BY MR. MELLEN:

Q Oh, you are McMahon? That is right, I am glad he knows his own name.

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MR. McCORMICK: Well, you asked him if he knew Officer McMahon.

Q Now, what officer was it, if any, that you saw that night who went up to the body of the deceased before you saw the revolver, Defendant's Exhibit A? A I didn't see any officer go to the body?

Q Didn't you go yourself? A Yes.

Q Well, did not Officer Guarniari go with you? A Well, the two of us stood there. I misunderstood what you said. I thought you said a uniformed policeman.

Q No, no, I mean an officer of the police force, whether in uniform or not? A Yes, myself and Officer Guarniari went over to the body.

Q Was Officer McMahon in uniform that night? A No.

Q Was Officer Guarniari in uniform that night? A No.

Q Or Officer McGee? A No.

Q You don't know the names of the officers who were in uniform? A No, sir.

Q You don't know them at all? A Well, I know them by sight but I don't know their names.

Q Now, did any officer of you three in plain clothes go near the body of the deceased before you saw this revolver Defendant's Exhibit A? A Yes, sir.

Q Who were they? A I for one, myself and Officer Guarniari.

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Q How about Officer McGee? A Well, I can't swear whether Officer McGee went over there or not.

Q Did you pay very much attention to Officer McGee before you saw this revolver in his hand? A Well, just a little bit.

Q Was it light or dark at that spot? A Well, it was not very light and it was not very dark. The light was pretty fair.

Q The street there is about how wide, the door where you were standing to the railing on the other side? A I figure it out about fifty feet.

MR. McCORMICK: Well, that is indicated on this map.

MR. MELLER: Well, I think that is all.

BY THE COURT:

Q Officer, you say that McGee joined you and your brother officer within a fraction of a second after you reached the place? A Yes, sir.

Q Now, why is your memory so accurate as to give us a fraction of a second as the time within which he reached you, and you cannot tell us within ten minutes of the time after he got there when you saw the revolver in his hand? Now, this is important, try and recall? A Just pretty near the time myself and Officer Guarnieri got hold of the defendant, Officer McGee came right up.

Q Yes? A Pretty near just, I don't think we had him grabbed a fraction of a second when he came running right up.

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Q You consider that of more importance to remember the exact time within which he came than to remember the exact time which elapsed after he came and until you saw the revolver in his hand? A Well, may be more than a fraction of a second. It may be a second, but I figure it, it was not only, about a fraction of a second.

Q Well, what are you speaking about now? The time when he came or the time after he came when you saw the revolver in his hand? A The time Officer McGee came running up.

Q Yes, that was you say, about a second or less after you reached there? A Yes, sir.

Q Then, how many seconds had elapsed between his coming and the time when you saw him with the revolver in his hand? A Between the time McGee came and I saw McGee with this revolver in his hand, it may be about five minutes after. I can't exactly swear it was five minutes. It may be more and it may be less.

BY MR. MELLEN:

Q What were you doing during that five minutes? A We got hold of the defendant there and we took him over to the body of the deceased, myself and Officer Guarniari, and I got hold of the deceased's right hand and I felt his pulse and he was unconscious, lying on the sidewalk at the time.

Q Now, were you there in all five minutes? A Well, I may be there more, I may be there less.

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Q How long was it, how much time elapsed between the time when you saw this revolver in Officer McGee's hands and the time you left the scene, altogether? A May be five or seven minutes.

Q That is the best you can tell us, is it? A Yes, sir.

BY THE COURT:

Q Did you say anything to McGee, did he say anything to you about that revolver? A Officer McGee said that some uniformed officer gave him this revolver.

Q He said waht? A Bfficer McGee said to me that some un iformed officer gave him this revolver.

Q In the presence of this defendant, that was said?
A Well, I don't know. The defendant was right there. I don't know whether he heard it or not.

Q Why, You heard it said? A yes, sir.

Q And you had ~~in~~ him in your possession? A Yes, sir.

Q Well then, why do you not know whether he was there or not? A I say, he was there, but I don't know whether he heard it or not.

Q Did you see the direction from which Officer McGee came when you first, was coming when you first saw the revolver in his hand? A No, sir, I did not. He was standing, he was north of me, he was standing on the sidewalk about--

Q (Interrupting) You say you saw nobody hand him the revolver? A No, sir, I did not.

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Q You did not see him pick it up? A No, sir.

Q And just what words did he use when he addressed you concerning that revolver? A He said a uniformed policeman gave him this revolver and he said he took it from the deceased.

Q And he said that he took it from the deceased?

MR. McCORMICK: That is, the uniformed officer said that.

Q That is, he said that? A Yes, sir. That is what Officer Magee told me. I did not hear the uniformed officer say that.

Q Well, were there any uniformed officers there before you got there? A No, sir.

Q Well, did you see any uniformed officers going up to the deceased after you got there? A No, sir.

Q What did you say to McGee, when he said that to you, if you said anything? A I did not say anything to McGee.

Q Not a word? A No, sir, not that I remember.

Q That will do.

BY MR. McCORMICK:

Q Now, in answer to a question by counsel for the defendant, you said you did not see anything in the hands of the deceased? A No, sir.

Q I mean the man that had been shot? A Yes.

Q Before he was shot the second time? A No, sir.

Q Did you see his hands? A yes, sir.

Q All right, that is all.

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PASQUALE LO RUSSO, called and sworn as a witness on behalf of the people, testified through official interpreter Villamena, as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

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

Q How long have you known him? A About one year.

Q Did you see Sansone on the 5th day of March, 1910?

A Yes, sir.

Q Do you remember the day that Giuseppe Tonaiulo was shot?

A Yes, sir.

Q Well, I mean that day, did you see the defendant Sansone on that day? A In the evening about five o'clock.

Q Where? A In a saloon on Mott Street, No. 102.

Q Did you see him in a saloon on Hester Street? A Yes, I meant to say in Hester Street.

Q In 189 Hester? A Yes, I made a mistake. 189 Hester.

Q What happened in that saloon on that evening? A We were in that saloon, about fifteen or sixteen of us, our friends playing what we call "Tocco"; that means that we play with the fingers like this (illustrating) and after while this Francesco Sansone says to the other one, to Tonaiulo, "I don't want to play any longer here", and Tonaiulo asked Sansone, "Why don't you want to play any more?" "Because I don't want to play any more". Then, Tonaiulo says to Sansone, "When you

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don't intend to play with us any more, get away from this conversation".

Q Who was this Tonaiulo, was he the fellow that was shot that night? A Yes, sir.

Q And this conversation was between him and Sansone, was it? A Yes.

Q All right. Go on with the conversation? A Then Giuseppe Toniaulo says to Sansone, they went out of the saloon and I remained there.

Q Did you see Sansone again that day? A Yes, sir. I saw him in the evening when he shot at Toniaulo.

Q What time was it, for how long was it after they left the saloon that you saw Sansone? A I saw him about eleven o'clock.

Q Where? A On the place where he shot Toniaulo.

Q Where is that place? A A little below the saloon at 102.

Q On Mott Street? A Yes, sir, between Mott and Canal Street.

Q Did you have any conversation there with Sansone?

MR. MELLER: Well, when? I object.

THE COURT: Objection sustained. Wait a moment, indicate the time.

MR. MCCORMACK: Well, I will withdraw the question and ask another preliminary question.

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THE COURT: Yes, if he had a conversation.

Q What did you see when you got down where Sansone was?
Did you see the other man there, Tonaiulo? A I saw Tonaiulo
on the ground.

Q What was Sansone doing then? A The policemen got
hold of him.

Q Did you have anything to say to Sansone? A Yes.

Q What was it?

MR. M ELLEN: I object to that, what he said.

THE COURT: Yes, when and where?

Q At the time you saw Sansone in the custody of the offi-
cer on Mott Street, did you hear or did you have any conversa-
tion with Sansone? A Yes, I said to Sansone, "Traitor, how
could you do it, how could you shoot this man?"

MR. M ELLEN: I move to strike it out.

THE COURT: Strike it out.

Q Did Sansone say anything to you? A No, sir.

Q How far from the body of Tonaiulo was Sansone at that
time? A About four or five paces.

Q What did you do that evening, where did you go? A Yes,
I was arrested too that evening and they took me to the sta-
tion.

Q Where were you taken; do you know? A They took me
someplace downtown but I don't remember where.

Q Well, what happened to you there?

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MR. MELLER: I object to that. It seems entirely immaterial.

THE COURT: Yes.

MR. MCCORMICK: I will connect it, your Honor. I do not like to make any statement as to just how I will, but I can connect it.

MR. MELLER: Connect it with the issue? With the shooting?

MR. MCCORMICK: Yes. With the defendant.

MR. MELLER: I object to it.

MR. MCCORMICK: He was arrested, Now, it is proper that he should state where he was taken, if I can connect it.

THE COURT: Unless there is some apparent relevancy.

MR. MCCORMICK: Well, I will bring it out in another way. I will withdraw that question.

Q Now, the next morning did you hear Sansone say anything?

A No, sir. He didn't say anything to me. He spoke to his uncle.

Q Well, where you when you heard Sansone speak to his uncle? A Well, I was in a cellar.

Q In a what? A In a cellar.

Q Cell, c-e-l-l, you mean, don't you? A Cellar, c-e-l-l-a-r.

Q Where was this cellar? A I don't know the street.

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Q well, you were in jail, were you locked up? A Yes.

Q Where was Sansone at that time, do you know? A I was locked up in a cellar, and Sansone was across away from me.

Q Was anyone else that you knew there at that time? A Girolomo Schapolo and Matteo Fratuella.

Q Who was Girolomo Schapolo and Matteo Fratuella? A One was the uncle of this Francesco Sansone, and the other one was a witness.

Q And was these men all locked up in the cells there?

A Yes, sir.

Q Now, did you hear Sansone on that Sunday morning say anything to any of these men? A Yes, he was talking with his uncle.

Q What was said?

MR. WELLEN: I object.

THE COURT: Said in another cell?

MR. McCORMICK: Yes.

THE COURT: Across a passageway between the two cells?

MR. McCORMICK: I will withdraw the question.

THE COURT: Yes, I think probably you had better get that a little more definitely.

Q Now, you had known Sansone for a year, you say? A Yes, sir.

Q And during that year had you often talked with him?

A Whenever I would meet, yes, we would talk together.

Q Did you know his voice when you heard it? A Sure.

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Q Did you hear his voice that Sunday morning? A Yes, sir.

MR. McCORMICK: I think it is proper that he should testify what he heard him say. He swears he recognized his voice.

THE COURT: Well, we have a precedent for it in another case.

Q What did you hear Sansone say?

MR. WELLEN: I object.

THE COURT: Yes, for the present, I think the objection will be sustained. It is the young man who testified that the night before he called the defendant a traitor, is it not?

MR. McCORMICK: Yes.

THE COURT: Now he is asked to testify to some conversation which he heard this man have in another room the morning after that.

MR. McCORMICK: They were not in different rooms, your Honor. They were in cells which occupied part of some big room, as I understand it, where his voice could be heard plainly. He says, he swears positively that the voice he heard was the voice of the defendant, that he was addressing his uncle Girolomo.

THE COURT: He heard what the uncle said?

Q Did you hear what his uncle Girolomo said? A No, Girolomo didn't say nothing. Francesco called Girolomo.

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Q Well, Francesco said something to Girolomo?

THE COURT: How does he know it was Girolomo?

Q How did you know it was Girolomo? A Because I know his voice.

Q If Girolomo did not speak, how could you tell whose voice it was? A Well, I know it was Girolomo. I could even say that it was some other man.

Q Well, you heard Girolomo's voice, did you? A Yes, sir.

Q And you heard Sansone's voice? A Yes, sir.

Q Well, were they talking to each other? A Yes, sir.

BY THE COURT:

Q What did Girolomo say? A Girolomo didn't say nothing. It was Francesco that called Girolomo.

BY MR. McCORMICK:

Q Well, when Francesco spoke to Girolomo, did not Girolomo speak back to him? A He says, "All right, all right, when we come out we will see it".

Q Who said that? A Girolomo.

Q And was that in reply to a question that had been asked by Sansone of Girolomo? A Yes, sir.

MR. McCORMICK: Now, you need not ask this question until I have a ruling on it. (addressing the interpreter)

Q What was it that Sansone said to Girolomo before Girolomo answered as you have testified?

MR. MELLEN: I object.

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THE COURT: Objection sustained.

Q Where you at the, or did you see the body of Tonaiulo that Sunday? A Yes, I saw it.

Q Where? A In some hospital, I don't know the name of the hospital.

Q Did you notice whether he had been shot? A Yes, I saw him swelled up here in the back of his neck. (witness pointing to the left of his neck) And I saw a little bit of a wound right up here, (witness pointing to the left side of his forehead)

MR. McCORMICK: Doctor Weston, will you stand up please?

Q Did you see that man there? (indicating) A I don't know him well.

Q Well, you identified the body there as the body of Tonaiulo, didn't you? A Yes, sir.

Q When you heard Sansone speak in the jail, did he speak in English or Italian? A Italian.

Q MR. McCORMICK: Will your Honor permit me to ask what he heard the defendant say?

THE COURT: No, we have some precedents regarding one sided conversations in homicide cases, but it is altogether too important a question to be left to the conjectural testimony of a person of the sworn attitude of this man towards the defendant.

MR. McCORMICK: Well, that goes, not to the admissi-

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bility of the testimony, but to the credibility.

THE COURT: There are other things that, while of course the recognition of the voice is one thing, in common practice before we allow any evidence going to identify the person whose voice it was, still, in a matter of this importance, the Court generally requires that there be no complexion of doubt whatever as to the statement made by the defendant. We have had cases where the court has established by its decision that principle with regard to statements made by defendants accused of various crimes that any statement attributed to them can only be permitted in evidence when it is surrounded by facts and circumstances, establishing the certainty to a great extent, of the conversation had. In this case, it seems to me there is altogether too much of a haze of uncertainty to permit it to appear on the record as absolute testimony against this defendant.

MR. McCORMICK: That is all.

CROSS EXAMINATION BY MR. WELLEN:

Q Tonialulo, the decedent was your cousin, wasn't he?

A Yes, sir.

Q You did not see the shooting? A No, sir.

Q At what hour of the day was it that you say you saw Sansone and Tonaiulo and the others in the saloon, playing "Tocco"? A About five o'clock.

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Q How long did they continue to play? A About one hour.

Q Do you want us to understand that they left the saloon about six o'clock, then? A No, about eleven o'clock they left the saloon.

Q Well, what were they doing after they stopped playing?

A Drinking.

Q They began to play at five and they stopped at six, is that right? A When I went up there it was about five o'clock, but they started to play about seven o'clock.

Q They played for one hour? A Yes, sir.

Q At eight o'clock then they stopped playing? A Yes, sir

Q Did they all remain in the saloon after that, or did any of them go out? A After they got through playing they went away. I remained in the saloon with another man.

Q Then you say that they went away from the saloon about eight o'clock? A They left the saloon about eleven o'clock.

Q Were they playing up to the time they left? A No, sir, they stopped playing quite a while before.

Q Whendid Tonaiulo leave the saloon, before or after Sansone? A They went out together.

Q Are you telling us what you saw that night? A Yes, sir.

Q Now, tell us again just what you heard Sansone say to Tonaiulo and Tonaiulo say to Sansone in the saloon that night?

A I heard Tonaiulo say to Francesco, "Don't you want to play

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any more?" Francesco says, "No". Then, Tonaiulo says to Francesco, "If you don't want to play any more, get out from the conversation".

Q Well, did Sansone leave after Tonaiulo said that? A No, sir.

Q Well, did they say anything else to each other before they left, after that? A No, sir.

Q Did you see Tonaiulo move his chair before that conversation or afterwards? A No, I didn't see him move it.

Q Did you see Tonaiulo move from his chair to a chair near Sansone? A No, sir. He was standing up.

Q Did you see him seated at any time before that? A Sansone was sitting. He was always sitting in his chair. Tonaiulo stands up.

Q All the time while they were playing? A Tonaiulo was sitting first, but after Sansone refused to play, then Tonaiulo got up and went in front of Sansone.

Q Then it was when he was in front of Sansone that he asked him if he wanted to play any more, was it? A Yes.

Q Well now, was Tonaiulo excited? A No, sir.

Q Was he angry? A No, sir.

Q Was Sansone angry? A No, sir.

Q Had they had any quarrel that evening? A In the saloon, no.

Q How long was it after they left, before you left? A About ten minutes.

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Q And then where to you go? Ignazzio Masullo called me and he told me that he heard some shooting in Hett Street.

Q How soon after you left the saloon did he tell you that?

A I was in front of the door of the saloon when Masullo told me that.

Q What saloon? A I don't know the number? I don't remember the number.

Q Was it in Hester Street? A Yes, Hester Street.

Q 189? A I don't remember the number.

Q Well, was it near Mulberry Street? A Yes.

Q Near the corner of Mulberry Street? A Yes, sir.

Q What did you do after he told you about this shooting?

A I ran over to see it.

Q Did you see it? A I saw Tonaiulo on the ground.

Q You did not see the shooting itself, did you? A No, sir.

Q Well, whom did you see there besides the body of Tonaiulo

A Francesco Sansone was in the hands of the policemen.

Q How many policemen did you see there? A Three.

Q In uniform? A No, sir.

Q How did you know they were policemen if they were not in uniform? A I saw that they got hold of Sansone.

Q Did you see any policemen in uniform there? A No, sir, I didn't see any. The

Q There were not any uniformed men there? A No, sir, I didn't see any.

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Q How many people did you see there? A There was quite a crowd there.

Q Name some of the Italians whom you saw there? A Ignazio Nasullo, Girolomo Schapolo and Matteo Pratuella.

Q Is that all that you saw there? A Well, I saw a big crowd there but I don't know them.

Q Where did you live at that time? A That evening I arrived in New York and I lived across the way from that saloon that I just mentioned before.

Q In Hester Street? A Yes.

Q Now, did you say that this shooting occurred or that you were told of this shooting only ten minutes after Tonaiulo and Sansone left the saloon that night? A Yes, sir.

Q That is all.

MR. MCCORMICK: That is all.

THE COURT: Did I understand you to say that these parties were in different cells at the at time he heard this alleged conversation referred to before?

MR. McCORMICK: Yes, sir.

THE COURT: Was there any way of passing between these cells?

MR. McCORMICK: I understand that there was.

THE COURT: And that the persons were not in his view at the time?

MR. McCORMICK: I am not sure about that, but I think not, I will ask him.

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THE COURT: Yes.

BY MR. McCORMICK:

Q At the time you were in the cell and heard Sansone speak to Gerolimo, could you see either of them?

THE COURT: No, not could he, but did he?

Q Did you see Sansone or Gerolomé? A No, sir.

THE COURT: No, the answer is "No" and that is all.

BY THE COURT:

Q Were there many other voices or were there other voices apparently coming from the cell, sounds of voices coming from the place where you say you heard the voice of the defendant? Were there other voices? A No, sir, only that voice I heard.

Q You didn't see him there at all? A No, I didn't see him, but I heard his voice.

BY MR. McCORMICK:

Q Well now, that evening, before you had been with Sansone and Gerolomo, had you not? A Yes, sir.

Q You three men were taken to the same place, were you not? A Yes, sir, but each one of us was in a separate room.

BY THE COURT:

Q Was what? A In a separate room.

BY MR. McCORMICK:

Q Did you see what room Gerolomo was put in and what room Sansone was put in? A Yes, sir.

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Q How far was the room that you were put in from the rooms they were in? A One room after another.

Q And you mean that Sansone was in the next room to the one that you were in? A No, Sansone was across the way from my room.

Q Directly across the way? A No, sir.

THE COURT: Well, how does he know? He says that he did not see him at all.

MR. McCORMICK: Well, I understand he says he saw him put there.

THE COURT: There is no use of cross examining to find that out. Get right at it.

Q Did you see him in that room? A No, sir.

Q Did you see him in that room the night before? A No, sir.

Q Did you see him come out of that room? A Yes, sir.

Q When did you see him come out of that room? A In the morning at seven o'clock. No, I did not see Sansone. I saw Gerolomo coming out of this room.

Q And did you see Sansone that morning? A No, sir, I heard his voice but I could not see him.

THE COURT: Well, that is altogether too conjectural and not of sufficient substance upon which to found a conversation, not to say now whether the conversation might be for or against the defendant.

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MR. McCORMICK: That is all.

HENRY KAUFMANN, being called and duly sworn as a witness on behalf of the people, testified as follows.

DIRECT EXAMINATION BY MR. McCORMICK:

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

Q To what precinct are you attached? A The Sixth Precinct Manhattan.

Q You were attached to that Precinct on the 5th day of March, 1910? A Yes, sir.

Q At eleven o'clock, or after, on that night, were you in the vicinity of Mott and Canal Streets? A I was on Elizabeth Street near Canal at that time.

Q That was in the county of New York, A The County of New York, yes, sir.

Q And did you hear anything then that attracted your attention? A I heard the report of two pistol shots.

Q Now, as nearly as you can recollect, how far apart were those two reports? A Well, about like this, (witness illustrates with two handclaps)

Q When you heard these two reports, what did you do? A I ran to the corner of Canal. I stood there a while looking west. I saw a crowd running, several people running north into Mott Street and I ran in that direction. When I got to Mott Street,

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I seen several officers, detectives there in the custody of three or four men---they had three or four men in their custody.

Q They had three or four men in their custody? A Yes, sir.

Q Did you see a man lying on the sidewalk? A I seen a man lying in front of 92 Mott Street on the sidewalk.

Q Now, take this diagram, People's Exhibit 3, and examine it carefully, ~~you~~ so that when you make your answer you can be sure that you are right, and point out where this man's body was lying. Now, this is Canal Street here and this is Mott, this is the corner of Canal and Mott? A Well, right about here. (indicating)

Q Right about where that cross is? A About there. (indicating) Well, about seventy-five feet from the corner, about.

Q Well, how close to the iron railing on the inside of the sidewalk was the body? A Well, a little bit on the slant. His head was close ot it.

Q His head was close to the railing? A To the railing, and a trifle on the slant, his leg was.

Q So that his right foot, that is the foot nearest to it was about how far from the railing? A Well, I judge maybe abouta foot.

Q Well, how was this man lying, on his back or how? A On his back.

Q Now, just tell exactly what you saw there about this man? A Well, when I got there I stood there a second and

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while I stood there, I noticed something shining on the side of his pocket on his pants pocket.

Q Which side of him was this on? A On the right side, between the body and the railing, and I took my night stick and I shoved it a little and I felt something moving, and I bent over and I noticed a revolver lying there.

Q What kind of a looking revolver was it? A A nickel plated revolver.

Q If you saw that revolver again, would you be able to identify it? A Well, I would not identify the revolver, I gave it to officer McGee, I didn't look at the name or anything. He told me at the time---

Q (Interrupting) Well now, just tell the jury exactly where this was lying when you first saw it, how much of it you saw and which part of it you saw? A I found that revolver---

Q (Interrupting) Does that look like the revolver? (Indicating defendant's Exhibit A)? A About that size, yes.

A 32 calibre, Officer McGee told me at the time.

Q You gave it to McGee? A Yes.

Q I am now showing you defendant's Exhibit A? A Well, it was lying about here on the side right at his side pocket (indicating) close to him and partly covered up with his coat. and about like that (witness illustrates)

Q Now, officer, just take this on the table and put your coat over the revolver and show how much of it was showing at

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the time? A About that much, about (indicating).

BY THE FIFTH JUROR:

Q Which end first? A This part was exposed, (indicating)

BY MR. McCORMICK:

Q Just as you have it there? A About that much, yes.

Q How close to his hip pocket was the revolver at that moment? A Well, lying about in that direction. (indicating) like that, and that part was covered up.

Q And where were his hands, did you notice them? A Well his hands were on top of his coat, but I really don't remember how his hands were lying at the time.

Q His hands was not on the revolver though, it was on the coat? A No, it was away from the revolver.

Q Now, before you saw that revolver, what length of the time elapsed between the time you reached the scene of the shooting and you discovered the revolver? A About two minutes.

Q And what were you doing during that two minutes? A Why, there were several people around nearby, and I ordered them on the other side of the street.

Q During that two minutes, did anybody approach the body of the man that was lying there? A No, sir, except one or two detectives that were there.

Q Well, that was part of your business to keep people away? A Yes.

Q And you officers did that? A We did that. They

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were on the opposite side of the street was the nearest.

Q And no Italians or any people except the officers were near the body? A Near the body, yes, sir.

Q Now, when you saw that revolver lying by the man's right hip, with the barrel of it sticking just a little out from his coat---- A (interrupting) Yes, about an inch or so.

Q (Continuing) what did you do? A Why, after I seen it, I took my stick and kept poking, I didn't know what it was. and I felt something heavy moving. I bent over when I saw the revolver and I went to Officer McGee.

Q Now, wait. Not so fast. Where were you or how were you standing at the moment when you picked that revolver up?

A On his left side.

Q That is, you were standing between him and the curb?

A Well, right at his left leg, at the side of his left leg.

Q So you leaned over the body as you picked the revolver up? A Yes, I picked it up, yes.

Q Then, after you picked it up, what is the next thing you did? A I told officer McGee about it.

Q Now, wait. Where was officer McGee, when you told him?

A About five feet away from me, in custody---

Q (Interrupting) What did you do with the revolver then?

A I picked it up and told him about it.

Q Never mind what you told him. What did you do with the revolver? A I gave it to officer McGee.

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Q When you handed the revolver to McGee, was the defendant standing right there or was he some distance away? A Standing about five feet away with McGee.

Q And that is the revolver that you handed McGee (indicating defendant's Exhibit A) A Well, I have not put any mark on for identification.

Q Well, a revolver that looked just like that? A Yes, about that size. 32 calibre, McGee told me.

Q Then what did you or anybody else do in the presence of the defendant? A He opened it, seen it was loaded and told me it was fully loaded.

Q Never mind what he said to you. What did you see him do with it? A Open it.

Q Did you notice whether the shots had been fired from it? A No, he looked and he told me. I didn't notice.

Q Well, it was loaded? A Loaded, yes.

Q What is the next thing you did? A Well, I went over on the other side of the street to keep the people away there that started to congregate around.

Q Were you there until the ambulance arrived? A Yes, sir.

Q During that time, did anyone except police officers go near that body? The crowd was kept away? A They were all kept away, nobody allowed near it.

Q Did you see any Italians there in the custody of the

officers? A Yes, three or four.

Q Do you know or did you hear the defendant say anything?

A No, sir.

Q And after the ambulance arrived, what happened? A Well we dispersed the rest of the crowd and I went back to my post. That is all.

CROSS EXAMINATION BY MR. MELLER:

Q Now, wait a minute. You say that you ran right up after hearing this shot? A Yes, sir.

Q And there were two shots, one right after the other? A Yes, sir.

Q Very close together? A Very close.

Q Did you see the revolver from which the shots proceeded? A No, I didn't.

Q You did not see the shooting yourself? A No, I was a block away from it.

Q You only heard a report? A Yes.

Q All you really know about it, is as you have told us, that you came up there, dispersed the crowd and got them on the other side of the street? A Yes, sir.

Q And that you approached the body, looked it over and saw this glittering object that you stirred it with your night stick, uncovered the coat of the decedent's body that was partly covered it, found the revolver, picked it up and handed it to officer Nagee? A Yes, sir.

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Q That is all you know about it? A That is all.

Q Now, how many uniformed officers were there there besides yourself? A Well, they were coming there gradually, I think there was about three or four there at the time .

Q They came right there? A Right there, yes, sir.

Q They were quite conspicuous in their uniforms, were they not? A Yes, sir.

Q You were in your uniform? A Yes, sir.

Q And the street was not dark? A Well, that part was dark right there?

Q Pretty dark? A Yes.

Q Pretty hard to see across it? A Well, you could distinguish anything. It was not so pitch dark, but it was dark.

Q Now, at the time you handed this revolver to officer Magee, he, you say was standing near Sansone, was he? A Yes.

Q Who else had hold of Sansone, if anyone? A Well, there were three or four detectives there. I really don't know which one had hold of him.

Q Did you know McGee beforehand? A McGee I knew personally.

Q Was he one of those who had hold of Sansone? A Well, I don't know if he had hold of him. He had hold of one, either one of the four or five, but just which one, I don't know.

Q You don't know whether he had hold of the defendant Sansone or not? A He did have at one time, but just at that

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time, I don't know.

Q How far do you say he was standing from the decedent when you handed McGee this revolver? A About five feet.

Q At the instant that you handed this revolver to McGee, where was the defendant Sansone, if you know, the defendant?

A Why, they were altogether.

Q You did not know which was the defendant and which was not, did you? A No. They were all together, four or five prisoners. They were all made prisoners, the witnesses and the defendant.

Q Well now, the prisoners were standing near the decedent's body, weren't they? A All within about five feet.

Q And all the rest of the crowd were on the other side of the street? A On the opposite side and in back of where the prisoners were.

Q Of course, the revolver was entirely out of the pocket of the man? A Entirely out, yes.

Q And can you tell us the position of the hands at all, of the decedent, when you first saw the body? A No, I couldn't say the exact position.

Q Well, he had evidently fallen, hadn't he? A Well, he was lying there when I got there.

Q And you do not know at all where his hands were? A No, I know they were away from the revolver.

G I U S S E P P E I L L U Z Z O , being called and duly sworn on behalf of the people, testified through official interpreter Villamena, as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q Where did you live at that time Tonaiulo was shot?

A 117 Mott Street.

Q Were you in the barroom at 189 Hester Street that evening, Saturday night? A Yes, sir.

Q Were you playing "Tocco" with about sixteen other men?

A Yes.

Q Was Sansone there? A Yes.

Q This defendant? A Yes, sir.

Q Giuseppe Tonaiulo? A Yes, sir.

Q Did you hear Tonaiulo and the defendant have any conversation during that game? A No, sir. I didn't hear nothing.

Q Well, how many games did you play there that evening that these two men were in? A Two or three or four games, I don't know how many, but more than one, sure.

Q Did you hear Sansone say anything about not wanting to play any more games? A Yes, sir, Sansone said, "I don't want to play any more "

Q What did he do when he said that? A When Sansone says, "I don't want to play any more", Tonaiulo got up from his chair. He was about five or six feet away from Sansone and he went right in front of Sansone, stands right before him and says

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to Sansone in this way, (witness illustrating by putting his left hand to the chest of Sansone) he says, "you stay back here when you don't want to play any more" and he placed himself right in front of Sansone. Well, then all of us says, "Well, that's nothing, that's nothing" and we persuaded Sansone to play once more. Then Sansone did play once more. Then Tonialo says to Sansone, "Now, that you want to play, I don't want to play any more". Then every one of us says, "Then, we will play no more game now, no more playing," and we stopped playing. And everyone took his own way.

Q They went, who went out first and who went out after?

A And I with another man there named Quarantunovo, we went out and walked slowly, and from there we went to the house of this Girolomo, where these people lived.

Q Who is Girolom? A That old man, the man that is quite old. He is in that room now (indicating)

Q And was this house at 102 Mott Street? A Yes, sir, 102 Mott Street.

Q And Girolomo Schapolo you mean, is that right? A I don't know his second name, because he did not come from the same town that I came from.

Q Well, he rents a boarding house there, doesn't he?

A I don't know. if He kept a boarding house there, but I know there was six or seven or eight men that they lived altogether there.

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Q Well, you say you went into this house, did you? A Yes.

Q Was it a house in a back yard? A Yes,

Q And you go through a narrow passageway through the front building to get to it? A Yes, sir.

Q Now, when you got into this room how many men were there? A Well, it was quite a crowd of people, pretty near all the people that were playing in the saloon, they were over there then.

Q Was the defendant there, Sansone? A Yes. I wanted to go to the toilet when I was there, and somebody told me, "don't go to the toilet, the toilet is occupied, Sansone is in the toilet now".

Q Well, did you see Sansone there? A No, I didn't see him. They told me he was in the toilet.

Q Well, you saw---while you were in that room, did not Sansone come in the room? A I didn't see him.

Q Well, was Tonaiulo there? A No, I didn't see Tonaiulo there.

Q Well, how long did you stay there? A Lasting two or three or four minutes.

Q Then, what did you do? A Then we decided we all decided to go out and take a cup of coffee and I and this Quarantuvovi started to go out.

Q Didn't you see Sansone and Tonaiulo there? A No, I didn't see it, because I didn't mind them.

Q Well, when you went out, who was with you? A This man that I just said, Giuseppe Quarantuoovo.

Q There was not anybody else with you? A I and this man, we were going arm to arm, and the other ones they all went out.

Q And who else came out with you? A I an Quarantuoovo went together.

Q Wall, who came after you? A Some other people, I don't know their names?

Q Well, don't you know whether Sansone was with them?
A No, I don't know.

Q Do you know whether Toniuolo was along? A When we got in the street, I saw Sansone and Tonaiulo together.

Q Well then, what did the decedent and the defendant do?
A Nothing.

Q Well, did they walk down the street? A Yes, they walked down the street without saying a word.

Q Well, who else walked down the street? A All of us.

Q Who was walking in front? A I could not tell you the names. Some one was going in ~~fixim~~ front and someone was going after.

Q When you got down pretty near to Canal Street, did anything happen? A Yes, when they got down to Canal Street, we saw some of the party that was coming right back, and I says to them, " Why, don't we want to go and have some coffee?" and

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someone says to me, "No, never mind, those two, they are angry at each other, never mind the coffee". We and my friend, we continued to go along when after that, when we started to go, we heard two shots fired, "Boom, boom". (witness illustrating. I turned around and I see this man fall. I was frightened that I dirtied in my pants. Then we saw some policemen run over.

Q When somebody said, "These two are angry with each other", which two do you mean? A I don't know their names. They must be country people of those people there. I don't know who they were.

Q Now, who were they speaking about, Sansone and the decedent? A Sansone and Tonaiulo.

Q Did you see or did you hear Sansone and Tonaiulo talking to each other? A No, sir, I didn't hear nothing said, because I was away from them when we were in the street.

MR. MELLON: If your Honor, please, I think I shall move to strike out that he heard them talking to Sansone and Tonaiulo, if he didn't hear what they said.

THE COURT: Strike it out.

Q Well, as you walked down the street, you and another man were walking ahead, were you not? A I don't know, I didn't pay no attention to this. Someone of us was ahead and someone of us was after.

Q When you heard the shots, what did you see? A I saw one man down on the ground and I saw another man in the hands

of the police and I heard the policeman say, "I got him, I got⁸¹ him".

Q Who was the man that the police had? A That man there, Sansone, (indicating)

Q Who was the man that was lying on the ground? A Ton-
iaulo.

Q Did you see a revolver in the hands of anyone there?
A No, sir, I didn't see no pistol. I was not near them. We
were about fifteen or twenty feet away from them.

Q Do you know whether Tonialulo and Sansone were walking
side by side going down the street? A No, sir, I didn't pay
no attention.

Q Do you know how many men there was in that crowd? A
About fifteen. More, but not less.

Q Well, didn't you tell me the other day that there were
only five men in that crowd?

MR. MELLER: I object to that.

A No, sir.

MR. McCORMICK: I withdraw the question.

CROSS EXAMINATION BY MR. MELLER:

Q Now, how long had you known Sansone before this evening?
A About three years ago.

Q And did Sansone every work under you? A Yes, sir.

Q well, what was his disposition while he was working

under you? A He was a quiet boy, obedient and he would go for whatever I would send him, worked from five o'clock in the morning until six o'clock in the evening.

Q Was he quiet and peaceable or other disposition? A He never quarrelled with anybody.

Q Now, did you have any talk with Sansone or with Tonialulo that night about Sansone after the episode in the saloon?

A No, sir, we didn't see him no more when we left the saloon.

Q What time was it when you all got to the saloon before you began to play? A It was late, but I couldn't tell you the time, because I didn't have no watch with me.

Q Was it after seven o'clock? A It was dark.

Q What? A It was dark.

Q Well, how long were they in the saloon playing altogether? A When I arrived there in the saloon, we played about fifteen minutes or half an hour, but at the time that I arrived there, they were playing already and I couldn't tell you, because I didn't pay any attention.

Q Do you know what time it was when you left the saloon? A No, sir.

Q You went directly from the saloon into the house 102 Moot Street, didn't you? A Yes, sir.

Q And did Sansone leave before you? A I didn't pay no attention.

Q Did Tonialulo leave the room before you did? A I don't know. I didn't pay no attention, because I was talking to this

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other man that I mentioned before.

Q Did you notice, or you did not notice when Tonialulo left the saloon? A No, sir.

Q Did you say anything to Tonialulo in the saloon about Sansone? A No, sir, nothing.

Q You did not speak to him? A No, sir. I was as far as there, as far as back to that window (indicating) to Tonialulo, was as far as there, to the table where counsel for the defendant is.

Q This game "Tocco" that you were playing that night, is that a game that you often play? A Yes, always.

REDIRECT EXAMINATION BY MR. McCORMICK:

Q Well, when you went to the house at 102 Mott Street, Gerolomo's house, what were the men doing, sitting around in the room? A Someone was sitting down and someone was standing up, conversing together.

Q Well, did not you invite them all out to have some coffee? A No, I did not invite them. It was anyone of us said, "Let us go out".

Q You all went out together? A Yes.

J O S E P H G U A R I A R I; duly sworn on behalf of the people testified as follows:

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DIRECT EXAMINATION BY MR. McCORMICK:

Q You are a member of the Municipal Police force, are you not? A Yes, sir.

Q Attached to the Detective Bureau? A Yes.

Q On the evening or the night of the 5th of March, 1910 at ten minutes after eleven o'clock, where were you? A I was standing in the doorway of No. 93 Mott Street, in company with Officer McMahon.

Q ninety what? A 93.

Q Point out on that diagram, People's Exhibit 3, where you were standing? A I was standing right in this doorway (indicating)

Q But that is not 93, is it? A Well, opposite 92.

Q Nearly opposite 92? A Yes 90 or 92.

Q The numbers are indicated on that diagram. 92 is not opposite where you were pointing? A Well, here is 90 and 92 and I was opposite here (indicating)

Q Now where the letter, or what letter is that "E"? A Yes.

Q Was anyone standing there with you? A Officer McMahon.

Q And did anything attract your attention to the other side of the street? A Yes, sir, a group of five or six men walking down, stopped and conversed in loud tones, but not quite loud enough for me to understand, and the first thing that drew my attention was the report of a pistol.

Q when you heard that pistol shot, you looked in the

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direction of it, didn't you? A Yes, sir.

Q What was the first thing you saw? A I seen the defendant Francesco Gansone stepping back a couple of paces with his revolver aimed at a man that I subsequently learned to be Giuseppe Taniaulo and fired a second shot.

Q How long a time between the first and second shots?

A About three or four seconds.

Q When you heard the first shot, where was Gansone standing? A On the sidewalk.

Q Was he moving or was he standing still? A Moving to the street.

Q Backwards, you mean? A Backwards.

Q Stepping back? A Stepping back towards the street.

Q And the revolver was in his right hand? A Aimed all the time.

Q Pointed at the decedent? A Yes, sir.

Q Now, at that moment, what was the decedent doing, did you notice? A Staggering back, falling to the sidewalk.

Q Now, when he staggered back, how far back did he stagger? A I should say about two paces.

Q And then he fell? A Fell to the sidewalk.

Q When he was staggering back right after you heard the report of the first pistol, did you notice his hands? A Yes, sir.

Q Was there anything in them? A No, Sir.

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Q What did you do when you heard the first report? A I ran to where I heard the shots.

Q Did you notice what the other men in this crowd did when the first report was heard? A They began to run up towards north on Mott Street.

Q Well, they did not cluster together, the crowd separated you mean? A Separating away, yes, sir.

Q You saw this man fall? A Yes, sir.

Q Did he fall right after the second shot was fired? A He was on the downward at the first shot and fell at the second.

Q And in the interim had gone back a couple of steps? A Yes, sir, from the street.

Q And fell on his back? A Yes, sir, on his back.

Q Now, at the moment of the firing of the second shot, where was Sansone the defendant? A He was about three feet away from the sidewalk in the street.

Q Going backwards towards the middle of the Street? A Yes, sir.

Q Did you see the revolver in his hand? A Yes.

Q What did he do? A After he threw it away.

Q When? A After he fired the second shot we ran to him and when he seen us running to him, he threw the revolver away towards the gutter.

Q Now, did you notice just where the body of the decedent

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was lying when he fell down as you have described? A He fell down near an iron railing.

Q Now, the iron railing was on the inner side of the sidewalk, wasn't it? A Yes, sir.

Q And as he fell, you say he fell on his back? Now, in what direction were his feet pointing? A North.

Q How close to the iron railing was his right shoulder? A Well, his right shoulder was almost right to it.

Q Well, almost right close to it; you mean it was right up against it? A Yes, sir, a matter of an inch or so, not enough to judge.

Q Did you notice how far apart his feet were? A I should judge they were about one foot away from the rail.

Q His right foot was about a foot from the rail? A Yes.

Q That is the foot nearest the rail was about a foot from the rail? A Yes.

Q Did you notice a gun around him any place? A No, sir.

Q Did you notice anything about him that you have not described in your testimony already? A No, sir.

Q What did you do when you ran up to where Sansone was? A He threw the gun away and I placed him under arrest with officer McMahon and I picked up the revolver up that he had just thrown away near the curb.

Q Did you see anyone pick a revolver up? A No, sir.

Q What kind of a looking revolver was it? A Which one

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do you have reference to?

Q The one that you saw Sansone throw in the street? A A
a black revolver.

Q And when he threw it into the street, it was how far
from the curb? A He was about eight or ten feet from the
curb.

Q And he threw it forward? A Yes.

Q And it slid along the street, up against the curb, did
it? A Yes.

Q When you say McGee picked it up? A I picked it up.

Q Was it a revolver like that? (Indicating People's Exhibit
1) A Yes.

Q What did you do with it? A I handed it to officer
McGee.

Q Is that the revolver? A Yes.

Q Can you identify it? A Yes.

Q How? A By the number, 2627 and by two dots we put
there.

Q Did you put them there? A No, sir, McMahon put them
there.

Q You saw him put them there? A Yes.

Q That is the revolver, is it? A Yes.

Q Did you ever see that revolver before? (indicating
defendant's Exhibit A) A In the hands of officer McGee.

Q Did you see where McGee got Defendant's Exhibit A?

A No, sir.

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Q How long after the shooting was it that you saw McGee have Defendant's Exhibit A? A Well, I should judge about five minutes.

Q Well, go on, tell what happened after that? A Officer McGee. We had placed the defendant Sansone under arrest and two other witnesses that was there Girolomo Schapolo and Matteo Fratuella and another young man who had got there, I should judge about five minutes after the shooting, that is LeRusso. I an officer McMahon held them by the railing there while officer McGee went down to see the body, and in about five minutes after he came back and said there was a second revolver found over there, and officer McGee and McMahon took the four prisoners to the Sixth Precinct station house, and I remained there until Doctor from the Hudson street hospital removed the body to the Hudson Street hospital, and then I went to the Sixth Precinct and joined my brother officers and then took the defendants to police headquarters in the patrol wagon where their pedigrees were taken.

BY MR. WELLEN:

Q Where what? A Where their pedigrees were taken. I then asked the defendant, Francesco, why did you shoot him?

BY MR. MCCORMICK:

Q Where was this, officer? A The first time I asked him, "Where did you shoot him?" was right at the shooting. He said, "He no shoot him". Then after the pedigree was taken

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and they were about to be put in the cell, I then asked him again, "What did you shoot him?" "Oh", he says, "He do things to me, I can't digest. We shoot him. We no care, I got plenty of witnesses".

THE COURT: The stenographer will repeat that.

(The stenographer repeats the answer.)

BY THE COURT:

Q Did he say that word "digest" in English or Italian?

A English.

Q He said "digest"? A Yes, sir.

Q Was this conversation generally in Italian or English?

A He, preferred to talk English, so I was speaking in English to him.

BY MR. McCORMICK:

Q Well, you have talked with him several times? A Yes, sir.

Q Does he talk English easily? A Just enough to get along.

Q But the language that you have given us here is the exact language he used, is it? A Yes, sir.

Q And is not a translation by you from the Italian? A No sir.

Q (continuin) of anything he said? A It is not a translation.

Q Now, on the following day, were you in the Tombs prison?

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A Yes, sir.

Q Did you hear the defendant make any statement there?

A Mr. Stickney tried to get a statement, but he refused to make a statement.

MR. M WELLEN: I object to that and move to strike it out.

THE COURT: Strike it out.

Q Have you heard the defendant say anything since then?

A No, sir.

MR. WELLEN: I object to that.

THE COURT: Well, the answer is no.

Q You have given all you know about this, have you? That is all you know about this affair? A Yes, sir.

CROSS EXAMINATION BY MR. WELLEN:

Q You are an Italian? A Yes, sir.

Q Do you speak Italian? A Yes, sir.

Q And speak the same Italian as Sansone? A No, sir.

Q You come from a different part of Italy? A Yes, sir.

Q Now, the first thing that you knew about this occurrence was the sound of a pistol shot? A Yes, sir.

Q You are not able to tell us what, if anything, was done immediately before that shot was fired? A No, sir.

Q You did not see anything before that? A No, sir.

Q The first thing you saw was the second shot, Sansone backing towards the curb and firing the second shot, with the

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