START

1846

CASE

CASE #1846

COURT OF GENERAL SESSIONS OF THE PEACE.

City and County of New York, Part V.

The People	
vs.	Before: HON. T.C.T.CRAIN, J., and a Jury.
PIETRO DANGELO	

Tried, New York, March 3rd, etc., 1914.

Indicted for murder in the first degree.

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Frank S. Beard,
Official Stenographer.

COURT OF GENERAL SESSIONS OF THE PEACE.

City and County of New York, Part V.

The People	
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Frank S. Beard,
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Official Stenographer.

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New York, March 3rd, etc., 1914.

Indicted for murder in the first degree.

Indictment filed February 10th, 1914.

Appearances:

ASSISTANT DISTRICT ATTORNEYS CHARLES N. BROTHERS, AND LUCIAN A. BRECKENRIDGE, FOR THE PEOPLE.

JOSEPH S. ROSALSKY, ESQ., FOR THE DEFENSE.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

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TRIAL RESUMED

New York, March 4th, 1914.

MR. BROTHERS: May I proceed, your Honor?

THE COURT: Yes.

Opening Address for the People

of

ASSISTANT DISTRICT ATTORNEY CHARLES N. BROTHERS.

May it please the Court:

And Gentlemen of the Jury:

The defendant, Pietro Dangelo, was indicted by the Grand Jury of this County on the 10th of February of this year, and the Grand Jury charge him with having killed a man named Gaspare Mattarelli, on the 22nd of last September, on 3rd Avenue near 17th Street.

The people up there on the stree, about nine o'clock at night, were startled by hearing a pistol shot, and they looked, and they saw a man running on the east side of the avenue, above Seventeenth Street, running across the car tracks, in a southwesterly direction.

He reached the corner of 17th Street and Third Avenue and went west to 134, where he fell.

As he was running, the witnesses say that he had his hands on his chest (Illustrating) and blood wascoming from his mouth.

Behind him, running also, was a young girl. She

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was screaming and calling "Gaspare," and also calling upon the Madonna, and immediately behind her was an elderly woman, also running.

Some of the witnesses on the corner saw the defendant still further behind, making his way in the same general direction in which the deceased was running. The defendant, I believe, came not much closer than the car tracks at 3rd Avenue. He did not go into 17th Street and he stopped, and some of the people saw that, as the girl got to the corner of 3rd Avenue and 17th Street, either through emotion, or because her mother, being so close behind her, they tripped each other, but, at any rate, they both tripped and fell together. At that point, witnesses say that the elderly woman made a motion to the defendant, at that time, like that (Illustrating) like that, with her hands, as though to warn him to go away.

MR. ROSALSKY: I object to that remark of the District Attorney and except.

MR. BROTHERS: The man who was running, with his hands on his breast was found to be Gaspare Mattarelli, and the girl running after him was the daughter of this defendant, and the elderly woman the mother of that girl.

The girl was living then at 191 Third Avenue, just two or three doors up above 17th Street, on the east side of the avenue---I ~~kkkixk~~ think it is over a pawnshop---and that's

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where the shooting took place---on the sidewalk.

A witness, hearing the shot, came up the avenue, and somebody said something to him and he looked and saw this defendant and he followed him, and he followed him all the way over, in a roundabout way to First Avenue and then up several blocks and the defendant stopped on the corner, and allowed a couple of street cars going south to pass by and he finally boarded one and sat down near the front, and this witness entered the car and sat down directly opposite to him in the car and watched him.

The car went on its way until it got to 14th Street and Avenue A or Avenue B---I don't remember now exactly which---wherever it turns off there---it is a transfer point, I believe--the witness will tell us just the corner---and when the car came along there he saw the young girl and her mother, whom he had never seen before, get on the car, and seat themselves alongside of the defendant. I think the mother sat between. And the daughter turned to the father and said, "You have killed my Gaspare." She said that in Italian. The witness is an Italian, and understood everything that was said

The old man said, "If you don't shut up, you'll get some too, and reached into his pocket, and pulled out a cartridge shell, and made a remark that that was all that was left of the bullet, and he made an attempt to rise, and his wife pushed him back into his seat, when he tried to get up, and

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she did that several times.

The witness went with them in the car, and they alighted some distance downtown and he watched where the man went.

All this time, he was looking for a policeman, but saw none that he could call.

When he saw where the man stopped, at a certain door---I believe it was a relative of his family---he went in search of an officer, but when he came back the man was gone.

And then a search was made for the defendant. The wife of the deceased, Mrs. Mattarelli was located. The man was dead, when the officers got there, at 134 East 17th Street. They found him lying on the sidewalk, dead, and they saw to it that the body was taken to the morgue.

On the following day Dr. Weston made an autopsy upon the dead body, which was identified to him by Officer Carlson as being the same body that he had seen on the sidewalk, the night before, and a little later the wife, Mrs. Mattarelli, was brought there, and she identified the body as that of her husband.

The doctor, upon examination, found that he was not shot in the mouth, as indicated by the blood coming from his mouth, as some persons supposed, but that a bullet went through the fleshy part of the left arm and had penetrated the chest wall under the arm, up in the neighborhood of the third rib,

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and had entered there, and had taken a direct course through his chest, somewhat to the front, and was taken out of the fleshy part of the outside of the chest, in front of the right shoulder. I think it was a 38 caliber bullet. And that was the cause of the man's death.

The people that saw the defendant recognized that he had but one arm, and, after some conversation with Mrs. Mattarelli, a search was made for a man named Pietro Dangelo, a one armed man, over fifty years of age.

His family was traced from New York to Brooklyn, and then they moved back, and they changed their address several times; and, finally, two months and a half later, on the 13th of December, Officer Carlson, by a long search, located this defendant at Rochester, New York, and he was brought back to New York City.

He was then taken before Coroner Feinberg, and one of the duties that the Coroner performs is to inquire into the cause of death, where a man dies a violent death, and this defendant was brought before him, and there he was asked by the coroner whether he desired to make any statement, and he was warned thathe did not have to make any statement, and, if he did, it would be used against him, if he was brought to trial, and this was conveyed to him through an Italian speaking police officer, attached to the Detective Bureau, Officer DeMartini, who was sworn by Coroner Feinberg to truly interpret

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what was said, and the defendant signified his desire to say what he wanted to say; and, after considerable talk, he was finally examined by the Coroner.

There were present Assistant District Attorney Breckenridge, Officer DiMartini, and a stenographer, Mr. Burchell, and Mr. DiMartini put the questions to him in Italian and then translated his answers into English, and they were recorded.

That statement will be testified to here by the witnesses, wherein the defendant said at that time that his daughter was married to a man named---it is a very hard name for me to remember---Croccolisi---a very unusual name. Her first name is Concetta, and I believe she is commonly called Nellie. They were married, and this man was commonly known as Proto, her husband, and they were living together at the time. This defendant stole a pistol, a black pistol, from a friend's house, and went up to Third Avenue to shoot the deceased, and he gave the reason for doing it, and the reason will appear from that statement.

He said that he killed Gaspari, because Gaspari, to use his words, wanted to make a prostitute of his daughter, or whatever he wanted to do. Those arehis words, as they will be testified to by the stenographer and Officer DiMartini. At that time, she was married and was living with her husband.

Now, the indictment recites that the defendant is

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alleged to have committed murder in the first degree. The defendant says that premeditated this killing, this ~~and~~ murder in the first degree, that he deliberated on it and shot him, intending to kill him.

Under certain circumstances, the law says that one man may kill another, but we will try this case on the evidence thatI have outlined to you.

This man was shot on Third Avenue, about nine o'clock in the evening. He was shot in a place where, to shoot him, the shooter had to be around to one side, and somewhat to the rear of the deceased, to shoot him in that place. These people who claimed to have a grievance against him were pursuing this man, were running after him, and the defendant was coming on after him, and the defendant made that motion (Illustrating).

The flight of the defendant from his accustomed home, and place of business, to another City, and remaining there for two months and a half is evidence that he himself was conscious of his own wrong doing, and that evidence will be offered for that purpose.

I ask this jury, in listening to these witnesses, to listen patiently to everything that they say. Don't make up your mind about anything. Don't at once jump to the conclusion that the defendant is guilty, or that he is innocent, until you have heard every word in this case, until his Honor says

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you may retire to deliberate. Keep your minds open until then. Don't be hasty about it. It is just as important to the State as it is to the defendant that you listen carefully, and intelligently, and patiently to everything that is said by everybody in this case; and, if you find that the defendant had a grievance, consider whether, as you listen to his Honor charging the law of this State, whether that grievance, as is outlined by him as one of the reasons why a man may, without fear of punishment, go out and slay another man, on the street.

MR. ROSALSKY: Will your Honor exclude all the witnesses?

THE COURT: It is so ordered. Now, without further direction, during this trial, witnesses on both sides will remain outside, except during the periods when they are in the witness chair, or after they have testified.

---oooOooo---

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THE PEOPLE'S TESTIMONY.

W I L L I A M A . C A R L S O N , of the 21st Precinct, Detective Division, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. BROTHERS: If the Court please, we offer in evidence a diagram showing a portion of 3rd Avenue and 17th Street. Counsel concedes the correctness of it.

THE COURT: It will be received and marked People's Exhibit 1.

(It is marked People's Exhibit 1).

DIRECT EXAMINATION BY MR. BROTHERS:

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

Q And your name is William A. Carlson? A Yes, sir.

Q In September of last year, you were attached to what precinct? A Twenty-first precinct.

Q Does that take in Third Avenue and 17th Street? A Yes, sir.

Q In the neighborhood of nine o'clock, that evening, or 9:30, where were you? A I was in the East 22nd Street Station House.

Q And, in consequence of some message, did you go to East 17th Street? A I did.

Q And to what part of the street did you go, and what did you see? A I went to 134 East 17th Street, which is

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on the south side of the street.

Q East or West of Third Avenue? A West of Third Avenue.

Q Yes? A And I found a man lying on the sidewalk, on his back,

Q Yes? A Dead. I tried to get a statement from him, but he was dead.

Q Did you see any marks of violence on him? A THere was a lot of blood flowing fromhis mouth, as he was laying on his back.

Q Was there another Police Officer there present at that time? A Just about the time I arrived three other police officers came there, also attached to the 21st Precinct, Officer Anthony Quevedo, Officer Anthony Hoffman and another officer, known as Kepko.

Q Were you there when the ambulance came? A I were not.

Q Where had you gone? A I had already started to work on the case before the ambulance arrived.

Q Did you look at that body carefully? A I did, yes, sir.

Q Did you observe the clothing on it? A I did.

Q Did you take a description of the clothes? A I did.

Q Did you see that body again? A I did.

Q Where? A At the Morgue, foot of 26th Street.

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Q Foot of East 26th Street? A Yes, sir.

Q When was that? A On the following day, September 23rd, 1913.

Q And who was present at the time you saw the body in the City Morgue? A Lieutenant Flannelly, of the 21st Precinct and myself.

Q Did Dr. Weston, one of the Coroner's Physicians, come therewhile you were there? A He was there on the following day, and I was present then.

Q And did you identify the body to Dr. Weston as the body that you had seen in front of 134 East 17th Street, on the night of September 22nd? A Yes, sir.

Q I show you People's Exhibit 2 for identification. Is that a picture of the man whom you found dead on the street? A Yes, sir.

BY THE COURT:

Q About what hour was it, Officer, when you saw this body? A About 9:25 A. M., September 22nd, 1913.

MR. ROSALSKY: I will concede that those clothes that the District Attorney is about to bring in, were the clothes found upon the person of the deceased.

MR. BROTHERS: That is very kind of Mr. Rosalsky. We will take that concession. They will be here in a minute.

BY MR. BROTHERS:

Q Now this place, 134 East 17th Street, west of Third

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Avenue, is in the City and County of New York, is it? A Yes, sir.

Q Did you at any time take up a search for this defendant? A I did.

Q When was the first time that you looked for this defendant, knowing him by name? A Since September 24th, 1913---

THE COURT: You have given the date now. That is all that was asked.

THE WITNESS: September 24th, until December 13th.

BY MR. BROTHERS:

Q During that time you had looked for him in what places? A A number of places.

Q In New York City? A Yes, sir; and Brooklyn.

Q Were you constantly engaged in the search? A I was assigned to the case, and was searching for him all the time.

Q Now, did you learn, several days after you saw this body on the street, after September 22nd, the identity of the deceased? A I did, yes.

Q And from whom did you get that information?

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

THE COURT: Objection sustained.

A The wife of the---

THE COURT: No, you must not answer.

MR. BROTHERS: No, the Judge says that you must not

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answer.

BY MR. BROTHERS:

Q Did you interview som woman? A I did.

Q What was her name? A I have got it in my pocket here.

Q Well, let us have it? A A woman by the name of Angdina Mattarelli.

Q Where did she live at that time? A 327 East 11th Street, New York City.

Q Did you see her at the Morgue? A I did; yes, sir.

Q Did you, at the time you saw her at the morgue also see the same dead body that you have been testifying about? A Yes, sir.

Q Now, you talked with her, and after you talked with her you searched for this defendant? A I did.

Q Where did you search for the defendant? A I first seen the defendant ~~xx~~ in Rochester, New York.

Q On what date? A On December 13th.

Q Was he under arrest at that time? A He was.

Q And what did you do with him? A I took him into custody and brought him back to New York City.

Q And when you got him to New York, what did you do? Where did you take him first? A I brought him to the East 22nd Street Police Station, and immediately notified the Coroner's Office and the District Attorney's Office and the

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Detective Division.

Q Yes. A That I had the man under arrest in New York City.

MR. BROTHERS: May allthe clothing be regarded as one exhibit, your Honor?

THE COURT: Is that agreeable to both sides?

MR.ROSALSKY: Yes, sir; it is.

(The clothing is marked People's Exhibit 3 in evidence.)

BY MR. BROTHERS:

Q Now, look at this exhibit (Indicating a coat), and say whether it is in the same condition now that it was on the night that you saw it on the dead man's body? AA Yes, sir.

Q Now, during the search that you made for the defendant, Pietro Dangelo, did you see any of the members of his family? A I did, yes.

Q Which ones did you see? A I seen his wife.

Q Where? A At Number 229 Leonard Street, Brooklyn, and also his daughter, at 229 Leonard Street, Brooklyn.

Q What is the daughter's name? A Nellie Dangelo.

Q Do you know her married name? Well, I will withdraw that. Did you talk with her?

THE COURT: Yes or no.

A At that time, no.

BY MR. BROTHERS:

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Q At any time, since that time or before?

THE COURT: Yes or no.

A I did, yes.

BY MR. BROTHERS:

Q Did you talk with her mother at any time? A I did, yes.

Q And was that before you saw the defendant in Rochester? A Yes, sir.

MR. BROTHERS: That is all.

MR.ROSALSKY: No questions.

BY THE COURT:

Q Officer, tell me as nearly as you can, in the order in which you went to the places, the different places in which you looked for this defendant, beginning, as you say, on September 24th, and ending, as you say, on December 13th, 1913. Now, that question calls for the addresses. To what place did you first go? A On September 24th---25th---I went to premises number 31 Leonard Street.

Q What floor? A Second floor.

Q Front or back? A Rear.

Q You went to another place? A I then went to 55 Lewis Street.

Q What floor? A Second floor, front.

Q Yes? A In the rear house.

Q Yes. A And from there I went to 560 Grand Street,

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Brooklyn.

Q What floor? A The first floor, in the rear.

Q That means one flight up or on the ground? A One flight up, in the rear. And from there I went to---then, the first night of the---

Q Now, if you don't remember, say so. A The first place I visited, before I knew this defendant's name---

Q No, after you knew his name. A From there I went to 229 Leonard Street, Brooklyn.

Q What floor? A I didn't go into the house.

Q Yes. A And from 229 Leonard Street I went to 315 Rivington Street.

Q What floor? A I went to several apartments at 315 Rivington Street. The top floor, in the front, on the west side of the building, and the floor beneath that, which is the fourth, on the front, on the west side of the building.

Q Yes. A I also visited a number of other houses that I made no record of. I guess that's all.

Q Now, having given the addresses of some of the places, are you able to fix the dates on which you went to these respective places? First we will take the first one, on Lewis Street? A Yes, on September 25th we went, ---I went, in company with Detective Digilio, we went to premises 31 Lewis Street.

Q And what hour of the day was that? A About 11 A.M.

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Q Now, take the next premises on Lewis Street, 55, when did you go there? A About 12 noon on September 25th, accompanied by Detective Digillio, we went to the premises 55 Lewis Street.

Q What date did you go to the premises on Grand Street, Brooklyn? A On September 26th.

Q And at what hour? A About ten A. M., we went to the premises 560 Grand Street.

Q On what date did you go to the premises on Rivington Street, 315 Rivington Street? A September 28th.

Q About what hour? A About 11 A. M., accompanied by Detective Digillio, we went to those premises. I also visited that same premises, 315 Rivington Street, on several other occasions, later than September 28th.

Q Between that and December 13th? A Yes, sir.

THE COURT: That is all.

CROSS EXAMINATION BY MR. ROSALSKY:

Q When did you visit 229 Leonard Street? A 229 Leonard Street?

Q Yes? A I didn't go into the house, I was in the vicinity there on September 25th.

Q Did you expect to find the defendant in the street? A We had that place covered.

Q No, answer my question. (Question repeated) A No, sir; we had a couple of men covering that place all the time.

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THE COURT: Now, strike out everything but "No, sir". And the jury will disregard everything else but that.

BY MR. ROSALSKY:

Q And when were you at 229 Leonard Street? A From September 26th until September 27th.

Q And how many times altogether were you at 315 Rivington Street? A On three different occasions.

Q And that was all the search you made, that you have told us, his Honor and the Jury? A Yes, sir.

Q And each time Digilio was with you? A Well, I visited a number of places that Digilio wasn't with me, places that I made no record of, houses.

Q Well, you were working on other cases besides this, at the same time? A No, sir; I was assigned to this case, and I was giving this case all my attention.

Q No other case but this? A No.

MR. ROSALSKY: That's all.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q You and Digilio and who else worked on it, if you remember? A Detective Digilio and Sergeant Willemse, attached to the District Attorney's Office.

MR. BROTHERS: That's all.

G I U S E P P E C A G L I A N O, of 305 East 24th Street, a witness called on behalf of the People, being duly sworn and examined through the official interpreter, Mr. Moustachi, tes-

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tified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your business? A I am a shoeblack.

Q Where is your bootblack stand? A 17th Street and Third Avenue.

Q On which corner? A Northwest corner.

Q Did you have a bootblack stand there on the night of September 22nd, 1913? A Yes, sir. It was closed. I had already closed it.

Q Where were you between nine and nine thirty that night? A It was about nine thirty, and I had my little child by the hand, and I was waiting for the young man, the other young man, to finish closing up the stand.

Q Well now, did anything happen there, and, if so, what was it? A While I was standing there, Iheard a report, similar to the sound of an automobile, a tire bursting, and I turned around to see what it was, when I saw a man coming from across the street with both his hands across his chest. (Illustrating).

Q And where was this man when you first saw him? A I was in front of 119 Third Avenue, and the man was coming from across the street right towards me.

BY THE COURT:

Q And when you say across the street, do you mean across 17th Street? A No, he came from the middle of Third Avenue,

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towards Seventeenth Street, towards me.

BY MR. BROTHERS:

Q Well, was he on the sidewalk, or on the roadway or where, when youfirst saw him? A I saw him in the middle of the track of Third Avenue, coming towards me.

Q And you were on the west side of the street? A Going uptown, I was on the left side of the avenue.

Q Now, when you saw this man running towards you, with his hands upon his chest, what else did you see? A I saw him, with one hand across his chest, and the other hand over his mouth, with the blood issuing from his mouth.

BY THE COURT:

Q Was he running or walking? A He was walking.

BY MR. BROTHERS:

Q Where did he go to? A He wentinto 17th Street, and in the middle of the block he fell down.

Q Do you know in front of what house he fell? A He fell in front of a coal man---it must have been in front of 131---in front of either 132 or 134.

BY THE COURT:

Q Did he fall upon the uptown or downtown side of 17th Street? A On the south side of the street.

BY MR. BROTHERS:

Q Did you see anybody else running? A Following the man, was a girl, a strong girl, and she was shouting, "Gas-

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pare, my dear, where are you going? Come here."

Q And how far behind the man running with his hand on his breast was this girl? A I didn't measure the distance. It was quite a distance.

Q Was there any one else running besides the girl, that you saw? A After the girl, there was a woman, an elderly woman.

Q And what was she doing? A She was going after the girl and shouting.

BY THE COURT:

Q About how far behind the man was the girl, when you first saw the man? A I saw the man---while I was standing at the corner there, the man passed me, at some distancefrom me, and the girl was then about in Third Avenue, on Third Avenue.

BY MR. BROTHERS:

Q And when you saw the man first on the Third Avenue tracks, did you see the girl then? A No, afterwards Iheard her cries.

Q And did you see this defendant there, that night? A I don't know.

Q Did you see an old man there? A I saw an old man.

Q Where was he? A He was also coming from across the street.

Q And how far across the street did he come? A He came

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also fromiin front of 191, towards me.

BY THE COURT:

Q And when you say across the street, what street do you mean? A Third Avenue. From across Third Avenue.

BY MR. BROTHERS:

Q Did he get over to the sidewalk? A yes, sir. Over to the sidewalk.

Q Will you describe the appearance of that old man? A It looked to me---it was rather dark---a kind of an old man, with an empty sleeve flying about, with one arm.

Q Have you seen that old man since that time? A No, sir.

Q Will you look at the defendant here, and say whether or not you saw himthat night?

MR. BROTHERS: (Addressing the defendant) Stand up.

MR. ROSALSKY: No, I object.

THE COURT: No, let him remain seated. He need not stand up.

A It doesn't look so, because this defendant has a beard. That one had no beard.

MR. BROTHERS: Will you please mark this for identification?

(It is marked people's Exhibit four for identification, a photograph).

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BY MR. BROTHERS:

Q I show you People's Exhibit 4 for Identification, and ask you whether you recognize the picture? A It looks like him.

Q Like whom? A It looks like the one that I saw, without beard.

Q Now, which man are you talking about, that you saw without a beard? A This one here (Indicating the photograph) This one to the right.

THE COURT: Now, pardon me. That paper just shown to the witness is marked People's Exhibit 4 for Identification, and the witness indicates that the figure to the right looks like a person whom he says he saw on that night.

MR. BROTHERS: Yes, sir.

BY MR. BROTHERS:

Q Now, which person that you saw that night, of September 22nd, do you say that this picture resembled? A It was dark, and he was across the tracks, and I couldn't well distinguish.

Q Now, you have told us of two men; one man running with his hand on his chest and then you have told of an old man thatyou saw come across the tracks. Now, which man does this picture resemble. A It looks like the one that is darker here in this picture. (Indicating.)

Q Now, which man that you saw there, that night, does it

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look like? I am asking you that. A The second man.

Q Was that the old man that you are talking about?

MR. ROSALSKY: I object to that, as leading.

A Yes, sir.

BY MR. BROTHERS:

Q Now, look at People's Exhibit 2 for identification, and tell us whether you saw that man, that night? Yes or no?

A Yes.

Q Well, what was that man doing, that night? A He was running.

Q What else did he do? A I only saw him running, with his hand on his chest.

Q Is that the man that fell down in front of 134? A The one that was running is the one that fell down.

Q Yes, and is that his picture? A Yes, sir.

MR. BROTHERS: Will your Honor let the Interpreter tell him to please answer?

THE COURT: Well, I think that perhaps he understands a little English. Face around here. When you are asked a question, you answer it, without so much talking. You understand me, and you will obey me. Pay attention to what is asked, and answer it. You tell him that in Italian.

MR. BROTHERS: May we have a witness brought in for identification, your Honor?

THE COURT: Yes.

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MR. BROTHERS: Call in Concetta, the girl.

THE COURT: I think we will let the witness describe the girl that he saw first. She need not come in for a moment.

MR. BROTHERS: Very well, sir.

BY MR. BROTHERS:

Q The girl that you saw running after the man, with his hand on his breast, describe how she looked? A She looked to me a small girl, with a small face.

Q Could you determine what nationality she was from her appearance? A No.

Q In what language did she speak, that you heard? A In Italian.

Q Yes. Had you ever seen her before that night? A No.

Q Can you describe the older woman? A She looked old.

Q Have you seen that younger woman, the girl, since that night? A No.

Q Have you seen the old woman? A No.

MR. BROTHERS: Now, with your Honor's permission, may we bring the girl in?

THE COURT: Yes.

MR. BROTHERS: Bring in Concetta.

BY MR. BROTHERS:

Q Now, look at the girl, but don't say anything.

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MR. BROTHERS: May we have the girl give her name on the record?

THE COURT: Well, I will take the name.

MR. ROSALSKY: Nellie Croccolisi is brought in, if your Honor please.

BY MR. BROTHERS:

Q Did you ever see that girl before? A No.

Q Does she resemble any one that you saw on the night of September 22nd, 1913?

MR. ROSALSKY: I object, if your Honor please. The witness has answered that he never saw her before.

THE COURT: Well, I will sustain the objection.

BY THE COURT:

Q When, for the first time, so far as you know, did you see that girl? Indicate the date when you first saw that girl?

A I don't remember the date.

Q Have you ever seen her, as far as you know, before you saw her in the Court Room, to-day? A I saw her in the station house.

Q What station house did you see her in? A In Twenty-second Street.

Q And had you ever seen her before you saw her in the station house? A No.

Q The first time that you ever saw the girl was in the station house, so far as you know; is that so? A And even

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then I didn't know her, but they showed her to me.

MR. BROTHERS: May we have this marked for Identification?

(It is marked People's Exhibit 5 for Identification)

BY MR. BROTHERS:

Q Now, I show you People's Exhibit 5 for Identification, and ask you if you know that person?

MR. ROSALSKY: Will your Honor pardon me. The question which your Honor referred to, "Did you ever see the girl?" in your Honor's question, did you have reference to the girl that was brought in, or the girl that he said he saw on the night of the shooting?

THE COURT: I was inquiring of this witness when, for the first time, he saw the girl who was brought into the Court Room.

MR. BROTHERS: That is the way I understood it.

THE COURT: Now there may have been some misunderstanding, and, if you would like me to, I will interrogate the witness regarding it. And you will pardon me, Mr. District Attorney?

MR. BROTHERS: Yes, sir.

BY THE COURT:

Q A few moments ago, a young girl was brought into the Court Room, and stood on the other side of that railing. (Indicating) Did you see her, to-day? A To-day?

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Q To-day? A yes, sir.

Q Now, have you ever seen that girl before, so far as you know, before to-day? A Only in the station house.

Q But you did see the girl who came into the Court, to-day, in a station house, before to-day; is that so? Yes or no? A In the station house.

Q Now, about when was it that you saw that girl in the station house? A One night, that the policeman brought me there.

Q And about how long was that after the night on which you say you saw aman with his hand on his breast who fell down on East 17th Street? A Idon't know, because the police brought me there, whether it was a month or more than a month.; I don't know.

Q Now, so far as you know, had you ever seen the girl that you saw on that occasion in the station house, before you saw her in the station house? A No.

THE COURT: Now, Ithink that clears up any ambiguity.

MR. ROSALSKY: Yes, sir; I think it does.

THE COURT: Now, the witness may answer the questions you put, Mr. District Attorney.

BY MR. BROTHERS:

Q Will you examine People's Exhibit 5 for identification and tell us whether or not you you recognize the person in that picture? A I could not.

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Q So far as you know, did you ever see the person whose picture you look at? Before this date? A No.

MR. BROTHERS: Now, may we have the mother brought in, your Honor?

THE COURT: Yes, the mother may be brought in.

MR. BROTHERS: Bring in Mrs. Dangelo.

BY MR.BROTHERS:

Q Now, look at this woman standing at the rail, look at her carefully. Don't look at me. Look at her.

MR. BROTHERS: Now, may we have her name?

MR. ROSALSKY: I object to the woman giving her name at this time, while she is in the room.

THE COURT: Yes, I think so.

BY MR. BROTHERS:

Q Now, having looked at that woman, tell us whether you ever saw her before to-day? A No.

MR. ROSALSKY: The woman who was brought in was Annie Dangelo.

BY MR. BROTHERS:

Q Did you see her in the station house the night you say you saw the young woman? A They showed her to me.

Q You said, a moment ago, that you never saw her before to-day? A. I didn't understand that part.

Q Did you ever see that woman, the last woman, before you saw her in the station house? A (No answer).

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BY THE COURT:

Q Now, when did you first see her (Referring to the last woman) A In the station house, when they showed her to me.

BY MR. BROTHERS:

Q Did you see her on the night of December 22nd, along Third Avenue, near Seventeenth Street?

MR. ROSALSKY: I object to that as leading.

THE COURT: I will allow it.

MR. ROSALSKY: Exception.

A No, I didn't see her. The face is something like it, but I didn't see her.

THE COURT: Mr. Brothers, I notice that Dr. Weston is in Court. Do you desire to put him on now?

MR. BROTHERS: I do, sir; very much desire it.

THE COURT: Do you object to that, Mr. Rosalsky?

MR. ROSALSKY: No, sir; I don't object.

THE COURT: Then the witness may step aside for the present.

A L B E R T T . W E S T O N , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Doctor---

MR. BROTHERS: If your Honor please, counsel concedes the qualifications of the witness. That will save a little time.

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BY MR. BROTHERS:

Q Doctor, you are one of the Coroner's Physicians of this county? A I am.

Q On the 23rd of September, 1913, did you perform an autopsy upon a body in the morgue? A I did.

Q Was the body identified to you? A It was.

Q By whom? A By a police officer.

Q What was his name? Will you look at your original record, please? A I can recall that by the record.

Q Look at it, please? A The body was identified by Officer Carlson, a detective.

Q Yes. A And also by two relatives of the deceased, brothers-in-law.

Q What did you find upon making your autopsy? A I found a pistol shot wound on the outer aspect of the left arm.

Q Will you indicate on your own arm where that was? A It was at a point about there. (Indicating).

Q Was that in front or back of the bone? A It was back of the bone.

Q And several inches below the tip of the shoulder? A About four inches below the tip of the shoulder. And, on autopsy, I found that this was a penetrating wound, which passed through the muscles of the arm and the chest wall, passed through the chest and through the lung and through

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the chest wall on the right side.

Q Was there an exit? A There was not.

Q Did you locate the bullet? A I did.

Q Where was it? A It was in the muscles of the right side of the chest, right in the axillary region, at a point about here (Indicating) underneath the chin, opposite the third rip, at a point about there. (Indicating).

Q And was it on the front side of the chest? A Well, it was a little to the front of the median line, yes.

Q Now, the course of that bullet, was it on a level with the ground? That is, did it rise or fall, where you found the bullet? A Well, the deflection was very little. I think it was practically on a parallel plane with the ground, practically level.

Q And have you the bullet here? A Yes, sir.

Q Will you produce it? A I will.

Q Do you know the caliber of it, Doctor? A I do.

Q What is it? A It is known as 38.

MR. BROTHERS: We offer it in evidence.

MR. ROSALSKY: No objection.

THE COURT: Received.

(It is marked People's Exhibit 6).

BY MR. BROTHERS:

Q How far in front of the median line, on the right side, did you find the bullet? A Why, the bullet was found in the

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muscles.

Q This muscle here (Indicating) A In the anterior wall of the chest; practically not more than two inches in front of the median line.

Q Well, you didn't have to raise his arm to get it out; did you? A No, sir.

Q He lay on his back, and you found it in the front? A Yes, sir; a little higher up than you are now indicating.

Q That is about correct, is it? (Illustrating) A Yes, sir.

Q What was the cause of death? A Well, the cause of death was the penetrating pistol shot wound of the chest.

Q This wound which you have just described? A Yes, the wound which I have just described.

BY THE COURT:

Q Did you find any other wounds on the body? A I did not.

Q This was the body of a man? A It was.

BY MR. BROTHERS:

Q A male body? A Yes, sir.

Q And did you make any estimate of his weight or height? A Why, roughly.

Q Or his age? A He was a young man, about medium height.

Q And what was his weight? A Oh, I should think he

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weighed in the neighborhood of about a hundred and thirty-five or a hundred and forty pounds.

Q The witness testified that this man ran from Third Avenue, som distance, in to East Seventeenth Street; that blood was coming from his mouth. What would be a competent producing cause for that hemorrhage from the mouth, after you examined the body, from what you found there? A Why, I---

MR. ROSALSKY: I object to that as incompetent.

THE COURT: If he can express an opinion, with reasonable certainty, I will allow it.

MR. ROSALSKY: Exception.

A Why, the perforation of both lungs by the bullet would cause hemorrhage, and that hemorrhage into the bronchial tupes, unquestionably did produce the hemorrhage from the lungs.

BY MR. BROTHERS:

Q It is not unusual for a man to run that distance, with such a wound, is it? A It is not common, but it is certainly permissible.

Q And the exertion of running would also influence the hemorrhage, would it not? A Yes, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Did you see, Doctor, somewhere among your papers here, that the weight given was a hundred and seventy pounds? A No, I didn't see any statement to that effect.

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Q Doctor, where was the entrance of the bullet? A It was on the outer aspect of the left arm, below the shoulder. (Indicating).

Q Below the shoulder? A Yes, sir; about four inches below the point of the shoulder.

Q Well, was it more to the front or the back? A Well, it was very near the middle of the arm, but it was slightly posterior to the middle of the arm.

Q Well, what do you mean by slightly posterior? A Well, not absolutely in the center, but rather towards the back, rather than towards the front of the center.

Q How far from the center, if a line were drawn on the center of the arm, would it be towards the back of that line or towards the front of that line? A Well, as the arm lay, in that way (Illustrating) in the position in which your arm hangs now, I should say it was just slightly to the back of such a line.

Q Was it so slight that it would be almost in the center? A Oh, apparently up in the center, but slightly to the back of the arm.

BY THE COURT:

Q Whereabouts was the point of exit from the arm, on the other side? A From the arm?

Q Yes? A It passed through the chest wall, through what we call the axillar, without passing out of the arm.

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Q And it passed through the arm? A Yes, sir; into the chest.

Q And the point of exit, so far as the arm was concerned, was that further to the front of the arm than the point of entrance of the arm, or just about the same? A Well, it went through the muscles that connect the upper arm with the chest wall, so that I couldn't say, so as to just exactly say, the relationship to the arm.

BY MR. ~~XXXXXXXX~~ BROTHERS:

Q Was there any wound under the arm here(Indicating)? A No, sir.

Q It went through the shoulder muscles, then? A Yes, sir; into the chest wall.

Q Now, take it as you are now looking at me. How did the track tend? A If it had any tendency at all, it was towards the front. The point where I found the bullet was somewhat anterior to the point where the bullet entered the body.

Q And by anterior you mean front, of course? A Yes, sir.

Q Now, look at People's Exhibit 3, this coat, and I call your attention to a hole in the left sleeve. Is that about the position of the entrance of the bullet in the arm? A Well, that's what I tried to describe, as to the entrance of the bullet.

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Q And that forms a good illustration of it? A Yes, sir.

Q Is that a bullet hole? (Indicating the Exhibit) A Apparently.

BY MR. ROSALSKY:

Q Now, what was the course of the bullet, doctor? Was there any deflection? A No, sir.

Q Straight? A Straight.

Q In a straight line from the shoulder to where you probed? A Where I removed it, yes, perfectly straight.

Q No deflection of any kind? A No, sir.

MR. ROSALSKY: That's all.

THE COURT: Do either of you gentlemen desire to interrogate the doctor respecting his opinion as to the position of the arm at the time? I don't know that that is competent.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Can you form any opinion, Doctor, from your examination, as to what position the left arm of the deceased was in when the bullet entered his arm?

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

THE COURT: Well, if you object, I will not allow it.

MR. ROSALSKY: And as speculative.

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THE COURT: That will be all, Doctor.

G I U S E P P E C A G L I A N O , being recalled to the stand, testified as follows:

BY THE COURT:

Q Did you continue to remain on the corner from the time that you first saw the man who, ~~xhx~~ you say, had his hand at his chest, until the moment that you say that you saw him fall; did you continue to remain on the northwest ~~xxxx~~ corner of Third Avenue and East Seventeenth Street? A Yes, sir.

Q And about how long did you stay on the corner after you saw the man fall? A Two minutes.

Q And then what did you do? A Then Iwent to my own house.

Q Did you see any police officer arrive at the place where the man had fallen? A No.

CROSS EXAMINATION BY MR. ROSALSKY:

Q What country do you come from? A From Italy.

Q Well, what province? A Potenza.

Q Did you knowthe dead man? A No.

Q Had you ever seen the dead man before that night? A No, sir.

BY THE COURT:

Q When you first saw the man that fell, did he have a hat on? A I didn't pay any attention to that.

BY MR. ROSALSKY:

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Q Where is your bootblack stand? A Next to the bar, the saloon.

Q Is it on Third Avenue? A Yes, sir.

Q And when you first saw the man come towards you, with his hand on his chest, where were you? A I was near to the bar, next to the saloon.

BY THE COURT:

Q Well, you were outdoors and on the sidewalk, weren't you? A On the sidewalk.

BY MR. ROSALSKY:

Q How far away from you was the dead man when you first saw him? A He was---he came from the middle of the track of Third Avenue and he passed me by, and there were several other people.

Q Now, when he passed you by, how near to him were you? A Two metres.

THE COURT: About six feet, or six feet and a half.

BY MR. ROSALSKY:

Q Did he make anynoise when he was going by you; did he shout or call out? A No, sir; only running.

Q Now, when you saw him run, did your eye follow him?

THE COURT: Now, tell him that I understand him, and I want him to talk so that I can hear him.

A After he passed the corner where I was standing, I did not look at him any more; I did not keep him in sight.

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BY MR. ROSALSKY:

Q Did you look in the direction of from where the man came? A Yes, sir.

Q Were there a numberof People on Third Avenue at that time? A Passers-by; yes.

Q Were there a number of people going west on 17th Street at that time? A Yes, people were congregated there at the time that the girl was shouting.

Q Well, where was the girl? How far away from you was the girl when she was shouting? A The width of the whole street.

BY THE COURT:

Q And when you say the width of the street, do you mean the width of Third Avenue? A Yes, sir.

BY MR. ROSALSKY:

Q When you heard the girl say "Gaspare" she was about sixty feet away from you? A Oh, she was already half way across the street when she said that.

Q And did you hear those words distinctly? Will you give me the words that you heard the girl use when she was about half across the street? A "Gaspare, my Gaspare, where are you going? Come here".

Q Is that all she said? A That's all.

Q And the girl that said that was not the girl that was brought in, this morning, meaning Nellie Croccolisi? A I

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don't know her as being the girl.

Q Well, you saw the girl; didn't you? A Isaw a girl, and I heard her shouting, but there wereso many people there.

Q Well, are you sure that the girl shouted? A Yes, that I am sure, that I heard the girl shouting that.

Q Did you say that there was a crowd around the girl at the time she was shouting? A She was shouting and then the man fell and then the crowd collected around.

Q Well, where did the man fall? Near where she was shouting? A No.

Q Well, was there a crowd around where she was shouting? A They ran after the girl until the girl reached the place where the man fell.

Q Did the girl go to the place where the man fell? A The girl reached near me. I heard that the man fell, but I didn't see himfalling.

Q Well, did the girl reach close enough for you to take a good look at her? A No.

Q How near to you did she come when you lost sight of her? A Right as near as the sidewalk. And then the crowd came, and I didn't see her any more.

Q Well, when she reached the sidewalk---did she reach the sidewalk where you were? A Yes, sir.

BY THE COURT:

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Q Did she have a hat on? A I didn't observe whether she had a hat.

BY MR. ROSALSKY:

Q Now, when she reached the side walk you lost sight of her? A No, I didn,t see her any more.

Q Now, was your eye watching her from the time you heard the shout until she reached the sidewalk? A I only saw her for a moment.

Q Well, at the time she reached the sidewalk, was there a crowd around her? A Yes, sir.

Q And then you say you saw an old woman running? A Yes, sir.

Q Well, was the old woman in the crowd? A Yes, sir.

Q Well, you don't know from where this old woman came, do you? A Yes.

Q Well, where did you first see this woman, in the middle of the street or on the sidewalk?

THE COURT: Referring to the old woman?

MR. ROSALSKY: Yes, sir; to the old woman.

A The middle of the street.

BY THE COURT:

Q Referring to Third Avenue? A Yes, sir.

BY MR. ROSALSKY:

Q But you don't know where she came from? A No.

Q And how near to the little girl was the old lady? A

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About six or seven metres distance.

THE INTERPRETER: About equal to fourteen feet.

THE COURT: Well, a meter is more than a yard, and a yard is three feet. It would be eighteen feet, or more than that, about twenty feet.

MR. ROSALSKY: Yes, sir; about that. There are thirty-nine inches in a meter. It would be about twenty-two feet.

THE COURT: It would be about twenty one feet, would it not?

MR. ROSALSKY: Yes, sir; about twenty one feet.

BY MR. ROSALSKY:

Q Now, did you---where did you see the old lady go?

A After the girl who was shouting.

Q Well, where did you first see the old lady, that night?

A When she was going after the girl that was shouting.

BY THE COURT:

Q Now, When your eye rested for the last time, that night, on the old lady, what was she in the act of doing? Walking, standing or doing what? A Walking fast.

BY MR. ROSALSKY:

Q And did she walk towards you? A Kind of sideways, she came, across the street.

BY THE COURT:

Q And when you say across the street, you mean across

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Third Avenue? A Yes, sir.

BY MR. ROSALSKY:

Q Did she reach the sidewalk where you were? A No.

Q You lost sight of her while she was still in the middle of the street? A No, I didn't. I lost sight of her. I didn't see her any more.

Q In what part of the street was she when you lost sight of her? A When she passed the corner where I was, in 17th Street.

Q And then you saw an old man? A Yes, sir.

Q How far behind the old lady did you see the old man? A Four or five metres.

Q And the old man whom you saw, four or five metres--- And where did you see the old man? A I saw himcoming across Third Avenue, after the old woman.

Q Where did you first see him? Where was the old man when you first caught sight of him? A Near the column of the elevated train.

Q And was there a crowd around there at the time? A Yes, sir.

Q Did I understand you to say that there was a crowd around the girl? A Yes, sir.

Q And a crowd around the woman, around the old lady? A Yes, sir.

Q And a crowd around the old man; when you first saw

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him? A Yes, sir.

Q Were there three separate crowds, or was there one large crowd around all of them? A All united.

Q And was the old man running or walking? A Walking.

BY THE COURT:

Q Did he have a hat on? A It looked to me that he had something on, but I don't know whether it was a hat or a cap.

BY MR. ROSALSKY:

Q And in what direction did you see the old man go? A I don't know.

Q And when did you lose sight of the old man, after you saw him? A I didn't see him any more.

BY THE COURT:

Q Where was he when you first saw him, on that night? A Near the posts of the elevated train.

BY MR. ROSALSKY:

Q And you saw him just for a second or a longer time? A About half a minute.

Q And was he standing quiet when you saw him? A Yes, he was standing quiet.

Q And that was in the middle of the street? A After crossing Third Avenue, on the east side of the elevated post.

Q And at the time you saw him, had you lost sight of the girl and the old lady? A Nobody.

Q Who was the last person you saw? The old lady---the

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young girl, the old lady, or the young man? A The last was the old man.

Q Had the girl disappeared when you saw the old man? A They were all in the middle of the crowd.

Q There were lots of ladies in the crowd? A Men and women.

Q How many old ladies in the crowd? A That I don't know.

Q Was there more than one old lady in the crowd that you saw? A I don't know, because there was a crowd there.

Q How many young girls were there in that crowd? A I don't know.

Q Was there more than one young girl in that crowd? A I don't know.

Q And the old man whom you saw in the crowd---I show you People's Exhibit 4 for Identification, and ask you whether any of those looked like the man whom you saw standing near the elevated pillars, that night? A He looked something like the picture to my right, because he had a dark face.

Q But you don't rememberhow he was dressed; do you? A No.

Q Now, tell me again what were the words you heard this girl shout? A I only heard her once saying, "My Gaspare, where are you going? Come here."

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Q And how loud did she shout that out? A As strong as she could shout it.

Q Now, the girl that you saw in the station house, some time after September 22nd, was that the girl who did the shouting? I withdraw that question.

MR. ROSALSKY: That is all.

THE COURT: I would like you to show him that diagram, for a moment. I want you to pay very careful attention to me, and the Interpreter will interpret. Let him take the diagram around the other way. You say to him, in Italian, that the portions which are colored pink represent buildings.

BY THE COURT:

Q Do you understand that? A Yes, sir.

Q And the part that is colored gray represents the sidewalk. A Yes, sir.

Q The lines going up indicate the tracks of the surface railroad on Third Avenue. This is Third Avenue (Indicating) This is white. This is East 17th Street (Indicating) That is a saloon? A yes, sir.

Q You say that you were on the northwest corner, that corner? (Indicating) Is that so? A Yes, sir; right at this corner, next to the saloon . (Indicating)

Q Will you take a pencil and make a mark showing where you were?

THE COURT: Now, just put it down so that he can do

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it. Make a mark there.

A There. (Indicating).

BY THE COURT:

Q You have now made a letter "U", and that is intended to show the point at which you stood, at the moment that you first saw the man who had his hand to his breast; is that so. Now, yes or no to that? A Yes, sir.

Q Now, with reference to East 17th Street. And I want you to pay close attention to this. When you first saw the man who had his hand to his breast, whereabouts was he? A There (Indicating).

Q Was he further uptown than Seventeenth Street?

MR. ROSALSKY: Pardon me, your Honor. The jury didn't get the answer to the last question.

THE COURT: Now wait a moment.

BY THE COURT:

Q Whereabouts on that diagram that is in front of you is Third Avenue? Put your finger on it. A There. (Indicating).

Q That is right. Now, point out on that diagram 17th Street. Where is it? A There. (Indicating).

Q What are those round black things? A These are the columns of the elevated trains.

Q What are the black lines which you see going up Third Avenue? A That is the track over the columns.

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MR. BROTHERS: I think they represent the surface tracks.

THE COURT: Tell him that those lines represent the tracks of the surface cars.

BY THE COURT:

Q Now, you make a mark on that diagram, showing as nearly as you can the spot where the man was who had his hand to his chest, at the time that you first saw him.

THE COURT: Tell him that in Italian, and tell him to think well before he does it.

BY THE COURT:

Q What were you asked to do, now? A You asked me to tell you where was the man when I saw him, the man who held his hand to his chest.

Q At the moment when you first saw him, I meant. A There (Indicating).

MR. ROSALSKY: I suggest that we call it by some letter .

THE COURT: Now, suppose you make a letter there.

BY MR. BROTHERS:

Q Might we put the initial of the deceased, Mattarelli, there?

THE COURT: Yes.

A I will put an M there, your Honor. He was on his way to come on the sidewalk.

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BY THE COURT:

Q Now, you have made a mark where the letter M is, indicating the spot where the man was who had his hand on his breast at the moment when you first saw him; is that so? A Yes, sir.

Q And at that moment he was not yet on the sidewalk? A No, he was just going to get on.

Q I see. At that moment, was he facing you? A He had his head down and he was running, but I couldn't quite see if he was looking at me.

Q Where was that man whohad his hand on his breast at the moment that you heard a young girl say "Gaspare"? A He was crossing the corner of the sidewalk, and going into 17th Street. There I lost sight of him.

Q Now, will you make a mark showing where the young woman was, at the moment that you heard a cry of"Gaspare"? A There. (Indicating).

Q Suppose he puts a "C" there, for her name?

THE COURT: Yes.

THE WITNESS: Then I will put a "C" there.

BY THE COURT:

Q Now, at the moment that the young woman called out "Gaspare", did you see an old woman? A Not right away; afterwards.

Q About how long after was it that the young woman called

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out "Gaspare" that you saw the old woman? A About half a minute.

THE COURT: You may both of you feel like interrogating him further, but we will take a recess now.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until five minutes past two o'clock.)

---oooOooo---

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AFTER RECESS

GIUSEPPE CAGLIANO, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. ROSALSKY:

Q Will you indicate on the diagram where youfirst saw the old lady? A There (Indicating)..

BY THE COURT:

Q Make a mark at the point where you first saw her? A There (Indicating).

THE COURT: Now, what initial shall we put there?

MR. ROSALSKY: We may put "A" there, for Annie, her first name.

THE COURT: Very well.

BY MR. ROSALSKY:

Q Now, make a mark where you first saw the old man? A There (Indicating).

Q And make that "D". A (The witness writes a "D" there.)

Q Now, will you make a mark where you last saw the little girl? A There (Indicating).

THE COURT: Give that the same initial as the initial for the girl, but mark it with a number "2".

MR. ROSALSKY: Yes, that will be "C-2".

THE COURT: Yes, that will indicate that it is the second position.

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BY MR. ROSALSKY:

Q Now, will you indicate by a mark on the diagram where you last saw the old lady? A There. (Indicating).

Q Mark that A-2. A (The witness writes A-2).

Q Now, will you indicate by a mark where you last saw the old man? A There. (Indicating).

Q You indicate the same place? A Yes, sir.

THE COURT: That is to say, he indicates the place where he first saw him as being the place where he last saw him. The letter "A" stands for the old woman, and the letter "D" for the old man, and the letter "C" for the young woman, and the figures "1" and "2" where they occur, indicate first and second positions. I think that there is no figure one, but figure 2 indicates the second position.

MR. ROSALSKY: And the letter "U" indicates the position of the witness.

THE COURT: Yes. The letter "U" indicates the witness. I think you had better bring out, Mr. Rosalsky, though doubtless it is plain enough, that these various letters do not indicate that he saw these people at the identical moment. I think that sufficiently appears.

BY MR. ROSALSKY:

Q Did you see the old lady, the young girl and the old man all at the same time? A One after the other.

Q And the crowd---where was the crowd with respect to

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where the girl was standing? A The crowd ran towards the young lady, after the young lady.

Q Was that before she hollered? A No, after she shouted out.

Q And where was the young lady at the time that she hollered, with respect to this diagram? A There (Indicating)

THE INTERPRETER: Indicating the letter "A", crossing the Third Avenue car tracks.

BY MR. ROSALSKY:

Q And how near was the old lady to the young girl at the time that you heard this holler or shout? A I hadn't seen her yet.

Q Well, what attracted your attention to the young girl? A Because I heard the scream.

Q Well, at the time that you heard the scream, didyou hear those words that you told the Court and Jury? A Yes.

Q And was there a crowd around the girl at the time that you heard those words? A No, she was alone. And then the crowd followed.

Q Now, do you read the Italian papers? A No.

Q Did you ever find out the name of the dead man? A No, sir.

Q Do you know the name of the dead man at the present time? A I heard it was Gasparino.

Q Well, when did you first hear that the name of the

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dead man was Gasparino? A When I heard the girl calling.

Q Well, when after that did you find out that the name of the dead man was Gasparino? A By hearsay.

Q Well, was it the same night? A No, afterwards.

BY THE COURT:

Q What was the name of the little girl whom you say, was with you at the corner? A It was my kid, Willie, his name is.

BY MR. ROSALSKY:

Q And how old is Willie? A Four years.

BY THE COURT:

Q What is the name of the man whom you say, was in the act of closing up the bootblack stand; what is his name? A Tony.

Q Do you know his last name? A Cagliano. He is my son.

BY MR. ROSALSKY:

Q How old is Tony? A Seventeen years old.

Q And where is he now? A He is at the business.

Q Has Tony received a subpoena to come to Court? A No, he doesn't know anything of it.

MR. ROSALSKY: That is all.

BY THE COURT:

Q Can you give us the names of any other persons whom you saw at the time that you saw the persons whom we have been

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talking about on that evening? A No.

Q The only persons whose names you know as having been at or near the corner of East 17th Street and Third Avenue on the night in question, at the time that you saw the persons we have been talking about, are Tony, who assisted you in your business, your son, and the little child that was with you; is that so? A That's all.

MR. ROSALSKY: I have no further questions, your Honor.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Do you know another man named Anthony Cagliano? A Yes.

Q Who is he? A He is my nephew.

Q Is he here, to-day? A Yes, he is outside.

Q Did you see him on the night of September 22nd?

THE COURT: Yes or no, now.

A Yes.

BY MR. BROTHERS:

Q And do you know a man named Pinaccio? A No.

Q Matteo Pinnaccio? A Oh, yes.

Q Did you see him on the night of the shooting? A Yes, sir.

Q And where was he on that night? A At the fruit stand.

Q Where is the fruit stand? A The other side of 17th

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Street.

BY THE COURT:

Q You mean the downtown corner? A Yes, sir.

Q In front of the cigar store? A Yes, sir.

Q In Third Avenue or on Seventeenth Street? A On Seventeenth Street.

RE-CROSS EXAMINATION BY MR. ROSALSKY:

Q The words which you say you heard the girl shout, were they in Italian or English? A In Italian.

MR. ROSALSKY: That's all.

MR. BROTHERS: That's all.

A N G E L I N A C A M E R A T T A , a witness called on behalf of the People being duly sworn and examined through the same official interpreter, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Well, what is your married name? A Angelino Mattarelli.

Q What was your husband's name? A 503 East 11th Street.

Q (Question repeated) A Gaspare.

Q Well, where was it you live..? A 503 East 11th Street.

Q And where did you live on September 22nd, 1913? A 327 East 11th Street.

Q Have you a family? A I have got two children; one ten months and the other one one and a half years old.

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Q Now, did you see Gaspare Martarella, your husband, on the 22nd of September, 1913? A Yes, sir.

Q What time of the day was it you last saw him? A On Firday, at four o'clock in the afternoon.

Q Did you see him again alive? A No.

THE COURT: Pardon me, what day of the week was the 22nd?

MR. BROTHERS: I don't know, Judge; it wouldn't be Friday.

BY THE COURT:

Q Was it on a Friday that you last saw your husband alive? A When he was dead, it was on a Friday.

Q Yes, but when was it you last saw your husband alive? A On Monday, at nine o'clock at night.

Q On Monday, at nine o'clock at night was the last time that you saw your husband alive; is that so? A Yes, sir.

Q What month of the year was it that you last saw your husband alive? A September.

BY MR. BROTHERS:

Q Now, did you see his body at the morgue? A Yes, sir.

Q Do you know what day of the week that was? A It was on a Wednesday, at night.

Q And you had seen him last on the Monday before? A Yes, sir.

Q I show you People's Exhibit 2 for Identification, and

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ask you whose picture that is? A That's my husband.

Q Gaspare Martarelli? A Yes, that's my husband.

MR. BROTHERS: We offer it in evidence, if your Honor please.

MR. ROSALSKY: I object to it as being immaterial, irrelevant and incompetent.

THE COURT: I think I will receive it.

(It is marked People's Exhibit 2 in evidence).

MR. ROSALSKY: We except.

CROSS EXAMINATION BY MR. ROSALSKY:

Q How old was your husband, Madam? A Twenty-six years old.

BY THE COURT:

Q Were you married in Italy or in this country? A In America.

BY MR. ROSALSKY:

Q Did you know Nellie Dangelo, while your husband was alive? A Yes, Iknew her that she used to come in the house and he used to make her carry the baby, my young baby.

Q Who did? A Oh, I used to bring my babies to her and carry them to her to show that my husband was a married man.

Q When was that? A I don't remember what month it was.

Q Was it in July, or August of 1913? A Perhaps.

Q Did your husband ever tell you that he was going around

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with Nellie?

MR. BROTHERS: We object to that, as incompetent.

THE COURT: Sustained.

BY MR. ROSALSKY:

Q Do you know whether your husband knew Nellie in the month of February, March, April, May and June, 1913?

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

A No.

BY MR. ROSALSKY:

Q At the time that you brought your children---Where did you bring your children? To whose house did you bring your children? A At the house of Nellie, and the Father was also present at the time.

Q Was your husband present at the time? A No, sir.

Q What was said at the time you brought your children there?

MR. BROTHERS: I object to that at this time.

THE COURT: Sustained. I do not see the materiality of it.

MR. ROSALSKY: Your Honor, I will connect it afterwards, when I get into the defense, I don't want to recall this witness.

THE COURT: Well, you may recall the witness then, if you desire.

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BY MR. ROSALSKY:

Q Did your husband ever stay out all night?

MR. BROTHERS: We object to that as immaterial, irrelevant, incompetent and improper, and because it has no material bearing on the question here.

THE COURT: I do not see how it can have any.

MR. ROSALSKY: It will be corroborative of some of the testimony of the defense.

MR. BROTHERS: It is not cross examination of the direct examination.

THE COURT: No, I think I shall sustain the objection, for the present, Mr. Rosalsky. I do not shut the door against it, though.

MR. ROSALSKY: Exception. That is all.

THE COURT: Now, one moment. Sit still.

BY THE COURT:

Q How long have you been in America? A Seven years.

Q And how old are you? A Twenty-three years old.

Q And when were you married to Gaspare Martarelli? A Six years.

Q You were married here in New York? A Yes, sir.

Q Were you acquainted with the defendant? A Yes, sir; I knew him when I used to bring my children to his house.

Q What house was that? A Lewis Street, second floor.

Q Do you remember the number? A 31, third floor.

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Q Front or back? A Back and front.

Q Before your husband's death, about how long had you been living at 327 East 11th Street? A three months.

Q And you had moved to that place from what place? A 10th Street.

Q Do you remember the number? A 240.

Q Tenth? A Yes, sir.

Q Where you had lived about how long? A Eight months.

Q Did your husband have any trade? A Shoemaker.

Q Did he have any shop? A In the shoe factory.

Q And do you mean that, up to the time of his death, he was working in a shoe factory? A Yes, sir.

Q What was the name of that factory? A I don't know.

Q Do you know where it was located? A I never asked him.

Q Now, you say you had two children by your husband? A Yes, sir.

Q So that the family at home, when your husband was alive, consisted of yourself, your husband and two children; is that so? A Yes, sir.

Q From Monday, at nine o'clock in the evening until the time of his death, you had not seen your husband? A No.

Q When did you first learn of his death? A Wednesday night.

Q That was the very night that you went to the morgue;

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is that so? A Yes, sir.

Q At 327 East 11th Street, in your rooms, did you have boarders? A No.

Q You, your husband and children occupied those rooms alone; is that so? A Yes, sir.

THE COURT: I think that is all.

BY MR. ROSALSKY:

Q Did you do any work while your husband was alive? A Yes; both; we were both working.

Q Did you know as to ~~xx~~ whether your husband---the only thing you know as to whether your husband was working or not was what your husband told you? A Not,as you claim, as he told me. But I used to see him going to work.

Q Well, you saw him leaving the house; is that what you mean? A He used also to carry his implements to go to work. He didn't carry those implements for nothing.

Q And do you know of any place where he worked for two months before his death? A I never used to ask him where he used to work.

Q Do you know of any place where he worked? A Even my brothers, who worked always, I never asked them where they worked.

Q Do you know, within the last five years, any place where your husband worked? A I never used to ask him where he worked. I never used to converse with him about that.

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We used to converse at nights; when he came home.

Q Now, how long were you working before your husband's death? For howmany weeks, months or years? A When I was in good health I used to work. When I had the babies, I couldn't work.

BY THE COURT:

Q And when you say you used to work, what do you mean? A I used to work on Gentlemen's coats and pants.

BY MR. ROSALSKY:

Q Now, how many times did you take your children to the defendant's house?

MR. BROTHERS: We object to that.

THE COURT: I think I will allow it.

A Once.

BY THE COURT:

Q And on that occasion, did you see the defendant? A Sure.

Q Now, wait a moment. And that was about how long before your husband's death? A Three or four months before.

BY MR. ROSALSKY:

Q What was the occasion of your going to the house with your children?

MR. BROTHERS: We object to that, on the ground that it is not cross examination of the direct examination of the witness.

THE COURT: Yes, Iwill sustain the objection at this

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stage. I will not allow you to go into it at this stage.

MR. ROSALSKY: Well, of course, it is discretionary with your Honor, but I will be finished with the witness, if your Honor will permit that.

MR. BROTHERS: I don't think that it is material, at this time. I would be very glad to recall the witness later.

THE COURT: Idon't think it is material at this time.

MR. ROSALSKY: Then that is all.

A N T H O N Y C A G L I A N O , of 326 East 22nd Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q How old are you? A Twenty years old.

Q And in September of last year, where did you work? A On the corner, on the northeast corner of East 17th Street and Third Avenue.

Q And what kind of work didyou do there? A Boot-black.

BY THE COURT:

Q Now, tell me again where you worked? A Bootblack.

Q Yes, but whereabouts? A Northeast corner of 17th Street and Third Avenue.

Q Wasn't it the northwest corner? A No, sir.

Q Northeast? A Yes, sir.

BY MR. BROTHERS:

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Q You have an uncle, have you? A Yes, sir.

Q And where is his stand? A On the northwest corner.

Q And you saw him here to-day? A Yes, sir.

Q And you are across the street from him? A Yes, sir.

Q And how long have you had that boot black stand there? A Thirteen years.

Q Well, you haven't been working there thirteen years, have you? A Well, my father is there with me.

Q Do you remember the night of the 22nd of September, being there at your stand? A Yes, sir.

Q At nine or half past nine o'clock? A Yes, sir.

Q And did you hear anything, that night? A Well, I didn't hear anything, but I heard shooting.

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

Q How many did you hear? A One.

Q And did you notice from where that shot sounded? A On my right hand side, about twenty feet away from me.

Q Well, did it sound on Third Avenue or on 17th Street? A On Third Avenue.

Q What were you doing at the moment that you heard the shot? A Just coming from down in the cellar.

Q Now, the entrance to that cellar is on which side of the building? A It's on Third Avenue.

Q And you had been down in there? A Yes, sir.

Q What did you go down there for? A Well, closing up

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my stand.

Q And where were you when you heard the shot? A At the foot of the stairs, the last step.

Q And how many steps did you haveto go up to the sidewalk? A Twelve steps.

Q And when you got up to the sidewalk, what did you see? A I seen a man running through the steet, with his hands on his breast (Illustrating), and he ran west on 17th Street.

Q And where was that man when you first saw him? A Just about getting to the first car track.

Q Well, was he in Third Avenue or on 17th Street? A On Third Avenue.

Q And was he on your side of 17th Street or the other side? A On my side.

Q And you say he ran west into 17th Street? A Yes, sir.

Q Had you ever seen that man before? A No, sir.

Q Did you see what became of that man? A Well, I closed up my---

Q No, answer me. Did you see where that man went? A He went right straight through 17th Street.

Q And did you see what became of him? A No, sir.

Q And did you ever see him again? A No, sir.

Q Was there anything else happening to him, besides running, and having his hands on his breast? A He was blowing blood from his mouth.

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Q And did you see anybody else running at that time? A I seen a girl and a woman.

Q Where was the girl? A She was just on the sidewalk, and the woman right after her.

Q Did you hear the girl saying anything? A Well, she was screaming, but she was about twenty-five feet away from me and I couldn,t hear what she said.

Q And where was the woman? A She was right in back of her.

Q Anddid you see an old man there? A No, sir.

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

Q Did you see where that girl went? A Well, she ran right after that fellow:that got shot.

Q The first man that you told us about? A Yes, sir.

Q Did you see how far she went? A Well, I was in a hurry to close up myself, so that the crowd wouldn't get around, and so Ididn't see where she went.

Q Well, when did you last see her? A When she was coming back.

Q Coming back from where? A Coming east on 17th Street.

Q You saw her coming towards Third Avenue? A Yes, sir.

Q And who was with her? A Her mother.

Q And were they walking together? A yes, sir; the mother was holding her from the back. (Illustrating).

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Q And where did they go? A Through East 17th Street towards Second Avenue.

Q They kept right across Third Avenue and went in the direction of Second Avenue? A Yes, sir.

Q Did you ever see that girl and that woman again? A No, sir.

Q I don't mean that night, but since that time? A No, sir.

Q You haven't seen them since? A No, sir.

Q You haven't seen them to-day? A Yes.

Q Oh, you did see them since? A To-day.

Q Now, you must listen to the question. I asked you whether you ever saw that girl and woman since the night you saw them on Third Avenue? A No, sir.

Q Now, that includes to-day. A (No answer).

Q (The question is repeated through the Official Interpreter) A No.

Q Did you know that girl? A I used to know that girl for about two weeks around there, hanging around the corner.

Q You had seen that girl around the corner for how long? A About two weeks.

Q Did you know where she lived? A Yes, sir.

Q Where? A 191.

BY THE COURT:

Q 191 what? A Third Avenue.

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BY MR. BROTHERS:

Q And what is on the ground floor? A A pawnbroker.

Q Do you understand this diagram? Is that the place that you refer to (Indicating)? A Yes, the pawnshop.

Q And you had seen her there for two weeks? A Yes, sir.

Q Did you ever speak to her? A No, sir.

Q Had you ever seen the older woman around the neighborhood? A No, sir.

Q Did you see this girl and the woman before you heard the shot? A No, sir.

Q Standing on the street? A No, sir.

Q Now, look at this defendant here. Did you see him around that neighborhood at any time? A No, sir.

MR. BROTHERS: May the girl be brought in now, your Honor?

THE COURT: Yes.

MR. BROTHERS: Bring in that girl again, Nellie. Now, don't say anything, but look at this girl carefully. (Indicating).

BY MR. BROTHERS:

Q Now, do you know that girl? A Yes, sir.

Q Where did you ever see her before? A I never seen her before.

Q Now, please listen to what I say. Did you ever see that girl before you saw her here? A Yes, I see her out-

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side.

Q And where did you see her before that? A I didn't see her.

Q What? A The last time I seen her was at the station house.

Q And before the station house where did you see her? A When she used to live around there, for two weeks.

Q Yes. And did you see her on the night of the shooting, at Third Avenue and 17th Street? A Yes, sir.

Q And what was she doing? A She was screaming through the street, and then, when she came back, I seen her again.

Q And who was she with, when she came back? A With her mother.

MR. BROTHERS: Please bring in the mother.

BY MR. BROTHERS:

Q And is that the girl that you have been telling us about? A Yes, sir.

Q Who was running after the man that was bleeding from the mouth? A Yes, sir.

BY MR. BROTHERS:

Q Now, look at this woman carefully (Indicating). Now, do you remember ever seeing her before? A I seen her that night. I seen her with the girl.

Q Is that the older woman that you spoke of? A Yes, sir.

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Q That ran after the young girl? A Yes, sir.

Q And, later, came back, holding her? A Yes, sir.

Q Now, will you tell us what this last woman who came into the room did, while she was running after the girl? A While she was trying to catch the girl from running.

Q And did they say anything? A No, sir.

Q And when they came back from 17th Street what was she doing? A The girl was crying and she said something in Italian, which I can't say in English.

Q Well, say it in Italian.

(The question is repeated through the Interpreter)

A Well, the mother and daughter passed by. The mother called the daughter---the daughter called the mother "Mascherata", which means a masked face; that she ought to be ashamed of herseld to be masked.

Q How far from the corner is your cellar? A Well, it's only about seven feet from the corner.

Q Will you point out on this diagram? Andsee if you can't point out the corner where your stand is? A Right there. (Indicating).

THE COURT: Heindicates the northeast corner.

BY MR.BROTHERS:

Q And where is your cellar? On 17th Street or on Third Avenue.

Q Now, will you point out on the diagram aboutwhere the

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cellar is? A This is Third Avenue right here. (Indicating)

Q Will you make an X?

THE COURT: He makes an X.

MR. BROTHERS: Yes, he makes an X.

BY MR. BROTHERS:

Q Now, you were attracted by a pistol shot? A Yes, sir.

Q And you came upstairs? A Yes, sir.

Q And what did you first see when you reached the sidewalk? A I seen a man run---just getting to the car tracks on my side, with his hands on his breast, (Illustrating) and flowing down blood from his mouth. And then I seen a girl and a woman running after.

Q Now, how far behind the first man was the woman and the girl? A They were about ten feet behind the man when I first seen them.

Q And did you remain in front of your cellar? A Yes, sir.

Q And did you see where the woman and the girl were going? A Well, I was looking after the man there, and then I seen the girl going as far as the northwest corner, and I was looking straight after the man that was running.

Q Had you seen the girl reach the northwest corner? A Yes, sir.

Q When did you hear the shouting? A The girl and the

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woman screamed.

Q Yes? A Well, when they were crossing the street.

BY THE COURT:

Q When you say the street, do you mean 17th Street or Third Avenue? A Third Avenue.

BY MR. BROTHERS:

Q And about how far away from you were they when you heard the screaming? A Well, about twenty-five feet away.

Q And who did the screaming? A The girl.

Q And the old lady too? A Well, she was crying.

Q And did you hear what she was screaming? A No, sir.

Q And you say you saw them come back? A yes, sir.

Q And had you remained in front of your place during the entire time? A yes, sir; right on the corner.

Q And you saw them pass you by going east? A Yes, sir.

Q Did they run or walk? A Well, the girl was crying and screaming, and the woman pushed her along.

Q Well, at the time when you first heard the screaming, what kind of screams did you hear? A Well, screaming. I couldn't tell you, you know. They got too excited, you know, and you couldn't understand what they said.

Q Well, whatwas it? Words or just screaming? A Yes, just screaming.

Q What do you mean by screaming? A Hollering.

Q No words at all? A Well, it was too far away and I

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couldn't hear what was said.

Q And did you hear any Italian words at that time? A No, sir.

Q You understand Italian? A Yes, sir.

Q And then, after you heard the screaming, you saw them go west? A Yes, sir; on 17th Street.

Q And then they came east? A Yes, sir.

Q And then you say you heard, in Italian, the words mascherata? A Yes, sir.

BY THE COURT:

Q Did you see any police officers there? A No, sir.

BY MR. BROTHERS:

Q Now, when they went by you, when you heard the word "mascherata" how far away from the old woman and the girl were you? A Only about three or four feet away.

Q And did you see the old man? A No, sir.

Q You didn't see him at all? A No, sir.

Q Was there a crowd around? A No, sir.

Q No crowd around? A No, sir; only the crowd was after the man was running through 17th Street.

Q Well, when you heard the screams, was there a crowd around? A No, sir; there wasn't many people on the avenue, see?

Q Did you know the dead man? A No, sir.

MR. BROTHERS: That's all.

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BY THE COURT:

Q Did you have any talk, that night, with your uncle, about what you had seen? A No, sir.

Q When you saw these other people, did you see your uncle? A Well, I seen him on the corner, by his own place.

Q What is your uncle's name? A Giuseppe Cagliano.

Q He was a witness here before you? A yes, sir.

Q About how long a time passed between the time that you saw the man first, who had the blood on his face, until you saw the old woman and the young woman pass ng you on East 17th Street, going East? A About five minutes.

Q During that time were you alone? A With my father. He was with me.

Q And what is his name? A Donato Cagliano.

Q He was with you all the time? A Well, he came after me from downstairs. He generally takes a little longer.

Q Your ~~xxxx~~ father was down in the cellar, too? A yes, sir.

Q And when you came up the cellar stairs, your father was back of you on the stairs? A No, sir; he was back of me, but downstairs.

Q You came up from the cellar before your father came up from the cellar? A yes, sir.

Q But, after you got on the sidewalk, your father came up to you on the sidewalk? A yes, sir.

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Q Can you give me the names of any other persons that you saw there, at the time that you saw the blood on his face, whom you know? A No, sir.

Q The man who had blood on his face, did he have a hat on? A A cap.

Q A cap? A Yes, sir.

Q Did he have a coat on? A I don't remember, sir, sure.

BY MR. BROTHERS:

Q Do you remember what kind of a cap it was? A It was one of them peaked caps.

Q Does that look anything like it? (Indicating) A Well, it was very dark in the night, and you couldn't make much cut of it, as he was running through the street.

MR. BROTHERS: That's all.

CROSS EXAMINATION BY MR. ROSALSKY:

Q You say you saw the girl follow the fellow, about five minutes after? A Well, follow after the man, until she come back, going east.

THE COURT: He says that, from the time he first saw the man with blood on his face, until the time that the womenpassed him, going east, was about five minutes.

BY MR. ROSALSKY:

Q You never saw this woman before that night? A The old woman?

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Q Yes, the old woman? A No, sir.

Q And you saw a lot of excitement there at that time? A Yes, sir.

Q And you saw this woman go west? A Yes, sir.

Q And then come east? A Yes, sir.

Q And you remember her as being the same woman? A Yes, sir.

Q Were there a number of other women there that night? A No, sir.

MR. ROSALSKY: That's all.

MR. BROTHERS: That's all.

BY THE FOURTH JUROR:

Q When you first came up from your cellar, and first saw the girl and the woman---A The man first.

Q The girl and the woman crossing the street, were they together or separate? A Well, one after the other.

Q They were separate? A Yes, sir.

BY MR. ROSALSKY:

Q How far apart were they? A Well, about two feet.

BY MR. BROTHERS:

Q Well, who was ahead? A The girl.

MR. ROSALSKY: That's all.

MR. BROTHERS: That is all.

M A T T E O P I N A C C I O, of 134 East 17th Street, a witness called on behalf of the People, being duly sworn,

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testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where is your place of business? A 148 East 17th Street.

Q Is that near Third Avenue? A yes, sir.

Q Is it on the corner? A Yes, sir.

Q Which corner? A The west side corner.

Q Now, on the north or south? A The northwest corner.

Q Well, is it towards 14th street or towards 23rd St? A Going to 14th Street, south.

Q Then it is the southwest? A Yes, sir.

Q What is your business there? A Fruit stand.

Q How long have you had your fruit stand on that corner? A Three years.

Q And do you know Anthony Cagliano? A Who is this man?

Q The bootblack? A Yes, sir; he's near me, next to me.

BY THE COURT:

Q Now do you know him? A Yes, sir.

Q How long have you known him? A Since he had a store in 17th Street.

Q And that's about how long? A Three years.

Q Do you know Giuseppe Cagliano? A Yes, sir.

Q What is his business? A Bootblack.

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BY MR. BROTHERS:

Q Now, do you remember the 22nd day of Septembe , 1913?
A Yes, sir.

Q Where were you between nine and nine thirty o'clock in the evening? A I was in front of the stand.

Q And did anything happen while you were standing there?
A I heard a shot.

Q And did you notice from which direction the shot came?
A From the Third Avenue side, from 191 Third Avenue..

Q And did you see anybody running there? A I saw a man running, with his hands on his chest, (Indicating with his right hand over his chest).

Q Where did that man run to? A He was coming from Third Avenue and going into 17th Street.

Q Was he going east or west? A West.

Q Did he pass close to you or not? A About five feet away from me.

Q Did you see anybody coming after him? A A young girl, with an old woman.

Q What were they doing? A The girl was running after the deceased.

Q What was the woman doing? A And the old woman ran after the young girl and caught hold of her, and both fell to the ground.

Q And where was that? A Right in front of my fruit

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stand, near the saloon.

Q Was anything said by them at that time that you heard? A The girl was crying.

Q Did you hear what she was crying? A No, sir; I didn't.

Q Did you hear any words from either of them that you could distinguish? A No.

Q Now, did you see anybody else coming along after the old woman? A Then an old man came.

Q Describe the old man? A It was about nine o'clock at night, and he was about fifty-five or sixty years old.

Q And was there anything else that you noticed about him? A And the old woman signalled to the old man in this way. (Indicating with his left hand outstretched) and advising the old man to go away.

MR. ROSALSKY: I move to strike that out.

THE COURT: I will strikeit out, and the jury will disregard it.

BY THE COURT:

Q Now, what did the old woman do? A That way. (Illustrating).

THE COURT: The witness indicates by a movement of his left hand.

BY MR. BROTHERS:

Q And where was the old woman at the time she made that

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movement with her left hand? A Well, she fell down in front of the saloon, on the corner of 17th Street, in front of my stand.

Q And where was the old man when she made this movement? A The old man was going away and continued his walking on Third Avenue towards 14th Street.

Q Well, where was the old man when the old woman made the movement with her hand? A Near the wife.

Q Well, was he on Third Avenue or 17th Street? A On 17th Street.

Q How far from the woman? A Oh, about that distance. (Illustrating).

THE INTERPRETER: The witness indicates a distance of three feet.

BY MR. BROTHERS:

Q And how far away were you then? A From one corner of the street to the other corner. I was in one corner, and the old man was in the other corner.

Q What did the old man do when she made this motion towards him? A He kept on walking.

Q In which direction? A Towards Fourteenth Street.

Q Was he coming towards her when she made this motion? A Yes, sir.

Q Now, did you see this defendant, this man sitting at the table there, that night? (Indicating the defendant) A

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Yes, sir.

Q Yes or no? A I saw him passing.

Q What was he doing? A He was passing, walking.

Q Well, have you spoken of him here before, to-day? A Yes. That time he had no beard.

Q Well, is that the old man that you have been telling us about? A Yes, sir.

Q Now, look at People's Exhibit 4 for Identification, and tell us whether you recognize the picture? A That's him.

Q And whose picture is that? A There is a change here, about his cap and his beard.

Q I didn't ask you that. Iasked you whose picture it was. A This defendant. (Indicating the defendant).

Q And does the picture show him as you saw him on the night of September 22nd? A Yes, sir.

Q Hedidn't have a beard then as he has to-day?

MR. ROSALSKY: I object to that. There is no such testimony, that he didn,t have any beard.

THE COURT: I think he has given some testimony about it, Mr. Rosalsky.

THE WITNESS: He had a smallmustache.

BY MR. BROTHERS:

Q Well, did he have whiskers on his cheeks at that time? A No.

Q Did you know---did you see where the man who was bleed-

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ing from the mouth went? A He fell in front of 132 East 17th Street.

Q Look at that picture, People's Exhibit 2. Do you recognize this picture? A Yes, sir; this is the dead man.

THE COURT: Showing People's Exhibit 2 to the witness?

MR. BROTHERS: Yes, sir.

THE COURT: And does it appear upon the record what picture was shown to the witness last?

MR. BROTHERS: Yes, sir; People's Exhibit 4.

BY MR. BROTHERS:

Q And have you seen that young girl since that night? A No.

Q Did you ever see her around that neighborhood before that night? A No.

MR. BROTHERS: May she be brought in, your Honor?

THE COURT: Yes.

MR. BROTHERS: May we bring them both in together to save time?

THE COURT: Yes.

MR. BROTHERS: Bring in both, Captain, please.

BY MR. BROTHERS:

Q Look at these two people carefully. Did you see them on the night of September 22nd, at Third Avenue and 17th Street? A I didn't see them, because when those people fell down at

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that time, there was a confusion there.

Q Well, do you remember seeing there at all, that night?

A No.

Q You say you saw a young girl on that corner, that night?

A No.

Q Didn't you see a young girl there? A No.

Q Ithought you said you saw a young woman running after a man who was bleeding from the mouth? A Yes, I did see her.

Q And an old woman running after her? A Yes, sir.

Q Now are these the two, that came into Court? A I didn't see the face, because it was dark.

Q Well, was that about the size of the girl?

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

THE COURT: I think I will sustain the objection.

MR. BROTHERS: All right.

BY MR. BROTHERS:

Q You say that they were too far from you to say for sure, is that it? A I couldn't distinguish; I didn't see them by the face.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Where is your stand? Where did you say your stand was?

A 17th Street.

Q Will you indicate on this diagram, if you can, where

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your stand is? A There (Indicating).

THE INTERPRETER: Indicating the northeast corner of 17th Street and Third Avenue, as being where the stand is.

BY MR. ROSALSKY:

Q Do you understand this diagram? A Which is Third Avenue?

Q There. (Indicating) A There. (Indicating) The stand is on the northwest corner.

Q What was the number of your stand? A 148 East 17th Street. There is where the cigar store is and that is where my stand is.

Q Pointing to the southwest corner? A Yes, sir.

Q Now, where were you standing when you heard the shot? A Iwas standing in front of West 17th Street.

THE COURT: Now, tell him thatthe part colored pink represents the buildings, and the part colored gray the sidewalk, and the part colored white, the street.

A That is where mine is, near the cigar store there. (Indicating).

BY THE COURT:

Q In other words, your stand is on the downtown side of East 17th Street? It was on the 17th Street side of the cigar store? A Yes, sir.

Q The cigar store being located on the south west corner of 17th Street and Third Avenue? A Yes, sir.

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BY MR. ROSALSKY:

Q Now, how far from the corner of the building is your stand? A Three or four feet.

Q And you were in front of your stand? A Yes, sir.

Q And you say, on the 22nd of September, you heard a pistol shot? A Yes, sir.

Q And the shot came from the direction of Third Avenue? A Yes, sir.

Q And after hearing the shot, you say you saw a man running towards you? A Yes, sir.

Q Did he run diagonally to you?

BY THE COURT:

Q Well, was he running in a straight line towards you? A He was traversing that Third Avenue track,and then went into East 17th Street.

THE COURT: Heindicates on the diagram a diagonal course from northeast ro southeast, along Third Avenue and then in a westerly direction along East 17th Street.

BY MR. ROSALSKY:

Q Did the defendant run by you on the same sidewalk where you were?

THE COURT: You don't mean the defendant?

BY MR. ROSALSKY:

Q I mean the deceased? A No.

Q He went by on the other side? A He wasn't running

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on the sidewalk. He was running right in the middle of East 17th Street. (Indicating).

Q And how far behind the first man did you see this little girl? A Ten or twelve metres.

Q Will you indicate the distance from where you are sitting? A A little more than from this witness chair until the end of the Court Room, to the wall; just about the full length of the Court Room.

MR? ROSALSKY: Can we agree upon this distance, your Honor?

THE COURT: What do you say, Mr. Foreman?

THE FOREMAN: About ninety feet.

MR. BROTHERS: Part 1 was measured once, but I don't know whether this part was ever measured or not.

THE INTERPRETER: This was measured once, and was seventy-five feet.

MR.ROSALSKY: Then we will agree on that.

THE COURT: Then we will say seventy-five feet?

MR. ROSALSKY: Yes, sir.

BY MR. ROSALSKY:

Q And where was this little girl when you first saw her? A She was at the other corner, in front of me.

THE INTERPRETER: The witness pointing to East 17th Street.

BY MR. ROSALSKY:

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Q The northwest corner? A Yes, sir.

Q What was the first time you saw the little girl? A Yes, sir.

Q Had you heard any screams before you saw this little girl? A I heard her crying.

Q Did you hear any screaming before? A When she was running after the deceased, she was shouting and crying.

Q And did you hear what she was shouting? A No.

Q And how near the little girl was the old lady? A Both together. They both fell down on the ground.

Q Well, I mean at the time you first saw the little girl, how near to her was the old lady? A This was all of a sudden, when I saw the man running, with his hands towards his chest, I saw the mother and the girl all together; I saw them all together.

Q And when you saw the man running you say they were a distance of about the length of this Court Room apart? A No.

THE COURT: Now there is a misapprehension there.

BY THE COURT:

Q You say that the man that was running was about as far ahead of the woman as the length of this Court Room, but you say that the two women, when you first saw them, were near together? That is my understandingof the testimony, is that what you mean? A Yes, sir; the deceased was. The daughter

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and the old woman were together.

BY MR. ROSALSKY:

Q Now, how close together? A Well, they were as close as possible; they were so close that one fell on top of the other.

Q Well, where did they fall? A At the corner, in front of me.

Q Well, were they as close together as you are now, with the Interpreter? A Yes, sir.

Q And after they fell---at the time they fell, where did you see the old man? A I didn't see at that time the old man, but, when they got up, then I saw the old man.

Q When they got up, where did they go? A When they got up, they were quarreling together, the young girl with the old woman, and at that moment the old man was approaching, and that's the time when the old woman signalled with her hand for him to go down.

MR. ROSALSKY: I object to that and move to strike that out.

THE COURT: Yes, strike it out. And the jury will disregard that. Repeat the question.

(Question repeated by the stenographer)

A They went towards Seventeenth Street, on the east side of 17th Street.

BY MR. ROSALSKY:

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Q And at the time they turned back, they were on the uptown side of 17th Street, is that right? A Yes, sir.

BY THE COURT:

Q How far west on East 17th Street did you at any time see, on that night, the old woman and the young girl. A About twelve feet.

Q Twelve feet west of Third Avenue? A Right in front of my stand.

Q And you say that from that point they turned, and they walked in an easterly direction, that is, towards Third Avenue, is that it? A Yes, sir.

Q They crossed Third Avenue; is that so? Yes or no? A They passed the tracks.

Q That is, they walked in an easterly direction from your stand, as far as the car track on Third Avenue? A And then they went towards Second Avenue.

Q But the furthest west that you saw them at any time on East 17th Street was when they were in front of your stand? Now, is that so? Yes or no, now? A Yes.

BY MR. ROSALSKY:

Q They were on the same side of the street where your stand is? A No, on the opposite side.

Q How far---where did they trip? On the sidewalk or in the middle of the street? A Between the sidewalk and the gutter.

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Q And after they had gotten up, did they continue east or west? A They went towards Second Avenue.

Q After they tripped? A Yes, sir.

Q Now then, which statement do you want to make? What do you mean to say; that they had gone east, after they tripped? I withdraw that. At the time that the young girl and the old lady fell, where was the old man? A That's the time he arrived.

Q Well, where did you see the old man come from? A I don't know. Isaw him there, but I don't know which direction he came from.

Q Now, when the old lady and the young girl got up did they turn and go east? A They went towards east, towards Second Avenue.

Q And did they at any time go west, west of Third Avenue, after reaching the sidewalk, after reaching the westerly side of Third Avenue and Seventeenth Street; did they at any time go west on that walk, on Seventeenth Street? A No, they went east.

Q Well, had they walked on any part of the northwesterly corner of Seventeenth Street and Third Avenue? A No.

Q Well, vthen, what did you mean by saying before that the old lady and the young girl were west on 17th Street, opposite you?

THE COURT: Well, his stand is about within three

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feet of the corner.

A Because they fell right there, in front.

BY MR. ROSALSKY:

Q And after they fell on the curb, they went east? A Yes, sir.

Q And you didn't hear any conversation between the old lady and the girl? A I heard them crying and shouting.

Q But you didn't hear any part of it?

BY THE COURT:

Q You don't know what they said?

BY MR. ROSALSKY:

Q You don't know what they said? A No.

Q Were they shouting anything? A They were crying.

Q Well then, you say they were shouting too, don't you? A Yes.

Q But you don't know what the shouting was? A No, I don't.

Q Were you a witness before the Grand Jury when this defendant was indicted for manslaughter in the first degree?

MR. BROTHERS: That is objected to as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. BROTHERS: In the first place, does he know anything about any such transaction? I object to it on that ground. The witnesses before the grand jury have no knowledge,

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usually, of what the grand jury does.

THE COURT: I think I will allow it. If he don't know, he can say so.

A I went there.

BY MR. ROSALSKY:

Q How many times did you go to the Grand Jury? A Once.

Q And when was that? A I think it was last week. I can't remember.

Q Well, weren't you before the grand jury in the month of December, 1913? A No.

MR. ROSALSKY: That's all.

MR. BROTHERS: That's all, sir.

MR. ROSALSKY: Oh, just one more thing.

BY MR. ROSALSKY:

Q What country do you come from? A Italy.

Q And what province? A Caserta.

Q Caserta? A Yes, sir.

BY THE COURT:

Q And how long have you been in New York? A Eight years.

BY MR. ROSALSKY:

Q And did you know the dead man? A No.

Q You never saw the dead man before? A No.

Q Did you see the dead man that night? A Yes.

MR. ROSALSKY: That's all.

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BY THE COURT:

Q Sit back here in the chair. How long didyou stay there on the corner after you saw the women fall? A Until about one or two o'clock in the morning.

Q After you saw the women fall, did you go down in 17th Street towards Irving Place? A I stayed where I was.

Q You didn't follow down in the direction in which the man went, who had his hand in front of his chest, yes or no, now? A I went afterwards,, after the women went away.

Q Were you on the corner when the policeman came? Yes or no? A Yes.

Q Did you see, that night, the body lying on thenside-walk in East 17th Street? A Yes, sir.

Q And that was about how many minutes after you heard the shot? A Two or three minutes afterwards.

Q Did you see the deceased when he was in the act of falling? A No.

Q When you got there to the place where the deceased was, was he on the sidewalk or was he in the street? A On the sidewalk.

Q And at that time when you got there, was there anybody near the body of the deceased? A It was full of confusion, full of people.

MR. BROTHERS: Will your Honor be good enough to adjourn now? I have some matters to take care of.

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THE COURT: Yes.

THE COURT: Gentlemen of the Jury, you are admonished not to converse among yourselves on any subjected connected with this trial,or form or expressany opinion thereon, until the same is submitted to you.

You are also cautioned not to go to the place where these occurrences are said to have taken place.

(The Court then adjourned the further trial of the case until Thursday morning, March 5th, 1914, at 10:30 o'clock)

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THE PEOPLE VS. PIETRO DANGELO

TRIAL RESUMED.

New York, March 5th, 1914.

E M A N U E L F E R R E A , of 136 East 17th Street, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Do you remember the 22nd of September of last year? A Yes, sir.

Q About 9:15 P. M. were you in the vicinity of 17th Street and Third Avenue? A Yes, sir.

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

Q Where wereyou at that moment? A About five feet this side of 17th Street.

Q That is, you were south of 17th Street? A Yes, sir.

Q And on which side of the avenue? A West side.

Q And in which direction were you going? A North.

Q Were you walking at the time? A Yes, sir.

BY THE COURT:

Q You were between 16th and 17th Streets? A Yes, sir.

BY MR. BROTHERS:

Q And how far were you from 16th Street when you heard the shot? A About five or six feet away from the corner.

Q And what did you do when you heard the shot? A I

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ran, and a man stopped me.

Q Did you see other people run? A Yes, sir; a big crowd of people ran.

Q Where were you when this man stopped you? A About six feet away from 17th Street.

Q And did this man who stopped you say something to you? A Yes, sir.

Q He spoke to you? A Yes, sir.

Q In addition to speaking to you, did he do anything? A He pointed to a man. (Illustrating).

Q How did he do that? A He said, "That man is after---"

Q No, don't say that, don't say what he said. A He pointed with his finger that way (Illustrating)

Q And to whom did he point his finger? A The defendant.

Q This man sitting here at the table? (Indicating the defendant) A Yes, sir.

Q Where was the defendant at that time? A Crossing the street, Third Avenue, and going east.

Q At 17th Street? A Yes, sir.

Q What did you then do? A I followed him.

Q You followed the defendant? A Yes, sir.

Q Will you describe further where you went and where he went? A From the corner of 17th Street, that will be the northwest corner, right over towards the southeast cor-

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ner, and walked along Third Avenue to 16th Street, and through 16th Street to First Avenue.

Q That would be East? A Yes, sir; east. On First Avenue, north again to 19th Street.

Q Now, as you followed him, were you always walking behind him, that is, on the same side of the street? A On the opposite side of the street.

Q Keeping him in view? A Yes, sir.

Q Well, he got to First Avenue, and how far did he go up? A To Nineteenth Street.

Q And what happened there? A Boarded a Belt Line Car, going south.

Q Did any cars pass before he got on? A Yes, sir; two cars passed before he got on the third.

Q During that time did you see any police officers? A No, sir.

Q Do you recall that that was the day of Mayor Gaynor's funeral? A Yes, sir.

Q And that there were very few police on the streets? A Yes, sir.

Q And did you stand near the defendant as you were waiting for the car? A Well, about six or seven feet away.

Q And he boarded a southbound car, did he? A Yes, sir.

Q Did you get on that car? A I boarded the same car.

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Q And in which part of the car did you sit down? A I sat down on the east side of the car, and he sat down on the west side of the car.

Q And, with respect to him, where did you sit? A About two feet away from him in the car, opposite him.

Q Opposite him? A Yes, sir.

Q You were sitting right across from him? A No, sir; a little further towards the back of the car.

Q Was he alone at the time? A Yes, sir.

Q And how long did you continue in the car? A Until he got off.

Q Do you recall anybody else getting on the car? A Yes, sir.

Q Who was that? A His wife and daughter.

Q Where did they board the car? A About Avenue B and Fourteenth Street.

Q When they got on, where did they sit? A The elder woman sat alongside of him.

Q Alongside of the defendant? A Of the defendant, and the young girl sat alongside of the mother.

Q So that the mother sat in between them? A Yes, sir.

Q And they were all on the same side? A Yes, sir.

BY THE COURT:

Q Close together? A Yes, sir.

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BY MR. BROTHERS:

Q And, as the car neared 14th Street, did you observe what the defendant was doing, as to whether he looked out of the car, or what he did?

MR. ROSALSKY: I object.

A He was turning his face towards the window, like as if he was looking out.

MR. ROSALSKY: I move to strike that out, "Like as if he was looking out."

THE COURT: Motion granted. Strike it out.

BY THE COURT:

Q Where did they get on, referring to the older woman and the younger woman? A Fourteenth Street and Avenue B.

BY MR. BROTHERS:

Q Now, do you understand and speak Italian? A Yes, sir.

Q Are you an Italian by birth? A Yes, sir.

Q How long have you been in this country? A Born here.

Q What? A Born here. I was born here.

Q Are your parents Italian? A Yes, sir.

Q And in what business were you engaged at that time?

A Trcking business.

Q Where was your place of business? A The Woolworth Building.

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Q The Woolworth Building? A Yes, sir.

Q Did you hear anything said by the defendant, or his two companions on the car? A The young girl.

Q What did she say? A She said, "Oh, Papa, you killed my Gaspare"

Q Did she say that in English or Italian? A She said it in Italian.

Q And what was her condition at that time, was she calm or was she crying? A Well, she was nervous like, excited.

Q She said what? Tell us that again? A She said, "Papa, you killed my Gaspare".

BY THE COURT:

Q And what did the defendant say? A He turned around and he said, "You shut up, or I'll give you some, too."

BY MR. BROTHERS:

Q And what did he do at that time? A He pulled out a shell, and showed it to her.

BY THE COURT:

Q When you say a shell, what do you mean? A The shell of a bullet.

BY MR. BROTHERS:

Q When you say a shell, what do you mean? A The shell of a bullet.

Q And where did he take it from? A From his vest pocket. And he said, "This is all that is left of the bullet, and

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he is gone."

Q Now, I show you a shell, and ask you if that resembles in anyoway the shell that the defendant had? A It was about as big as that.

Q And was that the kind of object that he had? A Yes, sir.

MR. BROTHERS: We offer it in evidence, as a sample.

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

MR. BROTHERS: It is a 38 caliber shell. Does your Honor care to see it?

THE COURT: Has it already been marked for identification?

MR. BROTHERS: No, sir; this is the first time that I have produced it.

THE COURT: No, I don't think that I will receive it.

MR. BROTHERS: May it be marked for identification, your Honor?

THE COURT: Yes.

MR. ROSALSKY: May I ask your Honor to instruct the jury to disregard this incident entirely, and the reference to the shell?

THE COURT: Yes.

(It is marked People's Exhibit 7 for Identification)

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BY MR. BROTHERS:

Q Was there anything further said by any member of this party? A No, sir.

Q Who paid the car fare; did you see that? A He paid his own fare, and when the two females got on, the girl turned around and said, "Pay the fare" two or three times, and then he paid it.

Q Did you see where they alighted from the car? A Yes, sir. The defendant got off in Mangin Street, between Goerck and Delancey, and the two females got off---

Q Where did they get off? A Right at the corner of Delancey Street.

Q And what did you do? A Ifollowed the man back to Goerck Street---to Rivington Street.

Q To any particular building? A He went in the northeast corner building.

Q The northeast corner building of Rivington Street and what other street? A Goerck.

Q Have you since learned who lived there? A No, sir. I only learned---

THE COURT: Now, yes or no.

THE WITNESS: No, sir.

BY MR. BROTHERS:

Q Did the defendant enter that building? A Yes, sir.

Q What did you do then? A I went and notified the

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police by telephone.

Q And did you remain about that corner building? A Yes, sir.

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

Q And where was he? A Right at the door, talking to another man.

Q Now, did any police officer come there? A Not at the present time, while he was talking.

Q And what became of the defendant? A He went away after I went around looking for another policeman on post.

Q And then you lost sight of him, that night? A Yes, sir.

Q Did you report this matter to the police, that night? A Yes, sir.

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

THE COURT: Oh, I will let the answer stand.

MR. ROSALSKY: Exception.

BY MR. BROTHERS:

Q Now, did you know the defendant at that time? A No, sir.

Q Or any members of his family? A No, sir.

Q Did you know the deceased, Gaspare Mattarelli? A No, sir.

Q Or any of the parties connected with this case? A No,

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sir.

BY THE COURT:

Q So that now, when you speak of the enderly woman being the wife of the defendant, and the younger woman being the daughter of the defendant, you are merely speaking in that connection, fromthings that you have heard since? A Things that I heard since.

Q I say, when you call the elderly woman the wife of the defendant, and the young woman the daughter of the defendant, you are merely talking in that regard from things that you have heard since that day? A Yes, sir.

BY MR. BROTHERS:

Q Now, were you in the station house on the 13th of December, 1913, when the defendant made a statement? A Yes, sir.

Q And did you see this same elderly woman and young woman present there at that time? A Yes, sir.

Q Did you hear them say anything about who they were? A No, sir.

Q Did you hear them say at any time, at any other place who they were? A No, sir.

Q So that your only information as to their relationship comes from some other source; is thatright? A Yes, sir.

Q Did you hear the young girl state certain things to the Coroner, that night? A No, sir.

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Q Well, you made a statement yourself, did you not? A Yes, sir.

Q Now, when did you next see the defendant, after the night of September 22nd? A In Rochester.

Q Were you sent there by the Police? A Yes, sir.

Q And did you identifythe defendant in Rochester? A Yes, sir.

Q Did you talk with him in Rochester? A Yes, sir.

Q Will you state the conversation which you had with him? A I went up to Rochester and met---

Q No, state what you said? A I met the defendant---

Q No, what did you say to him? A I asked him if his name was Peter Dangelo and he denied it and he said his name was Giuseppe Ordo.

Then I asked him if he had a daughter by the name of Nellie, and he said yes.

And I asked him if he lived in Brooklyn, and he said yes.

I asked him did he have a fruit store in Brooklyn, and he said yes. I asked him did he move to Rivington Street and he said yes.

And he says that Nellie was married. That's all I had to say with him at the present time, at the moment.

BY THE COURT:

Q Whereabouts did that talk take place? A In the boarding house where he was living.

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Q And what was the street and number, if you know? A 54 Hartford Street, Rochester, New York.

Q And who was present besides the defendant and yourself? A Two Rochester Detectives, Mr. Murphy and Mr.Moreau, I thinkthe name is.

BY MR. BROTHERS:

Q Were they Rochester Police Officers? A Yes, sir.

Q Did you have a later talk with the defendant, in Rochester? A At Headquarters, Idid.

Q Now, will you relate that conversation? A I asked him did he---

Q First tell us who was present there? A The Captain of Police.

Q A Rochester man? A yes, sir; and twe officers.

Q The same two you have mentioned? A Yes, sir.

Q Now, what talkdid you have with him? A We asked him his name over again, and everything, and he give us the same answers.

BY THE COURT:

Q No, what did you ask him? A I asked him if his name was Pietro Dangelo.

BY MR. BROTHERS:

Q You acted as interpreter, did you not? A Yes, sir. And asked him if he knew anybody by the name of Gaspare, and he said no. And I asked him again if he had a fruit store

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in Grand Street, Brooklyn, and he said yes.

And I asked him if he lived in Brooklyn, and he said yes. And I said, "Where?" And he couldn't tell me exactly. But he said it was in front of a moving picture house; two or three blocks away from the store.

Q You say that he said he didn't know a man by the name of Gaspare? A Yes, sir.

Q Was anything said specifically about shooting a man named Gaspare? A Yes.

Q What was said on that subject? A I asked him did he shoot a man by the name of Gaspare, and he denied it.

Q He said he didn't do it? A Yes, sir.

Q Now, did you accompany him to New York, with Police Officer Carlson? A Yes, sir.

Q The New York Detective? A Yes, sir.

Q Were you present when the defendant's photograph was taken in Rochester? A Yes, sir.

Q I show you People's Exhibit 4 for Identification and ask you whether that picture correctly shows how the defendant looked at the time you saw him in Rochester? A This is a picture of how the defendant looked, in Rochester.

Q And does that resemble his appearance on the night of September 22nd? A Yes, sir; only he had a little mustache.

Q He had more mustache than he has in the picture? A Yes, sir.

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MR. BROTHERS: We offer the picture in evidence.

MR. ROSALSKY: We object to it as immaterial, irrelevant and incompetnt.

THE COURT: I will receive it.

(It is marked People's Exhibit 4 in evidence)

MR. ROSALSKY: Exception.

MR. BROTHERS: May the wife and daughter be brought into Court, your Honor?

THE COURT: Yes.

MR. BROTHERS: Look at those two women, please. All right. They may go out.

BY MR. BROTHERS:

Q Do you know them? A Yes, sir.

Q Who are they? A That's the daughter and wife of the defendant.

Q Where had you seen them before to-day? A On the car.

Q As you have described? A Yes, sir.

Q Now, did you see them at any other place besides on the car? A Not before; afterwards.

Q Afterwards? A Yes, sir.

Q Where? A Down in Rivington Street.

Q And did you see them any other place? A Walking along the streets.

Q Did you see them, from time to time, on the streets

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of New York? A Yes, sir.

Q And do you remember seeing them on the 13th of December, at the Police Station? A Yes, sir.

Q When the defendant made a statement, and you did? A Yes, sir.

Q They were present? A Yes, sir.

Q And you pointed them out and identified them on that occasion? A Yes, sir.

Q Did you know them before? A No, sir.

Q That is, before September? A No, sir.

THE NINTH JUROR: Your Honor, may I ask a question?

THE COURT: Why, certainly.

BY THE NINTH JUROR:

Q I would like to ask you what the interval of time was between the time you got on the car with the defendant, and the time that the women got on the car, at 14th Street and Avenue B. How long a time was it? A Well, I figure about fifteen minutes.

Q Well, how long a time from the time you heard the shot until you seen these two women get on the car at Avenue B and 14th Street? A About ten minutes to ten.

Q How long a time was it? A About three quarters of an hour.

THE COURT: Now, wait a moment. About how long a time passed from the time you heard a shot until the time

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that you saw the two women get on the car, at Avenue B and 14th Street? A About three quarters of an hour.

Q That is to say, they got on the car at Avenue B and 14th Street, about three quarters of an hour after you heard the shots? A Yes, sir

THE COURT: I want to say to the jury now, because I think it is expressing the desire of both the District Attorney, and counsel for the defendant that, if at any time any one of you would like to ask a witness a question, you may frame the question, and, if it is a question that is legally permissible, why, the Court will allow the question to be put to the witness. Isn't that so, Mr. Rosalsky?

MR. ROSALSKY: Yes, sir.

MR. BROTHERS: Yes, sir.

THE COURT: Something may occur to you, gentlemen, that you would like to be informed about, and you want to feel perfectly free to frame the question. It may occasionally happen that some rule of law may prevent the Court from allowing the question to be put to the witness, but, if that is not so, the question will be put and answered.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. ROSALSKY:

Q When you say that it took three quarters of an hour from the time you heard the shot, until you saw the girl and

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the old lady get on the car, are you guessing at the time? A No.

Q Did you look at your watch? A I didn't have no watch. There was a man in the car at the time and I asked him the time and he said, "It's quarter of ten."

Q A quarter of ten? A Yes, sir.

Q When the old lady and the little girl got on the car? A Yes, sir.

Q And what time did you hear the shot? A About five after nine.

BY THE COURT:

Q How do you fix that time? A I left Fifteenth Street at nine o'clock.

Q Fifteenth Street and Third Avenue? A Third Avenue, a moving picture house there.

BY MR. ROSALSKY:

Q Did you look at the time when you left Fifteenth Street and Third Avenue? A Yes, sir.

Q And that is how you remember that time? A Yes, sir.

Q And you say you were walking on the west side of Third Avenue? A Yes, sir.

Q When you heard the shot, didyou run in the direction of the shot? A Between Sixteenth and Seventeenth Street, yes.

Q Did you run in the direction of the shot? A Yes,

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sir.

Q In what direction did you run? A North, on the west side of the Avenue.

Q And how far on the west side of the avenue did you continue, before you were stopped? A About six feet this side of 17th Street and Third Avenue, on the south corner, on the west side.

Q Were you on the downtown side of 17th Street or on the uptown side? A I was on the downtown side when I was stopped.

BY THE COURT:

Q That is to say, you had not quite reached Seventeenth Street, when you were stopped; is that so? A yes, sir.

BY MR. ROSALSKY:

Q And in what direction---how soon after hearing the shot, were you stopped? A About five minutes.

Q Are you sure it was five minutes? A About that.

Q And in what direction did the man who stopped you go? A He was ging south, on the west side of Third Avenue, down town side of Third Avenue.

Q And how near to the man who stopped you was the man whom he pointed out, that did the shooting? A The defendant was walking away, about three feet away from us, while we were standing there and talking.

Q Did the man who was shot turn around and point at him? A The man who was shot?

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Q Yes? A No.

Q Did I understand you to say that the man who was shot pointed out this man to you? (Indicating the defendant) A No, sir; no, sir.

Q Some other man pointed him out to you? A Yes, sir.

MR. ROSALSKY: I move to strike out all the evidence on that subject, your Honor.

MR. BROTHERS: I didn't bring out any such evidence.

MR. ROSALSKY: I understood that it was the man who was shot.

MR. BROTHERS: No, he testified that a man pointed out the defendant.

THE COURT: Yes, the only thing that was testified to on the direct was that, when this witness reached a certain point in his northward course, on the westerly side of Third Avenue, he was stopped by somebody, who made a certain motion with his hand, and, after that motion was made he, the witness, saw the defendant. Now, to the extent that there is more in the case than that, it has been brought out on cross examination.

BY MR. ROSALSKY:

Q Well, where was the defendant when you first saw him? A In the gutter on Third Avenue.

Q Whereabouts in the gutter? A Seventeenth Street and Third Avenue, crossing Third Avenue, in the gutter.

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Q On the uptown side of 17th Street or downtown side?
A He was walking towards downtown, in the middle of the street, crossing.

BY THE COURT:

Q In other words, when you speak of the gutter, you mean all that part of the street over which horses go? A Yes, sir.

Q Now, that is so, is it not? A Yes, sir.

BY MR. ROSALSKY:

Q Now, look at this diagram and see whether you understand it. You see where the rails are indicated? (Indicating) What is that? A The Third Avenue Railroad.

Q And you see 17th Street on the diagram? A Yes, here is 17th Street. (Indicating).

Q And the pink part of this diagram indicates the houses? A Yes, sir.

Q And the grayish part, the sidewalk? A Yes, sir.

Q Now, will you point out where you were at the time you heard the shot? A About here. (Indicating).

MR. ROSALSKY: He points out a place in front of the---

THE WITNESS: United Cigar Stores. The second store there. (Indicating).

BY MR. ROSALSKY:

Q And when you heard the shot, didyou stop or continue

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on? A I was here when I heard the shot, and when I got to there (Indicating) I stopped.

Q Now, when you first heard the shot, where were you? A About here. (Indicating).

Q In the middle of the block? A Yes, sir.

THE COURT: He indicates about the middle of the block, between Sixteenth and Seventeenth Streets.

BY MR. ROSALSKY:

Q And then did you continue to walk north or run? A I walked very fast north. I didn't exactly run, but walked fast.

Q And did you continue to walk? A Yes, sir.

Q And the moment you reached---you saw this defendant--- the first time that you saw the defendant where was the defendant? A When I walked through this way---

THE COURT: No. You pay attention to the question and answer it.

(The question is repeated by the stenographer)

A Right about here. (Indicating)

Q Will you mark just where he was?

THE COURT: Now, take your time, and think of it, before you do it, and then do it.

A Right here. (Indicating).

BY THE COURT:

Q Now, you have made a mark to do what? A To show

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the defendant in the street, walking.

Q When you first saw him; is that so? A Yes, sir.

MR. ROSALSKY: Now, will you mark that---

THE COURT: Suppose he puts his own initials?

MR. ROSALSKY: We might call it the letter "B" your Honor.

BY MR. ROSALSKY:

Q The letter "B" indicates the first position that you saw the defendant in? A Yes, sir.

BY THE COURT:

Q Which way was he facing at that time? A East.

Q And he was in the act of walking; is that so? A Yes, sir.

BY MR. ROSALSKY:

Q Now, where were you at the time that you saw the defendant for the first time? A Here. (Indicating).

MR. ROSALSKY: I will indicate that by the letter "F", the witness's own initial.

BY MR. ROSALSKY:

Q And from the time you saw him about in the middle of Seventeenth Street and Third Avenue, about in the middle of the street, you didn't lose sight of him, did you? A No, sir.

Q And then he proceeded in what direction? A Right over this way. (Illustrating).

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THE COURT: Indicating diagonally in a southeasterly direction, towards the easterly sidewalk of Third Avenue, reaching it about midway between 17th and 16th Streets.

BY THE COURT:

Q Is that so? A Yes, sir.

BY MR. ROSALSKY:

Q Did you at any time see the defendant on the northwest corner? A Yes, sir.

Q On the sidewalk? A Yes, sir.

Q And so, if I understand you, you heard a shot? A Yes, sir.

Q And you were about in the middle of the block at the time you heard the shot? A Yes, sir.

Q On the west side of Third Avenue? A Yes, sir.

BY THE COURT:

Q Between Sixteenth and Seventeenth Streets? A Yes, sir.

BY MR. ROSALSKY:

Q Between Sixteenth and Seventeenth Streets? A Yes, sir.

Q And you walked fast? A Yes, sir.

Q And when you reached about in front of the cigar store, indicated by the letter "F" on the diagram, you saw the defendant in the center of the street? A Yes, sir.

Q Indicated by the letter "B" on the diagram? A Yes,

5,446.
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sir.

Q And then you saw him go away? A Yes, sir.

Q Did you at any time see any of the women near him? A No, sir.

BY THE COURT:

Q Did you see either of the women before you saw them get on to the car? A No, sir.

BY MR. ROSALSKY:

Q Now, where was the man who---where was the man standing who pointed out the defendant to you? A Where the letter "F" is. (Indicating).

Q Do you know that man? A No, sir.

Q Did you ever see that man before? A No, sir.

Q And when you saw the defendant at the point where the letter "B" is was he walking or standing still? A Walking.

Q Was he walking fast or slow? A No, sir; very slow.

Q You didn't see from where the defendant came? A No, sir.

Q And you don't know from where he came? A No, sir.

Q And you say it took five minutes from the time you heard the shot until you saw the defendant? A Yes, sir.

Q And you walked fast from where you were, until the defendant was pointed out to you? A Yes, sir.

Q And then followed him right up? A Yes, sir.

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Q Did it take you five minutes to walk from where you say you heard the shot until you saw the defendant? A I didn't say exactly five minutes; I said about.

Q Oh, about? A Yes, sir; that's what I said.

Q Well, now, was it about five minutes? A Well, three or four minutes, may be three minutes.

Q Wasn't it less than that? A No, I don't figure it no less time.

Q And the other time, which you indicated was three-quarters of an hour you know by reason of seeing a clock at the time you left? A Yes, sir.

Q And seeing the timewhile you were on the car? A Yes, sir.

BY THE COURT:

Q Now, I understood you to say that you heard a person on the car say, in answer to your question as to the time, that it was a quarter of ten, at the moment that the women got on the car? A Yes, sir.

Q Now, as you were walking up the westerly side of Third Avenue, were you walking alone, or was somebody walking with you? A Alone.

BY MR. ROSALSKY:

Q Now, you walked to 16th Street? A Yes, sir.

Q Did you walk fast or slow? A Just as he walked. (Indicating the defendant).

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Q Well, was he walking fast or slow? A Taking it easy.

Q And then you walked east, through Sixteenth Street, to First Avenue? A Yes, sir.

Q And then walked north to 19th Street? A Yes, sir.

Q And then you walked east---where did you get on the car? At 19th Street and First Avenue? A Yes, sir; at 19th Street and First Avenue.

Q Now, how long did it take you to walk from where you started---from the time you started to follow the defendant, until the defendant got on the car, or until the defendant stopped to wait for the car? A Walking from 17th Street?

Q From the time you saw him, until he got on the car, or stopped to get on the car? A In all, about ten minutes, waiting and all.

Q Waiting and all, about ten minutes? A Yes, sir.

Q That is, from the time you first saw him, until you reached Nineteenth Street, and then got on the car, boarded the car, it was ten minutes? A Yes, sir.

Q Now, how many cars did you see go by? A Two.

Q Were those cars crowded? A No, sir.

BY THE COURT:

Q And when you say two, do you mean going in a downtown direction? A Yes, sir.

BY MR. ROSALSKY:

Q What was there that made you observe those cars going

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by? A Because he didn't board the car, and I didn't board it.

Q And this was a trolley car? A Dry Dock and Battery, Belt Line car.

BY THE FOREMAN:

Q Were they Belt Line cars? A Yes, sir.

Q And three passed in only ten minutes? A Yes, there was a blockade on the road.

BY MR. ROSALSKY:

Q Where was this blockade? A Uptown, around 20th Street, the conductor told me.

MR. ROSALSKY: I move to strike that out.

THE COURT: Strike it out.

BY MR. ROSALSKY:

Q Well, you got on the car at 19th Street and First Avenue? A Yes, sir.

Q And then the car went all the way down to Goerck Street? A To Mangin Street.

Q To Mangin Street? A Yes, sir.

Q Now, how long were you on that car? You got on the car at 19th Street; is that right? A Yes, sir.

Q And the other people got on the car, the ladies got on the car at 14th Street and Avenue B? Did you say Avenue B or First Avenue? A Avenue B.

Q And at that time you asked a man the time and he said

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it was a quarter to ten. A Yes, sir.

BY THE COURT:

Q About how long were you on the car before the witness got on it? A About ten minutes.

BY MR. ROSALSKY:

Q Did it take you ten minutes to ride from 19th Street to Avenue B and Fourteenth Street? A Yes.

Q Now, were you a witness before the coroner? A Yes, sir.

Q And were you a witness before the Grand Jury in the month of December? A Yes, sir.

Q At the time the Grand Jury indicted the defendant for manslaughter? A Yes, sir.

Q And you were also before the Grand Jury when the defendant was indicted by the Grand Jury for Murder in the first degree? A Yes, sir.

Q How many days---I will withdraw that. Did you go around with the policemen looking for this defendant? A Yes, sir.

Q How many days did you spend with the police? A From the 22nd to the 13th of December, when they took him back from Rochester.

Q And how often were you in in company with the police? A Every day.

Q Didn't you attend to your own business? A I had sold

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my business out, on the 15th of September.

Q Were you working for the Police Department? A At the present time, at the time of this murder; that'sall.

Q Now then, you were employed by the Police Department from the day of the murder until the defendant was arrested? A Yes, sir.

Q And you were paid a salary by the Police Department? A Yes, sir.

Q And did you receive any pay from the Police Department after the defendant was arrested? A No, sir.

Q And now you are simply here as a witness? A Yes; sir.

Q Are you receiving any pay for coming down here? A I am held in the House of Detention, at the present time.

Q Well, when did you go to the House of Detention? A I think it was on the 19th of January.

BY THE COURT:

Q And the in the order committing you to the House of Detention, is specified a certain compensation which you were to receive daily, while there? A Three dollars a day.

BY MR. ROSALSKY:

Q Now, what work did you do after the 22nd, for the Police Department? A Going around, trying to find the man, trying to find the defendant.

Q Did you ever, before the 22nd day ofSeptember, re-

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ceive any compensation from the Police Department for working for them? A Before the 22nd of September?

Q Yes? A No, sir.

Q This was your first experience? A Yes, sir.

Q And how much a day didyou get, may I ask you? A Two dollars a day.

Q What part of Italy did your parents come from, what Province? A I don't know what province they come from Tarso, I believe it is.

Q Do you know whereabouts the Province is? In the upper or lower part of Italy? A It is in the highest part of Italy, somewhere.

BY THE COURT:

Q You have been in the trucking business; is that so? A Yes, sir.

Q Carrying on the business on your own account? A Yes, sir.

Q With an office in the Woolworth Building? A With a concern in the Woolworth Building, doing the work for them.

Q In other words you were not in business on your own account? A Yes, I had a horse and truck of my own, doing the trucking for the one firm.

Q You owned the horse and you owned the truck? A Yes, sir.

Q And you did the trucking for only one firm? A Yes,

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sir.

Q And that firm had offices in the Woolworth Building? A Yes, sir.

Q And the name of that concern was what? A The Art Metal Construction Company.

Q Where did you stable your horse? A 69 Allen Street.

Q And you are a married man? A Yes, sir.

Q And how old? A Thirty one.

Q You sold out your horse and truck when? A On September 15th.

Q To whom? A B. Moore &Son.

Q And from the 15th to the 22nd you were without employment? A Yes, sir.

BY MR. ROSALSKY:

Q Did you know any of the Pclice Officers who were interested in this case, before the 22nd? A No, sir.

Q Do you know any Police Officers in the City of New York? A No; only these.

Q Now, on the 22nd, did you know any? A No, sir.

Q Who suggested giving you this employment? A The Police.

Q Had you made any statement to them at the time you received this employment? A This statement here about the shooting; that's all.

Q Did you tell them what you had heard on the car? A

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Yes, sir.

Q Was that before or after the employment? A Before the employment.

BY THE COURT:

Q No. The question is, when did you tell the police what you now say you heard on the car? Did you tell them before you were employed by the Police, or after you were employed by them? A Before.

BY MR. ROSALSKY:

Q And after you made that statement, the Police employed you? A Yes, sir.

BY THE COURT:

Q About how long had you been in the trucking business? A Four years.

Q And before that, what did you do? A Driver.

Q Employed by whom? A Jackson Brothers, and John J. Hawkins; several people.

Q You were born here in New York? A Yes, sir.

Q And were a driver for about how many years? A About fourteen years.

Q About fourteen years? A Yes, sir.

Q During which time you were employed by about how many different concerns? A About five.

BY MR. ROSALSKY:

Q You say the defendant pulled out a bullet, or a bullet

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shell?

THE COURT: We will take a recess now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

---oooOooo---

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AFTER RECESS.

EMANUEL FERREA, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. ROSALSKY:

(The last question is repeated by the stenographer)

A Yes.

Q Is that right? A Yes, sir.

Q And you were looking straight at the defendant? A Yes, sir.

Q And you watched every movement? A Yes, sir.

Q And from what pocket did he pull this shell? A Right hand vest pocket.

Q And how did he hold it?

BY THE COURT:

Q Out of his right hand vest pocket, is that right? A Yes, sir.

BY MR. ROSALSKY:

Q Show the juryhow he held it? A Just like that. (Illustrating).

THE COURT: Indicating what?

MR. ROSALSKY: Indicating an empty shell.

THE COURT: Well, held it between what fingers?

MR. ROSALSKY: His index finger and his thumb.

BY THE COURT:

Q In his right hand he held it, did he? A Yes, sir.

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BY MR. ROSALSKY:

Q So that everybody in the car could see what he held in his hand? A Yes, sir.

Q A public exhibition he made of the bullet? A Yes, sir.

BY THE COURT:

Q About how many persons were in the car? A Four--- five.

BY MR. ROSALSKY:

Q Five besides yourself? A No, sir.

BY THE COURT:

Q Five including yourself? A Yes, sir.

Q And including the conductor? A No, sir; outside of the conductor and the motorman. Sitting in the car.

Q Now, the other persons besides yourself in the car, and besides the defendant and the two woman, was it a man or a woman? A A man.

Q Sitting on the same side of the car as yourself? A Yes, sir; towards the back door.

BY MR. ROSALSKY:

Q When you went to Rochester you knew---before you went to Rochester you knew the deceased's name was Gaspare, didn't you? A Yes.

Q And when you started to work in this case you knew that the deceased's name was Gaspare? A After he was shot I

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knew it, not before.

Q And you say that the bullet was about---the shell was about this same size? (Indicating People's Exhibit 7 for Identification) A Yes.

Q And you are almost ready to swear that this is the exact size? A Almost.

Q Not altogether, but you are nearly willing to swear it? A Yes.

Q Well, is there anything else that you would like to testify to that you have not testified to?

MR. BROTHERS: We object to the form of the question.

THE COURT: Sustained.

BY THE COURT:

Q Did you stop at any place, from the Moving Picture Place, until you reached the point whereyou say a person spoke to you? A No, I went direct.

Q You walked right along? A Yes, sir.

Q And the moving picture place was on the west side of Third Avenue? A Yes, sir; between 14th and 15th Street.

Q Between 14th and 15th Street? A Yes, sir.

BY MR. ROSALSKY:

Q Will you tell the interpreter what the little girl said, in Italian, when she got on the car? A (The witness speaks in Italian to the Interpreter)

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THE INTERPRETER: "Oh, Papa, you have killed my Gaspare."

BY MR. ROSALSKY:

Q And what else did she say, and what did the defendant say, in Italian? Tell it to the Interpreter. A (The witness speaks in Italian to the Interpreter).

THE INTERPRETER: "Keep silent, or otherwise I will do the same thing to you."

MR. BROTHERS: Is that the literal translation?

THE INTERPRETER: Yes.

BY MR. ROSALSKY:

Q And what else did he say when he took out the bullet? A In Italian? Do you want me to say it in Italian?

Q Yes. A (The witness speaks in Italian to the Interpreter).

THE INTERPRETER: "This is what remains of the bullet."

BY MR. ROSALSKY:

Q What day in December did the Police stop paying you for your services? A On Saturday, December 14th, I think it was, when we come to New York.

BY THE COURT:

Q Do you remember whether other persons got on that car, after you got on it, and after the defendant got on it, that night, before the two women got on? A No, sir; one

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person got on at 17th Street. That made the third passenger in the car. And then the women got on, and made it five passengers in the car.

Q And so that when you and the defendant got on, you and he were the only passengers? A Yes, sir.

BY MR. ROSALSKY:

Q And you got on at the same corner that he got on? A Yes, sir.

BY THE COURT:

Q And how was the defendant dressed? A He had a brown coat and pair of pants, and a cap, something like the one he has got there, but a brown one, a summer cap.

BY MR. ROSALSKY:

Q Did you keep looking at the defendant all the time? A Yes, sir.

Q And did the defendant look at you while he was on the car? A Yes, sir.

Q You looked at each other? A Yes, sir.

Q Did you look at each other before he reached Fourteenth Street, before the car reached Fourteenth Street? A Yes, sir.

Q Did you notice whether he was looking at you? A Yes, sir.

Q Did you notice---were you looking at him while he was looking at you before the car reached Fourteenth Street? A

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Yes, sir.

Q And then, after the wife and the girl got on the car? A Yes, sir.

Q How many blocks had the car travelled before he pulled out the empty shell? A About one block.

Q And spoke loud? A Not very loud.

Q Loud enough for you to hear him? A Yes, sir; for me to hear him.

Q And you were paying close attention to everything that was going on? A Yes, sir.

Q You felt at the time that you would probably be a witness in the case, didn't you? A Yes, sir; Idid.

Q You knew that you were going to be a witness in this case if he ever was arrested, didn't you? A Well, I didn't know that exactly.

Q Well, you thought you would be, anyway? A Yes, sir.

Q And that's the reason why you paid close attention to everything that took place? A Yes, sir.

Q Now, who suggested that you work for the police? A Sir?

Q Who suggested that you work for the police in this case? A The detective that was on the case told me to work right ahead.

Q Right ahead? A Yes, sir; until we got the man.

Q You told him that you had no job? A I told him that

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I was out of employment.

Q And he said, "We'll give you a job?" A Yes, sir.

Q And did you agree on the salary, that very night? A Yes, sir.

Q And what was the salary? A Two dollars a day.

Q And expenses? A Yes.

Q Did you put in any extra bill for expenses, while you were working? A No, sir.

Q Why not? A Because I wasn't spending anything. I was with them all the time.

Q Who paid for your meals? A The detectives.

Q You were with them day and night? A Well, until they would leave me go.

MR. ROSALSKY: That is all.

THE NINTH JUROR: Your Honor, may I ask a question, with your permission?

THE COURT: Certainly.

BY THE NINTH JUROR:

Q You say that you came through 16th Street? A Yes, sir.

Q From Third Avenue? A Yes, sir.

Q And passed through Sixteenth Street to First Avenue? A Yes, sir.

Q You passed through the Park? A Yes, sir.

Q And you passed through another park? A Yes, sir; two

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parks.

BY THE COURT:

Q Now, do you understand that question? A Yes, sir.

Q Did you walk through the park? A Yes, sir; through the park.

BY THE NINTH JUROR:

Q From Third Avenue to Second Avenue? A Yes, sir.

Q And from Second Avenue you passed another park? A Yes, sir.

Q And then you went to First Avenue? A Yes, sir.

Q And then you went north on First Avenue to 19th Street? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Did you have anything in your hand when you were on the car? A I had an alarm clock.

Q And did you have it with you all the time that you have been talking about? A Yes, sir.

BY THE FIFTH JUROR:

Q You didn't know the man that pointed out the defendant did you? A The first time I seen him, the first time I ever seen him.

Q Well, what object had you in following this man? (Indicating the defendant) A Well, I saw that there was a crime committed and being a citizen of New York, I should see that he was arrested.

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Q And you took the stranger's idea of it? Eh? A Yes.

Q And you followed this man that you never knew and you never saw before? A Yes, sir.

Q And you took the strangers direction to follow this man? A Yes, sir.

BY THE EIGHTH JUROR:

Q Why have you been kept in the House of Detention? A Well, being I wasout of employment and I was engaged to go and get a job out of town, and I told the Police that I was going out of town to go to work, and they thought they would hold me here, because the case was coming up, and put me in the House of Detention.

BY MR. BROTHERS:

Q And you had heard a shot, before you started to run or walk fast? A Yes, sir.

Q And there were others running there? A Yes, sir.

Q And when this man spoke to you on the street you had no reason to doubt what he said, had you? A No, sir.

Q And you testified before the Coroner and before two Grand Juries to the facts, didyou not? A Yes, sir.

RE-CROSS EXAMINATION BY MR. ROSALSKY:

Q What was your salary while in the Houseof Detention?

MR. BROTHERS: He doesn't get any salary, and we object to it. The Court makes an order that gives himan

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allowance.

THE COURT: I think he stated already that the order gave him an allowance of three dollars a day.

MR. BROTHERS: And that is a provision of the State Law.

BY THE FOREMAN:

Q Now, when the defendant was pointed out to you, did he have anything in his hand? A I didn't see anything in his hand.

Q Now, do you know the deceased? A No, sir; I never knew him before.

Q Or any member of the family? A No, sir.

Q Or any friend of the family or the deceased? A No, sir.

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

DIRECT EXAMINATION BY MR. BROTHERS:

Q Do you hold an official position in this County? A Yes, sir; I am Coroner of the Borough of Manhattan.

Q And were you a Coroner of this Borough on the 13th of December, 1913? A Yes, sir.

Q And do you recall the night of the 13th of last December, being at the 21st Precinct Station House? A In East 22nd Street, yes.

Q And what occurred there at that time? Who was present?

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A There were present Detective DiMartini, a stenographer from the District Attorney's office and two assistant District Attorneys.

Q Mr. Breckenridge and Mr.---A And Mr. Murphy. There were present nthe defendant, the wife of the defendant, the daughter of the defendant and one or two other police officers.

Q Now, at that time, did you conduct, or rather, did you take a statement from this defendant? A I did.

Q And did you ask him certain questions? A Idid.

Q And did you employ some one as an interpreter? AYes, sir.

Q Who was that? A If my memory serves me right, I think it was Detective DiMartini.

Q And do you recall that you swore him as an Interpreter? A Yes, sir.

Q And after that was done, you questioned the defendant? A No, I first warned the defendant of his rights.

Q Yes, that's right. A And then I questioned him, and asked him if he wished to make a statement.

Q And then you put your questions and they were translated, apparently, into Italian? A Into Italian, and from Italian back into English.

Q And the stenographer from our office, the District Attorney's office, was recording what was being done? A Yes, sir.

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Q Have you since seen the stenographic record of that examination? A Ihave not.

Q At that time were you acting in your official capacity? A As a Magistrate.

Q In addition to taking a statement from this defendant, did you take a statement from a witness named Ferrea? A I don't remember the name, but there was another witness from whom I took a statement.

Q A man? A yes, sir.

Q Upon looking at the record before you, is your recollection refreshed as to what you said to the defendant, before any questions were put to him? A I told him that he might be a defendant, that anything that he said at that time might subsequently be used against him. That is, practically, about the words Itold him. And that whatever he said, at that particular time, could subsequently be used against him.

Q Do you know whether the Interpreter then spoke to the defendant in Italian? A He did.

Q Ipresume you haven't much of a recollection of what was said in reply by the Interpreter? A No, sir; not unless my recollection was refreshed.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Was the defendant excited at the time he was making the

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statement? A Not very,apparently.

Q Was there some excitement in him? A There may have been some retained excitement. It was not very noticeable on the surface.

Q There was something said about a witness, Ferrea making a statement, that night. Do you recall that? A I do.

Q Was that the first time that this witness Ferrea made any statement to the Coroner, or to the Coroner's Court? A That I don't know.

Q When the deceased was killed, on September 22nd, was that a case which came under your supervision? A No.

Q Do you know if there were any statements made by any witnesses, prior to December 13th, in the Coroner's Court? A Yes.

Q Do you remember the names of thosewitnesses? A I do not. Another Coroner held the inquest.

Q Do you know whether Ferrea was a witness at that inquest? A Idon't know.

Q Does your record show the names of the witnesses who were called before the Coroner's Court? A Always.

MR. BROTHERS: You may put them all in, if you wish.

THE WITNESS: Here it is, right here. (Indicating).

BY MR. ROSALSKY:

Q From the synopsis of the minutes, do you see the name

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of Emanuel Ferrea, before the Coroner? A No.

Q Thenfirst time---at least, you had a statement of Ferrea, on the 13th day of December, 1913? A Yes, sir.

Q Is that right? A Yes, at least I presume it was Ferrea who told the story to the Court, and about following the defendant.

Q Yes, and the Inquest was held when? A Prior to that. The date is there on the official papers.

Q The Inquest was held, according to your records, on the 9th of October? A yes, sir; the 9th day of October.

Q And there was no Emanuel Ferrea in the Coroner's Court on that day? A If the Official Inquisition papers say there was not, there was not.

BY THE COURT:

Q Corone , can you refer me, without any inconvenience, to the provision of law making you a Magistrate? A yes, sir: it is given in the Greater New York Charter, which gives Coroners all the rights of Magistrates, in Homicide Cases. I can't recall the exact section.

Q It is not a provision in the Code of Criminal Procedure? A No, sir.

Q The inquest in the case was conducted before one of your associates? A Yes, sir.

Q When you were at the station house, on the occasion which you have referred to, you were acting in the capacity

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of a Magistrate; is thatso? A Yes, sir.

Q Before whom this defendant was arraigned? A yes, sir.

Q On a charge? A Yes, sir.

Q And you were conducting there, in the capacity of a Magistrate, a preliminary investigation? A Well, no. This was Post-Inquest; that is, it was a condition that had occurred, the arrest of a prisoner, after the case had been closed at inquest, so that it was really a post-inquest, the proceedings.

Q In other words, there had been an inquest which was conducted by one of your associates, with a jury? A Yes, sir.

Q And at that inquest certain testimony was taken? A Yes, sir.

Q As a result of which a verdict was rendered by that jury? A Yes, sir.

Q Now, the rendition of that verdict terminated that proceeding, did it not? A Yes, sir.

Q Afterwards, upon the arrest of the defendant, you, acting as a Magistrate, conducted an examination? A Yes, sir.

Q And that you have called what? A Post Inquest Proceedings, that is, after inquest, between the time of inquest, and the arrest of the prisoner, the usual procedure has been, according to the Section of the Charter, as I understand it, for a great many years that, if the prisoner was

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arrested, post-inquest, that the prisoner might be arraigned before the Coroner, and, if sufficient evidence was presented, that the prisoner be held, pending the action of the Grand Jury.

Q And that was a proceeding which, as you understood the law, was not required to be conducted by the Coroner who conducted the inquest? A Well, it has been a common procedure in in the Coroner's Office, and, in most cases, when the prisoner was arraigned before the Magistrate, the Magistrate would remand the prisoner to the Coroner.

Q - I just wanted to understand it. Now, you find in the Greater New York Charter a provision conferring upon Coroner's in certain cases the powers of Magistrates? A Yes, sir.

Q And you find in that charter certain provisions as to post-inquest proceedings? A No, not that I remember; that there is anything relating to post inquest proceedings.

Q You claim that they are covered by provisions of the Code of Criminal Procedure? A Well, I couldn't say exactly. I have looked for it several times, but haven't found it, and I don't know myself whether it is there or not, because I haven't looked up that particular section, I mean as far as that was concerned, because that particular proceeding has never been questioned, and that's why I didn't look it up.

Q But you were there in your capacity as a Magistrate?

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A Yes, sir.

Q Made such by a provision of the Greater New York Charter? A Yes, sir.

Q To conduct what you have called, I suppose technically, a post inquest proceeding? A Yes, sir.

BY MR. ROSALSKY:

Q You say, Coroner, you were sitting as a Magistrate? A Yes, sir.

Q And a charge of homicide was made against the defendant at that time? A Yes, sir.

Q Did you advise the defendant that he was entitled to be represented by counsel? A Yes, the exact wording is here. (Indicating).

MR. BROTHERS: You may look at the stenographer's minutes, Coroner.

A After Officer DiMartini was sworn by the Coroner to act as Interpreter.

"BY THE CORONER:

"Q Now, interpret to him as follows: 'You are charged with murder in the first degree, in that you did feloniously shoot and kill one Gaspare Mattarelli, at Third Avenue and 17th Street, in the City and County of New York on the 22nd day of December, 1913. You don't haveto say any thing, unless you wish; anything you do say can be used against you.' And also that he is entitled to counsel.",

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BY MR. ROSALSKY:

Q Then you did so inform him? A Yes, sir.

MR. ROSALSKY: That is all.

F E L I X B . D i M A R T I N I , of the 29th Precinct, Detective Division, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

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

Q And for how long have you been? A Nine years in May.

Q And are you attached to the detective branchof the service? A Yes, sir.

Q For how long? A About six and a half years.

Q And do you read and speak and understand the Italian language? A I do.

Q And are you a native of this country? A I am.

Q And your parents were born where? A Italy.

Q On the night of December, 1913, were you at the 21st Precinct Station house, in East 22nd Street? A Yes, sir.

Q Were you sworn by Coroner Feinberg to truly interpret from the English intothe Italian language the questions which he put to this defendant? A Yes, sir.

Q And to re-translate the defendant's answers from Italian into English? A Yes, sir.

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Q Now, did you so truthfully and correctly interpret? A Yes, sir.

Q What Coroner Feinberg said you translated into Italian for the defendant? A yes, sir.

Q Did he apparently understand what you said? A He did.

Q Did he reply to you? A Yes, sir.

Q In what language? A In Italian.

Q Did you understand him? A Idid.

Q And did you repeat his answers in English? A His answers from the Italian to English, yes.

Q And you spoke those out loud, did you? A Yes.

Q And there was a stenographer present? A Yes.

Q Have you since seen a transcript of the record made by the stenographer on that occasion? A I have.

Q Have you read it over? A I have.

Q Does it accord with your recollection accurately of what was said on that occasion? A It does.

Q In the course of that statement which the defendant made to the Coroner, do you recall the defendant saying how the shooting was done? A I do.

Q And was he furnished with a pistol at that time? A Yes, sir.

Q Whose pistol was it? A My own.

Q It was unloaded at the time? A Yes, sir.

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Q And what happened at that moment? A Why, he illustrated---

MR. ROSALSKY: One moment. I object to it as being immaterial, irrelevant and incompetent.

MR. BROTHERS: I shall prove the record by the stenographer, from the original notes, but I want this witness to tell how it was. He was employed as one of the objects in the illustration.

THE COURT: I think it is competent, as explanatory of the record.

MR. ROSALSKY: Exception.

THE COURT: It is a mere question of the order of proof; thatis all.

A Why, I---

BY MR. BROTHERS:

Q First, were you seated at the time or was he? A We were both seated at the time.

Q And then what happened?

BY THE COURT:

Q I would like you to tell me, before you tell me that, I would like you to tell me what was the first thing you said to the defendant when you began to talk to him? A Why he--

Q When you opened your mouth to talk to the defendant, what was the first thing you said to him? A The Coroner told me---

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Q Now, you tell me what you said to him? A I told him he was a defendant, and was charged with homicide, and that he didn't have to say anything; that anything he may say may be used against him. That was the words that Coroner Feinberg told me to interpret to him, before he said anything.

Q Now, did you say anything else but that to him, before you began to question him? A No, sir; that's allat that time. And that they may be used against him.

Q You have told us now all that you recollect saying to this defendant, before the defendant began to speak to you; is that so? A At the time the Coroner was questioning him, yes. At the time the Coroner started to take his statement.

Q Do you recollect saying to him that he had a right to counsel? A I think so, yes; I think that was also said, but I am not so sure. I don't exactly remember the words, in detail, but that is practically the substance of the sentence which I was supposed to translate to the defendant, that anything he may say may be used against him.

BY MR. BROTHERS:

Q Well, didyou tell the defendant all that the Coroner told you to tell him? A I did, yes.

THE COURT: Now, you may go on and answer the question.

MR. ROSALSKY: Your Honor, Iwould suggest that,

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as this was taken in question and answer form, that I be permitted to go over it with the District Attorney, as there might be some questions that would be objectionable.

MR. BROTHERS: No, I don't think that there is anything in this that is not competent. If there was, I would exclude it myself.

THE COURT: It is competent for Mr. Brothers, I take it, to introduce parts, and you have the right to introduce such parts as he may omit, subject to objection on both sides as to the competency of anything that is said. In other words, Mr. Brothers is not required, in the first instance, even though he contends that the statement, in its entirety, is admissible, to introduce it all. And you will let Mr. Rosalsky have in his hand, that statement, so that he may read it, the same as you do. Now, we will proceed.

BY MR. BROTHERS:

Q Now, you say both you and the defendant were seated when it was suggested that he show how the shooting was done? A Yes, sir.

Q And that you unloaded your gun and handed it to him? A I did.

Q Then did you stand up? Tell how it was done? A We both stood up, and he walked about five or six feet away from me.

Q Now, let me---pretend that I am you. You were seat-

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ed and stood up? A Yes, sir.

Q And the defendant rose from his place? A Yes, sir.

Q And how close were you to him before you stood up? A We were sittingalongside of each other, about two feet apart. (Illustrating) and he got up and I walked off, and I said, "Tell me where to stop."

Q Oh, you backed off? A Yes, I think so. There was backing up, but I don't know whether he backed up first or I did; and, with the revolver, he pointed at me, and he said, "That's how I done it." (Illustrating).

BY THE COURT:

Q And which arm did he use? A The right arm.

BY MR. BROTHERS:

Q And the distance then between you and him was what? A About six feet.

Q And how were you standing with reference to facing each other? A Why, I was standing here, and the Coroner was seated about there, and he was about here. (Illustrating).

Q Well, were you standing in the position that we are, now, facing each other? A Yes, sir; facing each other squarly.

BY THE SEVENTH JUROR:

Q Iwould like to ask the officer, your Honor, if he did any detective work on this case?

BY THE JUROR:

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Q Did you? A No, sir; I didn't happen to be there on that day.

BY MR. BROTHERS:

Q You didn't work on this case at all? A No, sir. After the arrest was made I was told to go up there to the station house, and also spoke to the defendant's daughter and wife; that's all.

Q That was the same day? A Yes, sir; the same day.

MR. ROSALSKY: May I reserve the cross examination of this witness until after the confession goes in evidence?

MR. BROTHERS: I have no objection.

THE COURT: All right.

N A T H A N B I R C H A L L, of the District Attorney's Office, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Birchall, you live where? A 629 West 138th Street.

Q Are you employed in the office of the District Attorney of the County of New York? A I am.

Q As what? A Stenographer.

Q And you have been a stenographer how long? A About six and a half years.

Q You have been working at that occupation for that time; have you? A Yes, sir.

Q On the night of December 13th, 1913, were you present

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in the 21st Precinct Police Station, in East 22nd Street, at the time that Coroner Feinberg conducted a hearing? A yes, sir.

Q And did you act as the stenographer upon that occasion? A I did.

Q And did you take down in shorthand correctly all that was said by the Coroner and the other people present, including the translated answers of the defendant at the bar? A Yes, sir.

Q And have you your original stenographic record here? A Yes, sir.

MR. BROTHERS: With his Honor's permission, you may read it.

MR. ROSALSKY: I object to it as being immaterial, irrelevant and incompetent.

BY MR. BRTHERS:

Q Well, you have transcribed that from the original notes into typewriting, haven't you? A Yes, sir.

MR. BROTHERS: Is there any objection to his reading it from the typewriting?

MR. ROSALSKY: I object.

THE COURT: Do you wish to amplify your objection at all?

MR. ROSALSKY: No, sir; just a general objection.

THE COURT: You do not suggest that anything that

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the defendant said was said by reason of fear, produced by threats?

MR. ROSALSKY: No, sir; that is not the ground. Just the grounds that it is immaterial, irrelevant and incompetent.

THE COURT: I think I will receive it. The objection is overruled.

MR. ROSALSKY: Exception. Now, I have no objection to him reading it from the typewriting.

THE COURT: If there is any point in your objection that you wish to emphasize, so thatI may understand what is in your mind regarding it, why, I will hear you. I believe it is competent.

MR. ROSALSKY: As long as your Honor allows it, I have no objection to his reading it from the transcript.

BY THE COURT:

Q That will be easier for you; will it? A Yes, sir.

THE COURT: Then that may be done. You contend that the statement itself is incompetent?

MR. ROSALSKY: Yes, sir; that is the ground of my objection.

A "BY THE CORONER:

"Q Now, will you interpret to him as follows: You are charged with murder in the first degree, in that you did feloniously shoot and kill one Gaspare Mattarello at

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3rd Avenue and 17th Street, in the City and County of New York, on the 22nd day of September, 1913. You don't have to say anything unless you wish; anything you do say can be used against you. And also that he is entitled to counsel. (Officer DeMartini interprets to defendant).

Q Now ask him does he wish to go on and tell us just what happened at 17th Street and 3rd Avenue on the 22nd day of September, 1913. You better further tell him that I am a Coroner in the City of New York, and that it is my duty to investigate all sudden deaths and people who are killed or murdered. A He says "Do you want me to carry the wood of somebody else?"

"Q Ask him does he wish to go on and make a statement. A My daughter ran away.

"OFFICER DE MARTINI: All right, go ahead.

"THE DEFENDANT: She ran away with this Toto.

"THE CORONER: Is that the man outside?

"MR. BRECKENRIDGE: Yes.

"Q Toto is the man outside? A I don't know at this point what to say.

"Q Well, does he wish to tell the truth? A Yes.

"Q Hedoes wish to tell the truth? A Yes.

"Q Then tell him to go right ahead and tell us all. A And after this fellow married, the other fellow wanted to take her away.

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"Q Who does he mean by the other fellow? A This one that is dead.

"Q This one that is dead, meaning Gasparo Mattarello, the deceased? A Yes.

"Q Go ahead. A Because the first time he took her away from Brooklyn.

"Q Meaning his daughter? Let him give the name when he says her. A Then he had this fellow marry her. Then the fellow that is dead, meaning Gasparo, had Toto marry her.

"Q And then he wanted to take her away from Toto again? A Then the deceased had quarrelled. The deceased then had a quarrel with his wife, and also with his wife's brother, that is, the deceased's wife's brother; he also wanted to shoot the deceased because he didn't want to live with his wife, as he wanted to run away with my daughter, Concetta. He also had taken my daughter away for three or four days. This was Gasparo Mattarello.

" Q Then what happened after he took her away for three or four days? A Then after thathe had this other fellowmarry her. And then he wanted to take her away from him after that.

"Q He wanted to take her away from Gasparo Matterello? A No, Gasparo Mattarello wanted to take her away from Toto.

"Q Yes, and then what happened after that, when he wanted to take hers away? A Then I made inquires to find out

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where my daughter was living, but I couldn't find out.

"Q What happened after that? A I don't think anything more happened.

"Q Well, didn't Gasparo Mattarello die? A Yes.

"Q How did he die? What happened to him? A So being that one minute he took her away and stole her from the house,, then next minute he compelled his compare to marry - which would be Toto - and then after that he went and tried to steal her back again and then he wanted to put her to become a prostitute or whatever he wanted to do, and I went up there and shot him.

"Q And where did you shoot him, what street? A I don't very well remember the street.

"Q What Avenue? A Third Avenue.

"Q Does he know how many blocks away from 14th Street it was? A I think it is three blocks.

"Q Three blocks; 17th Street and 3rd Avenue? North of 14th Street it was; north; uptown? A Yes.

"Q And where did you get the pistol with which you shot him? A I stole it from a friend's house.

"Q And what kind of a,pistol was it, can he describe it. Can he describe it? A It was a black gun.

"Q How many chambers, how many chambers?

"OFFICER DE MARTINI: Will I illustrate my gun with him? I'll take the shots out, though.

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"THE CORONER: Yes, take the shells out,

(Officer DeMartini shows defendant his gun.)

"A It was five chambers.

"Q Five chambers; it was a dark gun? A A little but smaller than this (indicating Officer DeMa rtini's gun).

"Q Now, let him take the gun and ullustrate ~~xx~~ where--- you stand up, that's unloaded, you stand up and let him illustrate to you how Gasparo Mattarello was standing and how he was standing when he shot him.

"(Defendant takes gun and stands up in the position in which he was.

"THE CORONER: Illustrating as follows: He was facing him at the time and he pointed the revolver at him and he shot him.

"Q And what did he say to Mattarello before he shot him? What did you say to Mattarello before you shot him? A I can't remember the exact words; I can't remember everything. I have had a lot of trouble, my arm missing, invested money in a store and lost everything; everything against me.

"Q Now ask him who else was present when he shot him. A My daughter and my wife.

"Q Anybody else? A No."

MR. BROTHERS: Now, Officer DeMartini repeats, at the end of the 7th page, another statement of the defendant's and I think we should have that.

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THE WITNESS: "OFFICER DeMARTINI: He says that after this fellow had done all he could to her, they left, parted friends, he said he wouldn't do any more, and then he came back and tried to abuse her after she settled down, and naturally my head turned, and that was the reason he done it.

"Q How old was his daughter? A 14.

"Q 14 years old? A Small."

MR. BROTHERS: That's all.

CROSS EXAMINATION BY MR. ROSALSKY:

Q That was all that was taken there, that night? A yes, sir; that's all, from the defendant.

Q He wasn't asked whether he had told everything? A He was only asked what is in the record there.

Q Wasn't asked what his daughter had told him on the night of the shooting? A No, sir.

MR. ROSALSKY: That's all.

MR.BROTHERS: That,s all.

MR. ROSALSKY: No, just one more question.

THE COURT: Come back for a moment. I would like to ask you a question or two.

BY THE COURT:

Q Now, whereabouts was this taken down? A In the 21st Precinct Station house, in the Captain,s room.

Q And when was it taken? A About half past eleven a

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night, it started.

Q And who was present at the time? A Why, there was Coroner Feinberg, Assistant District Attorney Breckenridge, and Detective Landvoe, Detective Fogarty, Detective DeMartini, and Mr. Murphy was there part of the time, and there were others in the room whose names I didn't get.

Q About how many altogether in the room? A Oh, I should say a dozen or fifteen.

Q Now, while the defendant was speaking, was he seated or standing? A Seated.

Q All the time? A Yes, sir; except when he got up to illustrate how the thing was done.

Q And at that time was he standing? A He stood up and illustrated the manner in which he shot this man.

Q Well, at the time he stood up, did any one else stand up? A Officer DeMartini stood up.

Q And when they were standing up, about how far apart were there? A Why, I believe about ten feet apart.

THE COURT: That is all.

MR. BROTHERS: Will your Honor give me a moment's time?

THE COURT: Yes.

MR. BROTHERS: The People rest, your Honor.

MR. ROSALSKY: The defendant moves the Court to advise the jury to acquit the defendant, on the ground that the People have failed to establish the charge made out in the

indictment.

THE COURT: Your contention is that there is not sufficient evidence, outside of the alleged confession?

MR. ROSALSKY: Yes, your Honor, and on all the evidence?

THE COURT: I will deny your motion.

MR. ROSALSKY: I ask your Honor to take away from the jury the count charging murder in the first degree.

THE COURT: Denied.

MR. ROSALSKY: Exception. The same motion as to murder in the second degree.

THE COURT: Denied.

MR. ROSALSKY: Exception. And the same motion as to manslaughter in the first degree.

THE COURT: Denied.

MR. ROSALSKY: Exception. And as to all other degrees of assault.

THE COURT: Denied.

MR. ROSALSKY: Exception.

---oooOooo---

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THE DEFENSE.

Opening Address for the Defense

of

JOSEPH S. ROSALSKY, ESQ.

May it please your Honor.

Mr. Foreman and Gentlemen of the Jury:

The defense of the defendant will prove to you that, some time in February or March, 1913, two daughters of the defendant, other than the little girl, were employed, working on coats, and just about that time there was a strike, and the deceased was employed as a strike breaker; and that he escorted the sisters of the little girl or the daughters of the defendant home, somewhere on Lewis Street, and that in this way he became acquainted with Nellie Dangelo, the little girl who was brought in here; and that, thereafter, he called at the house quite frequently, and would take this little girl out and then propose marrgae to her, and I believe the mother or the father, the defendant here told him, the deceased, that the girl was entirely too young, and he said he would wait for her.

Thereafter he still continued to go out with this little girl, who was going to school during all this time, and, on many a day he told her not to go to school, and kept her away from school.

This continued until some time in July, when the

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mother and this defendant found out that he was a married man, that the dead man was a married man, and then they told him that he would have to stay away from their house, and keep away from the girl. He denied that he was married.

At about that time, the deceased's wife came to the home of the defendant, with her two little children, and said that the deceased was her husband, and that he was going around with their daughter, and to keep their daughter away from him, and just about that time the deceased, in the presence of the wife, said that she was not his wife, and that he hadn't anything at all to do with her and that the children were not his children, but the defendant, being convinced that they were his wife and children, threw him out of the house and told him to keep away from the house.

But, during July and August, he stealthily came around to the house when the parents were away, and would take the little girl to picture shows, and, while at the picture shows, he acted indecently, by putting his hand on her privates.

MR. BROTHERS: Is this the defense, your Honor? I object to this kind of opening.

THE COURT: Well, I will hear the opening.

MR. ROSALSKY: This continued until around the first days of September. One evening, around the first of September, he came to their home, where this little girl was, the father

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and mother being away at that time, and he stole a bank book and a gold bracelet, belonging to the defendant and his wife. He took them out of a trunk, and pulled out a pistol and told this little girl that he would kill her, if she said a word.

At about that time, he told the little girl to come along with him, and, clad as she was then, without any bundle or anything, he took her away from her home and told her that, if she said anything to any one, he would kill her.

He brought her to New York, and went and looked at different furnished room signs, and then landed at 191 Third Avenue, between 17th and 18th Streets, and hired a room.

After they had been in the room a short time, he told her to go to bed. She started to cry. He pulled out his revolver and said that he would kill her, if she didn't go to bed. The little girl then undressed herself partly and he got into bed there, and raped this little girl.

Not only did he commit rape in the second degree, she being under eighteen years of age, but he committed rape in the first degree, by force and duress, and said, if she ever said anything to any one, he would kill her.

He remained there all night with her, and, I believe, one or two other nights.

This little girl was in fear of her life. He then brought a friend of his, named Croccolisi, who is the present husband of this little girl to the room, and forced

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him to have intercourse with this little girl, and forced him to marry her, or otherwise he would kill both of them.

This Croccolisi, the present husband, is a fruit vender, and, two or three days after Croccolisi had been to this furnished room, the defendant came around to his wagon on 11th Street, where he was selling vegetables, and showed him a gun, and told him that, if he didn't get married to the girl, he would get this, and Croccolisi was in fear of his life, and this little girl was in fear of her life, and they sent word to her sister and told the father and mother and sister to be at the City Hall, on the 10th of September, and there Croccolisi married the girl, and he lived ib the same furnished room, and paid the second week's rent and remained there.

When Croccolisi went to work the deceased came around and had intercourse with the little girl, and tried to induce her to leave her husband and lead a life of shame.

This continued for severaldays, until about the 22nd day of September, when the little girl went to her father, who had a fruit store over in Brooklyn, and, on that day the father was moving, and it was some time in the afternoon---the girl will tell you with more definiteness, and tell everything thatI have told you now---and she told her father of the outrage that the deceased had perpetrated and committed; told himthat he was going to kill her husband,

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and herself, unless he married her, and told the old man that he wanted her to go to the country, saying she could make a lot of money and that, if she gave it to him, he would buy her diamonds and fine dress, and that she would get two dollars and five dollars for a short while, and would make all kinds of money, and that, if she did not go, he would kill her, and, if she told any one, he would kill her.

And this poor little girl, in mortal fear, went over to Brooklyn, and told the entire story to her father and also gave her address to her father.

And the father came home, that evening, and he told this story to his wife. His wife, on hearing that, said she wanted to go and get Nellie, and the old man gave her the address. She said she didn't know where to go, and that the old man should come along with her. They did go uptown, and when they reached 191 Third Avenue, expecting to find Nellie and never dreaming that Gaspare would be there, they found Nellie and Gaspare together.

What occurred there, Iwill tell you briefly, but the witnesses will state it more fully. Gaspare said, "Your daughter is married and you have nothing more to do with her" and grabbed the defendant by the throat, withhis left hand, and struck him with his right hand, and then made a move towards the back, towards his hip pocket. (Illustrating) And with that, the defendant pulled out a revolver and shot him, and

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then went away, and then he was apprehended in Rochester and brought down here.

After listening to this brief opening, I feel satisfied that, after listening to the witnesses, that you gentlemen will do your duty to the People of the State of New York and to this defendant.

THE COURT: Now, Iam disposed, Mr. Roslaky, to limit you somewhat in your proof, and I will tell you what Iam inclined to think is the proper limit in this case, As bearing upon the condition of mind that the defendant was in at the time when he may have done the deed, I will permit proof of what was said to him, what was told to him, respecting thedeceased; what was told to him, the defendant, as to what the deceased was done, also, all testimony bearing upon the possession by the deceased of a pistol; and, of course, the testimony relating to what actually took place at the time of the occurrence.

Now, what is excluded? Well, I would say that, for the purposes of this case, it is not a matter of materiality as to whether the deceased, in point of fact, did do the various things which your opening suggests that he did, provided that the defendant had reason to believe thatthe deceased had done those things, and was told about them, as bearing upon the state of mind that the defendant was in, and his capacity for deliberation and premeditation, the circumstances

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under which the death of the deceased was brought about. Now, have I made that reasonably plain?

MR. ROSALSKY: Your Honor has, except, may I not be permitted to introduce evidence as to the truth of these acts or occurrences?

THE COURT: Well, if you are entitled to introduce it, of course, Iwant you to. But I am in doubt as to your right to introduce proof of that kind. I have not made up my mind, but I am rather inclined to think that the question centers around primarily, what actually took place at the time of the shooting, and, secondarily, as to what the defendant had been told, as affecting the condition of mind of the defendant; and what the defendant believed, having been told; and that, irrespective of the truth or falsity of the things that the defendant may have been told. I think that is about the rule. What do you think about that, Mr.Brothers?

MR. BROTHERS: Ithink so, your Honor, and that is why I objected during the opening. I thought that the defense to be interposed was rather a defense of self defense, and the state of mind in which the defendant found himself at the time was immaterial. He went there, as he told usxin his statement, to kill the deceased, for a certain reason, and that was not a legal reason. And the defense of insanity is not interposed, and, therefore, what effect the stories that may have come to his ears, may have

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had on his mind, does not seem relevant to me, unless on the question of deliberation and premeditation.

THE COURT: I think the defendant is entitled to show here that certain things were told him, affecting the deceased, which tended to rob him of the capacity for deliberation and premeditation; and that, in point of fact, he was not in that condition of mind which permitted of premeditation and deliberation; and I think that, while the position is, in a certain sense, inconsistent, he may likewise show what he did was within those provisions of law applicable to self defense, because I think that the provisions will not prevent a defendant from taking positions which, from a certain viewpoint, may be inconsistent.

MR. BROTHERS: Well, I don't make any objection as to inconsistency, but there is no claim made here that, at the time, the defendant was not in his senses, was not sane, and did not know what he was doing. There is no claim of insanity, and insanity cannot be offered now as a defense, because no such plea was entered; and, while the defendant may have been told certain things which roused him to such a state of indignation that he went up there to kill him, that does not constitute self defense, or justify the killing.

THE COURT: I will receive evidence along both the lines that I have indicated.

MR. BROTHERS: That is satisfactory to the State.

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THE COURT: But I am indisposed to enter into the collateral inquiry as to the truth or falsity of these various alleged deeds of the deceased, I am indisposed to enter into that, because I think it would not be to the interest of the defendant on the one hand or the People on the other.

MR. ROSALSKY: Your Honor, as to the Statement of the District Attorney, there is no claim made here that the defendant was insane, but the claim made in this case is self defense, and the claim made here is by reason of what the little girl had told her father, and that his mind rose to such a pitch as to lead to a heat of passion, and we will introduce evidence along that line, it being introduced for that purpose, which the defendant has a right to do, under the plea of not guilty.

THE COURT: I will receive the evidence.

MR. ROSALSKY: If I call the witnesses, and do attempt to bring out some of the evidence, as to the facts, your Honor will permit me, just for the purposes of the record, to except, if you exclude it.

THE COURT: Well, if you contend seriously that that evidence ought to be received, and will direct my attention to some authority that you consider to be in point, and controlling, I will receive it. But I think that it is very similar to a situation which presented itself in the

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Geidel case, which was tried before me, where the defendant wanted to prove certain alleged misdeeds on the part of the deceased, as affecting the conduct of the defendant in that case towards the deceased. While the matter did not come up very squarely, I was inclined to think, upon an examination of the authorities that, while it was permissible to show statements made to the defendant which may have influenced his mind in what he did, that the truth or falsity of those things would not be inquired into, if they were told and believed. That was the point.

MR. ROSALSKY: May it please your Honor, would your Honor take an adjournment now, because Ihave looked up the question. While I haven,t any authority in point, if I be given an opportunity to look further into the question, I think I could do more justice to this defendant, because, if I am shut off now, it will hamper my defense.

THE COURT: You understand what I mean?

MR. ROSALSKY: Yes, I do.

THE COURT: Suppose, for example, a man who is killed, has never, in point of fact, carried a pistol; but suppose that the person who kills him has been told that the deceased did carry a pistol, and told under circumstances which created a belief in the mind of the defendant that the statement in that regard was true, and the defendant acted in the light of a movement made by the deceased, on the strength

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of that belief. If the defendant's conduct was otherwise justified, it would not be rendered criminal by the circumstance that he had been misinformed, respecting the carrying of the pistol; and therefore, the fact, as an independent fact, or the question of its truth or otherwise, would not be a material issue, but would be collateral and confusing. Isn't that so?

MR. ROSALSKY: Your Honor is right in your Honor's view. I believe that is the law. That is the law in the Webster case, the rule laid down in the Webster case. And I think the rule is correct, your Honor, also, because the District Attorney cannot counteract or contradict any of these statements, prove the contrary of these statements of facts.

MR. BROTHERS: How do you know I can't?

THE COURT: Unless I see some reason to change my decision, I will adhere to it. If either side brings my attention to something that would lead me to change, why, I would consider it. And I havemerely made these suggestions to give you a little idea in advance. Now, you may proceed.

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THE DEFENDANT'S TESTIMONY.

M A R I A · M O R T E L A N N O , of 325 Rivington Street, a witness called on behalf of the defense, being duly sworn and examined through the Official Interpreter, Mr. Moustach, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q Are you a daughter of the defendant? A Yes, sir.

Q Did you work with your sister in the month of February, 1913? On coats? A Yes, sir.

Q And where did you work? A 400 Lafayette Street.

Q And what is the name of the sister who worked with you? A Josie Ordo.

Q Did you know the dead man, Gaspare Mattarelli? A Yes, sir.

Q When did you first meet him? A When we went to work, when we first went to work, he was watching for us in Lafayette Street.

Q What do you mean by watching? A There was a strike there.

Q And what would he do? A He used to escort the women and girls, who were afraid to go home while the strike was in force.

Q Did you ever see the dead man with a pistol?

MR. BROTHERS: We object to that. The time is too remote.

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THE COURT: I will allow it.

MR. BROTHERS: I thought your Honor was going to rule upon the statements made to the defendant, and not as to whether or not the fact was so.

THE COURT: I think I will receive it.

A When Iwas afraid to go to work, and refused to go to work, he showed me a revolver and said, "Don't be afraid, I've got this in my pocket."

BY MR. ROSALSKY:

Q And would he go to your home with you? A Yes, he would bring me, escort me home; and then, in the morning, he would come and take me from the house to the work.

Q For how long a time did he do that? A I worked for four or five days and in those four or five days he done that.

Q Do you know whether he met your little sister, Nellie? A He saw her in the house.

Q And where did you live then? A 31 Lewis Street.

Q Did your father live there? A yes, sir.

Q And your mother? A Yes, sir.

Q And the rest of your family? A Yes, sir.

Q And the little girl Nellie, too? A Yes, sir.

Q Was Nellie going to school, last February? A Yes, sir.

Q And do you remember ever having any talk with Mattarelli, in or about the month of July, 1913, about his being

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married?

MR. BROTHERS: We object to that, upon the ground that the question is incompetent and immaterial and improper.

THE COURT: I am rather inclined to adhere to my position, Mr. Rosalsky. If this witness had a talk with the defendant with respect to the deceased, she may tell when that talk was, and what she said to the defendant.

MR. ROSALSKY: I don't claim any such talk, as far as this witness is concerned. Does your Honor sustain the objection?

THE COURT: Yes, I think I will, temporarily.

MR. ROSALSKY: And I most respectfully except. That is all.

BY THE COURT:

Q What is your father's business? A In Italy he used to be a miller.

Q And you yourself, were you born in Italy? A Born in Italy and married in Italy.

Q Did you come to New York at the same time that your father came? A Yes, sir.

Q Did your sister come at the same time? A All together.

Q And when did you and your father and mother and sister come to New York; about when? A On the 10th of January 1914, it's going to be fifteen years.

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Q And at the time you all came over from Italy, the family consisted of what? A Myself, my father, my mother, my sister Josie, and Nellie---well, Nellie didn,t arrive, but she was born here a month after we arrived here.

THE COURT: You may interrogate the witness.

CROSS EXAMINATION BY MR. BROTHERS:

Q You say that Gaspare was working at this factory where you made coats? A I was working upstairs and Gaspare was downstairs.

Q Yes. And was he there all the time? A Always.

Q And, in addition to working in the factory he acted as a guard for the workers going home; did he? A He wasm't working in the factory, he was only a watcher, watching for us.

Q yes, he was a watchman? A yes, sir.

Q And do you know whether he had a permit to carry the pistol? A No.

Q Did he show it to you on the street, the pistol? A He showed it to me once in Lafayette Street, when Itold him I was afraid to go home.

Q Yes. He always treated you kindly, didn,t he? A Yes, sir.

MR. BROTHERS: That is all.

BY THE COURT:

Q How long had you worked in that factory? A First, one

week, and then three days afterwards.

Q So that you worked ten days there altogether? A Yes, sir.

Q And during those ten days the deceased, Gaspare, worked as a watchman, is that so? A Yes, he used to take all the women, not only myself, but all those who were afraid to go home.

Q Now, when you say he was a watchman, what do you mean? A Against the strikers.

Q You mean to say that he accompanied the women who worked in the factory, on the street, so as to protect them from strikers who might have attacked them? Is that what you mean? Yes, or no, now? A Yes, sir.

Q You don't mean that he was a watchman, watching or guarding the property? A No.

Q What kind of work had your father done in America? A Before he lost his arm, he used to be a bricklayer.

Q And he lost his arm when? A In the month of October. It's eight years ago.

Q And since that time what work has he done, if any? A He used to sell newspapers. He used to sell shoes.

Q Have you any brothers? A No.

Q Where were you living on the 22nd of September last? Were you living with your father and mother? A No.

Q You are a married woman? A yes, sir.

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Q You have been married about how long? A Twenty years.

Q Whereabouts, if you know, were your father and mother living on the 22nd of September last? A They used to live in Brooklyn. I don't remember the name of the street but their store was in Grand Street.

Q Grand Street, Brooklyn? A Yes, sir.

Q What kind of a store was that? A Fruit store.

Q And they had had that for about how long? A The month of August last.

Q That is to say, in the month of August last, your father went into the fruit business, hiring a store on Grand Street in Brooklyn; is that so? A Yes, sir.

Q And before that, for a number of years he had sold newspapers; is that so? A Yes, sir.

Q And before that he had been a bricklayer? A Yes, sir. When he had both arms he used to be a hod carrier.

Q And before that he was a miller, in Italy? A Yes, sir.

Q How old is your other sister? A The oldest one?

Q How many sisters have you? A I have got two.

Q And what are their names? A One is Josephine, who is married.

Q And what is the name of the other? A Concettina, Nellie.

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Q She is the youngest one? A Yes, sir.

Q And how old is she? A This last February she is fifteen years old.

Q Do you remember what day in February was her birthday? A The 24th.

Q And on the 24th of February last she was fifteen; is that so? A Yes, sir; fifteen years old.

Q And she lived in September with your father and mother? A Certainly; on the first of September. ~~Afterwards~~, no.

Q That is to say, up to the first of September she did live with your parents? A Yes, sir.

Q But your other married sister did not? A Yes, she used to live with her father and mother.

Q And your brother-in-law lived there also? A Yes, sir.

Q So that the family in the house in Brooklyn consisted of your father, mother, brother-in-law, your sister who is married, and your younger sister; is that so? A Yes, sir, that's right.

Q What is your brother-in-law's name, who is the husband of your sister? A Braso.

Q What is his first name? A Braso Ordo.

Q And on how many different occasions did you yourself see the deceased? A As many times as he came to my

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mother's house.

Q You are not livingat your mother's are you? A In the month of June, I separated, because my family is too large.

Q So that, after your marriage, and up to June last, you did live with your father and mother; is that so? A Yes, sir.

THE COURT: I think that is all.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q Do you know on what day your father moved his store? A I don't remember.

Q Was it---do you know whether it was the same day that Gaspare was killed? A Before that?

Q Do you know? A Yes, it was before that.

Q Do you know whether your father moved on the 22nd day of September? A From where? From here to Brooklyn? Or from Brooklyn to here?

Q No, when he moved the store to New York? A On the 22nd of September.

Q That was on the same day as Gaspare was killed? A Yes, sir.

MR. ROSALSKY: That's all.

CROSS EXAMINTION BY MR. BROTHERS:

Q That is, he moved from ~~xx~~ where? A From Brooklyn to New York.

Q Now, do you remember being before the Grand Jury? A Yes, sir.

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Q And were you asked this question: "Q When did he move from Brooklyn? A In the month of October, the first of October." A The house, not the store.

Q He didn't move the store? A No; the store on the 22nd; the house on the first.

Q And where did he live in New York on the 22nd of September? A He was living in Brooklyn.

THE COURT: She said that he lived in Brooklyn until the first of October.

BY MR. BROTHERS:

Q And when did he move the store? A The 22nd of September.

Q Now, do you remember this question: "Q Your father lived where at the time of the shooting of Gaspare? A My father lived in Brooklyn.

"Q When did he move from Brooklyn? A About a month before."?

A I say again that from the store we moved on the 22nd of September, and the house on the first of October.

MR. BROTHERS: That is all.

MR. ROSALSKY: That is all.

THE COURT: Would you like to adjourn now?

MR. ROSALSKY: Yes, sir; I would like to adjourn now so that I may prepare myself on the matter that your Honor indicated.

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THE COURT: I want to say to you, gentlemen, that I am ready to accommodate you, and sit as long as you desire, on any particular day.

MR. BROTHERS: Well, if your Honor please, I have other cases to prepare, and the only time I have for preparation is after the Court adjourns.

THE COURT: Very well, then. We will adjourn now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case to Friday Morning, March 6th, 1914, at 10;30 o'clock.)

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TRIAL RESUMED

New York, March 6th, 1914.

THE COURT: In connection with the statement said to have been made by the defendant on the occasion when the defendant is said to have been at a station house in this City,, it appears that in the minutes of the report, as made at the time by the stenographer, who claims to have taken down what the defendant then said, there are, in certainplaces, certain things, not being questions put to the defendant, and not purporting to be answers made by the defendant, and such things are now, by the Court, on the Court's own motion, stricken out, and, in order that there may be particularity of statement as to what is stricken out, the following is stricken out:

The last two lines of page 159 of the stenographer's minutes in this case, reading as follows:

"Officer DeMartini: Will I illustrate my gun with him? I'll take the shots cut, though."

That is stricken out.

The top line of page 160:.

"The Coroner: Yes, take the shells out.

"(Officer DeMartini shows defendant his gun.)"

That is stricken out.

On the same page:

"Defendant takes gun and stands up in the position

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in which he was.

"The Coroner: Illustrating as follows: He was facing him at the time, and he pointed the revolver at him, and he shot him."

That is stricken out.

The jury are now told that that which has been so stricken out must be disregarded by them, in the event that the case is submitted to them, on the conclusion of the testimony.

MR. ROSALSKY: Your Honor, Idon't know whether it should be in or not, but it isn't in the record of this trial. There is a statement, at the conclusion of the examination, on page 6, a statement by the Coroner:

"The Coroner: I guess that's sufficient." I think that ought to be in.

MR. BROTHERS: That is not in the minutes because it was not read by the witness, who only read the questions and answers, and, at the conclusion of the questions and answers, the Coroner directed a remark to several people present and that remark is not in here, and, of course, forms no part of the case.

MR. ROSALSKY: I think it should be in.

THE COURT: I think it is proper that you should have it in, and you may call the Coroner and ask him as a witness whether he said that on that occasion.

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MR. BROTHERS: If Counsel wants it in, I have no objection. I am merely stating the fact as to why it is not in the record.

THE COURT: Now, pardon me. The matter is now disposed of as follows. It does not appear in the record. You may call the Coroner, and the Coroner may be asked whether he so said.

MR. ROSALSKY: Well, will the District Attorney consent to that? Will he consent that, at the conclusion of the examination, the Coroner said, "I guessthat's sufficient."?

MR. BROTHERS: I don't see what bearing that has.

THE COURT: Do you consent to that?

MR. BROTHERS: Well, I don't care whether it's in or out, sir. I don't see what difference it makes. It was spoken in English, and was not addressed to the defendant.

THE COURT: Then it will be put in, or you may call back the Coroner, and ask him if he said it.

MR. ROSALSKY: Well, if it is put in by consent, I will not haveto do that. Is it put in by consent?

MR. BROTHERS: Oh, yes.

MR. ROSALSKY: Your Honor, when the People closed their case, yesterday, Iforgot that I had reserved the right to cross examine the Interpreter who interpreted this confession, DeMartini, and I now ask your Honor to permit me to

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avail myself of that opportunity.

MR. BROTHERS: There is no objection on my part.

THE COURT: Very well.

MR. ROSALSKY: Then I will call DeMartini.

F E L I X B . D E M A R T I N I , being recalled for cross examination, testified as follows:

CROSS EXAMINATION BY MR. ROSALSKY:

Q Did you ever study the Italian language? A No, sir.

Q Did you ever study the grammatical construction of the Italian language? A No, sir.

Q Did you ever go to school where they taught Italian? A No, sir.

Q Did you ever study any text books in Italian? A Well, I read newspapers, etc.

Q And I understand you were born in this country? A Yes sir.

Q And what part of Italy do your people come from? A From Genoa.

Q And what dialect in Italian do they speak? A They speak the Genoese dialect, and the general Italian dialect.

Q Do you know how many different dialects there are in the Italian language? A There are quite a few.

Q About how many? A Well, most every city speaks a little different dialect than the other. You take Milan, and they speak the Milanese, and in Genoa, the Genoese, and

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in Naples, the Neapolitan. But it is all a general Italian dialect. It is only a variation of a few words, here and there.

Q And have you ever interpreted before this time? A I have.

Q Have you ever passed an examination as Interpreter? A No, sir.

Q Have you ever taken an examination in Italian? A No, sir.

Q For any office? A No, sir.

MR. ROSALSKY: Now, with your Honor's permission, I will ask the Official Interpreter to interpret the question at the bottom of page 156 of the minutes, by question and answer, in Italian, to give the witness an opportunity to re-interpret it into English.

THE COURT: What youwant done is to have the Official Interpreter say, in the Italian Language, those things which appear to have been said by the defendant?

MR. ROSALSKY: Yes, your Honor.

THE COURT: And then, after he has said in the Italian language those things, you want the witness on the stand to make a translation into English?

MR. ROSALSKY: Yes, your Honor, if that meets with your Honor's approval.

THE COURT: I see no objection to it.

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MR. BROTHERS: How will it be recorded? The stenographer cannot take it down in Italian. I have never heard this man's qualifications questioned.

MR. ROSALSKY: I am not entirely sure that the method suggested is the best method to be adopted, or the correct method to be adopted in doing what you want tohave done.

MR. ROSALSKY: Your Honor, this witness, in his meagre qualifications---

THE COURT: No, you should not discuss that. I understand what you want. It is really---

MR. ROSALSKY: The test of this witness's qualifications.

THE COURT: One difficulty is that you cannot reproduce the identical conditions.

MR. ROSALSKY: Yes, but I can produce this, I can produce how near he may come to translating what the interpreter may say, and then see how near it comes to the interpretation which he gave.

THE COURT: He will be listening to Italian from a different person from the one he heard speak in Italian on the night in question, and there is no identity of conditions; isn't that so?

MR. ROSALSKY: Well, while that may be true, still, your Honor, there is a sufficient basis to ascertain just how

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well he is versed in Italian, whether he couldact as an interpreter. Of course, it may be very easy for a person to come along, and say he heard a certain thing in Italian, and interpret it in one way, whereas it may probably mean something entirely different. Now, this is just a general test as to his ability to interpret.

MR. BROTHERS: But is there not another way of doing that? This man has testified to his qualifications. He testified, also, that he was sworn to interpret, and did so truthfully and accurately. It appears thathe is born on Italian parents and has spoken Italian all his life, and lived among Italians, and reads and writes it. Now, that raises a prima facie presumption that he understood what he was doing, and it does not seem that any other test is necessary or proper, until there is some independent proof to show that what was said on that occasion was not said. Now, taking the whole case into consideration, it does not seem that this statement was inaccurate. But I don't object to any examination.

THE COURT: Do you claim that there was any inaccuracy?

MR. ROSALSKY: I don't claim anything at the present time, your Honor. I just want to know how well he can interpret, and I think the juryshould know.

THE COURT: Well, as you make no claim of inaccuracy the test will not be made.

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MR. ROSALSKY: Exception. That's all.

THE COURT: Now, you may sit down there. I want to ask you a few questions myself.

BY THE COURT:

Q Are your father and mother living? A Only my mother, my father is dead.

Q Your father died about how long ago? A Why, I was about five years of age when he died.

Q And you continued to live with your mother until when? A Until I was married.

Q And that was about how long ago? A Six years.

Q The family at home, when you were living at home with your mother, consisted of what? A Why, my brother, two sisters, and myself.

Q And the language in the conversation between members of your family was what? A Italian and English.

Q In conversation between yourself and your mother, in what language did you customarily speak? A At times Italian and at times in English.

Q And you have been acquainted with a great many persons of Italian birth in this City? A Yes, sir; a great many of them.

Q And have had occasion to speak the Italian language frequently? A Yes, sir; very often.

Q Have you yourself visited Italy? A I have not.

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Q You say you do read Italian newspapers? A I do.

Q Do you write Italian? A Why, a little, yes.

MR. ROSALSKY: May I ask the witness another question, your Honor?

THE COURT: Yes.

BY MR. ROSALSKY:

Q In what dialect did the defendant speak? A The defendant, you mean, in what dialect?

Q Yes? A Why, he answers or speaks with a sort of Sicilian dialect, but he spoke in the general Italian tongue at that night.

BY THE COURT:

Q Were there some other officers present who speak Italian, at that time? A If I am not mistaken, Officer Digilio was also present. I don't know if he was present at the moment that the defendant made that statement, but Officer Digilio I did see there, later on.

THE COURT: You may proceed.

MR. ROSALSKY: Your Honor refuses to permit the defendant, through his counsel, to ask some of the questions and answers that were put to the defendant?

MR. BROTHERS: I suggest thatthe Official Interpreter might talk with this witness in Italian, and in that way satisfy himself that he speaks Italian, if there is any question about it.

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THE COURT: Well, now, we willadopt the test, inasmuch as there has been question about it.

MR. BROTHERS: Anything that your Honor regards as fair, I am willing to do.

THE COURT: Well then, we will do it. Proceed, now.

BY MR. ROSALSKY:

Q At the bottom of page 156.

THE COURT: Now, stand about two feet away from him, Mr. Interpreter.

BY MR. ROSALSKY:

Q The last question on page 156 of the stenographer's minutes.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: Now, you explain to him in this manner:

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: You are accused of murder in the first degree.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: That you have shot and killed one Gaspare Mattarelli.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: At Third Avenue and 17th Street, at the City and County of New York.

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THE INTERPRETER: (Speaks in Italian).

THE WITNESS: On the 22nd day of September, 1913.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: Don't say anything, if you don't so desire.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: All that you may say can be used against you.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: You also have the right to an attorney, to a lawyer.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: The Policeman, DeMartini, is the Interpreter.

MR. ROSALSKY: Now, your Honor, I want to read the English to the Jury, which appears in the minutes.

MR. BROTHERS: Now, before he reads that, may I ask a question?

THE COURT: Yes.

BY MR. BROTHERS:

Q Did you employ exactly the same language that Mr. Moustachi did when you spoke to the defendant? A No, sir; I may have varied in one little word here or there, because there are different ways of putting it.

MR. ROSALSKY: "By the Coroner: Now, will you

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interpret to him as follows: You are charged with murder in the first degree, in that you did feloniously shoot and kill one gaspare Mattarelli at Third Avenue and 17th Street in the City and County of New York,, on the 22nd day of September, 1913. You don't have to say anything, unless you wish; anything you do say can be used against you. And also that he is entitled to counsel.

(Officer DeMartini interprets to defendant)."

MR.ROSALSKY: Now, I will read the next.

MR. BROTHERS: Are we to go through the entire statement?

THE COURT: Well, how far do you want to go?

MR. ROSALSKY: I want to go a little further.

THE COURT: Very well.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: Now, askhim if he desires to tell what happened at 17th Street and Third Avenue.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: On the 22nd day of September, 1913.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: It is also best to tell him that I am the Coroner of the City of New York.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: It is also my duty to investigate all these instant deaths of the people who are assasinated or

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killed.

THE INTERPRETER: (Speaks in Italian)

THE WITNESS: "A He says, do you want me to carry the wood for somebody else?"

MR. ROSALSKY: Now, with your Honor's permission, I will read what the Interpreter has read, to the jury.

(Mr. Rosalsky reads same to the jury).

MR. ROSALSKY: Now, ask him the question on page 158.

THE INTERPRETER: Speaks in Italian.

THE WITNESS: He wanted to take her away from Toto again.

THE INTERPRETER: (The Interpreter speaks in Italian)

THE WITNESS: Then after, the deceased quarreled.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: Then the deceased had a quarrel withhis wife.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: And also with the brother of the wife.

THE INTERPRETER: Speaks in Italian.

THE WITNESS: That is the brother of the wife of the deceased.

THE INTERPRETER: (Speaks in Italian).

THE WITNESS: He also wanted to shoot the deceased,

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because he didn't want to live with his wife."

THE COURT: We will take a recess now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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A F T E R R E C E S S .

THE COURT: I think there are a few typographical errors in the minutes.

MR. BROTHERS: Do you mean of yesterday?

THE COURT: Yes. At page 12, the time should be 9:25 P. M.

F E L I X B . D e M A R T I N I , his cross examination being continued, testified as follows:

CROSS EXAMINATION BY MR. ROSALSKY:

MR. ROSALSKY: May I inquire from the Interpreter, whether he has been translating these questions in the Gennese dialect or the Sicilian dialect?

THE COURT: Well, he has been translating them in Italian; in neither dialect, in general Italian.

MR.ROSALSKY: In general Italian?

THE COURT: Yes.

MR. ROSALSKY: Now, may I askthat he translate the balance in the Sicilian dialect?

THE COURT: No, I will not direct that.

MR. ROSALSKY: Then I except to your Honor's ruling. Then I have no further questions to ask this witness, unless the witness be instructed to translate it in the Sicilian dialect.

THE COURT: No, no such instruction will be given.

MR. ROSALSKY: I will ask just one more question.

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BY MR.ROSALSKY:

Q Did this defendant speak to you in the Sicilian dialect? A No, sir.

Q He did not? A No, sir.

BY THE COURT:

Q He spoke to you in what you call general Italian? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q Now, after the Coroner said, "I guess that's sufficient," do you recall that there was some talk between the Coroner and Mr. Breckenridge, and then you translated a further statement of the defendant? A Yes, sir.

Q And you translated all that he said, did you? A Yes, sir.

Q Word for word? A Yes, sir.

MR. BROTHERS: That's all.

RE-CROSS EXAMINATION BY MR. ROSALSKY:

Q Did he, in that last statement, give you an entire sentence before you translated it? A I translated everything he told me. Now, it is in the record, but I can't recollect it word for word.

Q Well, do you remember whether, in the last sentence which you gave, whether he told you, in Italian, the entire sentence, before you started to translate it or not? A Why, he spoke to me, and he says, "I wish you would tell

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the Coroner that." And I translated it for him.

Q And did you translate the entire sentence, after he had concluded what he was saying in Italian? A Yes, all that he told me in Italian.

Q As to the last sentence? A Well, counsel, if you please, the record will show as to the entire conversation.

THE COURT: No, you do not understand.

THE COURT: Now, Mr. Witness, there are two ways of making a translation; one, after you have heard a few words of a not completed sentence, and put those words into the language into which you are about to translate; and then hearing the next few words, and doing likewise with those words. That is one way. And the other way is to wait until the person speaking hascompleted one sentence, and, upon the completion of that sentence, to put the entire sentence into the language into which you translate it. And you are asked now which you did?

THE WITNESS: Why, I put the entire sentence down.

BY MR. ROSALSKY:

Q Now, I ask you to look at the last sentence, after some talk with the Coroner and Mr. Breckenridge, and you have stated something that the defendant said? A Yes, sir.

Q And that was after he had finished the entire sentence? A Yes, sir.

Q And you gave the translation to the coroner? A Yes,

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sir.

MR. ROSALSKY: That's all. Now, may it please your Honor--

THE COURT: Just pardon me a moment. I think at this stage, in order to have the record correct, it is best that the Official Interpreter may be sworn, in order that he may say that he made a translation of the things appearing upon the record into general Italian.

MR. BROTHERS: Shall I conduct the examination?

THE COURT: Yes.

M A R C M O U S T A C H I , being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your business, Mr. Moustachi? A Official Interpreter of the Court of General Sessions, City and County of New York.

Q And how long have you been that? A About five or six years.

Q And in what languages do you conduct the interpretations? A Seven different languages.

Q Including Italian? A Yes, sir.

Q Did you, when conducting the recent examination of the witness, Officer DeMartini, translate from the paper which you held from English, correctly into Italian? A I did.

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Q You are a native of what country? A Greece.

Q Your parents were Greeks? A Yes, sir; and I was born in Constantinople.

THE COURT: Well, I think it well that it should appear that the paper that Mr. Moustachi had in his hand purported to be the stenographic copy from which the stenographer from the District Attorney's office, who was a witness, read, yesterday.

MR. BROTHERS: Yes, Ithink that ought to be done.

MR. ROSALSKY: No, sir; it was the record of this trial. I read from the minutes of the trial.

BY MR. BROTHERS:

Q You read from the stenographic record of this trial? A Yes, sir.

Q From the testimony taken, yesterday? A Yes, sir.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Now, Mr. Moustachi, how many different dialects are there in the Italian language? A Well, as far as I know, and others who understand the Italian language, there may be positively fourteen well known dialects.

Q Now, did you interpret the questions and answers which you have, reading from the minutes of this trial, in general Italian? A Yes, sir.

Q Did you interpret---you didn't use any Genoese dialect; did you? A No.

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Q Or any Sicilian dialect? A No.

Q Now, do you know from experiences which you have had, whether a person who understands and speaks the Genoese dialect, whether he can understand a person who speaks the Sicilian dialect?

MR. BROTHERS: We object to that, because the foundation has not been laid.

THE COURT: Sustained.

MR. ROSALSKY: Exception.

BY MR. ROSALSKY:

Q Is the Genoese dialect and the Sicilian dialect the same? A No.

Q Is there a great difference between the two? A Yes, sir.

Q Are a great many of the words in both dialects different? A Well, in each of them, or---

Q In the Genoese and the Sicilian? A Yes, sir.

BY THE COURT:

Q Do you mean to say that there is a different word for the same thing, or a variation in the pronunciation of the same word? A Different words.

Q In other words, a certain object might be called by one word in one dialect, and the same object might be called by another word in another dialect? A Yes, sir. For instance, the word "stone", "Petro" and then in another dia-

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lect you call it Sasso."

MR. ROSALSKY: In view of this explanation, will your Honor now permit me the question that I put before, and your Honor excluded?

THE COURT: I will allow you to put the question.

BY MR. ROSALSKY:

Q From the experience that you have had in interpreting the Italian language, do you know whether a person understanding the general Italian language, and who is a Genoese Italian dialectician, could he understand a person---A Certainly.

Q Who speaks the Sicilian dialect? A Certainly.

Q Then what do you say---but, nevertheless you say that there is a great difference? A Yes, there is some few.

Q Well, how do you explain that situation? A Well, if you arepersistent and you repeat the question to a Sicilian, and ask him what he means, he will certainly, practically magically speak Italian, and tell you in pure Italian the very words that he used as a dialect.

BY THE COURT:

Q In other words, while there arecertain words that are popularly in use in certain localities, there are substitutes for those words, which are general Italian? A Yes, sir.

Q And the substitute is known? A Is known.

MR. ROSALSKY: That's all.

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MR. BROTHERS: That's all.

MR. ROSALSKY: Now, may it please your Honor, I move to strike out the alleged statement made by the defendant before the Coroner, sitting as a Magistrate, on the ground that the instructions given to the defendant did not comply with the requirements of the law.

I call your Honor's attention to the fact that, under the decisions in the Molineux case, and in the Jackson case, that the Coroner was acting as a Magistrate, and that in the statement made by the defendant, which appears in evidence, the defendant---the Coroner informed the defendant that he was charged with the crime of murder in the first degree. He also informed him, "You don't have to say anything, unless you wish. Anything you do say can be used against you." And also that he is entitled to counsel."

I contend, your Honor, that that does not comply with the provisions of the Code of Criminal Procedure. Under Section 188 of the Code of Criminal Procedure; "When a defendant is brought before a Magistrate upon an arrest, either with or without a warrant, on a charge of having committed a crime, the Magistrate must immediately inform him of the charge against him, and of his right to the aid of counsel in every stage of the proceedings, and before any proceedings are had.

While it is true that he was told that he was en-

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titled to counsel, he did not inform him that he was entitled to counsel at every stage of the proceeding and before any proceedings were had.

He did not ask the defendant whether he desired counsel. He did not inform the defendant of his rights, that he could obtain counsel, if he so desired, and before he proceeded with the examination; and, in support of that I call your Honor's attention to the case of the People against Mondon, 103 N. Y., and People against Shaprow, 121 N.Y., and the People against McMann, 15 N.Y.

The Mondon case probably covers the situation. In the Molineux case, the Court of appeals said: (Reads) And citing Section 188 of the Code of Criminal Procedure. Then the Court goes on further, and says: (Reads).

So that there is no doubt that the Coroner here sat as a Magistrate; there is no doubt, from the Coroner's own testimony, that he sat here as a Magistrate; and, in view of those facts, and in view of the Court citing the exact language of Section 188, the contention of the defense is that the defendant was not fully acquainted with his rights, before the examination proceeded. Then, so far as the citation in the Molineux case is concerned, the pages are 330-331. It is a long decision.

THE COURT: Do you claim that the precise words of the Statute have got to be used?

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MR. ROSALSKY: No, I don't.

THE COURT: But you do contend that the substance of what the Statute says has got to be used?

MR. ROSALSKY: Yes.

THE COURT: You say that that which was said to the defendant was not equivalent to that which the Statute requires?

MR. ROSALSKY: Yes, your Honor.

THE COURT: You claim that it was not the same thing to say to him that he was entitled to counsel, as to say that, at every stage of the proceedings, he was entitled to counsel?

MR. ROSALSKY: Yes, sir.

THE COURT: Is the opinion in the case that you cite a case in which the statement with respect to having a right to counsel is couched in any other language than that given by the Statute?

MR. ROSALSKY: No, sir.

THE COURT: In all these cases that you cite, the admonition was given in the statutory language?

MR. ROSALSKY: Yes, sir; in the statutory language.

THE COURT: And the Court merely passes, therefore, in those cases, upon the sufficiency of the admonition that, in point of fact, had been given in those cases?

MR. ROSALSKY: Yes, sir.

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THE COURT: Was there a contention in any one of those cases that the admonition given was insufficient?

MR. ROSALSKY: There was not. Your Honor, I have another case, in the 6th New York Criminal Reports, the case of the People against Haines, a decision by Judge Cowing, wherein he says: "(Reads).

Now, the specified questions referred to there are covered by Section 188 of the Code of Criminal Procedure, which reads as follows: (Reads).

Your Honor will see that, if this statement were made before a Police Officer, or made before a District Attorney, all these safeguards would be unnecessary. But, being made in the way that it was, being made before a Coroner sitting as a Magistrate, and the defendant not being informed, as I contend, under Section 188, of all his rights, that the statement made and taken thereunder was in violation of the defendant's rights, and in violation of the Constitution, and, therefore, the statement should be stricken from the record.

I had supposed, your Honor, when I went into the trial of this case, that this alleged statement had been made in the District Attorney's Office, not with the aid of a Coroner, and for that reason, I was in no position, yesterday, when, for the first time, on hearing the statement as to how it was made, to collate the different cases.

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If your Honor will read the Mondon case in particular, while the Mondon case was a little different than this, still the principle and the law laid down by the Courtin that case are the same, and your Honor will see how strict the Court should be in admitting or rejecting a statement of this kind.

I may add, further, that this case comes under the head of a proceeding before a Magistrate, not under section 395, as a confession.

Your Honor well knows that, if the defendant were brought into a Magistrates' Court, there is not a Magistrate who understands the legal principle, who would ever attempt to proceed with an examination of this kind on a charge of murder, without first informing the defendant of his rights, and giving him an opportunity of retaining counsel; so that all his rights would be protected.

While it is true that the Coroner is a sworn officer, and should know what the law is, and how to proceed, and conduct his examinations, still we find that there is quite a serious omission here.

THE COURT: Without suggesting that it is so, suppose we regard it as a legal proceeding, everything connected with what was done in the station house was unqualifiedly irregular, might not that which the defendant said, be received

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in evidence, the same as though he had said it to any man on the street, as an admission against interest?

MR. ROSALSKY: No, your Honor; for this reason: If the Coroner was there, representing himself in an official capacity, and then had the defendant proceed to make this statement, after what the Coroner had said, I contend that it would be incompetent, contrary to the provisions of the Code.

MR. BROTHERS: I don't want to interrupt, but I would like to say this, your Honor, that counsel suggested that the people vs. Mondon, in the Court of Appeals, holds a certain thing, and I have read it before to-day and I have just read it again, and in that case an Italian was brought before the Coroner on a warrant charging him with murder, and the Coroner put him on the stand, and did not give him any warning that he could answer or not, as he pleased, or that he was entitled to counsel, but proceeded at once with the examination.

Now, in this case, the Coroner was there as a Coroner, notwithstanding the fact that he said he was there as a magistrate. A Coroner is a Magistrate, but, on this occasion, he was holding a post inquest. Under the law, a man arrested charged with homicide if taken before a City Magistrate, will be at once taken to the Coroner, and the authority of the Coroner's is in the City Charter, and the City Charter em-

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bodies the laws of 1882, and there it says that, where the crime of murder has been committed, it shall be the duty of the Coroner to hold an inquest, to swear a physician to view the body, and, should he deem it necessary, call a jury; and, if all the Coroner's be absent, or be unable to perform their duty, a Police Justice may hold the investigation.

Upon this man's arrest, and upon his being brought to this City, it was the duty of the Police to arraign him before a Coroner, and he was brought before him, and he was told that he could speak or not, as he desired, and that what he said might be used against him, and that he was entitled to counsel.

And I think your Honor's suggestion that, if taken by some one on the highway, the statement would be admissible is absolutely correct.

MR. ROSALSKY: Now, the power given to the Coroner--- Just one suggestion, your Honor---the power given to the Coroner was given by the laws of 1899, and those laws gave him the power to act as a magistrate, and the law is cited in the Jackson case, which gave the Coroner power to act as a Magistrate.

THE COURT: I am not satisfied that the statement was regularly taken, and I am not satisfied that it was not, but I will make it the subject of investigation, and I will know by Monday morning, and I will, on Monday morning, rule, and tem-

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porarily the matter is held in abeyance.

MR. ROSALSKY: Well, your Honor, this matter is of such grave importance that, when the defendant takes the stand, and goes through his entire examination, a decision on this point will make very little difference.

THE COURT: I will not rule upon it now; I will rule upon it then.

MR. ROSALSKY: By reason of your Honor's rulingyesterday, as to what I can go into, that will necessarily shorten the case, and your Honor's reasoning is in line with the case of the People against Harris, 209, N.Y., which covers the entire subject, and for that reason, I will limit myself as to the statements made by this witness to the defendant, on the day of the crime.

THE COURT: You may introduce in evidence any statements made to the defendant with respect to the conduct of the deceased, prior to the day of the shooting, which you claim operated upon the mind of the defendant, at the time when the shooting is said to have taken place.

MR. ROSALSKY: But your Honor limits me, and I suppose I am limited, under the case of the People against Harris, not even to prove the truth or actual occurrence of these matters?

THE COURT: I don't see that that is material, whether they are true or not. It is a question as to what

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was said and what he believed, in that connection, as affecting his mind.

N E L L I E C R O C C O L I S I , of 400 East 15th Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q Now, Nellie, I want you to talk out loud so that the Jury will all hear you. A All right.

Q How old are you, Nellie? A I was fifteen, last month.

Q And where were you born? A The month I was born?

Q No, where were you born? A 41 Goerck Street.

Q And did you go to public school? A Yes, sir.

Q Were you going to public school in 1913? A Yes, sir.

Q Did you know the defendant---the deceased, Gaspare Mattarelli? A I don't understand what you mean.

(The question is repeated by the Official Interpreter)

A Yes.

Q Did you know Gaspare Mattarelli, the dead man? A Yes, sir.

Q When did you first meet him? A Up at the house.

Q Under what circumstances? Up at what house? A In 31 Lewis.

Q Whose house is that? In whose rooms? A In our rooms

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Q And how did you come to meet him? A My sisters were working there.

Q Your sisters were working where? A In Lafayette Street.

Q And do you know what number? A 400.

Q And what are the names of your sisters? A Mary Martellano and Josephine Ordo.

Q And what kind of work were they doing? A Button-holes.

Q Now, in what monthdid you meet Gaspare first? A February.

BY THE COURT:

Q Of what year? Last year? A Yes, sir.

BY MR. ROSALSKY:

Q Now, did you ever go out with Gaspare? A Yes, sir.

Q Did you go to school, throughout 1913, until school closed? A Yes, sir.

Q For the summer vacation? A Yes, sir.

Q Did you ever go out with Gaspare during school hours? A Yes, sir.

Q And where did you go with him? A In moving pictures.

Q Now, do you remember when Gaspare was ordered to leave your house?

MR. BROTHERS: I object to that as leading, your Honor, and assuming a state of facts which has not been proven

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yet.

MR. ROSALSKY: Well, I will withdraw that.

BY MR. ROSALSKY:

Q Tell us until when did Gaspare come to your house, what month? A (No answer):

BY THE COURT:

Q What month did he stop coming to your house? A I don't remember now.

Q He began to come in February of 1913, is that so? A Yes, sir.

Q And he kept coming until about when? A (No answer)

Q Well, if you don't know, we will pass on to something else. A I don't remember.

Q What time did you stop going to school, what month? A I don't remember what month I stopped school.

Q Did you stay in school, until 1913, until the school closed for the summer vacation? A I didn't go for awhile, I didn't go until the vacation; I didn't go for a long time to school.

Q In other words, there was a long time before the school closed for the vacation, during which you were not going to the school; is that so? Do you understand me? A No, sir; I don't know what you mean at all.

Q Do you know when the school was closed for the vacation? A Yes, sir.

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Q When was the school closed for the vacation? A (No answer).

Q Now, if you don't understand, say so. A I don't know. I don't remember when it was closed.

Q Well, what season of the year was it when you stopped going to school? A Before vacation.

Q Yes, but how long before? A I don't remember how long before.

Q And when was your birthday in February? A The 24th.

Q Were you going to school in February? A No, sir.

Q You were not going to school in February of last year? A (No answer).

Q A year ago, last February, were you going to school? A I don't remember very well. If I did, I would tell you. I used to go sometimes, you know, but not every time, you know.

BY MR. ROSALSKY:

Q Will you talk up loud, please?

THE COURT: Now, you see they all want to hear you, and you must not be afraid, but you must talk so that all will hear you. Will you please remember that?

THE WITNESS: Yes; it's because I don't remember now.

BY MR. ROSALSKY:

Q Were you going to school when you met Gaspare? A I

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was going to school when I met him, yes.

Q And you met him in February of last year? A Yes, sir.

Q And how long after you met Gaspare did you continue to go to school? A I don't remember.

Q Did you go longer than a month or two months or three months? A No, not so long didn't go.

Q Now, do you remember when your father or mother ordered Gaspare out of the house? A Yes, sir.

Q Do you remember about what time that was? A (No answer).

Q Do you remember the month? A No, sir; I don't.

Q Was it in the summer time? A Yes, sir.

Q Was it around the time when Gaspare's wife came to your house, with her two children?

MR. BROTHERS: Wait a moment. I object to counsel suggesting in his questions the answer.

THE COURT: Yes, don't lead her.

MR. ROSALSKY: But there is evidence that she came to the house with her children.

MR. BROTHERS: Well, ask her if she remembers that occasion.

BY THE COURT:

Q Did you ever see a woman who said she was Gaspare's wife? A No, sir; I wasn't at home.

BY MR. ROSALSKY:

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Q Well, did Gaspare ever say to you that he wanted to marry you? A Yes.

MR. BROTHERS: Counsel is leading constantly, your Honor.

THE COURT: Well, it is true that it is leading, but it is not on a vital point in the case.

BY MR. ROSALSKY:

Q And what did Gaspare say to you about that? A He said thathe wanted to marry me.

Q And did he have a talk with any one of your family at that time? A Not before he told me.

Q Well, after he told you did he have a talk with any one in your family? A Yes, sir.

Q With whom did he talk? A He talked to all my parents.

Q To your father and mother? A Yes, sir.

Q And what did your father and mother say to him?

BY MR. BROTHERS:

Q Were you present? A Eh?

MR. BROTHERS: We object to it, unless it appears that this girl was present and heard the conversation.

BY MR. ROSALSKY:

Q Were you there when your father and mother talked to Gaspare about your marriage to him? A I don't remember.

Q Well, did you ever hear your father and mother talk

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to Gaspare about marrying you? A Yes, my mother and father says---

MR. BROTHERS: One minute. I object to it, unless it is a direct answer to the question.

THE COURT: Yes. Now, just pardon me for a moment.

BY THE COURT:

Q Young woman, were you in the room at any time when your mother was talking to Gaspare? Do you understand that question? A Yes, sir.

Q Now, what is your answer? Yes or no? A Yes.

Q Were you in the room at any time when your father was talking to Gaspare? A About the marriage?

Q Yes? A Yes.

Q And did you hear what Gaspare said on that occasion to your father and mother and what either one of them said to him? Did you hear it? A Yes, sir.

Q And was there more than one talk about your marriage, at which you were present, between Gaspare and your father and mother? A (No answer).

Q Well, perhaps you don't understand what I say? ANo, I don't understand what you say.

Q Was there more than one conversation between Gaspare and your father and mother about your marriage, when you were where you could and did hear what they said? A Yes, sir.

Q There was more than one? A Yes, sir.

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Q Do you understand me? A Yes, sir.

Q Well, on about how many times did Gaspare speak to your father and mother about your marriage, when you heard what he said? A (No answer).

THE COURT: She may not understand in English.

MR. ROSALSKY: No, she doesn't understand English any too much.

THE COURT: Then have the Interpreter.

MR. BROTHERS: She was born in this country and went to Public School, and heretofore we have talked with her.

THE COURT: She apparently has difficulty.

BY THE COURT:

Q Do you find it hard to speak English? A Well, I don't understand some questions that you ask me very well. I don't know if you mean---

Q Is it that you don't know what I mean, or is it because you are afraid to answer? A No, I don't know what you mean.

Q You don't know what I mean? A No, sir.

BY MR. ROSALSKY:

Q Do you understand the word "conversation"? A Yes, I think it means how many times Gaspare told my father and mother about marrying me.

BY THE COURT:

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Q That is right. You understand. How many times did he speak about marrying you? A Twice.

Q In other words, there were two separate times when Gaspare spoke to your father and mother in regard to your marrying him? A (No answer).

(The question is repeated through the Interpreter)

A He asked twice, at night.

BY MR. ROSALSKY:

Q At two different times? A Yes, sir.

THE COURT: Now, fix the time. When was the first time?

BY MR. ROSALSKY:

Q When was the first time Gaspare spoke to your father and mother about marriage to you? A (No answer).

THE COURT: Ask her that in Italian, now.

(The question is repeated through the Interpreter)

A It was St. Joseph's Day. I think it was the month of March.

BY THE COURT:

Q Well, when was the second time? A It was said all at once, in one night, twice.

BY MR. ROSALSKY:

Q Well, what was said, what did Gaspare say at that time? A He asked my mother and father that he wanted to marry me, and my mother and father says, "I have no daughter

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to marry, because she's too young," and he says, "Well, that's all right. I'll wait about four years for her."

And so my mother and father says, "Well, I can't, because my daughter is too young." So he asked her, "Well, how old is she?" And my mother and father says, "She's only fourteen." I wasn't yet fourteen.

And then he says, "Well, I'll wait about four years for her, as long as I will marry her."

BY MR. ROSALSKY:

Q And is that all that was said at that time? A Yes, sir.

Q Now, later on, was there any further conversation had between you, Gaspare, and your father and mother, about Gaspare being married, being a married man? A They sent him out of the house.

Q What do you mean by that? What did they say to him? A After they heard he was married?

Q Yes, tell us allabout that? A They said, "Well---"

THE COURT: I don't think it should be "they". You want to get what the defendant said, don't you?

MR. ROSALSKY: Yes, sir.

BY MR. ROSALSKY:

Q What did your father say when he sent him out of the house? Who sent him out of the house, your father or mother?

MR. BROTHERS: I object, on the ground that, a mo-

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ment ago, the witness said that she didn't remember being present when that happened.

MR. ROSALSKY: No, that was when the wife of the dead man came there.

THE COURT: I think that was it.

BY THE COURT:

Q Were you there when Gaspare left your house? A Yes, sir.

BY MR. ROSALSKY:

Q And who ordered him out of the house? A Father and mother.

Q Now what was said at the time that he was ordered out of the house? A They said "Well, Gaspare, you are married and you have two children and a wife. I can't give you my daughter, they said", and he said, "Oh, no, I'm not married. That isn't my wife and they aren't my children neither, but that's only a lady that I keep, that I took her from 14th Street, " he says.

My ~~mother~~ and father says, "Well, I don't care where you did take her from, but you were in the City Hall with her," and he said, "No, sir; I went to the City Hall and I only paid one dollar, and that don't go after six months."

And my father and mother says, "Well, all the same, it's your wife," and he says, "No, that ain't my wife.

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Iam going to marry your daughter." And my father and mother says, "No, you'll have to get out of my house, because I have no daughter to marry for you."

Q Anything else said? A Up until now, nothing else.

Q Now, about when was this last conversation, in what month? A The vacation time.

Q Do you remember the month? A No, sir.

Q Now, after Gaspare was ordered out of the house, did you ever go out with him? A Yes, sir.

Q And where did you go with him? A Moving pictures.

Q And while you were at the moving pictures with him did he ever---

MR. BROTHERS: One minute, we object to any leading.

BY ROSALSKY:

Q Did he ever do anything to you? Yes or no?

MR. BROTHERS: We object to that as immaterial, irrelevant and incompetent and improper, under your Honor's ruling.

THE COURT: I will sustain the objection.

THE NINTH JUROR: Your Honor, while it is fresh in my memory, I would like to have the Interpreter ask her, with your consent, about what time she left school, and the interval that passed from the time that she left school until she met this man. I believe you tried to get that from

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her, and it wasn't quite clear.

THE COURT: Ask her, in Italian, these questions.

BY THE COURT:

Q When did you last go to school? A I can't remember the month, because I would go, and stop going and then go again.

Q What is your best recollection as to the last day that you sat at a desk in a school house, as a student? A Ican't think what month.

Q Now, did you go to a school to study on any day after the day you first met Gaspare? A Yes, sir.

Q About how many times after you met Gaspare did you go to the school house? A In the day time?

Q Yes? A More than five days.

Q What school did you attend? A Jackson Street School.

Q What is the number of it? A I didn't see any number. I don't know the number.

Q What is the name of your teacher? A I can't remember the name, because I would have in the day time one teacher, and at night another teacher.

Q What grade were you in when you left school? A They put me in trial school.

Q How many years had you been going to school? A Eight years.

Q Always in the same school? A No, sir.

THE COURT: Go ahead then.

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THE NINTH JUROR: Another question, your Honor, which might bring a certain date to her mind. If she can place any Feast days by which she can connect her going to school, and as close to those Feast Days as possible.

THE COURT: You may ask her?

THE WITNESS: I can't remember what Feasts there were, what Saints.

BY MR. ROSALSKY:

Q Do you know what Decoration Day is? A Yes, sir.

Q Did you go to school up to the time of Decoration Day of last year? A I can't remember.

Q Now, did you, on the 22nd day of September tell your father that, during the---did you, on the 22nd day of September tell your father anything about going to moving picture shows, during the summer months, with Gaspare? A Yes, I did.

Q Did you tell your father---

THE COURT: No, ask her what she told.

BY MR. ROSALSKY:

Q What did you tell him, your father, about going to moving picture shows with Gaspare? A I can tellit in English.

Q Yes, then tell it. A What I told my father?

Q Yes, about the moving picture shows. A I told him because Gaspare used to keep me out of school, when I used to

go to school, to bring me in moving pictures, and I had to go with him, and I was forced by him to go to the moving pictures.

THE COURT: Just talk a little louder, young lady, will you, please? They all want to hear you.

BY MR. ROSALSKY:

Q What else did you tell your father about the moving pictures?

THE COURT: Now, will you permit me a suggestion, Mr. Rosalsky? Now, you claim that she told--that she had a conversation with her father on September 22nd, do you?

MR. ROSALSKY: Yes, sir.

THE COURT: Now, let us find out the place and the hour, the whole thing.

MR. ROSALSKY: Well, I want to bring out the different facts, as we go along, and lead up to the conversation of the 22nd.

MR. BROTHERS: I understood thatthis was the conversation of the 22nd.

MR. ROSALSKY: No, I want to take each little detail of what this witness has told me, and then I will have her narrate the whole conversation of September 22nd, and meanwhile I am going along as to the different little matters.

THE COURT: Why, you asked for the conversation of the 22nd day of September?

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MR. ROSALSKY: Yes, in reference to the particular facts of the case.

THE COURT: Well, now, it is entirely discretionary with you, but I would suggest that you ask her to tell the jury just the talk that she had with the defendant, and where it was.

MR. ROSALSKY: I will adopt your Honor's suggestion.

THE COURT: Now, young woman, look here.

BY THE COURT:

Q Did you have a talk with your father?

MR. ROSALSKY: Will your Honor permit me to go into that in my own way?

THE COURT: Yes.

BY MR. ROSALSKY:

Q Now, Nellie, did you see your father on the 22nd day of September, 1913? A Yes, sir.

Q Where did you see him for the first time on that day? A In the store, in Brooklyn.

THE COURT: Now, let us find out where the store was.

BY MR. ROSALSKY:

Q Now, where was the store? A In Grand Street.

Q What number? A 250.

Q And what kind of a store was this? A A vegetable store.

Q And what time of the day or afternoon or evening did

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you see your father? A About five or six o'clock.

BY THE COURT:

Q Morning or evening? A Evening.

BY MR. ROSALSKY:

Q Now, will you state to his Honor and the jury everything that you told your father when you saw him that evening?

THE COURT: Now, this is the evening of what day?

MR. ROSALSKY: The night of the shooting.

THE COURT: Very well.

BY MR. ROSALSKY:

Q Begin from the beginning and state everything.

BY THE COURT:

Q Now, just tell the jury everything that you told your father then. Now, talk to them. A I went over at five or six o'clock to my father in Brooklyn, to the store, and I found my father there, and I told him all that Gaspare did to me; how he took me out of the house from Brooklyn, in Leonard Street, in 229, and where he brought me, and when he took me out of the house, and how he took a bank book and a golden bracelet from the trunk, when I was alone in the house; that he told me not to speak, and he took out his revolver from his pocket, and he said, "Don't holler, or say anything while I am taking this bank book from the trunk, and the bracelet."

I said, "Why must you take that from the trunk? You have no right to open that trunk," I said, "to take that bank

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book and the bracelet out."

He said, "Well, just keep still. If you don't, I'll give you that in your head." (Illustrating).

Well, I had to keep still, forced from him. Then he took the bank book, and put it right in his pocket, and the bracelet.

Then, after he took that he said, "Now, you got to come with me;" he says, "because you are going to be my wife." I was crying, and I says, "No, I don't want to come with you. I can't marry you. You have two children and your wife. Better stay with your wife." He says, "Well, you've got to come. You know what I have here. I'll make you. I'll ~~do~~ take that on you." (Illustrating)

And then I had to go with him.

BY MR. ROSALSKY:

Q When you indicated or illustrated just now, what did you mean by that? A The revolver. And then I went with my clothes that I had on; I didn't take any dresses or clothes at all with me; and he brought me to New York.

So he brought me down to Third Avenue and 17th Street to the room. I didn't know what room was it.

Then after, three days, I lived there, and I was standing by the door, and then the janitor saw me, and says, "Come here, girlie. Don't stay on the stoop, because it isn't right to stay out on the stoop." And I said, "Why shouldn't I?

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I live here. Can't I stand on the stoop?" And the janitor said "No, it isn't nice for you to stand here on the stoop, because people pass here and see you, and it isn't nice."

MR. BROTHERS: May I interrupt?

THE COURT: Now, one moment. Young woman, I want you to tell these gentlemen what you told your father, when, on the evening of September 22nd, at about six o'clock, you were talking with your father, in the store on Grand Street in Brocklyn. Will you remember that?

THE WITNESS: Yes, sir.

THE COURT: Now, tell them what you told your father?

THE WITNESS: I told my father that Gaspare took me out of the house, and he took the bank book and the bracelet and then he brought me to Third Avenue and 17th Street.

Then he used to come up every time. Then he forced Croccolisi to marry me, that he brought him up there, for two or three nights. Gaspare used to live there, and he brought Croccolisi up there, and he says, "Now, Salvatore, you have to marry Nellie" and he said, "Why, no, I won't marry her," and he said, "Well, you'll have to marry her, and if you don't I'll shoot you," and he had again that gun in his pocket; he always had it in his pocket.

And I told my father because he wanted to bring me

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away to the country, to be a bad girl in the country, and he said he had to bring men up there, in the country. And I told my father because he wanted me to make money in the country and he told me he would make me go dressed up nice, and he said he would buy me diamonds with the money that I would get, and he says, "Every time a man comes up" he says, "you can get two dollars or three dollars at a time, because you are a pretty girl and you are young, too," and I told my father what Gaspare told me, and that he wanted to take me away.

And I told myfather,"Father, I don't want to stay there any more, because he wants to take me away."

And so I left my father the address, and so my father says, "All right, I'll come there with your mother, and take you home, take you back."

BY MR. ROSALSKY:

Q Now, have you stated everything that you told your father that evening? A (No answer).

(The question is repeated through the Interpreter)

A Yes, sir.

BY THE COURT:

Q Now, just tell us this. At the time that you were having that talk with your father, were you alone with him, or was there somebody else there, also? A No, sir; alone.

Q And in what room were you having that talk? A In the

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store.

MR. BROTHERS: May I ask your Honor whether she said the store was in Brooklyn?

THE COURT: Yes, the store was in Brooklyn, she said.

BY MR. ROSALSKY:

Q Now, did you tell your father what Gaspare did to you on the first night he took you to the rooms in 17th Street?

A Yes.

Q Well, tell the jury what you told your father about that? A (No answer).

(The question is repeated through the Interpreter).

THE WITNESS: I would rather say it in Italian, because I am ashamed to say it in American.

(The question is repeated through the Interpreter).

A The night he brought me into the room, he forced me to undress, to strip, and, with a revolver in his hand, he forced me to have sexual intercourse with him.

I first refused to obey him, I refused to undress. I refused to take even a stitch off my back, but he, with the revolver in his hand said, "You will not leave tonight. I'll kill you, if you don't,' and he forced me to have sexual intercourse with him, so much against my will that he struggled with me for a long time, until at last I gave in; and, after he was all through, all my drawers were full of blood.

BY MR. ROSALSKY:

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Q Now, on what night did that happen? Did you tell your father when that happened? A Yes, sir.

Q And when did that happen? A The night he took me away.

BY MR. BROTHERS:

Q Well, when was that? A The first of September.

Q The first of September? A yes, sir.

BY MR. ROSALSKY:

Q Was that the first night that you ever slept in the rooms on Third Avenue and 17th Street? A I was three nights with him in that room.

Q And did he sleep with you during those three nights? A Yes, sir.

Q Is that what he told your father? A yes, sir.

Q Now, didyou tell---Croccelisi is the man that you are married to at the present time? A Yes, sir.

Q And is he the same man that you told your father that the dead man forced you to marry? A yes, sir.

Q Now, when you say he wanted you to go to the country, did he tell you for what purpose? A To become a prostitute, so that Icould make money and give him the money.

Q Now, have you told us everything that you told your father, that evening? Now, just think over it again. A I think there is no more to say.

Q Now then, after you married---when did you marry Croc-

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colisi, about when? A I don,t remember the month, but it was two or three weeks after I stayed with the deceased.

THE COURT: I want to ask you one question there, young woman.

BY THE COURT:

Q How long before you had this talk with your father was it that you had last seen your father? A (No answer)

THE COURT: See if she understands that.

(The question is repeated through the Interpreter) A From the night I left, I hadn,t seen him.

Q That is to say, from the night of the first of September, 1913, until about six o'clock in the evening of the 22nd of September, 1913, you had not seen your father? A No, sir.

BY MR. ROSALSKY:

Q Did your father go with you at the time you were married? A Where?

Q At the City Hall. Was your father at the City Hall at the time you were married to Croccolisi? A Yes, sir.

Q And who else was there at the time youwere married? A Paul Melazzo, a cousin.

BYTHE COURT:

Q Well, when were you married to this man Croccolisi? A I think it was the month of September; I don't remember the date.

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Q And it was before the 22nd of September? Before the shooting? It was before the day of the shooting? A Yes, sir.

Q About how long before? A I can't remember.

Q And whenever that day was, you did see your father on the day of the marriage? A Yes, sir; I saw him in the City Hall.

BY MR. ROSALSKY:

Q Had you told your father anything about what went on between you and your father on the day that you met him at the City Hall?

THE COURT: No, you have not got that right. Repeat the question, Mr. Stenographer.

(The question is repeated by the stenographer)

BY MR. ROSALSKY:

Q About what went on between you and Gaspare? A No, sir.

Q The first time you ever told your father anything was on the day Gaspare was shot? A Yes, sir.

Q Now, after you were married, did you continue to live in the same place in 17th Street? A Yes, sir.

Q Did Gaspare come to your house after you were married? A Yes, sir.

Q And did you tell that to your father? A Yes, sir.

Q Did you tell your father all the talks you had with

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Gaspare after you were married? A Yes, sir.

Q Now, tell the jury what talks there were about that. A I told my father that Gaspare wanted to take me with him, after I was married, and every day he used to come up and force me to go to the country with him.

He used to tell me to come to the country with him. He said, "Leave your husband now, you will have to come with me, or I'll kill you."

And I said, "Why, no, I am married and I can't leave my husband now. I left my parents first and now I can't leave my husband."

And he said, "Well, that's all right, I was before your husband," he says, "you can come to the country. It's better than here. You have no work here and no money here, but there you can get money, more than you have here."

"Each time"he said, "You can get two dollars, and, after, I'll buy a few diamonds for you, and make you go dressed up nice." And I told my father that.

Q Well, what did you understand by that, about going to the country to make money?

MR. BROTHERS: I object to that, what she understood.

THE COURT: Sustained.

BY MR. ROSALSKY:

Q Well, did you tell your father that he wanted you to

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go to the country to work? A Itold him that he wanted me to go to the country to be---

Q To do what? A That he would bring up men to the house where he would bring me in the country, and I should make money for him.

Q In what way? A To be a bad girl.

Q And that's what you told your father? A Yes, sir.

Q Now, up to the time that you had the conversation with your father, that night, had you ever told your father anything about this? A Not before the night of the shooting.

Q Now, on the 22nd of September, on the night of the shooting, did you tell your father that you had expected Gaspare at the house, that night? A No, sir.

Q Do you know whether your father knew that Gaspare was going to be there, that night? A No, sir.

BY MR. BROTHERS:

Q You don't know? A No, sir; I do know. I don't know the way he means to say.

BY MR. ROSALSKY:

Q You say that your father didn't know that Gaspare would be there? A My father didn't know.

Q Now, after you had this talk with your father, where did you go? A I went home.

Q To your own home? A Yes, sir.

Q Did you see your mother, on that day, before you

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spoke to your father? A I had no time to see my mother, because she was in New York, working.

Q Your mother works for a living, do you say? A Yes, sir.

Q What does she do? A Sewing coats.

BY THE COURT:

Q Between September first and the day of your marriage, had you seen your mother? A (No answer).

THE COURT: Ask her that in Italian.

A No.

Q Between September first and the day of your marriage, had you seen either of your sisters? A I saw nobody.

Q When you say that you saw nobody, you mean that you saw no member of your own family? A No.

Q But on the day of your marriage you did see your father? A Yes, sir.

Q And on that day did you also see your mother? A Yes, sir.

Q And on that day did you also see your sisters? A No, sir.

BY MR. ROSALSKY:

Q Now, how was it that your father---where did you see your father and mother on that day? A In City Hall I met them.

Q And how did you come to meet them in the City Hall?

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A Croccolisi told my cousin, Paul Malazzo, for them to be at the City Hall.

Q Now, you reached your home on 17th Street at about what time that evening, the 22nd of September, the day of the shooting? A About seven o'clock, about seven or eight o'clock.

BY THE COURT:

Q Can you fix it any nearer than that? Which do you think it was? A I can't exactly remember, because I have no a watch in my pocket.

Q Well, do you remember your father and mother coming up that night? A The night of the shooting?

Q Yes? A Yes.

THE COURT: I suggest that you find out when she got back to New York.

BY THE COURT:

Q When you reached 191 Third Avenue on the evening of September 22nd, you went then to your rooms, I suppose? A Yes, sir.

Q And they were on what floor? A The rooms?

Q Yes, your rooms? A On the second floor.

Q And you had there how many rooms? A One room.

Q And when you got there was your husband there? A No, sir.

Q And was Gaspare there when you arrived there? A Not until I was awhile home. After, he came.

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Q You were in your room for some little time, on September 22nd, before Gaspare came? A Yes, sir.

BY MR. ROSALSKY:

Q Now, when Gaspare came, that night, did he go into your rooms? A The night of the shooting?

Q Yes? A He was downstairs.

Q Had he been in your rooms, that night, after you came over from Brooklyn? A No, not that night. He spoke to me downstairs.

Q Now, when did you first see Gaspare, that night? About what time was it? A About half past eight or nine o'clock.

Q Now, how did you come to see Gaspare? I withdraw that. Do you live in the front? Did you have a front room? A Yes, sir.

Q Looking out into the street? A Yes, sir.

Q And how did you happen to go downstairs, that night? A Gaspare whistled.

Q Did you know Gaspare's whistle? A Yes, sir.

Q Did you look through the window then? A Yes.

Q Did you see Gaspare there? A Yes, sir.

Q And what did you do? Did Gaspare say anything to you? A He told me to come down.

Q And did you go down? A Yes, sir.

Q And where did you go when you went downstairs, when

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you came down? A Outside, in front of the stoop.

Q And did you talk with Gaspare? A Yes, sir.

Q And what was the next thing that happened? How long did you talk to Gaspare before your father and mother came there? A I can't remember how many minutes I spoke.

BY THE COURT:

Q Was your husband there during that time? A No, sir.

BY MR. ROSALSKY:

Q At any rate you were talking with Gaspare? A Yes, sir.

Q But how long, you don't remember? A No, sir.

Q Is that right? A Yes, sir.

Q And then your father came along with your mother? A Yes, sir.

Q Now, state what happened when your father and mother came along.

BY THE COURT:

Q Tell where you were and where Gaspare was, and what happened? A When my father and mother came, they saw Gaspare out there, speaking with me, telling me to go away with him.

MR. BROTHERS: Now, we object to that, and move to strike it out. We object to her stating what they saw, which is impossible in law and in fact.

THE COURT: Well, I will strike it out.

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BY THE COURT:

Q Go ahead now, and tell us.

BY MR. ROSALSKY:

Q Tell us what you said, and what your father said and what Gaspare said and what the mother said, if she said anything? A Before my mother and father came, Gaspare was telling me, outside, near the door, to go away with him, that time, and he was forcing me to go away, and I said I wouldn't go away, I wouldn't go with him, because I didn't want to go away.

And, after a while, I saw my father and mother coming, and I ran to meet father and mother and Gaspare comes near, and my father says, "Gasparino, why do you come to bother my daughter yet, after she is married. You have been bothering her even when she is in my house. You have no right now to bother her, because she has a husband now. You have no right to bother her. Go to your wife and children. Don't come around here any more."

He says, "Well, that's none of your business. Your daughter, you don't own your daighter any more." He says, "You old Kike, you have no right to defend your daughter any more."

He says, "Why, whose daighter is it?" Then he says "Who has been supporting her, you or I?"

And he says, "I don't care about that. I have her here now, and I have been staying with her. Why, I have to defend

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her now. You have no right to come for your daughter and defend her now."

After that, my father said, "Why not?" And he said, "You go away, or I'll kill the three of you, to-night." And then he said, "You had better get out of here," and he caught ahold of my father to the throat (Illustrating) and turned out his coat and put his hand to his pocket, and we all hollered, and I wentup to my mother, and got around to my mother.

Then after that Gaspare got ahold of my father and put his hand to his pocket (Illustrating) And he wanted to kill my father and choke him.

And then we heard a shot between them two, and then we seen Gaspare run, start to run, to 17th Street and Third Avenue, and so I run after him, calling, "Gasparino". I thought he shot my father, because I didn,t see my father around there any more.

BY MR. ROSALSKY:

Q You didn't see xx where your father was at that time?

A Yes, sir.

MR. BROTHERS: I move to strike out what she thought, your Honor.

THE COURT: I will let it stay in.

BY MR. ROSALSKY:

Q And did your mother run with you? A Yes, sir.

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Q Did you see who fired the shot? A No, sir.

Q You didn't see the shot fired? A No, sir.

Q Did you see Gaspare make a move towards his pocket? A Yes, sir.

Q His back pocket? A Yes, sir.

Q With what hand did he make that move, if you remember? A With the right hand.

Q And with what hand did he have your father by the throat? A Left hand.

BY THE COURT:

Q And this was on the sidewalk? A Yes, sir.

BY MR. ROSALSKY:

Q Did you fall down, did you trip? A Yes, sir

Q Where did you trip and fall down? A On the corner of 17th Street.

Q On the other side of the street? A Yes, sir.

Q Did you see your father at thattime? A No, sir.

Q And what did you do after you fell down---after you got up, I mean, where did you go? A We walked towards 17th Street, on the other side.

Q East, through 17th Street, towards First Avenue? A Yes, sir.

Q Where else did you walk? A We went through the park walking, and went down to 14th Street and First Avenue.

Q And did you get on a car there? A Yes, sir.

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Q After you had tripped and fallen down---I withdraw that. After you heard the shots fired, did you see your father? A No, sir.

Q Now, when Gaspare ran, you ran after him? A Yes, sir.

Q You ran after him? A Yes, sir.

Q And what did you say while running after Gaspare? A I said, "mascherata"; that's an Italian word.

Q And did you say to Gaspare, while running after Gaspare, "Gaspare, my dear, come here?" A No, sir.

Q Or did you say, "My Gaspare, where are you going?" "Come here?" A No, sir.

Q You just said, "Gaspare, Gaspare, mascherata"? A Yes, sir.

Q And what did you mean by that? A I meant because--- it means a very bad man, that he doesn't care whatever he does for a person, and he always goes in front of them; it means he has no shame in his face.

THE INTERPRETER: Shameless.

BY MR. ROSALSKY:

Q Now, after you fell down and got up did your mother fall, too? A Yes, sir.

Q Did you see your father, at that time? A No, sir.

Q Did you see your mother make any motion to your father at that time? A No, sir.

Q And when you went to 14th Street and First Avenue, did

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you get on a car? A Yes, sir.

Q On what kind of a car did you get? A A belt line car.

Q Did you get on the first car that reached you? A Yes, sir.

Q And when yougot on the first car, whom did you see on that car? A My father.

Q And who else was in the car? A I didn't see no one else.

Q Were there other people in the car? A There were people.

Q Now, who paid the fare when you got on the car? A My mother.

Q Did you say to your father, "Oh, Papa, you killed my Gaspare?" Did you say that in Italian? A No, sir.

Q What did you say when you got on the car? A "Who shot, Papa?"

Q Did your father say to you, "Shut up, or I'll give you that, too?" A No, sir.

Q Did your father pull out a cartridge shell---did your father pull out something that looked like this? (Indicating People's Exhibit 7 for identification) And hold it between his thumb and forefinger, and say, "This is all that is left of it?" A No, sir.

Q Did he have anything in his hand at all? A No, sir.

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Q Or say that at all? A No, sir.

Q And where did you get off the car? What street did you get off at? A (No answer).

Q Do you remember? A I think we went off at Rivington Street.

Q Now, were you a witness before the Grand Jury in the month of December, 1913? A If I was to the Grand Jury?

Q Yes? A Yes.

Q And you stated to the Grand Jury what you knew about this case; is that right? A Yes, sir.

Q And at that time the Grand Jury indicted your father of Manslaughter in the First Degree; is that right? A (No answer).

THE COURT: She does not know that.

MR. ROSALSKY: Well, I suppose the district attorney will concede that the first indictment was for manslaughter in the first degree.

MR. BROTHERS: I will concede nothing. Are you through?

MR. ROSALSKY: Yes. No.

BY MR. ROSALSKY:

Q After that day did you see your father? A No, sir.

Q You didn't see your father until when? A Until the 13th of December.

BY THE COURT:

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BY THE COURT:

Q Let me ask you this. Between the day of your marriage an six o'clock on the 22nd of September, had you seen your father? A (No answer).

THE COURT: Ask her that in Italian.

(The question is repeated through the Interpreter)

A No.

THE NINTH JUROR: Your Honor, I would like to ask this witness how she was dressed when she went to live at that house on Third Avenue, 191. Was she dressed in long clothes or short clothes?

THE WITNESS: Long clothes.

BY THE JUROR:

Q From the time you went to live there until the time of your marriage were you locked up in a room, or were you able to go out, and go downstairs and out of the front door, at any time? A Yes, but he was there all the time after me. I couldn't move myself.

Q Was he always there? A Yes, sir.

Q Day and night? A Yes, sir.

Q And you couldn't go out? A No, sir. I had to go out with him.

MR. ROSALSKY: That's all.

CROSS EXAMINATION BY MR. BROTHERS:

Q Do you remember the lady who ran that house, Mrs.

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Theophile? A Yes, sir.

Q Do you remember her telling you to come in, and not stand out in front of the door? A Yes, sir.

Q Gaspare was not there then, was he? A No, sir.

Q Now, are you pretty sure that you did go over to Brooklyn on the day that Gaspare was shot? A If I went to Brooklyn?

Q Did you go to Brooklyn? A (No answer).

THE COURT: Ask her that in Italian).

(The question is repeated through the Official Interpreter).

A Yes, I went there, because I had a little chance. He wasn't there. He told me he wouldn't be there not for three hours.

BY MR. BROTHERS:

Q And this talk was had with your father in the fruit store in Grand Street there? A Yes, sir.

Q And you did not see your mother, that day, until the time of the shooting? A No, sir; because he was working in New York.

Q Now, do you remember coming to the District Attorney's Office on the 13th of December, and talking with this gentleman here, Mr. Breckenridge? (Indicating). A Yes, sir.

Q And do you remember that there was a man there, with a book and pencil, writing down things that were being said?

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A (No answer).

(Question repeated through the Interpreter)

A Yes, sir.

Q And Mr. Breckenridge asked you some questions, did he? A Yes.

Q And you answered them in English? A Yes.

Q You understood what he said? A I fainted, that night. I couldn't speak very well, because I was sick, and they was forcing me to speak.

Q Now, did you understand what Mr. Breckenridge said to you? A (No answer).

(The question is repeated through the Official Interpreter).

A I couldn't understand what they were saying, because they forced me, and they were forcing me to say what they wanted me to say, and through that, I couldn't understand.

Q Why, don't you remember that you wanted them to get you some supper, and they went out and got some supper for you, though you say you were sick? A I asked them for something, because I didn't feel well, and they told me, "Now, just wait. You'll get something, and then they never brought me anything.

Q Well, now, do you remember Mr. Breckenridge asking you where your father was living? with your mother, and you said in Brooklyn. Do you remember that?

MR. ROSALSKY: At what time?

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MR. BROTHERS: That was the night of December 13th, last year, at eight o'clock in the evening.

A I can't remember exactly.

BY MR. BROTHERS:

Q No. And do you remember his asking you this: "Did you and your father and mother come over from Brooklyn together? A When?

"Q The night he was killed? A In the day time, I went over to see my mother."?

A No.

Q Well, you understand ~~the time~~ what Iam talking about in English, don't you? Now, listen to me. Do you understand me? A Yes.

Q Did you tell Mr. Breckenridge that, on the day that this man was shot, "In the day time, I went over to see my mother. And so then my mother was working in New York. She was working in a cloak shop." Did you tell him that? A I don't remember.

Q Well, is it true? A I didn't say I went to see my mother, because I didn't go in the day time to see my mother.

Q Did you say: "I went to my cousin's house. I wouldn't go to Brooklyn, because it was too far for me?" Did you say that to Mr. Breckenridge? A No, sir.

Q You didn't say that? A I didn't say that, no.

Q Then did he ask you, "What cousin was that? A My

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aunt's daughter that lived in Rivington Street."? Now, did your aunt have a daughter that lived in Rivington Street? A (No answer)

Q Did you have a cousin living in Rivington Street? A Did I have a cousin living in Rivington Street?

Q Yes. Do you understand that? A Yes, I understand that.

Q Well, didyou have a cousin living in Rivington Street? A No cousin.

Q Well, who lived there? A My aunt.

Q Now, did you say this: "My mother wasn't there, that time. She didn't come there from the shop. Then she came from the shop and then I went home, after I saw my mother."? Did you say that to Mr. Breckenridge on that night? A I can't remember from that night.

Q Well, if you told Mr. Breckenridge that, was it the truth? A I don't remember if I told him that.

Q Well, was it true, if you did tell him? A I can't say if it was the truth or not, because I don't remember.

Q Don't you remember whether you saw your mother, that afternoon? A (No answer).

THE COURT: Now, we are still speaking, young woman, of the afternoon of the day of the shooting. The shooting took place on the evening of September 22nd, and we are talking about the afternoon of that same day. Do you understand

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that?

THE WITNESS: Yes, sir.

THE COURT: You say that to her in Italian, now, that we are talking about September 22nd.

(Question repeated by the Interpreter.)

A When you are talking to me about having seen my mother in the day time, Ididn't see her in the day time. Because all the questions that were asked of me, I was in such a weak and fainting condition, I can't remember whatever I may have said.

BY MR. BROTHERS:

Q Well, now, do you remember saying: "Then I went home, after I saw my mother.

"Q Went home where? A Seventeenth Street and Third Avenue."

Do you remember that? A Do you mean if I saw her before the shooting?

Q No. Did you tell Mr. Breckenridge that, after you saw your mother you went home to 17th Street and Third Avenue.

A I don't think I said that.

Q Did you tell Mr. Breckenridge anything about saying anything to your father, that day, the day of the shooting?

MR. ROSALSKY: I object to that.

THE COURT: I will allow that.

MR. ROSALSKY: Exception.

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A I don't remember whether I said anything.

BY THE COURT:

Q Were you asked whether you had said anything on the day of the shooting to your father; were you asked by Mr. Breckenridge?

MR. BROTHERS: I will concede that the specific question was not put, your Honor.

THE COURT: Very well.

BY MR. BROTHERS:

Q Now, you had known this man that you married a long time; had you not? Please answer yes or no. A Not a long time; only when Gaspare brought him there.

Q You knew him all summer; didn't you? A No.

Q Did you tell Mr. Breckenridge this: "Q How long had you known Salvatore Croccolisi when you were married to him? A All summer."?

MR. ROSALSKY: Now, if your Honor please, I would like to know in what form that question was put to her?

MR. BROTHERS: Why, Iam reading the question and answer, and I'll do it over again, if you desire, to make sure.

BY MR. BROTHERS:

Q Was this question put to you and did you make this answer:

"Q How long had you known Salvatore Croccolisi when you

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were married to him? A All summer?"?

A I can't remember.

Q Well, didyou know him all summer? A No, sir.

Q Were you asked this question, and did you make this answer:

"Q Where did you meet him? A He used to come up to the house."?

A I don't think I said that, but he has come in my house about twice.

Q Well, he was a friend of your brother-in-law's, wasn't he? Vincenzo? A No, sir; Gasparino used to bring him there.

THE COURT: We will take an adjournment now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Monday Morning, March 9th, 1914, at 10:30 o'clock).

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THE PEOPLE VS. PIETRO DANGELO

TRIAL RESUMED.

NewYork, March 9th, 1914.

THE COURT: I am now ready to pass upon the motion relating to the striking out of a certain statement said to have been made by the defendant in the station house of the 22nd Precinct.

Before passing on that motion there are one or two questions that I will address to the District Attorney, for the purpose, if possible, of having the circumstances, under-which the statement is said to have been taken, more clearly disclosed upon the minutes.

THE COURT: Mr. Brothers, I invite your attention to Section 783 of the Code of Criminal Procedure, and I ask you whether your understanding is that the statement of the defendant was taken while the Coroner was acting under that section?

MR. BROTHERS: Really, I don't know how to answer that, because I was not present, and I don't know what the Coroner had in mind. I presume that is the idea he had.

THE COURT: Is there any other provision of law under which he might have been acting at the time?

MR. BROTHERS: I don't see how he could have acted without such authority, because it was necessary to bring the man before the Coroner, and I presume it was the duty of

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the Coroner at that time to see whether there was probable cause for retaining this man in custody and sending him before the Grand Jury.

THE COURT: My understanding of the situation then is this; in the beginning of the month of October, a Coroner's inquest had been held upon the body of the deceased. That inquest was conducted by a Coroner other than Coroner Feinberg, and was carried on with the aid of a Jury. Certain witnesses were examined, their testimony taken, and the jury found a verdict.

MR. BROTHERS: Yes, sir.

THE COURT: I take it that that verdict was not one which, in terms, charged this defendant with the killing?

MR. BROTHERS: I believe the record shows, your Honor, that it charged merely that the deceased came to his death at the hands of an unknown person.

THE COURT: Therefore, the Police, having obtained certain information which, in their judgment, implicated the defendant, caused the defendant to be arrested while the defendant was in Rochester?

MR. BROTHERS: Yes, sir.

THE COURT: I take it that the defendant was perhaps arrested in Rochester without the issuance of a warrant. Do you know what the facts were?

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MR. BROTHERS: As I get the information, the witness Ferrea went to Rochester, and located him, and then telegraphed the Police, and Officer Carlson then went with a warrant and brought him here.

THE COURT: Then, upon a warrant, the defendant was arrested in Rochester, and he was brought down to New York, and he was taken to the station house of the 32nd Precinct?

MR. BROTHERS: Yes, sir.

THE COURT: Now, there, as a matter of convenience, rather than in the Court House or Coroner's Office, Coroner Feinberg went. A Magistrate might have gone, and might have done in te station house that which, in point of fact, the Coroner assumed to do?

MR. BROTHERS: Yes, sir.

THE COURT: The Coroner, as I understand it, initiated in the station house, by virtue of a power vested in him by Section 783 of the Code of Criminal Procedure, an examination, for the purpose of determining whether there was sufficient grounds for holding the defendant to await the action of the Grand Jury?

MR. BROTHERS: Yes, sir.

THE COURT: My understanding is that Section 783 requires that that proceeding shall be conducted as provided by Sections 188, 189, 190, 191, 192, 193, 194, 195, 196, 197, 198, 199, 200, 201, 202, 203, 204, 205, and some fol-

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lowing sections of the Code of Criminal Procedure.

If that is so, there are certain things which the Coroner was required to do. In so far as the record may not contain any affirmative evidence that he did not do those things, the Court will assume that he did them.

In so far as the record may contain evidence of what the Coroner did, the Court can indulge in no presumption that he did, with repect to those things, otherwise than as the record discloses. I am inclined to the view that there was a substantial compliance with Section 188; there was not a literal compliance.

It will be assumed that such statement as the Coroner took from the witness Ferrea, he took before any statement from the defendant.

There appears to be a lack of compliance with the provisions of Section 196. The statement that was taken of the defendant was a statement that was taken pursuant to the provisions of Section 196. The omission was an omission to inform the defendant that, in the event that he waived the making of a statement, the waiver could not be used against him on a trial.

The Court cannot assume or presume that such a statement as that was made to the defendant, for the reason that the record purports to disclose the only statement that was made to the defendant.

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Section 198 was not complied with, and that presents the most substantial deviation from the principles of the law; first, in that it does not appear that the coroner asked the defendant any one of those questions, and, second in that it affirmatively appears that he asked him a number of questions other than those, although those, apparently, under the law, were the only ones that he could ask him.

There being no evidence before the Court upon the subject, the Court may presume that the requirements of Sections 199and 200 were complied with.

Mr. Brothers, do you contend that the statement that was made by the defendant was not one that was made under Section 196?

MR. BROTHERS: I do.

THE COURT: I am going to hear you before deciding the motions, but I merely wanted to get your views.

MR. BROTHERS: That is, I contend that, judging from the record, what the Coroner had in mind.

THE COURT: Do you contend that, where a statement is taken pursuant to Section 196, the person taking it may ask questions others than those mentioned in 198?

MR. BROTHERS: Yes, that is, the Coroner.

THE COURT: To facilitate you in presenting your contentions, in order that you may direct your arguments to the points as to which the Court may be in doubt, the ex-

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amination which I have made of the law leads me to the conclusion that the general subject of confession is regulated by Section 395 of the Code of Criminal Procedure. There is a distinction between a confession and an admission. A man may make an admission which is against interest; and, if it is a xxux voluntary admission, as the law defines voluntary, it does not come under Section 395.

A man, for example, who contemplates the defense of an alibi, may make a statement which is destructive of that defense, inasmuch as, it indicates his presence at the place where the crime is said to have been committed, at the time when it was committed, and, upon the trial, that would be provable as an admission against interest.

Where a man admits doing something which, in and xx by itself, is not a crime, but is only one of a number of constituent elements which, in their entirety, constitute a crime, what he says regarding a circumstance, is an admission against interest, rather than a confession.

One of the elements of the ~~crime of murder, in either~~ of its degrees, and the crime of manslaughter, is the killing of a human being. The defendant's statement that he did kill is an admission against interest; but, apart from other statements, is an admission, perhaps, rather than a confession.

The general rule is that Section 395 of the Code of

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Criminal Procedure covers the admissibility of statements in the nature of a confession, whether they be made to a private person, or during the course of a judicial proceeding.

It supplies the test as to whether the statement is or is not voluntary. But where, with respect to a particular classof judicial proceedings, there are statutory requirements as to what should be done, and by whom, and in what way, those requirements with respect to statements made during such proceedings constitute a qualification upon the applicability of Section 395; and where a statement is taken under circumstances which makes the governing provisions of law those found in Section 188 and the following Sections of the Code of Criminal Procedure, its admissibility is dependent upon not merely whether it complies with the requirements of Section 395, but also whether it was done in a proceeding conducted as those sections require it to be conducted.

I will hear you, therefore, on the question, in the first place, of whether or ~~not~~ the statement of the defendant was taken in such a proceeding, and I will hear you, in the second place, upon the question as to whether, assuming that it was taken in such a proceeding, there is a fatal defect in the omission to state to the defendant thata waiver in the making of a statement could not be used against him, and a fatal defect in the omission of certain questions which were

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required to be put under Section 199, and the putting of certain questions not authorized or permitted by that Section.

I will hear you just as fully as you care to be heard, Mr. Brothers.

MR. BROTHERS: Your Honor, as to the first point, as to whether this was a judicial proceeding, I presume that, for the purposes of the argument we are bound somewhat by the record, because I was not present, and I cannot say what the object was of having the Coroner there, unlessit was to protect the rights of the defendant and to ascertain whether the man should be held for the Grand Jury.

Of course, your Honor recognizes that was an entirely unnecessary proceeding. It was not necessary for us to have a Coroner or Magistrate. The man could have been lodged in the Tombs and could have been indicted without having been held, because the witnesses were present at that time. And it was merely a matter of---it was a Saturday night, and of course the Grand Jury could not hear thecase until Monday.

THE COURT: Well, of course there is a difference between a legal and a practical necessity. As a matter of legal necessity, there was, as he could have sued out a writ of habeas corpus.

MR. BROTHERS: And your Honor will recognize that he arrived in this City, that evening, late, and, of course,

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the Coroner's Court does not sit on Saturday night, and could not sit until Monday morning, and, had he been taken before a City Magistrate, the City Magistrate would have referred the case to the Coroner. City Magistrates never hear any of these homicide charges, and the practice has been for years and years to take them before the Coroner.

Now, goingout of order at that point, let me say that the Coroners are not provided with the formal examination which the City Magistrates are, and your Honor knows, from your long service on the bench, that in an ordinary larceny case, there is a formal examination printed, with all those questions set out in that Section of the Code, and that the Clerk always asks all those questions, and the writing is done by the Clerk, and then he is taken in before the Magistrate, and he pleads. If he pleads not guilty, the Magistrate asks him if he desires an examination, and, if an examination is had, and a prima facie case is made out, the Magistrate then asks if he wants to be heard, and, if he does, he is sworn as a witness.

But, in a Coroner's Court, no such proceedings were ever had, and such blanks were never furnished to the Coroners, and they know nothing about any such proceeding.

Nevertheless, it would appear that the Coroner, having heard the evidence, was attending to the question as to whether there was probable cause to believe that the defen-

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dant had committed the crime charged, and should be held for the Grand Jury.

But I see nothing in the record to show---here it is, at the last, after hearing all the evidence---he said, "I will now hold him for the Grand Jury without bail, and will remand him to the Tombs until such a time as the Grand Jury shall act in his case."

So that he was acting in a judicial capacity, no matter what his intentions were; his actions govern, not what he said.

Now, your Honor directs my attention as to whether any fatal defect in the proceedings was had.

Now, urging again that the Coroner never, in any case, complies with those Sections, I say that the point, so far as I can find, from an examination of the authorities, has never been raised. The Coroner, even if he did act erroneously, was doing so because of the custom of the Coroner's Office.

Now, the question as to whether anyx question of waiver should have been raised in the defendant's mind, as to whether he should have been told that, if he chose to waive examination, it could not be used against him, that is going rather to the form than the substance, because the Court of Appeals has repeatedly held, in the Mondon case and the Molineux case and other cases, that the test to be applied

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to the statement of a defendant, whenever made, is, was the defendant's statement a voluntary one, was it made without compulsion, was he apprised of the fact that he didn't have to speak, and that, if he spoke, it could be used against him? Was it made without any promise of immunity?

In other words, was he, when speaking, fully aware of the fact that he was under a charge, and that what he was saying was coming from him voluntarily?

Now, in the Shaplow case, after the case had been presented to the Coroner's jury, the foreman stood up in the Coroner's Court, and he was the Sheriff of the County--- a case that your Honor has probably read---121st N. Y., and said, "The defendant desires to say something."

NOW, in that case they did not have that formal paper. It was in the Country, and I doubt if the Magistrates or Justices of the Peace, who sit in the country districts, have any such formal examination, or have any such blanks to go by.

Now, in that Coroner's Court, the Sheriff said, "He wants to make a statement?" "Is that so?" asked the Coroner. And he said, "Yes", and he said, "Well, if you make a statement it will be used against you, because you are under a charge here." And he said, "I don't care, I want to say something," and took the stand and was sworn.

In the Molineux case they held that the statement

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was not to be taken under oath, because an oath was a compelling force, and no oath was applied to this man, and he could say anything he wanted to without fear of punishment.

And Shaplow went on the stand and admitted thathe did the killing. When he came to trial on the indictment charging him with murder, he denied the whole thing and said he wasn't there at all, ~~kka kka~~ and the Court of Appeals said that that statement that he made was under the proper requirements of the law, and it was voluntary, and it was made with full knowledge of the charge against him. Nothing was said in there about these sections of the Code. Nothing was claimed that he should havebeen asked only certain questions. He was cross examined.

THE COURT: He was examined under circumstances other than those in this case. He was examined in the Court at the Coroner's Inquest.

MR. BROTHERS: But, as I remember, the Court of Appeals says the test is, was it voluntary? Clearly, in this case, it was voluntary, so far as this record shows.

Now, I read the Mondon case in 103rd N.Y. and there, in that case, the defendant was brought into Court before the Coroner, and nobody said a word to him. He was put in the chair and sworn.

THE COURT: The facts in the Mondon case are entirely dissimilar from this case.

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MR. BROTHERS: But the Monion case was cited last week by counsel, and in the opinion, not in the syllabus, there is nothing about any particular section, as I recall it. It said that there was no compliance of any kind with the statute for such proceedings, and there was not.

But I don't find any decision which says that if there is not a substantial compliance with the provisions of the Statute, the man must be put upon his guard, acquainted with his rights, and informed of the charge, and the absence of these other formalities in the statute would in no way invalidate the statement.

Now, the Code has been amended in the last year and a half and Section 221-b has been added, which says that the statements taken before a Magistrate, taken down by a stenographer, may be regarded as a deposition, within the meaning of the previous section, and need not be signed by the witness; and that section also goes on to say "including the statement of the defendant," and that requirement is clearly, or at least was clearly, had in this case, because there was a stenographer and he did take down what was said; and the requirement of the code which says that a statement must be signed and duly authenticated, under Section 221-B is unnecessary.

THE COURT: I will say to you frankly, Mr. Brothers,

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that I regard the material thing as being this. Where a statement is taken pursuant to Section 196 of the Code of Criminal Procedure, then, seemingly, under Section 199, a person taking the statement is limited to putting certain specific questions, and may not put other questions; and, therefore, when other questions are put, and what is obtained is responsive to the other questions, it seemingly ceases to be a statement contemplated by Section 196. Section 196 contemplates that a man shall spontaneously, of his own free will, for the purpose of exculpating himself, make a statement which is not guided or navigated by questions; and it is questionable whether what is produced as a result of questions is a statement which conforms to the requirements of Section 196.

MR. BROTHERS: Of course, your Honor, I have read these cases referred to under Section 198, and I don't find--- I may have skipped some of them, that there is any judicial decision to that effect, and, therefore, if there is not, my expression of opinion would be of no avail, your Honor having expressed your opinion.

THE COURT: Well, I did not know but that you might have found one case in point. I would not like to rule, for example, inadvertently, in the case of some authority that had decided the matter. My time for examining the law was more limited than I hoped it would be. I was prevented from

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giving a great deal of time to it.

I have examined a number of cases, and I have not found any one that was precisely in point, but I believe that a rule can be formulated from the decisions taken as a whole, and I think that that rule may be said to be that, where a statement is in the nature of a confession, its character, as to whether it is voluntary or not is determinable from the provisions of Section 395 of the Code of Criminal Procedure.

If the contention is made that the statement was not voluntary, the test to be applied is the test indicated by that Section, that a statement is not involuntary merely because it is one that is made in the Course of a judicial proceeding, but, when a statement is made in the course of a proper kind of judicial proceeding, then, in order to make the statement receivable in evidence, the proceeding must conform to the statute regulating that particular proceeding, and it is inadmissible where the proceeding does not.

I have reached the conclusion in this case that the Coroner was acting under Section 783 of the Code of Criminal Procedure, which conferred upon Coroners certain limited powers exercisable by Magistrates ordinarily. Or, to put it more accurately, the Coroner was invested by that section with a few of the powers bestowed upon Magistrates.

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That the examination was one having for its object an inquiry as to whether there were sufficient reasons to justify the holding of the defendant, until the charge against him could be presented to and passed upon by the Grand Jury.

That the Coroners' proceeding was covered by the provisions foundin the Sections beginning with 188 and ending with 221-B of the Code of Criminal Procedure, and that, where there is no affirmative evidence to the contrary, the presumption will be indulged in by the Court that those provision were complied with.

That it appears affirmatively here that the Coroner did not inform the defendant, as required by Section 196, that any waiver ~~by~~ of the defendant in making in a statement could not be used against him on the trial.

That it appears affirmatively that the Coroner put certain questions which were not allowed by Section 198 to be put, and much of that which was said by the defendant was responsive to such questions.

That the statement of the defendant was one made under Sedtion 196 of the Code of Criminal Procedure; and that, inasmuch as the proceeding did not conform to the requirements of the law in the particulars mentioned, the statement is inadmissible in evidence; and, having reached the conclusion that it is inadmissible in evidence, it is stricken out, and having been struck out, the jury are now

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told that they will disregard it, if this case is submitted to them.

MR. ROSALSKY: Now,may it please your Honor, I desire to be heard on the motion to dismiss the indictment, with the statement cut, on the ground that---

MR. BROTHERS: At this time, the People having rested their case, and the Court having admitted the statement of the defendant, and at that time the People having clearly established a prima facie case for the consideration of the jury, and the motion made by defendant's counsel having been made after the motion to dismiss, and after he had opened his case, and sworn a witness, we urge at this time that counsel is out of order in moving to dismiss the indictment; and, if the Court desires to hear that motion at this time it would seem that , in the exercise of discretion, and in the interests of justice, the People should be allowed to reopen their case.

THE COURT: Counselor, I will say to you that I think your motion is made at a time when the Court cannot with propriety, entertain it. I will also say to you that your motion is doubtless predicated upon what you assume to be inadequacy of evidence on the part of the People, the statement of the defendant being omitted.

In order that you may know what the Court's position on that contention would be, the Court would hold, if your

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motion were made at a time when the Court could hear and entertain it that, apart from the statement said to have been made by the defendant, and which is now no longer in the record, there is a sufficiency of evidence to hold this defendant, and, more particularly in that connection by reason of that which the witness Ferrea testified to as having been said by the defendant, while the defendant was on a certain car.

So that I do not want you to feel that the Court, in refusing to hear you, is passing upon the rights of this defendant on a technicality.

MR. ROSALSKY: If that be the case, your Honor, with that statement of the Coroner out, I desire to rest on the People's case.

MR. BROTHERS: We desire, as I said, to reopen this case, because we rested in the honest belief that our case was complete.

THE COURT: I will undoubtedly give you the right, Mr. Brothers, to reopen your case.

MR. BROTHERS: How can counsel rest on the People's case, when he has a witness on the stand, under cross examination.

THE COURT: Well, what counsel means is that, at the conclusion of this witness's testimony, as he is at present advised, he is not disposed to introduce further testimony.

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MR. ROSALSKY: No, sir; I would stop now and withdraw all the evidence given on behalf of the defendant, and proceed with the case as it stands.

Of course, your Honor will appreciate the position that the defendant is placed in. That was one of the reasons for which I intimated to your Honor that the defendant would be put in a very peculiar position if he was forced to proceed with his defense.

THE COURT: I understand your position, counselor, perfectly. It is entirely conceivable that, if the Court had made the ruling which it has now made, at the conclusion of the People's case, you would have rested without the introduction of any evidence.

MR. ROSALSKY: Yes, sir.

THE COURT: The circumstance that the ruling was not made at that time arose from the fact that the Court's attention was not at that time specifically directed by the objection that was taken by Counsel to the point upon which the Court has now finally, upon investigation of the authorities, concluded to strike out the testimony. I do not say that your objection was not legally broad enough. As a matter of fact, it presented the point in a way which would permit you to raise it on an argument in the Appellate Court, but it was not sufficiently specific, as a practical matter, to direct my attention to that which I

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have since concluded was an objection which ought to have been sustained.

Now, I will let the People reopen their case, because I think that that is fair to them, in the light of the ruling, and I will consider, if that is agreeable to both sides, that the defense has introduced no testimony, if, after the People have rested their case finally, you conclude that you desire to introduce no testimony.

If, after the People have rested their case finally, you conclude that you desire to introduce testimony, then it will be considered that that which, in point of fact, has already been given to the jury, and in that way both sides will have their rights properly protected, as it seems to me. Is not that so?

MR. ROSALSKY: Yes, sir; that is satisfactory.

THE COURT: Is that satisfactory, Mr. Brothers?

MR. BROTHERS: Yes, sir.

THE COURT: Then we will proceed in that way.

MR. BROTHERS: Well, your Honor must appreciate that the witnesses that I would like to use will not be here until two o'clock.

THE COURT: Undoubtedly. Would you like to have a recess until two o'clock?

MR. BROTHERS: Yes, sir.

(The Court admonished the jury in accordance with

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Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock.)

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AFTER RECESS.

MR. BROTHERS: Do I understand that the case is with me, your Honor?

THE COURT: Yes.

MR. BROTHERS: Just as though I had not rested the case?

THE COURT: Yes. Were there any portions of the testimony which ought to go out in the light of the ruling which has been made in regard to the statement of the defendant?

MR. BROTHERS: I presume that all that Coroner Feinberg said would be included in the ruling, and the remaining testimony would be that of Officer DeMartini.

THE COURT: I think that Coroner Feinberg's testimony should remain in the record for the purpose of showing the circumstances under which the ruling was made.

MR. BROTHERS: Yes, sir. And what does your Honor say as to Officer DeMartini, the Interpreter. You will remember that he testified as to the position that was assumed by the defendant.

THE COURT: I will strike that out, as being part of the statement.

MR. BROTHERS: And that is all of his testimony that will be stricken out, then? His translations will remain, and the testimony of Mr. Moustachi, showing the correctness

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of the answers?

THE COURT: No. I think it may appear that there was testimony given as showing, or tending to show---introduced for the purpose of showing the accuracy of the translation.

MR. BROTHERS: Well, that leaves upon the record certain statements alleged to have been made by the defendant.

THE COURT: The jury will be instructed, if the case is submitted to them, that they will not take into consideration any statement that was made, on that occasion.

MR. BROTHERS: On that occasion?

THE COURT: Yes.

A N T H O N Y J . Q U E V E D O , of the 21st Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

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

Q Attached to what precinct on the 22nd of last September? A 21st.

Q Did that include the portions of New York City and County designated as 17th Street and Third Avenue? A Yes, sir.

Q Were you on post as a police officer between nine and

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nine thirty P. M. of that day? A Yes, sir.

Q Did you see any part of any shooting in that neighborhood? A I didn't see the shooting, no, sir.

Q Did you hear the shot? A No, sir.

Q Did you hear any commotion? A No, sir.

Q Did anything attract your attention so that you went to 17th Street? A A young man came up to me at 15th Street---

Q Somebody spoke to you? Where were you then? A 15th Street and Irving Place.

Q And were you on a fixed or patrol post? A A patrol post.

Q Do you remember that the 22nd day of September was Mayor Gaynor's funeral? A Yes, sir.

Q Was there a large number of police officers in that funeral procession?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Yes.

BY MR. BROTHERS:

Q At the hour mentioned, between nine P. M. and nine thirty, did you cover your usual post, or did you have a larger territory?

MR. ROSALSKY: The same objection.

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THE COURT: Allowed.

MR. ROSALSKY: Exception.

A I had a larger territory.

Q Did you arrive at the corner of 17th Street and 3rd Avenue after this man spoke to you? A Yes, sir.

Q And did you see the dead body on the sidewalk at 17th Street? A Yes, sir.

BY THE COURT:

Q When you arrived there, was there another police officer there? A I---

Q At the time you got to the place where the deceased was on the sidewalk, was there another police officer already there---yes or no? A I don't remember, your Honor.

BY MR. BROTHERS:

Q Do you remember seeing any other officer there after you got there? A Yes.

Q Who was that? A Why, detective Carlson was one.

Q He was not in uniform? A No, sir.

Q There were some others? A And Officer Hoffman and Officer Kepko.

Q In uniform? A Yes.

Q Did you take charge of the body? A Yes, sir.

Q Did you personally search the clothing of the deceased? A Yes, sir.

Q Did you find any revolver or weapon in the pockets of

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his clothes?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No, sir.

THE COURT: Fix the time of the search.

BY MR. BROTHERS:

Q When did you make the search? A In the station house. About three quarters of an hour after the shooting.

Q And the body was in your custody during the time between the time when you got there and the time when it was searched? A Yes, sir.

BY THE COURT:

Q Are you able to say whether or not any pistol was taken from the person of the deceased, from the time when you first saw the body until the moment when you made the search in the station house? A Yes, sir.

Q Was there any taken? A No, sir.

BY MR. BROTHERS:

Q Did you know the dead man? A No, sir.

MR. BROTHERS: I think that is all.

BY THE COURT:

Q About what time was it that you saw the deceased, about what hour? A About 8:35, I think it was.

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THE COURT: You may examine.

CROSS EXAMINATION BY MR. ROSALSKY:

Q When you arrived at the spot where the body was, was there a crowd around? A Yes, sir.

Q Did you look at the time---I withdraw that. How do you fix the time as being 9:25 P.M.? A Why, I took out my watch.

Q And that is the time that you also gave in at the station house? A Yes, sir.

Q And you gave that time in on the night of September 22nd? A Yes, sir.

Q And you did not make the search of the deceased's clothes until you arrived at the station house? A At the station house, yes.

Q Did you traverse the distance between 191 Third Avenue and the place where you found the body, at any time, looking to see whether any weapon was in the street? A After I returned from the post, which was about 11 o'clock.

Q You did what? A Walked in that neighborhood, looking to see if I could find a revolver.

Q Well, where did you look? A Why, I understood the actual shooting---

THE COURT: No, it is a plain question.

BY THE COURT:

Q Where did you look? A Well, between 191 Third Avenue

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and 134 East 17th Street.

BY MR. ROSALSKY:

Q This was in the night time? A Yes, sir.

Q And how long did it take you to look, about? A Why, I just couldn't say any specified time. I walked over the ground.

Q Did you look on both sides of the street? A Yes, sir.

Q Where else did you look? A No other place.

Q Did you spend more than five minutes looking for it? A Why, I suppose it took me a little over that time, probable a quarter of an hour.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all, sir.

BY THE COURT:

Q Whereabouts were you when somebody spoke to you? A 16th Street and Irving Place.

Q And the moment that that person spoke to you what was the first thing you did? A I got to 17th Street as quick as I possibly could.

Q On a run? A Yes, sir.

Q And you ran up Irving Place to 17th Street? A Yes, sir.

Q From 15th? A Yes, sir.

Q Which side of Irving Place were you on at the time?

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At the time somebody spoke to you---east or west? A On the east side.

Q You ran up along the sidewalk? A Yes, sir.

Q And when you got to 17th Street you turned down towards Third Avenue, still on the run? A Yes, sir.

Q And, as you turned the corner from Irving Place, and looked down 17th Street, towards Third Avenue, did you see any crowd? A Yes, sir.

Q And you ran to where that crowd was? A Yes, sir.

Q Now, you are unable to say whether, when you got there, there was or was not already some other Police Officer there? A I am not.

Q Was the body in the roadway, that is to say where the horses go, or on the sidewalk? A On the sidewalk.

Q And which direction was the head? A Head looking south; feet looking north, lying on his back.

Q And this crowd was about the body? A Yes, sir.

Q And you pushed your way through it? A Yes, sir; pushed my way through it.

Q How close were the people, if you know, who were nearest to the dead body at the time you saw it? A Why, they were practically walking over the body. You had to shove them away. (Illustrating) And, when I got there a few seconds after, or hald a minute, I noticed two other policemen there, and I pushed back the crowd and asked if an ambulance had

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been called.

Q How did you take the body to the station house? A In the patrol wagon.

Q And that arrived how long after you got to the scene? A Oh, I should say about half an hour or so.

Q And you went in the patrol wagon with the body? A Yes, sir.

Q Now, where is that station house located? A East 22nd Street, between Second and First Avenues.

Q On the uptown or downtown side? A On the downtown side.

Q You were assisted by somebody in putting the body into the ambulance? A. Officers Hoffman and Kopko.

Q And you were assisted by somebody in taking it out? A Yes, sir.

Q The same officers? A Officer Hoffman assisted me.

Q When you got to the station house, where did you first put it? A In the back room of the station house.

Q And where was it at the time you searched it? A In the back room of the station house.

Q And who was present when you did search it? A Why, some of the detectives were there. I don't remember the names.

Q Was the Captain there? A No, sir.

Q The Lieutenant? A No, sir.

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Q He was not? A I believe Lieutenant Flannelly of the Detectives was there.

Q And it was searched in the back room? A Yes, sir; in the back room.

THE COURT: That is all.

THE NINTH JUROR: Your Honor, I suppose I am to be the one that questions as to most things.

BY THE NINTH JUROR:

Q During the time that you were with that body did anybody identify this man? A No, sir.

Q Did anybody say they knew him? A No, sir.

MR. BROTHERS: The dead man?

THE NINTH JUROR: The dead man.

BY MR. ROSALSKY:

Q Did you look down in the cellars on Third Avenue to see whether any pistol was thrown down there? A I just walked along the street and looked down into the areaways.

Q Did you go down into any of the cellars? A No, sir.

Q Or areaways? A No, sir.

Q Or go into any of the doors? A No, sir.

Q And this was at night, about eleven o'clock? A Yes, sir; probably about an hour and three quarters after.

BY THE COURT:

Q Was anybody else engaged in the search for that pistol

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so far as you saw?

MR. BROTHERS: May I ask what pistol your Honor refers to?

THE COURT: I withdraw the question.

BY THE COURT:

Q Was anybody engaged in searching for a pistol besides yourself? A Detectives Carlson and Stapleton of the 21st Precinct. They got there about the same time we did.

THE COURT: That is all.

J A M E S M c H U G H , of 221 East 23rd Street, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where are you employed, Mr. McHugh? A Employed by the Nassau News Company.

Q Where is their place of business? A Twenty-fourth Street.

Q What do you do for them? A Carry "hickeys" for them, bundles of papers.

Q Do you work in the middle of the night? A Yes, sir.

Q That is, you carry the bundles of papers from the press room down to the wagons? A Yes, sir.

Q And then they deliver them? A Yes, sir.

Q And were you engaged in that work last year? A Yes, sir.

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Q Do you recall the day of Mayor Gaynor's funeral?
A Yes, sir.

Q Do you remember whether or not you were, on that evening, in the neighborhood of Third Avenue and 17th Street?
A Yes, sir.

Q In which direction were you going? A North.

Q On which side of the avenue? A On the east side of the avenue.

Q Did you pass 17th Street? A Yes, sir.

Q As you passed 17th Street, was your attention attracted to anything? A Yes, sir.

Q What was it? A Two women and two men, a young man and a young woman, and an old man and an old woman.

Q Well, what attracted your attention? A Well, they had some dispute, and they were talking loud in Italian, and I seen their hands going (Illustrating), and that drawed my attention to them.

Q Where did you firstsee them? A Near the pawnshop.

Q And do you know where that pawnshop is located with reference to 17th Street? A Yes, sir.

Q How far from 17th Street is it? A It is three doors from 17th Street.

Q Do you live in that neighborhood? A Yes, sir; 23rd Street.

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Q Where did you live on that night? A At 221 East 23rd, the same address as now.

Q And you had been by 17th Street and Third Avenue frequently? A Yes, sir.

Q Covering a period of how long a time? A Oh, I have passed there for the last six years.

Q Now, the pawnshop you say is three doors from 17th Street? A Yes, sir.

Q Now, I show you People's Exhibit 1, a diagram, and this represents Third Avenue (Indicating) and this represents 17th Street. (Indicating). Now, do you see on the diagram the pawnshop that you refer to? A Yes, sir.

Q And you say---was it in front of this pawnshop that these people were? A yes, sir; in the doorway, by the pawnshop, which leads upstairs in the house.

Q The doorway which leads to the stairway going upstairs? A Yes, sir.

Q And you saw them talking? A Yes, sir.

Q In what language? A Italian.

Q You don't understand Italian? A No, sir.

Q It was a foreign language, something that you could not understand? A yes, sir.

Q Now, what was the position of these people? A The young man was facing south.

Q Facing you? A Yes, facing me. And the older man

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was facing west.

Q And where was he standing? A In towards the building.

Q Yes. How close to the doorway was he? A He was right by the doorway.

Q Would you say the threshhold of the door? Do you know what I mean by that? A Yes, sir.

Q Could you see him plainly? A Well, the women have been standing in front of me.

Q Well, I will say the door sillor door step? A No, he was right close to the step.

Q And was he on the sidewalk? A Yes, sir.

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

Q How close to it? A Just right up to it.

Q Now, he stood at the doorway on the sidewalk close to the sill? A Yes, sir.

Q Where was the young man standing, with reference to the old man? A In front of him, on the sidewalk.

Q Was he in front of him? A yes, sir.

Q And how was he facing, the young man? A He was facing him sideways (Illustrating).

Q He was facing south towards you? A Yes, sir.

Q The young man was? A Yes, sir.

Q How was that young man dressed; what kind of clothes did he have on? A Well, Ididn't take exact notice of that. I

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didn't get near enough.

Q Did you observe whether his clothes were light or dark? A Dark.

BY THE COURT:

Q About how near to them did you get?

MR. BROTHERS: I will get to that in a moment, your Honor.

THE COURT: Question withdrawn.

BY MR. BROTHERS:

Q How close to the old man was the young man? A Close to him.

Q So that the older man could have touched him with his hand? A Yes, sir.

Q How far were you away from them at that time? A Twenty-five feet away, south.

Q Comingnorth? A Yes, sir.

Q Now, with reference to the young man, where was the young girl and where was the older lady standing? A They were standing south, with their backs to me, and they were all together in a group.

Q Now, who was doing the talking? A It seemed to me that the two women were doing all the talking.

Q And were they talking to each other, or to these men? A Talking to each other, so that the men could hear it.

Q And in a loud way? A Yes, in a loud way.

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Q Did you see any gesticulations of the hands? A Yes, sir.

Q Did you notice anything about the girl's hair? A Her hair was hanging down.

Q It wasn't dressed or braided? A No, sir.

Q Anything about her waist? A Yes, it looked as though she had just come out of the house. Her waist was over her skirt.

Q Now, was there anything about the older man that you noticed particularly? A That he had one arm and a peak cap.

Q And do you see the defendant here? Do you recognize him? A yes, sir.

Q Is that the man who stood by the door? A yes, sir.

Q And did you continue walking toward them? A Yes, sir.

Q Did you continue watching them? A Well, I just looked over and kept walking until---

Q They were right in front of you? A yes, sir.

Q And you kept going towards them? A Yes, sir.

Q And were there other people on the street, too? A Yes, sir.

Q And as you approached them, what was the next thing you saw or heard? A Well, when I got to within twenty foot of them, I saw the flash and heard the report of the

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shot.

Q Coming from where? A From the direction of this man (Indicating the defendant) towards the young man.

Q Did you hear any noise when you saw the flash? A Yes, and I saw the young man turn and put one hand over his mouth, and the other towards his stomach, that way, (Illustrating) and run across Third Avenue towards Seventeenth Street.

Q And what did you do? A I stood looking at him running.

Q And did you see what the girl and the old woman and the old man did? A I seen the young woman run after the young man. She ran in the same direction, as if she wanted to get after him, and the older woman tried to catch her and pull her back.

MR. ROSALSKY: I object to that, what the older woman tried to do, and move to strike that out.

THE COURT: Motion granted.

BY MR. BROTHERS:

Q Did the older woman go after the younger woman? A Yes, sir.

Q And did she overtake her? A Yes, sir; on the cornerof 17th Street and Third Avenue, and the two women there got in a dispute, and kept rolling in the street.

MR. ROSALSKY: I object to that, and I move to

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strike out that the two women got into a dispute.

MR. BROTHERS: That is consented to.

THE COURT: Motion granted. Strike it out.

BY MR. BROTHERS:

Q As the younger woman ran across Third Avenue, did you hear see anything? A No, sir, I didn't hear anything at all.

Q Any screaming? A The young woman was screaming.

Q Once or several times? A Several times.

Q Loudly? A yes, sir; loudly.

Q And did you see where the older man, the defendant here, went? A No, I didn't see him until after I crossed the street, and then he came over across Third Avenue to the women.

Q And did you see ultimately what he did? A Well, he come over there, as much as to try to take them away with him.

MR. ROSALSKY: I move to strike that out, "as much as to try to take them away with him."

THE COURT: Motion granted. Strike that out.

BY MR. BROTHERS:

Q Well, he came over to them? A Yes, sir.

Q And when he got over there what happened? A Well, he tried, as much as if he wanted to take the women away with him.

MR. ROSALSKY: I object to that and move to strike

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it out.

THE COURT: Strike it out. Motion granted.

BY MR. BROTHERS:

Q No, what did he do, not what he tried to do. Did he take hold of anybody or touch anybody? A No, sir; the older woman pushed him away, as though to make him go away.

Q Did her hands touch his body? A Yes, sir.

MR. ROSALSKY: I object to that.

THE COURT: I will leave in that she touched him, only.

BY MR. BROTHERS:

Q What gesture did the older woman make? A She pushed him this way. (Illustrating).

Q And where did he go? A He cut across 17th Street, going south towards 16th Street, and I didn't follow him any further.

Q Did you see where the man who had his hands on his breast went to? A He ran across Third Avenue and up 17th Street, on the north side, west, and then cut across to the south side, and he ran up then to a delicatessen and grocery store, and fell there.

Q Did you go up to where his body was? A Yes, sir.

BY THE COURT:

Q How soon after he fell did you go to the place where his body was? A About five minutes after.

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Q And at the time you got there was anybody there besides yourself? A Yes, sir; there was more there besides myself.

Q They ran there before you did? A Yes, sir.

Q Youwere not the first to get there? A No, sir.

BY MR. BROTHERS:

Q Now, did you see where the younger woman and the older woman went? A No, sir; I didn't. When I came out of the crowd, they had gone already.

Q They had gone away? A Yes, sir.

MR. BROTHERS: May we have the two witnesses brought in, as we did before, your Honor?

THE COURT: They may be brought in.

BY MR. BROTHERS:

Q Now,look at these two people carefully, but say nothing. Take your time and look at them carefully. Now they may go out.

Now, do you recognize either of those persons? A Yes, sir.

Q Did you see them on the night of the shooting, as you have described? A Yes, sir.

Q And are they the people that you have told us about? A Yes, sir.

Q The young woman and the older woman? A Yes, sir.

MR. BROTHERS: May it appear that Mrs. D'Angelo and

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and the daughter are broug t in?

THE COURT: Yes---what is the daughter's name?

MR. ROSALSKY: Nellie.

MR. BROTHERS: Yes, we know her as "Nellie", your Honor.

MR. ROSALSKY: Yes, Nellie, but that is not her name.

BY MR. BROTHERS:

Q Now, do you recall how you became a witness in this case? A Well, when I went over to the Lunch Room where I eat, at 5 Frankfort Street---

Q Is that in the Tribune Building? A Yes, sir.

Q And you work at night? A Yes, sir.

Q Do you recall, late Thursday night, being in that restaurant? A Yes, sir.

Q Was there any one in there whom you knew? A Yes, sir; a friend of mine.

Q Who is he? A Edward Rice.

Q And where does he work? A He works as a chauffeur.

Q Now, did you see him between the time of the shooting and last Thursday night? A Yes, sir.

Q And did you talk with him about the case? A Yes, sir.

Q And, while you were eating your lunch, did a Mr. Lindsay come in and sit down near you? A Yes, sir.

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Q And did you know who he was? A Not then; no, sir.

Q And did you have some talk with him about this case? A No, sir.

Q Did your friend? A Yes, sir.

Q He said something to Mr. Lindsay about the case? A Yes, sir.

Q And, as a result of what occurred last Thursday night--- a little after midnight, was it? A Yes, sir.

Q In that restaurant? A Yes, sir.

Q You were subpoenaed to appear, and were brought to the District Attorney's Office? A Yes, sir.

Q You didn't give your name to anybody on the occasion of the shooting? A No, sir.

Q And nobody asked you for it? A No, sir.

Q And this is the first time you have been in Court on this case? A Yes, sir.

Q And Saturday morning was the first time you told your story to any person in authority? A Yes, sir.

MR. BROTHERS: You may examine.

CROSS EXAMINATION BY MR. ROSALSKY:

Q How old are you? A Going on twenty-two years of age.

Q And how long have you been employed by the Nassau News Company? A A little over a year.

Q And where were you employed before that? A Sayles

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& Zahn, wholesale butchers.

MR. BROTHERS: Pardon me. I forgot to ask a question.

MR. ROSALSKY: Certainly.

BY MR. BROTHERS:

Q At the time that you saw the defendant standing at that doorway, on the left hand side of the man that was shot, was there any pther person standing near the old man outside of the three persons that you have described? A No, sir, I didn't see nobody there.

Q Nobody there? A No, sir.

MR. BROTHERS: Thank you, Mr. Rosalsky.

BY MR. ROSALSKY:

Q How long were you employed by Sayles & Zahn? A About nine months.

Q And where were you employed before that? A Doing odd jobs, on and off.

Q Did you go to school in New York? A Yes, sir.

Q What school did you go to? A ~~Epiphxxxy~~ Epiphany Parochial School, Catholic School.

Q And when did you leave school? How old were you when you left school? A Sixteen.

Q And what did you do ~~after~~ you left school? A Went to work then for a butcher.

Q What was his name? A Harry Gutwiller.

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Q And how long did you work there? A About six or seven months; something like that.

Q And where is his place of business? A He has moved out of there. His father's establishment is in 15th Street.

Q But where was his place of business when you were employed by him? A 335 Second Avenue.

Q Did you get employment after leaving him? A No, sir; I did not.

Q What was the next place of employent? A Zahn's.

Q Did you work for any one during the time that you worked for Gutwiller---betwedn the time you worked for Gutwiller, until you went to work for Zahn? A Off and on.

Q And how long after you had worked for Gutwiller did you obtain employment with Zahn? A About a year or so.

Q Wasn't it more than a year? A No, sir.

Q And during that time you didn't do anything but odd jobs? A Yes, sir.

Q What kind of odd jobs did you do? A Wherever I would be taken, Iwould work. Around 24th Street, the horse stables there. I used to get jobs taking horses wherever they wanted to be sent.

Q Have you ever been convicted of any crime? A No, sir.

Q Do you know any of the police officers? A No, sir.

Q Now, where were you on September 22nd, around nine o'clock? A I don't recollect the date.

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Q Well, where were you on the night that you heard the shooting? A I was going home.

Q Where had you been? A I had come up from downtown.

Q Where were you downtown? A Down here in Frankfort Street.

Q And what time did you leave downtown? A I left early in the evening.

Q About what time? A About half past five or six.

Q And where did you go after leaving downtown? A Well, I walked uptown slowly.

Q Was that the time that you---did you stop anywhere? A Yes, sir.

Q Where? A I went to the moving pictures, and come out, and then went direct home.

Q To what moving pictures did you go? A Fourteenth Street. I got up as far as Fourteenth Street and went in.

Q You left downtown between five and six o'clock, you say? A Yes, sir.

Q And then you walked up as far as 14th Street? A Yes, sir.

Q And you went direct to the moving pictures? A Yes, sir.

Q Now, to what moving pictures did you go? A To the Comedy.

Q Now, you didn't stop anywhere else? A No, sir.

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Q What time did you go to the moving picture show? A Well, I don't know what the exact time was.

Q Well, about what time was it? A About half past six.

Q And where is this Comedy Moving Picture house? A Broadway and 14th Street.

Q And how long did you remain at the Comedy Moving Picture house? A Until I had seen the show.

Q Until you had seen the show? A Yes, sir.

Q Well, how long did that take, about? A Oh, about an hour and ahalf.

Q And from there where did you go? A Icome down 14th Street, going east to Third Avenue, and went up Third Avenue.

Q And then you went straight up? A Yes, sir; straight up north.

Q And that was about the time you saw the shooting? A Yes, sir.

Q And you say you were on your way home? A Yes, sir.

Q Now, between what streets do you live---between what avenues do you live? A Second and Third.

Q About what time in the evening did you see the shooting? A A little after nine, a quarter after, or so. I don't know the time to the minute.

Q And what was the very first thing that attracted your attention; was it a pistol shot? A No, sir; the women.

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Q And when you first saw the women, had you reached 17th Street? A Yes, sir.

Q Had you crossed 17th Street? A Yes, sir.

Q And do you remember infront of what store you were when your attention was first attracted? A Near the saloon on the corner there, on 17th Street.

Q That is the first thing that attracted your attention? A Yes, sir.

Q Now, will you point out on this diagram whereabouts--- do you understand this diagram? A Yes, sir.

Q You have seen it before? A Yes, sir.

Q Where did you see it? A No, I haven't seen this one before.

Q You never saw this before? A No, sir.

Q Until it was shown to you, in Court? A Yes, sir.

Q Now, will you point out where you were, the first time you heard the noise of these women (Indicating) A There. (Indicating).

Q Will you mark that "Mc", for your own name? A (The witness marks on diagram).

Q And will you mark where you saw the group, the men and the women, standing at the door. A There (Indicating).

MR. ROSALSKY: What shall we mark this?

MR. BROTHERS: Well, I really don't know.

MR. ROSALSKY: Well, I'll mark it "G" for "Group".

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THE COURT: Now, the letter "G" stands for "Group".

MR. ROSALSKY: Yes, sir, and "Mc" stands for this witness.

BY MR. ROSALSKY:

Q Now, you want this jury to understand that you, as indicated on this diagram by your name, or initial "Mc", and the group of men and women were there, as indicated by the letter "G"? A Yes, sir.

BY THE COURT:

Q At the moment when you first saw them? A Yes, sir.

Q That is where they were when you first saw them? A Yes, sir.

BY MR. ROSALSKY:

Q And you were attracted by loud talking? A Yes, sir.

Q And you said to the District Attorney that you were about twenty-five feet away at the time? A Yes, sir---about.

Q The entrance to this building, 191 Third Avenue, is nearest 18th Street? A Yes, sir.

Q The extreme end of the building? A 191?

Q Yes? A No, sir; that's nearer 17th Street, but the entrance is near 18th Street, the entrance to the building.

Q And this group at that time were standing in front of the entrance? A Yes, sir.

Q And you were about in the middle of the saloon, in

front of 187 Third Avenue; is that right? A Yes, sir.

Q And there was another house, a cigar store, between the saloon and the corner? A Yes, sir, Barber and cigar store.

Q Now, you could not make out what they were talking about, could you? A No, sir.

Q You didn't know what language they were talking? A Italian, they were talking, but I couldn't understand them.

Q Could you hear them talking Italian from where you were when you first saw them? A Yes, sir.

Q And did you continue to look in the direction of where the people were? A Yes, sir.

Q Or did you look in any other direction? A No, sir; I was going in that direction, and I put my eyes in their direction.

Q And you continued to look? A Yes, sir.

Q You didn't turn away? A No, I didn't turn my head away. I thought they had some dispute.

MR. ROSALSKY: I object to that and Imove to strike out what he thought.

THE COURT: Motion granted. Strike it out.

BY MR. ROSALSKY:

Q Well, the next thing you heard was a flash, is that right? A No, I heard the report of the shot.

Q Did you see the flash? A Yes, sir.

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Q Was there anything that attracted your attention at the time that you first heard the talking, to recall to your mind the distances ~~of~~ that all of the people who were in that group were from one another? A No, they were all together.

BY THE COURT:

Q Did you keep your eyes constantly fixed on this group from the moment when you first saw them until the moment that you saw the flash? A No, sir.

Q In other words, there were moments when your eyes were not upon any one of the group? A Yes, sir.

BY MR. ROSALSKY:

Q Were you attracted by the report or the flash? A By the flash.

Q Did you see the flash? A Yes, sir; and I heard the report after.

Q What did you hear first? A I saw the flash and then I heard the report.

Q The flash and then the report? A Yes, sir.

Q You are sure about that? A Yes, sir.

Q And the moment that you heard the flash---

THE COURT: Saw it.

MR. ROSALSKY: Thank you, sir.

BY MR. ROSALSKY:

Q The moment you saw the flash---I withdraw that. Had you been looking in the direction that the flash came from? A Yes, sir.

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Q And how far away---I withdraw that. How was the defendant standing with respect to you? A Facing west.

Q At the time you saw the flash? A Facing west.

BY THE COURT:

Q About how far away from you was the defendant at the moment when you saw the flash? A About twenty feet.

BY MR. ROSALSKY:

Q And in front of what store were you when you saw the flash? A I was coming up then towards the barber shop, the barber and cigar store.

Q Well, had you been in front of the cigar store at the time you saw the flash? A Yes, sir.

Q How far in front? A Well, just a few feet in front of it.

Q And how was the deceased at the time you saw the flash? Where was the defendant at the time you saw the flash? A Idon't know what you mean, the deceased.

Q The dead man.

BY MR. BROTHERS:

Q The young man? A He was standing facing south, sideways to the old man.

BY MR. ROSALSKY:

Q Did you see whether the dead man did anything at the time? A No.

Q Did you see? A Yes, I didn't see him do anything.

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Q Did you watch his movements before you saw the flash? A No, sir.

Q You didn't watch his movements? A No, sir.

Q Did you watch his movements after you saw the flash? A Yes, sir; just as I heard the shot.

Q But before you saw the flash you didn't watch the movements of the dead man? A No, He had been standing there when I first seen him.

Q Were your eyes centered all the time on him all the time? A Yes, sir.

Q And about how far apart were they, the two men, the old man and the young man? A About that far apart. (Illustrating).

MR. BROTHERS: Indicating about twelve or thirteen inches?

MR. ROSALSKY: Yes.

BY MR. ROSALSKY:

Q And you say that the dead man was---in what direction was the dead man facing? A South

Q Was his back to the defendant? A No, sir; sideways to the defendant.

Q And where were the women? A In front of the old man and the young man, with her back towards me, facing north.

Q Facing north? A Yes, sir.

Q With their backs turned towards you? A Yes, sir.

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Q Now, they were nearer to you than the dead man? A Yes, sir.

Q Now, are you sure about that position? A Yes, sir.

Q Now, let me see if I understand you? As you were coming along Third Avenue---A Yes, sir.

Q You heard some noise, some loud talking? A Yes, sir.

Q And you say that the women were doing the talking? A Yes, sir.

Q And at that moment you were in front of the saloon? A Yes, sir.

Q And this was at the entrance to the building---this group was in front of the entrance to the building 191 Third Avenue, where the pawnshop is? A Yes, sir.

Q And you want the jury to understand that you knew who was doing the talking at that time? A Yes, sir.

Q Sure about that? A Yes, sir.

Q Now, nearest to you, in front of this dead man, --- the old man and the young man, you say that these two women were standing? A Yes, sir.

Q And then the women had their backs to you? A Yes, sir.

Q And in front of the women was the defendant and the dead man? A Yes, sir.

Q And they were all together that way? A Yes, sir.

Q And you saw the flash? A Yes, sir.

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Q And you saw the movements of the defendant---of the deceased, of the dead man? A He was just standing in the position when I first saw him when I heard the shot.

Q Now, after you saw the flash and heard the shot, you then saw the dead man run; is that right? A Yes, sir.

Q And you saw the girl run? A Yes, sir.

Q And you saw the old lady run? A Yes, sir.

Q Where didnthe old man go at that time? A I didn't keep my eye on the old man. I went across the street in the same direction that they had gone.

Q Did you see the old man at the moment of the shooting? A No.

BY MR. BROTHERS:

Q Do you understand the question? A Did I see him at the moment that I heard the shot?

BY THE COURT:

Q Now, you saw the old man, at the moment that you saw the flash? A Yes, sir.

Q And you saw the old man at the moment that you heard the report? A Yes, sir.

Q And then, as I understand you, you watched the younger man go across Third Avenue? A Yes, sir.

Q And you watched the women go across Third Avenue? A Yes, sir.

Q And you went across after the women? A Yes, sir.

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Q And you lost sight of the old man for a brief space of time? A Yes, sir.

Q And, then you saw the old man again, he was over on the other side of Third Avenue, near the point to which the women had gone? A Yes, sir.

BY MR. ROSALSKY:

Q Now, did you hear the young girl scream? A Yes, sir.

Q While she was running? A Yes, sir.

Q Were you following her? A No, I followed after them. I didn't follow right after her.

Q Well, how near the little girl was the old lady at the time, following the dead man? A Right on top of one another.

Q And how far away was the dead man from them? A He was lying up away away from them.

Q And where was he lying? A On the sidewalk in front of a delicatessenand grocery store.

Q Well, didn't the little girl run after the dead man? A She ran, but she couldn't get up that far. The old woman had caught her on the corner.

Q And did you see the dead man run? A Yes, sir.

Q And did you see the dead man reach the westerly side of Third Avenue? A Yes, sir.

Q Did you see the dead man go by the westerly side of Third Avenue into 17th Street? A I seen him cut acros 3rd

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Avenue towards 17th Street.

THE COURT: I will interrupt you for a moment, Mr. Rosalsky. Will you allow me to have that diagram. You are not using it for the moment, are you?

MR. ROSALSKY: No, sir.

BY MR. ROSALSKY:

Q Did you at any time see the little girl following the dead man after the flash of the pistol? A Yes, sir.

Q How far away from the dead man was the little girl at the time you saw the little girl following him? A Just as he got on the other side of Third Avenue, she went after him.

Q And did you see the little girl and the mother fall? A Yes, sir.

Q At that time had there been a large crowd around? A Not exactly a large crowd.

Q Well, about how many people? A Twenty people.

Q On Third Avenue? A Yes, sir.

Q About nine or nine thirty o'clock, after hearing a pistol shot? A Well, just for that minute. They come after a few minutes.

Q Well, were there other people running at the time the old lady and the girl were running? A Yes, sir.

Q Lots of people were running? A Yes, sir.

Q And were you in the crowd running with them? A Yes,

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sir.

Q And did you see the little girl and the old lady fall? A Yes, sir.

Q After they fell---where did they fall? A At the corner of 17th Street.

Q On the uptown or downtown side? A On the uptown side.

Q Did they fall on the sidewalk or on the middle of the street? A From the sidewalk into the gutter.

Q And where did they go after they fell? A They picked themselves up again.

Q I know, but where did they go? A I didn't watch where they went to.

Q You didn't watch that at all? A No, sir; I went up to the dead man then.

Q Who did? A I did.

Q And when they got up after the fall did you still see them? A Yes, they were standing there until the old man came. The old woman was holding the young girl to keep her from going up there.

MR. ROSALSKY: I object to that and move to strike that out.

THE COURT: Yes, strike that out, "to keep her from going up there."

BY MR. ROSALSKY:

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Q Now, you say you saw the old lady do something? A Yes, sir.

Q What did you see her do there? A Push the old man away. (Illustrating).

Q Push the old man away? A Yes, sir.

Q And how near to her were you at that time? A Standing there with the rest of the people, right on top of them.

Q When was the first time that you ever told this story to any one before going to the District Attorney's Office on Saturday? A On Saturday was the only time, outside of my friend.

Q And you never told that story before? A Outside of my friend.

Q Whenn did you tell this story to your friend? A The night after the shooting, or the next morning, rather.

Q And did you tell him all these details that you have told here? A Well, not exactly every detail, I didn't tell him.

Q Did you tell him about pushing the old man away? A Yes, sir.

Q You remember that very well? A Yes, sir.

Q Did the District Attorney tell you---did the District Attorney ask you when you were down here: "Did you see the old lady push the oldman away, or make a motion to him?" A No, sir; I told that to him myself.

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Q Oh, you told him? A Yes, sir.

Q He didn't tell you that one of the witnesses in the case testified to that? A No, sir; he didn't tell me anything.

Q He didn't tell you that the little girl and the old lady fell down? A No, sir; I had seen that. I saw that myself and I told it myself.

Q He didn't say that there was testimony in the case of a witness to that effect? A No, sir.

Q You told him all that you have told here to-day? A Yes, sir.

Q You remembered everything? A Yes, sir.

Q Did you see where the old man went? After you saw the old lady make some motions to him? A Yes, sir; he cut across 17th Street, going south towards 16th Street, and I didn't follow him any further to see where he went.

Q And you saw him shoot? A Saw him shoot? Yes, the shot came from where he was standing.

Q Did you see him have a pistol in his hand? A No, sir; I didn't see any pistol.

Q And you knew that the old man was in the group where the shot had been fired? A Yes, sir.

Q And you saw the old woman? A Yes, sir.

Q And you saw him again on the corner? A Yes, sir.

Q And you didn't follow him? A ~~Xxx~~ No, sir.

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Q Instead of that, you went to where the dead man was?

A Yes, sir.

MR. ROSALSKY: That's all.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q And was there a reason why you didn't go near the old man? Did you have any particular reason in avoiding the old man? A No, sir.

MR. ROSALSKY: I object to that.

THE COURT: Well, he says "No, sir", and the answer will stand.

MR. ROSALSKY: Exception.

BY MR. BROTHERS:

Q Now, at the time the old woman and the young girl had hold of each other on the other side of Third Avenue, will you describe what they were doing at that time? A Well, they were fighting one another. (Illustrating).

MR. ROSALSKY: I object and I move to strike out the answer.

BY MR. BROTHERS:

Q Was one pulling the other? A Yes, sir; the old woman had hold of the girl and was pulling her away.

MR. ROSALSKY: I object to this and move to strike out the preceding answer.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

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A She had ahold of her arm, pulling her. (Illustrating) As if she didn't want her to go up there.

MR. ROSALSKY: I object, and I move to strike that out.

THE COURT: Motion granted. Strike it out.

BY MR. BROTHERS:

Q Well, who had hold of the other's arm? A The old woman had hold of the young girl's arm, and she pulled, and the young girl pulled away and they fell down.

Q Now, the Assistant District Attorneys that you told your story to were Mr. Breckenridge and myself? A Yes, sir.

Q On Saturday morning last? A Yes, sir.

MR. BROTHERS: I think that's all.

MR. ROSALSKY: That's all.

W I L L I A M A. C A R L S O N, being recalled by the District Attorney, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Officer Carlson, when you took up the investigation of this case first, you didn't know who the dead man was; did you? A No, sir; I did not.

Q Did you take fingerprints of that dead body in the morgue? A I did, sir; on September 23rd.

Q And with those finger prints, did you consult the Police Records at Headquarters?

MR. ROSALSKY: I object to that as immaterial, ir-

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relevant and incompetent.

THE COURT: Well, I don't know the purpose, but I will receive it.

MR. ROSALSKY: Exception.

A Yes, I did.

BY MR. BROTHERS:

Q At Police Headquarters there are records of criminals, by records of finger prints? A Yes, sir.

Q Did you find any record of the finger prints of the dead man? A No, sir; I did not.

MR. ROSALSKY: I object and I move to strike out the answer, if your Honor please.

THE COURT: Strike it out.

MR. BROTHERS: That is all, sir. Now, we have another witness, your Honor, Mr. Lindsay, who works at night, and it is difficult to get him here, and I have telephoned, ten minutes ago, and they said he would be here in fifteen minutes. Iwould like to rest now, with the privilege of calling him as soon as he comes.

THE COURT: Well, I will hear him as soon ashe comes.

MR. BROTHERS: I think he will be here in a few minutes. There is another matter too, your Honor. I would like to offer in evidence People's Exhibit 8 for Identification, being a certificate of marriage, the marriage of the

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daughter of the defendant to Salvatore Croccolisi. We offer it in evidence.

MR. ROSALSKY: We object to it as immaterial, irrelevant and incompetent.

THE COURT: I will receive it.

(It is marked People's Exhibit 8 in evidence.)

C A R L C. L I N D S A Y, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Where do you live, Mr. Lindsay? A 411 Fourth Avenue.

Q And your place of business, Mr. Lindsay? A Tribune Building.

Q And what is your business? A Dictaphone transcribing.

Q And are you employed by Mr. Beard, the Official Stenographer of this Court, to transcribe the shorthand minutes into typewriting? A I am.

THE COURT: Now, please speak so that everybody hear you, and face the jury.

BY MR. BROTHERS:

Q And have you been engaged on that work since the 4th of March of this year? A Yes, sir.

Q And the record which I show you is your work, is it? A Yes, sir.

Q And that work you do at night? A Yes, sir.

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Q And the minutes are delivered to me in the morning, and to other persons? A Yes, sir.

Q Do you recall being in the White House Lunch Room, on the 6th of March, in the middle of the night? A I do.

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

MR. BROTHERS: Stand up, Mr. McHugh.

BY MR. BROTHERS:

Q Did you see that young man on that occasion? A Yes, sir.

Q And did you have a conversation with another individual in his presence? A I did.

Q In the course of that conversation did you mention the fact that you were transcribing the minutes of this case?

MR. ROSALSKY: I object to that as immaterial irrelevant and incompetent.

THE COURT: I think I will sustain the objection.

BY MR. BROTHERS:

Q Or was the case that you were working on at that time discussed?

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

THE COURT: Sustained.

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MR. BROTHERS: I only want to show why we did not bring this witness earlier, and show that it was because of this gentleman's telling us of the witness.

BY MR. BROTHERS:

Q Now, you had some conversation there? A Yes, sir.

Q And you telephoned our office, did you not?

MR. ROSALSKY: I object to that.

THE COURT: Sustained.

MR. BROTHERS: Well, your Honor, counsel may argue about it. Now, why should our mouth be closed, if he argues that this witness should have been produced earlier. I am trying to show why we didn't produce him, because we didn't have him.

THE COURT: You have produced the witness in a perfectly timely and orderly way, and, if necessary, the jury will be so pointedly instructed.

MR. BROTHERS: Thank you, sir. And that is our entire case, with the exception of Mrs. Theophile, the landlady with whom these people lived on Third Avenue. Iam informed that she is ill now, and I could not call her up to the present time, because she is too ill to leave the house. But, it is possible, before the close of the case that she will be able to come, and, if so, I claim the privilege of calling her then, and, with that reservation, I rest the People's case.

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MR. ROSALSKY: And I renew my motions made at the close of the People's case, as if now made in every respect.

THE COURT: The motions are denied, and you have an exception.

MR. ROSALSKY: Exception. In view of this additional testimony, your Honor, the testimony of the little girl will remain in the case as originally, and also the sister. Now, if your Honor will pardon me, I have a number of character witnesses here that I would like to call before the District Attorney proceeds with the cross examination. I have had several character witnesses waiting here for several days, and may I call them now?

THE COURT: You may.

M A R I O G U G G I N O , of 219 Avenue A, a witness called on behalf of the defense, being duly sworn and examined through Mr. Moustachi, the Official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your profession, Doctor? A I am a preacher in the People's Home Church.

Q Do you know the defendant Pietro D'Angelo? A I knew him about twenty years ago in Bivorna, in my native country, where he was a miller.

Q And have you known him also in this country? A I knew him about ten years ago in this country, when I came, about

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eight or ten years. I don't remember if he came before or after me.

Q Well, since he has been in this country have you met him? A Yes, sir.

Q And do you know other people that know him? A Yes, sir; I know many other persons.

Q And what is his reputation for truthfulness and peacefulness? A He is a good man. Hewas a good working man in Italy, and I knew him as a good workman here.

MR. BROTHERS: Well, you were asked what the reputation for truthfulness and peacefulness of the defendant was, and you haven't answered that question.

THE COURT: Yes, I will strike out the answer. The question may be repeated.

(It is repeated by the stenographer).

A Yes, his reputation was very good.

CROSS EXAMINATION BY MR. BROTHERS:

Q Did you ever hear it said that he had shot a man on Third Avenue? A I heard it in January, after I came back from Italy.

Q You were in Italy at the time? A Yes, sir.

F E L I P P O C A S T E L A N N O, of 322 Rivington Street, a witness called on behalf of the defense, being duly sworn, testified through the official Interpreter, Mr. Moustachi, as follows:

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DIRECT EXAMINATION BY MR. ROSALSKY:

Q Do you know the defendant, Pietro D'Angelo? A Certainly I know him, Iknow him for many years.

Q How many years do you know him? A More than thirty years.

Q Do you know other people that know him? A Yes, the whole village of Pivano knows him.

Q What is your business? A I am a barber.

Q And what is the defendant's reputation for truthfulness and quietness? Good or bad? A Very good.

MR. ROSALSKY: That is all. Your witness.

CROSS EXAMINATION BY MR. BROTHERS:

Q Does Vincenzo Martolaro work for you? A He was a barber in Pivano, in my own country.

Q Now, I am asking you if you know Vincenzo Martolaro? A Yes, sir.

Q He is a son in law of Pietro's, isn't he? A Yes, sir.

Q And he is a barber, too? A Yes, sir.

Q Does he work with you? A No, sir, he works on his own account, in his own barber store.

MR. BROTHERS: That is all.

MR. ROSALSKY: That is all.

S A L V A T O R E P A D R O G I N O , of 7 Goerck Street, a witness called on behalf of the defense and being duly

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sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your business? A Barber, boss barber.

Q Do you know Pietro D'Angelo? A Yes, sir.

Q How long have you known him? A Thirty one years in America and the balance in Italy?

Q And how many years in Italy? A Thirteen years here and twenty in Italy.

Q Do you know other people who know the defendant? A Yes, sir.

Q What is his reputation for truthfulness and quietness? A Very good.

MR. ROSALSKY: Your witness.

MR. BROTHERS: No questions.

I G N I Z I O B O L A R O , of 554 Grand Street, being duly sworn and examined through the same Official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your business? A I am in the wholesale business.

Q What kind of wholesale business? A Grocery and liquor business.

Q And where is your place of business? A 554 Grand Street.

Q And do you know the defendant, Pietro D'Angelo? A I

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know him here and also I know him in Italy.

Q And how many years did you know him altogether? A Twenty years.

Q And do you know other people who know him? A Oh, yes.

Q What is his reputation for truthfulness and quietness? A Good, and everybody says it's good.

CROSS EXAMINATION BY MR. BROTHERS:

Q Did you hear that he had shot a man on Third Avenue? A I heard it, yes.

Q And you think still he is a good man, do you? A Sure, because it was right to shoot him.

Q Yes, and you were there and saw it; were you? A No, no.

Q Did you ever talk to him about it?

MR. ROSALSKY: I object to that as immaterial.

A No.

BY MR. BROTHERS:

Q And where did the defendant live during last September? A New York.

Q Whereabouts in New York? A He used to live in Goerck Street before.

Q Did he ever live in Brooklyn? A I don't know, I don't know whether he lived in Brooklyn.

I G N A T Z O S P A L INO, N of 550 Grand Street, a witness

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called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your business? A Barber.

Q Do you know the defendant Pietro D'Angelo? A Yes, sir.

Q How long have you known him? A Twenty years.

Q Do you know other people who know him? A Yes, sir.

Q What is his reputation for truthfulness and quietness, good or bad? A Good.

MR. ROSALSKY: That is all.

MR. BROTHERS: No questions.

S A L V A T O R E C A N N E L L O , of 7 Goerck Street, being duly sworn and examined through the official Interpreter, testified as Follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your business? A Fruit stand

Q Do you know the defendant Pietro D'Angelo? A Yes, sir.

Q How long have you known him? A More than thirty years.

Q Do you know other people that know him? A Yes, sir.

Q What is his reputation for truthfulness and quietness? Good or bad? A All good.

MR. ROSALSKY: That's all.

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MR. BROTHERS: No questions.

C A R M I N E C A N E L L O , of 66 Goerck Street, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q What is your business? A Grocery store.

Q Do you know the defendant Pietro D'Angelo? A Sure, I know him.

Q How many years do you know him? A Twenty-five years.

Q Do you know other people who know him? A Yes, sure I know.

Q What is his reputation for truthfulness and peacefulness? A Very good, a good man.

MR. BROTHERS: No questions.

N E L L I E C R O C C O L I S I , being recalled for further cross examination, testified as follows:

MR. ROSALSKY: Your Honor, it is understood that the testimony that this witness gave before stands, and that the District Attorney continues the cross examination?

THE COURT: Yes.

CROSS EXAMINATION (Continued) BY MR. BROTHERS:

Q Now, Nellie, you were married on the 15th of September, 1913, at the City Hall, were you not? A I remember the month but not the date.

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Q And you called Salvatore "Toto", did you not? A Yes, sir.

Q Everybody called him that, didn't they? A Yes, sir.

Q Now, Toto was a friend of your brother in law's, of Vincenzo, the barber? A No, sir.

Q Now, didn't you tell Mr. Breckenridge that? A (No answer).

Q Did you tell him that? A (No answer).

Q Did you tell him that? Do you remember being asked, "How long had you known Salvatore Croccolisi when you were married to him?" And you said, "All summer". Is that right? Did you tell him that? A I didn't know him all summer.

Q Is it hard for you to remember those things? A I didn't know him all summer, but I knew him since Gasparino brought him.

Q Were you asked this question: "Q Where did you meet him? A He used to come up to the house." Is that right? A Yes, sir.

Q Now, is that right? Did you say "He used to come up to the house?" A Yes.

Q And you were asked this question: "Whose friend was he?" "A I don't know." "Q Salvatore? A Yes, a friend of my brother in law. Q Which one? A The barber, Vin-

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cenzo." Is that true? That you told Mr. Breckenridge that Toto was a friend of your brother-in-law's? A (No answer).

BY THE COURT:

Q Did you say that to Mr. Breckenridge, Nellie? A (No answer).

(The question is repeated through the Interpreter)

MR. BROTHERS: She can answer in English perfectly.

A I think I did say it, but because I was forced to say it.

Q Now, was it true that he was a friend of Vincenzo's?

A No, sir.

Q And who forced you to say that? A Well, everybody used to tell me to speak, and say just what they wanted.

Q Well, did Mr. Breckenridge force you, this gentleman here (Indicating) Did he know that your brother in law was Vincenzo Martelaro? A Who did?

Q Mr. Breckenridge. Do you know whether he knew that?

A I don't know.

Q Is that the answer, the only answer you can give us on that? Didn't you want to tell Mr. Breckenridge the truth?

A I don't understand you.

Q Well, when youwere talking with Mr. Breckenridge did you want to tell him the truth? A I didn't tell him the truth when I said that Salvatore was a friend of my brother-in-law's.

Q Well, why didn't you? A Because, at that night, I

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didn't know what I was talking. I was bewildered.

Q And, after saying that, you said: "Q Which one? A The barber, Vincenzo", and then you were asked the question, "Q Who married your sister Maria? A Yes, sir." Is that right? Did he marry Maria? A Yes, certainly.

Q You understood that question and you were not forced to make an untruthful answer, were you? A No, sir.

Q Now, you told us, last week, that you went over to Brooklyn to see your father in the store on the day that Gaspare was shot; is that right? A Yes, sir.

Q And do you remember I asked you whether you told Mr. Breckenridge as I am going to read to you, and will you pay close attention:

"Q Did you, your father and mother come over from Brooklyn together? A When?

"Q That night hr was killed? A In the day time I went over to see my mother. So then my mother was working in New York. She was working in a cloak shop. I went to my cousin's house, I wouldn't go to Brooklyn, because it was too far for me."

Now, what I want to know is whether you said that, on Saturday night, December 13th, to Mr. Breckenridge. Did you? Yes or no? A I didn't say that.

Q You didn't say that? A No, sir.

Q And then he asked you, "Q What cousin was that? A

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My aunt's daughter that lives in Rivington Street. Then I went home, after I saw my mother, home to 17th Street and Third Avenue." Is that true? Did you say that? A I went over to my mother in the night time, when I went to speak to my father. Ididn't see my mother all day.

Q Did you see your mother at all that day up to the time of the shooting? A No, sir.

Q And where was your mother working that day? A Well, she was working every time in the shop.

Q And where did she live on that day? A Well, she was living in Brooklyn, and she came down to New York to work.

Q Yes, she lived in Brooklyn? A Yes, sir.

Q Now, you testified, last Friday that you stayed three nights with Gaspare. Is that correct? A Yes, sir.

Q And was that at 191 Third Avenue, over the pawnshop? A Yes, sir; 191.

Q You stayed there three nights with him, did you? A Yes, sir.

Q Do you remember telling Mr. Breckenridge that you were only there one night with him? A (No answer).

Q I will read you the question.

BY THE COURT:

Q No, what is her answer.? A No, I said more than one night.

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BY MR. BROTHERS:

Q "Q How long had you been living there with Gaspare at the time of the shooting? A One night. Then I lived with Salvatore." Did you make that answer to Mr. Breckenridge? A No, because I couldn't say that, because it wasn't one night that I stayed with him.

Q Then the question was asked, and you answered: "Q You left your home? A Yes, sir. Q How long had you been away from home? A Three months." Did you make that answer? A (No answer).

(The question is repeated through the Interpreter)

A No, I left before the homicide, and it was in September, and so how could I have been away three months from home?

Q "Q You lived with him three months? A Not with him, with Salvatore. Salvatore used to pay the rent." Did you make such an answer to that question? Answer yes or no. A (No answer).

(The question is repeated through the Interpreter)

A I don't think I said three months with Salvatore.

BY MR. BROTHERS:

Q Well, you did live with Salvatore before you married him, didn't you? A Yes; when Gasparino brought him.

Q Now, you don't knowwhat day it was he took you away from home, as you claim; do you? A Who? Gasparino?

Q Yes? A The first of September.

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Q Now, you have told us that your mother wrote a letter to some Judge in Italy and got an answer that Gaspare was married and had two children, is that right?

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

MR. BROTHERS: Well, she says she told her father that.

THE COURT: Does it appear among the statements made by her to her father?

MR. BROTHERS: Yes, sir; it does.

THE COURT: What page, Mr. Brothers?

MR. BROTHERS: I can't turn to it now, and, if your Honor is in doubt about it, I will pass on to something else. It isn't very important.

BY MR. BROTHERS:

Q Now, did you tell Mr. Breckenridge that?

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

THE COURT: Well, as affecting credibility, I think I will allow it.

MR. ROSALSKY: Exception.

A I told him that my mother wrote a letter inquiring whether Gaspare was a married man, but whether my mother got an answer or not I don't know.

Q Well, didyou tell Mr. Breckenridge that a letter came

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from a judge in Italy saying that he had two children and wasmarried?

MR. ROSALSKY: Objected to as before.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A I don't remember.

BY MR. BROTHERS:

Q You knew that Gaspare was married in New York, didn't you? A I did not.

Q Didn't you know that he wasmarried at all? A No, sir.

Q When his wife said he was married, you would not believe her, would you? A I wasn't home when the wife came home.

Q Didn't you testify, last Friday, that you were there when she came and said that.

MR. ROSALSKY: I object to that. There was no such testimony.

MR. BROTHERS: Well, may be I am wrong about it, and I will withdraw it.

BY MR. BROTHERS:

Q Now, did you work at all during that summer? A When I was with Gasparino, do you mean?

Q No, at any time during the summer? A Where? In the house or the factory?

Q Well, in the factory? A Yes, I worked.

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Q Where? Where was the factory? A 6th Avenue and 27th Street.

Q Well, what kind of work did you do? A Girls' jackets.

Q How long did you work there? A I can't remember.

Q Were you there a week or two weeks? A More than two weeks.

Q Were you there a month? A I can't remember. I wasn't countin the days.

Q What month was it? A When I started?

Q Yes? A I am very poor in my memory, I can't remember the month.

Q Now, Friday you told us with great detail all that you told your father. Is it possible that your memory failed you in any particular in that manner.

MR. ROSALSKY: I object to that question, if your Honor please.

(The question is repeated through the Interpreter)

A It's such a long time since I worked last that I don't remember.

BY MR. BROTHERS:

Q All right. Now, you say you were living in Brooklyn when Gaspare took you away? A Yes, sir.

Q Now, what time of day was it that he did that?

MR. ROSALSKY: I objects to that as immaterial, irrelevant and incompetent.

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And, if your Honor please, within the Harris decision---

THE COURT: It is testing memory.

MR. ROSALSKY: But it is in violation of the decision in the case of the People against Harris.

THE COURT: I think it is allowable, as testing the memory of the witness, and it is received for that purpose and that purpose alone.

MR. ROSALSKY: Exception.

A Six o'clock in the afternoon.

BY MR. BROTHERS:

Q Was there any one home? A No, sir.

Q You were home allalone? A Yes, sir.

Q Did you take any clothes with you when you left? A No, sir.

Q How long had you been wearing long dresses? A I have a deformity of my limbs, and, therefore, I am compelled to wear long dresses, and it's quite a long time since I have had long dresses.

Q Now, how did you come from the house in Brooklyn to Third Avenue?

THE COURT: On what occasion?

BY MR. BROTHERS:

Q On the occasion when Gaspare took you away.

MR. ROSALSKY: The same objection.

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THE COURT: I think I will sust-in the objection, because we concluded not to go into the details.

MR. BROTHERS: Very well, sir. I don't want to be unduly long.

BY MR. BROTHERS:

Q Let me ask you this question, which Mr. Breckenridge put to you:

"Q The night Gaspare was killed, you had been to call on your mother? A Yes, sir; in the day time."

Does that recall to your mind that you reall y did go to see your mother that day? A The day before?

Q No, that day? A I didn't see her that day.

BY THE COURT:

Q In other words, on the day of the shooting, you didn't see your mother until you saw her at the time the shooting was done; is that it? A Yes, sir.

BY MR. BROTHERS:

Q You told us, Friday, that you saw your father down on the sidewalk, the night of the shooting, is that right? A After he was shot?

Q No, before the shooting? A When he came with my mother, to take me.

Q And that was in the block north of 17th Street on Third Avenue? A Yes, sir.

BY THE COURT:

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Q And when you saw your father and mother coming, as I understand you, you were out on the sidewalk in front of 191 Third Avenue, talking with Gaspare; is that so? A Yes, sir.

Q And when your father and mother came up were you still standing with Gaspare in front of 191 Third Avenue? A Immediately I saw my mother I immediately left Gaspare and ran towards my mother.

Q When you saw your mother first, how far away from Gaspare was she? A From that window to the witness chair.

THE COURT: About fifteen feet?

MR. ROSALSKY: Yes, sir; about fifteen feet.

BY THE COURT:

Q And when you got to where your mother was, where was your father? A He came, together with my mother.

Q They were walking side by side? A Yes, sir.

Q And when you started to run towards them, or towards your mother, what did Gaspare do? A He joined us, too.

Q And when you four were together, who, if you remember, was it that spoke first, which one of the four? A Gasparino.

BY MR. BROTHERS:

Q Did your mother go up into your room, that night, before the shooting? A No.

Q Do you remember saying, "Your mother brought you upstairs? A Yes, sir." And you answered thatway, "Yes, sir",

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to Mr. Breckenridge? A No, sir.

Q "Q You met your father downstairs? A I only met my mother. I saw my father down there after a long while, not in that block." A No, sir.

Q Did you say that? A No, sir.

Q "Q What block? A My mother told me he wanted to see me, and I went over to him."

"Q Where did you see your father? A Down at 14th Street."

Did you say that? A No, sir.

Q You didn't say that? A No, sir.

Q Now, the only object your father andmother had in coming over, was to take you away from that room, was it not? A Yes, sir.

Q Well, when you were over in Brooklyn, why didn't you stay there? You were away over in Brooklyn at six o'clock. Why didn't you stay there when you were there? A I couldn't stay there.

Q Why not? Where were your father and mother going to take you? A Over to his house.

Q Well, you were already there at six o'clock? A Well, I couldn't stay there.

Q Why not? A Because Gasparino was all the time after me.

Q Well, wouldn't he come after you, if they took you

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over there from Third Avenue? A Well, after my mother and father were there, how could he come?

Q Well, wasn't that why they killed him, so that he couldn't come after you? Didn't they tell you that?

MR. ROSALSKY: I object to that.

THE COURT: Sustained.

BY MR. BROTHERS:

Q Now, you wanted to get away from Gaspare, didn't you? A Yes.

Q Why, you loved Gaspare, didn't you? A No, sir.

Q Didn't you used to go to the shoemaker shop in 7th Street where he worked? A No, sir.

Q Until the shoemaker chased you away? A No, sir.

Q Didn't you want to marry him? A When I knew that he was free, yes, but not after I knew that he was married.

Q Why did you run after him, after the shooting, calling out, "Gaspare, Gaspare, my Gaspare, come here"? A I didn't say that.

Q You were afraid of him? A I was afraid of him.

Q You thought he had shot your father? A Yes, sir.

Q And yet you ran after the man you were afraid of, knowing that he had a pistol, as you thought; is that right? A No, sir; I didn't see my father around there any more.

Q You thought he had shot your father? A Yes, sir.

Q Why didn't you run to your father? A I didn't know

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where my father was.

Q Didn't you see him standing right there? A No, I didn't see him any more.

Q On Friday, you said you saw him standing there, and the man had him by the throat? A Before the shooting?

Q Before the shooting? And as he had him by the throat your father shot him. A After the shooting, Ididn't see my father any more, I said; and, before the shooting, he took my father by the throat.

Q Well, were you still afraid of Gaspare when you were running across Third Avenue? A Well, I ran after him, to see if he shot my father.

Q What good would that do you? A I had a right to.

Q Were you still afraid of Gaspare when you chased after him on Third Avenue?

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

THE COURT: I will allow her to answer.

MR. ROSALSKY: Exception.

A I was afraid, but my own blood, I was thinking of my own blood, my own father.

THE COURT: We will adjourn now.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case until Tuesday Morning, March 10th, 1914, at 10:30 o'clock:)

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THE PEOPLE VS. PIETRO D'ANGELO

TRIAL RESUMED.

New York, March 10th, 1914.

N E L L I E C R O C C O L I S I , her cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. BROTHERS:

Q Did you at any time tell your husband that Gaspare was bothering you? A No, sir.

Q And wanted you to go away to the country?

MR. ROSALSKY: I object to that as immaterial, irrelevant and incompetent, under the Harris decision.

THE COURT: Sustained.

MR. ROSALSKY: Don't answer.

MR. BROTHERS: It is offered for the purpose of testing the credibility of the witness.

THE COURT: Do you contend that, on a previous occasion she made some statement to that effect?

MR. BROTHERS: No, sir; not that she ever said she told her husband. My contention is that she never did.

MR. ROSALSKY: You think she didn't.

MR. BROTHERS: She just now testified that she did not. And I believe it is competent, your Honor, to test her credibility, because she was living with her husband and had been for a week.

THE COURT: Just hand me up the Harris case and I will

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determine.

Mr. Brothers, under the case of the People against Harris, it isinadmissible. In other words, the question here is whether this witness made certain statements to the defendant. It is true that, from a layman's point of view, if it could be shown that such statements, if made, were untrue, an inference might be drawn from that circumstance that, in point of fact, they were not made, but the Courtof Appeals apparently holds that such an inquiry is inadmissible.

MR. BROTHERS: My inquiry is not directed to the truth or falsity of the statement made to the father, but as to whether she made any such stat ement to the husband.

MR. ROSALSKY: I will withdraw my objection, if your Honor please, provided your Honor will allowme to prove the truth of these facts.

THE COURT: I have excluded it, under the authority of the People against Harris.

MR. BROTHERS: I presume an inquiry as to whether she told her mother about it would be excluded, but your Honor can rule upon it when I ask it.

THE COURT: Apparently, under the Harris case, it is not admissible in evidance to show that, if certain statements were made, they would have been untrue, as indicating, in point of fact, that they were not made.

MR. BROTHERS: Don't you see, your Honor, that that

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debars the People from inquiring even as to cross examining her, as to the probability of her having told these things to the father?

THE COURT: It may be, as a practical matter, that a person will manufacture an entire story, and say a series of things which were untrue, and, therefore, as a practical matter, evidence going to the point that, if certain things were said, they were untrue, would be, from the layman's point of view, some evidence that the things were not said at all. But the Court of Appeals seems to hold that such an inquiry is not admissible.

MR. BROTHERS: Perhaps I don't make myself entirely clear. I am not endeavoring to attack the truth or falsity of the statement made to the father, but the fact that she said anything to her father on that day we may inquire into.

THE COURT: Certainly.

MR. BROTHERS: Now, as bearing on whether she told her father, that day, or whether the information reached him, not from the lips of this witness, but from some other source, if at all, is competent, it seems to me. For instance, if she told her husband, and the husband told the father, or the Mother told the father, at some other time, not at six o'clock on the day of the shooting, that's another matter, and it seems to me we may inquire into it, not as bearing on the fact as to whether she told the truth to her father, but as to whether

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she told him anything at all, my contention being that she did not say anything at all, that day.

THE COURT: Apparently, under the Harris case, it is not admissible.

MR. BROTHERS: As I understand the Harris case, it means that we cannot question the truth of the story. We cannot offer proof to show that it was a false story, but surely we can inquire into the details of the matter, and the circumstances relating to it, immediately preceding the event in question, to show that the story was not told to the father, but to some one else.

THE COURT: Well, you may interrogate, of course, very fully, respecting all the circumstances attending her alleged telling of the alleged story to the father, for the purpose of showing, if you can, that, in point of fact, she did not tell it.

MR. BROTHERS: And that is why I ask this question.

THE COURT: And I do not see that the circumstance that she either may or may not have said the same thing to somebody else, has any probative bearing on the point as to whether she did or did not tell the father. Now, her answer would be either in the affirmative or the negative.

MR. BROTHERS: Well, may we have the answer either in the affirmative or negative? May we inquire generally whether she told any one but her father anything about it?

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MR. ROSALSKY: I have no objection to that.

THE COURT: Well then, you may inquire.

BY MR. BROTHERS:

Q Did you tell any part of the story that you say you told your father on the night of the shooting, to any other person before that time? A Before the time of the shooting?

Q Yes? A If I told anybody beside my father?

Q Yes? A No, sir.

Q Now, you told us that you told your father that Gaspare had forced you to marry Toto. Is that right? Did you tell him that? A Yes, the night of the shooting.

Q Did you tell him that? A Yes, Itold him everything.

Q Your father was present at the wedding; was he? A (No answer).

Q Was your father at the City Hall when you were married? A He was, with my mother, of course.

Q And your mother? A Yes, sir.

Q Was Gaspare there? A No, sir.

Q You were asked down there, when the license was obtained, how old you were; weren't you? A Yes, sir.

Q And you said you were sixteen years old, didn't you? A Yes, sir.

Q And you were asked where you lived, and you said 55 Lewis Street, didn't you? A Where I used to live at first.

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Q And you were asked your full name, and you said, "Concetta D'Angelo," and your place of residence, and you said "55 Lewis Street"? A Yes, sir.

Q And as a matter of fact you didn't live there on the 15th of September of last year, but you lived at 191 Third Avenue, did you? A Yes, sir.

Q And your parents lived in Brocklyn; is that right? A Yes, sir.

Q Why did you give the address at the City Hall as 55 Lewis Street? A Well, they asked me where I used to live first.

Q Well, why didn't you tell the truth? A Well, I told them the truth.

Q Well, you didn't live at 55Lewis Street? A No, sir.

Q Well, is there any other reason why you gave that address? A Because they asked me for that address.

Q The clerk in the City Hall asked you for the address in Lewis Street? A Yes, sir.

Q Did he suggest that you give that address? A I don't know what you mean by that.

(The question is repeated through the Official Interpreter) A He asked me where I lived first, and I told him 55 Lewis Street.

Q Yes. And you are sure about that? A Yes, sir.

Q And he didn't ask you, where do you live now? A No,

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sir.

Q And how long was it since you had lived in Lewis Street; do you know? A I don't understand what you mean by that.

BY THE COURT:

Q How long a time is it since you left 55 Lewis Street? Now, talk up good and loud. Everybody wants to hear you. You answer now. A I can't remember how long.

BY MR. BROTHERS:

Q Well, now, at that time, when you were answering those questions, your father and mother were there; weren't they? A In the City Hall?

Q Yes? A Yes.

Q And they were asked if they consented to the marriage weren't they? A (No answer).

(Question repeated through the Interpreter).

A Certainly. If they weren't present, I couldn't have got married.

Q Did the Clerk suggest to you to say that you were sixteen years old, or did anybody suggest it?

MR. ROSALSKY: I object to that.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A I can't understand what you mean.

(The question is repeated through the Official Inter-

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preter).

A Because we knew that they wouldn't marry us under sixteen.

Q Now, I want you to tell the jury how you came home from Brooklyn, after seeing your father, on the day of the shooting, which way you came home to Third Avenue? A I came home from Bowery.

Q Well, you were in Brooklyn, on Grand Street, 350? A Yes, sir; then I went home.

BY THE COURT:

Q Now, how did you come from 350 Grand Street, your father's fruit shop, to 191 Third Avenue, on the day of the shooting? A I took a Grand Street car.

BY MR. BROTHERS:

Q Yes? A And it brought me down in Delancey Street to the Subway, Delancey Street near---where the Brooklyn car comes. Then I took further on---further on I went with my feet to Delancey Street and Third Avenue.

BY THE COURT:

Q You mean to say that you walked from Delancey Street? A Yes, sir; then I went out of the car.

BY MR. BROTHERS:

Q Now, you walked all the way from Delancey Street to the Williamsburg Bridge, up to where you lived? A Yes, sir.

Q Was there any reason why you did not take that Bridge

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car that goes across 14th Street? A I don't know what you mean by that.

THE COURT: Ask her in Italian.

(The question is repeated by the Official Interpreter).

A I didn't know that way. I only knew this car which I took as the way to get home.

BY MR. BROTHERS:

Q And how far does that car go? A I took the Grand Street car in Brooklyn, and got off at Delancey Street, where the car gets under the subway, in Delancey Street.

Q And then you walked the rest of the way? A Yes, sir.

Q Was there any reason why you walked?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Because I didn't know at that time what car to take, and also Iwished to walk.

BY MR. BROTHERS:

Q Now, when you got to Third Avenue, you knew that cars went up Third Avenue, up the Bowery? Is there not a car that runs up the Bowery and up Third Avenue, a red car?

A No, I never took a car there, so Ididn't know.

Q And you have lived in New York all your life, have you?

A Yes, sir.

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Q And you don't know anything about the cars on the Bowery? A No.

Q Now, do you remember that you were in Lewis Street, that afternoon? A ((No answer).

Q Do you know where Lewis Street is? A Yes, sir.

Q Where is it? A Lewis Street?

Q Yes. You say you know where it is. Where is it? Is it in New York or Brooklyn? A InNew York.

Q Whereabouts in New York? A I know only Lewis Street.

Q What street is it near? A Near Delancey Street.

Q Did anybody live on Lewis Street that you knew, on that day?

MR. ROSALSKY: What day have you reference to?

MR. BROTHERS: The day of the shooting, of course.

A I didn't go to Lewis Street, on the day of the shooting.

BY MR. BROTHERS:

Q Did anybody live in Lewis Street, that day, that you knew? A My cousin.

Q Yes. Had you been to see her, that day? A No.

Q You didn't tell Mr. Breckenridge that you had? A I did not.

Q Well, do you remember telling him this: "Q What did your mother go there for? A To see me, because they told her I wasn't home yet." Did you say that to him? A No, sir; I didn't.

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Q Did you say this: "So then they went to tell Salvatore. So Salvatore got frightened, and they were looking around for me." Did you say that? A No, I didn't.

Q I was then walking up from Lewis Street and until the Bowery, and then up the Bowery to Third Avenue, and I went home late. Did you say that to Mr. Breckenridge? A Because I came from Brooklyn, and I didn't go anywhere.

Q No. Did you say that? A No, sir; I didn't.

Q Did you tell Mr. Breckenridge this: "Q Where did the shot come from? A From in front of the window of the pawnshop, while I was standing there talking with my mother and Gasparo?" A I didn't say so.

Q You didn't say it? A No, sir. I said it, but in a different way.

Q Now, you told us, the other day, that at that time Gaspare was threatening you and your mother, is that right?

MR. ROSALSKY: I object to that. There is no such testimony.

BY MR. BROTHERS:

Q Well, what was Gaspare saying at that time, before the shooting? Tell us that again.

BY THE COURT:

Q Right before the shot was fired, what was Gaspare saying? If he said anything, what did he say? A He said, when he got near to my parents, he told me, "Don't be afraid" he

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said, "from your father, because, if he ever talks, I will kill him, I'll choke him." He told me that when he got near. So then Gasparone started to talk, and told my father what was he doing around there, so my father says, "Why, can't I come around here to my daughter?" and Gasparone said, "No." So he went right near to my father and caught hold of him to the throat (Illustrating)."

BY MR. BROTHERS:

Q Now, I am not asking you what he did, but what he said. Now, is that all he said at that time? A Who?

Q Gaspare? A Yes, sir.

Q Now, I will read that other question, so that the connection is shown: "By Mr. Breckenridge: Q Where did the shot come from? A From in front of the window of the pawnshop, while I was standing there talking with my mother and Gaspare.

"Q What did Gaspare say to you then? A He was talking with my mother, saying, 'Excuse me' because he did all this, and he felt hurt like by telling her a lie." Now, is that what Gaspare said at that time, and did you say that to Mr. Breckenridge? A No, sir.

Q You didn't say it? A No, sir.

Q Now, do you remember that you got on the Belt Line at Avenue A or B or which ever it was, at 14th Street, after the shooting? A At First Avenue and Fourteenth Street.

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Q And your father was on the car? A I seen my father on the car.

Q And you talked with him? A Yes, sir.

Q And did he tell you to shut up? A I says ---

Q And did he tell you to shut up? Answer yes or no. A I don't understand.

(The question is repeated thro ugh the Official Interpreter)

A He said "Zito" in Italian, which means "Silence".

BY MR. BROTHERS:

Q Now, did he say what he would do if you did not keep silence? A No.

Q Do you remember saying this to Mr. Breckenridge: "Q When you got on the Belt Line car, what did your father say to you? A If you don't shut up, I'll slap you." Did you tell Mr. Breckenridge that? A No, sir; I said it in a different way.

Q Well, how different did you say it? A I told him that my father said "Silence. There is nothing wrong."

Q You talked to Mr. Breckenridge in English, did you not? A I spoke in English because there was nobody there to Interpret, and I couldn't express myself any better.

Q Now, let me ask you this question: "Q When you were on the car, your father took out a cartridge shell; did he not? A No, I didn't see it.

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"Q And what did he say about shooting you? A Nothing. He said, 'If you don't shut up I'll slap you.'" And you repeated it a second time in English, did you? A No.

Q You didn't say that? A No, sir.

MR. ROSALSKY: I object to that. You didn't say what part you have reference to.

BY MR. BROTHERS:

Q If you don't shut up I'll slap you? A I didn't say that and I didn't say anything about the cartridge.

Q Weren't you asked about the cartridge. Now, haven't you forgotten? A No, he didn't ask me that.

Q Now, do you remember this question: "Q What did you say to him? A 'Who shot him?'

"Q Did you ask your father that? A yes, sir." And then did you say right after "Who shot him?" did you say this: "He says, 'What do you want to know?'"? A No, that isn't true.

Q You didn't say that? A No, sir.

Q There is just a little more of this. You didn't see your father after that until he was arrested, did you? A No, sir.

Q You were told that he had gone to Italy, weren't you?

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

THE COURT: Sustained.

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MR. BROTHERS: This is all on the subject of flight your Honor, and concealing his whereabouts.

THE COURT: I will sustain the objection.

BY MR. BROTHERS:

Q Did you know where he was, your father? A No, sir.

Q Now, again I ask you, once more: "Q Didn't you say to him, 'Father, did you kill him?' A He said, "If you don't keep still I'll give you a slap.'"? A No.

Q Did you ask your father if he had killed Gaspare? A I said, "Who fired the shot?"

Q Then you didn't say to him, "Did you kill him? " A No, sir.

Q Well, it was your father who shot Gaspare, was it not?

MR. ROSALSKY: I object to that.

THE COURT: Sustained.

BY MR. BROTHERS:

Q Did you state to Mr. Breckenridge: "Q It was your father that shot Gaspare? A Yes, sir." A The detective told me, "Yes, it is your father that shot him, and you say so."

Q And right after that were you asked this: "Q While you were in the car did he tell you why he killed Gaspare? A He said, 'Don't you see all the fooling he done to you?'"?

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Now, did you say that to Mr. Breckenridge? A No.

Q And you were asked again, "Q What did you tell him? A That was all right; that was all gone after." Did you say that to Mr. Breckenridge? A (No answer).

(The question is repeated through the Official Interpreter.)

A (No answer).

BY THE COURT:

Q Now, did you say it? A I did not.

BY MR. BROTHERS:

Q Now, do you remember, young lady, that that was on the 13th of December, that you talked with Mr. Breckenridge, and on the 17th of December, four days later, you went before the Grand Jury of this County to testify? A I remember that I went before the Grand Jury, but I don't remember how long after.

Q Well, was it several days? A I can't remember how many days it was.

Q And at that time you were sworn, on the bible, to tell the truth? A Yes, they gave me the book.

Q And you said, "I swear I'll tell the truth, whatever it is."? A yes, I was sworn to tell the truth and all that happened.

MR. BROTHERS: Now, if your Honor please, it will be necessary to read several lines leading up to a question

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that is important.

BY MR. BROTHERS:

Q Now, you testified in English to the Grand Jury, didn't you? A Yes, sir.

Q And the gentleman who asked you questions, asked them in English? A Yes, sir.

Q Now, you understand English perfectly well, don't you? A Yes, but you know some things I can't understand what you mean.

Q Well, if there is anything you don't understand, say so. Now, do you remember saying this in the Grand Jury: "Gaspare used to come up after Salvatore usedd to go out, and every time he told me I had to go away with him uptown. He said, 'You come away with me and leave your husband.' He said, 'You are a pretty girl and you can make money up there', and I said, 'What are you telling me, what do you mean, make money? If you bring me to a shop?' And he said, 'Why no. You are a pretty girl and you will make money there.' That is what he told me. 'And they will give you three dollars, because you are a young kid.'" Do you remember saying that to the Grand Jury? A Yes.

Q And do you remember this question being put to you? "Q Did you ever tell what you have just said, before this? A No, I don't remember about it, , but he told me that, in Third Avenue, upstairs." Now, do you remember that? A

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I don't understand what you mean.

Q (Question repeated) A To nobody else but my family, do you mean?

Q No. I asked you if you said what I have read to you? A The first page I did understand. Please read the second page again?

Q "Q Did you ever tell what you have just said before this? A No, I don't remember about it, but he told me that in Third Avenue, upstairs." Now, did you say that? A I can't understand what you mean.

Q What is it you don't understand? I want to know whether you said that. I will read all that you said again, so as to give you a fair chance.

Q (Question repeated through the Interpreter) A I can't understand you when you read it.

Q Well then, I will read it again: "Q Did you ever tell what you have just said before this?" Now, do you understand that? That means, did you tell this that I read before, on the other page? Now, do you remember that question, and did you understand it? A I can't understand what you mean, the second page.

Q Well, what is it that you can't understand? A When you read it, I can't understand.

Q Well, you understand: "Q Did you ever tell what you have just told us before this?"; don't you? A No, sir.

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Q You understood everything that was said in the Grand Jury Room, didn't you? A Yes, sir.

Q And everybody treated you kindly there? A The Grand Jury?

Q Yes? A They made me sit down and made me talk.

Q How did they make you talk. What did they do to you? A Nothing.

Q And now, this is the last time I am going to ask you this question: "Did you ever tell what you have just told us before this? A No, I don't remember about it, but he told me that in Third Avenue, upstairs." Now, did you make such an answer in the Grand Jury? Yes or no? If you don't remember it, you may say that. A I don't remember it.

Q But you won't say that you didn't say it? A No, sir; I don't remember.

Q Were you asked this question: "Q Did you tell Salvatore about this? A I didn't want to tell him this.

"Q Did you tell your mother? A I didn't tell my mother.

"Q Did you tell your father about it? A Yes, the day of the shooting."

Now, did you say that? A Yes.

Q Yes, you remember that, do you? You remember that all right; do you?

MR. ROSALSKY: I object to the remark of the District Attorney.

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THE COURT: Sustained.

BY MR. BROTHERS:

Q Do you remember it? A Yes, sir.

Q Now, let us have that other question again: "Q And did you ever tell what you have just said to anybody before this? A No, I don't remember about it, but he told me that in Third Avenue, upstairs." A I don't remember whether I said it or not.

Q "Q Tell us what happened then. Tell us what you told your father, and what happened? A I went up to my father and so I says all about it to my father. I says "Papa, this Gaspare comes and bothers me yet, after I am married. He wants to bring me uptown and he says, if I won't go, he will killme.'" Now, did you say that in the Grand Jury? A Yes, sir.

Q And that is all you said about what you told your father, is it not? A No, answer.

(The question is repeated through the Official Interpreter.)

A I explained all I could to the Grand Jury, but then they stopped me, and I don't remember saying anything more than that.

Q Well, do you remember saying any more than that? A I told all the facts that I said here.

Q Now, I will read it again: "I went up to my father

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and so I says all about it to my father. I said, "Papa, this Gaspare comes and bothers me yet, after I am married. He wants to bring me uptown and he says if I won't go, he will kill me. And so my father shook his head, that way, and he says, 'Well, all right. Go home and I'll come after you, and tell him not to come after you any more, and not to bother you any more,' and not to take me away, because I don't want to tell nothing to Salvatore because they will fight. After I went home about an hour or an hour and a half, Gaspare came again, and whistled downstairs.'" Now, is that what you told the Grand Jury? A Yes, sir.

Q You told this jury here that your father said that he was coming over there to take you home; is that right? A He was coming there to take me home, yes.

Q And that he did not expect to see Gaspare? Do you remember that? Do you remember saying that, at page 239 of this trial: "Q Now, on the 22nd of September, on the night of the shooting, did you tell your father that you had expected Gaspare at the house, that night? A No, sir." Do you remember saying that here? A Read it again.

Q (Question repeated) Did you so testify here. A (No answer).

Q Don't you remember saying that here? A Idon't understand what you say.

(The question is repeated through the Interpreter)

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A (No answer).

Q Well, I won't bother with it. "Q Do you know whether your father knew that Gaspare was going to be there, that night? A No, sir.

"Q You don't know? A I do know.

"By Mr. Rosalsky:

"Q You say that your father didn't know that Gaspare would be there? A My father didn't know."

Now do you remembersaying that?here? A That my father didn't know that Gasparé had to be up there at 17th Street?

Q Now, please try to understand me.

BY THE COURT:

Q Yes, that is what was asked you. Now, what is your answer?

BY MR. BROTHERS:

Q Do you understand that? A Yes, sir.

Q And did your father know that he would be there, that night? A No, sir.

Q Well, did you tell the Grand Jury that your father said, after you had told him, "Go home and I will come after you and tell him not to come after you any more?" Do you remember saying that? A I can't remember.

Q You can't remember? A No, sir.

Q Well, if you did say it, it was the truth, wasn't it? A Yes, sir.

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Q Now, you said he whistled for you to come downstairs? Did he do that? A Yes, sir.

Q And is that what he usually did and you would go downstairs to see him? A He told me to go down and see him.

Q (Question repeated). A When I was in Seventeenth Street?

Q Yes? A Some times he used to whistle and some times he used to come up stairs.

Q Now, do you remember telling the grand Jury that Gaspare put his hand in his pocket and went to shoot your father; do you remember saying that?

MR. ROSALSKY: I object to that unless he reads the question and answer..

MR. BROTHERS: Well, I am trying to get the thing done shortly, but I will read it. Do you want me to read it all?

BY MR. BROTHERS:

Q Well, after he whistled from down stairs, did you testify---"Q Was that in the afternoon? A It was in the night time, about half past seven or eight o'clock. As soon as he whistled about two times, I looked out of the window. My hair was all hanging down." Is that right? A The Grand Jury, yes.

Q You said that to them? A Idid, yes.

Q Now, do you remember giving this testimony: "He said

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"You shut up, or I'll choke you," and with the other hand he did this (Illustrating) and he put his hand in his pocket because he always brings the revolver like that (Illustrating). My father couldn't help himself with the right hand. He had only one hand. He is a tall fellow and he was stout, too, and my father couldn't fight with him, so my father took the hand and shot him. " Did you say that in the Grand Jury Room? A Idid say to the Grand Jury that my father tried to protect himself.

Q Did you say what I have read to you. That is my question? A I did tell the Grand Jury that Gaspare seized my father by the throat and made an attempt to get his hand in his hip pocket. (Illustrating).

Q And did you give this testimony: "He put his hand which he went to shoot him, Gaspare went to shoot him, and he said, "I- you don't shut up I'll choke you.'"

"Q Did you ever tellanybody before this that he tried to shoot your father? A No."?

A Yes, I did say it.

Q "Q This is the first time you ever told this? A Yes.

"Q You didn't tell us this on Saturday? A No." Did you say that, too? A yes, Idid say it.

Q "Q Well, why didn't you tell us on Saturday about the choking? Is there any reason why you didn't tell Mr.

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Breckenridge on that Saturday about the choking? A Because they asked me so many other things that I didn't knew answer."

"Q And now you have told us that Gaspare made a move to his back pocket with his right hand, and with his left hand had your father by the throat, is that right? A yes, sir; it's true.

"Q That's true? A Yes, sir."

Q Now, do you remember stating this to the Grand Jury: "Q They were right close together? A Right close together. He had my father this way---" an you then showed how it was done---"with his right hand, this way, and with the left han d he had behind him, and he opened his coat and had his hand behind his coat." Now, did you say that to the Grand Jury? A Yes, I did say that.

Q Yes. Were you swore that he had your father by the throat with the left hand and before the Grand Jury you said hehad him by the throat with the right hand. Now, which was right? A At the Grand Jury I said it was the left hand he had him by the throat.

Q You just now said that what I read was correct. Do you want to change that? A No, sir; I just want to say I couldn't understand what you read, because I couldn't hear it.

Q You didn't understand what I read; is that it? I'll read it again. (Repeats) A He reads too fast, and that's

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the reason I said yes, before I could understand what he says.

Q Now, I'll read it slowly. I'll read the question before:

"Q Did he have hold of your father when he was shot? A Yes, sir; he had hold of my father."

Now, did you say that? A Yes, sir.

Q "Q They were right close together? A Right close together." Now, do you understand that? A I understand that, yes.

Q And did you say that? A I can't remember if I said that.

Q Well, were they right close together at that time? A They was together, yes.

Q "He had my father this way (illustrating) with his right hand(Illustrating)" Do you understand that? A Yes, I under stand that.

Q And did you say it to the Grand Jury? A That he had my father with the right hand?

Q yes? A I said that he had the right hand in his pocket.

Q Now, I am asking you whether you said this: "He had my father this way, with his right hand, this way, and with the left hand he had behind him, and he opened his coat, and he had his hand behind him." Now, is that correct? Is that what you said to the Grand Jury? A (No answer).

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THE COURT: She may say that she does not remember.

A I don't remember whether I said with the right hand or the left hand.

BY MR. BROTHERS:

Q Well, do you remember that you showed the jury how it was done? A Isaid it the same way as I said it over here.

Q Do you remember standing up and putting your right hand up, and throwing back your coat, the coat you had on, with your left hand? (Illustrating) A Yes, but I don't remember if Idid say my right hand or my left hand, but I do remember that I illustrated it up there.

Q Now, at that time was your father standing right in front of the door? A Whinh door?

Q The door leading to your house from the street? A A little far away from the door. We were all united together.

Q Did he have his back to the door? A His back towards the door.

Q And was Gaspare standing in front of him? A Facing, yes.

Q Facing him? A Yes, sir.

Q Did you ever go to the shoemaker's where Gaspare worked, in 7th Street? A No, sir.

Q Did you know that he worked for a shoemaker in 7th

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Street? A No, sir; not in Seventh Street. I know that he used to work as a shoemaker in a factory.

Q Now, during the time that elapsed---I'll withdraw that. From the day that you talked with Mr. Breckenridge until you went to the Grand Jury, you were home with your Mother, were you? A I don't understand what you mean.

(The question is repeated through the Official Interpreter.)

A I was living at 15th Street.

Q And were you living with your mother or with your husband? A First I was with my mother.

Q And there were only two or three days---with whom were you living during that time? A With my husband, in 15th Street.

Q Well, did you see your mother during that time?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Certainly, in Rivington Street.

BY MR. BROTHERS:

Q And did you talk to her about this case? A For what?

Q Did you talk to her about the case? A Before going to the Grand Jury?

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Q Yes, correct. A I don't remember.

Q Now, did you talk to your mother before going to the Grand Jury about this shooting?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A I can't understand what you mean.

(The question is repeated through the Official Interpreter).

A I don't remember.

BY MR. BROTHERS:

Q Now, you say that you don't understand. You have lived in this City all your life, haven't you?

MR. ROSALSKY: I object to the District Attorney arguing with the witness.

MR. BROTHERS: I am not arguing. Iam inquiring.

BY MR. BROTHERS:

Q You were born here, weren't you? A Yes, sir.

Q And you went to school here? A I didn't go so very long to school.

Q You went to school? A Yes, sir.

Q And you talked English in school? A Yes, sir.

Q And the teacher talked English? A Yes, sir.

Q And you read English? A Yes, sir.

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Q And you read the English newspapers, don't you? A I don't know how to read.

Q You don't know how to read? A No, sir.

Q Is that the truth? A yes, sir.

Q And you don't know how to read? A No, sir.

Q And you went to school up to last February, is that the truth? A I don't remember how long I went to school.

Q Can't you read? A No, sir.

Q Can you write? A Ican write such small things, I can write my name, but I can't write no other things.

Q Now, don't answer this, but I will ask the question. When you told your father what you say you told him, that night, in the fruit store, did you tell him the truth?

MR. ROSALSKY: I object to that. However, I withdraw the objection.

BY MR. BROTHERS:

Q Did you tell him the truth? A To my father?

THE COURT: I will allow it.

A I did. I told him the truth.

BY MR. BROTHERS:

Q And was it all the truth? Was every word of it true? A Well, I told himevery thing just what Gasparino did to me.

Q And was every word of it true? A Yes, sir.

Q And were there any other things that Gasparone had done that you didn't tell your father?

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THE COURT: You mean to her?

MR. BROTHERS: Yes, sir.

BY MR. BROTHERS:

Q Did Gaspare do anything else to you that you didn't tell your father about? A (No answer).

Q Do you understand? A No, sir.

(The question is repeated through the Official Interpreter).

A He done other things, but I don't remember whether I said it to my father.

BY MR. BROTHERS:

Q Now, you say you saw your father in the fruit store in Brooklyn at six o'clock, is that right? A Five or six o'clock, I said.

Q And how did you go over to Brooklyn from Third Avenue?

MR. ROSALSKY: I object to that.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

BY THE COURT:

Q That is to say, how did you go from Third Avenue to your father's shop in Brooklyn? A I walked first.

BY MR. BROTHERS:

Q Well, how far did you walk? In Clinton Street.

Q Yes? A And I took the car from the subway, Grand

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Street car.

Q What time did you leave the house? A I can't remember what time I left the house; Ididn't havenc clock up there.

Q Now, when you got over to the store, what was your father doing in the store? A He was fixing all the things, because he had to move from the store.

Q Well, had he moved? A He was just going to move. He had some things out of there.

Q Did any customers come in while you were there? A No, sir.

Q And how big a store was it? A It was quite big.

Q And was there a good deal of fruit in the place when you got there? A There was nothing at all, that day I went.

Q When you got there there was nothing in the store? A No, sir.

Q Was everything moved out? A Not everything. He had a few things inside.

Q Well, what were they; what did he have? A The wood was there; what they put the fruits on, the stands.

Q And where did your father move his store to? A He didn't keep any store any more; he closed it.

Q Yes, he gave up keeping store, that day? A What do you mean by keeping store?

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Q Don't you know what keeping a store means? Did he give up the store? A (No answer).

(The question is repeated through the Official Interpreter).

A No, no more.

Q And he never kept a store after that? A No, sir.

Q Do you know why he did that?

MR. ROSALSKY: I object to that as immaterial, and as calling for the operation of the mind of another person.

MR. BROTHERS: Well, any preparation that the defendant made in the anticipation of the commission of a crime, and to conceal himself, are perfectly proper, if your Honor please, and I can prove it. But it is what she knows.

THE COURT: No, I will sustain the objection. It calls for the operation of the witness's mind.

MR. ROSALSKY: I ask your Honor to direct the jury to disregard the statement of the District Attorney.

THE COURT: No. I sustain the objection. Proceed.

BY MR. BROTHERS:

Q Did you ever hear your father ask Gaspare for money?

MR. ROSALSKY: I object, unless the District Attorney specifies a time.

THE COURT: Overruled. The question is entirely proper.

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MR. ROSALSKY: Exception.

A I don't know.

BY MR. BROTHERS:

Q I ask you whether you ever heard him ask Gaspare for money? A No, sir.

Q Did you ever hear money discussed between them? A No, sir.

Q Was your father hard up at that time? Was he without means?

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

THE COURT: Well, I think it calls for a conclusion. I will sustain it on those grounds.

BY MR. BROTHERS:

Q Well, did your father tell you at that time that he had to give up the store because his business was bad?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A I don't remember whether he said that or not.

BY THE COURT:

Q Well, did your father ever have a talk with you about that time, that is to say, before the shooting, within a few days before the shooting, as to why he was going to give up

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his store in Brooklyn? A (No answer).

(The question is repeated through the Official Interpreter)

A I don't remember.

BY MR. BROTHERS:

Q Now, you told us, the other day, that, that night, you told your father where you lived, so that he would know where to come? A I said I left him the address.

Q Yes. Didn't he know where you were living? A No, sir.

Q On the day that you were married, didn't he ask you where you and Toto were going to live? A No, sir.

Q Didn't your mother? A Idon't remember if my mother did.

Q And didn't you tell them, without being asked, that you were living at Third Avenue and 17th Street? A No, sir.

Q Was there any reason why you didn't tell them?

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

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A Because I lived in Third Avenue?

Q Yes? A Because I was ashamed to tell them.

Q Well, you were married then, weren't you? A Well,

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if I was married, that was no house for me to keep there.

Q And you lived with your husband up to the night of the shooting; isn't that right? A Yes, sir.

Q Now, have you any brothers? A No, sir.

Q How many brothers-in-law have you? A Two.

Q And how big are they? How old are they? A I don't know how old they are.

Q Well, they are over twenty years old, aren't they? A Yes, sir.

Q Grown men; aren't they? A Yes, sir.

Q And did you see them, from time to time during that summer? One of them lived with you over in Brooklyn, didn't he? A I don't know what you mean.

(The question is repeated through the Official Interpreter).

A Yes, sir.

BY MR. BROTHERS:

Q What is his name? A Billy Ordo.

Q Now, do you know whether your father and mother went to see Salvatore, the night before youwere married? A No, sir.

Q Do you know it or don't you know it? A I don't know it.

Q Did you and your husband ever have any quarrel about Gaspare?

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

MR. BROTHERS: If we can show any motive, it seems proper to me.

THE COURT: I will allow it.

A No, I never used to tell him any thing.

BY MR. BROTHERS:

Q Then you had no quarrel? A No, sir.

Q Did Toto, your husband, have any quarrel with Gaspare?

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

THE COURT: Sustained.

BY MR. BROTHERS:

Q Just before the shooting.

MR. ROSALSKY: Objected to.

THE COURT: Sustained.

BY MR. BROTHERS:

Q You liked Gaspare better than you did Toto, didn't you? A No, sir.

Q And didn't Toto go to your father and complain about that? Don't you know that? A When?

Q That Toto went to your father and told him that you liked Gaspare better than you did Toto? A No, sir.

Q Don't you remember that? A No, sir.

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Q Do you know whether it was done or not? Did you ever hear anything about it? A No, sir.

MR. BROTHERS: That is all.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q Now, Nellie, do you remember the night you were brought down to the District Attorney's office? A Yes, sir.

Q Where were you?---From where did they bring you? Who brought you down there? A The detectives brought me down there.

Q How many detectives were there? A When they brought me down there?

Q One or two, or more, or less? A There were two detectives on the car.

BY THE COURT:

Q From what place did they bring you? A From Rivington Street, up to my mother's house.

BY MR.ROSALSKY:

Q Now, will you tell whatthe detectives did to you? A They came to my house, before they took me down to the District Attorney's office.

MR. BROTHERS: Will you get the detectives' names first, please?

BY MR. ROSALSKY:

Q Who were the detectives that took you from your home? A I don't know the names.

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BY THE COURT:

Q Well, two persons, whom you were told were detectives, came to the house in Rivington Street where you were stopping? A Yes, sir.

Q And what is the number of the house? A 315. My mother used to live there.

Q And on what floor were you when the detectives came there? A Top floor.

Q Front or back? A Front.

Q And what hour of the day or night did they come to that place? A On Saturday night.

Q About what time? A I didn't see what time it was.

Q But/were ~~xxx~~ there when they arrived there? A From my parents, you mean?

Q Now, talk up. Twelve men want to hear you. Face around. Who were in the rooms with you, that you were in, at the time the detectives came in? A I was the only one home, with the children, up at the house, when the detectives came.

BY MR. ~~BROTHERS~~ ROSALSKY:

Q At the time the detectives came, had you eaten any supper, that night? A No, sir.

Q And what did they do after they came? A They took me in the front room and they closed the door.

Q And what did they do afterwards? A One was sitting

down and he told me to speak, to talk, whatever they asked me. Then I said, "Well, I can't talk." He says, "Why can't you talk?" Then another one comes, and he says, "Well, you have got to tell him."

Q Where was this? In your house or inthe District Attorney's office? A In my mother's house.

Q Before you went down to the District Attorney's office? A Yes, sir.

MR. ROSALSKY: I would like to know from the District Attorney whether Sergeant Willemse is in Court?

MR. BROTHERS: I don't see him here, and I don't know, and he is not subpoenaed in the case.

THE COURT: It is not a question for the District Attorney to answer.

BY MR. ROSALSKY:

Q Well, did you see the same detectives in Mr. Breckenridge's office? A Yes, sir.

Q How long did you stay in Mr. Breckenridge's office, that night?

THE COURT: Now, if you will pardon me, suppose we get at it a little more systematically.

BY THE COURT:

Q About how long were these detectives in your rooms before you went any where with them? A It was quite long.

Q Well, about how long? A Idon't know what time it

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was when they came in.

Q How long were they there before you went with them any where; how long werethey talking to you? A They stayed there long, until they searched all the house.

Q And about how long were they in the house before they started out with you? A (No answer).

(The question is repeated through the Official Interpreter).

A I can't remember.

Q Very well. Now, when you left the house, did you leave the house with them? A Yes, sir.

Q And where did they take you? A They told me to go by my husband, and they wanted my husband, Toto.

Q Idon't hear you. Now, where did you go with the detectives when you first left the house? A By my husband's pushcart, where he works.

Q Where is that? A 13th Street and First Avenue.

Q And how did you go from the house in Rivington Street to where your husband's pushcart was? A In a car.

Q And when you got to the pushcart, was your husband there? Yes or no? A Yes.

BY MR. ROSALSKY:

Q And how did you know they were police officers? A Because they told me so.

Q And then did they take you and your husband from

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13th Street to the District Attorney's office? A Yes, sir.

Q Now, had you eaten anything until that time? A No, sir.

Q When you got to the District Attorney's Office, what time was it before you left? A Before I left the District Attorney's Office?

Q Yes? A About twelve or half past twelve.

BY MR. BROTHERS:

Q At night? A Yes, sir; at night, about twelve o'clock.

BY THE COURT:

Q Do you mean midnight? A Yes, sir.

BY MR. ROSALSKY:

Q Do you know about how many hours you were in the District Attorney's office? A We went there about half past seven or eight o'clock I think it was and we went out of there about twelve o'clock.

Q Did you ask---when you were down to the District Attorney's office---did you ask any one for something to eat, that you hadn't eaten all day? A yes, sir.

Q Who did you ask that? A Well, the detectives was in there, too, and there was a stout detective there, and he said, "Well, you wait a minute".

Q Did they bring you anything to eat? A No, sir.

Q And where did they keep you while you were there? Were

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you alone or were there others with you there? A The detectives was in there with me.

Q Now, at the time the statement was being taken, who was in the room besides Mr. Breckenridge and yourself? A The detectives.

Q How many detectives were in the room during the entire time that you were making the statement; how many detectives were in the room? A About three detectives was in there.

Q Did they talk to you at any time while you were making the statement? A Yes.

Q What did they say to you, if you remember, at different times? I withdraw that. How many times did they talk to you while you were making the statement? A They talked plenty of times.

Q How many? A Many times.

Q Now, the many times they talked to you, what did they say to you? Was this during the time the statement was being taken? A They said, of course, I had to say everything, and, if I wouldn't say anything, that night, they wouldn't let me go home.

Q They wouldn't let you go home? A Yes, sir.

Q Now, did they come in and state that your mother said so and so? A Yes, sir.

Q And did they come in and state that your husband said

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so and so? A yes, sir.

THE COURT: Now, don't lead her.

MR. ROSALSKY: I don't think I am leading her, your Honor.

THE COURT: I think you are, and that is why I made the remark. Don't do it again.

BY MR. ROSALSKY:

Q Now, tell everything that the detectives said at that time? A Each time a different one would come in and they said "Well, Nellie, your mother said everything, why don't you talk? Your sister said everything."

And then they said, "You got to say everything, because your husband said everything."

And then comes a stout, fat detective, and he went this way to me (Illustrating) and he said, "Nellie, where is your father?" And I knew he was in Italy, and I said, "He is in Italy," and he said, "Now, your father isn't in Italy?" And I said, "I don't know if you have got my father here, but I believe he is in Italy."

And I said, "Why don't you give me something, because I feel very sick", and he said, "Now, wait a minute and we are going to give you a big nice steak" and it was twelve o'clock and they didn't bring me anything at all.

Q Now, what else did the detectives come and tell you that your mother or sister or brother-in-law or husband said?

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A Because I had to talk just what they wanted, they said.

Q Now, have you stated everything that you said they said or are there some things that youdon't remember, that they said? A I don't remember if I said anything more or they said anything more.

BY THE COURT:

Q Have you told us all that you remember? A Yes, sir.

BY MR. ROSALSKY:

Q Now, just think, and see if you can remember some of the things that they told you to say?

MR. BROTHERS: May I inquire whether, at that time, Mr. Breckenridge was present?

BY MR. ~~ROS~~ BROTHERS:

Q Was this gentleman, Mr. Breckenridge, there at the time that these detectives did these things? A He was there, but he went out again.

Q And he was not in the room when any of these things happened? A I think he was in there when they told me that they had to bring me something down. I don't remember whether he was or not.

BY MR. ROSALSKY:

Q Did the officers tell you to say things, or attempt to tell you to say things, and you said it was not so? A Yes, sir.

Q Well, tell this jury what they wanted you tosay? A

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Well, an Italian Detective came in, with eyeglasses, and he got so excited with me, he got so mad, and he said, "You got to say this, your father shot him. You mustn't say that your father didn't shot him. You must say that your father shot him, " and he told me that I had to say everything that he said.

BY THE SECOND JUROR:

Q Did he speak to you in Italian? A No, sir.

Q Well, how did you know that he was an Italian? A When he got excited to me, when he got mad and excited to me, he spoke Italian. First in Italian and then in English.

BY MR. ROSALSKY:

Q Now, you said you were close together in front of 191 Third Avenue. Will you stand near the Interpreter and show me how close together the four of you were? A As close as that (Indicating)

Q And where was your father? A On this side (Indicating).

THE COURT: Would you like to have four persons in the group?

MR. ROSALSKY: I would, your Honor.

THE COURT: Captain, you may step around here.

BY MR. ROSALSKY:

Q Now, just put these three men in the places where your father and Gaspare and your mother were? A My father

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was here, with his front towards Gasparino, and Gasparino was this way (Illustrating) My father was a little close to me, and my mother was next to me, like that. (Illustrating)

BY MR. ROSALSKY:

Q Now, at the time that Gaspare took ahold of your father---

THE COURT: Now, wait a moment. She indicates that the defendant and the deceased were face to face, and that the witness stood to the left of her father and a little nearer to Gaspare, and facing Gaspare, and that the witness's mother stood to the witness's left and alongside of Gaspare. That is about it, is it not?

MR. ROSALSKY: Yes, sir. And the distance indicated between the deceased and the defendant, what was that? About three feet, your Honor?

THE FOREMAN: Hardly three feet, your Honor.

BY MR. ROSALSKY:

Q Now, you saw Gaspare grab your father by the throat?

A Yes, sir.

Q And I also understood you to say that he made a motion to go to his pocket? A Yes, sir.

MR. BROTHERS: Haven't we gone all over that?

THE COURT: Yes. Now, don't lead Her.

BY MR. ROSALSKY:

Q And with what hand did Gaspare grab your father by the

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throat? A With the left hand.

Q And with what hand did he go to his pocket? A The right hand.

Q Now, did Gaspare move in any way when his hand went to his pocket? A He moved sideways like that. (Illustrating).

Q Now, if you said before the Grand Jury that Gaspare grabbed your father with the right hand and went to his pocket with his left hand, is that a mistake? A When I went to the Grand Jury?

Q Yes. If it appears in the Grand Jury minutes that you stated that your father---that Gaspare grabbed your father by the throat with his right hand, and went with his left hand to his pocket, is that so, or were you mistaken? A I remember that I was sitting on that seat (Indicating) and I made the motions just as I did here.

Q Well, in what way did you make these motions? Show the jury? A With the left hand to his throat and the right hand to his pocket. (Illustrating).

Q And if it appears that you stated before the Grand Jury differently, you were mistaken? A Yes, I thi nk I was mistaken if Isaid that.

Q Now, did Gaspare work less times than when he was idle?

MR. BROTHERS: Objected to.

THE COURT: Sustained.

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BY MR. ROSALSKY:

Q Did he work every day while he lived with you?

MR. BROTHERS: Objected to.

THE COURT: Sustained.

MR. ROSALSKY: Exception.

BY MR. ROSALSKY:

Q Well, did you know in what factory Gaspare worked?

MR. BROTHERS: I object to that.

THE COURT: Allowed.

A I didn't know in what factory it was, but I knew he used to work in a shoe factory.

BY MR. ROSALSKY:

Q Well, did he work while he knew you? A No, sir.

Q Was he doing any work while he knew you?

MR. BROTHERS: I object to that.

THE COURT: Allowed.

A No, sir.

BY MR. ROSALSKY:

Q Now, Mr. Brothers, this gentleman over here (Indicating the District Attorney) asked you whether you didn't say that you heard a shot coming from in front of the window of the pawn shop, before the Grand Jury, and you said you said it in a different way---

MR. BROTHERS: No, not before the Grand Jury. To Mr. Breckenridge.

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BY MR. ROSALSKY:

Q Now, will you state from what direction the shot came? A (No answer).

Q I will withdraw that question. Mr. Brothers stated that you had said to Mr. Breckenridge something about a shot that came from in front of the window of the pawnshop, and you said you didn't say it in that way. Will you state to the jury in what way you did say it? A The first time?

(The question is repeated through the Official Interpreter).

A I said I heard the shot.

BY MR. ROSALSKY:

Q At the time Gaspare grabbed your father by the throat, did you holler? A Yes, sir.

Q And what did you do at that moment? A I went to get hold of my mother.

Q Now did you---did the Grand Jury ask you for everything that youtold your father on the night of the 22nd? A If they asked me if I said anything?

Q Yes. (Question repeated) A They stopped me and finished with me.

Q They didn't ask you any questions of what you told your father, outside of what you stated here? A Yes, they asked me, and I told them everything.

Q Did you tell the Grand Jury that you told your father

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that Gaspare had ruined you?

MR. BROTHERS: We object to that. It's not redirect. However, I withdraw the objection. Go on.

A I don't remember whether I said it.

BY MR. ROSALSKY:

Q Well, do you remember whether the Grand Jury asked you that? A That I don't remember.

Q Now, did you tellthe Grand Jury about Gaspare stealing the bank book and the bracelet?

MR. BROTHERS: We object to that? We made no inquiry about that.

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

MR. ROSALSKY: Exception.

BY MR. ROSALSKY:

Q Did the Grand Jury ask you about Gasparino forcing you to marry Toto? A Yes, sir.

Q And did you tell them? A Yes, I said so.

Q Now, you told no one about any of these things until you told your father on September 22nd, is that right?

A Yes, sir.

Q And on September 22nd, you say your father was moving?

A Yes, sir.

Q Have several things already been moved? A Yes, sir.

MR. ROSALSKY: That's all.

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RE-CROSS EXAMINATION BY MR. BROTHERS:

Q Now, were those detectives in the Grand Jury room when you were before them there? A Not in the Grand Jury room.

Q Were you hungry, on that day?

MR. ROSALSKY: What day?

A (No answer).

BY MR. BROTHERS:

Q Were you hungry on the day that you were before the Grand Jury? A You don't mean in the Grand Jury?

Q Now, do you understand what hungry means? A Yes, sir.

Q Now, were you hungry before the Grand Jury? A (No answer)

BY THE COURT:

Q When you were talking to the Grand Jury were you hungry at that time? A Well, I came in the morning, your Honor.

Q (Question repeated) A No.

BY MR. BROTHERS:

Q And what time did you make this statement to Mr. Breckenridge? Wasn't it at eight o'clock in the evening? Don't you remember that it began at eight o'clock? Hadn't you had any supper, that night? A No, sir.

Q Did you have any supper the night of the shooting?

MR. ROSALSKY: Objected to as immaterial, irrelevant

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and incompetent.

THE COURT: I will allow it, as testing her memory.

BY MR. BROTHERS:

Q (Question repeated) A (No answer).

Q Now, don't you understandthat question? A Yes, sir.

Q Well, why don't you answer it?

THE COURT: Now, answer, young woman.

A I don't remember if I had been eating first, in the day time.

BY MR. BROTHERS:

Q Do you know what supper means? A Yes, sir.

Q Did you have any supper the night Gaspare was shot?

A No, sir.

Q Now, you remember that well, that you didn't have any supper? A Yes, sir.

Q What time do you usually have supper? A When?

Q Any night? A Well, any time.

Q Well, it wasn't unusual for you not tohave had your supper, when Mr. Breckenridge saw you at eight o'clock, was it?

A Any time. We have no stated time, no fixed time.

Q Did Mr. Breckenridge speak kindly to you, that night?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: I will allowmit.

MR. ROSALSKY: Exception.

A He was talking in a natural way, and he wasn't cross at all

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with me.

MR. BROTHERS: Now there is a question, your Honor that I thought I had asked, and I find I did not, and, with your Honor's permission, I will ask it, though it is not proper re-cross examination, perhaps.

THE COURT: I will allow it.

BY MR. BROTHERS:

Q And do you remember this question being asked by Mr. Breckenridge:

"Q When your father was going to shoot him, didn't you try to stop him? A I thought he was only going to hit him. He said to me, 'Keep still, talk easy, don't be so excited. There is nothing.'" Did you tell Mr. Breckenridge that? A I don't remember.

Q Well, is it true, what I have read.

MR. ROSALSKY: I submit, if the witness don't remember, she can't say whether it is true or not.

THE COURT: I will allow it.

MR. ROSALSKY: Exception.

A Read it once more.

Q "I thought he was only going to hit him, he said to me, 'Keep still, talk easy, don't be so excited. There is nothing.'" Is that true? A I didn't say that.

Q Is it true? A I don't remember.

Q Did you think your father was only going to hit him?

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A I don't understand what you mean by that.

MR. BROTHERS: Very well.

THE FOREMAN: May I ask a question?

THE COURT: Yes.

BY THE FOREMAN:

Q Directly, on the night of the shooting, after the shooting, you went to 14th Street and First Avenue, and took a car, did you not? A yes, sir.

Q And how long were you waiting on the corner there for a car? A Well, the car didn't stay so long to come. I can't tell you the time.

Q And you took the first car that came along? A Yes sir.

Q Did you know that your father would be on that car? A No, sir.

Q It was just by accident that you got on that car? A No, I didn't know that he was going to be on that car.

Q Well, what object had you and your mother to take that car? You took that car to go where? A My mother was bringing me to my cousin's, because it was late to go to Brooklyn.

Q And your father and mother and you got off at the same place? A No.

Q Your father left the car at a different time from what you did? A Yes, sir.

BY MR. BROTHERS:

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Q Did your mother tell you, as you walked over to the car, that you would find your father over there? A No, she didn't know it.

MR. BROTHERS: Mr. Breckenridge suggests that we have the young lady show, with the Interpreter, the positions that her father and Gaspare were in at the time that the shot was fired. May that be done?

THE COURT: Yes.

(The witness illustrates with the Interpreter and the Crier).

MR. BROTHERS: May it appear on the record that she first placed the right hand of the crier upon the throat of the Interpreter? May it appear that she took the officer's right hand and put it on the throat of the Interpreter?

MR. ROSALSKY: No, she did not.

THE ELEVENTH JUROR Yes, I saw her do it.

THE COURT: Now, the jury will remain unqualifiedly quiet.

(The witness continues the illustration).

BY MR. BROTHERS:

Q Now, is that the exact way they stood when the shot was fired? A yes, sir; and then, you know, when I seen---

Q Now, wait.

THE COURT: No, this young woman will go on. She was making an illustration.

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A (Answer continued). Then, when I seen Gaspare get hold of my father that way, my mother was next to me, and I went to my mother.

THE COURT: Now, that is not descriptive. That is stricken out.

BY MR. BROTHERS:

Q Did you see any pistol in your father's hand? A No, sir.

THE COURT: That will be all, Officers.

MR. BROTHERS: May it appear on the record that the witness now places the left hand of the officer who impersonates the deceased upon the shoulder of the Interpreter, who impersonates the father, the defendant?

BY MR. BROTHERS:

Q Did you see your father take the pistol from his pocket? A No, sir.

Q You didn't see any pistol at all? A No, sir.

Q Was your back turned to him at the time that the shot was fired? A yes, sir.

Q You didn't see who fired the shot? A No, sir.

Q And you don,t know in what position they were when the shot was fired, do you? A I seen the position, because that's why I went to my mother, when I seen Gasparino do that.

Q At the moment that the shot was fired, did you see who

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fired it? A No, sir.

Q And did you see what these men were doing, and how they were standing, at the time the pistol was fired? A I don't know what you mean by that.

THE COURT: I think it will be conceded that she did not. Isn't that so, Mr. Rosalsky?

MR. ROSALSKY: Yes, sir.

MR. BROTHERS: Then I am content with that.

BY MR. ROSALSKY:

Q When Gaspare grapped your father by the throat, did your father try to do anything? A He wanted to get away from him.

Q And that time you hollered, and turned away? A To my mother.

Q And then immediately you heard a shot? A yes, sir.

Q Now, after the shooting, did you have any quarrel with your mother? A No, sir.

Q Were you saying any words against your mother? A No, sir.

Q Was your mother trying to run after you, to get hold of you, when you ran across the street, on the west side of Third Avenue? A She seen me run and she run after me.

Q Yes. And when you were running, you fell? A Yes, sir.

Q When you got up, did you try to pull away from your

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mother? A No, sir.

Q You went then with your mother? A Yes, sir.

MR. ROSALSKY: That's all.

MR. BROTHERS: That's all.

THE COURT: That is all, young woman.

S A L V A T O R E C R O C C O L I S I , of 400 East 15th Street, being duly sworn and examined through the same Official Interpreter, on behalf of the Defense, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q Are you the husband of Nellie D'Angelo? A Yes, sir.

Q Do you remember the date that he married her? A The 14th or 15th of September.

Q Now, when was the first time you ever met Nellie, your wife? A Two days after Gaspare had her.

MR. BROTHERS: We move to strike that out.

THE COURT: Strike it out, and the jury will disregard it.

BY MR. ROSALSKY:

Q When did you first meet Nellie, the first time?

THE COURT: No, what place? A In a furnished room in 17th Street and Third Avenue.

BY MR. ROSALSKY:

Q Before that time had you ever seen Nellie? A I only saw her once, by sight, passing by.

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THE COURT: Now, wait a moment. Pardon me.

BY THE COURT:

Q Whereabouts was this furnished room on 17th Street? A Between 17th and 18th Streets, on Third Avenue.

BY MR. ROSALSKY:

Q Did you ever go to Nellie's house before you married her? A Either once or twice.

Q Who took you there? A Gaspare.

Q The dead man? A Yes, sir.

THE COURT: You had better make it plain what he means by "Nellie's house".

BY MR. ROSALSKY:

Q When you say you went to Nellie's house, you mean where Nellie, your present wife, was living? A My wife.

BY THE COURT:

Q Yes, but what house do you mean? Do you mean the house where her father and mother lived? A Yes, sir.

Q In Brooklyn? A No; 55 Lewis Street.

BY MR. ROSALSKY:

Q And about when was that; the first time you ever went to Nellie's home in Lewis Street? A Four months before marrying her.

Q Now, did you ever go to Nellie's house with Nellie's brother-in-law, Melazzo? I think that's the name. No, I'll withdraw that question. Do you know Vincenzo Martelaro? A

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It is four months now that I know him.

Q Did you know Vincenzo Martelaro before your marriage?

A No.

Q Did you ever go with him to Nellie's home on Lewis Street? A I went once or twice there.

BY THE COURT:

Q Did you ever go with this man Vincenzo Martelaro? A No.

BY MR. ROSALSKY:

Q Now, who took you---how did you come to go to 191 Third Avenue in September?

MR. BROTHERS: Now, isn't that objectionable, your Honor?

THE COURT: Yes, sustained.

BY MR. ROSALSKY:

Q Did you ever see Gaspare with a pistol?

MR. BROTHERS: We object tothat as incompetent and improper.

THE COURT: I will allow it.

A Yes.

BY MR. ROSALSKY:

Q Did you see him at 191 Third Avenue, with a pistol, during the month of ~~Nov~~ September? A Yes, sir.

Q Where else did you see him with a pistol during the month of September? A He came between Twelfth and Thir-

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teenth Streets, where I was with my pushcart and he had a revolver then.

Q When was that? A I don't remember.

Q Was that before or after you were married? A Before I got married.

BY THE COURT:

Q How long before? A Three or four days before.

EX MR. ROSALSKY: I have no more questions to ask, your Honor, in view of the Harris decision.

CROSS EXAMINATION BY MR. BROTHERS:

Q Now, you saw Nellie's father and mother the night before you were married, did you not? A No, sir.

Q You did not? A No.

Q Are you sure about that? A Yes, sir.

Q Were you before the Grand jury? A Yes, sir.

Q And you were sworn to tell the truth? A Yes, sir.

Q And there was a man there who spoke the questions in Italian to you? A Yes, sir.

Q Do you remember this question and answer: "Q That is the first time you had seen them since you were married? A I saw them one night before, when they came to my house, and said, 'When are you going to get married?' and I told him, 'Tomorrow we are going to get married at the City Hall'" Did you tell that to the Grand Jury? A I didn't say so.

Q "Q The night before you got married? A Yes, sir.

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They told me, 'Are you going to marry our daughter?' Itold them, 'We are going to get married the following day'"? Did you say that? A I didn't tell them that. I told that to Paul Melazzo.

Q You didn't tell the grand Jury that?

THE COURT: No, he means he didn't tell the parents.

BY MR. BROTHERS:

Q "Q When was this? A The father and mother of my wife came near my pushcart, the night before, and told me if I was going to marry her."? A That was four or five days before.

BY THE COURT:

Q You mean to say that your talk of that kind with the father and mother was four or five days before your marriage? A Yes, sir.

BY MR. BROTHERS:

Q And where did you have the talk? A Where I had my pushcart, in front of my pushcart.

Q Where was it? A Between 12th and 13th Street.

Q How did they know that you were there, do you know? A Because they used to pass there often, and I always was there.

Q Who told them that you were going to marry Nellie? A I told them.

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Q When? A Four or five days before.

Q Well, did you know them? A Yes, sir.

BY THE COURT:

Q Because you had seen them at 55 Lewis Street; is that so? A Yes, sir.

BY MR. BROTHERS:

Q And they came to you at your push cart, four days before and asked you if you were going to marry Nellie? A yes, sir.

Q Who brought up the subject of marriage? A I did.

Q And did you like Nellie at that time? A Yes, I loved her, but I was forced by the other man.

Q Yes, but you loved her, didn't you? A I didn't love her at first.

Q Now, you had been living with her before you were married, hadn't you?

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

THE COURT: I will allow it.

A One week.

BY MR. BROTHERS:

Q And you had had sexual intercourse with her? A Yes, sir.

Q Did you know how old she was? A Ididn't ask her.

Q Did you know, is the question. A No.

Q Didn,t you know that she was under eighteen years of

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age? A No.

Q Did you have any fight with Gaspare after you were married? A No, sir.

Q You and he were good friends? A Yes, he was a good friend, but he didn't belong to my own work.

Q Now, you say that he htreatened you if you didn't marry this girl? A Yes, more than once.

Q And did you tell the police about it? A No.

Q When he came with a pistol to your pushcart did you tell a policeman about it and have him arrested? A No.

Q And you knew it was against the law for him to carry a pistol? A I don't know anything about the law.

Q Did you carry a pistol yourself? A No.

Q Did your wife ever make any complaints about Gaspare?

MR. ROSALSKY: I object to that.

THE COURT: Sustained.

BY MR. BROTHERS:

Q Did you see her out on the street, walking with Gaspare, at any time?

MR. ROSALSKY: I object to it.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No.

BY MR. BROTHERS:

Q Now, did she tell you that she was going down to see

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her father and mother on the day that Gaspare was shot?

MR. ROSALSKY: Objected to.

THE COURT: Sustained.

MR. BROTHERS: Whether she told him that she was going down there?

THE COURT: Yes.

BY MR. BROTHERS:

Q Did she tell you the reason that she was going down to see them?

MR. ROSALSKY: The same objection.

THE COURT: The same ruling.

MR. BROTHERS: Now, if I can show that she ascribed a different reason from the one she gives here, by this witness, I think it is proper. She says that she went to her father for protection, and I think that I can show that she gave a different reason.

THE COURT: Well, I am inclined to think you are right.

MR. ROSALSKY: Exception.

BY MR. BROTHERS:

Q Now, didn't she tell you on that day that she was going to see her father, and why she was going? A No, she didn't.

Q Do you remember being questioned about that before the Grand Jury? A No, I don't remember.

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Q Well, see if this refreshes your recollection:

"Q Did you know that she had gone down to see her father and mother on the day of the shooting?" A Yes. They asked me that question.

MR. ROSALSKY: One moment. I object to the question, asking a part of a question, and getting an answer.

THE INTERPRETER: I put the whole question.

THE COURT: Yes, he put the whole thing.

BY MR. BROTHERS:

Q And did you answer that question:

"A Yes, she told me that. My wife told me she was going down to see her father and mother."

MR. ROSALSKY: Objected to.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A I don't remember whether I said it.

THE COURT: Now, we will take a recess, if you desire.

MR. BROTHERS: I have but one more question.

BY MR. BROTHERS:

Q "Q Did she say what she was going about? A To pay them a visit, because it was eight days that she hadn't seen them." Did she say that and did you testify to that? A I don't remember.

THE COURT: We will take a recess now.

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(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until two o'clock).

---oooOooo---

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A F T E R R E C E S S.

THE COURT: Would you like your last witness back, Mr. Brothers?

MR. BROTHERS: Yes, sir; I would.

THE COURT: Then he may be recalled.

THE COURT: (Addressing the Third Juror) Mr. Rothschild, have you had any message yet?

THE JUROR: I telephoned up and they said she was asleep at the present time. I am very much obliged to your Honor.

S A L V A T O R E C R O C C O L I S I, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued by Mr. Brothers).

Q On the night Gaspare was shot, where were you? A I was at the pushcart.

Q And were you any other place that night? A No.

Q Were you at your wife's cousin's house? A Yes.

Q At what hour? A About ten o'clock at night.

BY THE COURT:

Q And where was that? A 55 Lewis Street.

BY MR. BROTHERS:

Q Was it not Roosevelt Street? A I don't know the name of the street.

Q You just said 55 Lewis Street? A Yes, sir.

Q Well, do you know where Roosevelt Street is? A Ido

not.

Q Well, where did you live before you married Nellie?

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

THE COURT: I will allow it.

MR. ROSALSKY: Exception.

A 339 East 11th Street.

BY MR. BROTHERS:

Q Did you state to the Grand Jury that which I am about to read to you:

"Q Where were you the night of the shooting? A In a cousin of my wife's home, at Roosevelt Street---Roosevelt Street near the Bridge."

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

THE COURT: I will allow it.

MR. ROSALSKY: Exception.

A Yes, sir; Isaid near the Bridge.

BY MR. BROTHERS:

Q And did you say Roosevelt Street? A Idon't know whether I said Roosevelt or Lewis. I don't know.

Q And which street were you in, that night? A At 55, near the Bridge.

Q And who asked you to go there?

MR. ROSALSKY: I object to that as immaterial, ir-

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relevant and incompetent.

THE COURT: Well, I will allow him to answer.

MR. ROSALSKY: Exception.

A My wife. It was near when I was going to marry her, and I didn't know where to go and she told me where to go.

BY MR. BROTHERS:

Q Well, why did you go to that place, that night? A I went to get my wife.

Q How did you know that she was there? A I went in the house, and I couldn't find her, and the door was locked, and I went there.

Q How did you know where to go? A I went there once or twice.

Q Before that? A Before I married her I went there.

Q Now, hadn't you arranged with Nellie, or with Nellie's mother, to meet them at that place, that night?

MR. ROSALSKY: I object to that.

THE COURT: Sustained.

BY MR. BROTHERS:

Q Had you made an arrangement---

THE COURT: If you will leave out "Nellie's mother" I will allow it.

BY MR. BROTHERS:

Q Had you arranged with Nellie to meet them at that house after the shooting?

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

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A No.

BY MR. BROTHERS:

Q The night that you talked with Mr. and Mrs. Dangelo at your pushcart about marrying Nellie, did they threaten you with arrest if you didn't marry her? A No, they didn't threaten me, except they asked me when will I marry her and I said, "When I have a chance, when I have time."

Q Didn't they say that you had been living with their daughter, and you would have to marry her?

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

THE COURT: I do not see exactly what bearing it has, Mr. Brothers?

MR. BROTHERS: Well, I would have to outline what I mean by it, to indicate to your Honor what I wanted. If your Honor wants me to I will. The purpose of it is, I claim, that they compelled this man to marry their daughter, because he had been living with her as husband and wife, and, after that, finding that the girl preferred the other man, he arranged with the father, if he didn't take his daughter back, certain things must be done. That is my claim. There is no proof of it at

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this time, but I am trying to prove it by this witness, as showing the motive for the killing of the deceased on the part of the defendant.

THE COURT: I think it is competent in that view. I will allow it.

MR. ROSALSKY: Exception.

A They asked me when will I marry her.

BY MR. BROTHERS:

Q Will you please answer the question? A Yes, they told me that, certainly.

Q That you would be arrested if you didn't marry the girl; isn't that right? A No.

Q Well, what did they say to you about what they would do, if you didn't marry her?

MR. ROSALSKY: I object to the question, if your Honor please, upon the ground that it is immaterial, irrelevant and incompetent, and trying to contradict a statement which comes right within the Harris case.

THE COURT: I think it bears on the question of motive, and is receivable on that account.

MR. ROSALSKY: Exception.

A They only told me to marry her. That didn't tell me what they would do to me.

BY MR. BROTHERS:

Q Now, did you go to the defendant after you were mar-

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ried and tell him anything about Gaspare and your wife?

MR. ROSALSKY: I object to that as immaterial and irrelevant.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No.

BY MR. BROTHERS:

Q Didn't you see Mr. D'Angelo, the defendant, the night before the shooting? A No.

Q And didn't you tell him at that time that he would have to get rid of Gaspare? A No.

Q Didn't you tell Him that, if he didn't keep Gaspare away from your house, that you would send Nellie back home to her father? A No.

Q Now, what time did you usually go home from work at night? A About half past seven or eight. OnSaturday, about midnight.

Q And why didn't you get home this Monday night until after half past nine?

MR. ROSALSKY: I object as immaterial, irrelevant and incompetent.

THE COURT: I will allow it.

MR. ROSALSKY: Exception.

THE COURT: It may have a bearing.

A I was busy in the basement, cleaning and fixing the goods.

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BY MR. BROTHERS:

Q And where is that? A 217, at the corner of Thirteenth Street.

Q And what Avenue? A First Avenue.

MR. BROTHERS: That is all.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q The first time you ever had any intercourse with Nellie, what did Gasparino say to you? A Two days afterwards he forced me to marry her.

MR. BROTHERS: No, that is not an answer, and I move to strike it out.

THE COURT: Yes, strike it out, and the jury will disregard it.

BY MR. ROSALSKY:

Q After you had had sexual intercourse with Nellie, did Gasparino show you a pistol? A Yes, sir.

Q The District Attorney asked you why didn't you have him arrested. Why didn't you have him arrested? A I was afraid of him, and, besides, I had to make a living, and I had no time.

Q Were you afraid of Gasparino? A Sure I was afraid of him.

Q Were you afraid that he would kill you? A Yes, because he always carried that revolver.

Q Now, did you tell Paul Melazzo about marrying Nellie?

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A The night before the wedding I met him in First Avenue---Second Avenue---and Ninth Street, and told him to be in the City Hall, tomorrow morning, because I was going to marry her.

Q Did you tell Paul Melazzo who should be in the City Hall? A Her father and mother and self.

MR. ROSALSKY: That's all.

RE-CROSS EXAMINATION BY MR. BROTHERS:

Q I meant to ask youthis. Was Gaspare present at the time you were married? A No.

Q And although he was not there, you were willing to marry the girl is that right? A I had to marry her.

Q Yes. The girl's father and mother were there, weren't they? A Yes, sir.

Q Have you ever been convicted of a crime? A No; of a crime.

Q Have you been convicted of anything? A Why should I? I am only a hard working man.

BY MR. ROSALSKY:

Q Why did you have to marry Nellie?

MR. BROTHERS: I object to that. We have been all over that.

THE COURT: Yes, sustained. We have been all over that. I think you misapprehended the question of the District Attorney. He merely asked a question as to whether her father and mother were there.

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BY MR. ROSALSKY:

Q Well, did Gaspare tell you what he would do to you if you didn't marry Nellie? A He said he would kill me.

Q And is that what led you to marry Nellie? A Yes, sir.

MR. ROSALSKY: That's all.

MR. BROTHERS: No further questions.

MR. ROSALSKY: I will call Annie D'Angelo. Will your Honor permit me to ask just a few questions of McHugh, before I call this witness?

THE COURT: Yes.

J A M E S M c H U G H , being recalled for further cross examination, testified as follows:

CROSS EXAMINATION (Continued) BY MR. ROSALSKY:

Q Who was the first person to come to your house about coming down to the District Attorney's Office.

Q Did you go to the District Attorney's office yourself? A No, sir; I was subpoenaed there.

Q Who brought the subpoena to you? A A stout man with a mustache. I didn't know him.

Q Was he a police officer? A Yes, Ithink he was.

MR. ROSALSKY: Is Sergeant Willemse here?

MR. BROTHERS: I don't see him.

BY MR. ROSALSKY:

Q Well, he was a police officer; is that right? A Yes,

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sir.

Q Did you see him around the corridors of this building, yesterday? A No, sir.

Q Well, how many police officers were there? A That came to me?

Q ~~Ex~~ Yes? A One.

Q Do you know whether---did he tell you who he was? A No, sir; he didn'ttell me.

BY THE COURT:

Q I think you told us, yesterday, where the moving picture place was that you went to. Where was it? A Broadway and 14th Street.

Q And were you in that moving picture place alone, or with some friend? A Alone.

Q And when you walked along up Third Avenue, on the night of the shooting, were you walking alone? A Yes, sir.

Q You went from the moving picture place through 14th Street? A Yes, sir.

Q And up Third Avenue from 14th? A Yes, sir.

Q Onthe east side of the way; is that so? A Yes, sir.

Q And where were you bound? A North, home.

Q And your home was where? A 221 East 23rd.

Q Did you observe the hands of the young man when you first saw him, referring now to the young man who was shot. Do you understand my question? A Yes, sir.

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Q Did you observe his hands? A Yes, sir.

Q And did you observe his hands when he was going across Third Avenue? A Yes, sir.

Q Did you at any time see anything in his hands? A No, sir.

Q Where were you when the Police Officers arrived, where the body was, if you know? A In the gutter.

Q By the body? A Yes, sir.

Q And about how long had you been where the body was at the time the first officer in Uniform came? A A little over five minutes.

Q And during that time were you looking at the dead body? A Yes, sir.

Q During that time did you touch the dead body? A No, sir.

Q And during that time did you see any one touch the dead body? A No, sir.

Q And what is your best estimate of the time that passed from the moment that you saw the dead man fall until the moment that you stood by his body? A Well, I didn't see the dead man fall.

Q You didn't see the dead man in the act of falling? A No, sir.

Q You had lost sight of him? A Yes, sir; I was on the corner when he fell.

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Q In other words, there was something that prevented your looking down to the point where the dead man fell? A Yes, sir.

Q I think you said you were not the first person to reach the point where the dead man fell? A No, sir.

Q You mean that you were not the first? A I was not the first.

Q Did you stay there until the patrol wagon came? A Yes, I seen the patrol wagon.

Q Well, were you there at the time that the body was put into the patrol wagon? A Yes, sir.

Q And were you there when the wagon drove off with the body in it? A Yes, sir.

Q What is your best recollection as to the length of time between the time that you saw the flash, and the time when the body was put into the patrol wagon? A That I couldn't swear to.

Q After the body was put into the patrol wagon, where did you go? A I went home.

Q And, in going home, what course did you follow? A Going north, the same way.

Q You walked up Third Avenue, or did you walk up Irving Place? A I walked up Third Avenue.

Q In other words, you walked back along 17th Street until you got to Third Avenue, and then went up Third Avenue?

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A Yes, sir.

Q And which side of the avenue did you go up? A The west side, and cut across 18th Street to the east.

Q Where did you say that you work now? A Nassau News Company.

Q And what kind of work are you doing? A Carrying "hickeys", carrying newspapers down to the wagons.

Q And what work were you doing on the evening of September 22nd last? A The same work, sir.

Q Your work, that night, stopped at about what time? A I started work in the morning, sir; from one to seven.

Q You work every morning? A Yes, sir.

Q From one o'clock in the morning, that is, an hour after midnight, until seven o'clock? A Yes, sir.

Q And those were your hours of work at that time? A Yes, sir.

MR. ROSALSKY: Is Sergeant Willemse here? I want him brought in.

MR. BROTHERS: Well, if he is here, bring him in.

MR. ROSALSKY: You know he is in the building.

THE COURT: No. Now, you have the same right to produce that witness that anybody else has.

MR. BROTHERS: I know that he was out of the State, bringing a prisoner home, and did not get here until this morning.

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MR. ROSALSKY: Will your Honor permit one of the Court Officers to go up to the Homicide Bureau and see if he is there?

MR. BROTHERS: I have no objection.

THE COURT: Yes, Captain, you can send an officer up there to see if he is there.

BY MR. ROSALSKY:

Q Well, did you have any talk about this case to that officer on the way down to the District Attorney's Office?

A No, sir.

Q Now, when was the first time you spoke about this case, prior to coming to the District Attorney's Office.

MR. BROTHERS: We have been all over that.

THE COURT: Yes, you have. But I will allow him to answer this one question.

A On the night of the shooting, I told it to my friend, Edward Rice.

BY THE COURT:

Q And where does he live? A 36 Monroe Street.

BY MR. ROSALSKY:

Q And you never said another word about it until when?

A Until I went to the District Attorney's Office.

Q Now, on the night of the shooting, as you were coming along Third Avenue, you say the women were standing with their backs toward you?

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THE COURT: No. Now, counselor, I will not allow you to go into that. But, if any question put by me leads you to put a question, that question I will allow.

BY MR. ROSALSKY:

Q Now, were they nearer to 17th Street than the dead man? A yes, sir.

Q In other words, they were standing between you and the dead man? A Yes, sir.

Q And were they both standing on the same side? A Yes, together.

Q Who was standing nearer to the building? A The old lady.

THE COURT: I think you have been all over that, and it is not called out by anything I have asked.

BY MR. ROSALSKY:

Q And do you want to tell the jury that you watched every movement ~~xxxx~~ of the deceased, prior to the flash?

MR. BROTHERS: Objected to as already gone over.

THE COURT: Sustained. Yes, we have been all over that.

BY MR. ROSALSKY:

Q How was Third Avenue lighted up, that night? A Well, the pawnshop had been closed where they were standing.

Q And is there any electric light in front of the pawnshop? A Not that I can remember.

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Q Is there any electric light or any other kind of light in front of the cigar store? A In his window; not in front of it.

Q And was there any electric light on the corner? A Yes, sir.

Q And were there people walking up and down at that time? A yes, sir.

Q And your view was unobstructed? A I don't understand what you mean.

Q I say, were there any people walking between you and where the dead man was standing, prior to the flash? A Yes, sir.

Q And their walking between you didn't interfere with your view? A No, because I seen them already.

Q But when they got between you and the dead man, did you see every movement of the dead man or did they interfere? A No, they didn't interfere. If they had been doing anything, I would have seen it.

Q What do you mean by that? A If the dead man had been doing anything, why, I would have seen him doing it.

Q Why, did the dead man stand in the same position from the first time you saw him until you saw the flash? A Yes, sir.

Q Didn't you testify in your direct examination that you saw their hands going? A yes, the women.

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THE COURT: Now, that is a question put counter to the intimation I gave, a moment ago, and the witness need-n't answer it, because you have exhausted the witness. Anything that I have brought out by my questions, I would allow you to interrogate him about, and I would afford the same opportunity to Mr. Brothers. Otherwise the examination is closed.

MR. ROSALSKY: Exception. That is all for this witness, your Honor. I except to your Honor's refusal to permit me to go any further, except that I want this witness here to identify Willemse when he comes here.

THE COURT: Of course I understand that you were calling him by way of further cross examination? If you were calling him as a witness, there would be a different rule applicable.

MR. ROSALSKY: It was for further cross examination.

A N N I E D ' A N G E L O , awitness called on behalf of the defense, being duly sworn and examined through the same Official Interpreter, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q Where do you live? A I reside in Rivington Street. I don,t know the number. I don't know any numbers.

Q How old are you? A 55 years old.

Q How many children have you had? A Three children.

Q How many have you had altogether? A Nine.

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Q And how many are living? A Three.

Q And six dead? A Yes, dead.

Q Give me the names of those children who are living? A Maria D'Angelo, Josephina D'Angelo and the last one, Nellie D'Angelo, who is the youngest.

Q Now, do you work for a living? A yes, sir.

Q What kind of work do you do? A Sewing coats.

Q Were you working during all of last year? A Yes, sir I always worked.

Q Well, do you remember about when Nellie was missing in 1913? A I remember she was missed on the first of September.

Q Was there anything else missing at the time Nellie was missed? A The bank book and the gold bracelet.

MR. BROTHERS: I move to strike that out, on the ground that it is incompetent, under your Honor's ruling.

THE COURT: I think that is so, Mr. Rosalsky.

MR. ROSALSKY: I am trying to avoid all those questions, your Honor.

BY MR. ROSALSKY:

Q Did you know Gaspare Mattarelli? A I did know him.

Q When did you first see him? A When there was a strike with the working people.

BY THE COURT:

Q And when was that? A I think it was in September, I

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can't exactly remember.

Q Of the same year as the shooting? A Yes, sir.

BY MR. ROSALSKY:

Q How many months before the shooting was the strike? A I don't know; I don't know what time it is, but I knew him because he used to come and take the women home.

Q Well, when you said before it was in the month of September, did you know that it was in the month of September? A It was the month of September, about the first of September, that I missed my daughter.

Q Well, after the strike, did Gaspare come to your house?

THE COURT: Yes or no, now.

A Yes.

BY MR. ROSALSKY:

Q Did Gaspare ever talk to you about marrying Nellie? A Yes, sir.

Q And what was that talk you had with Gaspare?

MR. BROTHERS: We object to that on the ground that it is incompetent.

THE COURT: Sustained.

MR. ROSALSKY: Exception.

BY MR. ROSALSKY:

Q Well, do you remember Gaspare's wife ever coming to your house, with two babies? A Yes, sir.

Q What took place on that day? A Gaspare was there

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when the wife of Gaspare and two children came, and Gaspare said, "I don't know you as a wife of mine, and these are not my children, and, if you don't go away, I'll throw you down the stairs."

Q And did you after that order Gaspare to leave your home and to leave Nellie alone? A I did so, yes.

Q Now, did Nellie ever tell you anything that Gaspare had said to her, prior to the night of the shooting? A No, sir.

Q Who was the first person to tell you any of the doings between Nellie and Gaspare? A I didn't know anything about it.

Q Now, do you remember on the night of the shooting, did you see your husband? A I did not.

Q Before going up to Third Avenue, when did you see your husband? A In the house of Paul Melazzo in New York, in Lewis Street.

BY THE COURT:

Q About what hour of the day or night was that? A It was at night.

BY MR. ROSALSKY:

Q Do you remember the hour? A About eight o'clock at night.

Q Was Nellie at the same house in Lewis Street? A No, sir.

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Q Did you see Nellie before, that day, before that time? A No, sir.

Q Did your husband say any thing to you at that time? A Yes, sir.

Q What did your husband tell you? A He told me that Nellie was in Brooklyn and---

MR. BROTHERS: We object to that.

THE COURT: Sustained.

MR. ROSALSKY: Your Honor, willyou not permit me to show what the husband said?

THE COURT: Well, does it not come within the rule as to self-serving declarations? Is it not inadmissible on that ground?

MR. ROSALSKY: Well, I will except to your Honor's ruling, and proceed.

BY MR. ROSALSKY:

Q Well, after you had had a talk with your husband--- answer this yes or no---after your husband had told you something what did you do?

MR. BROTHERS: objected to.

THE COURT: Sustained.

BY MR. ROSALSKY:

Q After you had had your talk on that occasion what did you say?

MR. BROTHERS: Objected to.

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THE COURT: Sustained.

BY MR. ROSALSKY:

Q What did you do after that? A I went to take my daughter home.

Q And did you have the address? A Nellie left it to my husband.

Q Did you know where to go? A No, I didn't.

Q Well, did you ask any one to go with you? A My husband went with me.

Q And then you went to 17th Street and Third Avenue? A I don't know the street.

Q Well, you went with your husband? A Yes, sir.

Q Now, do you remember what street you got off the car at, if you know? A When we went to get my daughter, we went on walking. We didn't take any car.

Q Well, what you reached the house, when you were walking, did you see your daughter? A No.

Q Well, after walking some time did you see your daughter in the street? A I saw her standing right in front of her own door.

Q And who was there when you saw her? A Gasparino was there.

Q And did you and your husband and Nellie and Gasparino talk together, that night?

THE COURT: No. Suppose, now, you ask her what was

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done?

BY MR. ROSALSKY:

Q What was said and done after you saw Nellie? A As soon as Nellie saw me, she approached me. My husband was by my side, and Gasparino approached also.

Then my husband did state to Gaspare, "Why is it that you are talking with my daughter?" Then he said, "Why don't you leave my daughter alone? She is married and you are married, and have got children. Why don't you leave her alone."

And then Gasparino said, "You old cuckold, I will show you" and he, with his right hand, slapped the defendant in his face, and with the left hand he grabbed him by the throat (Illustrating).

Then, withhis left hand on my husband's ~~throu~~ throat, he placed his right hand in his hip pocket (Illustrating). My daughter seen the hand on my husband's throat---

MR. BROTHERS: I object to that and move to strike it out.

THE COURT: Strike it out. Go ahead now.

A (Answer continued). My daughter screamed, and suddenly I heard a pistol shot, and we were screaming, and we couldn't se---I couldn't see my husband, and my daughter and I ran after Gasparino, who was running away at the time.

Then my daughter started to scream, "mascherata",

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why did you take my blood away? You shotmy father," because we couldn't see the defendant any more.

Q Well, did you follow your daughter immediately after the shot? A Yes, sir; I ran after her and caught hold of her. I took her away and took her towards downtown, because she was crying.

Q Did you and your daughter trip while running? A Yes, sir; both; we both fell.

Q Did you see your husband at that time when you fell? A No.

Q Did you see your husband when you got up? A No, sir.

Q After the shooting, did you see your husband on Third Avenue, that night? A Ican't tell you about Avenues or Streets, because I don't know, but I can tell you something about the car.

Q Did you see him, your husband, on the same street or avenue where the shooting took place, immediately after the shooting? A (No answer).

BY THE COURT:

Q From the time of the shot, when did you next see your husband? A Afterwards, in the car.

Q You didn't see himfrom the time of the shooting, until you saw him inside of a car on that evening, is that so? A No, sir.

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BY MR. ROSALSKY:

Q At the time that your husband was talking to Gaspare, indicate the position of Gaspare and your husband, the position they were in. A (The witness illustrates).

THE INTERPRETER: I am Gaspare and the witness is the defendant.

BY MR. ROSALSKY:

Q Now, how near to Gaspare was your husband.

THE COURT: Do you mean at the time of the shot?

MR. ROSALSKY: Yes, sir.

THE INTERPRETER: The witness pointing as being two feet away from the Interpreter).

THE COURT: I think we can do a trifle better than that. Suppose we assume that the end of the jury box is the door leading into the hallway of 191 Third Avenue. You tell her that that end of the jury box we shall consider the door leading into the hallway of 191 Third Avenue, in front of which the shooting is ~~xdi~~ said to have taken place. Now, we will say that the Court Officer there represents Gaspare, and the Interpreter your husband. Now, do you want another person there to complete the group? Or don't you care about that?

MR. ROSALSKY: Well, I want to get the position first, but we may as well have another one.

THE COURT: Captain, if you will kindly step around there. The Captain in this part will represent your daughter.

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(The witness illustrates).

THE INTERPRETER: She says I am the husband, the defendant, between the street and the doorway. "My husband was like this (Illustrating) and the defendant's face was to Gaspare, and he said 'Why don't you leave my daughter alone, Gaspare, she is married and you are married, too?' And Gaspare said to him,'You old man, your daughter don,t belong to you any more' and with the right hand he slapped the old man in the face and then with the other hand he seized him by the throat and then with his right hand pulled away and put it behind his hip. (The witness illustrates) Then I screamed and seized hold of my daughter, and then we heard the report."

BY MR. ROSALSKY:

Q Now, was Gaspare so near to the old man as you have indicated? A Yes, he was approaching closer and closer.

Q Was he as close as this? (Illustrating) or did they move away at all? A That was the distance. (Indicating).

THE COURT: Very well, sit down now.

BY THE COURT:

Q Who stood next to your husband, you or your daughter? A My daughter was nearer to my husband.

Q So that your husband stood, as I understand you, with his back to the door leading to 191 Third Avenue? A Yes, sir.

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Q And your daughter stood a little further away from that door, and on your husband's left hand side, is that so? A No, I was on my husband's left hand side.

Q Then you were nearer to your husband than your daughter? A Nellie was nearer my husband.

Q Well, as you placed the figures, a moment ago, as I understood you, your husband was placed with his back to the door? A No, he was on the street. Ican't remember that which you ask.

BY MR. ROSALSKY:

Q Well then, did you hear Nellie holler, "Gaspare, Gaspare dear, come here," while she was running after Gaspare? A No.

BY THE COURT:

Q Did you hear your daughter Nellie say anything when she was going in the direction that Gaspare had gone? Yes or no, now? A No.

Q Did you hear her call out anything? A She was saying, "Mascherata", about her own father.

BY MR. ROSALSKY:

Q Was she hollering, "Gaspare, Gaspare"? A She called, "Mascherata".

Q At the time that you were running, that you and Nellie were running after Gasparino, did Nelloe shout, "Gaspare, Gaspare"? A She said, "Gaspare, mascherato."

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BY THE FOURTH JUROR:

Q What is the meaning of that?

THE INTERPRETER: A man with shame, who wears a mask.

BY MR. ROSALSKY:

Q Now, after you had fallen with Nellie, and after you got up, did you see your husband at that time? A

THE COURT: She said she did not see him until she got on the car.

BY MR. ROSALSKY:

Q Did you make any motion to your husband, any movement of your hand indicating anything? A I didn't see him.

Q Well, did you afterwards go with your daughter to a car? A Yes, sir.

Q When you got out of the car---do you know at what street you got on the car? A At 14th Street.

Q And did you take the first car that came along? A Yes, sir.

Q And when you got on that car was your husband in that car? A Yes, sir.

Q Who paid the fare, you or your husband? Who paid your fare and Nellie's fare, you or your husband? A I paid for myself and for Nellie.

Q What did Nellie say when she got on the car to your husband? A Then immediately she entered the car, and she said, "Papa, whow did this thing happen? Who shot?"

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Q And what did your husband say? A My husband said, "Silence. I don't know anything about it."

Q Did your husband say to Nellie, "If you don't shut up I'll shoot you too?" A No, sir.

Q Did your husband say---did Nellie say, "Oh, Papa, you killed my Gaspare," when she got on the car? A No.

BY THE COURT:

Q Did you see any cartridge in your husband's hand?

MR. ROSALSKY: Your Honor, I am just coming to that.

THE COURT: Withdrawn.

BY MR. ROSALSKY:

Q Did your husband turn around and say to Nellie, "You shut up or I'll give you some too?" A No, sir.

Q Did you see your husband take out a cartridge shell, like this (Indicating) and hold it between his index finger and thumb and say, "This is all that is left of the bullet and he is gone."? A No.

Q Now, do you know whether your husband had a pistol when he went there, that night, whether he had a pistol with him? A No.

Q Did your husband tell you that he was going to shoot Gaspare, that night? A No.

Q Did you expect to see Gaspare, when you reached Nellie's home, that night? A No.

MR. ROSALSKY: That's all.

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CROSS EXAMINATION BY MR. BROTHERS:

Q When your daughter disappeared, did you make any search for her?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: I think I will allow it.

MR. ROSALSKY: Exception.

A I was inquiring, and I was trying to find her, and I was making inquiries.

BY MR. BROTHERS:

Q Where did you inquire? A I went to the Italian Consul for my book, my bank book.

Q Did you go to the Police Station? A No.

Q Didn't you go to 191 Third Avenue and find your daughter living there with Salvatore?

MR. ROSALSKY: When, when? I object to the question.

THE COURT: Before September 22nd?

MR. BROTHERS: Yes, sir; before September 22nd.

A No.

BY MR. BROTHERS:

Q Did you see Croccolisi, the husband of your daughter, the night before the wedding? A No.

Q Didn't you see him at his pushcart? A No.

Q Wasn't your husband with you at the time? A No.

Q Do you remember that you testified before the Grand

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Jury? A yes, sir.

Q And you were sworn to tell the truth, just as you were here? A yes, sir.

Q And there was an Interpreter there, as there is now, who spoke Italian? A Yes, sir.

Q Now, do you remember this question and answer, put to you before the Grand Jury:

"Q You went down to see Croccolisi at his push cart, the night before they were married, didn't you? A Yes."? A No, sir.

Q You didn't say that? A No, sir.

Q "Q She was living with Salvatore at that time? A yes, they lived together, yes, where I went and found them there." Did you make such an answer in the Grand Jury? A Before they got married in the City Hall, do you mean?

Q I don't know. Iam asking you? A No.

Q Did you make that answer, is the question? A Well, the question is, she was living with Salvatore at that time, and what time?

Q Well, did you see her living with Salvatore at any time before or after the wedding? A Idon't remember.

Q You don't remember? A No, sir.

Q Well, do you remember whether you were there.

BY THE COURT:

Q Were you ever at the place where the shooting took

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place before the night of the shooting? A No.

BY MR. BROTHERS:

Q Now, did you see your daughter, that day, at your house?

THE COURT: Referring to the day of the shooting?

MR. BROTHERS: Yes, sir.

A No, sir.

BY MR. BROTHERS:

Q Where were you living at that time? A When?

Q At the time of the shooting? A In Brooklyn.

Q At what place and what street? A The store was in Grand Street. I don't remember numbers. And that day we were moving away from thestore.

Q And where was the house? A It was about two or three blocks away from the store.

Q Well, the house wasn't in the same building with the store? A No, sir.

Q Do you remember this question and answer in the Grand Jury Room.

"Q How did you discover your daughter was living on Third Avenue? A She came personally to our house and told us that this man wanted her to go to another village."

Did you make that answer to that question? A Yes, sir; because my husband told me before I went there where she lived.

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Q Well, now, did you say that she came to your house on that day, as I read it to you? A Yes, she said that she came while my husband was there, but I wasn't present.

Q Did you say that she came to your house? That is the question? A I couldn't have said it, because I only knew it that night. I didn't see her there.

Q Now, did you make this answer:

"Q What time did your daughter come down to see you that day? A About seven or eight o'clock. It was in the night."?

A All the time about my husband I was answering.

Q Did you answer as I read, please.

MR. ROSALSKY: I submit that the witness answered fully.

BY MR. BROTHERS:

Q Now, when you were asked: "What time did your daughter come down to see you that day?" Did you understand that they were asking about yourself or your husband? A They didn't ask me those questions.

Q Did you say, "She came down that day about seven or eight o'clock. It was in the night?"

MR. ROSALSKY: I object, unless the question and answer be put.

BY MR. BROTHERS

Q "Q What time did your daughter come down to see you

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that day? A About seven or eight o'clock. It was in the night.? A No, I don't remember.

Q Now, do you remember being asked:

"Q What happened on the night of the shooting? A I saw my daughter with Gasparino, the deceased, quarreling, and my husband was there---my husband wasn't there---my husband was with me. I went there with my husband at that place because my daughter told my husband and I that that man wanted her to go to a village to become a prostitute."

MR. ROSALSKY: I submit, your Honor, that he should finish the entire question, as long as he puts the question.

THE COURT: I understand that you have read the question in full?

MR. BROTHERS: Yes, sir; I have.

THE COURT: And the answer in full?

MR. BROTHERS: No, sir. I'll read the rest of it afterwards. I wanted to direct her attention to something specific now. What I want to direct her attention to is the statement that her daughter told her husband and her something.

THE COURT: I think that, technically, the more correct way is to read the whole, and then direct her attention to anything in particular that you want.

MR. BROTHERS: Very well, sir; I will do that.

BY MR. BROTHERS:

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Q "I heard my husband say to this man, 'Though my daughter is married, you still insist upon bothering her, and want her to lead a life of shame?' And at that time this man grabbed my husband by the throat, and placed his hand, made a motion with his hand in his back pocket."

A Yes.

Q Is that the answer? A Yes. That question was put to me and that answer was given.

MR. ROSALSKY: Your Honor, may I know what point the interpreter reached?

MR. BROTHERS: The Interpreter said that he read the question and answer which I put, and also the next question: "Q All right, what happened then?"

THE INTERPRETER: I read down to where the pencil mark is.

Q (Question continued)

"A "And he punched him in the head and he put his hand in the back, and then I grabbed my daughter, and, in the mean time I heard a shot and I grabbed my daughter and pulled her away. I don't know who done the shooting."

Now, is that right, that you didn't know who did the shooting? A I couldn't tell, because he had ahold of my husband's throat.

Q And you ran away, did you not, before finding out who was shot? A Gasparino ran away first, and then my daughter ran after Gasparino, and I ran after my daughter.

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Q But before you ran away from that spot, did you know who had been shot? A No, sir.

Q And were you surprised to see your husband on the car? A No, I said to my daughter, "Nellie, your father is here."

Q. Did you expect to meet him on that car?

MR. ROSALSKY: Objected to.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A No,

BY MR. BROTHERS:

Q What kind of a car was it?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A The Belt Line car.

BY MR. BROTHERS:

Q And how did it happen that you and your husband were at this house in Lewis Street at eight o'clock? A I was working in New York, and my husband came to take me from there, and then we go to find my daughter, where she was living.

Q Well, but how did your husband know that you would be in Lewis Street, that night, at eight o'clock?

MR. ROSALSKY: Objected to.

THE COURT: Sustained.

BY THE COURT:

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Q Had you made any appointment with your husband to meet you at 55 Lewis Street, that night, at eight o'clock? A No, sir.

Q Had you told him that you were going to 55 Lewis Street, that day? Yes or no, now? A I hadn't seen my husband ~~xx~~ since I left home in Brooklyn.

Q Now, at about eight o'clock, you say your husband came to 55 Lewis Street? A yes, sir.

Q And he came to what floor? A The second floor.

Q And he found you there; is that so? A Yes, sir.

Q And howlong had you been there at that time? A That moment.

Q In other words, you and he arrived at 55 Lewis Street together, is that so? A No, not together.

Q Well, how long were you there before he got there? A About five minutes.

BY MR. BROTHERS:

Q Was Toto there? A Who is Toto?

Q Salvatore Croccolisi? A No.

BY THE COURT:

Q Had you been in your house on that day or in your husband's store in Brooklyn, on the day of the shooting? A No, sir.

Q How long before the shooting had you been living at 55 Lewis Street? A That same night.

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Q Had you left Brooklyn that morning? A Yes, Iwent to work that morning.

Q And whereabouts did you go to work that day? A In the shop.

Q And when you say the shop, do you mean your husband's shop? A No, sir; the Jewish shop.

Q Whereabouts is that? A You will excuse me if I don't know the street, but I am trying to remember where it is. I don't know. It's near Delancey Street, some where going up-town.

Q Well, that is where you were making cloaks or coats? A Yes, sir.

Q And what time didyou get through working, that night? A Between six and seven.

Q And did you go right from the shop near Delancey Street to 55 Lewis Street? A Yes, sir.

Q And was it your intention at the time you went to 55 Lewis Street to pass the night at 55 Lewis Street? Yes or no? A No, not to sleep.

Q You intended to go back from there to Brooklyn, is that so? Yes or no? A Yes.

Q And who didyou go to see at 55 Lewis Street? A I went to see the children, the babies, because they used to live there and I used to live upstairs.

Q What babies? A The babies of the wife of Paul Me-

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lazzo.

Q Well, had you told your husband that you were going to stop at 55 Lewis Street? A No.

BY MR. BROTHERS:

Q Now, do you remember being at that place where the shooting happened at about four o'clock that afternoon? A No, sir.

Q Don't you remember going there and asking the landlady if your daughter was home? A No.

Q And she would not let you go into the daughter's rooms, because the daughter wasn't home? A No.

Q Will you say that you were not there?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No, I wasn't there.

MR. BROTHERS: That is all.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q Is Melazzo your daughter?

THE COURT: What is that?

BY MR. ROSALSKY:

Q Who is this Melazzo who lives in Lewis Street? A It is a husband and wife. They are relatives of mine.

Q And those were the people you went to see, that night?

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A Yes, sir.

Q Now, Mr. Brothers asked you a question about if you testified that you went---whether you went down to see Croccolisi at the pushcart. Did you see him at a pushcart at any time before the shooting, before his marriage? A Yes, he sent for me and I went.

Q Who did he send after you? A He saw Paul Melazzo and told Paul Melazzo.

Q And then you and your husband went to see Croccolisi? A I went alone.

Q Well now, did you, between the time that your daughter was married, and the night of the shooting, see Croccolisi? A Neither my daughter nor Croccolisi.

Q Now, in some of the questions which were put to you by the Grand Jury and which you answered, did you refer to your husband? A I can't understand that.

MR. ROSALSKY: That's all.

P I E T R O D ' A N G E L O , the defendant, of 325 Rivington Street, being duly sworn and examined through the same Official Interpreter, testified as follows:

MR. BROTHERS: Does he speak English?

THE INTERPRETER: That I don't know.

MR. BROTHERS: Will you inquire?

DIRECT EXAMINATION BY MR. ROSALSKY:

Q How old are you, D'Angelo?

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THE INTERPRETER: Answer the gentleman in English. He says he can't understand it or speak it.

BY MR. ROSALSKY:

Q How old are you? A Sixty-one, nearly sixty-two years old.

Q And where were you married? A In Italy.

Q And what was your business in Italy? A I was a miller and I was a baker.

Q And when did you come to this country? A Fifteen years ago.

Q And was Nellie born in this country or abroad? A Yes, sir.

Q How long were you in this country before Nellie was born? A On the 10th of January we arrived here, and on the 24th of February Nellie was born.

Q And what did you do for a living after you came to this country? A Some times a laborer. No matter what I could find, I would do.

BY THE COURT:

Q When did you lose the left arm? A About eight or nine years ago I lost it.

BY MR. ROSALSKY:

Q What was your business at the time you lost the left arm? A I was cutting in the cellar some firewood, and a nail entered my hand.

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Q Well, what did you do for a living after that, after you lost your arm? A I used to go and help my wife by carrying coats after she sewed them up, and bring them backwards and forward.

Q Now, do you know the dead man, Gasparino Mattarelli? A I didn't know him.

BY THE COURT:

Q Where were you living on the 22nd of September last? A In Brooklyn.

Q Whereabouts? A Leonard Street, Brooklyn.

Q What number? A I think it was 229 Leonard Street, Brooklyn.

Q And what business were you in on that day? A A fruit store I had there in Grand Street.

Q In Brooklyn? A Yes, sir, in Brooklyn.

BY MR. ROSALSKY:

Q When you lived in Lewis Street---when did you live in Lewis Street? Before Living in Leonard Street? A I was in Lewis Street, number 35.

Q And did you live there with your family? A Yes, sir.

Q And did Gaspare ever come to your house in Lewis Street?

THE COURT: Find out when he lived in Lewis Street.

BY MR. ROSALSKY:

Q When did you live in Lewis Street? A In the month of June.

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BY THE COURT:

Q That is to say, in the month of June, 1913, you were living at 55 Lewis Street with your family? Is that so? Yes or no? A Yes. First in 31 Roosevelt Street, and then we went to 55 Lewis Street.

BY THE COURT:

Q And how long did you live at 55 Lewis Street? A One month, about two months.

Q And the family, while you were living there, consisted of whom? A Three.

Q Yes. Your wife and who else? A Concetta, my daughter, myself and my wife.

Q Did your other daughters live with you at 55 Lewis Street? A No; in 55 Lewis Street, no. Nobody lived with me.

Q Just your wife and yourself and your youngest daughter, is that so? A Yes, sir.

Q But in Roosevelt Street, you and what other daughters lived? A In Roosevelt Street?

Q Yes? A No, no Roosevelt Street. I wish to be corrected. It was 31 Lewis Street, and 55 Lewis Street.

Q Now, how long did you live at 31 Lewis Street?

THE COURT: Now, continue the examination, counselor and find out where he has lived and with whom he has lived. Let us get it as definite as possible.

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BY MR. ROSALSKY:

Q Where did you live in January, 1913? A (No answer)

BY THE COURT:

Q That is a year ago last January. A 31 Lewis Street.

BY MR. ROSALSKY:

Q And from there where did you move to? A To 55 Lewis Street.

Q And when did you leave 55 Lewis Street? A About September, I can't well remember.

Q Well, when did you move to Leonard Street in Brooklyn? A The month of August.

BY THE COURT:

Q Last year? A Yes, sir.

BY MR. ROSALSKY:

Q And you moved to Leonard Street from what number in Lewis Street? A I can't remember if it was 229 or 329.

Q What number, what street? A Leonard Street.

Q Well, where were you living before you moved to Leonard Street?

THE COURT: He said 55 Lewis Street.

BY MR. ROSALSKY:

Q Well, now, did Gaspare come to your house while you lived in 31 Lewis Street? A Some times he used to come.

Q Well, where was it, in what place was it that you first saw Gaspare? Was it in 31 or 55 Lewis Street? A When the

strike was in force.

Q Well, do you remember the month? A I don't remember.

Q Well, about how long before Nellie went away? A It was in 31 Lewis Street where his wife and two children came over to my house, at first.

Q And after the wife and two children came to Lewis Street, did Gaspare continue to come to your house? A Yes, sir.

Q And how long after did Gaspare come to the house? A About two months.

BY THE COURT:

Q Did he ever visit your house at 229 or 329 Leonard Street, Brooklyn? A I didn't see him.

BY MR. ROSALSKY:

Q When was it that you ordered him not to come to your house any more? A When we saw his wife.

BY THE FOURTH JUROR:

Q When did you move from31 Lewis Street to Leonard Street in Brooklyn?

THE COURT: He moved from 31 Lewis Street to 55 Lewis Street, and from 55 Lewis Street to Leonard Street.

BY THE THIRD JUROR:

Q Did you move to Leonard Street in Brooklyn from 31 Lewis Street or 55 Lewis Street? A From 55.

BY MR. ROSALSKY:

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Q Did Gaspare come to your home in 55 Lewis Street? A Once or twice.

Q Well, was it from 55 Lewis Street that you ordered him not to come there any more? A We told it to him, at first, at 31, when we saw the wife, and then we told it to him again at 55 Lewis Street.

BY THE NINTH JUROR:

Q What do you mean by "We"? A The whole of our family told him, "Don't come here any more."

BY MR. ROSALSKY:

Q Well now, on the first of September---I withdraw that. Do you remember---when did you last see Nellie in your home in Leonard Street? I withdraw that. When did Nellie stop living at your home in Leonard Street? A The first of the month of September.

Q At the time Nellie left your home was there any property missing belonging to you and your wife?

MR. BROTHERS: We object to that.

THE COURT: I think I will sustain the objection.

MR. ROSALSKY: Exception.

BY MR. ROSALSKY:

Q Did you go anywhere after Nellie left your home, to look for Nellie? A Yes, we searched for her, all of us.

Q Where did you go searching for her? A We went to New York, and we inquired all around Brooklyn, everywhere.

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Q Did you go to the Italian Consul? A No.

Q Do you know whether your wife went to the Italian Consul? A Yes, she went there to make a report that she found all the box upside down, the box or trunk or valise.

Q When Nellie left, you say that everything was upside down? A Yes, sir; and we found that bank book taken and the gold bracelet taken.

MR. BROTHERS: I move to strike that out.

THE COURT: Motion granted. Strike that out.

MR. ROSALSKY: Exception.

BY MR. ROSALSKY:

Q Now, how long after Nellie left home---I withdraw that. When did you first find out, after Nellie left home, that she was in New York? A When that fellow came to the wedding.

Q Who came to the wedding? A This one that she has got at present for a husband.

BY THE COURT:

Q In other words, you say that the husband of Nellie came to Brooklyn, and as a result of something that you heard from him at that time, you knew that she was in New York? A No. Then I didn't know where to look for Nellie, because Nellie came herself.

THE COURT: Now, we will adjourn.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure and adjourned the further trial of this case until Wednesday Morning, March 11th, 1914, at 10:30 o'clock).

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TRIAL RESUMED

New York, March 11th, 1914.

THE COURT: Mr. Brothers, there are, here and there, typographical errors, which are perfectly natural, but they do occur in these minutes.

MR. BROTHERS: Is there any particular one that your Honor has in mind, that ought to be changed, before summing up? I have not had a chance to read it thoroughly yet.

THE COURT: Well, I have not come across anything of any consequence or importance.

P I E T R O D ' A N G E L O , the defendant, his direct examination being continued, and testifying through the Official Interpreter, testified as follows:

DIRECT EXAMINATION (Continued) BY MR. ROSALSKY:

Q Will you state the circumstances under which you went to City Hall with your wife, the day Nellie was married? A The man who took Nellie as a wife told my wife, and my wife told me, and then we made the appointment.

MR. ROSALSKY: Your Honor, may I bring in Willemse for a moment, to find out whether he brought McHugh down?

THE COURT: Yes.

MR. BROTHERS: Yes, I asked the Sergeant to come down, and I will have him sent for, if he is not out there now.

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MR. ROSALSKY: May I withdraw this witness for a moment?

THE COURT: Yes.

CORNELIUS W. WILLEMSE, Police Sergeant, of the 21st Precinct, a witness called on behalf of the defense, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. ROSALSKY:

Q Sergeant, have you had any connection with this case? A Yes, a great deal.

Q When did you first take charge of this case? A Two days after the murder.

Q And ever since that time have you been active in the prosecution of this case? A Yes.

Q Did you go to Rochester? A No, sir.

Q Were you in touch with the witnesses in this case? A Yes, sir.

Q From the time of the commission of the crime down to to-day? A Yes, sir.

Q Do you know McHugh? A I do.

Q Did you subpoena him? A I did.

Q Did you see him at the time you subpoenaed him? A Yes, sir.

MR. ROSALSKY: That's all.

CROSS EXAMINATION BY MR. BROTHERS:

Q Where? A In the Tribune Building, on the 5th

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Floor.

Q At whose office? Mr. Lindsay's office? A Yes, sir.

Q What time of day or night was it? A It was shortly after one o'clock in the morning, Saturday morning.

Q And you handed him a subpoena, did you? A Yes, sir.

Q At my request? A Yes, sir.

Q Did you have any conversation with MCHugh at that time? A I asked him if he knew anything about the case. As he started to tell me, I stopped him. I said, "That's enough. You are the right man. Here is your subpoena, tell your story to Mr. Brothers."

Q Did he relate to you any part of the details of what he had seen? A He stated to me---

Q (Question repeated) A He began the story and then I stopped him.

Q Had you ever seen him in your life before you saw him in Mr. Lindsay's office? A No, sir.

Q Had you personally been searching the neighborhood of where the crime is alleged to have been committed, for eye-witnesses? A I have.

Q Since the 22nd of September? A I have.

Q And xkx he was the first man that you saw, was he not, that claimed to have seen the shooting, outside of the family of the defendant? A That's right, yes, sir.

Q And you didn't personally accompany him to our office,

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did you? A No, sir; I gave him the subpoena and went home.

Q But you were present when he did arrive? A Yes, sir.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q How did you know that he was an eye-witness? A Mr. Lindsay had informed me about it.

Q And then you want the jury to understand that you didn't talk to him about what he saw? A No, sir; I didn't. He started to tell me about it and I stopped him, and told him to tell Mr. Brothers.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all.

P I E T R O D ' A N G E L O , the defendant, being recalled to the stand:

DIRECT EXAMINATION (Continued) BY MR. ROSALSKY:

Q Your daughter was married in the City Hall? A Yes, sir.

Q Did you have any celebration of any kind after the marriage? A Nothing.

Q Now, on the night of the marriage, did your daughter tell you anything about Gaspare? A No.

Q Now, when was the next time you saw your daughter? A When she came to tell me about coming to my house.

Q Was on the day Gaspare was shot? A Yes, sir.

Q And where did she come, that day? A In my store.

Q And what were you doing on that day with your store?

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A We were moving.

Q And at the time Nellie came, had part of the belongings of your store been moved out? A There was something left.

BY THE COURT:

Q Had you taken anything out of your store before Nellie came there, that day, to any other store or place? A Yes, sir.

Q Where did you take your stuff? A In New York.

Q What place? A Delancey Street.

Q What number? A I don't know the number, but near the barber store of my son-in-law, the husband of my other daughter.

Q What did you intend to do? Open a store there? A No, I wasn't going to open another store,, but I stored there the wooden stands in the barber shop of my son-in-law.

THE COURT: Now, I don't want to interrupt your examination, but I suggest that you interrogate him very fully as to when he began to move this stuff out of the Grand Street store, what hour of the day, and what day.

BY MR. ROSALSKY:

Q What time of the day did you begin to move your store, your Grand Street store? A Three o'clock in the afternoon I made the first trip.

Q What do you mean by the first trip? A wagon load? A With a horse and wagon, the first trip.

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Q Now, what time of the day did Nellie come to see you? A Six or half past six; about half past six in the afternoon.

Q Now, will you tell the jury everything that Nellie told you on the day of the shooting, about half past six? A Nellie told me that the deceased asked Nellie whether there was anything in the box, in the trunk, and he, the deceased, asked Nellie for the key of the trunk, with a revolver in his hand, threatening her to give the keys. and he opened the trunk.

BY MR. BROTHERS:

Q With a key? A Yes. And he started to upset the whole contents of the trunk, to see whether there would be any money. Then, not finding any money, he took a bank book, which represents deposits in the bank in Rome, and a bracelet, valued at fifteen dollars.

BY THE FOURTH JUROR:

Q From whom did this man obtain the key with which he opened the trunk?

THE COURT: Mr. Juror, I do not think that that is a question that I can allow. The witness is now purporting to tell us what was told to him by his daughter.

MR. BROTHERS: Well, may I make a suggestion, your Honor? May the question read, "Did Nellie tell him from whom he got the key?"

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THE COURT: Well, I think I will let him tell his story uninterruptedly now, and, when he is all through, if there is a question that the juror desires to ask, he may ask it.

THE WITNESS: That's all.

BY THE COURT:

Q Tell us everything that Nellie said to you when she began to talk to you at half past six o'clock, on the 22nd of September, in your Grand Street store. A Then, while Nellie was telling me about this bank book and the bracelet she was crying, and, while she was crying, she was telling me how the deceased, with the revolver in his hand, said to Nellie, "now, go on, and walk downstairs", and also she was telling me how he forced her to have men, which the deceased brought to her, and wanted her to have sexual intercourse with these men.

Then she said that he took the present husband of Nellie in the room, and with a revolver in his hand said to this husband of Nellie, "Now, look here. You have to marry this girl, or I'll kill you."

And Nellie said to me, "I couldn't talk, because I was afraid. He had the revolver placed in front of me."

And she told me, also, that he, the deceased, wanted to take Nellie to a village, and that, as she was a pretty girl, she could make money, all the time threatening her with the revolver, and, if she wouldn't do as he tells her, he would

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kill her, and that's all.

Q About how long did the talk between you and Nellie last? A About half an hour.

Q And where did it take place? A In the store..

Q And who, if any one, was there, besides yourself, at the time? A Nobody else.

BY MR. ROSALSKY:

Q Now, did Nellie tell you anything about Gaspare committing rape upon her, the day he took her away from your home?

MR. BROTHERS: I object to that as leading, your Honor.

THE COURT: Objection sustained.

MR. ROSALSKY: He says he has told everything, your Honor, and I am now refreshing his memory, as I have a right to do.

THE COURT: You may ask him if he has told allthat he recollects.

BY MR. ROSALSKY:

Q Have you now told all that you recollect of what Nellie told you, on that day? A That's all. I don't remember any more.

Q Did Nellie tell you anything about Gaspare committing rape on her, the day he took her away from home? A Yes.

Q Now did Nellie---did you know where Nellie lived be-

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fore she spoke to you on the day of the shooting? A No, I did not.

Q Did you find out the address on that day, on that night? A She left the address with me.

Q And now, after Nellie told you this, what did you do? A I was mad, enraged.

Q Well, what did you next do? A Before Nellie arrived in the store, I had a revolver in a table in the back of the store; it was hidden there. Then I thought to myself "I might forget that revolver after I move everything from here. My wife is working in New York, and so I had better put it in my pocket now so that I won't forget it."

Q Did you put that revolver in your pocket before or after Nellie came? A At one o'clock, and Nellie came at half past six.

Q At the time you put the revolver in your pocket, did you know anything about Gaspare's actions towards Nellie? A No.

Q How long have you had that revolver? A Ten years.

Q And where did you get that revolver? A A friend of mine gave it to me as a souvenir of remembrance.

BY THE COURT:

Q What is his name? A Giuseppe Sirchia.

Q Where does he live? A He went to Italy.

Q When? A Ten years ago.

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BY MR. ROSALSKY:

Q Now, when, after your conversation with Nellie, did you see your wife? A I went to my wife, and talked with my wife.

Q Where? A At Paul Melazzo's, at night.

Q And where is Paul Melazzo's house? A 55 Lewis Street.

BY THE COURT:

Q And how did you know that your wife was going to be there? A She used to work at the coats, and when she was through, she would go direct there, after she was through working, because to go to Brocklyn, it was too far away.

BY MR. ROSALSKY:

Q Well, didyou tell your wife what Nellie told you, that night? A The whole thing I told my wife.

Q Well, after you talked with your wife, did your wife say anything?

THE COURT: Yes or no.

A Nothing at all.

THE COURT: Perhaps he did not understand the question. Repeat it.

(The question is repeated through the official Interpreter).

A I can't remember.

BY MR. ROSALSKY:

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Q Well, who suggested going up to Nellie's house, you or your wife? A My wife.

Q And how did you come to go along with her? A Then, when Nellie had told me all about it, and left me the address, I went and saw my wife, to tell her, "You had better go and get Nellie. As she left the address, you had better go and get her," and my wife said, "If you come with me I'll go, because I don't understand about streets in New York, and I don't know the address," and that's the way I went.

Q And how did you get up to Nellie's house? A We walked.

Q Now, at the time you started to Nellie's house, did you know whether Gaspare was going to be there or not? A No, sir.

Q At the time you started for Nellie's house, did you intend to kill Gaspare, if you saw him? A No.

Q Was there any such thing in your mind at that time? A No.

Q Now, on reaching near Nellie's house, who did you first see? A Both together. They were talking.

Q And did you go right up to Nellie? A Yes, sir.

Q And was Gaspare there? A Yes, he was talking and arguing with Nellie.

Q Now, will you state what you said, and what Gaspare said, and what your wife said and what Nellie said, on Third Avenue and 17th Street? I withdraw that.

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THE COURT: Now, pardon me a minute. Suppose you direct his attention, in the first place, to what Gaspare was saying, if anything, to Nellie as he came up.

BY THE COURT:

Q Did you hear what Gaspare was saying to Nellie, as you approached? A Yes.

Q What was he saying? A He said he wanted to take her with him.

BY MR. ROSALSKY:

Q Now, did you then join in the conversation? A Yes, sir.

Q Well, was this in front of the pawnshop on Third Avenue, where Nellie lived? A Yes, sir.

Q Now, state everything that you said, and that Gaspare said, and that your wife said, and that Nellie said at that time? A I approached Gaspare, after I heard him saying that he wanted to take her with him, and I said, "Why do you want to bother this girl? She is married now. You don't want to ruin her life with her husband? She is married now. Do me the favor to leave her alone, and you go with your wife, and let this girl with her husband alone, and don't ruin her life." He immediately exclaimed, "You old cuckold, you dishonorable man," and with that he seized me by the throat, and with his left hand he seized my throat (Illustrating) and with the right hand he punched my head with his

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clenched hand, and it was a hard blow, and it pained me. The other hand on my throat was getting tighter and tighter at my throat. And then he let go of me, and withdrew a little bit backwards, and made a sign with his right hand towards his hip pocket (Illustrating), and I immediately, realizing that I had a revolver in my pocket, with my trembling hand, I fired. Then, knowing with my trembling hand I wasn't sure whether I wounded him or not, ~~knowing~~, I ran away, for fear that he would fire at me.

Q Now, will you indicate with a Court officer the position at the time of the shooting that you and Gaspare were in, and your wife and daughter.

THE COURT: Now, take your time. And tell him to think well before he does it. The gate of the jury box is the door leading into the hallway of 191 Third Avenue from the street.

(The witness illustrates).

THE INTERPRETER: This is the position. The Court Attendant is Gaspare and the defendant is standing where I am.

THE COURT: Now, we will go a step further and tell him that that direction represents 18th Street (Indicating) and that direction represents 17th Street (Indicating).

MR. ROSALSKY: Now, where was Nellie standing?

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THE INTERPRETER: I am Nellie.

MR. ROSALSKY: And let him place the next officer.

THE INTERPRETER: I would like to place them at the distance they were, but there is no space in this place to illustrate the distance.

THE COURT: Is there room enough further on there? Take that other space there, which is larger. Now, the 12th Juror can stand up, if necessary, to see it.

Now, for the record, the witness indicates that Gaspare was standing facing 17th Street; that he, the witness, was facing 18th Street; that the witness's wife was towards the door leading into the hallway of 191 Third Avenue; that Gaspare's left side was towards that door, and that they stood about two and a half feet apart; and, at about two and a half feet to the witness's left stood the witness's daughter, and that, on the left hand side of the witness's daughter, stood the witness's wife, alongside of Gaspare, and facing more or less towards the doorway leading into the hallway of 191 Third Avenue. Is that right?

MR. ROSALSKY: Will your Honor allow me to ask one question?

THE COURT: Well, is that substantially correct?

MR. ROSALSKY: It is.

BY MR. ROSALSKY:

Q Was the defendant standing with his back towards the

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building, looking west, or was he looking north?

THE COURT: That is, this witness himself?

MR. ROSALSKY: Yes, sir.

THE COURT: "Were you standing?" Put the question thatway.

BY MR. ROSALSKY:

Q Were you standing with your back to the building, looking west or north? A Iwas on the side, standing sideways to the wall of the building.

BY THE COURT:

Q Your right side was near the door of the building? A yes, sir.

Q Near the door of the building 191 Third Avenue? A Yes, sir.

Q About how far away from the door? A About one pace.

Q And was the door open or closed? A Idon't remember.

THE COURT: Now, come back to the chair.

MR. ROSALSKY: Your Honor, Iwant to get another position.

THE COURT: Very well.

BY MR. ROSALSKY:

Q Indicate how Gaspare seized hold of you by the throat.

THE COURT: He indicates that Gaspare took hold of the witness by the throat with his left hand, and that Gas-

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pare struck him on the left hand side of the witness'shead, with Gaspare's right hand. That will do now.

BY MR. ROSALSKY:

Q And what did Gaspare next do? A Then Gaspare turned sideways.

THE COURT: He indicates that Gaspare turned slightly, presenting his left hand side toward the defendant, and that he put his hand, his right hand, in his hip pocket.

BY MR. ROSALSKY:

Q Do you say that Gaspare put his right hand in his hip pocket, or towards the hip pocket? A He had it in his pecket; his hand in his pocket.

Q And at that moment what did you do?

THE COURT: He indicates that the witness, with his right hand, took out of the witness's right hand hip pocket, a pistol, and fired.

BY MR. ROSALSKY:

Q Now, how close to you was Gaspare, at the time you fired? A This is the distance. (Indicating).

THE COURT: He indicates a distance of about two and a half feet.

MR. BROTHERS: We have a rule here, your Honor, two feet and a half.

BY MR. ROSALSKY:

Q Now, will you show how far you extended your hand at

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the time you fired the shot? A That way. (Illustrating).

MR. ROSALSKY: Indicating about a foot. Indicating that the pistol was about a foot---where is that rule?---Indicating about twelve inches.

MR. BROTHERS: Let him take the pistol, it is empty, and show us.

THE WITNESS: This way. (Illustrating)

MR. ROSALSKY: Indicating about twelve inches.

MR. BROTHERS: Yes, from the muzzle of the pistol to the coat of the deceased.

THE COURT: That is, the left hand sleeve of the coat of the deceased.

BY MR. ROSALSKY:

Q And was Gaspare looking at you at the time you fired? A Yes, sir.

Q Now, after the shot was fired, did you see your wife and Nellie? A I didn't see anybody. I was all in a tremble, and I was stupid.

Q Where did you go? A 17th Street.

Q Did you run across the street west on Third Avenue? A I went on 17th Street towards First Avenue.

BY THE COURT:

Q Did you keep on the sidewalk, on the east side of Third Avenue, walking along towards 17th Street, or did you leave that sidewalk and go diagonally towards the westerly

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side of 7th Avenue? A From where I came, with my wife, I left the same route.

Q Now, you pay attention to this. After you had fired the shot, did you walk along the sidewalk on the easterly side of Third Avenue until you came to 17th Street? yes or no? A That's the reason Iwould like to explain.

THE COURT: Now, listen to me.

BY THE COURT:

Q Now, after firing the shot, did you go across the Third Avenue sidewalk, the sidewalk which is in front of 191 Third Avenue, and out into Third Avenue where the car tracks are, and over across those car tracks, in the direction of the 17th Street corner, and did you then turn back and reach---

THE COURT: Well, translate that part now.

A Iwant to explain that. After I fired, and after I was so excited, my hand was trembling, and I wasn't noticing in which direction I was going, I couldn't pay attention to it.

Q So that you are not able to answer that question? A I can't answer it, because I was all excited.

Q And you don't know whether you went diagonally across Third Avenue, towards the westerly side of Third Avenue, and then back to the easterly sidewalk of Third Avenue, reaching it at a point between 17th and 16th Streets, or whether, after the shooting, you continued down along the easterly side of Third Avenue? A I can't remember, because Iwas excited.

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BY MR. ROSALSKY:

Q Now, immediately after the shooting, did you see your wife and Nellie fall down in the gutter? A No.

Q Did you see your wife and Nellie, after falling down, get up from the gutter? A No, Icouldn't see anything.

THE COURT: Just pardon me. Iwant to ask him one question. What did you do with the pistol after you fired the shot? A After I fired the shot, I was so excited, and my arm was trembling, and with the blow I received on my head with his clenched hand, the revolver must have fallen out of my hand, because I didn't even realize when it fell out of my hand.

THE COURT: Go ahead.

BY MR. ROSALSKY:

Q Now, did your wife, immediately after the shooting, make any motion to you, or say anything to you while you were on Third Avenue? A Nothing that I remember of. I didn't see any.

Q Where did you then go after the shooting, if you remember? A In a car.

Q Do you know at what street you got on the car? A First Avenue.

Q Do you know the street? A. 17th Street. Itook the car there.

BY THE NINTH JUROR:

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BY THE NINTH JUROR:

Q Ask him if he remembers passing through two parks, after he left Third Avenue, on his way to First Avenue, before he reached First Avenue? A I can't remember. I was bewildered. Icouldn't remember anything.

BY THE FOURTH JUROR:

Q Can the witness tell us how he reached 17th Street and First Avenue. A I recollect myself of going through the road from where I came uptown.

Q Well, if I understand, you came uptown through Third Avenue? A From 14th Street. Iwalked without a car to Third Avenue and to 17th Street.

BY THE COURT:

Q In other words, in going to 191 Third Avenue, you walked along Third Avenue, from Third Avenue to 14th Street, to the front of 191 Third Avenue? A Yes, sir.

Q But the juror wants to know, how, having left 191 Third Avenue, you got to 17th Street and 1st Avenue? A I recall myself of turning in the street where I was.

BY THE JUROR:

Q Meaning what street? A 17th Street. And from 17th Street I went to First Avenue.

BY THE COURT:

Q Well, do you say that you walked through 17th Street, in going from Third Avenue over towards First Avenue? Did

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you not walk down Third Avenue until you got to 16th Street, and then through 16th Street? Did you walk through 17th Street or did you walk through 16th Street? A Ipassed 16th Street, and I went down to 17th Street, and then I went through 17th Street.

Q After you fired the shot, how far down Third Avenue did you go? A I can't remember. I was bewildered.

Q So that you don't now recollect through what street you walked, while going from Third Avenue over to First Avenue; is that it? A No, I don't.

BY THE EIGHTH JUROR:

Q Did you turn at the first or second street which you reached after leaving 191 Third Avenue? A (No answer).

BY THE COURT:

Q Did you turn at the first or second street after you had left 191 Third Avenue? A Ican't remember, because I was bewildered.

BY MR. ROSALSKY:

Q Now, at any rate, you got on the car? A Yes, sir.

Q Do you remember whether you got on the first car that passed, or did you let one or two cars pass by? A That I can't remember.

Q Well then, you got on a car going downtown? A Yes, sir.

Q Did you pay your fare? A Yes, sir.

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Q And when did you next see your wife, that night, and Nellie? A In the car.

Q Did they get on the car after you had already been in the car? A I can't remember if it was before or after. I was bewildered.

Q Well, when Nellie and your wife got on the car, did you pay the fare? A No, I paid for myself.

BY THE COURT:

Q How long had you been on the car when your wife and Nellie got on, if you know? A Five minutes.

Q And when they got on, did you pay the fare for them? A No.

BY MR.ROSALSKY:

Q Who paid the fare for Nellie and your wife? AThey themselves paid the fare.

Q Do you know where you dropped the pistol? A Ican't remember, because it fell off my hand.

Q Now, when Nellie was on the car, did she say to you, "Oh, Papa, you killed my Gaspare."? A No.

Q Did you say,"you shut up, or I'll give you the same, too"? A No.

Q Did you then pull out a shell (Indicating) and hold it between your index finger and thumb, and say, "That's all that's left of the bullet, and He's gone."? A No.

Q When Nellie got on the car---A I didn't have that

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in my pocket.

Q Well, when Nellie got on the car, do you remember what Nellie said to you? A Nellie said, "What have you got, Papa?"

Q And what did you say to Nellie? A I told her"I can't speak, I am bewildered."

Q Then you rode downtown with Nellie and your wife? A Yes, sir.

Q And do you remember where you got off? A Idon't remember whether it was Rivington, Stanton or Houston, I don't remember. My head was bewildered, that night.

Q Well, after that, you went away from New York? A Yes, sir.

BY THE COURT:

Q When did you leave New York? A The next day.

Q At what hour? A In the morning.

Q At about what time? A Between seven and eight.

THE COURT: Do you want to ask a question, Mr. Juror?

THE NINTH JUROR: Yes, sir.

BY THE NINTH JUROR:

Q Was it your wife's custom to go every night, preceeding the night of the shooting, to 55 Lewis Street, and have her meals there, or her supper? A Yes, sir.

Q How long previous to the time of the shooting had she

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been in the habit of going there, to 55? A The time we used to be---the time we were in Brooklyn.

BY MR. ROSALSKY:

Q How long had you been living in Brocklyn before the shooting? A One month.

MR.ROSALSKY: That's all. Your witness.

CROSS EXAMINATION BY MR. BROTHERS:

Q I show you People's Exhibit 4, and ask you if you remember having your picture taken in Rochester? A Yes, sir.

MR. ROSALSKY: I object to that. He was forced to have it taken.

MR. BROTHERS: And I ask to have the jury see the picture now. It is in evidence.

THE COURT: Yes.

BY MR. BROTHERS:

Q The beard that you wear now you grew in New York, since you have been in prison, did you not? A I always wore this kind of whiskers, but, when the season comes, I shave them off.

Q Now, did you see Salvatore, Nellie's husband, the night before the shooting? A No.

Q Did you see him at any time before the shooting? A He came twice, with Gaspare.

Q Didn't you see him at his pushcart, the night before

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the wedding, and was your wife with you? A No.

Q Did Salvatore ask your permission to marry Nellie? A Yes, sir.

Q And when did he do that? A At the same time when he said that he wanted to marry her.

Q And when was that? A I can't remember when.

BY THE COURT:

Q How long before the wedding? A About three or four days.

Q And where was he when he asked it? A In Lewis Street.

BY MR. BROTHERS:

Q At a house? A Yes, sir.

Q Whose house? A Paul Melazzo's.

Q And was your wife there at the time? A Yes, sir.

Q Tell us what was said at the time?

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

MR. BROTHERS: It is for the same reason that I advanced yesterday, as to motive, your Honor.

THE COURT: I think I will allow it.

MR. ROSALSKY: Exception.

A He asked for her, and I said, "Well, she was dishonored already, and I thought it best for her to get married."

Q Did you ask where Nellie was at that time? A No, sir.

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Q You hadn't seen Nellie then for two or three weeks had you? A No.

Q And you say you had been looking for her? A The first day, we were looking for her. Afterwards we stopped looking for her.

Q Did you go at any time to any police station to report her disappearance?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No.

BY MR. BROTHERS:

Q And when Salvatore said he knew where she was, you didn't ask him where she was; is that right? A No, but we have arranged to meet at the City Hall, the day of the wedding, and I met her there.

Q You didn't care to ask Salvatore where Nellie was at that time?

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

THE COURT: Well, I will allow you to ask him whether he did ask.

MR. ROSALSKY: The same objection.

THE COURT: You may ask whether he asked Salvatore.

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MR. BROTHERS: Yes, sir.

MR. ROSALSKY: We except.

BYMR. BROTHERS:

Q Did you at that time ask Salvatore where Nellie was?

THE COURT: Yes or no now.

A I asked her there in the City Hall where had she been all this time.

Q And did she tell you in the City Hall where she had been?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A He said, Salvatore said, "She was withme, and then she was with somebody else. I can,t tell you now."

BY MR. BROTHERS:

Q Wasn't anything said on that subject when Salvatore asked permission to marry Nellie? A No; we didn,t mention it to him and he didn't mention it to us.

Q Now, do you say that you only looked one dayfor Nellie? A No, a whole week.

Q Didn't you say, a moment ago, that you started looking after the first day? A That means the first days.

Q Very good. And did you say, a moment ago, that you stopped looking because she was dishonored already? A No,

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sir.

THE COURT: I think you are a little mistaken as to the evidence there. He said that he consented to the marriage because she was dishonored already.

BY MR. BROTHERS:

Q And howdid you know that? How did you know that she was dishonored, when Salvatore asked to marry Nellie? A Didn't we know that she ran away from the house?

Q How did you know that? A We were told.

Q Who told you? A Salvatore told us.

Q When? A At the City Hall.

Q He didn't tell you four days before the marriage, when he asked your permission to marry her? A No.

Q Now, when you saw Nellie at the City Hall, did she tell you where she had been living? A No.

Q Did you ask her? A I asked her, but she wouldn't tell me.

Q Did you ask her where she was going to live after she was married? A No.

Q Didn't you care for your daughter any more at that time?

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

THE COURT: Overruled.

MR.ROSALSKY: Exception.

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A After she got married and got a husband, I didn't care.

BY MR. BROTHERS:

Q Well, before she was married, before the ceremony at the City Hall, were you angry with your daughter? A No.

Q Were you glad to see her? A Because she was an unfortunate girl.

Q Were you glad to see her? A Yes, sir.

Q And did you ask her to come home with you? A Yes, sir.

Q And what did she say? A "I can't come".

Q Did she say why? A She couldn't say anything, because she was all in a tremble and she was too much frightened.

Q Was there anybody there threatening her at that time? A If she had made an attempt to say one word, where she has been or where she is, that man there would have shot her.

Q What man? A Gaspare.

Q Was he there in the City Hall? A No.

Q Where was he, that day? A That I couldn't tell you.

Q Did you hear Nellie answer questions there at the City Hall? A No.

Q Were you there when she was asked her name and where she lived? A I was there, but I was just as good as a stupid there. I couldn't understand.

Q Was there not a man there who spoke to you in Italian?

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A There was one who was seated there at the desk, but Nellie went inside.

Q Yes. And didn't you sign a paper there yourself?

A No.

Q Weren't you asked if you consented to the marriage? A The one who was seated at the desk there asked me.

Q He spoke to you in Italian? A Yes, sir.

Q And did you make a mark on the paper which he showed you? A Yes, sir; they asked me to write my name.

Q And you can't write, and made your mark? A I can write.

Q And what did your wife do? She can't write, can she? A No, sir.

Q Well, she made her mark before you signed your name? A yes, sir.

Q Now, you did consent to the marriage, didn't you? A Yes, sir.

Q And did you consent to the marriage because you had told Salvatore that he must marry your daughter?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No. He came and told me that.

BY MR. BROTHERS:

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Q Now, did you tell him at that time that Nellie had been dishonored by him?

THE COURT: That is to say at the time he, Salvatore, was asking the witness's consent?

MR. BROTHERS: Yes, sir.

BY MR. BROTHERS:

Q At the time that Salvatore asked permission to marry Nellie, did you tell him that he, Salvatore, had dishonored Nellie?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No.

BY MR. BROTHERS:

Q Did you know that Salvatore and she were then living together as man and wife? A No, I didn't know it.

Q Did you know it on the day of the wedding? A That day, I knew it.

Q Who told you? A Nellie.

Q Did she tell you anything about Gaspare, at that time?

THE COURT: On the day of the wedding?

MR. BROTHERS: Yes, sir.

A I asked her, but she said, "I can't tell no more."

BY MR. BROTHERS:

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Q Well, why did you consent to Salvatore marrying Nellie?

MR. ROSALSKY: Objected to.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Because she was dishonored and she could never get married again.

BY MR. BROTHERS:

Q That was four days before the marriage? A Yes, sir.

Q Did you know at that time by whom she had been dishonored?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No, I didn't.

BY MR. BROTHERS:

Q How did you know that she had been dishonored then?

A Because she left my home.

Q Why were you giving up your store?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A I lost all my money and I couldn't succeed. Icouldn't make any sales.

BY MR. BROTHERS:

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Q Did you ever ask Gaspare for any money? A Never.

Q Did you tellSalvatore that you were going to have him arrested?

THE COURT: Do you mean, have Gaspare arrested?

MR. BROTHERS: No, Salvatore.

A No.

BY MR. BROTHERS:

Q Did you ever make any complaint at any station house against either Gaspare or Salvatore?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A No.

BY MR. BROTHERS:

Q What was left in the store the day that Nellie came, the day of the shooting? A The woodwork.

Q Is that the woodwork which you stored on Rivington Street? A Yes, sir.

Q When did you move into Rivington Street? A That night.

Q What time? A The first trip was made at three o'clock and at six o'clock the second trip.

Q Did you go along on that trip, the six o'clock trip? A Yes, sir.

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Q And you left your store on the second trip at what hour? A About half past eight.

Q Did you say, a moment ago, that the second trip was at six o'clock? A Just wait a minute. I will explain it to you. My son-in-law went with the car , at noon, and then he came back at three o'clock with a horse and wagon and then we loaded the car to take the night trip.

Q And what time did you leave the store on the night trip? A The last trip was at half past eight.

Q How many trips were made? A Two.

Q And did you go along on the wagon on the last trip? A No, I took the surface car.

Q Didn't you say,a moment ago, that you went along on the wagon on the last trip?

MR. ROSALSKY: I object to that. There is no such testimony.

MR. BROTHERS: May the record be read?

THE COURT: Yes.

(The testimony is read by the stenographer).

THE COURT: Allowed.

MR. ROSALSKY: Exception.

BY MR. BROTHERS:

Q Did you say, a moment ago,that you went along on the second trip, at six o'clock? A No.

Q If you did say it, you didn't mean it, is that it? A

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At half past six my daughter came there.

Q Will you answer the question. A No, I didn't say that, because it wasn't so.

Q Now, what did you store in that place on Rivington Street, besides the woodwork? A Empty boxes.

Q And why did you store them there? A

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Because it comes handy for firewood in the winter.

BY MR. BROTHERS:

Q And were you paying storage on those empty boxes, or going to? A No, because it was my son in law. He keeps the store; and there is an empty basement there, and I could keep it there.

Q Now, where was your son in law when Nellie came, at half past six? A He was in New York.

Q In New York? A Yes, sir.

Q What was he doing there?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: Sustained.

BY MR. BROTHERS:

Q Did you go on the first trip? A Yes.

Q And what time did you get back fromthat first trip?

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A Six o'clock I reached Brooklyn.

Q Yes. And when you reached Brooklyn did you go to the store? A Yes, sir.

Q And what did you do when you got there? A Istarted loading the wagon.

Q Unloading or loading? A Loading.

Q And whatdid you put on the wagon? A Planks, boxes.

Q And how long did it take you to get them all on? A One hour.

Q And were you carrying them out of the store during that hour and putting them on the wagon? A Yes, sir.

Q And were you doing thatwhen Nellie came? A Nellie was there.

Q While you were carrying these things out? A Yes, sir.

BY THE COURT:

Q What is the name of that son in law? A Biaggio Ordo.

Q Where does he live? A I don't know where he lives.

BY MR. BROTHERS:

Q Is he the son in law who went up to Rochester? A Yes, sir.

Q And he met you in Rochester, did he? A Yes, sir.

Q How did he know you were in Rochester? A I sent him a letter.

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Q And did he take part in the conversation between you and Nellie, at the store, that night of the shooting? A No, we were at a corner, and she was talking in a low tone.

Q At a corner where? On the street? A No, inside, in the rear of the store.

Q Did you ask her any questions? A Yes, sir.

Q Did you tell her at that time that Aalvatore had been to see you three days before, or four days before? A No, sir.

Q And didn't you tell her that Salvatore wanted to marry her?

THE COURT: This was after the marriage.

MR. BROTHERS: Yes, that's right. I will withdraw those questions. I am in error.

BY MR. BROTHERS:

Q Now, while you were talking to Nellie, and she was telling you about getting into that trunk, did she say how Gaspare got the key?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Because my wife had left the keys there, and she is only a youngster, and the keys were laying there.

BY MR. BROTHERS:

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Q Wasn't the trunk broken open? A I don't know whether he broke the trunk.

Q Did you look at it?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A It wasn't broken, because there was the accommodation of the keys there.

BY MR. BROTHERS:

Q Were you surprised when Nellie told you her story on the night of the shooting?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A I was in a rage.

BY MR. BROTHERS:

Q And was it then you thought of your pistol? A No, I put that revolver in my pocket at one o'clock.

Q What were you going to do with it? A I had it as a remembrance. I never used to carry a firearm.

BY THE COURT:

Q Did you, at any time after you had obtained the pistol, load it? Did you at any time after the time that you first

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received that pistol, load it? A Yes.

Q Now, when for the last time did you load it? A Ididn't load it. I got it as I received it, and it remained so.

Q Did you, at any time while you owned that pistol, load it? A No; as I received it as a present, so I kept it.

Q Did you at any time before the shot was fired on Third Avenue, on the evening of the 22nd of September, discharge that pistol? A No, I didn't; because it's forty years since I have discharged a firearm.

Q You say that, from the time that you received the pistol, until you fired a shot from it, on the evening of September 22nd, on Third Avenue, you had at no time discharged it, is that so? A Never.

Q And you say that you received that pistol about ten years ago? A Yes, sir; perhaps more than ten years, but not less than ten years.

Q And was it loaded at the time you got it? A Yes, sir.

Q And do you mean to say that what you discharged from the pistol, on September 22nd, was in it at the time you received it? A Yes, sir.

THE COURT: Go ahead now, Mr. Brothers.

BY MR. BROTHERS:

Q You say you were enraged when Nellie told you this story? A Certainly.

Q Did you make up your mind then that you would kill

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Gaspare? A No.

Q And you had heard some of that story before that time; hadn't you? A No.

Q You hadn't heard a word of it before that night? A No, sir.

Q What time did you leave the store, to go to New York, that night? A With Nellie?

Q Did you come with Nellie? A No.

Q Then why did you ask, "With Nellie?"? A At half past eight.

Q You left the store at Grand Street, Number 350, Brooklyn, at half past eight? A At half past eight.

Q How do you know it was half past eight? A Approximately I can tell it was half past eight.

Q Well, how do you know it was half past eight?

MR. ROSALSKY: I submit that that is an answer, approximately.

THE COURT: I will allow the question.

MR. ROSALSKY: Exception.

BY MR. BROTHERS:

Q Did you look at a clock? A There was in the barber shop a clock.

Q Well, you have a watch yourself? A Yes, but it doesn't go.

Q Why do you carry it?

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

A Now it goes, but when I had it it didn't go.

BY MR. BROTHERS:

Q When did it begin to go?

MR. ROSALSKY: Objected to.

THE COURT: Allowed. I will allow a full cross examination.

MR. ROSALSKY: Exception.

A When Iwas in Rochester, there I had it fixed.

BY MR. BROTHERS:

Q And you went first to 55 Lewis Street that night, did you? A Yes, sir.

Q How long did you stay there? A About a quarter or half an hour.

Q And from there you walked up to where Nellie lived?

A Yes, sir.

BY THE COURT:

Q I understood you to say that from there you first took a car, from which you got out at 14th Street and Third Avenue.

A No, I was walking.

THE COURT: My recollection is probably wrong.

BY MR. BROTHERS:

Q And did you walk all the way to Third Avenue and 17th Street? A Yes, sir.

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Q Did you go through 11th Street, yes or no? A The side of the sea, or the water. The Belt Line. I took the road from the side where the Belt Line goes.

Q Then you rode part of the way? A No, where the Belt Line runs, the car.

Q Well, do you remember being at 11th Street, near Gaspare's house, that night? A No.

Q Didn't you and your wife go to Gaspare's house, before you saw Nellie, that night?

MR. ROSALSKY: Objected to.

THE COURT: Allowed.

MR.ROSALSKY: Exception.

A No.

BY MR. BROTHERS:

Q Didn't you wait around at his house to see him? A No, sir.

Q Do you know where he lives? A No.

Q Don't you remember his wife came to your house and told you where he lived?

MR. ROSALSKY: I object to that. There is no such testimony in the case.

A No.

BY MR. BROTHERS:

Q Did she come to your house at any time, the wife of Gaspare? A Yes, sir; she did.

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Q With her baby on her arm? A Yes, sir.

Q Didn't she tell you then where she lived? A No.

Q What color was this pistol that you had? A I don't remember.

Q Was it like the one in Court, or was it black? A It was black.

Q Yes? A Yes, it was that color like this one here. (Indicating a pistol on the District Attorney's table).

THE COURT: Well, do you want to have that marked for Identification?

MR. BROTHERS: No, sir; it is a blue steel revolver.

BY MR. BROTHERS:

Q Do you know the make of that pistol? A I don't know those things.

Q Didn't you look at it, from the time you had it, duringthose ten years? A No, I placed it there as a remembrance, and I didn't handle it any more.

Q What was it a remembrance of, a remembrance from a person?

BY THE COURT:

Q Where had it been before you put it in the drawer in the store in Grand Street? Where had it last been? A In a drawer in the commode, in the bureau drawer.

Q That was when you were living at 31 Lewis Street? A Yes, sir.

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Q And when you were living at 55 Lewis Street also?

A Yes, sir.

BY MR. BROTHERS:

Q Did you have a permit to keep it?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: Well, are they only issued to citizens of the United States?

MR. BROTHERS: Yes, sir.

THE COURT: There is no proof, I think, that he is a citizen of the United States.

BY MR. BROTHERS:

Q Are you a citizen of the United States? A No. I am fifteen years here, and I haven't any papers, because I can't speak English.

THE COURT: I think I will sustain the objection, because it appea rs, apparently, that he could not obtain one.

BY MR. BROTHERS:

Q What did you say to Nellie in the store, after she told this story to you? A Isaid, "Leave me the address here and I will send your mother there and she will take you away from there."

Q Why didn't you keep Nellie home, that night? A Because she had to go, she couldn't stay.

Q Why not?

MR. ROSALSKY: I object to that as calling for the

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operation of another person's mind.

A She had a husband.

BY MR. BROTHERS:

Q Did you say anything to her at that time, that she should tell her husband these things?

MR. ROSALSKY: I object to that as immaterial.

MR. BROTHERS: The question is not very well put. I will withdraw the question.

THE COURT: I think I will sustain the objection.

BY MR. BROTHERS:

Q Did you tell Nellie her husband should protect her?

MR. ROSALSKY: I object to that as immaterial.

THE COURT: I will allow himto answer.

MR. ROSALSKY: Exception.

THE COURT: Yes or no, now.

A I told her, "Your husband must protect you," but she prefers better her parents. And she came also to inquire whether we would receive her with open arms.

BY MR. BROTHERS:

Q You said, did you, that you would send your wife to get her to come home? A Yes, sir.

Q Didn't you intend to go yourself? A No.

Q Why didn't you want to go?

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

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THE COURT: Allowed.

MR. ROSALSKY: Exception.

A I didn't care to go; I didn't want to go.

BY MR. BROTHERS:

Q You say that, at Lewis Street, your wife suggested going up to the house; do you? A She told me that she didn't know the way in the streets.

Q Had you thought of going to the house where Nellie was living before your wife suggested it? A No; because she was married, and I didn't care anything more about it.

Q And you had no intention of going to Nellie's house until your wife said, "Let's go."? A Yes, sir.

Q Didn't you expect your wife to come home that night to Brooklyn? A No because she would come late.

Q Well, if she came late, she would come; wouldn't she? A Yes, but she would have to spend money to pay car fares.

Q Well, but didn't she do that every night? A Some times she would go without paying fares, except by taking the ferry at Houston Street.

Q Well, why did you come over to New York, that night, to see your wife?

MR. ROSALSKY: Objected to.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A To go and get my daughter.

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BY THE COURT:

Q How tall are you? A I don't know.

Q Stand up. A (The witness stands up.)

THE COURT: Well, I think it is well to have it appear on the record what his height is.

MR. BROTHERS: I am not good at such matters, your Honor.

THE COURT: Mr. Foreman, what do you say?

THE FOREMAN: About five foot six, I should say.

THE NINTH JUROR: About five foot four, I should think.

MR. MURPHY: Five feet. We have measured it, Mr. Rosalsky and I, the height of the defendant.

BY THE COURT:

Q How much do you weigh? A I never weighed myself. I never indulged myself in those curiosities.

Q Your left arm is entirely missing, from the shoulder? A There is a stump, your Honor. (Indicating).

Q In what pocket did you put the revolver when youtook it out of the drawer? A This pocket. (Indicating the right hip pocket.)

BY MR. BROTHERS:

Q Did you have your coat buttoned at the time you took it out to shoot Gaspare? A Unbuttoned.

Q Was Gaspare's coat buttoned or unbuttoned at that mome nt

A I didn't pay attention to that.

Q Did you see him unbutton it? A I didn't pay attention to it.

Q Now, did you steal this gun from a friend's house, the night of the shooting? A No. They gave it to me as a remembrance.

Q Did you tell Officer DeMartini, on the 13th of December, that you stole it from a friend's house?

MR. ROSALSKY: I object to that.

THE COURT: If it is part of anything said by him in the station house, as part of the alleged statement, I will exclude it. But, if it is something that he may have said to DeMartini, other than upon that occasion, I will receive it.

MR. BROTHERS: Well, we don't claim that he said anything to anybody, except on that occasion.

THE COURT: Very well, then, it is excluded.

MR. ROSALSKY: And will your Honor direct the jury to disregard the colloquy of counsel and the Court?

MR. BROTHERS: Can't I ask a question?

THE COURT: Why, yes, you have a perfect right to ask the question. There is no occasion to instruct the jury.

MR. BROTHERS: I have a right, have I not, to interrogate the witness as to anything he said at any time or place; have I not?

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THE COURT: I will exclude anything that he may have said, forming part of an alleged statement in the station house. But, if you contend that, at some other time, other than that, he said something, I will receive it.

MR. BROTHERS: On that point, your Honor, while the statement made in the Coroner's presence might have been inadmissible as a confession, nevertheless, if this man will admit now that he said anything like that, it is an admission against interest; and, unless it is shown by him that it was made under duress, or under promise of immunity, it is admissible, I think.

THE COURT: There is a distinction, Mr. Brothers, between something that he said to a man who was acting as an interpreter. What I mean to say is, for example: While the statement itself might not be receivable in evidence, you might be, perhaps, in a position where you could prove the alleged admission by some bystander, somebody who might have heard it.

MR. BROTHERS: But the only person I could prove that by is DeMartini, who was the only person present who understood Italian. But, irrespective of whether I am entitled to rebut the statement now, am I not entitled to ask him whether he said those things at that time, assuming for the purpose of argument that he said such things as I asked him about?

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THE COURT: No. I think that would be an indirect way of getting the statement before the Jury. I think I will adhere to my ruling.

BY THE NINTH JUROR:

Q Was Nellie ever away from home before the time she went away with the deceased? A No.

BY MR. BROTHERS:

Q Didn't Nellie live over in Brooklyn before you moved over there? A When we moved from New York, we went with her.

Q Had you forgotten that you had the pistol in your pocket that day? A Yes, sir.

Q And when did you first remember that you had it? A When Gaspare put his own hand in his own pocket.

Q And which hand did he put in his pocket? A The right hand.

Q At that moment, what was he doing with his left hand? A He had me by the throat. (Illustrating).

Q Did he have you by throat at the time you discharged your pistol? A No.

Q At the time you discharged your pistol, what was Gaspare doing? A He was trying to draw a revolver.

Q Did you see any revolver? A Yes. (Illustrating)

Q Where was it?

THE COURT: Now, the witness is probably or conceiv-

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ably in a condition of uncertainty as to the question. He may have in mind his own pistol.

MR. BROTHERS: And that is what I am asking, your Honor, whether he saw any revolver? A

A Yes, and I got scared.

BY MR. BROTHERS:

Q Now, did he have it all the way out of his pocket when you saw it? A No.

Q How far out of his pocket did he have it? A Half.

Q And did he have it in his hand? A Yes, sir.

Q Now, which side of him was nearest to you at that moment? A The left side.

Q And he was drawing the pistol from his right hip pocket, was he? A Yes, sir.

Q And was he standing, as you sit there, and I am Gaspare, was he standing as I am ? (Illustrating) A Yes.

Q How was his left arm, at that moment? A It just had left my throat.

Q Was it out like this? (Illustrating)

MR. ROSALSKY: I object to the District Attorney asking him a leading question.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A And then he drew the hand away.

BY MR. BROTHERS:

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Q And at the moment you fired the pistol, was his left hand pointing towards you. (Illustrating) A He had it hanging down.

Q Like this? (Illustrating) A No, this way. (Illustrating) He had his left hand hanging down in a kind of half way, and his right hand in his hip pocket. (Illustrating).

Q And he was standing as I am to you now? (Illustrating) A Yes, sir.

Q And could you see the pistol coming out of his pocket at that time? A I saw him withdrawing the arm out of his pocket.

Q Did you see the pistol, is the question. A I saw it. I saw him when he was sideways, as you are standing now, and then he turned.

Q And then he turned around like this, did he? (Illustrating) A Yes, sir.

Q And then did you shoot at him? A Yes, when I saw the revolver, I fired.

Q Now, when you fired at him, was he standing facing you as I am now? (Illustrating) Was he standing facing you at the time you fired at him? A Yes, sir.

Q As I am now facing you? A No.

Q How was he standing when you fired at him? Now, you put me the way he was. A First he was that way. (Illustrating) as you have got your hand now, and then afterwards, in

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this way (Illustrating), and then I fired.

THE COURT: Now, we will take a recess.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and took a recess until five minutes past two o'clock).

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AFTER RECESS:

PIETRO D'ANGELO, the defendant, his cross examination being continued, testified as follows:

CROSS EXAMINATION (Continued) BY MR. BROTHERS:

Q Did you pull your pistol from your hip pocket before or after you saw the pistol in Gaspare's hand? A After.

Q And did you aim with your pistol? A No.

Q Did you hold it out in front of you? Did you hold the pistol out in front of you? A As soon as I drew the pistol from my pocket, I fired it.

Q And did you have to cock the revolver before you fired it? A No.

Q Had you ever fired that pistol off before that time? A Never; neither that one nor any other one.

Q When you held the pistol in front of you, where was Gaspare looking, at that moment? A He was looking towards me.

Q And was the pistol in front of him and in front of you, at the same time? A I drew the revolver at the time, and fired anyhow, because at that time I saw him, he was going to draw his pistol.

Q Was Gaspare looking at you so that he could see your pistol? A Yes, sir; and he looked crossed.

Q Did he make any effort to take away your pistol? A No, sir.

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Q Did he get his pistol at any time all the way out of his pocket? A (No answer).

THE COURT: The witness is apparently under the impression that you are referring to his pistol. Gaspare's pistol is the one you refer to?

MR. BROTHERS: Yes, sir.

(The question is repeated through the Official Interpreter).

A He drew all his pistol out.

BY MR. BROTHERS:

Q And did he point the pistol at you? A No, he had no time to do that.

Q And did he have the pistol in his hand when you shot him? A Yes.

Q What became of that pistol, if you know? A I don't know.

Q Did you see him put his hands on his breast and run away? A No.

Q Did you see him run away? A No, I didn't see him any more.

Q Did you see your boarder run away? A No.

Q Did you see your wife run away? A No, nobody.

Q Did you throw that pistol away in the park that you had? A It fell out of my hand, from fright.

Q Where? A I don't know.

Q Did you have it in your hand when you passed a church

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yard in 16th Street? A I don't know.

Q You knew what car to get on; did you? A The car from the Belt Line.

Q You got on the right car, did you? A I saw a car passing, and I got in.

Q Did you know that that car would take you to where you wanted to go? A It was going downtown, I knew that.

Q Did you know that cars went downtown on Second Avenue? A Not on Second Avenue.

Q Perhaps that is so. I don't know. Did you know that cars went down on Third Avenue? A I don't know.

Q Didn't any cars pass on Third Avenue while you were there? A I don't know. I couldn't tell.

Q Was this a strong blow which Gaspare struck you with his fist? A It was so strong that I couldn't understand anything more; I was dazed.

Q And did it knock you down? A No.

Q Did it knock you off your balance, did you stagger? A Yes.

Q Was that the time that you remembered having the pistol in your pocket? A No, not then.

Q When did you remember having the pistol? A Well, when I saw him put his hand in his hip pocket.

Q Did you have any difficulty in getting your pistol out of your pocket? A No.

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Q Did you pull it out quickly? A Yes, about a second.

Q Did you have any trouble in getting hold of the handle? A Immediately that I drew the revolver from my pocket, I fired.

Q But did you have any difficulty in finding the trigger with your finger? A With the fright, I had, and with my trembling hand, I didn't think even I would be able to fire a shot from that revolver.

Q And when did you make up your mind to leave New York City? A The next day.

Q At what time? A About seven or eight o'clock in the morning.

Q Who paid for your railroad ticket? A I paid it.

Q Did you have the money ready in your pocket? A Yes, sir.

Q When did you put that money in your pocket?

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

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A I had it beforehand.

BY MR. BROTHERS:

Q How much? A Eleven or twelve dollars.

Q And what was the fare?

MR. ROSALSKY: I object to that as immaterial, ir-

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relevant and incompetent.

THE COURT: Overruled.

MR. ROSALSKY: Exception.

A Seven or eight dollars.

BY MR. BROTHERS:

Q Did you see Salvatore after the shooting? A No.

Q Did you see any of your family after you got off of that Belt Line car that night? A Nobody.

BY THE COURT:

Q Where did you sleep, that night? A Near the river, on a plank, on a piece of wood.

BY MR. BROTHERS:

Q Why didn't you go home? A I was afraid that he might kill me.

Q Weren't you afraid of being arrested? A No, at that time I was afraid that he might come and kill me.

Q And did you go to Rochester, the next day, for fear of being arrested? A Yes.

Q And is that why you stayed in Rochester? A Yes.

Q Did you feel that you had done wrong when you went to Rochester? A I knew I had done wrong, but, at the same time, the wrong was done to me.

Q Now, do you remember a man standing on the corner, with an alarm clock in his hand, when you went to get on the car? A No.

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Q Did you see a man sitting across from you with an alarm clock in his hand? A No.

Q What was it you said to your daughter, at the time she asked you, "What is it you have, Papa?" A I told her, "Don't speak, because I can't talk" because my heart was beating.

Q What did you have in your hand at that time? A Nothing.

Q Do you know why she asked you that question?

MR. ROSALSKY: One moment. I object to that as calling for the operation of the mind of another person.

THE COURT: He may answer yes or no.

MR. ROSALSKY: Exception.

A Because she thought that that man fired at me and I was wounded.

BY MR. BROTHERS:

Q Tell us again the name of the man who gave you the pistol? A Giuseppe Sirchia.

MR. BROTHERS: That's all.

RE-DIRECT EXAMINATION BY MR. ROSALSKY:

Q Were you in the Italian Army? A Yes, I was a soldier.

Q And for how many years were you a soldier? A Three years.

Q And that is what you meant by saying that you used

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fire arms, forty years ago? A Yes. When I was firing as a practice. I had no enemies, and I had nobody, and, therefore, I didn't carry any firearms.

Q Now, where did you come from, what part of Italy? A From Sicily, Province of Palermo.

Q And you speak the Sicilian dialect?

MR. BROTHERS: I object to that as incompetent and improper. I don't see that that is material.

A Not exactly the Sicilian dialect, not so well.

BY MR. ROSALSKY:

Q Now, you were asked a question by Mr. Brothers, wherein you responded by saying, "If she had said one word where she had been, he would have killed her." When did you obtain that knowledge? Before or after Gaspare was shot?

THE COURT: I am afraid, Mr. Rosalsky, that that will not be plain to the witness. May be it will be.

MR. ROSALSKY: I will put another question.

BY MR. ROSALSKY:

Q You have made a statement, in answer to the District Attorney's question, wherein you stated that, if Nellie had said only one word where she had been, he would have killed her. Do you remember making that statement? A Yes, sir.

Q When did you obtain this knowledge? Before Gaspare was shot or after Gaspare was shot? A After.

Q You mean on the evening of the shooting? A Yes, sir;

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when she told me all the story.

Q Now, do you remember when the dead man's wife came to your house, with the babies? A Yes, sir.

Q Was Gaspare there then? A Yes, sir.

Q Will you tell the jury what happened at that time, what was said? A The wife of the deceased came in the house, took the baby and put it on her lap, and sat down, and said to the deceased, "You scoundrel, here is your child, and I am your wife," and he said, "Go away from me. I have no children, I have no wife. I have you as a mistress. I have you as any common woman."

Q Now, you saw a picture shown you before, which was taken in Rochester. I withdraw that question. Was this picture taken by the Police? (Indicating People's Exhibit 4) A Yes, sir.

Q Now, you said that you knew your daughter was dishonored at the time that she married Croccolisi. What do you mean by that? A That Gaspare had sexual intercourse first with her.

Q Well, what did you mean by saying before, in answer to a question of Mr. Brothers, "Didn't we know that she ran away from the house?" A Because she left the house, and she remained away I don't know how long, I don't know whether it was four or five days, with him.

Q When did you first know that your daughter had been

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ruined by Gaspare? Before your daughter told you, on the night of the shooting? A When my daughter came to tell me all about it.

Q Then you did know that she had been ruined at the time Croccolisi married your daughter? A Yes, sir.

Q Then when you went away from New York you went away because you didn't want to be arrested; is that right? A Yes, sir.

Q Did you know that, if you were arrested, you would have to remain in jail until your case would be tried? A Perfectly so.

Q And was that the reason you went away? A Yes, sir.

Q You knew, no matter how much you were in the right, you would have to be tried on this charge.

MR. BROTHERS: We object to that, first, because it is incompetent, and, secondly, the witness has already testified that he knew he had done wrong.

THE COURT: I think that I will sustain the objection, not for the reason assigned, but because he has practically answered the question already.

MR. ROSALSKY: Then I am satisfied with the answer. That's all.

THE COURT: Now, there are one or two things that I want to find out from you.

BY THE COURT:

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Q Now, you are between sixty-one and sixty-two years of age; is that so? A Yes, sir.

Q When was your sixty-first birthday? A The 20th of October.

Q So that, on the 20th of October last you were sixty-one years old? A Yes, sir.

Q And you came to this country about fifteen years ago, is that so? A Yes, sir.

Q And on the voyage over, you were accompanied by your wife and your two oldest daughters; is that so? A yes, sir.

Q And when you arrived, you arrived at the Port of New York; is that so? A Yes, sir.

Q And since you have been in America, with the exception of the time that you went to Rochester, you have always lived in either New York or Brooklyn? A Only the time that I had the store in Brooklyn, always in New York.

Q So that from the time of your arrival, until the time you moved over to Brooklyn, you lived always in the Borough of Manhattan; is that so? A Always here in New York.

Q And the first work that you did in New York was as a laborer, and, at times, as a hod carrier, is that so? A Yes, sir.

Q And you continued to do that kind of work until about nine years ago, when you received an injury in your hand, in your left hand; is that so? A Yes, sir.

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Q And that was caused by a nail puncturing your left hand; is that so? A Yes, sir.

Q And, as a result of that injury, your left arm was cut off; is that so? A Yes, sir.

Q And since the time you lost your left arm, you worked fromtime to time helping your wife in carrying clothing to and from the place where she worked? A Yes, sir.

Q And you opened a fruit store in Grand Street, Brooklyn? A Yes, sir.

Q And after you opened a fruit store in Brooklyn, your wife continued to work in the coat factory? A Yes, sir.

Q When you first arrived in America, were both of your older daughters married? A Only one.

Q Now, that is the oldest of the three; is thatso? A Yes, sir.

Q You came over on the ship with your wife and two daughters; is that so? A Yes, sir.

Q They were on the ship with you? A Yes, sir.

Q And were they at that time married? A Only one.

Q The oldest of all was married at the time that she came over with you on the ship? A Yes, sir.

Q Now, when you first arrived in New York, did you and your wife and two daughters, your youngest child not then having been born, live in the same house? A Yes, sir.

Q Do you happen to remember where that house was? A

Yes, sir.

Q Where was it? A 41 Goerck Street.

Q And about how long did you live there? A Until the time when they began to wreck the house to build the new bridge.

Q Until the time they began to tear down the house? A Yes, sir.

Q And that was about how long that you lived there? A A year.

Q And it was while you were living at that address that your youngest daughter was born; is that so? Yes or no, now? A Yes.

Q Now, at the expiration of a year, or about that time, do you happen to remember where you moved next? A Lewis Street, Number 12.

Q And at Number 12 Lewis Street, did you and your three daughters and your wife live? A Always together.

Q About how long didyou all live together at 12 Lewis Street? A All the time.

Q About how long did you all live there together, at 12 Lewis Street? A Either two or three years; I can't exactly remember.

Q Do you remember where you next moved? A We went to Goerck Street, to Delancey Street.

Q Two different places? A Yes, sir.

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Q And about when was it that your second daughter was married? A It's about a year ago.

Q Now, after that time, of your second daughter's marriage, did you and your wife and three daughters live together? A Yes, sir.

Q Now, can you tell me where it was that you first saw the man who is dead? Gaspare; in what house? A 31 Lewis Street.

Q And can you tell me about when that was? A When the strike was on, I think it was.

Q Well, about how long ago, the month? A I can't remember the month.

Q Well, was it as much as a year ago? A About.

Q The first time that you saw Gaspare, had your second daughter already been married? A No.

Q So that the first time that you saw Gaspare was before your second daughter's marriage? A Yes, sir.

Q And your second daughter has been married a little more than one year? A Yes, sir.

Q About how many times did you yourself see Gaspare inside of your rooms at 31 Lewis Street? A About ten or fifteen times. I can't tell.

Q Now, your relations with him, first off, were pleasant, were they not, friendly? A Just as friendship.

Q He was coming, as I understood it, to see your youngest

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daughter, is that so? A At first he came there as a friend.

Q And was it from 31 Lewis Street that you moved to 55 Lewis Street? A Yes, sir.

Q About how many times did Gaspare visit your rooms, if at all, at 55Lewis Street? A Two or three times; I can't remember.

Q And was it at 55 Lewis Street, or 31 Lewis Street, that you saw the wife of Gaspare, for the first time? A 31.

Q Did you ever see Gaspare in your rooms in Brooklyn? A No, sir.

Q How long before the 22nd of September was it that you had last seen Gaspare? A In New York, at 55 Lewis Street.

Q And about how long before you moved to Brooklyn, for the last time? A About a week.

Q And you had lived in Brooklyn for about two months, on the 22nd of September; is that so? A One month.

Q Was it not about five weeks on the 22nd of September? A Idon't know; I can't say.

Q Whenever you did see Gaspare, except the occasion when you saw him on Third Avenue, was he inside one of your rooms? A Yes, sir.

Q You never met him on the street? A No, sir.

Q And you never met him in any other houses than those you lived in? A No, sir.

BY MR. ROSALSKY:

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Q One moment. Have you ever been convicted of any crime?

A I never remember such a thing.

Q Have you ever been arrested before this time? A No, never.

Q Both in this country and in Italy? A No place, nowheres.

MR. ROSALSKY: That is all. The defense rests.

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REBUTTAL.

WILLIAM T. FISHBOUGH, of 700 West End Avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q What is your business, Mr. Fishbough? A Official Stenographer to the Additional Grand Jury.

Q And on the 17th of December, 1913, did you act as such official stenographer? A I did, yes.

Q And did you take the testimony given by the witnesses in the hearing of the People of the State of New York against Pietro D'Angelo? A Yes, sir.

Q And have you produced the original minutes of that hearing? A Yes, sir.

Q Taken by yourself? A Yes, sir.

Q Will you turn to the minutes, and to the testimony particularly of Concetta D'Angelo. A Yes, I haveit.

Q Now, will you look at your notes, and taking the question, "Q Only Salvatore was living there? A Yes." and read all of that question and answer.

THE COURT: I take it, Mr. Brothers, of course, without any question, that that which you are calling his attention to, is what you called the witness's attention to, and you are limiting it to that?

MR. BROTHERS: Yes, sir.

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MR. ROSALSKY: Did she deny it, or didn't remember it? I don't remember which. I object to his reading any question where she said, "I don't remember."

MR. BROTHERS: Well, if the witness takes refuge in the expression, "I don't remember", we are certainly entitled to prove positively that she did make a statement to the contrary.

THE COURT: I will let you refer to the questions you called her attention to. The only portion I will exclude is where she may have admitted she did say that.

MR. BROTHERS: No, sir; of course I don't want to prove that.

MR. ROSALSKY: And I object to this.

THE COURT: Have you any authority to the contrary?

MR. ROSALSKY: I have no ready authority on hand, but I think the decisions are that it is only permissible where she says she did not make the statement, and another position is where she did not remember.

THE COURT: It may conceivably be open to debate, whether you can put in that proof on that point, Mr. Brothers.

MR. BROTHERS: Well, I have understood the law to be, since I have been practicing law, which is about fifteen years, that the rule was as I have stated it.

THE COURT: Yes, upon reflection, I remember that that is the rule, and I will allow it.

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MR. ROSALSKY: Exception.

A The witness, Concetta D'Angelo was asked :

"Q Only Salvatore was living there? A Yes, sir; but Gaspare used to come up after Salvatore used to go out. So every time he told me I had to go away with him again uptown. He said, 'You come away with me and leave your husband. You are a pretty girl and you can make money up there.' I said, 'What are you telling me, what do you mean, make money? If you bring me to a shop?' He says, 'Why, no, you are a pretty girl and you will make money there.' That is what he told me---'And they will give you too three dollars to you, because you are a young kid.'"

"Q Did you ever tell what you have said to anybody before? A No, I don't remember about it, but he told me that in Third Avenue, upstairs."

Q Now further along.

MR. BROTHERS: She admitted this, your Honor, but to show the connection, I think that it will be proper to read it.

MR. ROSALSKY: I object to that as not strictly rebuttal.

MR. BROTHERS: All right, if you object, Iwon't read it.

BY MR. BROTHERS:

Q Now, take up the question, "Q Tell us what happened

then, what you told your father, and what happened then?"

A She was asked the question:

"Q Tell us what happened then, tell us what you told your father and what happened then? A I went up to my father. So I says all about it to my father. I says, 'Papa, this Gaspare comes and bothers me yet, after I am married. He wants to bring me uptown, and he says, if I won't go, he'll kill me.' So my father shook his head that way (Illustrating) and he said, 'Why, all right. Go home, and I will come after you and tell him not to come after you any more, and not to bother you any more,' and not to take me away, as I didn't want to tell nothing to Salvatore, because they will fight. After I went, about an hour or a half hour, like that, Gaspare came again. He whistled from downstairs".

Q Now, a little further along, look at the question: hold of

"Q Did he have/your father when he was shot?"? A The witness was asked this question:

"Q Did he have hold of your father when he was shot? A Yes, he had hold of my father.

"Q They were right close together? A Right close together. He had my father this way (Illustrating) with the right hand, this way, and with the left hand he had behind him, and he opened his coat and put his hand behind his back, and he said, 'If you don't shut up I'll choke you and kill you.' And, all at once, after I turned around like this to

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my mother, I heard a shot, and I turned around and seen him run."

Q Now, will you turn to the testimony of the witness Salvatore Croccolisi? A Yes, sir.

Q And take the question: "Q Did you know that she had gone down to see her father and mother on the day of the shooting?"? A The witness, Salvatore Croccolisi was asked the question:

"Q Did you know that she had gone down to see her father and mother on the day of the shooting? A Yes, sir; she told me that, yes; my wife told me to go and see---she told me she was going down to see her father and mother.

"Q Did she say what she was going about? A To pay them a visit, because it was eight days and she hadn't seen them."

Q Now, skipping the next question, take up the following one. A "Q That is the first time you had seen them since you were married? A I saw them, One night before, they came to my house and they said, 'When are you going to get married?' And I told them, 'Tomorrow, we are going to get married at the City Hall.'"

"Q When was this? A The father ~~of~~ and mother of my wife came near my pushcart, the night before, and told me if I was going to marry her.

"Q The night before you got married? A Yes, sir. They

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told me, 'Are you going to marry our daughter?' I told them, 'We are going to get married, the following day'."

Q Now, turning to the testimony of Annie D'Angelo, near the beginning---

MR. BROTHERS: She admitted that first part, so that we will pass that.

BY MR. BROTHERS:

Q Take the question, "Q You went down to see Croccolisi at his pushcart the night before he was married?" A "Q You went down to see Croccclisi at his pushcart the night before they were married, didn't you? A Yes."

Q Now, the next question and answer. A "Q She was living with Salvatore at that time? A Yes, they lived together, yes, where I went and found them there."

Q Now, skipping one or two questions, you get to: "By a Juror: Q How did she discover her daughter was living on Third Avenue?" A "Q (By a juror) How did she discover her daughter was living on Third Avenue? A She came personally at my house and told us that this man wanted her to go out to another village and become a prostitute, and told of the cruelties he used to do to her."

Q Now, three or four questions below the last one: "Q What time did your daughter come down to see you, that day?" A "Q What time did your daughter come down to see you that day? A About seven or eight o'clock. It was in the night."

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Q Now, do you remember where you read the testimony of the witness Concetta, the girl, in answer to the question as to whether they were close together, she said, "He had my father with the right hand, this way (Illustrating), whether she rose from her seat and made any demonstration? A Yes, sir; I do.

Q Well, can you recall what illustration she made, or were you occupied in writing? A I can recall, yes.

MR. ROSALSKY: Objected to.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

BY MR. BROTHERS:

Q Well, what do you remember that she did? A I remember that the witness got up and turned her face away from me and, while she was making that answer, she very quickly put her left hand behind her, under her coat. What she did with the right hand, I couldn't see, because that was in a line with her face.

Q And her body was between you and her right hand? A Yes, she was talking to the gentlemen on the right hand side of the room.

MR. BROTHERS: That is all.

CROSS EXAMINATION BY MR. ROSALSKY:

Q Was the testimony of Croccolisi taken through an Interpreter? A Yes, his testimony was taken through an interpreter.

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Q Was the testimony of Annie D'Angelo taken through an Interpreter? A Yes.

Q Was the girl's testimony taken through an Interpreter? A No, it was not.

Q Now, you were busy writing the record? A Yes, sir.

Q And writing all the questions which were being put? A Yes, sir.

Q And you recall this particular instance? A I do.

Q The position that she was in? A I recall what I stated there.

Q Well, do you recall that by reason of the fact that you have a statement to that effect in your minutes? A Not in those words; no, sir.

Q Or have you an independent recollection? A Why, I have absolutely an independent recollection, and I have also an indication in my notes which says that, without mentioning the words in shorthand, at that particular part of the notes, that she did illustrate.

Q Well, did the jury, after that question, ask her to go through it again, a second time? A Not that I remember.

Q Did the Grand Jury ask her whether it was with the right hand or left hand? A Not that I remember.

Q And what question was put to the witness at the time she answered that the defendant had hold of the deceased with the left hand? A Do you want that from independent recol-

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lection?

Q Yes? A I can't say.

Q Well, from your book. A Do you want the question to which she made that answer; is that it?

Q Yes?

MR. BROTHERS: It is on page 13 of the transcript.

A I have it. The question to which she made that answer was:

"Q They were right close together?"

Q And the answer which you gave here was in response to this question? A Yes, sir.

Q Did the Grand Jury indict the defendant at that time, on December 17th? A I couldn't tell you, sir. I don't know.

Q You don't know whether that is the time that the Grand Jury indicted this defendant for manslaughter in the first degree? A Absolutely not.

Q Did you take the testimony during the month of January in the same case? A January of this year?

Q Yes? A No, sir; not that I recall.

MR. ROSALSKY: That is all.

MR. BROTHERS: That is all, sir.

L U C I A N S . B R E C K E N R I D G E , a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BROTHERS:

Q Are you an attorney and counselor at law? A Yes, sir.

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Q And at present a Deputy Assistant District Attorney of the County of New York? A I am.

Q And have been for how many years? A Nearly four.

Q At the present time are you in charge of the Homicide Bureau of the District Attorney's Office? A I am.

Q On the night of December 13th, 1913, did you take a statement from the witness Concetta Croccolisi? A I did.

Q And did you ask certain questions to which she made answers? A I did.

Q And those questions and answers were in English? A They were.

Q Do you remember, independent of the record, what the witness Concetta said about being in Brooklyn on the day of the shooting? A Well, I can't give her words. I can give my recollection of it. My recollection is that she said she was not in Brooklyn.

Q Do you remember whether she gave any reason for it? A She said it was too far to go.

Q And do you remember whether she said at that time anything about what her father said to her on the Belt Line car, after the shooting? A Yes, sir.

Q What was it? A I asked her several times about what she said then, and she said that her father said, "Keep quiet or I will slap you."

Q Do you remember whether she said at any time to you

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whether, while in the car, her father had said why he had shot Gaspare? That is, independent of the record? A I don't believe I do recall what her answer was.

Q Would looking at the record refresh your recollection? A Yes, it would.

Q Did you read over the transcript shortly after it was had? A Yes, I did; when it was handed to me by the stenographer.

Q And did it refresh your recollection at that time that it contained what the witness had told you, that evening? A Yes, sir.

Q And will you refresh your memory from the record and tell what she said her father said on the subject of shooting Gaspare? Of why he shot Gaspare?

MR. ROSALSKY: I object to this.

THE COURT: Allowed.

MR. ROSALSKY: Exception.

A He said to her, "Don't you see all the fooling he has done to you?".

CROSS EXAMINATION BY MR. ROSALSKY:

Q Do you remember, Mr. Breckenridge what time in the evening you took this statement? A I think we started to take it between half past seven and eight, on the evening of--- on Saturday evening, December 13th.

Q And do you know how long Nellie was kept in the District

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Attorney's Office? A I think it was about nine o'clock or possibly a little later when we left here for the 21st Precinct Station house.

Q And did you come back to the District Attorney's Office? A No, sir.

Q And you don't know how long she was kept do you? A No, but she left with us; we all went together to the 21st Precinct.

Q And was this statement made before you left for the 21st Precinct? A It was, yes.

Q And do you remember seeing the---did you tell her, at any time, that, if she did not make a statement, you would put her in the House of Detention? A No, sir.

Q Do you remember, on December 16th, seeing Croccolisi, the husband, in your room, on the day prior to the first indictment? A I remember that he was there. I don't remember whether it was the 16th. It was between the 13th and the 17th.

Q And did you threaten him, unless he made a statement, you would put him in the House of Detention? A I don't recall doing so, and I am quite sure I did not.

Q Now, do you remember Croccolisi being in your room, and my appearing there, and several police officers being present there? A Yes, sir.

Q Do you remember that you told ~~xx~~ him---you started to

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make some statement to him, and I turned around to him and told him not to do any talking to you; that you had no right to ask him any questions, and that, if you wanted to ask him questions, you could take him before the Grand Jury or a Magistrate? A Yes.

Q Do you remember at that time stating to the Officers--- do you remember, at that moment, turning around and going over to your desk, and pulling out some papers, and saying, "We'll see if we can make him talk or not."? A No, sir; I do not.

Q Do you remember that you said you would get an order and put him in the House of Detention, if he wouldn't talk? A No, I don't remember telling him that, I don't remember doing that, but I may have done it.

Q You may have done it? A Yes, but I don't recall.

Q Do you remember saying to the officers, "Keep that man in this room until I come back," and going out of the room? A Yes.

Q At that time Croccolisi was not under arrest; was he? A No.

Q And then do you remember coming back, about half an hour afterwards? A Yes.

Q And then serving him with a Grand Jury subpoena for the next day? A Yes.

Q And when you bring a witness to your room, or any person to your room, and he is not charged with any crime, but,

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when you find that he is a witness in a case, if he refuses to give you any information about the case, do you try to get an order committing him to the House of Detention? A It depends upon the circumstances.

Q Do you or do you not? A Sometimes I do and sometimes I do not.

Q Well, in this case, didn't you threaten that? A Not on those grounds alone; Generally.

Q Well, didn't you, that evening---did Nellie refuse to speak, that night? A No, sir; not to me. She may have to some one else but not to me.

Q Were there any police officers there? A Yes, three.

Q Did they say anything to her while you were taking the statement? A Well, we were all talking to her, one at a time.

Q Yes, and you were putting a number of questions to her? A We were putting the questions as they appeared to be necessary.

Q You didn't tell Nellie, at the time you started to take her statement that, if she didn't want to talk, she didn't have to? A Certainly not.

Q And you knew that she was the daughter of the defendant? A Yes.

Q And you went right ahead and took her statement? A Yes, sir.

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Q And didn't she ask for something to eat? A No, sir; my recollection is that she said, on account of her pregnancy, she felt sick, and couldn't eat, and she asked for a glass of water and got it.

Q And she didn't ask for anything to eat? A No, sir.

Q Now, did you get a statement from the Mother, the wife of the defendant, that night? A No, sir; we talked to her. But I only had one stenographer.

Q And she refused to talk to you? A No, sir; she didn't.

Q Well, but didn't you want to take the Mother's statement? A Yes, but I had only one stenographer there.

Q Didn't she say that she didn't want to make a statement? A No, sir.

Q And didn't you try to force her to make a statement? A No, sir.

Q But you tried to force croccolisi to make a statement? The day Iwas in your room? Did you or did you not?

THE COURT: I think you have been all over that. You have got what the fact is.

BY MR. ROSALSKY:

Q Well, if you didn't mean to compel him to make a statement, why did you go to your desk, and get the papers for his committment, and slap them down before him? A I don't remember doing anything of the kind.

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Q And, after you had taken all these witnesses before the Grand Jury, the Grand Jury found an indictment for manslaughter in the First Degree? A Yes.

Q And then, subsequent to that time the Grand Jury returned a verdict for murder in the first degree, and that is the indictment upon which the defendant is on trial? A Yes; the first indictment was superceded.

MR. ROSALSKY: That's all.

RE-DIRECT EXAMINATION BY MR. BROTHERS:

Q The time the Counsel refers to, when he came into your office, and Croccolisi was there, did he state that he was counsel for Croccolisi? A No, sir.

Q Or for Mrs. D'Angelo? A No, sir.

Q Or Concetta D'Angelo? A No, sir; he said they were his witnesses.

Q And you took them, nevertheless, before the Grand Jury and they told their stories? A Yes, sir.

Q And, before anybody can be committed to the House of Detention, an affidavit must be made, showing that they are material witnesses? A Yes.

Q And that they are evading service; isn't that right? A Yes, sir.

Q And that has to be submitted to a judge, who passes upon it? A Yes, sir.

Q And the person to be locked up is brought before the

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Court? A Yes, sir.

Q And usually, counsel is assigned to the party? A Yes, sir.

Q And the opportunity to fix bail is given? A Yes, sir.

RE-CROSS EXAMINATION BY MR. ROSALSKY:

Q Did counsel for the defendant inform you that, if any of those witnesses refused to talk, that you had no right or power to compel them to talk? A I believe you said something of the sort.

Q And then you went out and came back and gave them subpoenaes? A Yes, sir.

MR. ROSALSKY: That's all.

MR. BROTHERS: That is all, sir.

MR. ROSALSKY: Just one question more.

BY MR. ROSALSKY:

Q And how late did Nellie remain in the custody of the Police, that night? A She remained in the custody of the Police until she was discharged by Coroner Feinberg.

Q About what time was that? A It was before twelve o'clock.

Q Wasn't it after twelve? A No, sir.

Q Do you remember whether the proceeding didn't begin at about eleven o'clock that night? A I couldn't tell you exactly when they began. It was about eleven, I should say.

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Q I ask you to look at this page (Indicating) and see whether this does not refresh your recollection that the proceedings began at about 11:30. A Yes, but my recollection is that it was rather before than after 11:30.

Q Well, would this paper give you any independent recollection, or refresh your recollection, that it was about 11:30? A Yes.

Q And didn't this proceeding last longer than an hour? A I should say that they lasted less than half an hour.

Q Well, it was in the neighborhood of midnight before she was discharged? A Yes, it was about midnight.

MR. ROSALSKY: That is all.

MR. BROTHERS: The People rest.

MR. ROSALSKY: The defendant renews the motions made at the close of the People's case.

THE COURT: Denied. You have an exception.

MR. ROSALSKY: Exception.

THE COURT: Now, gentlemen, I want to convenience both sides as far as possible, in regard to the summation, the duration and the general arrangement.

MR. BROTHERS: Well, I am subject to your Honor's suggestion.

THE COURT: I may say this, if it is agreeable to both sides, I think that the summation on both sides should take place on the same day.

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MR. BROTHERS: Yes, I think that is but fair, your Honor.

THE COURT: And I think that the case should go to the jury at as early an hour in the day as is consistent with a proper presentation of the case on both sides. Now, if you gentlemen feel that you can sum up, tonight, I will sit late to enable you to do it, and charge the jury in the morning.

MR. BROTHERS: Well, I don't know that either Mr. Rosalsky or myself would like to do that, because some very important testimony has been taken, to-day.

THE COURT: I understand that.

MR. BROTHERS: Which we ought to have an opportunity to look at. But I will begin at any hour tomorrow morning that your Honor suggests.

THE COURT: Now, suppose we began tomorrow morning at half past nine?

MR. ROSALSKY: Oh, I think that is too early, your Honor.

THE COURT: Well, I am just trying to find out. Suppose we began tomorrow morning at ten?

MR. BROTHERS: That is agreeable to me.

MR. ROSALSKY: That is agreeable to me.

THE COURT: Now, about how long would you want in your summation?

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MR. ROSALSKY: I think we can agree upon an hour each.

MR. BROTHERS: I don't think I ever talked over an hour in my life, and I think I can do with less than that, in this case.

MR. ROSALSKY: Well, I will take the same time as you do.

MR. BROTHERS: Well, suppose we agree upon an hour each?

MR. ROSALSKY: That's satisfactory.

THE COURT: Then that will take us up to 12 o'clock, and then I will give the jury an opportunity to get their lunch, and I will charge them after lunch, and they can enter upon their deliberations.

MR. BROTHERS: That is a very excellent plan.

MR. ROSALSKY: Well, if that be the case, why can't we begin at half past ten, to bring the luncheon hour to about half past twelve, instead of making it ten? Why not open at the usual hour? That half hour in the morning means a whole lot.

THE COURT: Now, is it a matter of importance to you?

MR. ROSALSKY: Yes, sir; I would like to make certain arrangements when I get down to my office in the morning, and this half hour means a whole lot to me.

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THE COURT: Well, now, can't you do that tonight? It seems to me that you can make those arrangements tonight, or open your office half an hour earlier.

MR. ROSALSKY: But I am a late riser, your Honor.

THE COURT: Now, we will open at exactly ten o'clock, and the summations are expected to consume not more than two hours, and that will make the hour twelve o'clock, and at twelve o'clock you gentlemen will be given an opportunity to get your noonday meal; and, at a quarter before one, you will be in the box, and I will begin to deliver the charge, which I will make as brief as I can, in the light of the character of the testimony and the questions involved in this case, and you may make such arrangements as you may consider it desirable to make, in the light of the fact that the case will go to you during the early afternoon of tomorrow.

(The Court then admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjoruend the further trial of the case to Thursday Morning, March 12th, 1914, at 10:30 o'clock).

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THE COURT'S CHARGE.

CRAIN, J.-

Gentlemen of the jury: I ask your careful attention to everything to which I have to say to you. I shall be as brief as I feel that it may be possible to be. I shall speak as plainly to you as I am capable of speaking, because my wish is to say that which will aid you in reaching a just verdict in this case.

The defendant, Pietro DeAngelo is charged, in this indictment, with the crime of murder in the first degree. The indictment alleges, in substance, that on the 22nd of September, 1913, he killed Gaspari Martolletti in the County of New York. I do not mean to say that that is the language of the indictment but I do mean to say that the indictment, following the law's definition of the crime of murder in the first degree, charges this defendant with the crime of murder in the first degree, in that it charges that on the 22nd day of September, 1913, he killed, in the County of New York, one Gaspari Martolletti.

An indictment is an accusation in writing. It is nothing but an accusation. It creates no presumption that Pietro DeAngelo, the defendant, is guilty. Pietro DeAngelo has said, by his plea, that he is not guilty, and you have been empanelled and are acting as jurors in this case so that

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in your capacity of exclusive judges of the facts you may determine from the evidence and from the evidence alone and from the evidence as you recollect it, in the light of the law's definitions as they will be given to you in this charge whether or not the defendant is guilty of either the crime of murder in the first degree or any of the lesser degrees of homicide to be stated in this charge.

Some allusion has been made in one of the summations to the enforcement of the criminal law. The criminal law is enforced when the jury renders that verdict which, in the judgment of the jury, in the light of the law as stated in the charge, and in the light of the evidence, is required by the law and the evidence, whether that verdict be one of guilty or one of not guilty. The law is the measuring stick and the evidence is that which is to be measured. The law represents the weights on one side of the balance and the evidence is that which is to be weighed on the other side of the balance. The law says that if a man does a certain thing under certain circumstances, he has committed a crime and then proceeds to specify what that crime is, and the function of the jury is, taking the definition of the crime as it is given in the charge of the Court, to say whether or not the evidence satisfies them, beyond a reasonable doubt, that that thing which the law says may not be lawfully done has been done under the circumstances under which the law forbids it being done and so done by the defendant who

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is on trial. The evidence to be weighed consists of the spoken word of witnesses responsive to questions put insofar as the answers have been allowed to stand, not being stricken out either upon motion of the Assistant District Attorney or upon motion of the defendant's counsel or by the Court of the Court's own motion. The evidence also includes any exhibits which there may be in the case which have been offered and received in evidence. If there be in this case any concession the evidence also includes such concession. The evidence does not include anything which was said by any witness which was stricken out under any of the circumstances mentioned. The evidence does not include and exhibit merely marked for identification but not received in evidence. The evidence does not include any colloquy or conversation which may have been had between counsel during the pendency of the trial. The evidence does not include anything which may have been said by either counsel in addressing the Court. The evidence does not include anything which was said by the Court in ruling upon any question relative to the reception of evidence or upon any motion during the trial. The evidence does not include anything suggested in a question taken without connection with the answer to the question. That last thought has been imperfectly expressed. By it I mean that if something is suggested by a question the truth of the thing suggested is not a

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matter of evidence except insofar as the answer as given by the witness contains an affirmation of the suggestion as contained in the question.

During this trial a good many things were said by witnesses which afterward were stricken out. During this trial some extended remarks were made by the Court in ruling upon certain questions relating to the reception of evidence or the stricking out of evidence, and possibly, upon motions. Everything that was stricken out forms no part of the evidence in this case and when you go into that room that is called the jury room, you will not talk among yourselves about anything that was said in your presence about any evidence that was stricken out or about anything which was said in your presence not embraced within the Court's definition of evidence as given to you in this charge. You will not permit any of those things to be the subject matter of talk by any of you. And, therefore, it goes without saying that you will not permit any of those things to influence you, in the slightest degree, in reaching the verdict which you will reach in this case. Contrary wise your verdict in this case will be based upon those things said by witnesses which were allowed to stand in the light of the law's definition as they will be given to you in this charge. Your verdict will be based on nothing else. You will be wholly uninfluenced by any decision which this Court may have made upon any motion during the trial of the

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case as, such decisions import no opinion by the Court as to what your verdict shall be.

If your recollection on the evidence differs from anything which has been said respecting it by the Counsel for the defendant, or by the Assistant District Attorney, or which may be said respecting it by the Court, your recollection will control you when you retire to deliberate. If after you have retired to deliberate there should arise among you a dispute or controversy as to what, in point of fact, the evidence was upon any given point, you may with propriety, ask the officer having you in charge to bring you again into this Court room and where, in the presence of the defendant and of the defendant's counsel and in the presence of the Assistant District Attorney and of the Court, that portion or those portions of the minutes of testimony from the official record may be read to you respecting which such dispute or controversy arose in the jury room.

In the domain of fact you are supreme. It is your function to weigh the evidence in order that you may reach a conclusion as to what is the truth, so that your verdict may represent that which you believe to be true. No consideration of general policy, no consideration as to what the effect of a verdict one way or the other may be should influence you into the slightest degree in the discharge of your duty. Your duty is simply to apply the law as the law

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will be stated to you by the Court, to the evidence as you recollect it, and to render that verdict which is true in the light of the evidence and in the light of the law. If you discharge that duty by doing that you will have fulfilled the obligation of the oaths which you took when you took your seats. If, to any extent, you fail to do that then, to that extent, you fail to discharge the obligation imposed upon you by the oath which you took when you became jurors in this case. "Weighing the evidence" is a figurative expression. It means that analysis of the testimony and evidence in the case which thoughtful minds make in an effort to reach a determination as to what is the truth. The considerations which will influence you in the weighing of the evidence are matters resting within your own discretion and cannot be made the subject of any mandatory comment by the Court; that is to say the Court cannot point out and suggest what considerations may lead you either to one conclusion or another in the weighing of evidence. In a suggested but not in a mandatory way you may consider it not improper to take in the case of each witness the sum total of what the witness has said respecting the matters to which the witness has testified as expressive of the meaning of the witness rather than an isolated answer to an isolated question. You may consider it not improper to ask yourselves what was the witness's manner in testifying as indicating truthfullness or the opposite. What was the

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witness's seeming intelligence, what were the witness's opporutinities for observation? What was the witness's apparent capacity for observation? Is the story told by the witness consistent with itself? If there is inconsistency in it is it in a minor point or some matter material to the case. Is the story of the witness in conflict with the testimony of some other witness or is it in conflict merely, with the testimony of some one witness or with the concurring testimony of different witnesses? What is the witness's relation to the controversy, interested or disinterested, biased or unbiased? Sometimes when witnesses are persons of foreign birth, who give their testimony through the medium of interpreters , they may find it harder to express with entire accuracy the thought which they, in point of fact, desire and design to express. If you believe that any witness has committed deliberate perjury respecting a material matter then, and in that event you are at liberty to wholly disregard the testimony of such witness.

This is a criminal action. In a criminal action the burden of proof is upon the prosecution and that burden requires that before the defendant can be found guilty you must be satisfied, from the evidence beyond a reasonable doubt of his guilt. A reasonable doubt is a doubt that is founded in and sustained by reason. It is not a whim, it is not a caprice, it is not the action of unreasonable

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sympathy. It is not a mere subterfuge to which resort may be had in order to avoid doing a disagreeable duty. It is a doubt back of which there is a because.

The Court of Appeals say respecting what constitutes a reasonable doubt in a comparatively recent case that, "A reasonable doubt is not a mere whim, guess or surmise, nor is it a mere subterfuge to which resort may be had in order to avoid doing a disagreeable thing, but it is such a doubt as reasonable men may entertain after a careful and honest review and consideration of the evidence. It must be founded in reason and must survive the test of reasoning or the mental process of a reasonable examination.

And again, in another case, the Court of Appeals say, in the same connection: "Proof beyond a reasonable doubt has been well defined to be that which amounts to a moral certainty as distinguished from absolute certainty. A doubt is a state of mind in which a conclusion cannot be reached upon the question before it, and if it is not due to mental inability to coordinate facts in evidence it must arise from the absence of some material fact or because such a fact has not been sufficiently established by the evidence, and, therefore, the foundations for a belief are insufficient."

A verdict in a civil case may not infrequently and in fact generally may be found upon what is known as a mere preponderance of evidence, but a verdict of guilty cannot be

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lawfully found in a criminal case unless the jury is satisfied from the evidence beyond a reasonable doubt of the defendant's guilt.

The defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of a reasonable doubt as to whether his guilt is satisfactorily shown he is entitled to an acquittal.

If you have followed me to this point you will see that I have told you that my purpose was to speak as plainly to you as possible, and to aid you, as far as I properly could, in reaching a just verdict in this case. I have told you what is properly meant by the enforcement of the Criminal Law. I have told you what an indictment is, and what it is not. I have told you what I included when I spoke of the evidence to be weighed, and I have told you what I excluded. I have told you that you were supreme in the domain of fact, and I have invited your attention to what is known as the doctrine of reasonable doubt and to the doctrine of presumption of innocence; or, in other words, to those two rules applicable in criminal actions. I have suggested to you, not in a mandatory way, but merely by way of suggestion, some of the considerations which conceivably you may consider it not improp r to apply when you enter upon that process figuratively spoken of as the weighing of evidence.

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I now invite your attention to certain legal definitions, and I will read you certain portions of Article 94 of the Penal Law which is entitled "Homicide". In the reading I shall omit certain parts of that article and the parts omitted are omitted because, in my opinion, they are, in any conceivable view of the evidence inapplicable in this case, and that to bring them to your attention would burden you with matters which you need not consider and would tend to confuse rather than enlighten you. My reading in the first instance will be without comment and after I have finished reading without comment I shall retraverse the ground directing your attention to specific points.

"No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed and the fact of the killing by the defendant, as alleged, are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt."

"Homicide is the killing of one human being by the act, procurement or omission of another.

"Homicide is murder, manslaughter, excusable homicide, or justifiable homicide .

" The killing of a human being, unless it is excusable or justifiable is murder in the first degree when committed from a premeditated and deliberate design to

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effect the death of the person killed.

"Such killing of a human being is murder in the second degree when committed with a design to effect the death of the person killed but without deliberation and premeditation.

"In a case other than one of those specified in Sections 1044, 1046 and 1047 homicide not being justifiable or excusable is manslaughter.

"Such homicide is manslaughter in the first degree when committed without a design to effect death by means of a dangerous weapon.

"Homicide is justifiable when committed in the lawful defense of the slayer when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer, and there is imminent danger of such design being accomplished or in the actual resistance of an attempt to commit a felony upon the slayer in his presence."

I return and recur to the provision reading "No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed, and the fact of killing by the defendant, as alleged, are each established as independent facts, the former by direct proof and the latter beyond a reasonable doubt."

The person in this case alleged to have been killed

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was one Gaspari Martolletti. The fact of his killing was required by this provision of law to be established by direct proof as distinguished from the alleged fact that the deceased was killed by the defendant which latter fact it was competent for the People to prove either by what is known as direct evidence or by what is known as circumstantial evidence to the jury's satisfaction.

When is the killing of a human being murder in its first degree? The law answers that question and makes to that question this answer: The killing of a human being unless it is excuable or justifiable is murder in the first degree when committed from a deliberate and premeditated design to effect the death of the person killed.

What must there be to make a killing come within this definition of murder in the first degree? There must be a design to effect the death of the person killed and that design must answer to the description of a deliberate design to effect the death of the person killed, and that design must further answer to the description of a premeditated design to effect the death of the person killed. Where there is a design to effect the death of the person killed, and that design answers to the description of a deliberate design to effect the death of the person killed, and, moreover, answers to the description of a premeditated design to effect the death of the person killed, and the

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killing is not excusable within the law's definition of what it is that constitutes excusable homicide, and is not justifiable within the law's definition of what constitutes justifiable homicide, the killing constitutes murder in the first degree.

The two words deliberate and premeditated have been the subject of quite frequent comment in the Court of Appeals.

In the case of the People against Koenig reported in volume 180 of the N. Y. Cuurt of Appeals Reportsat page 155, Chief Judge Cullen of the Court of Appeals delivering the opinion of the Court of Appeals says at page 161:

"Probably the best definitions of murder in the first degree under our present law are to be found in the opinions in Leighton against the People 88 N.Y. 117 and People against Majone, 91 N.Y. 211. In the first case Judge Danforth said 'If the killing is not the instant effect of impulse: if there is hesitation or doubt to overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder.' In the second Judge Earl wrote 'Under the Statute there must be not only an intention to kill, but there must also be a deliberate and premeditated design to kill. Such a design must precede the

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killing by some appreciable space of time, but the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for choice to kill or not to kill, and for the formation of a definite purpose to kill and when the time is sufficient for this it matters not how brief it is. The human mind acts with celerity which it is sometimes impossible to measure and whether a deliberate and premeditated design to kill was formed must be determined from all the circumstances of the case.'" And then Chief Justice Cullen adds: "I very much question whether these statements of the law can be substantially improved."

Judge Danforth said in the case of Leighton against the people of the State of New York reported in volume 88 of the New York Court of Appeals Reports at page 117 in delivering the opinion of the Court:

"To bring the case within the Statutory definition of murder in the first degree it was necessary that the crime should be perpetrated from a deliberate and premeditated design to effect the death of the person killed. An act coexistent with and inseparable from a sudden impulse although premeditated, would not be deemed deliberate as when under sudden or great provocation one instantly although intentionally kills another, but the Statute is not satis fie

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unless the intention was deliberated upon and if the impulse is followed by reflection that is deliberation. Hesitation even, may imply deliberation so may threats against another and selection of means with which to pereptrate the deed. If, therefore, the killing is not the instant effect of impulse, if there is hesitation or doubt to be overcome, a choice made as the result of thought, however short the struggle between the intention and the act, it is sufficient to characterize the crime as deliberate and premeditated murder."

In the case of the People against Majone reported in 91 N.Y., at page 211, Judge Earl delivering the opinion of the Court said:

"Under the Statute there must be not only an intention to kill, but there must also be a deliberate and premeditated designto kill. Such design must precede the killing by some appreciable space of time, but the time need not be long: it must be sufficient for some reflection and consideration upon the matter, for choice to kill or not to kill, and for the formation of a definite purpose to kill, and when the time is sufficient for this it matters not how brief it is. The human mind acts with a celerity which it is sometimes impossible to measure and whether a deliberate and premeditated design to kill was formed

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You will notice that I have already said in referring to the law's definition of murder in the first degree that it excludes cases where the homicide is either one falling under the laws definition of excusable homicide or under the law's definition of justifiable homicide and later in this charge I will comment upon what it is that makes a killing, under the law, justifiable and what it is that constitutes justifiable homicide. But before making that comment, inasmuch as it will apply as well to the crime of murder in its second degree and to the crime of manslaughter in its first degree, that is to say to the law's definition of those crimes, and as to the law's definition of the crime of murder in its first degree reference will be made to the law's definition of the crime of murder in its second degree, and then to the law's definition of the crime of manslaughter in its first degree.

When you retire to deliberate you will first consider the question of this defendant's guilt or innocence of the crime of murder in its first degree. If, upon the evidence, you believe him to be innocent of that crime, or if upon the evidence, you entertain a reasonable doubt respecting his guilt of that crime you will consider the question of this defendant's guilt or innocence of the crime of murder in its second degree. I recur, therefore, to the

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law's definition of murder in the second degree:

"Such killing (meaning a killing which is not excusable homicide nor yet justifiable homicide) is murder in the second degree when committed with a design to effect the death of the person killed, but without deliberation and premeditation." What is the similarity between the crime of murder in the first degree and the crime of murder in the second degree? The similarity is this: Neither can be committed in the absence of a design to effect the death of the person killed. What is the distinquishing differenee between the crime of murder in its first degree, and the crime of murder in its second degree? In the crime of murder in its first degree that design must answer to the description of a deliberate design as that word deliberate has been defined in the decisions which have been read from to you, and must also answer to the description of a premeditated design as that word premeditated has been defined in the decisions which have been read from to you;but contrarywise in a case of murder in its second degree the design which may be an element in the crime need not be a design deliberated upon or premeditated upon. To put it more plainly, and with a little greater degree of accuracy a man may be guilty of murder in its second degree who kills another under circumstances where the killing is not excusable homicide, as defined by law, or justifiable homi-

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cide as defined by law, who kills that other with a design to effect that other's death although that design be one without deliberation, and likewise one without premeditation. If, under the circumstances mentioned, you should come to the consideration of this defendant's guilt or innocence of the crime of murder in its second degree and should thereupon believe him to be innocent of that crime, or should thereupon entertain a reasonable doubt as to his guilt of that crime it would become your duty to consider the question of this defendant's guilt or innocence of the crime of manslaughter in its first degree, and because that is so your attention is invited again to the law's definition of that crime. What does the law say it is that constitutes the crime of manslaughter in its first degree? The law says:

"Such homicide (meaning a killing which is not an excusable homicide nor yet justifiable homicide) is manslaughter in the first degree when committed without a design to effect death but by means of a dangerous weapon.

If one man kills another under circumstances making the killing neither excusable homicide as the law defines excusable homicide, nor yet justifiable homicide, as the law defines justifiable homicide, without any design to effect the death of the person killed, but by means of a dangerous weapon that man is guilty of manslaughter in its

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I now invite your attention as to what the law has to say respecting what it is that consiitues justifiable homicide. I do not invite your attention to what the law has to say respecting what it is that constitutes excusable homicide as I reach the conclusion, that in this case, the provision of law applicable to excusable homicide is inapplicable in any respect of the evidence.

Homicide, says the law, "is justifiable when committed in the lawful defense of the slayer." It does not stop, however, at that point, but adds "When there is reasonable ground to apprehend a design on the part of the person slain to commit a felony or to do some great personal injury to the slayer, and there is imminent danger of such design being accomplished or in the actual resistance of an attempt to commit a felony on the slayer in his presence."

You will see that that portion of the law requires some analysis in order that it may be plainly comprehended. The law provides for one general situation under which a man may be justified in the killing of another, and that general situation is expressed in this phrase: "In the lawful defense of the slayer" and then the law specifies three separate alternatives as subdivisions under that general head, and under any one of which a man may justify the killing of another. The general head applies to all and equally to each and those heads stated

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not in the order in which they appear in the Statute, but preferably for your consideration, more in their logical connection may be stated as follows. First, when there is reasonable ground to apprehend a design on the part of the person slain to do some great personal injury to the slayer and there is imminent danger of such design in being accomplsiehd. Secondly, when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony and , thirdly, in the actual resistance of an attempt to commit a felony on the slayer in his presence.

I proceed to an analysis of the first of those three situations as I stated them to you, namely, that presented where a man seeks to justify the killing of another on the ground that he acted in his lawful defense because there was reasonable ground to apprehend a design on the part of the person slain to do some great injury to the slayer and there was imminent danger of such crime being accomplished. In that connection the questions are:Was there reasonable ground to apprehend a design on the part of the person slain to do some great personal injury to the slayer, and secondly, was there imminent danger of such design being accomplished. If both those questions can be properly answered, on the evidence, in the affirmative, and the act was one in the lawful defense of the

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slayer under such circumstances the homicide is justifiable homicide under the law.

I now come to the second alternative, "In the lawful defense of the slayer when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony". What is a felony? A felony is a crime which is punishable either by death or by imprisonment in a State prison. The crime of assault in its first degree is a felony. The crime of assault in the second degree is a felony, and the crime of attempt to commit the crime of assault in its first degree is a felony. The crime of attempt to commit the crime of assault in its second degree is a felony. What are the laws definitions of assault in the first degree and assault in the second degree. The law says respecting assault in the second degree that "A person who with an intent to kill a human being or to commit a felony upon the person of the one assaulted assaults another with a loaded firearm is guilty of assault in the first degree". The law says that "A person who under circumstances not amounting to the crime of assault in the first degree wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm is guilty of assault in the second degree." The law says that, "An act done with intent to commit a crime

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tending but failing to effect its commission is an attempt to commit that crime."

I have now analyzed the second of those subdivisions and I now come to the third, or rather, before I pass to the third in order to make it perfectly plain I will summarize under the second subdivision, as follows: One who kills another may claim that the killing is justifiable if it is done in the lawful defense of the slayer when there is reasonable ground to apprehend a design on the part of the person slain to commit a felony.

Coming to the third branch the law says that "Homicide is also justifiable when committed in the actual resistance of an attempt to commit a felony upon the slayer in his presence." That presents considerations not greatly differing, although slightly differing, from those presented by the second branch alluded to a moment ago. The question under it is what was done done in the actual resistance of an attempt to commit a felony upon the slayer in his presence?" Before a party can justify the taking of life in self defense he must show that there was reasonable ground for believing he was in great peril, that the killing was necessary for his escape, and that no other safe means was open to him. When one believes himself about to be attacked by another, and to receive great bodily injury it is his duty to avoid the attack if in his power to do so, and the right of attack for the pur-

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pose of self defense, does not arise until he has done everything in his power to avoid its necessity. One without fault if attacked by another may kill his assailant if the circumstances be such as to furnish reasonable ground of a design to take the life or do him great bodily harm though in point of fact he is mistaken," which is but another way of saying that a man may act, under certain circumstances, upon appearances.

A defendant in a criminal case who interposes a plea of self defense is not obliged to establish it by a preponderance of evidence. The burden is upon the prosecution throughout the trial to establish the crime charged beyond a reasonable doubt. If upon the whole case, including the testimony on behalf of the prosecution and on behalf of the defendant, a reasonable doubt of the defendant's guilt arises the jury must acquit.

I have now directed your attention to certain general provisions contained in the article of the penal Law entitled "Homicide." I have directed your attention to the law's definition of the crime of murder in its first degree. I have directed your attention to the law's definition of the crime of murder in its second degree, and I have directed your attention to what the law has to say respecting what it is that constitutes justifiable homicide. I directed your attention to the law's definition

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of the crime of manslaughter in the first degree.

It has been said quite recently in reiteration of what was said also not very long ago, by the Court of Appeals, that in a criminal case a Judge has the right and it is his duty to present the evidence to the jury in such light and with such comments that the jury may see its relevancy and pertinency to the particular issue upon which it was admitted and thus be better qualified to appreciate its character and weight, and to determine its credibility. These questions are for the jury, but it is proper that a Judge should assist the jury in marshaling the evidence so that they may be more readily and intelligently come to a conclusion which shall be satisfactory to themselves, consistent with the evidence, and in accordance with the law. The Judge should do this in a fair and impartial manner having due regard to the rights of the defendant, and with a serious and anxious desire for their preservation. The Judge should have an equal regard for the rights of the people, and an equally serious regard for the preservation of those rights.

In this case there is not as urgent necessity for [redacted] comment by the Court upon the testimony as is presented in many cases, and that is because of the painstaking way in which it has been tried by the Assistant District Attorney who has tried it, and by the defendant's counsel,

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and because of the careful marshaling of the facts by counsel for the defendant and by the Assistant District Attorney.

In January, 1899 there came from Italy to the port of New York a family consisting of this defendant, his wife, two daughters and the husband of the oldest daughter. The defendant had been a soldier, a miller and a baker in Italy. The family settled on the lower East Side and lived in the house to which they first went for about a year. There the youngest daughter was born, and she is now between fourteen and fifteen years of age. The family moved from place to place on the lower East side. In the year 1913, when they were living at No. 31 Lewis street, and the oldest daughter was working at 400 Lafayette street, as a buttonhole maker on coats, she met the deceased, who was employed there for the purpose of safeguarding to and from their homes from attack by strikers the women employes of the establishment who feared that they might be assailed. The older sister worked in this place at 400 Lafayette street for about ten days, and during those ten days from time to time, the deceased accompanied her to 31 Lewis street and into the rooms where the defendant and the other members of the defendant's family lived including the defendant's youngest daughter, who, at that time, was a school girl.

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There is testimony going to the point that during that time, on one occasion, while in the street, the deceased showed to the oldest daughter of the defendant a revolver. There is no testimony in the case that the circumstances that he had so shown a revolver was communicated by that daughter to the defendant. The deceased according to some of the testimony, appears to have come to the house on Lewis street on a number of occasions, and to have met the youngest daughter at times when she was going to school, and to have taken her upon certain occasions to certain moving picture shows. There is testimony, as I recall it, going to the point that after the deceased had been coming to the house for a brief period he asked upon two occasions, the parents of the young woman, namely this defendant and the defendant,s wife for permission to marry the defendant's youngest daughter. There is testimony going to the point that permission was refused on the ground that the defendant's youngest daughter was then too young. There is testimony going to the point that the deceased said he would wait, even if it were necessary, to wait about as long as four years. There is testimony going to the point that at that time the deceased was a married man, and was living on East 10th street in the County of New York, from which place he afterwards moved

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moved to East 11th street, and then from one number on E. 11th street to another number on the same street. There is testimony going to the point that at times the defendant's youngest daughter visited the deceased, and the family of the deceased in their rooms. There is testimony going to the point that the wife of the deceased now his widow, on one occasion went to the rooms of the defendant, and the defendant's family at 31 Lewis street with one or both of her children, and informed the defendant, and the defendant's wife that she was the wife of the deceased, and that those were his children. There is evidence going to the point that after the wife of the deceased had made this communication the deceased continued to come to the rooms of the defendant, the defendant,s wife and family, but that upon a certain occasion he was told not to come again, and that because of the fact that he was a married man. There is testimony going to the point that, thereafter, occasionally, the deceased continued to meet the youngest daughter of the defendant. The defendant and his family moved from 31 Lewis street to 55 Lewis street--possibly I have those numbers not in their proper order but from one of those addresses to the other, and from whatever may have been the last number on Lewis street to a house at 229 Leonard street in Brooklyn. The move to Brooklyn appears to have been made some time in the

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month of August, 1913. At the time of the move, the defendant's oldest daughter and her husband and the members of her family were no longer living with the defendant.Those who moved to the rooms in Brooklyn consisted of the defendant, the defendant's wife, and the defendant's second daughter who had married, and the defendant's youngest daughter. The defendant appears to have kept a fruit store on Grand street in Brooklyn, a few blocks away from the rooms on Leonard street where he lived. There is testimony going to the point that on the first of September, in the absence of the defendant, the deceased came to these rooms, had some conversation with the youngest daughter of the defendant, and took her from those rooms under circumstances which he purports to narrate, to a room on the second floor front at No. 191 Third avenue between 17th and 18th streets in the County of New York. There is testimony given by the defendant's youngest daughter going to the point that afterwards, and on the 15th of September, as I recall it, she was married to her husband at the city hall of New York, and that, on that occasion, he saw but had no extended conversation with her father, and her mother, Both of whom were then present. There is testimony given by the defendant's youngest daughter and going to the point, as I recollect it, that on the afternoon of September 22, 1913, about 6 o'clock she had a talk

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with her father at a time when no one else was present in the store on Grand street in Brooklyn kept by her father. Her father was then in the act of moving out of that store, had many of his things already moved, but a portion of his property was still there. She purports to narrate what she told her father on that occasion, and she purports to say that after the talk which she then had with him she returned, in the way which she purports to describe, from that store to the rooms at 191 Third avenue. She purports to state, as I recall her testimony, that when she reached that room her husband was not there, that the deceased was not there: that after she had been in the room for a short time she heard a whistle which she recognized as the whistle of the deceased, and she looked out of the window, and she saw the deceased in front, and she came downstairs, and started to talk with the deceased on the sidewalk, on the easterly side of Third avenue in front of the house in which he had had a room and had a room, and that while she was talking there with the deceased, and as she says, at a time when the deceased was asking her to go away with him into the country for a purpose which she purports to mention, she saw her father and her mother approaching, and when they were near to her, she ran towards her mother, she was followed by the deceased, that they formed a group and some conversation ensued: she purports to say what the

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deceased said and did, and as to what was said in reply, and she purports to describe what then took place except, if I recollect her evidence, she does not claim to have seen the actual act of shooting. As I recall her testimony she does not claim to recollect having seen any revolver, see it in the hands of the defendant or in the hands of the deceased.

The defendant has purported to give testimony bearing upon his past life, the circumstances under which he became acquainted with the deceased, the substance of what he says was told to him by his youngest daughter on the evening of September 22nd, and what he thereafter did: how he came to go to 191 Third avenue. The wife of the defendant purports to give some testimony, among other things bearing on the circumstances under which she says that she went, on the night of September 22nd to 191 Third avenue, and the mother of the defendant's youngest daughter, being the wife of the defendant, purports to give some evidence as to what transpired when she and the defendant reached No. 191 Third avenue, and the defendant likewise purports to give some testimony bearing upon what then took place. You will recollect what that testimony was.

A man keeping a bootblack stand on the northwest

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corner of 17th street and Third avenue purports to tell where he was and what he saw at the time of the shooting.

A young boy, a nephew of the last witness, who had, in conjunction with his father a bootblack stand on the northeast corner of 17th street and Third avenue purports to tell what he saw and heard on the night of the shooting.

A man who had a bootblack stand on the southerly side of 17th street and the westerly side of 3rd avenue likewise purports to tell what he heard and saw on the night of the shooting.

A you man named Ferrara who during the week before the 22nd of September had been the owner of a horse and truck doing the trucking for a concern having an office in the Woolworth Building purports to describe where he had been in the early evening of September 22nd, and how he walked up the westerly side of Third avenue to where he was at the time that his attention was attracted by a pistol shot; how he then went forward to another point where he was when somebody spoke to him, and that he then saw the defendant. He purports to tell where the defendant was at the time that he saw him. As I recall it the defendant was walking slowly diagonally across Third avenue in a southwasterly direction from the more westerly side of Third avenue, and the northerly side of 17th street down

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towards the easterly sidewalk of Third avenue to a point between 17th and 16th streets, and that the defendant walked down to the corner of 16th street on the easterly side of Third avenue, and then through 16th street to First avenue, and up First avenue to 19th street stood on the corner, waited for two cars to pass, got on the third car; he was followed by this witness who continued on the car with the defendant until the car reached Avenue B and 14th street when it was boarded by the defendant's wife and the defendant's youngest daughter, and that witness purports to tell certain talks that he heard and which he said he understood between the defendant on the one hand, and his daughter on the other. The daughter denies that that talk took place and claims to tell what the talk between her and her father was at that time, and the defendant purports to give testimony, likewise, as to what was said between himself and his daughter on that occasion. That witness continued in the car until the defendant left the car, and then followed the defendant to a certain place, and therelost sight of the defendant. Afterwards, and I think about the 13th of December, or a little before the 13th of December he saw the defendant in Rochester, that witness being employed by the police between the day following the shooting and the day of the defendant's arrest, and being detained for a period of

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time in the House of Detention.

A young man employed by a news company, having their place of business on 24th street, and living on East 23rd street,has given testimony going to the point that he had been at a moving picture place on the night of September 22nd, on 14th street, and had left and gone to Third avenue had walked up Third avenue on the easterly side of the way, and had reached the northerly side of 17th street, on which corner there was a saloon, had passed partially along the front of the saloon, still going in a northerly direction, when his attention was attracted by loud talking:that he saw at a distance ahead of him a group consisting of four people of which the defendant was one, a young man another, and two women, one of whom he has identified as the wife of the deceased, and the other is the youngestdaughter of the deceased, and he purports to tell what their positions were, the extent to which he watched them, and what he saw them do, where they stood with respect to each other, the hearing of a report, the seeing of a flash, what he saw these people or some of them do, immediately after the flash. You will recollect what that evidence was.

Testimony has been given respecting where the deceased was wounded. That testimony as I recall it, is in substance as follows: That it was a pistol shot wound; a penetrating

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bullet wound on the outer aspect of the left arm, slightly back of the bone, and about four inches below the tip of the shoulder, which passed through the muscles of the arm and through the shoulder muscles and the chest wall, and through the chest, and through the lungs and through the chest wall on the right side; that there was no exit: that the bullet was in the muscles on the right side of the chest at a point underneath the chin opposite the right rib, and a little to the front of the median line: that its course was practically level, and that it had been discharged from a 38 caliber revolver: that the deceased was a young man of medium height, weighed about 135 or 140 pounds.

The defendant's defense, as I understand it, is the defense of self defense. He claims as I understand it, that he did not come to New York for the purpose of killing the deceased: that he did not come to New York with the expectation of meeting the deceased. He claims that he came over to New York to see his wife at 65 Lewis street: that at the time he came over he did not intend to go uptown: that the suggestion of going uptown came from his wife to him, and it was made, as he understood, because she was unfamiliar with the streets: that he accompanied her up under those circumstances: that he had forgotten that he had the pistol in his pocket; that he put the pistol in his pocket about one o'clock on the day

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of the shooting; that he took it then out of the drawer; that he was afraid of forgetting it in the act of moving; that it did not occur to him that he had the pistol with him, until, as he says, the deceased put his hand behind him, and he saw in the hands of the deceased a pistol. He claims that at the time he drew the pistol the deceased had seized hold of him by the throat with one hand and had struck him with the other hand, had then reached back towards his hip pocket in which, as the defendant says, he saw either in whole or in part, a pistol. That under those circumstances and no other, he drew a pistol and fired it. The defendant says that the first night he did not go home because he was afraid of injury at the hands of the deceased, and that afterwards he kept away fearing arrest.

The contention of the People, as I understand their contention, is that the circumstance under which the store was closed in Brooklyn, the circumstance that the defendant had on his person a pistol, the testimony of the witness McHugh who was the young man employed by the news company, the position and character of the wound and the conduct of the defendant after the shooting are circumstances from which you can properly infer a design on the part of the defendant to kill the deceased, that that design was deliberated upon and premeditated upon.

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The defendant has produced in his behalf certain witnesses who have given testimony that is sometimes spoken of as character evidence. In the case of the People against Gilbert, reported in 199 N. Y. at page 10, at page 26 the Court of Appeals comments with approval on certain portions of the charge of the trial Judge in that case on the subject of character evidence, and in instructing you respecting the testimony of those witnesses I will instruct you, in substance, in the language indicated by that opinion as having been used by the trial Judge in that case. You are instructed to consider the evidence of good character with all the other evidence in arriving at a conclusion and to weigh the probabilities as to whether a person of such character would be guilty of such an offense? Good character alone might create a reasonable doubt. If you have a reasonable doubt the defendant is entitled to an acquittal. Good character is not a specific defense such as justification or excuse might be, but evidence of good character may create a reasonable doubt even if the evidence were otherwise conclusive. It should be considered with all the other evidence in order to decide whether the defendant was guilty beyond a reasonable doubt.

In this case there is certain testimony to which allusion has already been made respecting the conduct

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of the defendant after the shooting and the circumstance more particularly that he went to Rochester. In the case of the people against Fiorentino the Court of Appeals commenting on the effect to be given by the jury to evidence tending to show the flight of a defendant said: "Evidence of flight is competent because when unexplained it tends to show consciousness of guilt, although alone it raises no legal presumption thereof. They further said that"Flight of itself was not evidence of guilt." They quote withapproval from a case in which it was said that 'it should be considered in connection with such explanation of it, if any, as might be offered by a defendant."

I feel confident gentlemen, that it is not at all necessary that I should say anything to you respecting the responsibility that rests upon you. It is your duty, with open minds, to consider the evidence as you recollect it. Perhaps in the light of the comments upon my recollection of the evidence, as I have made them, it is proper to say that I am not merely conscious of the fact that I have but very imperfectly stated portions of the evidence, but there may be many matters material in determining the question of the defendant's guilt or innocence which I have not alluded to, and that it remains to you, as stated originally in this charge, that you are the

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exclusive judges of the facts and that in the domain of fact you are supreme.

A number of requests have been handed to me by counsel for the defendant. I think they are practically all emobodied in the charge as made, and in that belief they are declined except as charged.

THE COURT: Are there any requests Mr. Brothers?

MR. BROTHERS: No, sir.

MR. ROSALSKY: I specifically ask your Honor to charge --

THE COURT: Hand it up, please.

MR. ROSALSKY: No. 8. I do not believe your Honor has covered the question of the burden of proof.

THE COURT: I think I did.

MR. ROSALSKY: Exception.

THE COURT: I think it is fully covered by the charge as made.

MR. ROSALSKY: I ask your Honor to charge the 12th request.

THE COURT: That is covered by the charge as made.

MR. ROSALSKY: Except this portion, if your Honor please, "Although it may afterwards turn out that the appearances were false and there was, in fact, no such design."

THE COURT: I charged that in that very language.

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That is my recollection of it. That is an extract from a note of a case appearing in the Penal Law, and from that I read.

MR. ROSALSKY: I request your Honor to charge on manslaughter in the first degree the words "An act being done in the heat of passion."

THE COURT: I do not think that is applicable. If you will read the entire subdivision you will see that it is not.

MR. ROSALSKY: Exception.

MR. BROTHERS: We do not object to that if your Honor approves of it.

THE COURT: I think if you will look at the words which follow you will see that it is not applicable. You see it is coupled with the words "but in a cruel an unusual manner." I will charge you, gentlemen, as requested by counsel; "Manslaughter in the first degree is a homicide which is neither excusable nor justifiable -- a homicide committed without a design to effect death, in the heat of passion, but in a cruel and unusual manner, or by means of a dangerous weapon.

MR. ROSALSKY: I ask your Honor to charge having in mind the Harris case, that all that was told to the father, whether it be true or false, is immaterial.

THE COURT: Yes, I charge that.

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MR. ROSALSKY: I ask your Honor to charge in respect to the evidence that Ferrara being a paid witness his testimony should be given greater care and scrutiny.

THE COURT: Well, he is in the House of Detention now, isn't he?

MR. ROSALSKY: In reference to his being employed by the Police Department?

THE COURT: I do not think I will add anything to what I have said.

MR. ROSALSKY: Exception. I ask your Honor to charge the jury that a disinterested witness is not necessarily entitled to any more credit than an interested witness. The whole subject of the interest of a witness and its effect upon his testimony is for the jury.

THE COURT: I charge you that. Any requests Mr. Brothers?

MR. BROTHERS: No, sir.

THE COURT: I suppose there will not be any objection on either side to these gentlemen of the jury sending any proper communication that they may care to to their business associates or friends?

(No objection.)

THE COURT: After you have retired to the jury room the captain will have an opportunity to take any messages that you care to send.

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MR. ROSALSKY: I have no objection to the jurors taking all the exhibits if they so desire.

MR. BROTHERS: I have none. I would be glad to let them have anything they want.

A JUROR: We ought to have the chart.

MR. BROTHERS: Yes.

(The jury take the diagram.)

THE COURT: I think if you take the chart it might be well to let the jury have a little explanatory statement of what those various initials stand for unless they recollect.

A JUROR: I don't think we do.

MR. BROTHERS: Well, I don't remember offhand myself.

THE COURT: Where figures appear in the chart they represent not the first position in which a person saw a person, but the second position in which that witness saw that same person. I can recollect some of these. The cross mark on the westerly sidewalk near which there is the letter F indicates the point at which Ferrara was at the moment he was stopped. He testified he was down in the middle of the block between 16th and 17th streets at the time he heard the shots, and he was stopped about this point.

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A JUROR: Stopped by another man?

THE COURT: Yes.

MR. ROSALSKY: In respect to that letter D that is the defendant.

THE COURT: The letter D near the elevated railroad pillar represents the point at which, I think, two witnesses said they saw the defendant.

MR. BROTHERS: Yes, sir.

MR. ROSALSKY: The first witness said he saw him in the first position where the letter D is -- where the D is, that is the position that the bootblack stand man said he saw the defendant in.

U indicates the position where the first witness said he was at the time he heard the report as of an automobile tire.

MR. BROTHERS: That is my recollection.

A JUROR: The northwest corner.

MR. BROTHERS: A represents the mother, as I remember it?

MR. ROSALSKY: That's right. And C represents Concetta, the daughter and MC represents McHugh.

MR. BROTHERS: I think some of the jury will remember it.

(Pictures of the deceased are given to the jury by consent.)

The jury retire at 3.30 p.m.

The jury return to court at 5.30 p.m.

THE COURT: I am in receipt of the following communcation from the jury: "What constitutes murder in the second degree, manslaughter in the first degree and justifiable homicide."

I charged you as I hoped fully, and as I also added, clearly on this point. I cannot now say anything which is different from that which I said before to you although I may be able to put the same thoughts in somewhat different language. I will attempt to comply with your request and give you a definition first, of what it is that constitutes murder in the second degree, and then of what it is that constitutes manslaughter in the first degree and then of what it is that constitutes justifiable homicide.

Murder in the second degree is defined in Section 1046 of the Penal Law in the following words:"Such killing of a human being is murder in the second degree when committed with a design to effect the death of the person killed or of another, but without deliberation and premeditation." The word "such" as used in that section has reference to a killing which is neither excusable homicide, as excusable homicide is defined in the Penal Law or justifiable homicide, as justifiable homicide is defined in the Penal Law. So that to constitute murder in the second degree a person must kill another person, and must

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kill that other person with a design to effect the death of the person killed, but that design may be one which is without deliberation and premeditation. Murder in the second degree differs from murder in the first degree in that in the case of murder in the first degree the design the effect the death of the person killed must be a design which is with deliberation, and also a design which is with premeditation.

I will now give you the law's definition of the crime of manslaughter in the first degree, and call your attention to what constitutes the difference between murder in the second degree and manslaughter in the first degree.

Manslaughter in the first degree is defined in section 1050 of the Penal Law which reads in part, as follows:

"Such homicide is manslaughter in the first degree when committed without a design to effect death, in the heat of passion, but in a cruel and unusual manner or by means of a dangerous weapon. The word "such" in that definition has the same meaning and force as the word "such" in the definition of murder in the second degree, that is to say, it excludes a killing which, under the law, is defined as excusable homicide, and it also excludes a killing which under the law, is jutifiable homicide. Where there is no design to effect the death of the person killed it is

manslaughter in its first degree: where, in the alternative, it is done in the heat of passion, but in a cruel and unusual manner or by means of a dangerous weapon. If one person by means of a dangerous weapon, without any design to effect the death of another kills that other under circumstances which are not such as would make the killing excusable homicide, and under circumstances such as would not make the killing justifiable homicide, such person is guilty of manslaughter in its first degree.

In response to your request I will now define to you what it is that constitutes justifiable homicide. The law on that subject is found in Section 1055 of the Penal Law: "Homicide is justifiable when committed in the lawful defense of the slayer when there is reasonable ground to apprehend a design on the part of the person slain to do some great personal injury to the slayer, and there is immi-nent danger of such design being accomplished." That is one situation in which homicide is justifiable. Another situation in which homicide is justifiable is the following: Homicide is also justifiable when committed in the lawful defense of the slayer when there is reasonable ground to apprehend a design on the part of the person slaim to commit a felony". You were told before as you are told now that a felony is a crime punishable by either death or imprisonment in a State prison, and assault in its first

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degree, as that crime was defined to you in the main charge of the Court, assault in its second degree as that crime was defined to you in the main charge of the Court, an attempt to commit the crime of assault in either its first or second degrees, was a felony. The third situation in which homicide is also justifiable is when it is committed in the actual resistance of an attempt to commit a felony on the slayer in his presence. A felony there again, in that same connection, has the same meaning as that already, and heretofore given to you, namely, a crime which may be punished by either death or imprisonment in a State prison. I have now defined to you in response to your request what it is that constitutes murder in its second degree, and I have defined to you, in response to your request, what it is that constitutes manslaughter in its first degree, I have told you what it is that makes homicide justifiable and when a homicide is justifiable. I told you, as I told you in the main charge, that the provision found in the Penal Law respecting excusable homicide as distinguished from justifiable homicide is a provision which is inapplicable in this case. Now have I made that reasonably plain to you, gentlemen?

THE FOREMAN: Indeed you have, your Honor.

MR. ROSALSKY: Will your Honor define attempt to

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commit assault in the second degree which is also a felony?

THE COURT: I said that. Now, gentlemen, you may retire.

(The jury retire at 5.40 p.m.)

(The jury return to court at 10 p.m., and state that they find the defendant guilty of manslaughter in the first degree with a recommendation to the extreme mercy of the Court.

(Defendant remanded to March 18th.)

The following is copy of defendant's requests to charge:

1. Not every homicide is murder in the first degree.

2. In murder in the first degree there must be a killing of a human being from a deliberate and premeditated design to effect the death of the person killed: that the people have the burden of showing:- first, that the killing did take place: that it was done deliberately and with premeditation, and they must satisfy the jury of these facts beyond a reasonable doubt, and further you must be satisfied that the defendant committed the crime deliberately and with premeditation: that means, that he did it knowing that he was going to do so, and having deliberately made up his mind that he was going to kill Gaspero Matterello, the deceased.

3. Before you can find any premeditation and deliberation from the evidence in the case you must be

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satisfied beyond a reasonable doubt that the defendant had deliberated and formed the design, after having thought about the intent, and had the design and intent created and fixed in his mind, if he meditates upon it, if he thinks about the intent beforehand, before he commits the act.

4. That to constitute murder in the first degree, the acts of premeditation and deliberation must precede the act of the killing.

5. The jury must make up their minds from the acts done by the defendant prior to the shooting, as to whether the defendant had formed any act of premeditation and deliberation to effect the death of the deceased.

6. Flight is of itself no evidence of guilt.

7. Flight is of itself no evidence of intent or motive.

8. The burden of proving the guilt of the accused beyond a reasonable doubt never shifts from the prosecution.

9. The defendant is entitled to the benefit of a reasonable doubt not only in the case made out by the prosecution, but the rule applies to any defense interposed.

10. That this same rule applies to the different degrees of murder, manslaughter and assault.

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11. That if the accused was attacked in such a manner, or under such circumstances as to furnish reasonable ground for believing the danger imminent, and that such design would be accomplished, he might safely have acted upon appearances and killed his assailant, if that had been necessary to avoid the apprehended danger.

12. One who is without fault himself, when attacked by another, may kill his assailant, if the circumstances be such as to furnish reasonable ground for apprehending a design to take away his life or do some great bodily harm, and there is also reasonable ground for believing the dagger imminent that such design will be accomplished; although it may afterwards turn out that the appearances were false and there was in fact no such design nor any danger that it would be accomplished.

13. A defendant in a criminal case, who interposes the plea of self defense, is not obliged to establish it by a preponderance of evidence. The burden is upon the prosecution throughout the trial to establish the crime charged beyond a reasonable doubt, and if upon the whole case, including the testimony on behalf of the defendant, a reasonable doubt of the defendant's guilt arises, the jury must acquit.

14. Evidence of good character may of itself create a reasonable doubt, when without it none would exist, and that upon the request of the accused the jury should

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be told that such evidence, in the exercise of their sound judgment, may be sufficient to warrant an acquittal, even if the rest of the evidence should otherwise appear conclusive.

15. The jury should consider the evidence of good character with all the other evidence in arriving at a conclusion; to weigh the probabilities as to whether a person of such character would be guilty of such an offense: that good character alone might create a reasonable doubt, and that if they had a reasonable doubt the defendant was entitled to an acquittal.

16. Evidence of good character is not only of value in doubtful cases, and in prosecutions for minor offenses, but is entitled to be considered when the crime charged is atrocious, and also when the testimony tends very strongly to establish the guilt of the accused. It will sometimes of itself create a doubt when without it none would exist.

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