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

-----X

:
THE PEOPLE OF THE STAGE OF NEW YORK :

:Before

-against- : HON. THOMAS C. O' SULLIVAN,J.

: and a Jury.

FRANCESCO SANSONE. :

:

-----X

New York, May 19th, 1910, etc.

Indicated for Murder in the First Degree.

Indictment filed April 21st, 1910.

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

For the People,

ASSISTANT DISTRICT ATTORNEY ROBERT C. McCORMICK.

For the Defendant,

CHASE MELLEEN, ESQ.

A jury was duly impaneled and sworn.

James E. Lynch,

Official Stenographer.

dispute resulted in the breaking up of this game.

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

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

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

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

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

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

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

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

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

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

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

FRANCIS McGEE, called and duly sworn as a witness

on behalf of the people, testified as follows:

By THE COURT:

Q Now, officer, speak loud enough to let the last man in that box hear distinctly every word you say, will you remember that?

A Yes, sir.

DIRECT EXAMINATION BY MR. McCORMICK:

Q You are attached to the Detective Bureau?

A Yes, Sir.

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

A Yes, Sir.

Q On Saturday evening, March 5th, 1910, at about ten minutes after eleven, where were you?

A I was on Mott street between Canal and Hester street.

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

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

Q Did you hear a shot fired there that night?

A Yes, Sir.

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

ing of that shot? What was the first thing attracted your attention, and then go on?

A. I was standing in the hallway of No. 101 Mott street. I heard a pistol shot. A little south of me on the opposite side of the street from where I was standing, it was, and I saw the deceased in this case fall on the sidewalk, and just as I arrived there, my two side partners placed the defendant under arrest, and picked up a revolver from the street which he threw away, which I saw him throw away.

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

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

A. Yes, Sir.

Q. Where was the defendant standing at what moment?

A. He was standing on the sidewalk.

Q. What part of the sidewalk?

A. On the sidewalk proper, near the curb.

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

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

Q. Was he standing, or describe it?

A. When I got there he was lying down. His head was lying in the direction of Canal street and his feet towards Hester street. That is, he was unconscious.

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

A Yes.

Q Where was the defendant standing when he fired the second shot?

A He was standing in front of the deceased, nearer the curb.

Q Well, I know, but you did not see him, or you saw him just after he fired the first shot, didn't you?

A I did not see who fired the first shot. I saw the second shot fired by this defendant, but I don't know who fired the first shot. I didn't know at that time.

Q Was any one else standing near either of these two men at that time?

A There was five of them altogether

Q When you first looked?

A Yes.

Q What became of these five, did you notice?

A The defendant, the deceased and three others who were placed under arrest, they are witnesses in this case now.

Q Well, did you notice what became of them at the moment of the firing?

A They stepped away, and Guarniari and McMahon placed the defendant under arrest, and I the other three witnesses and backed them up against the fence and searched them to see whether they had any concealed weapons or not, and there was not any of them had any.

Q Did you notice whether any of them came close to the body of the deceased?

A Officer McMahon took the defendant over to the deceased and tried to get an identification, but he was unconscious.

BY THE COURT:

Q what?

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

THE COURT: Strike out that he tried to.

BY MR. McCORMICK:

Q You say you saw the defendant throw a revolver down? How long was that after the second shot was fired?

A A lapse of probably two or three seconds, something like that.

Q Where was the defendant when he threw the revolver on the street?

A He was just standing on the curb, stepping off the curb on to the street.

Q Didn't you say he had already backed out into the street when he threw it down?

A When he threw it down he was just stepping down.. He threw it right alongside the curb.

Q On the street or on the sidewalk?

A The sidewalk -- or on the street rather.

Q Who was it first laid hands on the defendant?

A Officer Guarniari.

Q Did you see him?

A Yes.

Q How far from the curb was the defendant when that happend?

A Probably five feet.

Q Towards the middle of the street?

A Yes.

Q What was the defendant doing at that time?

A He was backing away from where the body of the deceased lay.

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Q Is that all that happened there at that time?

A We took them around --

Q Did officer Guarniari hand that revolver to you, did you say?

A Yes.

Q And are you able to identify it?

A Yes.

Q Where is it, do you know?

A Officer McMahon it outside in that other room.

Q Now what was the condition of this revolver as to being loaded?

A It was 38 calibre.

Q No, as to where it was loaded?

A There were threeloaded cartridges in the revolver and two empty shells.

Q What kind of revolver was it?

A It was a 38 calibre, Harrington-Richardson revolver.

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

A He was falling.

Q He was staggering?

A He was falling back against the fence.

Q And did you notice his hands?

A I was not near enough to see his hands at that time.

Q Could you tell whether or not there was anything in either hand?

A Well, when I got there there was not, no, sir.

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

A Yes, Sir.

MR. McCORMICK: I offer the revolver in evidence.

MR. MELLEN: No objection.

(Marked People's Exhibit 1 in evidence)

Q You have testified that there were three loaded and two unloaded shells in the revolver at the time?

A Yes, Sir.

Q Are those the shells (indicating)?

A Yes, Sir.

MR. McCORMICK: I offer them in evidence.

Q How can you indentify these?

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

Q And you do indentify them now in thatt way?

A Yes, Sir.

MR. McCORMICK: I offer them in evidence.

MR. MELLEN: No objection.

(Marked People's Exhibit 2 in evidence).

Q Is that all you saw there at that time?

A Yes. Well, I saw another revolver there. Officer Kaufmann of the Sixth Precinct came --

Q He had the revolver, did he?

A He picked up the revolver and handed it to me.

Q Did you see him pick it up?

A No, sir.

MR. MELLEN: What did he say?

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

Q Now, did you have any conversation with the defendant

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at that time?

A Yes.

Q What was it?

A Asked him why he did the shooting and he said. "I didn't do any shooting".

Q Do you remember his exact words?

A He said, "Me no shoot".

Q Now, after that, on Sunday, March 6th, 1910, that is, the next morning, did you have a talk with him?

A On the way from Police Headquarter to the Tombs Court here, the defendant, I had him handcuffed to me, coming down, and he asked --

THE COURT: No, strike that out.

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

Q Did he say anything about going to jail?

A He said, "Me no afraid, going to jail for him, he all the time make trouble."

Q And that is all you know about this case?

A That's all, yes.

MR. McCORMICK: That is all.

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

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

Recess until 2 o'clock p.m.

After recess.

TRIAL RESUMED.

FRANCIS McGEE, a witness for the People, resumes the witness stand:

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

(Marked People's Exhibit 3 in evidence).

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

THE COURT: Very well.

DIRECT EXAMINATION CONTINUED BY MR. McCORMICK:

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

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

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

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

Q Now, make a mark, the letter "X" where the defendant was standing when you first saw him?

A (Witness indicates). Well, about there, as near as I can designate it.

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

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

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

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

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doing there at the time, Officer?

A I was working on another case.

Q That is all.

CROSS EXAMINATION BY MR. MELLEN:

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

A Yes, sir,

Q How was the street lighted there, was it lighted that night?

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

Q Canal street end?

A One at Canal and one at Hester, yes, sir.

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

A Yes, sir.

Q Had you noticed these people before that time at all?

A I had noticed a number of people going to and fro through the block, and in and out of the hallways of these different tenement houses.

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

A Immediately.

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

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

Q It was almost instantaneous, wasn't it?

A Almost, yes sir.

Q Did you start on a run across the street?

A Yes, sir.

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

A Yes, sir.

Q What was it that particularly attracted your attention to Sansone in this short interval?

A Because I saw him fire the second shot.

Q No, what was it that drew your attention to him particularly so that you could see the second shot?

A I saw the shot fired from his hand.

Q Were you looking at him when you started to cross the street on a run?

A I was looking at the number of them standing there together, five, I believe.

Q Well, was Sansone standing out there alone, by himself?

A When the second shot was fired he was by himself, yes, sir.

Q In this short interval the others had scattered away from him?

A The others were beginning to come up Mott street in the direction of Hester street.

Q How far was the deceased standing from Sansone when

you say you saw Sansone fire this second shot?

A I should say five or six feet.

Q And he was standing, the deceased was standing against the railing, was he?

A When I saw him he was leaning, falling against the railing, yes, sir.

Q He was falling against the railing?

A Yes, sir.

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

A YEs.

Q Along a distance of about 75 feet or so from Canal?

A Yes, sir.

Q Was it light at that spot?

A Fairly. It was not exactly under an electric light, but it was say 50 feet from the electric light.

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

A Yes, sir.

Q Which hand?

A The right hand.

Q What did you see Sansone do with that pistol?

A I saw him throw it in the street.

Q Throw it down or drop it?

A Throw it down.

Q In what part of the street?

A Right near the curb, right near the sidewalk where he stood.

Q Almost at his feet he threw it?

A Probably five feet from his feet.

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

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A In the hands of officer Kaufmann.

Q Have you that revolver here?

A Yes, sir.

Q will you kindly produce it?

A It is out in that witness room. officer McMahon has it out there.

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

Q Is this the revolver that was handed you that night (indicating)? at that spot?

A Yes, sir.

MR. MELLEEN: I offer that in evidence.

(Marked Defendant's Exhibit A in evidence)

Q Now, how near was that revolver, or was Kaufmann standing to the deceased when he handed you it?

A Two feet of the body of the deceased.

Q Did you see him pick it up?

A No, sir.

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

A No, sir.

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

A No, sir.

Q You did not examine his body?

A No, sir.

Q How long did his body lie there?

A I should say about ten minutes.

Q How long did his body lie there?

A I should say about ten minutes.

Q How was he taken away?

A Taken away in an ambulance.

Q To what hospitals?

A Hudson street, House of relief.

Q Did you go to the hospital with the body?

A I did not

accompany the body there, no, sir.

Q You went there afterwards?

A Yes, sir.

Q Did you see, or were you shown anything else taken from his body or person?

A No, I was shown anything else.

Q Well, you know as a fact that something else was taken?

A I have heard that he had a subpoena on him. My recollection is he did have a subpoena on him to appear in some court in Staten Island.

Q Did you hear anything about any weapon that was taken from his body or person?

A No, sir.

Q Well now, before you heard and saw this second shot fired, had you noticed the deceased and the defendant together that evening?

A No, sir.

Q You had not seen them at all?

A I may have seen them but didn't pay any attention to them.

Q Was there anything going on on the sidewalk just before you heard the first shot, the sidewalk of Mott street oppsite where you were standing, that attracted your attention in any way?

A There was there talking which didn't understand, probably loud talking, I believe there was.

Q Indulged in by several persons?

A Yes, sir.

Q You do not understand Italian?

A Some of it, very liittle.

Q You did not understand what these people were saying?

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Q You did not hear what they said?

A No, sir.

Q Who reached this, who was the first officer to reach this assemblage?

A Joe Guarinari.

Q Did you notice him before this occurrence that evening?

A He was with me that evening, yes, sir.

Q Where was he when you were in the doorway?

A He was in a doorway on Mott street about 75 feet nearer to Canal street than I was, south of me.

Q The doorway of what building, if you recall?

A Some factory building there. I don't know which one.

Q On the east or west side?

A The west side.

Q That is the same side with you?

A Yes, sir.

Q How many doors away from you?

A I should say about 75 feet may be, further down, he was nearer Canal street, but I don't know just which door he was at.

Q Now, when you heard the first shot and left this doorway did you see this officer?

A I saw this officer as I started running in their direction, I saw them coming, he and officer McMahan coming up the street.

Q So they were the ones who got there first?

A Yes, sir.

Q Both of them?

A Yes, sir.

Q What did the defendant do when they arrived, that you saw?

A Didn't do anything. Simply placed him under ar-

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

Q He was peaceable and quiet, wasn't he?

A Yes, sir.

Q Made no resistance?

A No, sir.

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

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

Q You didn't pay any particular attention to him beyond seeing him fall?

A Beyond seeing the man fall, I didn't know who it was or what he was doing, or anything else.

Q That is all.

RE-DIRECT EXAMINATION BY MR. McCORMICK:

Q Did you attend the autopsy?

A Yes, sir.

Q Where did that take place?

A In the House of Re-lief, Hudson street Hospital.

Q What day, the next day. do you remember?

A It was on Monday, the 7th or March.

Q Did you see any physician there?

A Yes, sir.

Q Who was it?

A The Coroner's Physician.

Q Do you know his name?

A I do, but I can't recall it.

Q Is he in this room now?

A Yes.

Q Where?

A Sitting right back there (indicating).

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

stand up?

Q Is that the man you saw (indicating)?

A Yes, Sir.

Q Performing the autopsy?

A Yes, sir.

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

A Yes, sir.

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

A Yes, sir.

Q About how far from the railing, on the inside of the sidewalk?

A He lay right against the railing.

Q And was his head towards the north or south?

A South.

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

A Lying on his back.

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

MR. MELLEEN: I object to that.

THE COURT: Between whom?

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

MR. MELLEEN: I object to that.

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

THE COURT: I will allow it.

MR. MELLEEN: Exception.

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A Yes.

Q With whom?

A Pasquale LoRusso.

Q What was said?

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

Q Did you hear the defendant say anything?

THE COURT: He may answer that question?

MR. MELLEN: Excetption.

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

Q Did you hear any conversation, did you hear any one say anything to the defendant?

A I heard Pasquale LoRusso say to him, "You traitor, you traitor".

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

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

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

DIRECT EXAMINATION BY MR. McCORMICK:

Q What is your occupation?

A I am a physician.

Q Are you one of the Coroner's Physicians of the Country of New York?

A I am.

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Q How long have you held that position?

A 21 Years.

Q 11 years?

A 21 years.

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

A I did.

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

A It was.

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

A I did.

Q What did you discover upon that examination?

A I found a pistol shot wound of the head and a pistol shot wound of the neck. The pistol shot wound of the neck was not a wound which involved anything except the skin and muscles. The wound of the head penetrated the head, caused a fracture of the skull, laceration of the brain, which was the cause of death .

Q what did you say was the cause of death?

A Pistol shot wound of the head, laceration of the brain.

Q Could you tell how long the man had been dead? Was there any way of telling that?

A Why, I could tell a little better by the notes(indicating). The autopsy was performed on the same day.

Q 1:10 in the morning?

A Yes.

Q What time of day did you perform the autopsy?

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A 11:10 a.m.

Q Was the body identified to you by any one else than this officer?

A By the ambulance surgeon and by a relative.

Q Do you remember the name of the relative?

A I can refresh my memory by the notes.

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

MR. McCORMICK: That is all.

MR. MELLEEN: That is all.

JEREMIAH McMAHON, called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY. MR. McCORMICK:"

Q You are a member of the Municipal Police Force, are you?

A Yes, sir.

Q Attached to the Detective Bureau at Police Head-quarters?

A Yes, sir.

Q On Saturday night, Maroh 5th, 1910, about a little after eleven o'clock, where were you?

A I was standing in the doorway of 71 Mott street.

BY THE COURT:

Q Just a little louder, officer.

A I was standing in the doorway of 71 Mott street.

BY THE COURT:

Q Just a little louder, officer.

A I was standing in the doorway of 71 Mott street

BY MR. McCORMICK:

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

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which you were standing?

A About 15 feet, 15 or 20 feet.

Q Now, I show you People's Exhibit 3, and ask you if you can, after examination this diagram, point out where you were standing?

A I was standing about here. I think (indicating).

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

Q You do not know whether that is 71 or not, as a matter of fact, do you?

A Well, I think that is the number, to the best of my belief.

Q You are not sure about it? were you alone when you were standing there?

A No, sir.

Q Who was with you?

A Officer Guarniari.

Q Make a mark, the letter "G" where he was standing.

A Well, he was standing right, he was standing to the north of me.

Q Well, just make the letter "G" there.

A (The witness indicates on the diagram People's Exhibit 3).

Q Did you hear a pistol shot while you were standing there?

A Yes, sir.

Q What were you doing there?

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

BY THE COURT:

Q That will do.

BY MR. McCORMICK:

Q Now, you say you heard a pistol shot?

A Yes, sir.

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

A Yes.

Q What did you see?

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

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

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

Q Well now, just tell what you saw there?

A Well, I saw the flash of a pistol shot.

Q Where was the pistol?

A The pistol was in the hand of Francesco Sansone.

Q And where was Sansone at that moment?

A He was standing on the street just about a foot or two away from the curb on the east side of Mott street.

Q Was he moving or was he standing still?

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

Q And fired a second shot?

A Yes, sir.

Q So that he had backed out into the street at the time he fired the second shot?

A Yes, sir.

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

A Yes, sir.

Q Well now, tell just what you saw?

A Well, I saw a man stagger and fall to the sidewalk.

Q Could you tell what direction the revolver was pointed in when this man staggered?

A Yes, sir. The revolver was pointed in the direction towards the man that fell on the sidewalk.

Q Did you see the man fall on the sidewalk?

A Yes, sir.

Q How far from the railing was he when he fell?

A Well, he was right up against the railing. There is a curb right outside the railing, and he was partly up against the curb.

Q What did you do as soon as you heard the first shot?

A Myself and officer Guarniari ran towards the defendant.

Q Well, what did you do. Go on, tell just what you did?

A Officer Guarniari grabbed hold of him by the right hand I grabbed him by the left hand. When we were about, say about five feet away from him he turned right around to run south on Mott street.

MR. MELLEEN: I object to that.

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

Q He turned right around?

A Yes, towards canal and he attempted to put the gun in his right hand pocket --

MR. MELLEEN: objected to and I move to strike it

out.

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

Q Was the gun in his right hand?

A Yes.

Q Tell what he did with his right hand?

A Threw the gun on the street.

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

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

Q Well, between the time he fired the shot and the time he threw the gun on the street, did he do anything?

A He made an attempt to put the gun in his pocket.

MR. MELLEEN: Object to and I move to strike it out.

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

Q Do not draw your conclusion as to what he was trying to do, state what saw him do?

A He put his hand around towards his hip right hand pocket.

Q Then how long after he did that was it that he threw the gun on the street?

A Just a fraction of a second.

Q How long after he fired the second shot was it that he put his hand at his hip?

A Just a fraction of a second.

Q Now, just describe exactly how this man acted who fell down by the railing?

A Well, after the second shot was fired --

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

THE COURT: If he knows.

Q (Continuing) If you know?

A Well, he was standing on the sidewalk facing west.

THE COURT: Just a moment.

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

A Yes, sir.

Q Now, just state to the jury what you saw in that regard?

A He was standing on the sidewalk, and after, or between the first and second shot, when the second shot was fired he staggered backwards with his hands partly upwards like that (Illustrating) and fell on his back with his head facing south.

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

Q How close to the rail was he?

A When he fell he was right up against the curb, or right up against the railing.

Q In which direction was his head pointing?

A South.

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

A Partly on his back.

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

A Yes, sir.

Q Was there anything in them?

A No, sir.

Q Now, just before he fell, in what direction was his body moving, or was he moving?

A Well, he was facing west, and when he staggered, he staggered backward and kind of fell on his back.

Q Now, when he staggered backward, how far, how many feet did he stagger?

A Two or three feet, may be four.

Q Staggered back two or three feet and then fell back on his back?

A Yes, sir.

Q And you say you saw nothing in his hands?

A Nothing in his hands.

Q Now, did you have any conversation with Sansone at that time?

A Yes, sir.

Q What was it?

A Myself and officer Guarniari.

BY MR. MELLEEN:

Q When was this conversation?

MR. McCORMICK: At the time of the arrest.

Q Immediately?

A Right immediately after the arrest.

BY MR. McCORMICK:

Q Go on.

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

BY THE COURT:

Q Who asked that?

A Officer Guarniari was in company with me at the time.

BY MR. MELLEEN:

Q You heard this?

A Yes, sir.

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

BY MR. MELLEN:

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

A Guarniari.

Q And in what language?

A English.

Q The answers were given in what, English?

A Partly in broken English.

BY THE COURT:

Q Proceed.

A He says "Me no shoot."

BY MR. McCORMICK:

Q Is that all that was said at that time, That you remember?

A Well, we questioned him in the morning, the following morning.

Q I mean, I am talking right about there at the scene of the shooting?

A Yes, that was about all remember.

Q Did you see the revolver that officer McGee had at that time, or did you see a revolver there?

A I saw officer Guarniari pick up the revolver that this man dropped on the street.

Q That you saw this man drop on the street?

A Yes, sir.

Q Is that the revolver (indicating People's Exhibit 1)?

A Yes, sir. that's the revolver.

Q That's the revolver you saw the defendant throw on to the street?

A Yes, sir.

Q What did you do? You say you had the defendant Sansone in your custody?

A Yes, sir.

Q What did you do with him?

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

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

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

THE COURT: It is not quite definite.

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

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

Q Did you have any conversation with the defendant after that, or hear any one else converse with him?

A Yes, I heard --

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

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

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after that?

A No, sir.

Q Did you hear any one else converse with him?

A Yes.

Q Where?

A In the cell at Police Headdquarters.

Q Who was it that was talking to him?

A Officer Guarniari.

Q Will you state to the jury--

THE COURT: In what language, please?

BY MR. McCORMICK:

Q In what language was that conversation?

A English.

MR. MELLEEN: When?

Q When?

A On Sunday morning, March 6th.

Q Will you state what that conversation was?

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

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

Q Did the conversation refer to this shooting?

A (No answer)

BY THE COURT:

Q Well, was it about it?

A Yes, sir.

THE COURT: All right, what was said?

BY MR. McCORMICK:

Q Simply what was said by the defendant or any one conversing with him?

A Officer Guraniara asked him in the morning what he shot this man for, and he admitted doing the

shooting, in the morning.

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

Q You must repeat what you heard.

A He says "Me no afraid to shoot the son-of-a-bitch, he all the time make the trouble for me".

Q Is that all, is that practically all?

A That's about all I remember.

CROSS EXAMINATION BY MR. MELLEEN:

Q Now, officer, you say you did not see anything in the deceased's hands night?

A Yes, sir.

Q All that you have described here of the occurrence that evening took place almost instantaneously, isn't that so?

A Yes, in a few fractions of a second.

Q Had you noticed these people on the opposite side of the street to you before the shooting?

A Yes, sir.

Q How many were there?

A There was about five or six men.

Q Had you noticed Sansone particularly before?

A No, sir.

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

A No, sir.

Q Had you noticed the deceased before?

A No, sir.

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

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A No, sir.

Q Was there anything particular to call your attention to them?

A No, sir.

Q They were just passing along on the other side of the street?

A Well, they were standing, they were talking there.

Q Standing?

A Standing, yes.

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

A Well, the five was --

BY THE COURT:

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

A No.

BY MR. MELLEEN:

Q You did not see him standing there?

A No.

Q Was he standing there, that you know --

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

Q If you know.

A I did not see him.

Q You don't know then whether he was standing there before this or not?

A No.

Q Do you know whether Sansone was with him or not before this?

A No.

Q You don't know where Sansone was before you saw him fire this shot?

A No.

Q How do you know that this was the revolver that Sansone had that night?

A Well, I saw him throw it out in the

street.

Q Well, but how do you indentify this particular revolver?

A There is a mark right there on the butt, on the end.

Q You put that mark there?

A Yes, sir.

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

A Yes, sir.

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

A Officer McGee had that in his hand.

Q In his hand?

A Yes, sir.

Q Did you see him pick it up?

A No, sir.

Q Did you see it before he picked it up?

A No, sir.

Q The first you saw of it was in officer McGee's hands?

A Yes, sir.

Q You don't know how it came in his hand?

A No, sir.

Q Now, just describe, will you, there officer McGee and officer Guarniari -- is that his name?

A Yes, sir.

Q (Continuing) -- and yourself were standing, where those two officers were standing when you first came there?

A Myself and officer Guarniari were standing is door way of I think it is --

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

Strike it out.

BY MR. MELLEN:

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

A Myself

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

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

A Yes, sir.

Q How long did it take you to run across the street and grab him?

A A couple of seconds, I should think.

Q Were they standing right opposite where you were?

A Yes, about opposite where I was standing.

Q Nearer Canal street or further uptown?

A A little further uptown.

Q Now, where was officer McMahan standing, when officer McGee came over?

A I had of Sansone at the time.

Q When did you first notice officer McGee?

A Just a fraction of a second after I got hold of Sansone.

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

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

Q You are sure now the number is 92 and not 72?

A Yes,sir, I think I made a mistake.

Q Your memory about that number is clear?

A Yes.

Q How long did you stay there after you heard the shot, the first shot?

A Myself and officerr Guarniari ran --

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

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

THE COURT: No, no.

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

A Well, it may be about ten minutes after.

Q You were there altogether about ten minutes?

A May be about ten minutes.

Q Before you took Sansone to the police station?

A I figure it about ten minutes.

Q Now, Sansone was peaceable, was he?

A Yes, sir.

Q Did not show any resistance?

A No, sir.

Q And submitted to arrest?

A Yes, sir.

Q Did he appear excited?

A A little bit.

Q But he was generally quiet, wasn't he?

A Yes, sir.

Q How near was he to the deceased when you saw him fire the second shot?

A I figure it out about may bem about four or fice feet.

Q Was he at that time backing away from the deceased?

A Yes, sir.

Q When you firstt saw him how near to the deceased was he?

A Well, I figure it he was about a couple of feet away, may be two or three feet.

Q They were practically alongside each other?

A Yes.

Q Before you heard and saw the second shot fired, after you heard the first shot, did you pay any attention to the deceased?

A Yes, I saw the deceased fall down.

Q In that brief interval you saw him fall?

A Yes.

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Q It was almost instantaneous, wasn't it, between the first and second shots?

A Well, yes, maybe a second or two.

Q One shot followed the other almost as rapidly as could be fired, didn't it?

A No, sir.

Q Well, very rapidly?

A Well, there may be a couple of seconds between the two shots.

Q A couple of seconds, and during that time you did not see anything in the deceased's hands?

A No, sir.

Q You did not see anything lying near his body?

A No, sir.

Q When you first saw him on the ground?

A No, sir.

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

A Yes, sir.

Q Did you see anything else than this revolver, Defendant's Exhibit A, taken from his body there?

A No, sir.

Q Do you know whether or not anything else was taken from his person there at the hospital?

A I don't know.

Q You know nothing about that?

A No, sir.

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

A Yes, sir.

Q And just what you saw?

A Yes, sir.

Q And nothing else?

A Nothing else

BY THE COURT:

Q Did McGee go the place of the alleged shooting before

or after you?

A After me.

Q Well, how long after you?

A Well, I figure about a fraction of a second.

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

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

Q He ran right up to where you were standing?

A Yes, sir.

Q But he got there afterwards?

A Yes, a fraction of a second afterwards.

Q Well, you saw him coming up?

A I saw him when he got there.

Q And he came right to where you were standing?

A Yes, sir.

Q And then he went away from where you were standing? In what direction, if any?

A Well, he was there pretty near all the time.

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

A Yes, sir.

Q And then what did he do?

A Well, I saw him go over and get hold of a couple of other men that were in the crowd at the time.

Q You saw him do what?

A Get hold of two other, two or three other men that were standing there at the time.

Q What direction did he go when he went away from you, after coming up to where you stood?

A Well, he went a little north of where I was standing.

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

A Well, I can't exactly say.

Q But you saw him go?

A Well, I saw him leave there, but I couldn't swear.

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

A Yes, sir.

Q Well, now, why can you not tell us whether he went towards the body of the deceased or not?

A Well, I can't exactly remember.

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

A Yes, sir, he shot--

Q (interrupting) When, now?

A Maybe 4 or 5 seconds after, maybe more than that.

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

A Yes, sir.

Q Then McGee went away?

A Yes, sir.

Q How far had he gone from you when you first saw the revolver in his hand?

A He may be about 5 or 10 feet.

Q Now, can you not tell us whether he went in the direction of the decedant or not?

A Well, I think he went on the sidewalk towards the deceased, but I can't exactly say if he went over to the body of the deceased.

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

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first saw the revolver in his hand?

A He was standing about, I figure about five feet away from the body of the deceased.

Q How far from the body of the deceased was he when he first came to the place where you stood?

A About 6 or 7 feet.

Q Six or seven feet?

A Yes, sir.

Q And when you first saw him with the revolver in his hand, he was how far away from you, 5 or 6 feet, would you say?

A He was about 5 or 6 feet away from the body of the deceased.

Q And how far from you?

A Well, he showed me the revolver, then he may be a foot or two away from me.

Q What is that?

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

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

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

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

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

A Officer McGee had the other revolver in his hand.

Q Well, who picked this revolver up?

A I don't know.

Q Did you see anybody with that revolver?

A Yes, I saw that revolver after with officer McGee.

Q Did officer McGee take it?

A Yes, sir, he had it here.

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

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

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

MR. MELLEN:

Q Now, confine your attention solely to this revolver, Defendant's Exhibit A. Tell me again when you first saw that revolver on this evening?

A I saw that revolver in the hands of officer McGee.

Q When, for the first time?

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

Q Which revolver did you see first, this revolver People's Exhibit 1?

A Yes, sir, that's the first revolver I saw.

Q And you saw this revolver Defendant's Exhibit A Afterwards?

A Yes, sir.

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Q Did you see both revolvers in the hands of officer McGee?

A Yes, sir.

Q And you saw neither revolver before that moment, did you?

A I saw this one first.

Q And you saw People's Exhibit 1, this revolver first, in the hands of Officer McGee?

A I saw defendant throw that revolver on the street.

Q Well, all right, go on with your answer?

A And officerr Guraniari picked that revolver up and gave it to officer McGee.

Q Yes, you saw that?

A Yes, sir.

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

A A few minutes after.

Q Well, what do you mean by a few minutes?

A Well, I can't exactly say. May be one, may be five, may be six or seven minutes, eight minutes or ten minutes.

Q Why, you were only there ten minutes?

A Well, it may be five or ten minutes. I didn't take the time. It may be fifteen minutes. It may be between ten and fifteen.

Q Is not your recollection about this occurrence very clear?

A Yes, sir.

Q It is only two months ago?

A That's all.

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

Defendant's Exhibit A in his hands?

A He was standing on the sidewalk about five feet north of the body of the deceased.

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

A Yes.

Q Where?

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

Q Now, had you seen Officer McGee before that time near the body of the deceased?

A No.

Q Not at all that evening?

A No, sir.

Q What other officers approached the body of the deceased?

A There were three or four police officers there in uniform.

Q Where was officer Kaufmann?

A There were three or four uniformed policemen there.

Q Tell us the names of them all?

A I don't know any of their names.

Q Well, you know your name and you know officer McMahan's name?

A Yes, sir.

Q And you know Officer Guarniari's name?

A Yes.

BY MR. McCORMICK:

Q Well, what is your name?

A McMahan.

BY MR. MELLEEN:

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

MR. McCORMICK: Well, you asked him if he knew officer McMahan.

Q Now, what officer was it, if any, that you saw that night who went up to the body of the deceased before you saw the revolver, Defendant's Exhibit A?

A I didn't see any officer go to the body?

Q Didn't you go yourself?

A Yes.

Q Well, did not officer Guarniari go with you?

A Well, the two of us stood there. I misunderstood what you said. I thought you said a uniformed policeman.

Q No, no, I mean an officer of the police force, whether in uniform or not?

A Yes, myself and officer Guarniari went over the body.

Q Was officer McMahan in uniform that night?

A No.

Q Was officer Guarniari in uniform that night?

A No.

Q Or Officer McGee?

A No.

Q You don't know the names of the officers who were in uniform?

A No, sir.

Q You don't know them at all?

A Well, I know them by sight but I don't know their names.

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

A Yes, sir.

Q Whor were they?

A I for one, myself and officer Guarniari.

Q How about Officer McGee?

A Well, I can't swear whether Officer McGee wentt overr there or not.

Q Did you pay very much attention to officer McGee before you saw this revolver in his hand?

A Well, just a little bit.

Q Was it light or dark at that spot?

A Well, it was not very light and it was not very dark. The light was pretty fair.

Q The street there is about how wide, the door where you were standing to the railing on the otherside?

A I figure it out about fifty feet.

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

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

BY THE COURT:

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

A Yes, sir.

Q Now, why is your memory so accurate as to give us a fraction of a second as the time within which he reached you, and you cannot tell us within ten minutes of the time after he got there when you saw the revolver in his hand? Now, this is important, try and recall?

A Just pretty near the time myself and Officer Guarniari got hold of the defendant, Officer McGee came right up.

Q Yes?

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

Q You consider that of more importance to remember the exact time within which he came than to remember the exact time which elapsed after he came and until you saw the revolver in his hand?

A Well, may be more than a fraction of a second. It may be a second, but I figure it, it was not only, about a fraction of a second.

Q Well, whatt are you speaking about now? The time when he came or the time after he came when you saw the revolver in his hand?

A The time Officer McGee came running up.

Q Yes, that was you say, about a second of less after you reached there?

A Yes, sir.

Q Then, how many seconds had elapsed between his coming and the time when you saw him with the revolver in his hand?

A Between the time McGee came and I saw McGee with this revolver in his hand, it may be about five minutes. It may be more and it ma less.

BY MR. MELLEEN:

Q What were you doing during that five minutes?

A We got hold of the defendant there and we took him over to the body of the deceased, myself and Officer Guaniari, and I got hold of the deceased's right hand and I felt his pulse and he was unconcious, lying on the sidewalk at the time.

Q Now, were you there in all five minutes?

A Well, I may be there more, I may be there less.

Q How long was it, how much time elapsed between the time when you saw this revolver in Officer McGee's hands and the time you left the scene, altogether?

A May be five or seven minutes.

Q That is the bestt you can tell us, is it?

A Yes, sir.

BY THE COURT:

Q Did you say anything to McGee, did he say anything to you about that revolver?

A Officer McGee said that some uniformed officer gave him this revolver.

Q He said what?

A Officer McGee said to me that some uniformed officer gave him this revolver.

Q In the presence of this defendant, that was said?

A Well, I don't know. The defendant was right there. I don't know whether he heard it or not.

Q Why, you heard it said?

A Yes, sir.

Q And you had him in your possession?

A Yes, sir.

Q Well then, why do you not know whether he was there or not?

A I say, he was there, but I don't know whether he heard it or not.

Q Did you see the direction from which Officer McGee came when you first, was coming when you first saw the revolver in his hand?

A No, sir, I did not. He was standing, he was north of me, he was standing on the sidewalk about--

Q (Interrupting) You say you saw nobody hand him the revolver?

A No, sir, I did not.

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Q You did not see him pick it up?

A No, sir.

Q And just what did he use when he addressed you concerning that revolver?

A He said a uniformed policeman gave him this revolver and he said he took it from the deceased.

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

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

Q That is, he said that?

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

Q Well, were there any uniformed officers there before you got there?

A No, sir.

Q Well, did you see any uniformed officers going up the deceased after you got there?

A No, sir.

Q What did you say to McGee, when he said that to you, if you said anything?

A I did not say anything to McGee.

Q Not a word?

A No, sir, not that I remember.

Q That will do.

BY MR. McCORMICK:

Q Now, in answer to a question by counsel for the defendant, you said you did not see anything in the hands of the deceased?

A No, sir.

Q I mean the man that had been shot?

A Yes.

Q Before he was shot the second time?

A No, sir.

Q Did you see his hands?

A Yes, sir.

Q All right, that is all.

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

DIRECT EXAMINATION BY MR. McCORMICK:

Q Do you know Francesco Sansone, the defendant?

A Yes, sir.

Q How long have you known him?

A About one year.

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

A Yes, sir,

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

A Yes, sir.

Q Well, I mean that day, did you see the defendant Sansone on that day?

A In the evening about five o' clock.

Q Where?

A In a saloon on Mott Street, no. 102.

Q Did you see him in a saloon on Hester Street?

A Yes, I meant to say in Hester Street.

Q In 189 Hester?

A Yes, I made a mistake. 189 Hester.

Q What happened in that saloon on that evening?

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

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

Q who was this Tonaiulo, was he the fellow that was shot that night?

A Yes, sir.

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

A Yes.

Q All right. Go on with the conversation?

A Then Giuseppe Tonaiulo says to Sansone again that day?

A Yes, sir. I saw him in the evening when he shot at Tonaiulo.

Q What time was it, for how long was it after they left the saloon that you saw Sansone?

A I saw him about eleven o' clock.

Q Where?

A On the place where he shot Tonaiulo.

Q Where is that place?

A A little below the saloon at 102.

Q On mott Street?

A Yes, sir, between Mott and Canal street.

Q Did you have any conversation there with Sansone?

MR. MELLE: Well, when? I object.

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

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

THE COURT: Yes, if he had a conversation.

Q What did you see when you got down where Sansone was? Did you see the other man there, Tonaiulo?

A I saw Tonaiulo on the ground.

Q What was Sansone doing then?

A The policemen got hold of him.

Q Did you have anything to say to Sansone?

A Yes.

Q What was it?

MR. MELLEEN: I object to that, what he said.

THE COURT: Yes, when and where?

Q At the time you saw Sansone in the custody of the of tge officer on Mott Street, did you hear or did you have any conversation with Sansone?

A Yes, I said to sansone, "Traitor, how could you do it, how could you shoot this man?"

MR. MELLEEN: I move to strike it out.

THE COURT: Strike it out.

Q Did Sansone say anything to you?

A No, sir.

Q How far from the body of Tonaiulo was Sansone at that time?

A About four or five paces.

Q What did you do that evening, where did you go?

A Yes, I was arrested too that evening and they took me to the station.

Q Where were you taken; do you know?

A They took me some place down town but I don't remember where.

Q Well, what happened to you there?

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

THE COURT: Yes.

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

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

MR. MCCORMICK: Yes. With the defendant.

MR. MELLEEN: I object to it.

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

THE COURT: Unless there is some apparent relevancy.

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

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

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

Q well, where you when you heard Sansone speak to his uncle?

A Well, I was in a cellar.

Q In A what?

A In a cellar.

Q Cell, c-e-l-l, you mean, don't you?

A Celler, c-e-l-l-a-r.

Q where was this cellar?

A I don't know the street.

Q Well, you were in jail, were you locked up?

A Yes.

Q where was Sansone at that time, do you know?

A I was locked up in a cellar, and Sansone was across away from me.

Q Was anyone else that you knew there at that time?

A Girolomo Schapolo and Mattoo Fratuela.

Q Who was Girolomo Schapolo and Matto Fratuela?

A One was the uncle of this Francesco Sansone, and the other one was witness.

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

A Yes, sir.

Q Now, did you hear Sansone on that sunday morning say anything to any of these men?

A Yes, he was talking with his uncle.

Q What was said?

MR. MELLEEN: I object.

THE COURT: Said in another cell?

MR. McCORMICK: Yes.

THE COURT: Across a passageway between the two cells?

MR. McCORMICK: I will withdraw the question.

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

Q Now, you had known Sansone for a year, you say?

A Yes, sir.

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

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

Q Did you know his voice when you heard it?

A Sure.

Q Did you hear his voice that Sunday morning?

A Yes, sir.

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

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

Q What did you hear Sansone say?

MR. MELLEEN: I object.

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

MR. McCORMICK: Yes.

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

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

THE COURT: He heard what the uncle said?

Q Did you hear what his unclce Girolomo said?

A No, Girolomo didn't say nothing. Francesco called Girolomo.

Q Well, Francesco said something to Girolomo?

THE COURT: How does he know it was Girolomo?

Q How did you know it was Girolomo?

A Because I know his voice.

Q If Girolomo did not speak, how could you tell whose voice it was?

A Well, I know it was Girolomo. I could even say that it was some other man.

Q Well, you heard Girolomo's voice, did you?

A Yes, sir.

Q And you heard Sansone's voice?

A Yes, sir.

Q Well, were they talking to each other?

A Yes, sir.

BY THE COURT:

Q What did Girolomo say?

A Girolomo didn't say nothing. It was Francesce that called Girolomo.

By MR. McCORMICK:

Q Well, when Francesce spoke to Girolomo, did not Girolomo speak back to him?

A He says, "All right, all right, when we come out we will see it".

Q Who said that?

A Girolomo.

Q And was that in reply to a question that had been asked by Sansone of Girolomo?

A Yes, sir.

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

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

MR. MELLEEN: I object.

THE COURT: Objection sustained.

Q Where you at the, or did you see the body of Tonaiulo that Sunday?

A Yes, I Saw it.

Q Where?

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

Q Did you notice whether he had been shot?

A Yes, I saw him swelled up here in the back of his neck. (witness pointing to the left of his neck) And I saw a little bit of a wound right up here, (witness pointing to the left side of his forehead)

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

Q Did you see that man there? (indicating)

A I don't know him well.

Q Well, you indentified the body there as the body of Tonaiulo, didn't you?

A Yes, sir.

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

A Italian.

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

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

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

bility of the testimony, but to the credibility.

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

MR. McCORMICK: That is all.

CROSS EXAMINATION BY MR. MELLEEN:

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

A Yes, sir.

Q You did not see the shooting?

A No, sir.

Q At what hour of the day was it that you say you saw Sansone and Tonaiulo and the others in the saloon, playing "Tooooo"?

A About five o' clock.

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Q How long did they continue to play?

A About one hour.

Q Do you want us to understand that they left the saloon about six o' clock, then?

A No, about eleven o' clock they left the saloon.

Q well, what were they doing after they stopped palying?

A Drinking.

Q They began to play at five and they stopped at six, is that right?

A When I went up there it was about five o' clock, but they started to play about seven o'clock.

Q They played for one hour?

A Yes , sir.

Q At eight o'clock then they stopped playing?

A Yes, sir.

Q Did they all remain in the saloon after that, or did any of them go out?

A After they got through playing they went away.I remained in the saloon with another man.

Q Then you say that they went away from the saloon about eight o' clock?

A They left the saloon about eleven o'clock.

Q Were they playing up to the time they left?

A No, sir, they stopped playing quite a while before.

Q When did Tonaiulo leave the saloon, before or after Sansone?

A They went out together.

Q Are you telling us what you saw that night?

A Yes, sir.

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

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

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

Q Well, did Sansone leave after Tonaiulo said that?

A No, sir.

Q Well, did they say anything else to each other before they left, after that?

A No, sir.

Q Did you see Tonaiulo move his chair before that conversation or afterwards?

A No, I didn't see him move it.

Q Did you see Tonaiulo move from his chair to a chair near Sansone?

A No, sir. He was standing up.

Q Did you see him seated at any time before that?

A Sansone was sitting. He was always sitting in his chair. Tonaiulo stands up.

Q All the time while they were playing?

A Tonaiulo was sitting first, but after Sansone refused to play, then Tonaiulo got up and went in front of Sansone.

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

A Yes.

Q Well now, was Tonaiulo excited?

A No, sir.

Q Was he angry?

A No, sir.

Q Was Sansone angry?

A No, sir.

Q Had they had any quarrel that evening?

A In the saloon, no.

Q How long was it after they left, before you left?

A About ten minutes.

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

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

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

Q What saloon?

A I don't know the number? I don't remember the number.

Q Was it in Hester Street?

A Yes, Hester street.

Q 189?

A I don't remember the number.

Q Well, was it near Mulberry Street?

A Yes.

Q Near the corner of Mulberry Street?

A Yes, sir.

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

A I ran over to see it.

Q Did you see it?

A I saw Tonaiulo on the ground.

Q You did not see the shooting itself, did you?

A No, sir.

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

A Francesce Sansone was in the hands of the policeman.

Q How many policemen did you see there?

A Three.

Q In uniform?

A No, sir.

Q How did you know they were policemen of they were not in uniform?

A I saw that they got hold of Sansone.

Q Did you see any policemen in uniform there?

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

Q There were not any uniformed men there?

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

Q How many people did you see there?

A There was quite a crowd there.

Q Name some of the Italians whom you saw there?

A Igansio Masullo, Girolomo Schapolo and Mattoo Fratuela.

Q Is that all that you saw there?

A Well,I saw a big crowk there but I don't know them.

Q Where did you live at that time?

A That evening I arrived in New York and I lived across the way from that saloon that I just mentioned before.

Q In Hester Street?

A Yes.

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

A Yes, sir.

Q That is all.

MR. McCORMICK: That is all.

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

MR. McCORMICK: Yes, sir.

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

MR. McCORMICK: I understand that there was.

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

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

THE COURT: Yes.

BY MR. McCORMICK:

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

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

Q Did you see Sansone or Gerolomo?

A No, sir.

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

BY THE COURT:

Q Were there many other voices or were there other voices aparently coming from the cell, sounds of voices coming from the place where you say heard the voice of the defendant? Were there other voices?

A No, sir, only that voice I heard.

Q You didn't see him there at all?

A No, I didn't see him, but I heard his voice.

BY MR. McCORMICK:

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

A Yes, sir.

Q You three men were taken to the same place, were you not?

A Yes, sir, but each one of us was in a seprate room.

BY THE COURT:

Q Was what?

A In a seprate room.

BY MR. McCORMICK:

Q Did you see what room Gerolomo was put in and what room Sansone was put in?

A Yes, sir.

Q How far was the room that you were put in from the rooms they were in?

A One room after another.

Q And you mean that Sansone was in the next room to the one that you were in?

A No, Sansone was across the way from my room.

Q Directly across the way?

A No, sir.

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

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

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

Q Did you see him in that room?

A No, sir.

Q Did you see him in that room the night before?

A No, sir.

Q Did you see him come out of that room?

A Yes, sir.

Q When did you see him come out of that room?

A In the morning at seven o'clock. No, I did not see Sansone. I saw Gerolomo coming out of this room.

Q And did you see Sansone that morning?

A No, sir, I heard his voice but I could not see him.

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

MR. McCORMICK: That is all.

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

DIRECT EXAMINATION BY MR. McCORMICK:

Q Are you a member of the Municipal Police force of the city of New York,

A Yes, sir.

Q To what precinct are you attached?

A The Sixth Precinct Manhattan.

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

A Yes, sir.

Q At eleven o'clock, or after, that night, were you in the vicinity of Mott and Canal Street?

A I was on Elisabeth Street near Canal at that time.

Q That was in the country of New York,

A The County of New York, yes, sir.

Q And did you hear anything then that attracted your attention?

A I heard the report of two pistol shots.

Q Now, as nearly as you can recollect, how far apart were those two reports?

A Well, about like this, (witness illustrates with two handclaps)

Q When you heard these two reports, what did you do?

A I ran to the corner of Canal. I stood there a while looking west. I saw a crowd running, several people running north into Mott Street and I ran in that direction, When I got to Mott Street,

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

Q They had three or four men in their custody?

A Yes, sir.

Q Did you see a man lying on the sidewalk?

A I seen a man lying in front of 92 Mott Street on the sidewalk.

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

A Well, right about here. (indicating)

Q Right about where that cross is?

A About there. (indicating) Well, about seventy- five feet from the corner, about.

Q Well, how close to the iron railing on the inside of the sidewalk was the body?

A Well, a little bit on the slant.

His head was close to it.

Q His head was close to the railing?

A To the railing, and a trifle on the slant, his leg was.

Q So that his right foot, that is the foot nearest to it was about how far from the railing?

A Well, I judge maybe about a foot.

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

A On his back.

Q Now, just tell exactly what you saw there about this man?

A Well, when I got there I stood there a second and

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

Q Which side of him was this on?

A On the right side, between the body and the railing, and I took my night stick and I shoved it a little and I left something moving, and I bent over and I noticed a revolver lying there.

Q What kind of a looking revolver was it?

A A nickel plated revolver.

Q If you saw that revolver again, would you be able to identify it?

A Well, I would not identify the revolver, I gave it to officer McGee, I didn't look at the name or anything. He told me at the time---

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

A I found that revolver---

Q (Interrupting) Does that look like the revolver? (Indicating defendant's Exhibit A)?

A About that size, yes. A 32 calibre, officer McGee told me at the time.

Q You gave it to McGee?

A Yes.

Q I am now showing you defendant's Exhibit A?

A Well, it was lying about here on the side right at his side pocket (indicating) close to him and partly covered up with his coat and about like that (witness illustrates)

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

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the time?

A About that much, about (Indicating).

BY THE FIFTH JUROR:

Q Which and first?

A This part was exposed, (indicating)

BY MR. McCORMICK:

Q Jusy as you have it there?

A Aboutt that much, yes.

Q How close to his hip pocket was the revolver at that moment?

A Well, lying about in that direction. (indicating) like that, and that part was covered up.

Q And where were his hands, did you notice them?

A Well his hands were on top of his coat, but I really don't remember how his hands were lying at the time.

Q His hands was not on the revolver though, it was on the coar?

A No, it was away from the revolver.

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

A About two minutes.

Q And what were you doing during that two minutes?

A Why, there were several people around nearby, and I ordered them on the other side of the street.

Q During that two minutes, did anybody approach the body of the man that was lying there?

A No, sir, except one or two detectives that were there.

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

A Yes.

Q And you officers did that?

A We did that. They

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

Q And no Italians or any people except the officers were near the body?

A Near the body, yes, sir.

Q Now, when you saw that revolver lying by the man's right hip, with the barrel of it sticking just a little out from his coat---

A (interrupting) Yes, about an inch or so.

Q (Continuing) what did you do?

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

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

A On his left side.

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

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

Q So you leaned over the body as you picked the revolver up?

A Yes, I picked it up, yes.

Q Then, after you picked it up, what is the next thing you did?

A I told officer McGee about it.

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

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

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

A I picked it up and told him about it.

Q Never mind what you told him. What did you do with the revolver?

A I gave it to officer McGee.

Q When you handed the revolver to McGee, was the defendant standing right there or was he some distance away?

A Standing about five feet away with McGee.

Q And that is the revolver that you handed McGee (indicating defendant's Exhibit A)

A Well, I have not put any mark on for identification.

Q Well, a revolver that looked just like tthat?

A Yes, about that size. 32 calibre, McGee told me.

Q Then what did you or anybody else do in the presence of the defendant?

A He opened it, seen it was loaded and told me it was fully loaded.

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

A Open it.

Q Did you notice whether the shots had been fired from it?

A No, he looked and he told me. I didn't notice.

Q Well, it was loaded?

A Loaded, yes.

Q What is the next thing you did?

A Well, I went over on the other side of the street to keep the people away there that started to congregate around.

Q Were you there until the ambulance arrived?

A Yes, sir.

Q During that time, did anyone except police officers go near that body? The crowd was kept away?

A They were all kept away, nobody allowed near it.

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

officers?

A Yes, there or four.

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

A No, sir.

Q And after the ambulance arrived, what happened?

A Well we dispersed the rest of the crowd and I went back to my post.

That is all.

CROSS EXAMINATION BY MR. MELLEEN:

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

A Yes, sir.

Q And there were two shots, one right after the other?

A Yes, sir.

Q Very close together?

A Very close.

Q Did you see the revolver from which the shots proceeded?

A No, I didn't.

Q You did not see the shooting yourself?

A No, I was a block away from it.

Q You only heard a report?

A Yes.

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

A Yes, sir.

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

A Yes, sir.

Q That is all you know about it?

A That is all.

Q Now, how many uniformed officers were there there besides yourself?

A Well, they were coming there gradually, I think there was about three or four there at the time.

Q They came right there?

A Right there, yes, sir.

Q They were quite conspicuous in their uniform, were they not?

A Yes, sir.

Q You were in your uniform?

A Yes, sir.

Q And the street was not dark?

A Well, that part was dark right there?

Q Pretty dark?

A Yes.

Q Pretty hard to see across it?

A Well, you could distinguish anything. It was not so pitch dark, but it was dark.

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

A Yes.

Q Who else had hold of Sansone, if anyone?

A Well, there were three or four detectives there. I really don't know which one had hold of him.

Q Did you know McGee before hand?

A McGee I know personally.

Q Was he one of those who had hold of Sansone?

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

Q You don't know whether he had hold of the defendant Sansone or not?

A He did have at one time, but just at that

time, I don't know.

Q How far do you say he was standing from the decedant when you handed McGee this revolver?

A About five feet.

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

A Why, they were altogether.

Q You did not know which was the defendant and which was the defendant and which was not, did you?

A No. They were al together, four or five prisoners. They were all made prisoners, the witnesses and the defendant.

Q Well now, the prisoners were standing near the decedent's body, weren't they?

A All within about five feet.

Q And all the rest of the crowd were on the other side of the street?

A On the opposite side and in back of where the prisoners were.

Q Of course, the revolver was entirely out of the pocket of the man?

A Entirely out, yes.

Q And can you tell us the position of the hands at all, of the decedent, when you first saw the body?

A No, I couldn't say the exact position.

Q Well, he had evidently fallen,hadn't he?

A Well, he was lying there when I got there.

Q And you do not know at all where his hands were?

A No, I know they were away from the revolver.

GIUSSEPE ILLUZZO, being called and duly sworn on behalf of the people, testified through official interpreter Villemena, as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

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

A 117 Mott Street.

Q Were you in the barrom at 189 Hester Street that evening, Saturday night?

A Yes, sir.

Q Where you playing "Toooo" with about sixteen other men?

A Yes.

Q Was Sansone there?

A Yes.

Q This defendant?

A Yes, sir.

Q Giusseppe Tonisulo?

A Yes, sir.

Q Did you hear Toniaulo and the defendant have any conversation during that game?

A No, sir. I didn't hear nothing.

Q Well, how many games did you play there that evenig that these two men were in?

A Two or three or four games, I don't know how many, but more than one, sure.

Q Did you hear Sansone say anything about not wanting to play any more games?

A Yes, sir, Sansone said, "I don't want to play any more"

Q What did he do when he said that?

A When Sansone says, " I don't want to play any more", Toniaulo got up from his chair. He was about five or six feet away from Sansone and he went right in front of Sansone, stands right before him and says

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

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

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

Q Who is Girolom?

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

Q And was this house at 102 Mott Street?

A Yes, sir, 102 Mott Street.

Q And Girolomo Schapolo you mean, is that right?

A I don't know his second name, because he did not come from the same town that I came from.

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

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

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Q Well, you say you went into this house, did you?

A Yes.

Q Was it a house in a back yard?

A Yes,

Q And you go through a narrow passageway through the front building to get to it?

A Yes, sir.

Q Now, when you got into this room how many men were there?

A Well, it was quite a crowd of people, pretty near all the people that were playing in the saloon, they were over there then.

Q Was the defendant there, Sansone?

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

Q Well, did you see Sansone there?

A No, I didn't see him. They told me he was in the toilet.

Q Well, you saw--- while you were in that room, did not Sansone come in the room?

A I didn't see him.

Q Well, was Tonaiulo there?

A No, I didn't see Tonaiulo there.

Q Well, how long did you stay there?

A Lasting two or three or four minutes.

Q Then, what did you do?

A Then we decided we all decided to go out and take a cup of coffee and I and this Quarantuovi started to go out.

Q Didn't you see Sansone and Tonaiulo there?

A No, I didn't see it, because I didn't mind them.

Q Well, when you went out, who was with you?

A This man that I Just said, Giussepe Quarantuovo.

Q There was not anybody else with you?

A I and this man, we were going arm to arm, and the other ones they all went out.

Q And who else came out with you?

A I am Quarantuovo went together.

Q Well, who came after you?

A Some other people, I don't know their names?

Q Well, don't you know whether Sansone was with them?

A No, I don't know.

Q Do you know whether Toniuolo was along?

A When we got the street, I saw Sansone and Tonaiulo together.

Q Well then, what did the decedent and the defendant do?

A Nothing.

Q Well, did they walk down the street?

A Yes, they walked down the street witout saying a word.

Q Well, who else walked down the street?

A All of us.

Q Who was walking in front?

A I could not tell you the names. Some one was going in front and someone was going after.

Q When you got down pretty near to Canal Street, did anything happen?

A Yes, when they got down to Canal Street, we saw some of the party that was coming right back, and I says to them.

"Why, don't we want to go and have some coffee?" and

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

Q When somebody said, "These two are angry with each other". Which two do you mean?

A I don't know their names. They must be country people of those people there. I don't know who they were.

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

A Sansone and Tonaiulo.

Q Did you see or did you hear Sansone and Tonaiulo talking to each other?

A No, sir, I didn't hear nothing said, because I was away from them when we were in the street.

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

THE COURT: Strike it out.

Q Well, as you talked down the street, you and another man were walking ahead, were you not?

A I don't know, I didn't pay no attention to this. Someone of us was ahead and someone of us was after.

Q When you heard the shots, what did you see?

A I say one man down on the ground and I saw another man in the hands

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

Q Who was the man that the police had?

A That man there, Sansone, (indicating)

Q Who was the man that was lying on the ground?

A Tonialo.

Q Did you see a revolver in the hands of anyone there?

A No, sir, I didn't see no pistol. I was not near them. We were about fifteen or twenty feet away from them.

Q Do you know whether Tonialo and Sansone were walking side by side going down the street?

A No, sir, I didn't pay no attention.

Q Do you know how many men there was in that crowd?

A About fifteen. More, but not less.

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

MR. MELLEEN: I object to that.

A No, sir.

MR. McCORMICK: I withdraw the question.

CROSS EXAMINATION BY MR. MELLEEN:

Q Now, how long had you known Sansone before this evening?

A About three years ago.

Q And did Sansone every work under you?

A Yes, sir.

Q Well, What was his disposition while he was working

under you?

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

Q Was he quiet and peacable or other disposition?

A He never quarrelled with anybody.

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

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

Q What time was it when you all got to the saloon before you began to play?

A It was late, but I couldn't tell you the ime, because I didn't have no watch with me.

Q Was it after seven o'clock?

A It was dark.

Q What?

A It was dark.

Q Well, how long were they in the saloon playing altogether?

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

Q Do you know what time it was when you left the saloon?

A No,sir.

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

A Yes, sir.

Q And did Sansone leave before you?

A I didn't pay no attention.

Q Did Tonialulo leave the room before you did?

A I don't know. I didn't pay no attention, because I was talking to this

other man that I mentioned before.

Q Did you notice, or you did not notice when Tonialulo left the saloon?

A No, sir.

Q Did you say anything to Tonialulo in the saloon about Sansone?

A No, sir, nothing.

Q You did not speak to him?

A No, sir, I was as far as there, as far as back to that window (indicating) to Tonialulo, was as far as there, to the table where counsel for the defendant is.

Q This game "Toooo" that you were playing that night, is that a game that you often play?

A Yes, always.

REDIRECT EXAMINATION BY MR. McCORMICK:

Q Well, when you went to the house at 102 Mott Street, Gerolomo's house, what were the men doing, around in the room?

A Someone was sitting down and someone was standing up, conversing together.

Q Well, did not you invite them all out to have some coffee?

A No, I did not invite them. It was anyone of us said, "Let us go out".

Q You all went out together?

A Yes.

JOSEPH GUARIARI: duly sworn on behalf of the people testified as follows:

DIRECT EXAMINATION BY MR. McCORMICK:

Q You are a member of the Municipal Police force, are you not?

A Yes, sir.

Q Attached to the Detective Bureau?

A Yes.

Q On the evening or the night of the 5th of March, 1910 at ten minutes after eleven o'clock, where were you?

A I was standing in the doorway of No. 93 Mottt Street, in company with Office McMahon.

Q ninety what?

A 93.

Q Point out on that diagram, People's Exhibit 3, where you were standing?

A I was standing right in this doorway?

(indicating)

Q But that is not 93, is it?

A Well, opposite 92.

Q Nearly opposite 92?

A Yes 90 or 92.

Q The numbers are indicated on that diagram. 92 is not opposite where you were pointing?

A Well, here is 90 and 92 and I was opposite here (indicating)

Q Now where the letter, or what letter is that "n"?

A Yes.

Q Was anyone standing there with you?

A Officer McMahon.

Q And did anything attract your attention to the other side of the street?

A Yes, sir. a group of five or six men walking down, stopped and conversed in loud tones, but not quite loud enough for me to understand, and the first thing that drew my attention was the report of a pistol.

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

direction of it, didn't you?

A Yes, sir.

Q What was the first thing you saw?

A I seen the defendant Francesce Sansone Stepping back a couple of paces with his revolver aimed at a man that I subadquently learned to be Giusseppe Taniaulo and fired a second shot.

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

A About three or four seconds.

Q When you heard the first shot, where was Sansone standing?

A On the side walk.

Q Was he moving or was he standing still?

A Moving to the street.

Q Backwards, you mean?

A Backwards.

Q Stepping back?

A Stepping back towards the street.

Q And the revolver was in his right hand?

A Aimed all the time.

Q Pointed at the decedent?

A Yes, sir.

Q Now, at that moment, what was the decedent doing, did you notice?

A Staggering back, falling to the sidewalk.

Q Now, when he staggered back, how far back did he stagger?

A I should say about two paces.

Q And then he fell?

A Fell to the sidewalk.

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

A Yes, sir.

Q Was there anything in them?

A No, sir.

Q What did you do when you heard the first report?

A I ran to where I heard the shots.

Q Did you notice what the other man in this crowd did whom the first report was heard?

A They began to run up towards north on Mott Streer.

Q Well, they did not cluster together, the crowd separated you mean?

A Separating away, yes, sir,

Q You saw this man fall?

A Yes, sir.

Q Did he fall right after the second shot was fired?

A He was on the downward at the first shot and fell at the second.

Q And in the internim had gone back a couple of steps?

A Yes, sir. from the street.

Q And fell on his back?

A Yes, sir, on his back.

Q Now, at the moment of the firing of the second shot where was Sansone the defendant?

A He was about three feet away from the sidewalk in the street.

Q Going backwards towards the middle of the Street?

A Yes, sir.

Q Did you see the revolver in his hand?

A Yes.

Q What did he do?

A After he threw it away.

Q When?

A After he fired the second shot we ran to him and when he seen us running to him, he threw the revolver away towards the gutter.

Q Now, did you noticed just where the body of the decedent

was lying when he fell down as you have described?

A He fell down near an iron railing.

Q Now, the iron railing was on the inner side of the sidewalk, wasn't?

A Yes, sir.

Q And as he fell, you say he fell on his back? Now, in what direction were his feet pointing?

A North.

Q How close to the iron railing was his right shoulder?

A Well, his right shoulder was almost right to it.

Q Well, almost right close to it; you mean it was right up against it?

A Yes, sir, a matter of an inch or so, not enough to judge.

Q Did you notice how far apart his feet were?

A I should judge they were about one foot away from the rail.

Q His right foot was about a foot from the rail?

A Yes.

Q That is the foot nearest the rail was about a foot from the rail?

A Yes.

Q Did you notice a gun around him any place?

A No, sir.

Q Did you notice anything about him that you have not described in your testimony already?

A No, sir.

Q What did you do when you ran up to where Sansone was?

A He threw the gun away and I placed him under arrest with officer McMahon and I picked up the revolver up that he had just thrown away near the curb.

Q Did you see anyone pick a revolver up?

A No, sir.

Q What kind of a looking revolver was it?

A Which one

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do you have reference to?

Q The one that you saw Sansone throw in the street?

A A black revolver.

Q And when he threw it into the street, it was how far from the curb?

A He was about eight or ten feet from the curb.

Q And he threw it forward?

A Yes.

Q And it slid along the street, up against the curb, did it?

A Yes.

Q When you say McGee picked it up?

A I picked it up.

Q Was it a revolver like that? (Indicating People's Exhibit 1)

A Yes.

Q What did you do with it?

A I handed it to officer McGee.

Q Is that revolver?

A Yes.

Q Can you identify it?

A Yes.

Q How,

A By the number, 2627 and by two dots we put there.

Q Did you put them there?

A No, sir, McMahan put them there.

Q You saw him put them there?

A Yes.

Q That is the revolver, is it?

A Yes.

Q Did you ever see that revolver before? (indicating defendant's Exhibit)

A In the hands of officer McGee.

Q Did you see where Magee got Defendant's Exhibit A?

A No, sir.

Q How long after the shooting was it that you saw McGee have Defendant's Exhibit A?

A Well, I should judge about five minutes.

Q Well, go on, tell what happened after that?

A Officer McGee. We had placed the defendant Sansone under arrest and two other witness that was there Girolomo Schapolo and Mattoo Fratuella and another young man who had got there, I should judge about five minutes after the shooting, that is Lorusso. I an officer McMahan held them by the railing there while officer McGee went down to see the body, and in about five minutes after he came back and said there was a second revolver found over there, and officer McGee and McMahan took the four prisoners to the Sixth Precinot station house, and I remained there until Doctor from the Hudson street hospital removed the body to the Hudson Street hospital, and then I went to the Sixth Precinct and joined my brother officers and then took the defendants to police headquarters in the patrol wagon where their pedigrees were taken.

BY MR. MELLEEN:

Q Where what?

A Where their pedigrees were taken. I then asked the defendant, Francesce, why did you shoot him?

BY MR. McCORMICK:

Q Where was this, officer?

A The first time I asked him, "Where did you shoot him?" was right at the shooting. He said, "Me no shoot him". Then after the pedigree was taken

and they were about to be put in the cell, I then asked him again, "What did you shoot him?" "Oh" he says, "He do things to me, I can't digest. Me shoot him. Me no care, I got plenty of witnesses".

THE COURT:

The stehographer will repeat that.

(The stenographer repeats the answer.)

BY THE COURT:

Q Did he say that word "digest" in English or Italian?

A English.

Q He said "digest"?

A Yes, sir.

Q Was this conversation generally in Italian or English?

A He, preferred to talk English, so I was speaking in English to him.

BY MR. McCORMICK:

Q Well, you have talked with him several times?

A Yes, sir.

Q And is not a translation by from the Italian?

A No, sir.

Q (continuin) of anything he said?

A It is not a translation.

Q Now, on the following day, were you in the Tombs prison?

A Yes, sir.

Q Did you hear the defendant make any statement there?

A Mr. Staikney treid to get a statement, but he refused to make a statement.

MR. MELLEN: I object to that and move to strike it out.

THE COURT: Strike it out.

Q Have you heard the defendant say anything since then?

A No, sir.

MR. MELLEN: I object to that.

THE COURT: Well, the answer is no.

Q You have given all you know about this, have you? That is all you know about this affair?

A Yes, sir.

CROSS EXAMINATION BY MR. MELLEN:

Q You are an Italian?

A Yes, sir.

Q Do you speak Italian?

A Yes, sir.

Q And speak the same Italian as Sansone?

A No, sir.

Q You come from a diferent part of Italy?

A Yes, sir.

Q Now, the first thing that you knew about this occurrence was the sound of a pistol shot?

A Yes, sir.

Q you are not able to tell us what, if anything, was done immidiately before that shot was fired?

A No, sir.

Q You did not see anything before that?

A No, sir.

Q The first thing you saw was the second shot, Sansone backing towards the curb and firing the second shot, with the

revolver pointed towards the decedent?

A Yes.

Q Now, no one got there before you?

A Got where?

Q No other officer got there?

A No, sir. Officer McMahon and I were the first ones there.

Q You got there simultaneously?

A Yes, sir.

Q And as Sansone was backing with the revolver in his hand pointed at the decedent, and before he fired the second shot, what was Tonialulo doing?

A Staggering, falling back to the sidewalk, his hands were up, something like this (indicating)

Q The second shot was fired and he fell?

A Yes, sir.

Q Now, how wide was the sidewalk at this place, if you know?

A I should judge the sidewalk was about ten or twelve feet wide.

Q Ten or Twelve feet wide?

A Yes, sir.

Q There was a railing near the factory on the east side?

A Yes, sir.

Q And Tonialulo fell near this railing?

A Yes, sir.

Q Now, how far was Sansone from Tonialulo, the first time you saw him?

A He was about eight or ten feet.

Q As far away as that?

A Yes, sir.

Q when you first saw him?

A When I first saw him.

Q How far was he when he fired the second time?

A He was about twelve or fourteen feet.

Q Well, he was not in the roadway, was he when he fired the second time?

A Yes, sir. on the street.

Q He had stepped in the roadway from the curb?

A Yes, sir.

Q Now, when you saw this second revolver the first time, Defendant's Exhibit A, where was McGee standing?

A He come right over to where we were with the prisoners.

Q you were standing with the prisoners?

A I and officer McMahan.

Q And how far from the body of the decedent?

A I should judge about ten feet.

Q Ten feet?

A Yes, sir.

Q And was officer McGee nearer to you, nearer to the body than you are further form it?

A He was nearer to the body than what we were.

Q He was between the body and you?

A Yes, sir.

Q And he showed you the revolver?

A Yes, sir.

Q Did he say anything about it?

A He said, "Another revolver has been found".

Q Did he say where it was found?

A No,sir, not right there. You had not seen this other revolver until that moment?

A Yes, the first time I saw it.

Q Did you go to the hospital the next morning?

A I went to the hospital the same night.

Q Did you examine the body there?

A No, sir he was not dead then. We went down to see if we could get a statement from him, but he was too far gone and no statement could be gotton, so we did not see him.

Q He did not regain consciousness?

A No, sir.

Q He was unconscious when you first saw him on the sidewalk?

A Yes.

Q And he never regained consciousness?

A No, sir.

Q Did you at any time after that examine his person, his clothing?

A Officer McGee was the one that labelled the clothing and took all clothing.

Q From the hospital?

A From the hospital, yes, sir.

Q Well, did you see the things that were taken from him at the hospital?

A No, sir.

Q You are sure, are you that you spoke to Sansone in English?

A Yes, sir.

Q You said something in your direct examination about his preferring to talk in English?

A Well, I said, "Why did you shoot him," just that way, and he answered in English so of course, all the rest of the conversation took place in English.

Q Well now, did you state exactly the words that he said, "He has done things to me that I could not digest" Are those his exact words?

A To the best of my remembrance, yes, sir,

Q He didn't say anything about words, "that I could not stomach"

A He said, " I can't digest".

BY THE COURT:

Q You say that he preferred to talk Italian, how do you know that--- or to talk English?

A Well, because he answered

back in English.

Q You addressed him in what language?

A In English.

Q And he spoke back in English?

A Yes, sir.

Q Well, how do you find from that that he had a preference for English?

A Well, if he didn't care to be speaking it, he would have spoke back in Italian.

Q But you did not address him in Italian at all?

A No, sir.

REDIRECT EXAMINATION BY MR. McCORMICK:

Q He knew you was Italian, didn't he.

A Yes.

THE COURT: Now, we cannot permit any genealogy in this matter at all. We simply go into the fact.

RE CROSS EXAMINATION BY MR. MELLEN:

Q Now, officer, is it or is it not a fact that another officer of you who were there spoke to Sansone in English and Sansone shook his head or said he didn't speak English, gave you to understand that he didn't speak English and that you then spoke to him in Italian, isn't that a fact?

A No, sir.

Q Is it not a fact that he didn't speak to you in English and that he spoke to you in Italian that night?

A No, sir. He spoke to me in English.

BY THE COURT:

Q Did you ever see him before in you life?

A No, sir.

Q Did he ever see you to your knowledge or meet you any place?

A I don't think so.

BY MR. McCORMICK:

Q Were you at the morgue the next day?

A Yes, sir.

Q Whom did you see there?

A Well, I seen the doctor from the corner's office.

Q That is the doctor that was in here to-day?

A Yes, the gentleman with the light hair.

Q Did you see a body there that day?

A Yes, sir.

Q Was it the same body that was lying on the sidewalk?

A Yes, sir.

Q Did you Pasquale Lorusso there?

A At the morgue?

Q Yes?

A Yes, sir.

Q And did you see him identify the body before the corner's physician?

A Yes, sir.

BY THE ELEVENTH JUROR:

Q Did you see the police officers there in uniform?

A Yes, sir.

Q With regard to the revolver with which the shooting was done, you say that picked it up?

A Yes.

Q And you gave it to officer McGee?

A Yes.

Q Was there any particular reason for that?

A Because he examined it?

Q He examined it?

A Yes. I had hold of the prisoner and he come up, and I gave him the revolver and said, "this is the revolver that done the shooting, I just picked it up from the street".

Q And you say officer McMahon marked it for identification?

A At police headquarters, yes. We are partners and we are always together. We always work together, and that is the reason why we all, where you find one you find the rest.

THE COURT: Now, you are speaking about the Exhibit of the prosecution?

MR. McCORMICK: Yes, people's Exhibit 1.

THE COURT: Is that the Exhibit, Mr. Juror, you are talking about?

THE ELEVENTH JUROR: Yes, sir.

BY THE FIFTH JUROR:

Q Was there any cartridges found in the other revolver, in the defendant's exhibit?

A Yes, sir.

MR MCCORMACK: Yes, the officer testified it was loaded.

Q Were there any exploded?

A No, sir.

BY MR. JELLEN:

Q They were all loaded cartridges? A all loaded cartridges.

MR. MACCORMICK: NOW, if your Honour please, I ask for an adjournment until to-morrow, and I do not know whether I am ready to rest the case or not.

THE COURT: All right. Gentlemen, you are admonished that you are not to discuss any matter connected with this trial and you are not to form or express any opinion upon

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it, until it is finally submitted to you.

Half past ten o'clock to-morrow morning.

(The court thereupon adjourned the further trial of the case until Friday May 20, 1910 at ten o'clock A.M.)

PEOPLE vs. SANSONE

New York, May 20, 1910

Trial resumed.

RAE THORNTON LA VAKE, M.D., being called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR McCORMICK:

Q What is your occupation?

A Physician.

Q Are you attached to any hospital?

A Hudson Street Hospital.

Q Were you on the 5th of March, 1910?

A Yes, sir.

Q On the night of the 5th of March, did you go in an ambulance to a place on Mott street, just north of Canal?

A I did, yes, sir.

Q What did you see there?

A I found a man lying on the east side of the street with a bullet wound in his skull and in his neck.

Q Was he alive or dead?

A Alive.

Q Did you see any one else around there that you remember? You may not remember the name of any one, but did you see other people there?

A Yes, some officer. I think, or detective, I have forgotten which.

Q What happened when you got there, what did you do?

Did any one help you put the body in the ambulance? How did the body get in the ambulance?

A It was taken on a stretcher.

Q Who placed it in the ambulance?

A The driver and some other man, I believe.

Q How far north of Canal Street was this body lying? Take that diagram, People's Exhibit 3, and here is Canal Street, there is Mott Street, and indicate about whatpart of the street the body was lying on?

A Well, it was--

Q (Interrupting) Now, look at it carefully before you answer, so that you may be sure of giving the right answer?

A I should say it was somewhere in here, somewhere (indicating).

Q What time of the evening was it?

A The call came into the hospital, by the records, at 11:10.

Q Do you indicate about where that mark "X" is?

A I should say so, yes.

Q What did you then do with the man who had been shot?

A I bandaged his head and put him on the stretcher and he was taken immediately to the hospital, where he was turned over to the house surgeon.

Q Did you see him alive after that?

A Yes, sir.

Q When?

A What is it?

Q What time of the night?

A I saw him within an hour after I brought him in, I saw him the next morning.

Q Did you treat him for his injuries?

A Just put a bandaged on his head at first, that's all, then the house surgeon treated him.

Q Well, do you know what was done to him there?

A No, sir.

Q The next morning did you see him?

A I saw him, yes, sir.

Q Do you know when he died?

A He died about 11:10 A.M. the morning of the 6th of March.

Q Was an autopsy performed on his body on the same day that he died?

A Well, I don't remember if it was the same day or next day. I know an autopsy was performed. I witnessed it.

Q You witnessed the autopsy performed on the dead body of the man that you picked up there in Mott Street that you have testified about?

A Yes, sir.

Q Was that performed by Dr. Weston, do you know?

A I believe they said it was Weston, yes, sir.

Q At all evening, the body upon which the autopsy was performed was the body of the that was lying in Mott Street?

A Yes, sir.

MR MELLEEN: No questions.

MR McCORMICK: The people rest.

MR MELEN: Now, if your Honor please, I move to dismiss on the ground that the People have not made out a caue, not made out a case against this man, under the in-

dictment, and have not made out a case against him for which he should be held further for trial.

THE COURT: Motion denied.

MR MELLEN: Exception.

Mr Mellen opened the case on behalf of the defense, as follows?

MR MELLEN: May the Court please, Mr. Foreman and Gentlemen of the Jury:

The defendant in this case in next to prove to you, gentlemen, the circumstances under which this killing took place. There is no question as to the killing. We have made no point about that. That is to all intents and purpose conceded. There was never any intention to deny it. The crucial question in the case for your consideration, however, which we are now to place before you, is, how and under what circumstances did this killing take place?

In all of the evidence that has been put before you by the people, there is not a scintilla of evidence as to an exceedingly important interval in this affair, and it is as to what occurred particularly during that interval that we are now to direct your attention.

We have had testimony here as to the firing of a shot, and testimony by the officers who say that after that shot was fired they turned toward this place where the killing took place, and then saw Sansone, the defendant, fire a second shot. But what took place between and immediately preceding the time when that first shot was fired, and the firing of the second, is the important

fact which is to be brought to your attention.

Now, this is what took place upon that evening: Immediately preceding the shooting, immediately preceding the first shot, and sufficiently before hand to be properly brought to your attention, what we propose to prove by witnesses, and I shall simply outline the testimony, following the example of the learned District Attorney, leaving certain details, and perhaps I may accidently misstate some of the evidence, but I shall try to tell you exactly what the witness have told me about this occurrence.

In the evening, after eight o'clock, accordingly to my information, the defendant and a number of companians were playing-- and I may say that the defendant himself will be among the first, if not the first witness, whom we shall call to the stand to tell the story--were playing a game called "tocco", an Italian game, I do not know just what it is, but they play it with their fingers, and they sit aroung in a circle, and drink or money is the stake, and the defendant had been brought into this game, somewhat against his will. He did not have any money and he did not want to play the game, and I think he borrowed some money from one of the men sitting in the game, or about to play the game, and he then went into the game and played against his will.

The deceased, Tonaiulo, came into the room, the sa-

loon, I think after the game had started, I am not quite sure whether it was at the same time as the rest of them or after, but I think after the game had started, and he took his place. The defendant said that he had enough. He was urged to play some more, and he protested, but his friend, I think, gave him five cents, or something, and he did go on playing, and then he said that he had enough and did not want to play any more, and Tonaiulo, who had come into the game at that time, went over to him and said, substantially, and I am not trying to repeat exactly the words, but he will tell you that, and other witness who heard them will tell you that, he substantially protested against his stopping playing, and said, "what's the matter with you, why don't you want to play?" And he said, "No, I don't want to play any more", and Tonaiulo was somewhat heated at what he said, and he went over in front of the defendant, either stood or sat right in front of him and said, "Why don't you want to play any more, you must go on playing", again, the deceased said, substantially, as one of the witness called for the People said himself, "Well, as long as you go on playing I won't play any more", and then he went away.

Now, that is substantially what occurred. There may be some slight variation in what the witnesses will tell

you, but that is substantially what occurred.

Tonaiulo left the saloon, but the defendant and some of his friends who were with him, left afterwards, and I shall show by witness who saw Tonaiulo after leaving the saloon, and before this occurrence, who will tell you what Tonaiulo in that interval did.

Tonaiulo went to the house. 102 Mott Street, where they all lived, the house kept as sort of boarding house by the uncle of the defendant, Scirpoli. Tonaiulo went to the house where he lived and went up to his room and went to a bag, a small bag, and took there from a revolver. A boy by the name of Perla, who was there, will be called to show this occurrence, as well as another older boy who was in bed in this room. They saw Tonaiulo take the revolver and say that he was excited, and the uncle of the defendant, who kept this house, came into the room, or happened to be there, and he said , , "Joe", speaking to the deceased, "What are you doing with tht revolver?" And Joe answered, the deceased answered, "None of your business. This night I die, or some one else." He was in a very excited frame of mind.

With that he left that room. Meanwhile, the defendant had left the saloon and came to this house and went into the toilet, and then some of the other friends who were around, urged him, or said, "Oh, let us all go out

and get some coffee", and they started out to get some coffee.

Now, the defendant was not walking with Tonaiulo in the street at all, after this occurrence. The first that he saw of Tonaiulo, I think, after Tonaiulo left the saloon, and certainly within a considerable interval before this shooting, was this: He was walking south on Mott Street on the east side with his friends, one or more of them. They came to this factory, this factory No. 92 or 90 where there is this iron railing that has been described in the testimony, where this occurrence took place, when suddenly, without warning, Tonaiulo stepped forward from the railing when the defendant got there and struck him in the face, I think; some say here (indicating) and some say in the face, struck him, and the defendant said, "Let me alone, do not ruin me, I do not want to ruin myself, let me alone", very much the same words he used before when Tonaiulo was urging him to go on playing, "Let me alone, I do not want any trouble with you, let me alone" and with that Tonaiulo said, "This night is your last upon each", or words to that effect, and put his hand in his hip pocket, pulled his revolver out, and the defendant saw his revolver in about this position (indicating), and others will also say that they saw this same thing that I am now describing to you; some of them heard the words.

Tonaiulo took the revolver out of his pocket like that, after having said, "This night you die", or, "This is your last night upon earth", whatever the words were, and with that the defendant, seeing that revolver and hearing those words, pulled his revolver quickly, he was quicker than the man, and he had been a soldier, he was quicker than Tonaiulo, the deceased, and he shot him, and he says he shot quickly, one right after the other, and you will remember the testimony of the officers is all to the effect that the two shots were fired almost simultaneously, a very few seconds difference. Then he dropped his revolver and stood there until he was arrested.

He was arrested and taken to the police station, and you have heard virtually what was done after that.

Now, we shall claim, as a result of this testimony, and it is corroborated-- a number of these Italians who were there will give testimony-- and let me say, first of all, we shall show that Tonaiulo, the deceased was of a quarrel some disposition. You have heard what the officers said that the defendant said the next morning that he had always been making trouble for him, always making trouble, and the defendant knew his disposition as a quarrelsome disposition. Why, they had known each other, I think, for sometime, although

they had never had any direct quarrel themselves until this evening. We shall claim that that act, committed in that way, deplorable as it was that any human life should be taken, was nevertheless justifiable under the law, It is a case of justifiable and excusable homicide under the law, and he had the right, when seeing that his life was in danger, with the threat that was made, accompanied by the present drawing of the revolver and holding it at him, and practically getting it at him, although he was at liberty then, he had a right to use means to protect his own life, in self defense, and we shall ask, after considering this testimony and wieghing it carefully, we shall ask you to acquit the defendant of the crime of which he is charged.

THE DEFENSE

FRANCESCO SANSONE, the defendant, being defense, testified through official Interpreter Villamena, as follows:

DIRECT EXAMINATION BY MR MELLEN:

Q Where were you born?

A Monte Sant 'Angelo, Italy.

Q How old are you?

A I will be twenty-seven years old.

Q How long have you been in this country?

A I was three

years before in this country. Then I went to Italy. Last April I came back here to America.

Q And what occupations have you followed in this country?

A Laborer.

Q Were you, or you were, I believe, in the army in Italy before you came here?

A Yes, sir.

Q How many years did you serve in the Italian army?

A Two years.

Q Now, did you know the deceased, Tonaiulo?

A Yes, I know him by sight. I saw him many times, but I never did have any dealings with him.

Q How long did you know him before the 5th of March, 1910?

A I know him when he came to New York.

Q When was that?

A Last January.

Q Did you live in the same house with him?

A Yes, sir.

Q Now, do you remember the 5th of March, 1910, this year?

A Yes, sir, well.

Q Where were you on the evening of that day?

A In New York.

Q Whereabouts in New York, after you stopped work that evening?

A In New York.

Q What part of New York, what street?

A Mott Street.

Q Where you lived?

A Yes, sir.

Q Did you that evening go to a saloon at 189 Hester Street?

A Yes, in the evening.

What time in the evening did you go there?

A I don't remember exactly the time.

Q About what time was it when you first went to the saloon that evening?

A About nine oclock in the evening.

Q Now, just tell the jury in your own words what you did that evening n the saloon, what you yourself did?

A On that evening I met Frattuolo, a freind of mane. He says to me, "Friend, what are you doing here, you are in New York?" I says to him, "yes, I am in New York". ANd what are you doing in New York?" "I come over here and I am going to get a letter of mine that is over to the post office". It was about four or five o'clock in the afternoon when I heard by the banker where I received my letter, that there was a registered letter for me down at the post office. I went with this Frattuolo down to the post office, and when I got down there they told me that I wanted somebody to identify me in order to give me the letter. When I went down to the post office I had in my papers of my brother. I showed them down to the post office and he told me that he could not give me the letter.

MR McCORMICK: I object to all this. The question is here whether he murdered this man, and not whether he had citizens papers down to the post office or not.

THE COURT: Well, I will allow that answer. I just want to see what it is . We will not discouse it but I will hear

the answer; repeat the answer.

(Answer repeated by the stenographer).

MR MELLEN: If your Honor allows that to stand I will bring him right down to the point.

MR McCORMICK: Your Honor sees it is no responsive to the question.

Q Now, never mind what took place before you got to the saloon, only what happened when you got to the saloon. Tell me what happened there?

A After we got through eating that evening, me and Matoo Frattuolo, we went to this saloon. Frattuolo says, "Come along and have a glass of beer". We went in the saloon and we got a glass of beer. After that Frattuolo says, "Have another glass of beer". We had another glass of beer in the saloon. We met there some friends of ours and we were invited to play "Tocoo". It is an Italian game that we play by the fingers. I says to Frattuolo, "I have not got no money".

MR McCORMICK: Well, it simply prolongs the examination of the witness unnecessarily.

THE COURT: With whom was this conversation?

MR McCORMICK: With a man named Frattuolo, a friend of his in the saloon.

MR. MELLE: A friend of his that was playing this game in the saloon. The game cuts a very important figure in the story.

THE COURT: You may bring out any reasonable amount of conversation which leads upto the issue, but I would not be too long with the preliminary questions.

MR. MELLE: It will be very brief. we would have it by this time.

Q Go on?

A I says to Frattuolo, "Well, I don't care to play because I have not got any money". Frattuolo says to me (witness illustrating by making a motion with his hand up and down), "Quiet, quiet, I have not got the money for you, go on and play". We went and played and we played three games, and Frattuolo game me 25 cents first and then 5 cents after. After.

We played there three or four games my money ran out, the money that my friend gave to me, and I says, "I don't care to play any more", and besides that some other people were icilined not to play any longer. I says, "I don't care to play any more." My friend says, that wanted to give me money, he says, "All right, I don't care, to play any more, either." Then this Tonaiulo come before me, stands right in front of me. I says to this Tonaiulo, when he come in front of me, I says, "People move away, go away from in front of me". and this Tonaiulo did not pay any attention to my words. I got up then and I went outside to the toilet t o pass water. When

i come back I found Tonaiulo sitting on my chair. I says to him, "Get up off this chair, this is my chair", and Tonaiulo did not listen to me, and I, to avoid trouble, I went and sat at another chair far away from him, saying to Tonaiulo that he has got very little education.

After a little while Tonaiulo got up from my seat and I went and took the place at my first place at my first seat where I was seated first. When I was sitting there Tunaiulo says to me, "Now, we must have another game". I said to Tonaiulo, "No, I could not play". He said, "Yes, you must have another game", and I answered him, "I have not got any money", and besides that the friend of mine that lent me the money he did not want to play, and it did not look very nice for me to play when my friend that gave me the money would not play. Tonaiulo said to me, "Then you must play". I says to him, "I will not play".

Then a friend of mine that was right alongside of me, his name is Barattieri, says to Tonaiulo, "This fellow don't want to play, what do you want to tease him so far?" He says, "He has not got any money, leave him alone", and after this Tonaiulo got up and he swore to the Blessed Virgin, and he says, "All right, I will see you to-night", and he went out. I remained with my friend in the saloon. We remained in that saloon about ten or fifteen minutes longer, and then we all went home to our house. I thought that we got there to stay there at night. The other people, they went some on the

inside and some remained outside, but I retired into the toilet there to pass water once more. When I got through I come out and I find that all were in the yard and says, "We are going to have some coffee, come along." Knowing that I did not have any money I did not accept the invitation, but this Barattieri says, "Come on, come on, I know that you have not got any money, that's all right, we will pay for it", and we all started to go and get that coffee.

Q Now, wait a minute. You were in the saloon, then, how long altogether that evening?

A I and Frattuolo were there after--we remained about one hour.

Q Now, has Barattieri another name?

A I don't know his other name. I heard everybody call him Barrattieri, Barattieri, and that's why I knew him, From it.

Q Did you see him here in court on the witness stand yesterday?

A Yes, sir, I saw him sitting there.

Q Is that the witness that they called Iluzzo?

A I don't remember what they called him. It was the witness that had the mustache.

Q The Italian witness?

A If you call the witness now I will identify him.

Q You know Lorusso?

A Yes, I know Lorusso, the other one.

Q It was not Lorusso whose other name is Barattieri?

A No, it was not Lorusso.

Q It was the other Italian witness?

A Yes, the other

one.

Q Now, then, take up the story where I interrupted you, and tell me what occurred after Barattieri told you to come out and have some coffee. Go on and tell us all that occurred that evening?

A We went out then from the house in a group of two or three, some one was ahead and some one was in the back, and when we got near to the iron railing, this Tonaiulo, I did not see that he was there, come right in front and he punched me right here in the face (witness illustrating by pointing to his right cheek). I says to him, "what do you do that for? I don't want to ruin myself, leave me alone", and Tonaiulo says, "Ah, ruin yourself?" he says, "Your days are over now, this is the last of your days", and he pulled a pistol out of I fired twice.

Q Now, go on and tell us what happened after that?

A After that I saw him fall, and when I saw him fall I stepped two paces back and I leave my pistol right in the street, put the pistol right in the street. I remained there until two officer came and got hold of me.

Q Did you speak to either of those officer that evening?

A In the evening I did not say why nothing. The policemen they were talking, they were talking in English. I do not speak the English language, and I could not understand what

they were saying, but the next morning they spoke to me in the Italian language, and I understand the Italian language, and the next morning I spoke to them.

Q What did you say to them?

A The next morning a policeman asked me in Italian, "Did you kill the man?" I says, "Yes, I did kill the man, I was the one that did it, because I did that to save my life, I was quicker than he was, I was afraid that I was going to get killed and I killed him".

Q Now, what kind of a man, if you know, what was the disposition of this man Tanaiulo during the time you know him?

MR McCORMICK: I object to the question as incompetent, immaterial and irrelevant. The question is whether there was self defense, and not what this man's reputation was or might have been thought to be.

THE COURT: If he knows?

MR MELLEEN: The Court has held squarely that he may testify to general reputation was or might have been thought to be.

THE COURT: If he knows?

MR MELLEEN: The court has held squarely that he may testify to general reputation of a man if he knew it.

THE COURT: Yes, if he knew it. Ask him that one question, "Do you know?" And ask then of the trait involved in this case.

MR. MELLEEN: Yes, sir.

BY MR MELLEEN:

Q Do you know what Tonaiulo's general reputation was prior to this evening?

THE COURT: Yes or no to that.

A I know that he insulted me all the time.

MR McCORMICK: I move to strike that answer out.

THE COURT: Yes, strike out the answer.

Q Now, what was the reputation, if you know, of Tonaiulo?

Q Well, I don't know what this man's reputation means. What does reputation mean?

THE COURT: You may take the trait involved, whatever it is.

Q Do you know whether or not he was one of a friendly, peaceable, or of a quarrelsome disposition?

A He was quarrelsome, he would quarrel with every one.

MR MELLEEN: That is all. Your witness.

BY THE EIGHTH JUROR:

Q Was Tonaiulo standing up by the railing when you passed?

A Yes, sir. near the iron railing.

Q Was anybody between you and Tonaiulo when you passed?

A No, sir, no, there was nobody between me and Tonaiulo. He struck me with his fist, and he told me what I said before. some of the party was in front, and in the rear of me, and someone was right alongside of me.

MR MELLEEN: I omitted this question, if I may ask it, your Honor?

THE COURT: Yes.

BY MR MELLEEN:

Q Between the time that Tonaiulo struck you, came out

from the railing as you have described and the time you saw him leave the saloon, did you see him again that evening?

A No, sir, I didn't see him any more.

Q You were not walking with him in Mott Street, that evening?

A No, no.

BY THE THIRD JUROR:

Q How long have you been in this country, since you last came from Italy?

A I arrived in this country the second day of April.

Q February?

A April.

BY MR MELLEN:

Q Last year?

A Yes.

BY THE THIRD JUROR:

Q 1909?

A 1909.

CROSS EXAMINATION BY MR McCORMICK:

Q Did you know Tonaiulo in Italy?

A Yes, I know him by sight.

Q Did he come from the same town in Italy that you came from?

A Yes, sir.

Q Did you know any of his relatives there?

A No, sir.

Q Didn't you shoot a man in the head with a revolver in Italy?

MR MELLEN: I object to that, if your Honor please, as incompetent, immaterial and irrelevant. The crime for

which this defendant is indicted here is shooting Tonaiulo.

Now, if the prosecution is going into all of the past record I shall certainly put in the past record of Tonaiulo.

THE COURT: He can ask him if, without justification or excuse he did shoot a man in Italy.

MR MELLE: But we certainly do not want to have a lot of irrelevant testimony.

THE COURT: Any question on the examination of a witness as to his bias or as to his credibility, if the question involves the commission of a crime, if the question.

Q Did you shoot a man while you were in Italy, did you shoot a man in the head without justification or excuse?

A No, sir, no one.

Q Didn't you leave Italy on false papers?

A With false paper? (The witness laughs). No, I could go back in Italy a hundred times again.

Q You played cards about an hour, or played this game about an hour in the saloon at 189 Hester Street, did you?

A Yes, for pleasure.

Q Now, this quarrel that you had with Tonaiulo, that was the first quarrel you ever had with him, wasn't it?

A Another evening he wanted to kill me, and I went to sleep

in a hotel.

MR McCORMICK: I move to strike out the answer.

MR MELLEN: I think that is responsive.

THE COURT: No.

MR McCORMICK: I asked if he had another quarrel.

MR MELLEN: Well, if a man threatens to shoot another, isn't that a quarrel?

MR McCORMICK: Well, it calls for yes or no.

THE COURT: It is not directly responsive and it may be objectionable upon that score, but I will let it stand.

Q Well, there was bad blood between you and Tonaiulo wasn't there?

A No, I didn't have any ill feeling against him, from the time that he pulled the pistol at me in my house, I didn't have any ill feeling. I didn't want to have nothing to do with him, because I didn't want to ruin myself.

Q Where did you get the gun you had in your pocket at the time of this shooting?

MR McCORMICK: Well, now, ask him where he got it?

MR MELLEN: He is answering it. I can understand enough Italian to know he is answering the question.

THE COURT: We will have to take the answer before we can rule upon it.

A I came from the state of Maine, and I went to White Plains where I remained a few days looking for work, and from white Plains, not finding any work there, I came to New York.

MR McCORMICK: Now, that has nothing to do with this question.

THE COURT: Now, you have not said all that he said in answer to the question (addressing the Interpreter).

THE INTERPRETER: That is all, your Honor, that is what he said, exactly, every word.

THE COURT: Well, it is substantially what he said, but not accurately what he said.

MR McCORMICK: Well, I would suggest that the Interpreter interpret after each sentence or two, instead of permitting the witness to talk for a minute or two each time.

THE COURT: Now, then let him answer the question propounded by the District Attorney. He has not answered it yet.

THE INTERPRETER: He did not answer it yet, your Honor.

(Question repeated through the Interpreter).

A An Italian left this country to go back to Italy says to me, "You want to buy this pistol?" I says, "What do you want me to do with the pistol, I don't need any pistol". He says, "Well, buy it, I give it to you for anything at all", and I gave him a dollar and he gave me the pistol. In the State of Maine there is some animals there and you need a pistol.

Q You bought this pistol in the state of Maine?

A No.

Q Where did you buy the pistol, in New York?

A I bought that pistol in New York from an Italian that was going back to Italy.

Q What was his name?

A I don't remember the name.

Q How long ago did you buy it?

A When I came to New York.

Q How long ago?

A In the month of December.

Q What year?

A 1910.

THE INTERPRETER: That is what he said. I have to translate what he says.

Q Well, do you mean last December?

A Last December.

Q That is last winter?

A Yes, last December.

Q Where did you live at that time?

A I lived in no house at that time. That time I went up to White Plains.

Q Where did the man live that you bought the revolver from

A I don't know. He was a Sicilian. I Met him in the Park.

Q What park did you meet him?

A Mulberry Street.

Q Why were you carrying this revolver on the evening that you killed Tonaiulo?

A I did always carry the pistol from the time they they stole my money off me.

Q Who stole the money from you?

A Three or four men met me and they wanted me to show some hotel to them. They spoke in English to me, and I told them I don't know. They said, "Ah, you don't know, no?" And they jumped at me, and they took \$40 that I had in this pocket (indicating).

Q Where did that happen?

A Canal Street.

Q What part of Canal Street?

A Canal and Elizabeth Street. I don't remember exactly, but it was in Canal Street?

Q How long ago?

A Last December when I come back from White Plains.

Q And have you been carrying that revolver in your pocket ever since that time?

A Yes, whenever I would go out.

Q What pocket did you carry it in?

A My hip pocket, this one (indicating the right hip pocket).

Q Is that the pocket your revolver was in the night that you killed Tonaiulo?

A Yes, this one here (indicating the right hip pocket).

Q Now, when you left the saloon, whom did you leave with?

A With Barattieri, and all that were there, with Barattieri, Frattuolo and all that were there.

Q Were you angry when you had the fight with Sansone in the saloon?

MR MELLE: Not Sansone, you mean Tonaiulo?

Q With Tonaiulo in the saloon?

A No, sir.

Q You were not angry at all?

A Nothing.

Q Was Tonaiulo angry?

A Tonaiulo was angry, and I said to myself, "Why, why should I be angry for? Why, if this man wants to kill me he could not kill me, because I am going right home now."

Q Didn't you say a while ago that Tonaiulo was always in-

sulting you?

A Yes, he fight with me, but i did not have no ill feeling against him.

Q Well, did he insult you that night?

A He insulted me because he sat on my chair, as I said before, and everything he did what I stated before.

Q Well, didn't it make you angry when you spoke to him and he would not answer you?

A No, sir, I did not get angry. I only said to him, Be patient, move away from here".

Q Oh, you did not insult him then, did you?

A No, sir.

Q You did not do anything to make, or to insult him?

A Nothing. Not then and never did I insult him.

Q Well, then you went over Giralomo scirpoli's house, didn't you?

A I went in the toilet and then we come out to go and get some coffee, as I stated before.

Q Well, I ask you whether you did not go to Scirpoli's house; was not this toilet in Scirpoli's house?

A Yes, it is the toilet that belonged to Giralomo's house.

Q Well, was not Tonaiulo there?

A I didn't see him.

Q Well, you walked out from your uncle Giralomo's house to the sidewalk and then walked down to Mott Street, didn't you?

A Yes, all together.

Q And in that party--or first, what relation is Giralomo Scirpoli to you?

A It is nothing to me. We all call him "Uncle" because he is an old man. Every one that lives in that house, they call him "Uncle".

Q Well, isn't he related to you by blood?

A No, sir, he is nothing to me.

Q Did Tonaiulo live in that house?

A Yes, sir.

Q How many rooms were there that your uncle had there?

A Four rooms.

Q How many men lived in those rooms?

A Sometimes twelve, thirteen, it depended on the evening, sometimes no one.

Q Well, on this evening when you walked out to go down Mott Street, you were going to get some coffee, were you not?

A No, we didn't take no coffee.

Q Well, you were going to get some coffee, were you not?

A Yes, we went out to get the coffee, but we didn't take any coffee.

Q Well, now, as you walked south on Mott Street, were you walking side by side with the man you killed?

A No, sir, I didn't see him, I didn't see him.

Q Now, isn't it true that you walked down Mott Street with five other men, and that those men were Giuseppe Phiaffredo and Giuseppe Illuzzo, who walked side by side in front, and that then you came walking behind them a few feet with the man that you afterwards killed, and behind you were Frattuolo and Scirpoli, and that that is all the people there were of that crowd, walking down the street that night?

A These two that you mentioned first, they were going ahead of us, and I was going with the other ones all together.

Q Who was walking alongside of you? Now, I want one word, one name, if any?

A On my side was three, but as the sidewalk was narrow, the three could not go abreast, and I was a little further ahead of the other two.

Q In which way were you walking when Tonaiulo struck you?

A I was going in the direction of that side, down (indicating), near Mulberry Street.

Q Were you walking towards Canal Street or were you walking towards Hester Street?

A Canal Street.

Q Which side of you was Tonaiulo when he struck you?

A That side (indicating).

Q Was he between you and the railing?

A Yes, this is the railing (witness pointing to the left side). Tonaiulo was next to the railing. I was in front of my two friends, because the sidewalk was not wide enough to let the three come abreast, and Tonaiulo struck me.

Q Who was standing behind you at that time, you say, which two friends?

A Frattuolo and Scirpoli, and the other one, there were a good many, because we all came out of the house.

Q Well, the only people behind you were Frattuolo and Giralomo Scirpoli, is that right?

A Yes, sir, sure there were some others.

Q What did he strike you with, his fist?

A With his fist, like this right here (pointing to the left check).

Q show these gentlemen just where he hit you?

A (witness indicating) Right here, right here it was broke, it was wounded.

Q Which fist did he hit you with?

A Do you want me to say what fist he struck me with? He struck me with the right.

Q What happened to you when he struck you, did you fall down?

A No, no. I on the ground? No, no.

Q What did you do when he struck you?

A I said, "I don't want to ruin myself.

Q "I don't want to ruin myself"? What did he say?

A "Ah, you don't want to ruin yourself? Why, your days are over now", and then he pulled the pistol out.

MR MELLE: What did he say?

Q What did he say to you?

THE INTERPRETER: "Your days are over now".

THE COURT: Let the witness repeat that.

A I says to him, "I don't want to ruin myself", and he says to me, "Ah, don't you want to ruin yourself? Your days are over now", and he pulled the pistol out.

BY MR McCORMICK:

Q Was that the first thing you heard him say?

A Well, that is all I heard.

Q Didn't he say anything to you before he struck you?

A He struck me first, and then he says, "Why didn't you want to play any more", when he was talking, then he struck me.

Q I thought you said a minute ago that you had not seen him until after he struck you?

A No, I didn't see him before he struck me. It was this way. He struck me first, and then he says, "Why didn't you want to play tocco?" I says to him, "I don't want to ruin myself".

MR MELLEEN: Where was this?

MR McCORMICK: At the iron railing.

BY MR McCORMICK:

Q Now, isn't it true, that just before the shooting, you were walking side by side with Tonaiulo, and that he said, "I don't want to go for any coffee, and turned around and started back toward Giralomo's house?"

A I did not see Tonaiulo at all.

Q What was Tonaiulo doing the first time that you did see him there?

A I don't know what he was doing. I was punched, that is all.

Q How close to the railing was he standing when he puched you in the face?

A Yes, he was right close to the railing, to the iron railing.

Q Didn't you hear Tonaiulo say he was going back, that he was not going for any coffee?

A No, sir, I didn't see him at all.

Q Why did you shoot at him the second time?

A I don't know now that I fired two shots, it was so quick. I see that before my eyes, and I fired.

Q Show me how quick to each other those two shots were?

A Simultaneously, one after the other like this (witness illustrating with his fingers).

Q Make a noise on that table with your fist, showing how close together those shots were?

A Like this (illustrating).

Q Close your hand and knock with your fist on the table?

A (Illustrating) Like that.

Q Why did you throw the gun down on the street?

A Because I saw that the policemen were coming, and I did not want them to have the idea that I was going against the police, and I threw the pistol in the street.

Q Did you try to run away?

A No, sir.

Q When the man that you killed was pointing the revolver at you, you say you could see it shining?

A Why I saw him certainly, he had it in his hand.

Q Well, I ask you whether the revolver was shining?

A Yes, sir, I saw it shining.

Q You mean shining like that (indicating Defendant's Exhibit A)?

A Yes, like that, shining like that it was.

Q What color was the revolver?

A Mine was black.

Q When you were arrested do you know where you were taken?

A First they took me to Elizabeth Street station house and then they took me to the other station house.

Q Do you know where that second station house was?

A This one here, this one near here.

Q Well, was Lorusso looked up, do you know, at the same time you were?

A Yes, he was arrested.

Q And did he spend the night in the same place you did?

A No, I didn't see him, where they put him.

Q Well, did you see where Giralomo was put?

A No, sir, no one.

Q Well, were you all four taken from the place where you shot this man to the station house, together?

A Yes, four together.

Q And were you all locked up there?

A No, sir. We remained there a little while and then a carriage come and took us to the other station house.

Q And which station house did you spend all night in, the second one?

A The second one. The next morning they took me to the Tombs.

Q Did you have this revolver in your hand all the time, from the time you fired the first shot until you fired the second?

A Why, certainly. The shots come one after another one, sure I had it in my hand.

Q Where were you standing, what part of the sidewalk when the two shots went off together?

A On the sidewalk I was standing, when I saw his pistol, and I did try to do the best I could.

Q How far away from him were you when you shot him the first time?

A From here (pointing from the point of the de-

defendant's foot to the beginning of the rail of the jury box).

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

AFTER RECESS

Trail resumed.

FRANCESCO SANSONE, the defendant, resumed the witness stand.

CROSS EXAMINATION CONTINUED BY MR McCORMICK:

Q How long time was it between the time you were struck with the fist and the time you first saw the pistol in the other man's hand?

A At once, as soon as you could see it.

Q Were you looking at him when he drew the pistol?

A Yes, sir, I was looking at him, yes, sir, I was looking at him.

Q Now, show the jury how he drew the pistol?

A As he pulled the pistol this way (witness illustrating by putting his hand in the hip pocket and pulling out his handkerchief), as soon as I saw that pistol I pulled my pistol out.

Q Show us how he pointed the pistol at you? What until I get the pistol (indicating or handing to witness Defendant's Exhibit A). Now, when you first saw the pistol, show us how he was holding it?

A I saw the pistol this way (witness il-

illustrates), this way, having the pistol that way, through his trousers pocket on the right side.

Q Did he keep it that way all the time?

A As I saw the pistol I pulled out my pistol.

Q Did he point that pistol at you?

A He put the pistol this way (witness illustrating by putting his hand up).

Q Did he point the pistol at you?

A He held the pistol this way (illustrating).

BY THE FOREMAN OF THE JURY:

Q Now, you say he struck you in the face before he drew the pistol? Did he have the pistol in his hand when he struck you in the face?

A No, sir.

BY THE SECOND JUROR:

Q Did Tonaiulo have an overcoat on?

A I did nto look at that.

Q Didn't you know that he had an overcoat on?

A I didn't pay any attention to defend myself.

BY MR McCORMICK:

Q The very minute that he struck you with his right first, did he then put his hand down quick to his pocket?

A Yes, sir, right afer he struck me he pushed, he put his hand to his hip pocket and pulled the pistol, and as soon as I saw the pistol I pulled my pistol out.

Q Now, let me take that (indicating Defendant's Exhibit

A). Now, this is your pistol isn't it (indicating People Exhibit 1)?

A Yes.

Q Where did you have that pistol?

A (Witness illustrates by putting People's Exhibit 1 in his right hip pocket). That is the way the end of the pistol goes inside.

Q Turn around and show the jury?

A (Witness indicates to the jury).

Q Now, when Tonaiulo hit you with his fist and then grabbed his pistol, and pointed his pistol at you, show me how you got your pistol out of your pocket?

A (Witness illustrates by drawing the pistol from his pocket). I did like this, because I saw death before me, before my eyes, and that is why I did this.

Q Well, and while you did that Tonaiulo stood with his pistol pointed at you all the time?

A Yes, he had the pistol in his hand, and I saw the pistol and I fired.

Q Was the pistol pointed at you all that time?

A All the time. What time could pass? It was like lightning, like the wind.

Q Was Tonaiulo looking at you when you put your hand in your hip pocket and pulled your pistol out?

A Why, I didn't look at him to see if he was looking at me or not. He was quick, and I was quicker than him.

Q Well, he was quicker than you if he had his revolver

pointed at you before you started to get yours, wasn't he?

Objected to. Objection sustained.

MR MELLEN: I do not want to object any more than I have to.

Q When did you first come to American?

A The 16th day of December, 1905.

Q What steamer did you come on?

A The Prince Albert.

Q what line did that belong to?

A The Hamburg American Line.

Q What name did you come under?

THE INTERPRETER: Your Honor, he says, "When I come to American I come under the name of a woman, Maria Lamarca

Q They asked me where I was going to and I says I was going to Maria Lamarca. Francesco Sansone.

Q How long did you go back to Italy?

A In the month of September, 1908.

Q How long did you stay in America that time?

A Nearly three years.

Q When did you go back to Italy?

A In the month of September, 1908,

Q How long did you stay in Italy?

A Five or six months.

Q On what date did you come back to America after that five or six months?

A The first or second day of April.

Q What year?

A Last year.

Q On what steamer?

A The "Cretic".

Q Of what line?

A The White Star Line.

Q What was the name of the steamer?

A "Cretic"

Q White Star Line?

A Yes.

Q What name did you come under?

A The same name.

MR MELLEN: Now, your Honor, I object to this.

THE COURT: The question is allowed.

Q Now, when you were in the jail the night after you killed this man, did you say anything to your uncle Giralomo?

A What do you want me to say? Nothing.

Q Did you say anything to Giralomo?

A What do you think, I could see him where he was and where he was not?

Q Well, where was he?

A Well, do you think that I knew where he was? I don't know where he was. I was---

Q (Interrupting) Well, you know where you were?

THE COURT: Let him finish that answer.

A (Continuing) I was in a cell with another man.

Q Who was in the cell with you?

A Another man.

Q What was his name?

A Did I ask him what his name is? That man was sleeping when I went in. He went far in front. Across the way from me. they were woke up.

Q Did you have a talk with Giralomo that night?

A What should I talk with?

Q Didn't you say to Giralomo, who was in another cell, "Giralomo, I want you to say that Tonaiulo has always been making trouble for me"?

A I? No.

Q And that "Tonaiulo had a revolver to shoot me so that I

had to defend myself"?

A I did not talk with nobody.

Q Didn't you also say for him to say that Tonaiulo left the saloon to go home to get the revolver?

A It is no use. what do you want me to say? I did not speak with nobody. I accept. I lay down on the floor and that is where I remained, because another one was asleep in the cot.

Q Well, I ask you whether you said that to Giralomo or not?

A No, I did not say nothing.

Q And did not Giralomo say to you, "I will"?

A I did not say nothing to him. I did not see where they took him. I know where they took me. I lay down on the floor and I remained there.

Q Well, did you say those things, or any of those things to Giralomo next morning?

A Nothing. I never said that. I never said that, never, because they took me to the Tombs in the morning. They took him upstairs and I remained downstairs.

Q Well, didn't you at any time, that night, or the next day, or any other time tell your uncle Giralomo those things?

A When should I see him? When should I talk with him? I never saw him.

Q Well, wasn't he in the next cell?

A Do you think I saw in what cell they took him? I did not see in what cell they took him.

Q Well, was he in a cell?

A What do I know, in what cell they took him?

Q Do you know whether he was in any cell there?

MR MELLEN: Now, if your Honor please, I object. This cross examination has gone to great lengths.

THE COURT: Yes, it is far enough.

MR MELLEN: The defendant has denied over and over again that he did not know anything about that, and what is the use of wasting time?

MR McCORMICK: Well, I think it is very important.

THE COURT: Yes, but you are bound by his answer.

MR McCORMICK: I have finished that part of the examination. I have only asked it twice, once as to the evening and once as to the next morning.

MR MELLEN: He has answered time and time again that he did not see where they took him.

Q Did you tell these police officers that you did not shoot Tonaiulo at the time they arrested you?

A They spoke in English. I did not answer them because I do not speak English.

Q Did you say anything in Italian to the officer, to the Italian officer who took part in arresting you?

A When they arrested me they spoke English and I did not say anything, because I did not understand the English language.

Q Did officer Guarinari, one of those officers who arrested you say to you, or ask you why you shot Tonaiulo?

A They spoke English. I did not understand what they said and

I did not answer.

Q Do you ever speak English?

A English? Why should I speak English? I don't know how to speak English. I know the name of the tools that I need in my work, that is all.

Q Don't you ever talk English?

A Why should I talk English? When the boss asks me to do something I will do that. Why, you think I should come in court and talk English, or I should go to the policeman and talk English, when I am not asked and I don't answer?

Q Did you say to one of these policemen, speaking of Tonaiulo, "Him do things to me, I can't digest"?

A I don't understand what you say.

Q The question is whether you said that to this officer, yes or no?

A I?

THE COURT: Tell him to say yes or no to that.

A No.

Q Did you say to him, speaking of Tonaiulo--

(Question withdrawn).

Q Did you say to this officer, speaking of Tonaiulo, "Me shoot him, me no afraid, me got plenty witnesses"?

A Once, I don't speak English. The next morning, yes, I spoke in Italian to the witness, to the policeman, when they says, "Did you do this?" And I said, "Yes, I did that to defend my life, because I see that before my eyes".

Q Well, right after the shooting, didn't you deny that

you had done it?

A Well, if I said to you that I could not answer?

Q Did you ever see that man before (indicating Officer McGee)?

A Yes, that evening I saw him. He took me to the prison.

Q On Sunday, The day after the shooting?

A Yes, the day after he took me.

Q Were you handcuffed to him?

A Yes, handcuffed to him.

Q Did you ask him to get you a pack of cigarettes?

A Yes, I told him I wanted to buy eight cigarettes because I got four cents.

Q Did he give you five cents?

A He see that I had four cents, and he paid for the pack of cigarettes, because he saw the money first, that it was not enough.

Q Now, the night before that, did you say to this officer, McGee, the night before, at the time of the shooting, "Me no shoot, me no shoot", yes or no?

A I could not say nothing.

Q Now, about the time, right after you got the cigarettes did you say to this officer, McGee, "Me no afraid, I shoot the son-of-a-bitch"?

A No, sir.

Q Did you say, "He all the time make trouble for me, and I can no stomach him no longer"?

A Speak Italian.

Q Did you ask this officer for cigarettes in the English

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language or in the Italian language?

A I said "cigarettes". I said, "Compra pachett cigaret".

Q Did you say to him, "Me no afraid to go to jail for him", meaning Tonaiulo?

A No.

REDIRECT EXAMINATION BY MR. MELLEN:

Q you were asked by the District Attorney on cross examination about your conduct in Italy. I show you this paper and ask you when you received it.

MR. McCORMICK: Now, wait a moment.

MR. MELLEN: You opened the door.

MR. McCORMICK: I object. Well. I will wait until the question is asked.

(Question repeated by the stenographer.)

MR. McCORMICK: Now, the question is when he received it, and it does not require a long answer.

THE COURT: Well, we must receive the answer from the interpreter as it was made before we can rule upon it.

MR. McCORMICK: Well, why not instruct the witness to answer simply the date?

THE COURT: Well, it is too late now. We will have to receive the answer, and if it is an improper one it will be stricken from the record and the correct answer required from him.

A After this thing happened I wrote to Italy asking them to send a paper stating what I was down there and they sent me this paper.

Q Do you know who signed that paper?

A The Mayer.

Q The mayer of what place?

MR. McCORMICK: I desire the privilege of examining the witness as to his knowledge on that subject before counsel can go any further.

THE COURT: You may have it.

BY MR. McCORMICK:

Q Do you know how signed that?

A You ask me who signed this? I don't know. It comes from Italy.

Q You do not know who signed it?

MR. McCORMICK: He says he does not know who signed it, and if the deceased signed it I could understand how it might be permissible.

BY MR. MELLEN:

Q You wrote to Italy after this occurrence and recieved this paper, did you?

Objected to. Objection sustained.

Q To whom did you write in Italy?

MR. McCORMICK: Now, the objection was sustained and I object again.

THE COURT: Objection sustained. He knows nothing at all about who signed it.

MR. MELLEN: I am asking now to whom he wrote in Italy before he received this paper.

MR McCORMICK: I object to the question as incompetent, immaterial and irrelevant.

THE COURT: Yes, I will let him answer that question.

A I wrote to my mother.

MR. MELLEEN:

Q How long before the 5th of March was it, the night that you shot this man, that you say he threatened to shoot you?

A About 20 days previous. He pulled a pistol at me in his house.

Q And then what did he say to you?

A He took me with the pistol, when I saw him, that he pointed the pistol, I asked Scirpoli to give me some money, and Scirpoli gave me money and I went to sleep in a hotel.

Q Now, did you see Tonaiulo from the time you came out from the toilet after you left the saloon, the toilet in your uncle's house, until he struck you?

A I did not see him or nothing. I never saw him.

Q How big a man was he, as big as you?

A I did not measure him, but he was about my height, a little higher than me.

Q Was he heavier than you or lighter?

A Like me.

Q Are you sure than as soon as he struck you and before you pulled your revolver, he spoke to you?

A Yes, as I said before he told me "Your days are over now" and he pulled his pistol and I pulled my pistol.

Q Now, did you see the pistol in Tonauilo's hand before

you started to pull your own pistol?

A Well, and then you think I did not see it? As soon as I see the pistol I was quicker.

Q I want to know and you can answer yes or not, simply this: did you see Tonauilo's pistol in his hand before you touched your own pistol?

A Well, then you think that I did not see it? Yes. I saw the pistol and I pulled--

THE COURT: Tell him to answer that question yes or no.

Q (Question repeated)

A Yes, I saw it. Yes, I saw it and I make as quick as I could.

Q And as soon as you saw it in his hands pointed in your direction, you pulled your revolver, is that rights?

A Yes, then I did pull it out quick.

Q And that was after he had said to you "Your days are over", is that so?

MR. McCORMICK: I object to that question as leading.

THE COURT: No.

Q Was that before or after he said to you "Your days are over"?

A He pulled the pistol first.

THE COURT: Let him answer the question.

Q (Question repeated)

A I pulled my pistol out when I saw the pistol in his hand.

Q Before you pulled your pistol out, did he or did he not

say "Your days are over" or the words that you have repeated? Objected to as leading. Objection overruled.

A Yes, he said my days were over.

THE COURT: Now, will you have him answer that question, whether he said that, as his attorney has asked him?

BY THE COURT:

Q Was it before or after your pistol was pulled out that he made the remark which you say he did?

THE INTERPRETER: Your Honor, he does not answer your Honor but goes off again "He struck me first".

Q (Question repeated)

A Before I took the pistol out.

BY MR. MELLEEN:

Q Now, then, tell us again--

THE COURT: Let us get the whole of that.

A (Continuing) He says at the same time he pulled his pistol out, he says "Your days are over now"

Q Now, I want you to tell us again?

MR. McCORMICK: Now, I object to repeating.

THE COURT: Well, let us see what the question is.

Q (Continuing) In your own way exactly and in the order what was said and done by Tonauilo when you saw him after leaving your house?

MR. MELLEEN: I want to get it straight, in sequence.

MR. McCORMICK: Now, I make an objection and I do not know whether your Honor ruled on it or not. This

is begining the direct examination of thish witness over again.

THE COURT: Well, a repetition of it may be quite important, but beyond that we will not go; that is a repetition of the statemen concerning the main transction here.

A After I got through passing the water in the toilet I came out, and they says to me "Let us go out and have some coffee" and then I said to them "No, never mind, I don't want any coffee". Someone of them says "The money is right here,come along". "No, I don't want to go". "Well, come on, come on, the money is here". Then I went along. When we went along in the street I met Tonauilo and he struck me right here, you see, he cut me right there (Witness pointing and putting his finger to his chin),that's it. Then I says to him "I don't want to ruin myself", and Tonauilo says "Ah, don't you want to ruin yourself? Your days are over" and he pulled a pistol. I saw the pistol and I pulled my own pistol.

BY MR. MELLEEN:

Q That is all.

MR. McCORMICK: That is all.

FRANCESCO PERLA, called and duly sworn as a witness on behalf of the defendant, testified through Official Interpreter Villamena, as follows:

DIRECT EXAMINATION BY MR. MELLEEN:

Q How old are you?

A 17 going on 18.

Q Do you remember the 5th of March of this year?

A Yes.

Q Where were you living at that time?

A 102 Mott Street.

Q Who else was living at that place with you that day?

A I and three more.

Q Who were the other three?

A The brother of that defendant and two other persons. I know them by sight.

Q Do you know, or did you know Tonauilo?

A Yes.

Q Did you see him that evening?

A Yes.

Q What time of the evening on March 5th did you see him?

A I did not go out that night. Tonauilo came up to the house.

Q What time was it he came?

A It must be about half past nine or ten o'clock.

Q What did he do, that you saw him do?

A I was over to the house when this Tonauilo came in. He opened the closet, took out his valise out of the closet, opened the valise and pulled out a pistol. In that time Girolamo come up and says "Guiseppe, what are you going to do to night?"

MR. McCORMICK: i object to this.

MR. MELLEEN: Well, I think we are entitled to what Tonauilo said that night.

THE COURT: I will allow it.

A (Continuing) "Guiseppe, what are you going to do to night?"

MR. McCORMICK: This was not in the presence of the defendant.

THE COURT: No, we will proceed with it, however.

BY THE COURT:

Q Proceed?

A What are you going to do tonight? and this Tonaiulo pushed Girolamo with his fist (witness illustrating by putting his own fist over his left chest) and he said "Blessed Virgin, prostitute, tonight I will die or he will die"

BY MR. MELLEN:

Q And what did he do after he said those words?

A He opened the door and he went outside, and I don't know where he went to.

Q Did you see the pistol that he took out of the valise?

A Yes, sir.

Q can you say whether or not it was this pistol, Defendant's Exhibit A?

A Yes, yes this is the one.

Q Did you see what he did with that pistol before he left the room?

A He put it in his pocket.

Q What pocket?

A He had it in his hands and he put it in his pocket. Do you want me to look at him what pocket he put it?

Q Do you know what he said, I mean on what side, what hand

he had it in?

A I saw him take the pistol, I saw the pistol in his hand. If you want me to look at and see in which hand he had it, I did not see it. I did not pay no attention to which hand he had it. I did not say nothing because I was afraid of him, because he did lick me on previous occasions.

cROSS EXAMINATION BY MR. McCORMICK:

Q How long have you known Sansone?

A I was an artist in Italy and I know him from childhood. He served as a soldier.

Q Is Sansone a cousin of yours?

A No, sir.

Q Is Girolamo an uncle of yours?

A No, sir.

Q Are you any relation to Sansone?

A No, sir.

Q Are you any relation to Girolamo?

A No, we only come from the same town, that's all.

Q How long had you lived with Girolamo?

A Who, I? Yes, it must be since the month of January.

Q Have you talked with Girolamo about this case?

A No, sir.

Q Did not Girolamo ever say anything to you about this case at all?

A No, No.

Q Well where do you live now?

A 340 112th Street. I have got the envelope here, 342 East 112th Street.

Q How long ago did you leave Girolamo's house?

A After this thing occurred they went to the prison and we took our own way.

Q You say you were at Girolamo's house the night that Tonauilo was killed, is that right?

A Yes.

Q Well, did you see Tonauilo there?

A Yes, when he come into the house.

Q I mean, did you see him there at the same time Sansone was there?

A Sansone was not there.

Q Was not Sansone there at all that evening?

A Yes, Sansone came, and then they went out. I don't know where they went to. I don't know if they went out to take a walk or what.

Q Well, who went out first, Tonauilo or Sansone?

A Sansone did not come to the house at all. Tonauilo came took his pistol and he went out.

Q Was Giarolamo there?

A Yes, when he took his pistol Girolamo happened to be there.

Q Well, did Girolamo go out with him?

A Yes, sir.

Q And who else went out at that same time?

A I did not see anybody else.

Q What time was it they went out?

A I didn't have no watch.

BY THE COURT:

Q When the deceased said what you have testified to, in talking with Girolamo, did he name anybody at all? If he mentioned any persons name?

A No, sir.

Q That is all.

PASQUALE DAPOLTA, called and duly sworn as a witness on behalf of the defence, testified through official Interpreter Villamena as follows:

MR. MELLEEN: I will find out if this is the right man, I don't know.

DIRECT EXAMINATION BY MR. MELLEEN:

Q Did you live at 102 Mott Street on March 5th of this years?

A Yes, sir.

Q Did you see Tonauilo that night?

A Yes, sir.

Q Do you know the boy Francesco Perla?

A Yes, we lived together in the house.

Q Were you in the same room with him at 102 Mott Street that night.

Q Were you there when Tonuailo came in?

A Yes, sir.

MR. MELLEEN: Well, that is the man.

Q Now, about what thime was this that Tonauilo came into the room where you and Perla were that night?

A It must be about nine or half past nine, ten, but no less.

Q You mean that it was not earlier?

MR. McCORMICK: Not later.

A No. no later than 10.

Q Now, tell us what you saw Tonauilo do that night, or heard him say to anyone else in that room that night?

MR. McCORMICK: Just wait a moment. I object to this, because it is incompetent, immaterial and irrelevant.

The question is what happened out on the street there, on Mott Street.

MR. MELLEEN: I am going to connect it by Girolamo, and show exactly what happened from this moment until the end. I cannot put it all in at once.

Q Yes, unless it is connected motion will be granted. Proceed.

A (Question repeated)

THE COURT: I direct the attention of counsel to the precedent established in the Stokes case, in 53 N.Y., here you are, in the syllabus, half way down.

A I happened to be in the house of Girolamo that evening, when I saw this Tonauilo rush in excited, looking for his valise. Finally he found his valise and pulled a pistol out. We all says "What's the matter?" He says to me "Get away form me, keep back, because this evening no one should interfere with me, because this evening I or somebody else must be in the grave"

Q Now, did you see Gorolamo in the room with Tonauilo, or did you not when that occured?

A Yes, sir, he was in the room.

Q Did Tonaiulo theen leave the room?

A Yes, sir.

Q Were you in bed or up?

A No, I was up when he came.

Q Did or did not Girolamo follow Tonauilo when he left

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the room?

A Yes, sir.

Q They went out of the room together?

A Yes, sir, Tonauilo, and Girolamo after him.

Q Now, did you go out of the house that evening?

A No, sir.

Q Would you recognize the revolver that Girolamo took if you saw it?

A No, in that moment I could no look at the revolver.

Q Do You know what it looked like?

A No, sir, I don't.

THE COURT: Repeat Mr. Mellen's previous question.

(The previous question is repeated by the stenographer

MR. MELLEN:

Q Would you recognize the revolver that Tonauilo took out of the valise if you were to see it again?

A No, the pistol I could no recognize.

CROSS EXAMINATION BY MR. McCORMICK:

Q "Well, is that the pistol? (Indicating another pistol)

A I don't know.

Q Now, which pistol did you see?

A I could not state.

Q Now, is it not a fact that you were in Boston at that

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time?

A No, no.

Q Where have you been living during the last two months?

A White Plains.

Q How long ago did you leave the house of, or were you living in the house of Girolamo the night that this man was killed?

A That evening, yes.

Q How long after that did you move away from that house?

A No, I went away. My house is in White Plains.

Q You did not live there that night?

A No, sir.

Q Where do you live now?

A Madison Avenue, White Plains.

Q Have you lived there ever since?

A Yes, sir.

Q Do you know a man named Pasquale LoRusso?

A No, sir.

Q What?

A No, sir.

REDIRECT EXAMINATION BY MR. MELLEN:

Q How long have you lived at White Plains?

A Three years.

Q Do you have a house there?

A Yes, sir.

Q Have family there?

A No.

Q Do you work there?

A I board there.

Q You work there?

A Yes, sir.

Q Whom do you work for?

A The Grand Sewer.

BY THE SEVENTH JUROR?

Q How do you know it was a revolver that he took out?

A Well, I saw him when he pulled it from the valise and put it in his pocket. I could not state what kind of a revolver it was, but you could see that it was revolver.

BY THE FOREMAN:

Q Well, was it polished or was it a colored one?

A For me, I could see that it was white.

BY MR. McCORMICK:

Q Like this? (Indicating People's Exhibit 1)

A No.

MR. MELLE: Showing first Defendant's Exhibit A second People's Exhibit 1.

BY THE SEVENTH JUROR:

Q Where were you standing when you saw him take the revolver out?

A I went right after him, in his own room, as soon as he took the pistol he had it in his pocket, and I save to him "What happened?"

BY MR. McCORMICK:

Q Do you the know the names of the other people that were in this room the time you saw him take the revolver out of the valise?

A There was Francesco Perla, the brother of this defendant, that was in bed at the time, and Matteo Toterio.

Q Is that all?

A That's all.

Q Whereabouts in the closet was the valise, on the floor or on a shelf?

A It was in kind of a closet in his

room.

Q What part of the closet was it?

A Against the wall.

Q Did he carry the valise out into the room before he took the revolver out or it?

A Yes, sir.

Q What kind of looking valise was it?

A I don't know what kind of valise it is. You see, the closet tis made this way, a door like that (witness pointing to the door of the jury box) and he opened the door and he went in there, right in the closet. He did not pull the valise out of the closet, the valise was out in the closet, and he opened the valise and pulled out the pistol. I went after him and saw he put the pistol in his pocket, but I did not see the valise.

Q Well, how do you know he got it out of the valise?

A Why, naturally, because I saw it.

Q Well, you said a minute ago that you did not see any valise?

A I went after him when he went near the closet.

Q Did you see the valise?

A Yes, in the closet, yes.

Q Describe what kind of valise it was?

A A Small valise.

Q Well, how large?

A About that long (indicating)

Q About two feet long?

A Yes.

Q What color was it?

A Red.

Q And it was on the floor of the closet?

A Yes.

Q Well, why didn't you go out and stop him if you thought he was going to kil someone?

A Well, once that he

said to us "Everybody should mind their business" why should I go after him, and then, would I know that, that he would do this?

Q Did he mention the name of anyone that he was going to kill?

A No, sir. He says "One of the two must go in the grave"

Q One of which two?

A Well, he says "Tanauilo or this Sansone"

Q Now, do you know Francesco Perla?

A Yes, sir.

Q Was he in the room at the time you saw Tonauilo take the gun out of the valise?

A Yes, sir.

Q And did he hear Tonauilo say to you "Somebody must be in the grave tonight"?

A Yes, sir.

Q Is that all Tonauilo said about shooting?

A That's all.

Q Did you hear him say anything about swearing by the Blessed Virgin?

A Yes, when Girolamo came, he says "No, even if come the Blessed Virgin, what I shall do, I will do it".

BY MR. MELLEN:

Now, you say that Girolamo, ot that Tonauilo said that either he or Sansone must die that night?

A Yes, sir.

Q Did he mention the name of Sansone in that room?

A Yes, sir.

Q That is all.

MATTEO TOTARO, being called and duly sworn as a witness on behalf of the defence, testified through Official Interpreter Villamena, as follows:

DIRECT EXAMINATION BY MR. MELLEN:

Q How long have you been in this country?

A Four years.

Q Where do you live now?

A White Plains.

Q Do you speak a little English?

A (In English) No.

Q Well, you understand a little English?

A Well, I can't talk. I understand a little bit.

Q (Through the Interpreter) Where you living on the 5th of March of this year?

A 102 Mott Street.

Q Who else was living there with you?

A Francesco Sansone, Guiseppe Tonauilo, and different other persons. There lived there about fifteen or sixteen other persons.

Q Did Francesco Perla live there at that time, the boy?

A No, I don't remember, because I don't remember all that were there.

Q Did you see Tonauilo on the evening of March 5th at 5 o'clock?

A Sure.

Q Where did you see him?

A When he come upstairs in the house.

Q What house?

A 102.

Q Into what room?

A The room on the ground floor, the rear house, in the yard.

Q Were you in that room?

A Yes, sir.

Q what partt of the room were you?

A On this side.

(indicating to the left)

Q Were you in bed?

A Yes.

Q Now, tell us who else came into the room or was in the room that night, if you know, at that same time?

A Pasquale Dapolta, the brother of Francesco Sansone, and another young man, I don't know his name, Francesco Dipera.

Q Did you see Girolamo in the room that night?

A Yes.

Q Did you see Tonauilo in the room that night?

A Yes, sir.

Q Was he there at the same time Girolamo was there?

A Tonauilo came first.

Q And did Girolamo follow?

A Yes, sir, after.

Q Now, tell us what you saw Tonauilo do, or what you heard him say, or anyone else say in the room that time?

A I was in bed and I saw Tonauilo come in. I saw him go to the valise and open his valise and pick up a pistol out of the valise. I says to him "what are you going to do tonight?" He says "Tonight they kill me or I kill someone".

Q Did you hear him mention any names?

A No, sir.

Q How far were you away from him when he said this?

A The same room.

Q Well, how far away from him?

A A little distance, six or seven feet.

Q Would you recognize the revolver that you saw him

take out of the valise if you saw it again?

A No, sir.

Q Was it white or a black revolver?

A White.

Q Did it look like this, showing you Defendant's Exhibit A,?

A Yes, sir, something like this, but I couldn't swear that this is the one.

CROSS EXAMINATION BY MR. McCORMICK:

Q Have you talked with Girolamo about this case before you came in he today?

A No, sir.

Q Do you know Girolamo?

A Yes.

Q Has not Girolamo been around to see all these witnesses, preparing this case for the defendant?

MR. MELLEEN: I object to that. How can he know what Girolamo has done with somebody else?

THE COURT: Yes.

Q Well, has not Girolamo come to you and talked to you about this case?

MR. MELLEEN: I will concede that.

A No, sir.

MR. McCORMICK: Well, he will not let you concede it.

MR. MELLEEN: Of course, somebody has to talk to find out what these men know about this case.

I don't know if it is Girolamo or somebody else. I do know that the interpreter has talked to him.

Q Were you there that night right after the shooting?

a Yes, I was in the house.

Q And did you go out and see the body of this man lying on the sidewalk?

A No, sir.

Q Why didn't you?

A I was in bed. I didn't want to go out.

Q Well, how did you find out about it?

A When the people come back in the evening, in the house, they told me.

Q Did you see Tonauilo take the revolver out of the valise?

A Yes, sir.

Q Where was the valise?

A In the room.

Q What part of the room?

A Near the bed.

Q Was it on a chair or on the floor?

A On the floor.

Q Well, wasn't it up on shelf?

A Well, I didn't pay no attention. I don't know where they took the valise from. I saw that they opened the valise down on the floor there.

Q Well, now, what kind of looking valise was it?

A I don't know what kind of valise it was, because--

Q (Interrupting) Well, was it black--

THE INTERPRETER: I am not through yet.

MR. McCORMICK: I beg your pardon.

A (continuing) I don't know what kind of valise it is because I am not long in New York.

Q Well, that is a good reason, but you were looking right at the valise, weren't you?

A Yes, I looked at him when he picked the pistol in his hand. Then I asked him what he was going to do with it.

Q Well now, the valise was right along side the bed on the floor, and you could see it, couldn't you?

A It was not near my bed. It was near the bed where Tonauilo slept.

Q Well, whose bed was it near. your bed or his bed?

A Tonauilo's bed.

Q What color was it?

A I don't remember what color.

Q Was it black?

A I don't remember well. Black, no. I didn't pay much attention. I was not long enough in New York.

Q Well, that's good reason, but were you, or who else was in the room when he picked this revolver out of the valise that was on the floor?

A Francesco Dipera.

Q You saw Francesco outside, didn't you?

A yes.

Q Now, you have told us what Tonauilo said. Did he say that to you?

A He said that in the room to all of us.

Q Well, who else was in the room?

A A Pasquale Dapolta.

Q Go on and answer?

A Different persons, I don't remember who they were.

Q How many persons?

A Four or five, and the brother of this defendant Francesco Sansone was there to.

Q Was Girolamo there?

A He came afterwards.

Q Did you hear the defendant say anything while Girolamo was in the room?

THE INTERPRETER: The defendant you mean?

Q Did you hear the deceased say anything while Girolamo

was in the room?

A When Girolamo was in the room he saw this man with the pistol in his hand and he says "What are you going to do?" and the deceased said "That's none of your business" and he pushed Girolamo one side and he went out.

Q Did not Girolamo tell you to swear to that?

A No, sir.

Q How long was Tonauilo in that room then?

A I didn't pay much attention, but two or three minutes, three or four minutes.

Q Were you the only one in bed there?

A One more.

Q Who was the other man in bed?

A The brother of Francesco Sansone. He did not feel very well that evening.

Q You have been living in White Plains how long?

A Four years.

Q Has anybody been up there to see you since this man was killed?

A No, sir.

Q Who asked you to come down here and testify?

A I was subpoenaed.

Q Do you know the man that subpoenaed you?

A Yes.

Q Who was it?

A Matteo Frattulo.

Q Where did he serve the subpoena on you, up there?

A Yes, sir.

Q When he served that subpoena on you didn't you talk to him about this case?

A He told me that the case was going on trial and I should come down as a witness.

Q Did you hear him ask any other man to come down here

and testify?

A No, sir.

Q Didn't he tell you that Girolamo had raised some money, and that your expense would be all paid by Girolamo?

A I know about the money, but he didn't say anything about this.

Q Well, what about the money, what do you know about the money?

A I know that they collected some money.

Q Well, tell us what you know about that?

MR. MELLEEN: What he knows is not material, but if your Honor thinks it is material, it seems to me it is taking up time with rather immaterial things.

THE COURT: Well, that may be an interesting thing to an attorney who is assigned to it, to try it at the expense of the State.

Q Go on?

A I know that they collected some money but that all I know.

Q Well, who collected it?

A I don't know. I live in White Plains. I don't know what they do in New York.

Q Well, You have not talked to Girolamo about the case at all?

A No, sir.

Q Well, did Girolamo have the money?

A I don't know.

Q Did you get any of the money?

THE COURT: I think you have gone for enough on that.

MR. McCORMICK: That is all.

REDIRECT EXAMINATION BY MR. MELLEEN:

Q Now, is it not a fact that you talked to this gentle-

Mr. Sganga about this case, didn't you?

MR. McCORMICK: I object to the question as leading. Let him ask him if he has ever seen this gentleman before.

Q All right. Did you ever seen this gentleman before?

A No, sir.

Q Have you told us anything upon the stand that is not true?

MR. McCORMICK: I object to the question.

THE COURT: Yes, objection sustained.

Q Have you told us all that you saw that took place in that room that evening?

A Yes, sir, surely.

Q Have you told us anything that did not take place that evening?

A No, sir.

MR. McCORMICK: One moment.

THE COURT: We ought not to go too far into collateral here.

MR. McCORMICK: I justt want, for the purpose of introducing other evidence, for him to identify a man.

THE COURT: On anything that was brought out now?

MR. McCORMICK: It will be brought out on rebuttal.

THE COURT: You have had your cross-examination.

MR. McCORMICK: I know it, but I will have some rebuttal.

RE-CROSS EXAMINATION BY MR. McCORMICK:

Q Did you ever seen that man (indicating a person in the courtroom)

A No.

Q That is all.

GIROLAMO SCIRPOLI, being called and duly sworn as a witness on behalf of the defence, testified through Official Interpreter as follows:

DIRECT EXAMINATION BY MR. MELLEEN:

Q Where do you live?

A 102 Mott Street.

Q How long have you lived there?

A Four months.

Q Where did you live before that?

A Before I was in the country. When I come back from the country I started this boarding house.

Q The boarding house at 102 Mott Street?

A Yes.

Q How long have you been in this country?

A Five years.

Q And what do you do?

THE INTERPRETER: You Honor, I made a mistake, I must admit it. He says "Locanta", that is not a boarding house, but a lodging house and I correct myself.

THE COURT: Yes.

Q What is your occupation besides keeping a lodging house?

A Laborer.

Q You know Sansone the defendant?

A Yes, sir.

Q How long have you known him?

A I have know him from him infancy.

Q You knew him in Italy?

A Yes, sir.

Q He came from the same town?

A Yes, sir.

Q Did you know Tonauilo?

A Yes.

Q How long had you know him?

A From infancy.

Q Did he come from the same town?

A Yes.

Q You knew Tonauilo in this country, too?

A Yes.

Q What was his disposition?

A He was a bad subject, He would insult everyone.

Q Was he quarrelsome?

A Always.

Q Now, do you remember the day that he was shot?

A Yes, sir.

Q Did you see the occurrence?

A Yes, sir.

Q Were you in the saloon that night before the occurrence in Hester Street?

A Yes, we played "tocto"

Q Now, who first went into the saloon, if you know, that evening?

A I went there first and Tonauilo came after me.

Q Did Sansone come before Tonauilo or afterwards?

A Sansone was there.

Q When Tonauilo came?

A Yes, sir.

Q Now, what time was it that you went to the saloon that night?

A It must be about ten or half past ten.

Q And how late did you stay there?

A Less than half an hour, fifteen minutes or more.

Q Well, how many games of "tacto" did you play that night?

A Three.

Q How many games did Sansone play that night, if you

know?

A I played only one game of tocto. They played two toctos before me, but only three games of tocto were played there.

Q How many games did you see Tonauilo play there?

A One. He played with me.

Q Now, tell us in your own way just what occurred in that saloon from the time you went in there until Tonauilo left, only in the saloon?

A We had a game of tocto. After that game of tocto Sansone with another one says they don't wantt to play any more. Tonauilo says to Sansone "Why don't you want to play any more?" He said "Because I have not got any money".

Well, Sansone says "All right, when you don't way to play" and Sansone got up from his place and went right in front-or Tonauilo got up from his place and went right in front where Sansone was sitting. Then Tonauilo left and he went over to the house because he was lodging at my place. Then Tonauilo left the saloon and went over to the house.

Q Now, what happened then?

A I left right shortly after Tonauilo and go home, and I saw Tonauilo open his valise and get the pistol out. I saw to him "Peppino, I did always like you, now, what are you going to do with that pistol?" He says to me "That is none of your business" and he pushed me (witness illustraing by his own hand pointing at his chest). Then he went out and he placed himself in front of the door of my house. After a while Sansone with Fratuolo and the others

come right in, and the others after they remained there a little while says "Let us go out and have a cup of coffee" and we all started to go out. Then we started to go towards Canal Street and when we got near Canal Street, Peppino says "I don't want any coffee"-- angry--"I want to go back". I says "Well, I don't want any coffee". Well, I says "Let us to home".

Then we all started to go back.

BY THE EIGHTH JUROR:

Q Whom do you mean "We all left the lodging house"? Who all were in the party?

A Barratieri, Giuffredo, Giuseppe, and five or six other men, I don't remember their names. About ten persons altogether.

Q Was Tonauilo along with them?

A Yes.

Q And Sansone?

A Yes, sir.

BY MR. MELLEN:

Q Now, go on and tell us what happened down there near Canal Street, that you saw?

A Then when we walked back, we walked about 40 feet and Tonauilo struck, Sansone right in the face and Sansone says, "Tonauilo, why do you do that, I don't want to ruin myself" and Tonauilo says "For the blood of the Blessed Virgin", he says, "This is your last moment" and he pulled a pistol.

BY MR. MELLEN:

Q Last month or last moment?

A Last moment, Tonauilo says "For the blood of the Blessed Virgin, this is your last

moment" and pulled out a pistol and then Sansone was quicker than Tonauilo and pulled out a pistol and fired at him.

Q Did Sansone or Tonauilo say those words about the Blessed Virgin and this being his last moment before or after he pulled his revolver?

THE COURT: (Addressing the interpreter) Let him answer that last question. When you get to that last question, when you say "Before he drew it, or after he drew it, go slowly and stop between them, and then he may see the important of it.

A He had his pistol out already when he said those words.

Q Now, did Sansone pull his revolver before or after Tonauilo pulled his revolver?

A After that he pulled his pistol, Sansone had his pistol like pocket, trousers pocket) and he fired it.

Q Which hand did Sansone use when he pulled his revolver?

A In the right hand.

Q Now, did you see the revolver in Tonauilo's hand plainly before you saw Sansone pull his revolver?

MR. McCORMICK: I object to that. He called for yes and he is practically putting the words in the witness's mouth.

MR. MELLEEN: Well, if all witnesses were absolutely

intelligent, I suppose that any question that even suggested leading would be improper, but we have to take witnesses, especially in the case of these men, as we find them, and as God gave them intelligence.

THE COURT: Well, perhaps you had better ask which revolver he saw first.

MR. MELLE: Very well, your Honor.

Q Which revolver did you see first that night?

A The white one.

Q Was it a revolver like this (showing Defendant's Exhibit A)

A That is the pistol of Tonauilo.

Q You recognize that as Tonauilo's pistol?

A Yes, I saw this pistol home lots of times, and I saw this pistol in the hands of Tonauilo lots of times over at the house.

Q Is this the pistol that Tonauilo took out of the house that night as you have discribed?

A Yes, sir.

Q And when he took the revolver out of the valise and put it in his pocket, did or did you not follow him out of the room?

A No. He went out and I remained, and then when all the rest of the countrymen of ours came in, we went out all together.

Q Now, how long after he left the room was it that you left the room?

A About a couple of minutes.

Q And how long after he went out of the room with this

revolver in his pocket, as you have described, did the shooting take place?

A Not even fifteen minutes.

Q And are you prepared to swear, or do you swear that the revolver he took out of the bag was the revolver that you saw in his hand that night out in the street?

A Why, certainly, sure, in his hand.

Q That is all.

CROSS EXAMINATION BY MR. McCORMICK:

Q Sansone is related to you, isn't he?

A No, sir.

Q Isn't he a kinsman of yours?

A They all call me uncle because I am an old man, but I am not related to him at all. His name is Sansone and my name is Scirpoli.

Q How long have you known Sansone?

A From his infancy.

Q What floor, or you have a boarding house at 102 Mott Street, have you? You did have one on the 5th of March?

A Yes, sir.

Q And that boarding house was on the ground floor?

A Yes, the ground floor.

Q That is on the same level with the street?

A Yes.

Q And how many rooms did you have?

A Four rooms, two on each side.

Q How many men lived in those four rooms with you at that time?

A Eight on one side and nine on the other side.

Q When Tonauilo came in to get the revolver, he came into

the same room in which you were, didn't he?

A Yes, where I did live.

Q Who else was in that room at that time at that time?

A Three or four persons. There was the brother of this defendant, Francesco Perla, Matteo Totaro, and Pasquale--I don't know his second name--Dapolta.

Q What was the first thing that Tonauilo did when he came into the room?

A I got there after Tonauilo.

Q What was Tonauilo doing when you reached the room?

A He was near the valise. He opened the valise and he picked the pistol and he put it in his pocket.

Q Where was the valise?

A In the closet.

Q What color was the valise?

A Red.

Q Now, what was the first thing that Tonauilo said when he came into the room?

A I was not there when he first got in the room. I arrived there after Tonauilo. I arrived there a minute later.

Q What was the first thing you heard him say in that room that night?

A When I arrived in the room, Tonauilo was there in the act of picking the pistol from the satchel and putting it in his pocket. I said to him "Peppino, what do you want to do with this pistol tonight?" He says to me "That is none of your business" and he pushed me away and I said to him "Peppino, you know that I did always like you, what do you do that for?"

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Q Did you ever see this gentleman before (indicating)

A Yes, sir.

Q Do you know who he is?

A He is the one that examined me.

MR. McCORMICK: Indicating Assistance District Attorney Stickney.

Q Did you make a statement to him?

A Yes.

Q And did you sign your name to the statement?

A Yes, I make a cross, yes.

Q Is that it? (indicating)

A Yes.

Q You signed this?

A I made two crosses.

MR. McCORMICK: I offer it in evidence.

MR. MELLEEN: I object to it. We have the witness here upon the stand.

THE COURT: You may examine in relation to it at present. There is not enough foundation laid for it yet.

Q Did he ask you this question, I mean Mr. Stickney, this gentleman here: "What time did Sansone come to your apartment at 102 Mott Street"

THE COURT: Mr. Mellen, you may find out how these questions were asked and in what language, by the gentleman named, or through an interpreter, and how, before it goes on.

BY MR. MELLEEN:

Q Do you remember when this gentleman asked questions of you?

A Yes, sir.

Q When was it?

A I don't know if it was the 6th or 7th or March.

Q Where?

A In the prison, the first time it was in the prison.

Q At that time you were under arrest, were you?

A Yes, sir.

Q Did he ask you the questions himself in Italian or in English?

A There was an interpreter there, a policeman.

Q Do you know the policeman's name?

A Yes, I know him.

Q What was his name?

A I know him by sight, but I don't know his name.

MR. MELLEN: Will you call Officer Guarniari here, please?

Q Is that the officer who asked you the questions? (indicating)

A Yes.

MR. MELLEN: Indicating Officer Guarniari, one of the witnesses of this case for the People.

THE COURT: Yes, and one who assisted in making the arrest of the defendant.

MR. MELLEN: Who assisted in making the arrest.

Q It was that officer whom you have just identified, who was one of those who arrest you after this shooting, was it not?

A Yes.

Q Now, did you read, or were these question and answers on this paper that has been shown to you read over to you and translated to you before you signed the paper?

A They did not say nothing.

Q Do you know or not whether these questions and answers down here are the ones that were put to you and that you answered that day?

A Yes, those are the questions and the answers.

Q Were they read over and translated to you before you signed the paper?

A When I come out on bail the policeman showed to me this paper and he says "Did you say this, did you say this, did you say this other thing?" and I says "Yes" and then I made the cross.

Q Now, at the time you were examined there, you were in jail under arrest?

A Yes.

Q And you were asked questions by one of the men who placed you under arrest?

A Yes.

Q Were you afraid?

MR. McCORMICK: I object to this question as leading.

A I was in the prison.

MR. MELLE: Now, you can go on. I object. Well, I will wait.

THE COURT: He has not yet answered the question whether of not that record and that book of question was translated from English into Italian and asked him be-

before he signed it. He has not yet answered that. That must be answered before I will allow him to answer any question about it.

BY MR. MELLEEN:

Q Were the words in this paper, if you know, read out and translated to you before you signed your name to that paper?

A Yes, when I come out of the prison, then they made me sign, when I come out on bail, but before, no.

BY MR. McCORMICK:

Q It was on the 15th of March, wasn't it, or ten days later.

MR. MELLEEN:

Q Now, who read those to you and translated them to you at that time?

A The policeman.

Q The same one who acted as interpreter?

A Yes, sir.

BY MR. McCORMICK:

Q You signed this ten days after you got out of jail, didn't you?

A Yes, when I come out of jail.

Q You were not in jail when you signed this?

A No, sir.

Q You signed this in this building, didn't you?

A Yes, sir, upstairs.

MR. McCORMICK: Now, I ask to have that previous question of mine repeated.

(Question repeated by the stenographer as follows:

Did he ask you this question, I mean Mr. Stickney, this gentleman here, "What time did Sansone come to your apartment at 102 Mott Street?")

MR. McCORMICK: Well, I will give the question and answer.

BY MR. McCORMICK:

Q (Reading) "What time did Sansone come to your apartment at 102 Mott Street"-

THE COURT: I am not going to allow that in.

MR. McCORMICK: Well, I am asking a question--

THE COURT: You have got a man who does not understand English, signing a statement in English.

MR. McCORMICK: I will not ask him that.

THE COURT: Well, if you are asking him anything preliminary to that--

MR. McCORMICK: Well, I give that up. I will ask something else.

MR. MELLE: Just let me ask one question.

BY MR. MELLE:

Q Do you speak the same Italian as Sansone, the same dialect as Sansone?

A The same, we come from the same town,

BY MR. McCORMICK:

Q In the presence of Mr. Stickney, this gentleman, did officer Guarniari ask you in Italian "What time did Sansone come to your apartment at 102 Mott Street?" and did you answer,

this answer"Tonauilo came in to get his revolver and then Sansone came in a little later"

MR. MELLEEN: Well, I do not object to that.

A Yes, Tonauilo first and Sansone after.

MR. McCORMICK: Tonauilo came in to get his revolver and then Sansone came in a little after.

Q Did he ask you this question: "Did you see Tonauilo take a revolver?"

A Yes, sir. It was in the valise and he went and got it out of the valise?"

A Yes. You mean Tanauilo, not sansone.

Q Were you asked "What did he do with it?" and did you answer "He put it in his pocket and I asked him 'what are you going to do with that revolver'"

A Yes that's what I said and I say that now.

Q And were you asked this question "Q What did he say?" and did you give this answer "He did not say nothing, he went out"

A He says "That is none of your business" and he pushed me and he went outside.

MR. McCORMICK: I move to strike out the answer as not being responsive. The question is whether he was asked that question and whether he gave that answer, yes or no.

MR. MELLEEN: I object to the answer being stricken out. You have to taken into consideration the witness.

THE COURT: Let him answer if he knows that, but there is a question whether or not the translator has translated a solecism from another language, "He did not say nothing", I do not believe that the same ungrammatical expression exists in his own language as an idiom, from what I know or it, I know that it does not; I know that is a "Yankeeism".

MR. McCORMICK: Well, some of these Italians acquire "Yankeeisms".

THE COURT: I know that and it is a good thing they do sometimes, and the sooner they acquire more of them the better.

MR. McCORMICK: I mean the interpreters.

THE COURT: I do not think, though, there is anything of importance in the objection which nobody but the Court raises. You may ask the question.

BY MR. McCORMICK:

Q Did you say to this Italian police officer in the presence of Mr Stickney, "We met Tonaiulo outside the door and we all went to get coffee"?

A Yes, sir.

Q And did you also say, "While going down Tonaiulo and Sansone walked together and began to argue about something"?

A Yes, I said they were walking together but Tonaiulo remained a little behind when we went near Canal Street.

Q Well, is that true, did Tonaiulo and Sansone walk down

Mott Street side by side?

THE COURT: Yes or no to that?

A No, sir, they were not side by side. Tonaiulo was ahead of him.

Q Were they talking to each other?

A No, sir.

Q Did Tonaiulo walk a little ahead of Sansone, or away from 102 down to the place where the shooting happened?

A Tonaiulo was ahead of us, about twenty feet all the time, and then suddenly he come back and says, "The blood of the Blessed Virgin, I must go behind of every one of you".

BY THE COURT:

Q I must what?

A "Go behind every one of you".

BY MR McCORMICK:

Q Didn't you say to Officer Guarniari, in the presence of this gentleman, Mr Stickney, that was going down there (Question withdrawn).

Q Didn't you say that Sansone had been arguing while they were walking along Mott Street, that he was arguing with Tonaiulo?

A No. They was not talking together.

Q Well, did they ask you this question, "What were they arguing about?" And did you make this reply, "The only thing I knew, Tonaiulo said to Sansone, "Don't put your hand in your pocket"?

A No, sir, Tonaiulo struck Sansone with his fist in his face, and he says, "Your days now are over", and put the hands in his pocket and drew the pistol. Sansone was quicker,

than Tonaiulo and he shot him.

Q Now, before, just before Tonaiulo struck Sansone with his fist, what was said?

A Sansone says, "Be careful, Pettino, be careful, Pettino, do not ruin us, do not let us be ruined", and Tonaiulo says, "Your days are over now".

Q Were they walking together or were they standing still on the sidewalk when they had that conversation?

A They were standing then.

Q How long were Tonaiulo and Sansone talking to each other before Tonaiulo struck him with his fist?

A Nothing, no time at all. When this Tonaiulo struck Sansone, Sansone says, "Pettino, look out, do not let us get ruined", and Tonaiulo pulled the pistol out of his pocket. Sansone had his hands in his pockets already and he was quicker than the other one.

Q Were you asked this question: "Do you know whether Tonaiulo had a gun in his hand at the time of the shooting? Did you give this answer: "He had his hands at it to try to get it out, but he had not time to get it out before he got shot"?

A No, I said that he pulled his pistol already.

Q You did not say that?

A He did not have time to fire it, but I did not say that he did not have time to pull it out.

BY THE TWELFTH JUROR:

Q Did you understand the dialect of the policeman who was speaking to you, the dialect?

A Yes, I understood what he says to me, but I didn't understand what he was talking to

the other man in English, because I don't speak English.

Q Did he speak the same dialect as you?

A Yes, he speaks the same way as I do, but when he was telling the other one that put that in writing, I did not know what they were writing.

BY MR McCORMICK:

Q Well, four of you were arrested there that night right after the shooting, is that right?

A Yes, four.

Q And you were taken or you spent the night following that in jail, didn't you?

A Yes, sir.

Q And you were in a cell?

A Yes, sir.

Q Was anybody else in the cell with you?

A I was alone.

Q Where was Sansone?

A Well, we were there in the same prison, but I don't know where he was.

Q Did you talk to him during the night?

A No, sir.

Q Did you talk to him in the morning?

A No, sir.

Q Did you say to him, or did he say to you, did he say to you, "Uncle Giralomo, I want you to say that Tonaiulo was always making trouble for me, that Tonaiulo had a revolver to shoot me, so that I had to defend myself; also say that Tonaiulo left the saloon to go home to get the revolver"?

MR MELLE: I object. My friend has labored extensively and exceedingly hard about this conversation, and I sympathize with him in his labor, but this witness has

already said plainly and distinctly, that he did not talk with him in there, that he did not talk with him in there, that they were in different cells, and now, why ask him when he said he did not talk, why take up time asking if he said this?

MR McCORMICK: Well, it will not take up time if he says no.

THE COURT: Let him answer the question.

A No, sir.

Q Well, now, just tell us exactly how this shooting happened?

A When we decided do not take the coffee any more, we started to return home, and when we got about forty feet from Canal Street, this Tonaiulo struck Sansone with his first, and says to him, "Your days are over now, by the blood of the Blessed Virgin", and he pulled his pistol; before he did this, this fellow Sansone was quicker, and instead for him to die, the other one die.

Q Well, if Tonaiulo was walking ahead of Sansone, how could he hit him?

A As we were walking to go home, this Tonaiulo turned back and without saying a word, struck him, and after he struck him he said those words that I said before.

Q Well, Tonaiulo had been with you from the time you left 102 Mott Street, hadn't he?

A Yes, always.

Q And who else was in the crowd?

A Seven or eight persons.

Q You raised some money for the defense of Sansone,

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didn't you?

A Yes, all the country people put ten cents, twenty-five cents, some fifty cents.

Q Did you go to Boston to get any money, or to Worcester, Massachusetts?

A Yes, sir, no, I was at Worcester, Massachusetts.

Q You did not go to Boston?

A No. Worcester, Massachusetts, no Boston.

Q What did you do with all this money?

A I Kept it myself, because I lost so many day, I lost days being as a witness, and I lost so many days, I lost days being as witness as a witness, and I lost my job.

Q Well, now, you got nearly a thousand dollars that way, didn't you?

A \$15.

Q Didn't you deposit nearly a thousand dollars in an Italian bank lately, that you raised in that way?

MR MELLE: I object.

THE COURT: Objection sustained.

RE- DIRECT EXAMINATION BY MR. MELLE:

Q Where is Sansone's brother, if you know?

MR McCORMICK: I object.

A He is in Boston, Massachusetts.

Q You have known Sansone from infancy?

A Yes.

Q What is his disposition?

MR McCORMICK: I object to that.

THE COURT: Yes, objection sustained.

Q Do you know his general reputation in the community for quarrelsomeness or peaceableness?

THE COURT: You mean the defendant?

MR MELLEEN: The defendant.

A He is like a baby, every one likes him, because he did harm to no one.

MR McCORMICK: I move to strike that out as not responsive. The question is what was the reputation.

THE COURT: Yes, strike it out.

Q Well, tell us that what was his reputation in the community for quarrelsomeness?

AbNo, sir, Sansone was always of good conduct.

Q Did you ever hear Tonaiulo threaten Sansone before this night?

A About twenty-four or twenty-five days previous to this murder, Tonaiulo and Sansone engaged in a game of cards, and Tonaiulo was dealing some cards from the game, and Sansone says to him, he says, "You know that I"--

MR McCORMICK: I object. It is not in answer to any question here.

THE COURT: Repeat the question.

(Question repeated by the stenographer).

BY THE COURT:

Q Answer yes or no.

A I never heard him.

BY MR MELLEEN:

Q Did you ever hear Tonaiulo Threaten Sansone in any way?

MR McCORMICK: I object to that as leading, your

Honor

THE COURT: I will allow the question.

A Yes, sir.

Q What did he say and when was it?

A Yes, it was that night that I mentaioned before, in my house in Mott Street, resulting from a game of cards, this Tonaiulo says to this Sansone, "Don't you know who I am?" This Sansone says, "Who are you anyway?" And Tonaiulo says, "I will show you who I am", and pulled a a pistol out of his pocket, and we, there were about fourteen or fifteen there, we jumped on top of this Tonaiulo and prevented an assault.

Q Did Sansone stay in the house that night?

A No, sir, I gave him a dollar and told him to go and sleep in a hotel.

RE-CROSS EXAMINATION BY MR McCORMICK:

Q Now, where did this happen?

A In my house.

Q How many men were there?

A Sixteen or seventeen persons.

Q Do you know who they were?

A There is no one of those men here. Some went to Buffalo, some went to West Virginia, some went to Canada, none are here now.

Q How long ago was it?

A Twenty-four or twenty-five days previous to this murder.

Q And there were seventeen men in the room that night and now all those men have left New York except you, is that

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right?

A Yes, only me.

Q That's all.

THE COURT: Gentlemen, you are admonished that you are not to discuss any matters connected with this trial, nor to form nor express any opinion on it until it is finally submitted to you.

Half-past ten Monday morning.

The Court thereupon adjourned the further trial of the case until Monday, May 23, 1910, at 10:30 o'clock A.M.

New York, May 23rd, 1910.

Trial resumed.

THOMAS TAPALO, called and duly sworn as a witness on behalf of the defence, testified as follows:

THE WITNESS: I live at 189 Hester Street.

DIRECT EXAMINATION BY MR. MELLEEN:

Q Mr. Tapalo, do you speak English?

A A little bit.

Q You know the defendant Sansone?

A Yes, sir.

Q How long have you know him?

A About a couple of years.

Q What is your occupation?

A Well--

Q Speak up so the last gentleman can hear plainly what you say?

A Well, I see this fellow in my place, 189 Hester Street. I got a business there, a saloon and restaurant, and I see that fellow so many times, he has been in my place and I see he is a good fellow.

MR McCORMICK: I object to this.

Q Never mind that. Do you know the defendant Sansone's reputation and character?

A Yes, sir.

Q What is it?

A He is good man.

Q Is he quarrelsome or not, has he a quarrelsome dis-position, does he fight?

A No, no I don't see him no fighting at all.

Q Did you also know the deceased, Tonauilo?

A Yes, sir.

Q How long did you know him?

A Well, about a year.

Q Did you know his character and reputation?

MR McCORMICK: Objected as incompetent, immaterial and irrelevant.

MR. MELLEEN: Where there is a plea of self defence, the Court has held it over and over again. It is a circumstance for the jury to take. It is perfectly competent testimony where there is a defence of self defence.

THE COURT: I will allow it.

Q (Question repeated)

A Yes, sir.

Q what was it?

A Well, that fellow has got sometimes--

MR McCORMICK: No, just one word, good or bad.

Q Yes, just one word, good or bad?

a He is a bad fellow.

MR. MELLEEN: That is all.

MR McCORMICK: That is all.

GIUSEPPE GIUFFRIDA, being called and duly sworn as a witness on behalf of the defence, testified through official Interpreter Villamena, as follows:

THE WITNESS: I live at 104 Mott Street.

DIRECT EXAMINATION BY MR. MELLEEN:

Q How long have you been in this country?

A Seven years.

Q Do you know Sansone the defendant?

A Yes, sir.

Q How long have you know him?

A I know him for four

years in this country, and I know him from Italy, too.

Q Did you come from the same town?

A Yes, sir.

Q Did you know the deceased Tonauilo?

A No, sir, I didn't know him in Italy.

Q Did you know him in this country?

A Yes, about four or five months time, that he was in New York.

Q This year?

A Yes, sir.

Q And do you remember the 5th day or March, this year?

A Yes, sir.

Q Where were you on the evening of that day?

A I was in the Saloon or Tomasino.

Q Where?

A 189 Hester Street.

Q Who else was in the saloon that night when you were there?

A sixteen or seventeen persons was there, and they asked me if I wanted to play "tocto".

Q Was Sansone there?

A Yes, sir.

Q Was Tonauilo there?

A Yes, sir.

Q Did you see Tonauilo come into the saloon?

A No, sir.

Q Did you see Sansone come in?

A No, sir.

Q What time was it that you went into the saloon?

A About half past nine or ten o'clock.

Q Was Sansone and Taonauilo there when you came in?

A Yes, I saw they were there.

Q Were they playing when you came in?

A No, they come in for the first game of "tocto".

Q How many games of tocto did they play?

A Three.

Q Did you here Tonauilo say anything to Tonauilo in that saloon that night?

A Yes, I know this, that after the third game Sansone says he don't want to play any more. Tonauilo says to him "Why don't you want to play any more?" and Sansone says "You don't know my circumstances". Then Tonauilo got up and stood in front of Sansone and says "When you don't want to play get out of here."

Q What happened, if anything, after that that you saw in tha saloon?

A Well, they exchanged a few words between them. and then we went between them and nothing happened there.

Q Well, who left the saloon first, if anybody?

A I did not see it.

Q Did you see Tonauilo go out?

A I didn't pay any attention to it. I know that they went one after another.

Q Do you know whether Toauilo or Sansone went out first?

A No, sir, I didn't pay any attention.

Q Well, now, when--and you went out yourself, did you?

A Yes, I went out with Iluzzo.

Q About what time was it you all went out of the saloon?

A I couldn't tell you exactly the time. I did not have a watch with me that night. It must be about half past eleven--half past ten.

Q Now, where did you go when you left the saloon?

A I and Iluzzo, we were going home, we went inside of the house

of Giralomo Scirpoli.

Q Now, tell us, if you please, in your own way as briefly as possible, just what you saw or heard from that moment, that night?

A As soon as we got in there I and Iluzzo says to the other one "Let's go and have some coffee. When we got to the corner of Canal Street, Tonauilo says "I don't want any coffee" and he started to go back with a few of his friends. They went in an opposite direction from us, and we started to go down Canal Street, me and Iluzzo, because we wanted to go some place else, and when we were about ten or fifteen paces from them, we heard two shots. I saw Tonauilo then down on the ground and Sansone was in the hands of four or five men. I don't know who they were.

Q You did not see the actual shooting, then?

A No, sir, we could not see them, because our backs were turned to them.

Q You were nearer Canal Street than Tonauilo?

A Yes, we were near Canal Street and they were going back the same way that they came.

Q Who were you walking with?

A With Iluzzo.

Q Did you see Tonauilo and Sansone after you left the house, until you heard the shots?

A Why, yes, sir, we went out altogether.

Q Now, did you see anything in Tonauilo's hands there on the sidewalk?

A No, sir.

Q I did not ask you what your business is, what is it?

A Carpenter.

Q Where do you work?

A In New York, wherever I could find a job.

Q You were working at this time, you were at work?

A No, sir.

Q Did you hear Tonauilo or Sansone say anything to each other out on the sidewalk?

A No, sir.

CROSS EXAMINATION BY MR McCORMICK:

Q When you came out of 102 Mott Street and started to walk towards Canal Street, with whom were you walking?

A With Iluzzo.

Q Is that the man they called Barattieri?

A Yes.

MR McCORMICK: It is conceded that the man referred to, Iluzzo, is the same man called by the prosecution, and he testified Friday.

Q Now, walking right behind you from 102 Mott Street, down towards Canal Street came Sansone and the deceased, didn't they?

A They were a group of people there. They were going together. I could not say that they were walking together.

Q Do you remember making a statement in this building a short time after the killing of Tonauilo?

A Yes, sir.

Q Did you make that statement to the Italian detective named Guarniari?

A Yes, sir.

Q And was that statement typewritten, and did you sign it?

A The first time I did not sign it. The second time yes.

Q I show you a document and ask you whether you signed that, did you sign that?

A Yes, sir.

Q Before you signed it did the detective read it over to you?

A Yes, sir.

Q Now, I will refresh your memory. Didn't you say to the detective on that occasion "Tonauilo and Sansone were both with us at the time, but I could not hear what they were talking about, as Iluzzo and I were too much in the front. Sansone and Tonauilo were in front of us first, but then they stopped and we went in front of them. I was walking with Iluzzo when Tonauilo said he didn't want to go for any coffee. I said to Iluzzo let us get away from here, we are married men, it does not look good for us, as we have families to support."

A Yes, I said this. I remember that I said this, that when I saw Tonauilo--

Q Now, the question is whether you said that or did not say it?

A Not altogether. May be the man that spoke the Italian for me, he could not interpret well.

Q Well, what did you say then?

A I said when I saw Tonauilo come back and say that he didn't want any coffee, then I said to Iluzzo "Let's go home, let us go about our business, I don't want to be mixed up with these people at all"

and we went away, that's what I said.

Q Will, why didn't you want to be mixed up with those people?

A I didn't want to go, because they told me that this Tonauilo was a bad fellow, and because they told too that they were going to fight.

Q Were these two men, Tonauilo and Sansone, talking to each other while they were walking from 102 Mott Street down towards Canal?

A I didn't pay any attention. I was going with Iluzzo and those other fellows were going in a group of nine and ten. I didn't pay any attention if they were talking or not.

Q Well, were Tonaiulo and Sansone walking together?

A They were altogether. Sometimes in front, sometimes in the rear.

Q Well, do you know whether Sansone talked to Tonauilo at the time they left No. 102 until the shooting?

A No, sir.

Q That's all.

MATTEO FRATTAROLO, called and duly sworn as a witness on behalf of the defence, testified through Official Interpreter Villamena, as follows:

THE WITNESS: I live at 340 East 112th Street.

DIRECT EXAMINATION BY MR. MELLEN:

Q Do you speak English?

A You speak a little?

A No.

Q What is your business?

A Laborer.

Q How long have you been in this country?

A Five years.

Q Did you know the deceased, Tonauilo?

A Yes, sir.

Q Is he any relation of yours?

A Yes, sir.

Q What relation?

A A cousin.

Q Did you come from the same town in Italy?

A Yes, sir.

Q Did you Sansone?

A Yes, sir.

Q How long have you know him?

A Five years or more.

Q Where?

A Here in America. I knew him in Italy, but he was little boy.

Q Where were you on the night on March 5th of this year?

A Yes, I worked that day in Station Island and I come back to New York about 3 o'clock and I went in that saloon there in Hester Street.

Q What did you do in the saloon there in Hester Street?

A Well, when I got in the saloon there I went in there to see some countrymen of mine that were and I found there about fifteen or sixteen. I found this Giuseppe Tonaiulo and Francesco Sansone, and Michele Perla and Giuseppe Giuffrida, and other ones, I don't remember the names.

Q Was this in the afternoon or evening of that day?

A It was three o'clock in the afternoon.

Q Did you see them in the saloon that evening?

A Yes, sir. We ate and I paid for five or six persons. I paid for Sansone, for Tonauilo and for Scirpoli and Giuffrida and others.

Q What did you do in the evening in the saloon there?

A Then, after we got through eating we went outside, I, Sansone and a few more, and three or four hours after we went back in the saloon.

Q Now, what time was it when you went back into the saloon with Sansone?

A It must be about half past seven or eight o'clock.

Q And who was in the saloon at that time when you entered?

A I found there this Peppino Tonauilo and other countrymen of mine.

Q What did you do, if anything?

A We were asked if we wanted to play a game of "tocto" and I says all right. Then Sansone told me that he had no money and I said to Sansone, "Go ahead and play and I pay for you." We played firstt and the second and the third game. Then Tonauilo says to this Sansone "You have to play once more" and Sansone says "No, I don't want to play". Then Tonaiulo says to Sansone "What is the reason that you refuse to play?" and Sansone says "Because I have not go any money". Then Tonauilo says to him " If you don't want to play any more, I occupy your place, your seat" and he went and stood right in front of Sansone. Then Sansone says to Tonauilo "could you go and sit some other place, besides covering my face like this" and because of the countrymen that were there, that they went between them, nothing happened.

Q what happened after that? Tell us all that you saw or heard with respect to Tonauilo or Samsone that night?

A After a little while, Tonauilo went out of the saloon and I remained there.

Q Well now, go on and tell us from there what happened after that until the end.

MR. McCORMICK: I object to the question, what happened. It has to relate to this matter. It has to relate to the deceased.

MR. MELLEEN: I withdraw the question.

MR. McCORMICK: For instance, I object to any conversation between others not in the presence of these two men.

MR. MELLEEN: Yes, very well.

Q Now, go on from where you just stopped and tell us all that you saw with respect to Sansone and Tonauilo, saw them doing or any of them doing, anyone of them doing that night, and what you heard Sansone or Tonauilo say to each other, or what you heard anybody else say to anybody else in Tonaiulo's and Sansone's presence and hearing that night?

A Tonaiulo went out first, and after Tonauilo Giralomo Scirpoli went right after him. About 10 or 12 minutes, eight, nine or ten of us we left the saloon and we went to 102 Mott Street, in front of the door there

I found Tonauilo. Then Barattieri suggested that we go out and take some coffee and I says "All right, let's go" and about nine or ten persons of us started to go get that coffee.

Then, when I got at the corner of Mott and Canal Street, this Barattieri says "Let's go down here, here is a place where we could get some cofffee". I says to Barattieri "We don't make any difference in the place, let us go" and then Tonauilo says "No coffee, I don't want any coffee".

Then I says to him "When you don't want any coffee, let all of us go home, because I have to go to Staten Island and it is quite late".

When we walked about seven or seven or eight paces I heard this Tonauilo say to Sansone "You are always cunning about me, don't put the hands in your pocket, otherwise your days are over".

BY THE COURT:

Q Who said that?

A Tonauilo to Sansone, and when I heard these words I started to turn, and in the meantime two shots were fired already. I saw only the second shot, the flash of the second shot, and I saw that he (indicating the defendant) was the one that fired the shots.

Q How near were you to the deceased when you heard the second shot?

A When I turned around and I saw him, he was about six or seven feet far from me.

Q Did you see, did you notice Tonauilo immediately be-

fore you heard the shot?

A I didn't not see it, because I was ahead of them. My back was turned to them but I heard these words that I just said before.

Q Did you or did you not see anything in Tonauilo's hand at that time or about that time?

A After a few minutes we were all arrested and I was arrested with the other ones. They took me before the deceased there and I saw right along side of his leg something, I couldn't exactly state what it was, but something with a black handle. I don't remember well, because I was intoxicated that night.

CROSS EXAMINATION BY MR. McCORMICK:

Q Well, what did it look like?

A It was covered. I was a little drunk. I was between the policemen. I was shaking from fright.

Q Well, what kind of looking thing was this that you speak of as being on the sidewalk?

A What little part of that I saw that was outside, looked like to me as if it was a pistol, a revolving pistol.

Q Did you make a statement in this building about a month ago?

A Yes, sir.

Q Can you read English?

A No, sir.

Q Did you sign this statement with your name?

A I don't remember. I think, yes.

Q Did you swear that it was a true statement?

A Yes,

Q I now show you a document and ask you whether this is the statement that you signed?

A Yes, sir.

Q Was that statement read over to you by the Italian Detective?

A Yes, he read it in Italian.

Q In the Italian language?

A Yes, he read it in Italian. He read first in English and then he would tell me in Italian.

Q And what he told you, you swore was true, didn't you?

A What I say now I said before.

Q How many people do you now say walked from 102 Mott Street down towards Canal?

A From eight to nine, no more than that.

Q Now, you were in front of Sansone and Tonauilo when you heard the shots, were you not?

A Yes, sir.

Q How far in front of them were you?

A Six or seven feet.

Q How far in front of them were you when you first left 102 Mott Street?

A Near the same distance, seven, eight, nine or ten feet, because as we come out of the house we started to go on the sidewalk, one after another.

Q And while you were walking down Mott Street towards Canal Street, did you hear Sansone and Tonauilo talking to each other?

A Yes, he was right alongside of Tonauilo, but they did not say nothing.

Q Did you say, didn't you swear in this statement "I seen

Francesco Sansone fire the shots and I seen Giuseppe Tonauilo fall to the ground"?

A The second shot I saw.

Q Didn't you, or were you not asked this question and didn't you make the reply here:

"Q Did you see Fracesco Sansone fire the shote?"

A Then I saw him fire the shorts."

A No, I said the first shot I didn't know who did fire, the first shot. but the second shot I saw Sansone fire.

Q How, far were you away from Sansone when he fired these shots?

A Six or seven feet.

Q Where was Sansone standing when he fired the first shot?

A The first shot I did not see.

Q Where was he standing when you saw him first?

A He was right at the corner of the curb, of the sidewalk, and Tunauilo was a few feet away from him.

Q Did Giuseppe Tonauilo step backwards several steps before he fell?

A No, sir. As he was standing he fell.

Q Did he fall after the second shot or before it?

A After the second shot.

Q Well, wasn't he staggering backward when the second shot was fired?

A Why, certainly, he didn't get a glass of wine at that time. It was lead that he got.

Q Well, answer the question? (Question repeated.)

A Yes.

Q How far back did he stagger?

A About a pace, that's all. Just as I heard the shot I ran over to them, but before

I got near the deceased I was arrested.

Q Were you not on the occasion of your being examined in this building, the time that you signed this affidavit, didn't you say or was not this question asked you? "Who was walking with Sansone?" and didn't you give the following reply: "Sansone and Tonauilo were walking together and they were taking. They were just after having a little dispute in the saloon at 189 Hester Street about some beer. We were in the saloon at 189 Hester Street playing tocco. This Francesco Sansone did not have any money. So I told Sansone to play and if he lost I would pay for him, and sansone lost three games and I paid for him and then he had no more money and he did not want to rely on me any more, so he quit. Giuseppe Tonauilo asked him to play another game and he said no, he would not and then he stopped. When Francesco Sansone said he didn't want to play any more than Giuseppe Tonauilo said 'Well, I will take your place'. "Sansone was standing up by a chair and Tonauilo went right in front of him, of Sansone, and Sansone said to Tonauilo 'What am I, an animal that you got to stand in front of me?'. "Then Giuseppe Tonauilo left and went out of the saloon"?

A Yes, sir.

Q Is that right, is that true?

A Yes, that's what I said from the beginning, that Tonauilo went in front of Sansone.

Q And Sansone said--you left out that Sansone said

"What am I, an animal?"

MR. McCORMICK: Well, he now admits Sansone states that.

Q Didn't you say upon that occasion the following: "When we got to 102 Mott Street Tonauilo and Sansone were both afraid of each other and were watching each other and were arguing, and when Barattieri says 'What's the use of fighting, let us go and get a cup of coffee' then we all started to go and get a cup of coffee and we walked south on Mott Street to Canal Street, and when we got to where the shooting took place, the shots were fired".

MR. MELLEEN: I think, your Honor, there were a number of question asked. I think questions should be put one by one. Is this one whole sentence?

MR. McCORMICK: This is one sentence. I am asking him whether he did not make the following statement and then I read it.

THE COURT: Well, you had better ask him in as direct and brief a manner as possible, I should think.

MR. McCORMICK: Well, I could divide it up, but that is, I think, all one sentence. There are two sentences there really, but they are so connected. If you want me to go all over it?

THE COURT: Is that a question and answer?

MR. McCORMICK: Part of it is and this last part

develops into just a statement of the facts.

THE COURT: That is to say, that this man on some occasion were in this building, in the District Attorney's office, had a conversation in Italian with the Italian officer who made the arrest in this case, and that Italian officer then stated the substance of his conversation with this witness to the stenographer, and it was written out in English?

MR. McCORMICK: Yes, sir.

THE COURT: Of course, your method of asking whether or not the statements were previously made, includes the question "were you asked these questions in Italian, and did you make these answer in Italian?"

MR. McCORMICK: Well, I have said that, I think, at the beginning of this line of questioning.

THE COURT: Otherwise, of course, we would have to reply upon the accuracy of a person who is not here. However, you may ask the question "Did you make on any former occasion these statements?" and designate the occasion.

BY MR. McCORMICK:

Q Upon the occasion when you were examined in this building, when you made statement to the Italian detective Guarniari before referred to, did you make the following statement:

"When we got to 102 Mott Street, Tonauilo and Sansone were both afraid of each other and were watching each other and were

arguing, and when Barattieri said 'what's the use of fighting, let us go and get a cup of coffee', then we all started to go and get a cup of coffee and we walked south on Mott Street to Canal Street, and when we got to where the shooting took place the shots were fired".

MR. MELLE: Why not stop there and take the witness's answer?

THE COURT: Yes.

A No, sir.

Q What is the answer?

A No, sir.

Q What is there incorrect in that statement as far as it has been read. Let us find out what is wrong in that, as far as we have gone?

A That is not so, because when we went in the house there, Tonauilo was right in the front of the house there and he did not say a word.

Q Well, go on and read the balance of it?

A No, Barattieri says about the coffee, yes, but not "what is the use of having this fight". Yes, and coming back.

Q Do you deny now that you said on that occasion that Tonauilo and Sansone were both afraid of each other and were watching each other and were arguing?

A I never said that-

THE COURT: I think it is only fair to the witness and the defendant to say, gentlemen of the jury, that the statement concerning which this witness is now being examined are supposed to have been made sometime since

the charge here, by this witness, in Italian to an officer. That officer then translated the alleged statement made by this man into English, and it was typewritten, and now another Italian interpreter is taking that statement out of that translation and putting the questions to this man. I say that to you so that you may have a fair notion of the value, as evidence, of a contradictory statement proved from that sort of transaction.

BY MR. McCORMICK:

Q Were you asked this question and did you give the following reply:

"Q Did you hear any dispute between Sansone and Tonauilo before the shots were fired?

A Sansone was telling Tonauilo that he should not have stepped in front of him in the saloon. They were arguing about that point"

A In the saloon, yes, he said that, but not outside.

Q How long have you known Tonauilo?

A From his infancy.

Q And you say you are related to him?

A Yes, sir.

Q How long have you known Sansone?

A I know Sansone in Italy, too, when he was a child, but I did not have any friendly relations with him. I know him five years in this country.

Q Did you ever know Sansone and Tonauilo to have any other fights?

A No, sir.

Q Where did you live at the time of this shooting?

A Staten Island.

Q That's all.

MICHELE GUERRA, called and duly sworn as a witness
on behalf of the defence, testified through official Interpreter Villamena as follows:

THE WITNESS: I live at 340 East 112th Street.

DIRECT EXAMINATION BY MR. MELLEN:

Q How long have you been in this country?

A Four years.

Q Did you know the deceased, Tonauilo,

A Yes, sir.

Q Any relation of his?

A Yes, sir.

Q What?

A I am related to him on my mother's side.

Q How long did you know Tonauilo?

A From infancy.

Q In Italy and in New York also?

A Yes.

Q Do you know Sansone?

A Yes, sir.

Q How long have you know him?

A Seven or eight years.

Q In Italy and in New York?

A Yes, sir.

Q Now, where were you on the evening of March 5th, about 11 o'clock?

A Mott Street.

Q What part on Mott Street?

A I was near where this killing took place.

Q What were you doing there, how did you happen to go there?

A I was going in the direction of the Bowery to get some room in some hotel to sleep there.

Q Were you living at 102 Mott Street at that time?

A No, sir.

Q Where were you living at that time?

A I was working

in the country and I was only two days in New York.

Q What part of the country were you working?

A Staten Island.

Q Well now, what time on the 5th of March did you come to Manhattan from Staten Island?

A Two days before.

Q Had you see Tonauilo or Sansone that evening before you saw the shooting?

A No, sir.

Q Where were you before that evening?

A I was going around the street, walking.

Q Tell the jury what you saw Tonauilo, or what you saw happen between Tonauilo and Sansone that evening?

A I heard Tonauilo say to Frank, meaning the defendant, "Your days are over now" and I saw Tonauilo strike the defendant with his fist.

Q Go on, what else did you hear or see?

A And after this I saw Tonauilo put the hands in his pocket and pull a pistol out. After that I saw Sansone pull his pistol out and fire two shots at Tonauilo.

Q Is that all you heard or saw before the shooting? Have you told us wholly all you saw or heard between these two before the shooting?

A Yes, sir, all of it.

Q Did you hear Sansone say anything to Tonauilo when Tonauilo said "Now, your days are over"?

A I heard Sansone say "Look here, I don't want to ruin my self, I don't want to quarrel".

Q Now, was that before or after that you heard Sansone say this, was that before or after Tonauilo pulled his pistol?

A I heard first Tonauilo say "Your days are over now". Then Sansone says to Tonauilo "I don't want to ruin myself, I don't want to quarrel". Then Tonauilo struck Sansone with his fist and after that he pulled his pistol out and Sansone was quicker than Tonauilo and he shot him.

Q In what direction were you walking that night when you say this, uptown or downtown?

A I was going in the direction as you would say from 102 Mott Street to Canal Street.

Q Now, in what direction were these others walking that you saw there?

A They were going in front of me, towards me.

Q You had not been with them then that evening at all, had you?

A No, sir.

Q That is the first you saw of them that evening?

A Yes, sir.

Q And how far were you from Tonauilo and Sansone when you say this occurrence took place and you heard these words?

A I was about ten feet away from them, walking towards them, but when I heard this I stopped.

THE COURT: You may cross examine after recess.

Gentlemen, you are admonished that you are not to discuss any matter connected with this trial, or to form or express any opinion upon it until it is finally submitted to you.

Recess until ten minutes after two.

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May 23rd, 1910. 2:10 P.M.

(Trial continued)

MICHELE GUERRA (Resumed the stand.)

CROSS EXAMINATION BY MR. McCORMICK: (Continued) Through Interpreter Villamena.

Q Where do you reside?

A 340 East 112th Street.

Q Where do you reside?

A 340 East 112th Street.

Q How long have you lived there?

A One month.

Q Where did you live on the Fifth of March?

A The third of March i arrived in New York from Staten Island.

Q where did you live on the fifth of March?

A one of the hotels on the Bowery.

Q Which one?

A I do not know the name of the place. One evening I slept in one place and the next evening I slept in another place.

Q Where was the hotel you slept in on the fifth of March?

A On the left side of the Bowery; I did not look at the number; I went upstairs and pay and I went to sleep.

Q Where was your home at that time?

A I did not have any residence; I was from Staten Island.

Q What time of the evening was it you saw Sansone shoot Tonauilo?

A It must be half past ten or eleven o'clock; I did not have any watch with me.

Q Where were you coming from?

A I can from Mulberry Street; came down Mulberry to Mott Street.

Q Where were you in Mulberry Street?

A In the street, walking.

Q Where did you spend that evening prior to ten o'clock?

A Walking up and down the street, going in some saloons; get a glass of beer, and go along with my friends.

Q What were you doing that day? Where were you working?

A Well, I was not working that day.

Q Where did you sleep the night before that?

A Staten Island, New York.

Q Did you live with Tonauilo in Staten Island?

A Yes. We worked in the same place.

Q You were in Mulberry Street and you started from Mulberry Street over to Mott Street; is that right?

A From Mulberry I went to "East" Street. I do not know what the witness means by that; from "East" Street, I went in Mott Street.

Q Where is East Street?

A Hester Street.

Q You walked through Hester Street to Mott Street and then down Mott Street towards Canal; is that right?

A Yes, sir

Q And how far were you from Canal Street when you saw this man shoot the other?

A They were nearer to Canal than I was.

Q I ask you how far this man from Canal Street when you saw him shoot?

A Sixty or seventy feet.

Q Was he on the east side or the west side of the street?

A East side; left hand side as you go towards Canal Street.

Q After Sansone shot the other man did you see what happened to Sansone?

A I saw the policeman come and I went away.

Q Where was Sansone when the policeman took hold of him?

A I did not see where he was when the policeman got hold of him; I saw the policeman come and I went away.

Q Where was the policeman when you saw the policeman?

A I saw them coming from Canal Street in that direction of Canal Street; three or four men; they were in citizen's clothes; I do not know if they were policemen or not, but I saw one policeman in uniform.

Q Where was Sansone standing when he fired the second shot?

A He fired the two shots at one time.

Q Where was Sansone standing when he fired the second shot; answer that question?

A I did not very well lock there straight, but Sansone was between the street and the sidewalk and the deceased was near the railing.

Q Which way were you walking?

A I was going right towards them; they were facing me.

Q Did you see the revolver that Sansone had in his hand?

A Yes, I saw it.

Q What kind of looking revolver was it?

A Black.

A I was going right towards them; they were facing me.

Q Did you see the revolver that Sansone had in his hand?

A Yes, I saw it.

Q What kind of looking revolver was it?

A Black.

Q Was it a revolver like that? (showing black revolver)

A Yes, like that.

Q How close to Sansone were you when you first noticed

Sansone and Tonauilo?

A From here to that table there. (Pointing at the table where the defendant is sitting)

Q When you were that far away from him what did you hear him say?

A I heard Tonauilo say, "By the blook of the Blessed Virgin, this is your last moment" and I heard this fellow, the defendant, say to him, "Peppino, do not let us ruin ourselves" and then Tonauil punched him in the face.

Q Now, he said all that, all that conversation took place before Tonauilo Struck Sansone; is that right?

A Yes.

Q And then after they had that talk he struck Sansone with his fist; is that right?

A Yes.

Q Now, when they began to talk was Sansone walking or standing still?

A No, they were walking.

Q And were they walking side by side?

A No, they were not exactly side by side; one was a little ahead of the other one.

Q Which one was ahead?

A Sansone was ub front; Sansone was in front; he said, "I do not want to quarrel with you."

Q And were you walking behind them when you first saw them?

A No, sir, I was coming towards them, because I was going in the direction of Canal.

Q And in what direction were they walking?

A They were going in the direction of 102 Mott Street.

Q How far did you say you were from Sansone when he fired the first shot,

A From here to that table theme. (Indicating

table at which defendant is sitting)--no; I was at that time a little further distance, because as soon as I saw them both pull the pistol out I went back a little bit.

Q You saw them both pull their pistol out?

A Tonauilo pulled a pistol out swearing and this fellow, the defendant, when he saw Tonauilo pull the pistol, he pulled his own revolver and he fired two shots, "Poom--Poom."

Q Now what were you doing between the first time you heard them talking together and the time when the shot was fired?

A I stood still and I said to myself, "Those people are quarrelling."

Q Well, then they got through talking and at the time Sansone was struck with the fist, and they were about as far as from you to this table (indicating defendant's table)--you were from them, weren't you?

A Yes, sir.

Q So the conversation you heard them have with each other was when you were still further distance away from them than from that table to where you are?

A No, when I heard them talking I was as far as from here to the table, but knowing the disposition of my cousin, that for nothing at all he would stab somebody or he would shoot somebody--because in Italy he was always arrested and always in prison--I stood back a couple of paces.

Q Who else was around there at that time?

A Giralomo, Barattieri, and Giuseppe Chiofreddo; I did not see the other

Q Where was Tonauilo?

A There was some confusion there, who went ahead and who remained there.

Q Where was Tonauilo at the time the shot was fired?

A I did not see him; I did not pay any attention to where he was. I say some was going ahead and some was staying back.

Q Where was Barattieri?

A I am first saw Barattieri-- first saw Baratierra with the deceased when I was far away and then I saw Barattieri away from the deceased and the deceased coming back.

Q Where was Giralomo?

A I did not see Giralomo. I did not see Giralomo after the shooting took place. Then I crossed the street and went to the other sidewalk and I went away to the Bowery.

Q As soon as you heard the second shot what did you do?

A I went away.

Q How close together were the two shots?

A Right away, "poom--Poom."

Q When those shots were fired you were about fifteen feet north of Sansone; is that right?

A Yes, something like that; about ten or fifteen feet more or less.

Q Then in what direction did you walk?

A I crossed the street and went to the other sidewalk and I went inthe

Bowery.

Q Did you walk north on Mott Street to go to the Bowery, or south?

A This is the street: the witness illustrates by putting both hands up like that (illustrating). The shooting took place in this way, pointing with his left; I croosed the street and went to the other sidewalk, pointing with his right, straight up to Canal Street, and when I got up to Canal Street I went up to Bowery.

Q Did you walk or run?

MR. MELLEEN: If you Honor please, I object. I think this cross examination has gone far enough. what is it proving?

THE COURT: I will allow it.

A I was not running, but I was taking pretty fast steps.

Q Did you see the man who was shot fall to the ground?

A No, sir. Yes, sure, I saw him.

Q How did he fall?

A I did not look at him well, but I saw him falling back like this and I ran away; I did not pay any attention.

Q How far was the from the curbstone when he fell?

a He fell near the iron rail.

Q Which say was he facing when the shots were fired at him?

A Face to face with this defendant.

Q Which direction was the man who was shot facing?

A Tonauilo was with his back against the iron railing and

this defendant was facing him.

Q What did Tonauro do with his revolver?

A He did not do nothing; he did not fire; he did not have time.

Q Did he have a revolver in his hand at the time the two shots were fired?

A Yes, sir, he had the pistol in his hand, because he had him out.

BY MR. MELLEEN:

Q Because what?

A He had him out.

BY MR. McCORMICK:

Q How long did you continue to look at the man that was shot after the second shot had been fired?

A I did not look at him at all. As I saw him fall, I went.

Q Did he still have the revolver in his hand when you went away?

A Well, I did not went over there to look at him, whether he had the pistol in his hand or not. As soon as I saw him pull the pistol out of his pocket, this defendant pulled the pistol out too and he fired two shots and when he fell I went away.

Q Well, you were looking at him when the second shot was fired, weren't you?

A Yes, I saw both shots leaving the pistol. When he fell I did not look at him any more.

Q He had the revolver in his hand when the first shot was fired, didn't he?

A Yes, sir.

Q And you saw him when the second shot was fired, didn't you?

A yes.

Q Well, did he still have the revolver in his hand when the second shot was fired?

A I don't know when the second shot was fired if he had the pistol in his hand or the pistol fell down on the ground. Two shots was fired pretty near at one time.

Q Have you ever talked to anyone about this case?

A Yes, sir.

Q Who, A With the lawyer and with the interpreter.

Q With the lawyer and with the interpreter. Did you ever talk to anyone else?

A No, sir.

Q How did you happen to meet the lawyer and the interpreter?

A Giralomo came to me and he said, "Come over, because the case is going on trial now, "and he took me to the office of his lawyer.

Q Where did you meet Giralomo?

A In my house, 240 East 112th Street.

Q How far away from you were the officers when you walked across the street?

A I did not pay no attention how far the policemen were from me; I see the policemen coming and I went away.

Q What direction did you see the policemen were coming from?

A In the direction of Canal Street.

Q Well, were they coming up the middle--

A Yes, I saw them coming from Canal Street and Mott Street running. One was in uniform and the other was not. I do not know if

they were policemen or not and I went away.

Q Were they running in the middle of the street or on the sidewalk?

A Yes, they jumped from the sidewalk and started to run in the street.

Q Which sidewalk?

A At the west side of the sidewalk, Mott Street; those policemen were not in uniform, in civilian clothes.

MR. MELLEEN: If your Honor please, I object again to continued cross examination of the witness along these lines. He has gone over the testimony over and over again.

MR. McCORMICK: I have not repeated a question twice. I object to that statement. I have not repeated one question twice.

MR. MELLEEN: My objection is that you have.

MR. McCORMICK: What question?

MR. MELLEEN: My recollection is you asked what direction he was going when he had the revolver and what direction after and all these details over and over again.

THE COURT: Let us not prolong this session. You may continue, MR. McCORMICK.

MR. MELLEEN: I except.

Q You did not see Giralomo or any of those men you know around there at the time.

THE COURT: Around where?

Q (continued) Around where the shooting took place?

A Yes, as I crossed the street and I went on the other sidewalk I turned back and I saw Giralomo, Fratteollo, Chiofreddo and Barattieri.

Q Did you talk to any of those men?

A No, sir.

REDIRECT EXAMINATION BY MR. MELLEN:

Q You said in answer to the District Attorney that when you saw Tonauilo and Sansone in the street there saying these things, that you moved away, because you had known Tonauilo in Italy and he had been arrested all the time; is that right?

A Yes, always.

Q What was he arrested for?

MR. McCORMICK: I object to that as immaterial and irrelevant.

MR. MELLEN: You opened the door.

MR. McCORMICK: How did I open the door.

MR. MELLEN: By asking the question and letting the answer come out without objection.

MR. McCORMICK: I object to the question.

THE COURT: Objection overruled.

A He was arrested because he was quarrelling with everybody; sometimes he stab somebody and sometimes he shoot somebody

and my mother don't want me to go with him, because he was quarrelsome.

BY MR. McCORMICK:

Q Well, this man Sansone has stabbed a few people, too, hasn't he?

A No, sir.

Q Didn't he stab the brother of the man that he killed once in Italy?

A I don't know that.

Q Wasn't he arrested once in Italy for stealing?

A No, sir. This I don't know.

Q Did Giralomo offer you any money to come here and testify?

A No, sir, he did not promise any money, but I will get 50 cents a day.

BY MR. MELLEEN:

Q I did not hear that?

A I will get 50 cents a day.

Q You got money from the interpreter, didn't you?

A Yes.

Q Your witness fee?

A Yes.

(The defence restes)

OFFICER FRANCIS McGEE, (recalled)

DIRECT EXAMINATION BY MR. McCORMICK:

Q You remember ther night of the fifth of March when four of these Italians were arrested at Mott Street and Canal, don't you?

A Yes, sir.

Q Do you know the names of the four men that were ar-

rested?

A Why--

Q Well, see if the defendant Sansone was one? (handing paper)

A Yes, sir.

MR. MELLEEN: I object.

A (continued) I think I can recall them. Sansone, Schirpolo, Larusso, Fratteollo, I think the other fellow's name was.

Q Frateollo; do you know where those men went that night?

A In the cells at Police Headquarters.

Q And did you see the cells in which they were placed?

A Yes, sir.

Q Did you see these men in those cells?

A Yes, sir.

Q What time of night was that?

A About half past twelve or one o'clock A.M.

Q How far was Larusso's cell from the defendant's cell?

A I cannot just recall; I have the record here.

Q Give a description of that portion of the prison where these cells were?

A They are in the basement of the new building at Police Headquarter about-- they run from about the center of the building north probably 50 feet, and the cells are facing each other, starting at No. and running up to 20, I think it is.

Q And are there gratings in front of the doors?

A Yes, sir.

Q So that sounds can be heard through out the room almost as though there were no partitions there?

A Why, yes.

Q Do you know how far Mr. Larusso's cell the defendant's cell was?

A I can't recall.

Q Do you know how the cell that Larusso was in was from the cell in which Schirpolo was placed?

A I cannot say just how far it was, no, sir.

Q Do you know how the numbers of the cells are arranged as to odds and evens?

A The odd numbers are on one side I think, I am not positive about that and the even ones on the other; I would not swear positively; I don't remember.

Q Now you remember when you made the arrest there?

A Yes, sir.

Q You have already described to the jury the direction in which you came when you heard the first shot fired?

A Yes, sir.

Q You were then travelling in a northeasterly direction; is that right, about?

A No, I was travelling in a southeasterly direction.

Q That is right, in a southeasterly direction and you started when?

A As soon as I heard--

MR. MELLEEN: If your Honor please, I think I must object. I do not object to rebuttal, but it must be rebuttal of something the defendant's witnesses have testified to. This is imply reopening the direct examination of the People's case. Let the question that he has asked now be directed to some testimony produced by the defendant.

It seems to me--

THE COURT: Yes, that is the proper theory of rebuttal.

MR. McCORMICK: Well, the defence has just produced a witness who says that after the second shot was fired, he started to run across the street. I wanted to show if he had he would have run right into the arms of these three officers, or this one anyhow, by this witness.

Q You started you say, as soon as the first shot was fired?

A Yes, sir.

Q And do you know just where you were when the second shot was fired?

A Oh, I was about 20 feet from where I had started, or 25.

Q And you were looking in the direction of the shot?

A Yes, sir.

Q Did you see any man walk rapidly across the street in front of you?

A I didn't notice anyone.

Q Well, you were on the lookout for people getting away from the scene of the crime, weren't you?

A Yes, sir.

Q And you didn't see anyone?

A No, sir.

Q Did you say that this crowd of men, these six men were walking at the time the shot was fired north or south?

A I saw them walking south justt before the shot was fired.

BY THE ELEVENTH JUROR:

Q I do not know whether this is a proper question, but I

want to find out if this is the officer who testified he did not see the uniformed officer on the scene of the murder?

A No, sir, I did not so testify.

Q You are not the officer?

A No, sir.

BY MR. MELLEEN:

Q You saw uniformed officers there?

A Yes, sir.

Q How many?

A I should say three or four.

BY MR. McCORMICK:

Q Well, Kauffman handed you this revolver and said he picked it up alongside of the deceased?

A Yes, sir.

OFFICER JOSEPH GUARNIERI (recalled)

DIRECT BY MR. McCORMICK:

Q Do you remember asking question of Giralomo Schirpolo in the office of the District Attorney sometime ago?

A Yes, sir.

Q Do you remember asking him about what was said about his being in his house at 102 Mott Street when the deceased came in to get his revolver?

A Yes, sir.

Q And you asked him this question. "What did he say." meaning what did the deceased say?

A Yes, sir.

Q No, no, I withdraw that. Do you remember asking, "What did he do with it", meaning the revolver; what did the deceased do with the revolver? Do you remember what reply he made to that?

A He said he put it--

Q What reply Giralomo made to that question?

A He said he put it in his pocket.

Q Was this typewritten statement prepared by you, or the stenographer, under your direction?

A Yes, sir.

Q I ask you to refresh your recollection. Can you refresh your recollection by looking at that?

A Yes, sir.

Q Do you remember now what he said?

A Yes.

Q What?

A He said he did not say anything, just simply put it in a pocket.

Q And do you remember whether Giralomo says that he said something to the deceased?

A Yes, sir.

Q About the revolver?

A Yes.

MR. MELLEEN: If your Honor please, I do not think these questions were put to the witness on the stand.

MR. McCORMICK: They were though.

THE COURT: Suppose we keep on following this method; what is going to happen? The defendant will call somebody to contradict this officer Then you will call somebody to contradict the defendant. The rule is made that where question affecting collateral matter are asked of a party not being the witness of the party asking the question, but he make him his own witness for that purpose, he is bound by the answer of the witness.

MR. MELLEEN: I should like to see the memorandum that was used, your Honor.

MR. McCORMICK: Certainly you can see it all you wish (handing same). The rule I have in mind is that rule (Showing book to court)

THE COURT: That may be the rule in--or was the rule according to this case of the Queens Bench, but it is not the rule applicable to our American cases, by any means, except that it be a question, which, is of the issue itself.

MR. McCORMICK: Well, it seems to me with the defence of self defence that has been interposed here, that it is not a collateral matter, and the defence has called this man as his witness and he has testified and made statements in conflict to written statement made by him before that.

MR. MELLEN: If your Honor please, if I may interrupt there, in order to put an end to this, I am perfectly willing to have every single one of these papers that was signed as my friend says here in this office, offered in evidence and read to the jury.

MR. McCORMICK: I offer them in evidence; what I did before.

MR. MELLEN: Perfectly willing to have them all go in.

MR. McCORMICK: I offer in evidence--

MR. MELLEN: With this statement; that this officer, Guarinieri, is one of those who participated in the arrest of the defendant and the other witness; he acted as

an interpreter and asked question of the matter--he was the one who read the matter over to the witnesses before the witnesses signed. I am perfectly willing to have it all go in. Very glad to.

MR. McCORMICK: Do you want them marked separately?

MR. MELLEEN: Put in one at a time and read it.

MR. McCORMICK: Including the police officer's?

MR. MELLEEN: The whole thing.

THE COURT: Whatever the attitude of the counsel may be. It is still within the discretion of the Court whether the record will be loaded with matters of that description.

MR. MELLEEN: It is either that, or stop this line of testimony, going over and over the same thing, I calling a witness and the People calling a witness, contradicting back and forth--why, it will be interminable. I am willing, even if it make the record long, I am willing to have it done this way.

THE COURT: It is not what the willingness of the counsel may be. It is the propriety of the proceeding. Again, if you gentlemen are agreed upon this proposition, that that document, representing an examination made by a lawyer on the staff of the District Attorney--

MR. MELLEEN: Ex parte entirely--

THE COURT: Through the interpretation of the officer who made the arrest, appearing then in English and now

brought back to him--

MR. MELLEEN: Leaving its weight to the gentlemen of the jury--

THE COURT: If you are satisfied that that is a correct proceeding, why the Court is willing to let you adopt it.

MR. McCORMICK: I would suggest if it were offered in evidence each side in summing up can read any part they want to, but it is not necessary to read it on the records now.

THE COURT: The proper proceeding is, when a document is admitted in evidence, whatever you want to place before the jury from that document should be read to the jury, That is the proper proceeding.

MR. MELLEEN: I merely wish to say, your Honor, it is entirely immaterial to me whether it is done or not. What I want to do is to come to an end sometime and is it worth while asking those question again. The jury have the circumstances; they have heard a lot of material read out of these; there is a whole lot more and I am free to any now in view of my offer, all in line with what the witnesses testified to; all of it, with some slight contradictions as to some of the things that were said here. The District Attorney, of course, has picked out the mat-

ters in which they contradicted their testimony there to the extent they did, if at all. I do not think it is worth wasting the time of the Court at all over this matter, the time of the Court or the jury. I do not think it is worth while putting the thing in. I do not think it amounts to anything. We have had witnesses here; the jury has seen the witnesses on the stand and can form their own estimate of thier credibility without referring to that which was said and which was done in the District Attorney's office, not represented by anybody, and this officer who made the arrest taking part in the examination. I do not think it is worth anything, but to cut it short, if it does cut it short, I am willing to stick to my offer.

THE COURT: There is not any doubt, Mr. McCORMICK, that your examination of this officer is along the line of attacking or impeaching your own witness, because when you asked collateral questions of the witnesses for the defence, you made them witnesses for yourself; there is no doubt about that. Now now far you may go in impeaching the credibility of your own witness is not a very difficult question to answer.

Mr. McCORMICK: If a witness for the defendant goes on the stand and swears to a statement that is in conflict to a prior statement in writing, I have a right

to prove the statement in writing.

THE COURT: He did not put it in writing.

Mr. McCORMICK: There is the signature (indicating)

THE COURT: He signed his signature with a mark for his name, to a written statement which he did not understand. It was English.

MR. MELLEN: Had to accept this officer's word about it entirely.

Mr. McCORMICK: I do not want to prolong the trial.

THE COURT: The proper thing would have been to have brought the interpreter in who did interpret and have him at that time interpret this statement here. That would have been the proper thing.

BY Mr. McCORMICK:

Q Did you interpret that statement?

A Yes, sir.

Mr. McCORMICK: Here is the interpreter. This man is the interpreter.

THE COURT: But you did not bring him in at the right time. However, you gentlemen are agreed with regard to that?

MR. MELLEN: Do you want to do that, Mr. McCORMICK?

Mr. McCORMICK: I don't want to prolong the trial to that extent, because this is a repetition of what I have put in already.

MR. MELLEN: I think it is a repetition of what I

have put in.

Mr. McCORMICK: That is all right, except there are certain variances. The witnesses have not stuck to their story.

MR. MELLE: You have not read the whole of the story. That is the trouble.

Mr. McCORMICK: I do not want to prolong the trial. You can let me ask this witness a few more questions?

MR. MELLE: Ask him a few more questions.

THE COURT: If the objection is still made to this testimony it is sustained. If the objection is withdrawn and you gentlemen have agreed to a method of procedure, proceed along that line.

MR. MELLE: I have allowed Mr. McCORMICK to ask two more questions and then I will see.

BY Mr. McCORMICK:

Q You read all of this over, the affidavit of Giralomo Schirpolo, to him, did you?

A Yes, sir.

Q And you read it over truthfully and correctly?

A Yes, sir.

Q And you translated it--I mean when you read it you translated it and read in Italian language the contents of this affidavit?

A Yes, sir.

Q And you made certain changes in ink, didn't you?

A Yes, sir.

Q With your initials, "J. G".

A Yes, sir.

Q And that is a correct statement, a correct translation of a statement in Italian?

A Yes, sir.

Q And the same as to Fratteollo, each of them?

A Yes, sir.

Mr. McCORMICK: I will read this on to the record, if your don't mind.

MR. MELLEN: Then read the whole of it. I would like the whole of it if you are going to adopt that course, the date and all the rest of it, please.

THE COURT: Does the jury understand whose statement that is?

Mr. McCORMICK: Giralomo Schirpolo's, the old man. "City Prison, March 6th, 1910. 12 M. Statement of Giralomo Schirpolo through Italian Interpreter Officer Joseph Guarnier.

STATE OF NEW YORK :

: SS:

COUNTY OF NEW YORK:

MR. STICKNEY: Gerolomo Schirpolo, you are charged with being implicated in the shooting of Giuseppe Tumaulo. My name is Henry A. Stickney. I am one of the deputy- Assistant District Attorneys of the Country of New York and I am making an investigation in connection with the shooting. I have come to question you about the shooting. Are you willing to answer any questions which I may put to

you?

THE WITNESS: Anything I know I am willing to say.

MR. SRICKNEY: Before you answer any questions which I put to you I think is my duty to advise you that anything that you say to me may be used against you, and, therefore, that anything you say must be purely voluntary on your part. You are also entitled to counsel before you make any statement.

THE WITNESS: I want to say what I know.

BY MR. STICKNEY:

Q Where do you live?

A 102 Mott Street.

Q On what floor do you live?

A Ground floor as you enter in the rear yard.

Q Do you know Giuseppe Tumaulo?

A I keep fifteen boarders home and he is one of my boarders.

Q Do you know Francesco Sansone?

A He is one of my boarders.

Q How long has Tumaulo boarded with you?

A About two months.

Q How long have you know Francesco Saonsone?

A More than two months.

Q Did you ever hear any quarrels or disputes between Sansone and Tumaulo?

A Tumaulo was always quarreling with Sansone and Sansone said "What's the use of you and I quarreling." About a month before Tumaulo, in my

house, pulled out a revolver to Sansone and Tomaulo told Sansone that he was going to shoot Sansone.

Q What else?

A Last night Barratareo asked us, Giuseppe Tumaulo, Mattoo Fratteollo, Francesco Sansone and Giusseppe Cheofratto to come out and have a cupe of coffee. There were about five or six of us. While we were going down to get the coffee Tumaulo turned around and said "I don't want any coffee" and Tumaulo said to Sansone "Don't you try to put your hands in your pocket." Tumaulo went ot get his revolver (indicating) and he couldn't do it and Sandson was quicker than Tumaulo was and he shot him.

Q What time did Barratareo come and ask you to get a cup of coffee?

A I don't know whether it was eight or nine o'clock; I don't know what time it was.

Q Where were you when Barratareo came in to get you?

A We were in my apartments.

Q At 102 Mott Street?

A At 102 Mott Street.

Q What time did Sansone come to your apartment at 102 Mott Street?

A Tumaulo came in to get his revolver and then Sansone came in a little after, a little later on.

Q Did you see Tumaulo take a revolver?

A Yes, sir, it was in valise and he went and got it out of the valise.

Q Did you see Tumaulo take the revolver out of the valise?

A Yes.

what did he do with it?

A He put it in his pocket and I asked him "What are you going to do with that revolver"

Q What did he say?

A He didn't say nothing. He went out.

Q Do you know whether the revolver was loaded?

A Yes, it was loaded.

Q How do you know that it was loaded?

A Because it was always loaded.

Q When did you see the revolver the last time?

A The last time I saw it was three or four days ago.

Q Where did you see the revolver last?

A In the house.

Q Who had the revolver at that time?

A I see Tumaulo take it out of his pocket three or four days ago and put it in the valise, and laslt hight he came and tookit from the valise and put it back into his pocket.

Q Had you been to the saloon at 189 Hester Street during the evening?

A Yes, sir, I was over there for about half an hour.

Q And what happened at the saloon while you were there?

A We played Tucco, played three or four games.Sansone said he didn't way to play any more and Tumaulo told Sansone that he ought to play, and Tumaulo swore.

Q Are you a relative of Sansone?

A Distant cousin,

but I know him from Italy. I worked with him in Italy.

Q Is Matto Fratteeollo a relative of Sansone?

A No, he also knows him from Italy.

Q Did you know Tumaulo and Sansone in Italy?

A Yes, sir.

Q What Province did Tumaulo come from?

A The Province of Foggia.

Q What town did Tumaulo come from?

A Mt. St. Angelo.

Q What Privince did Sansone come from?

A Same Province.

Q What town did Sansone come from?

A Same town.

Q What province and town did you come from?

A Same province and town, Province of Foggia, Town of Mount St. Angelo.

Q Was Tumaulo ever in touble in Italy?

A Always in trouble, Always in jail.

Q What was he in jail for?

A He has got six or seven years coming to him in Italy; he had to run away from Italy.

Q What did Tumaulo do in Italy?

A He was always wounding somebody by knife or by revolver.

Q Did he ever kill anybody in Italy?

A No, he wounded a lot of them.

Q Was Sansone ever in touble in Italy?

A No.

Q Was Sansone ever in jail?

A No, he took a couple of figs off a tree and he got three days for it.

MR. MELLEEN: What?

MR. McCORMICK: He took a couple of figs off a tree and he got three days for it."

Q Was he ever in any other trouble in Italy?

A No, this is the only time.

Q Was Sansone ever in any trouble in the United States?

A No.

Q How often have you seen Sansone since he came to this country?

A I only saw him two or three months-- since he is living with me.

Q How long after Tumaulo went out of your apartment last evening did Sansone come in?

A Tumaulo came in first and shortly afterwards, about six or seven minutes, Sansone came in.

Q Did you see Sansone and Tumaulo together again last evening after Sansone came in and Tumaulo went out?

A Yes, sir.

Q Where?

A When Tumaulo came in it was about six or seven minutes after when Sansone came in and they commenced to talk, and Barratareo came in and had a cup of coffee. When Sansone came in Tumaulo was in but Tumaulo went right out and waited for Sansone outside the door at 102 Mott Street."

THE COURT: That was in the house of the witness?

MR. McCORMICK: Yes, sir.

"Did Sansone go out after Tumaulo went out?"

A A few minutes after.

Q Did you go out with Sansone?"

A Yes, after we went out to have the coffee we all went out together, five or six together, and Sansone was in the crowd.

Q When you went out with Sansone and the others did you meet Tumaulo?"

A Yes, sir, he was standing in front of the door at 102 Mott Street.

Q State exactly what happened when you met Tumaulo in front of the door?"

A We met Tumaulo outside the door and we all went to get coffee. While going down Tumaulo and Sansone walked together and began to argue about something.

Q What were they arguing about?"

A The only thing I know Tumaulo said to Sansone "Don't put your hand in your pocket." Sansone said "Giuseppe, I ain't putting my hand in pocket, and don't let you and me have any trouble because we are old friends in Italy", and then, the first thing I know, the shooting took place, and I started to go home and I was arrested.

Q Did you see the shooting?"

A No, I didn't see it.

Q Where were you when the shooting took place?"

A I was two or three feet in front of Sansone and Tumaulo.

Q How many shots did you hear fired?"

A Two.

Q After you heard the first shot what did you do?

A I tried to run away; tried to go back home.

Q Which way did you run?

A I ran towards my home.

Q Did you run past Sansone and Tumauro?

A Yes, I had to pass in front of them to get home.

Q Did you see a revolver in Sansone's hand?

A I didn't see the revolver at all; the only thing I heard was the shots.

Q Do you know whether Tumauro had a gun in his hand at the time of the shooting?

A He had his hand at it to try to get it out, but he hadn't time to get it out before he got shot.

Q In what pocket was Tumauro's revolver?

A I don't know which, but it was the trouser's pocket.

Q Did you see Sansone with a revolver at the time of the shooting?

A No, I didn't.

Q Do you know whether he had a revolver?

A I know he had a revolver.

Q Did you see Sansone with a revolver yesterday afternoon?

A I know he always carried one but I didn't see it because I can't look through his clothes.

Q Who's not Tumauro?

A who could have shot him? Sansone is the only one could shoot him. It was only them two that was there.

Q Did any one of the others who were walking with San

son and Tumauro have a revolver?

A Nobody.

Q Did you see anybody else with a revolver?

A No.

Q Did you see Sansone with a revolver in his hand last night at the time of the shooting?

A No, I didn't see him with any. I heard the shots and I began to cry, and I tried to run home and I had no time to see anything.

Q How far away from Tumauro's body were you when you were arrested?

A Five or six feet.

Q Who arrested you, this man here (indicating officer McGee)?

A It might have been but I couldn't say.

Sworn to before me this:

: Gerolomo his mark Shirpolo

8 day of March, 19110. :

C. P Dillon. Commissioner of Deeds, New York city. Witness, James Hamill."

THE COURT: Is there any more of that document that you care to read?

MR. McCORMICK: That is all I care to use, your Honor.

BY MR. McCORMICK:

Q Did you see the cells in which these men were men were placed at Police Headquarters that night?

A We have a record here of the cells.

Q Well, were you down in there. Do you know how the cells are located?

A Yes, sir.

Q Can you hear from one cell to the other?

A Yes, sir.

Q You mean there is an open space in each door, or lattice work?

A A grating.

Q A grating?

A Yes, sir.

Q And what is the length of the room?

A About 25 feet.

BY MR. MELLEEN:

Q How much?

A About 25 feet.

BY MR. McCORMICK:

Q You are just guessing?

A Yes, guessing.

Q Do you know how far the cell was that Larusso was in from the cell Gerolomo was in?

MR. MELLEEN: If your Honor please, I object. This is not rebuttal. My friend is now endeavoring to get in, very apparently, something he was not allowed to get in on his examination in cheif in the People's case, trying now to make proof of something he was not able to make proof

of before. That is not rebuttal and I object to it.

MR. McCORMICK: It might be rebuttal for all there is in that argument of yours. They have undertaken to establish self-defence. The evidence that I now offer precludes any idea of self-defence. It shows that the--

THE COURT: Do not argue it. Objection overruled.

MR. MELLE: I except.

BY MR. McCORMICK:

Q You do not know the size of the room in which these cells are?

A No, sir, but about 25 feet, the best I can judge.

Q Well, about how many cells are there?

A I couldn't tell you.

OFFICER JEREMIAH McMAHON (recalled):

DIRECT-EXAMINATION BY MR. McCORMICK:

Q Have you been in the prison?

A Do you know where these four men who were arrested at Mott street and Canal street on the 5th of March; where they spent the night?

A Yes, sir.

Q Where?

A In the cells in Police Headquarters.

Q Describe the cells in Police Headquarters?

A Well, they run north and south, in the middle of the building, there is about seven or eight cells on the west side and seven or

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eight cells on the east side.

Q You mean there is a passageway between them?

A Yes, sir.

Q And the passageway runs which direction?

A The passageway--there is an aisle running through the building and cells on each side.

Q The passageway runs which direction?

A North and south.

Q And how long is that passageway?

A About 35 feet.

Q And on each side of that passageway are there cells?

A Yes, sir.

Q And how many cells are there?

A I think there is about 18 or 19 cells.

Q Have you a diagram of the jail?

A Yes, sir.

Q Let us see it?

A (Produces.)

Q Who made it?

A Myself.

Q You made that from your own knowledge of the conditions there?

A Yes, sir.

Q And were these cells numbered?

A Yes, sir.

Q And are the numbers of these cells indicated on this diagram?

A Yes, sir.

Q And do you know which cells were occupied by these persons?

A No, I do not.

Q Can you hear from one end of that passageway to the other--from a cell at one end to a cell at the other end?

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A Yes, sir.

BY THE COURT:

Q Have you tried it, officer?

A Yes, sir.

Q When?

A Well, several times I have been in there.

Q Do you know whether these men, the defendant and several witnesses were in that room or in those cells at any time?

A Yes, sir.

Q How do you know that?

A Well, we took them out of there that morning, March 6th.

BY MR. McCORMICK:

Q Who did you take out of there that morning?

A We took out the defendant Francesco Sansone, Pasquale Larusso, Gerolomo Schirpole and Mattoo Frappeolo.

MR. McCORMICK: I offer in evidence--

THE COURT: If he took them out he knows out of which cells he took them.

BY MR. McCORMICK:

Q Which cells did you take them out of?

A Well, I don't remember exactly the cells.

MR. McCORMICK: It seems to me that while it might be better to show the numbers of the cells occupied by these men, or how close they were to each other, the fact that the whole room did not take up over 35 feet, and that this room is a good deal more than 35 feet and you can hear a voice distinctly from one end to the other, the

evidence I have already offered should now be received.

MR. MELLEEN: Why don't you produce the doorman or somebody that heard the conversation.

MR. McCORMICK: I have.

THE COURT: The only distinction the Court can see from the identification of a voice over the telephone, which is admitted in all the the courts, is over the telephone you have one voice and must logically be located at that one spot, but when all is said and done we identify by the voice the person who spoke. It strikes me in a place of this character, if the witness has testified that he knew the person and spoke with him frequently, so frequently as to become acquainted with his voice, and hears that voice in that room, it is competent testimony. I am not saying how strong it is. That is for the jury to say. But I have not any doubt with the additional testimony which the prosecution has furnished, that the prosecution has established a basis for its admission here as competent testimony, which will be allowed. Of course the competency of the testimony, the jury will understand, means it is something which they may consider. It is for them to say. after considering it, what strength there is in it to support the proof or to support the question itself as to what was said.

PASQUALE LARUSSO, (recalled) (through Interpreter Villamena):

DIRECT-EXAMINATION BY MR. McCORMICK:

Q Do you remember where you were on Sunday, the 6th of March, 1910, which was the day after the shooting?

A Yes, sir.

Q What time of the morning was it that you were taken out of that--where was it?

A The prison.

Q Did you hear Francesco Sansone say anything in that prison that morning?

MR. MELLEEN: If your Honor please, I object again. This is not rebuttal to anything that was said by any of the witnesses called for the defence. It is reopening the case in chief for the People, and I object to it.

THE COURT: Question allowed.

MR. MELLEEN: I except.

A Yes, sir.

Q What was it?

MR. MELLEEN: The same objection will apply to all this testimony?

THE COURT: Yes.

Q What language did he speak in?

A Italian.

Q What did he say?

MR. MELLEEN: Again I object, on the ground that there is no evidence yet that the person who was speaking, if

this witness heard anybody speaking then, was the defendant. I object to it on that ground.

THE COURT: Objection sustained.

Q Did you hear any conversation?

MR. MELLEEN: Objection sustained, I understand.

MR. McCORMICK: I am asking another question.

Q Did you hear any conversation between the defendant Sansone, and Gerolomo Schirpolo?

A Yes, sir.

Q What was said?

MR. MELLEEN: I object to it.

THE COURT: Objection sustained.

MR. McCORMICK: Is this objection sustained, your Honor?

THE COURT: Yes; at present there is not the foundation laid that is necessary to establish the identity of the person whose voice it was and how he knew it.

BY THE COURT:

Q Did you hear the voice of Sansone Sunday morning after the shooting?

A Yes, sir.

BY MR. McCORMICK:

Q Where was the voice--how do you know it was his voice-- how long have you known--

MR. McCORMICK: He has already testified he has known Sansone for a year.

THE COURT: Yes.

Q How long had you known Sansone before that day?

A One year previous.

Q And had you ever talked to him?

A Yes, sir.

Q Were you familiar with the sound of his voice?

THE COURT: How often had he talked?

Q How often did you talk to him during that year?

A I did not count how many times. Every time I would meet him.

Q Well, a great many times or only a few times?

A A good many times.

Q And were you familiar with his voice?

THE COURT: The statement "A good many times" is still susceptible to more or less than would make it necessary for him to know that voice.

Q How many times did you talk to him during that year?

A Always, every Sunday that I would meet him, fifteen or sixteen times.

Q And is there any doubt about this being Sansone's voice you heard on that Sunday morning?

A Yes, sir.

Q I ask you if there was any doubt about it?

A No; it was Sansone's voice.

Q And did you hear before that day--had you known Gerolomo Schirpolo?

A Yes, sir.

Q How long had you known him?

A About a couple of years previous, but I only met Gerolomo a couple of times.

Q What did Sansone say?

A I heard Sansone say, "Uncle

Gerolomo--"

MR. MELLEEN: I object, if your Honor please.

THE COURT: The question is allowed.

MR. MELLEEN: I except.

A I heard Sansone say, "Uncle Gerolomo, try to help me now in this matter; try to say that this Tonauilo was waiting for me with a pistol in his hand at Canal and Mott street."

Q Did he say anything else?

BY THE TENTH JUROR:

Q May I ask the interpreter a question? Did the witness say "Try to help me and try to remember."

A Yes, just exactly.

BY THE COURT:

Q Ask him to repeat it and translate it absolutely correctly and accurately?

A "Dear Gerolomo. See to help me. You say that Tonauilo was waiting for me at Mott street with a pistol in his hand."

BY THE ELEVENTH JUROR:

Q Did he say what he said before?

A Yes, see to help me.

Q When you interpreted before you said "try"?

A I cannot help it.

BY THE COURT:

Q That is the question: not whether you can help it, but what he said?

A "Try to help me."

BY MR. McCORMICK:

Q Did he say anything else?

A And Gerolomo said, "All right, all right."

Q Well, did Sansone say anything about--

MR. MELLEEN: Don't lead. I shall object.

MR. McCORMICK: I want to call his attention to a certain subject. Will your Honor permit me?

THE COURT: No, you may ask him what has been said and if he has testified to all that has been said, but do not direct his attention to anything which was said.

Q Now, just take your time and see if you cannot think of anything else?

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

THE COURT: Objection sustained.

Q Have you now testified to all that you heard him say?

A Yes, sir.

MR. McCORMICK: Well, I submit it is proper for me to suggest the subject upon which he has previously made a statement.

THE COURT: Not if he swears he has not said anything else.

MR. McCORMICK: I can refresh his recollection. We all sometimes think we have stated all of a thing, and we have not.

MR. MELLEN: We all know what the human memory is, but at the same time the law has laid down a rule that witnesses must not be led.

BY THE COURT:

Q You can ask him if he has now under oath said everything he heard the defendant say at that time and place?

A Yes, sir.

THE COURT: Now if he wants to say he heard something else, it will be for the jury to weigh this man's evidence from start to finish.

MR. McCORMICK: (The People rest.)

THE COURT: Is that the young man that testified that he approached the defendant and called him "Traitor."

MR. McCORMICK: Yes; I want to ask another question, there, your Honor.

THE COURT: I will allow that. I want to say, for the benefit of the jurymen, that both the attorneys and the Court were under the impression yesterday that this man called the defendant "Traitor"; that was my memory of the testimony, and to my surprise, in looking over the testimony I find that there is an expression, or perhaps there were two expressions added to that word used by the defendant, and you are entitled to know what they are, I think from my examination of the record.

BY MR. McCORMICK:

Q Larusso, you testified yesterday that you Sansone near the body of Tonauilo; do you remember?

A Yes, a little distance.

Q And you said something to Sansone?

A Yes, sir.

Q What was said?

MR. MELLEEN: What did you say.

MR. McCORMICK: What did you say?

A I called him "Traitor" twice.

Q What else did you say?

THE COURT: Did he say anything else?

Q (continued:) Did you say anything else?

A I only said, "Traitor."

MR. MELLEEN: I move to strike that out.

THE COURT: That rather justifies the memory of the Court on that matter and I think of the attorneys, but in some way or another a different statement has crept into the record. I think perhaps the interpreter may have said something, or perhaps the witness may have muttered something which the jury did not hear or which the attorneys did not hear.

THE FOREMAN: All I heard was "Traitor, traitor."

THE COURT: That is the recollection of all the jury? That is the only expression that was heard was "Traitor, traitor"?

SEVERAL JURORS: Yes, sir.

BY MR. McCORMICK:

Q You don't remember saying anything else, do you?

A No, nothing else.

Q And Sansone did not say anything?

A No, sir.

MR. MELLEEN: That may be stricken out and the jury told to disregard it?

THE COURT: Yes, I think it would be well to correct the record as regards that.

MR. McCORMICK: I think the record should be corrected, although if the entire answer as it stands now was stricken out, it needs no correction.

THE COURT: It was stricken out because the court was under the impression that the only thing he did by way of any charge against the defendant then and there was to call him traitor twice, but the record shows something else.

MR. MELLEEN: The defence has no further testimony and I move to dismiss the indictment have not been proved; that the People have not proved the crime of murder in any of its degrees against this defendant, not made out a case.

THE COURT: Or homicide in any degree?

MR. MELLE: Or of homicide in any degree.

THE COURT: Motion denied. Any other motion you care to make, if you find it necessary, You may defer it until morning.

The Court thereupon admonished the jury in accordance with section 415 of the Code of Criminal Procedure and adjourned further trial until half past ten A.M., Tuesday morning, May 24, 1910.

New York, May 24th, 1910

TRIAL RESUMED.

Mr. MELLLEN: If your Honor, please, I move to dismiss the indictment, upon the following grounds: First, that the People have failed to prove the commission by the defendant of the crime charged in the indictment, upon the following grounds: First, that the People have failed to prove the commission by the defendant of the crime charged in the indictment. Second, that the People have failed to prove the commission by the defendant of the crime of homicide in any degree. Third, that the People have failed to prove beyond reasonable doubt the commission of any crime by the defendant. Fourth, that the People have not made out a case against this defendant. I also move the Court to advise the jury to acquit the defendant on the ground that the evidence is insufficient to warrant conviction.

THE COURT: All motions denied. I will say to the jury that the denial of any motion by either of the attorneys is not a matter to be considered by you. Whether the motions are granted or denied does not concern the fact at all, and you are directed to disregard any denial or granting or any motion that may have been made.

MR. MELLLEN: Exception, if your Honor please.

Mr. Mellen then closed the case on behalf of the defence.

Mr. McCormick closed the case on behalf of the People.

PEOPLE vs. SANSONE.

(Murder in the First Degree).

THE COURT'S CHARGE.

THE COURT:

Gentlemen of the Jury,

The killing of one human being by another, by the act of another, is in law called homicide. Homicide, in the language of the law, is either 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 deliberate and premeditated design to effect the death of the person alleged to have been killed.

You are to note with care, gentlemen, the phrase "deliberate and premeditated design to effect the death of the person killed, but without premeditation and delib

eration.

You will notice the difference, gentlemen, between the degree of murder. Design to effect death; premeditated, deliberate, or deliberate and premeditated design to effect death: murder in the first degree.

I have used an expression there which I wish to change. I have said "A deliberate and premeditated design to effect death: murder in the first degree." The law does not say "with a deliberate and premeditated design" if murder in the first degree; but murder in the second degree, not from a design, if you notice, but with a design to effect death, and without deliberation and premeditation.

When the act of killing is committed without a design to effect death, and when it is not excusable or justifiable, it is not murder; it is manslaughter, and if it be committed by a person in the heat of passion and by means of a dangerous weapon, it is manslaughter in the first degree.

If the act of killing a human being is committed in the lawful defence 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 imminent danger of such design being accomplished, such killing is neither murder nor manslaughter; it is justifiable homicide.

The indictment in this case charges the defendant at the bar in such terms as to bring the charge within the meaning of the statute which defines murder in the first degree.

It is charged that the defendant, Francesco Sansone, on the 5th day of March, 1910, in the Country of New York, did feloniously and with malice aforethought, shoot and kill one Guisepe Toaiulo.

You will find first from the testimony the proof of the death of the person alleged to have been killed. For that purpose, you will examine the direct testimony of the witnesses, and the testimony relating to the autopsy. However, the Court does not apprehend that you will find much trouble in that direction, as the attorneys in the case make no dispute concerning the death. That being established, you will proceed to determine from the testimony whether the defendant, without excuse of justification, did from a deliberrate and premeditated design to effect the death of Guisepe Tonaiulo, take the life or Tonaiulo, and if you find from the testimoney, beyond a reasonable doubt, that the defendant did so kill the deceased, you will find him guilty of murder in the

first degree.

The law says "from a deliberate and premeditated design to effect death." The design must precede the act by some appreciable time, Now, the design must be deliberate and premeditated. It is said that the origin of the word "deliberate" is found in the Latin word "Libra," a scale, a balance. A man deliberates when he balances in the mind the thought for or against an act. When he gives thought to a design. When he weighs in the mind the design to kill or not to kill and decides to kill, it is then a deliberate and premeditated design to effect death, and if, thereafter, he executed that design, he is guilty of murder in the first degree. When the act of killing is with the design, and without deliberation and premeditation, it is murder in the second degree, as you have been told.

If from some sudden and great provocation by the deceased, the defendant killed him without design, it would not be murder. If from some observable cause such as a sudden and fierce blow by the deceased given to the defendant, he aroused the passion of the defendant to the extent that, in the heat of passion the defendant drew his revolver and killed him, it would be man-

slaughter in the first degree; but the observable cause must be found in the testimony.

The same must be said with regard to your consideration of any and all matters submitted to you.

You must be careful to consider them in the light of the testimony. Whatever conclusion you reach must be supported by the testimony in the case.

You have been instructed that homicide is neither murder nor manslaughter when committed in the lawful defense of the slayer. To establish his defense of justifiable homicide, it is the duty of one engaged in a quarrel to avoid an attack and to retreat from it if he can do so with safety to himself. But, if the attack upon him be so sudden and fierce and violent that a retreat would not diminish but would increase his danger, he may instantly kill his adversary without retreating at all.

Did the defendant have reasonable ground to apprehend a design on the part of the person slain to do him, the defendant, great personal injury? Did he have reason to believe that that danger was imminent? Not that it was in fact imminent, but from all appearances, did he have reasonable ground to believe that it was imminent? Was he without fault himself in the matter?

These are the questions which the law requires you to answer from the testimony, and if your answer to them is yes, the defendant committed justifiable homicide and should be acquitted.

What were the previous relations of the parties? If the deceased threatened the defendant on previous occasions, if his reputation for quarrelsomeness and violent conduct was bad, if he threatened the defendant, then struck him a violent blow and then drew his revolver, as if to accomplish his threat--these things are all for you to consider in determining whether the danger to the defendant was imminent, or whether he had reasonable ground to believe that it was.

Was the defendant without fault himself? According to his testimony he generally went armed. There is some testimony that shortly before the shooting that night the deceased told him to take his hand out of his pocket, that there was no necessity for it. There is also testimony that the deceased provided himself with a loaded revolver that night, shortly previous to this death, threatening at the same time that he or the other would die that night.

What bearing these matters have upon the subsequent trouble you may determine from all the facts in the case. They are important as furnishing reason on either

side for the subsequent trouble.

In every criminal action the defendant is presumed to be innocent until the contrary is proved, and in case of a reasonable doubt whether his guilt is satisfactorily shown he is entitled to an acquittal.

The reasonable doubt, of which the law speaks, is that doubt which may exist in the minds of reasonable men after a fair, honest and careful investigation of all the testimony. If there be then such a reasonable doubt in the case, the defendant is entitled to an acquittal. If there be a reasonable doubt with regard to the material elements which constitute the crime charged, with regard to the proof of any such material element, the defendant is entitled to the benefit of that doubt, and he should be acquitted.

If it appears to the jury that the defendant has committed a crime, and there is reasonable ground for doubt in which of two or more degree he is guilty, the jury can convict of the lowest of the degree only.

The burden to prove guilt beyond reasonable doubt is at all times on the prosecution. The defendant is under no obligation to prove his innocence.

Evidence of good character may, of itself, create a reasonable doubt, when without it none would exist in a case. But it is with the jury to determine

whether evidence of good character is of such a nature as to leave them any reasonable doubt.

You are the sole judge of the facts in the case. Whether a witness is credible and to what extent you are to believe him, you are to determine. You may disregard his testimony if you believe that it is false to any extent. That is also for you to determine.

You will disregard the nationality of a witness in deciding his credibility.

If any part of the evidence, as I have said, strikes you as false, you may disregard all that evidence or you may consider so much of it as you believe to be true.

In a case of this character, you are advised to scrutinize the testimony of a police officer with great care, when it concerns an alleged admission to the policeman by the defendant; especially if the testimony comes from the officer who makes or has assisted in making the arrest.

Are there any request to charge that the Court has not covered, Mr. Mellen?

MR. MELLEN: I would like your Honor to charge --

THE COURT: (Interposing) I mean in the

submitted requests?

MR. MELLEEN: Yes, sir, the ninth request.

THE COURT: I will look at that, the ninth?

MR. MELLEEN: Yes, sir.

THE COURT: Will you read it, please?

MR. MELLEEN: The question for the jury to determine is not merely what did the defendant believe, from the circumstances present.

MR. MELLEEN: I ask your Honor also to charge this --

THE COURT: Well, is there any other number here that you wish to refer to?

MR. MELLEEN: Yes, numbers twelve and fifteen.

THE COURT: You may read them.

MR. MELLEEN: If the jury find from the evidence that the defendant had reason to fear an intention on the part of the deceased to do him bodily injury, and that the deceased struck the defendant, following the blow with a statement to the effect that this was his last day, or that his days were over, or words

of similar import --

THE COURT: (Interposing) I beg your pardon, but is that number twelve?

MR. MELLEEN: Number twelve (continuing)-and immediately thereupon the deceased drew his revolver; the defendant saw the revolver in the deceased's hands; the jury must infer whether, in drawing his revolver and killing the deceased, the defendant acted with that deliberation and premeditation essential to the most serious crime known to the law, or whether in fear of his life, he acted upon sudden impulse without reflection or even without intent to kill, but in defense of his own life.

THE COURT: I so charge.

MR. MELLEEN: And number fifteen?

THE COURT: Yes.

MR. MELLEEN: When one who is without fault himself is attacked by another in such a manner or under such circumstances as to furnish reasonable ground for apprehending a design to take away his life, or do him some great bodily harm; and there is reasonable ground for believing the danger imminent that such design will be accomplished, he may safely act upon appearances.

THE COURT: I beg your pardon, that is not the fifteenth in my notes.

MR. MELLE: Well in your notes it is number thirteen.

THE COURT: Yes, very well.

MR. MELLE: (Continuing) He may safely act upon appearances and kill the assailant, if that be necessary to avoid the apprehended danger, and the killing will be justifiable, although it may after ward turn out that the appearances were false, and there was in fact neither design to do him serious injury or danger that it would be done.

THE COURT: Do you claim there is any evidence here to support the final conclusion in your request?

MR. MELLE: No, not the final conclusion; perhaps leaving after the comma "if that be necessary to avoid the apprehended danger." I think that is sufficient.

THE COURT: Yes, there is, of course, as I understand, no reason for requesting a charge which cannot look to the evidence.

MR. MELLE: No, I withdraw the latter part, after the semi-colon, so it reads then, simply "and there is reasonable ground for believing the danger

imminent that such design will be accomplished, he may safely act upon appearance and kill the assailant, if that be necessary to avoid the apprehended danger, "let it end there?"

THE COURT: Yes, so far charged.

MR. MELLE: Imminent danger means that there is a threatened evil, or one which appears as if it were ready to follow. There must be reasonable ground to apprehend a wicked design or probable danger that such design will be accomplished.

THE COURT: I so charge.

MR. MELLE: I think that is all.

THE COURT: Any other requests to charge?

MR. MELLE: There is just one other, that is numbered in typewriting "24" at the bottom of page 8.

THE COURT: Proceed.

MR. MELLE: If the defendant knew that the deceased was reputed to be violent and quarrelsome it might raise in his mind a fear of danger, and the testimony upon that subject in the case is an element to be considered by the jury in determining whether or not the defendant acted in self-defense.

THE COURT: I so charge. You may take your time, and if you find that the court has not covered all your request you may refer to them.

MR. MELLEEN: Well, on the next page, the one numbered in typewriting "26", page 9: "A person who is assaulted by another without provocation has a perfect right to use sufficient force to repel the assault without running away, or, believing that his life is in danger, or that he is in imminent danger of grievous bodily harm, he has a right to repel the assault, and use all necessary force for that purpose, and as a last extremity he has a right to kill the aggressor."

THE COURT: I so charge.

MR. MELLEEN: The burden of proof rests upon the prosecution, throughout this case.

THE COURT: Well, that has been already charged.

MR. MELLEEN: I should like to have it again; and the people must prove by competent evidence, satisfactory to the jury, that the defendant is guilty of the crime charged in the indictment, of murder in the second degree or of manslaughter in the first degree, beyond a reasonable doubt, or acquit.

THE COURT: I so charge.

THE THIRD JUROR: That is your Honor, there are only four alternatives, murder in the first degree, murder in the second degree, manslaughter in the first degree or acquittal?

THE COURT: Or justifiable homicide. That is, as the case has been submitted to you, and now, gentlemen,

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you may retire.

(The jury retired at 1:10 o'clock P.M.)

The jury returned to the court room at 5:18 P.M.

THE COURT: Gentlemen, I understand from your communication that you want to hear evidence read, that is, the testimony of certain witnesses. (Reading): "The jury would like to hear the testimony in regard to the actual shooting, of the following witnesses read: Sansoni, Officer McGee, the man known as "Uncle" and the last witness of the defence."

MR. MELLEEN: That is, Scirpeli and Guerra.

THE TENTH JUROR: I would like the testimony read of the man who corroborated the defendant, Giralomo-- as to seeing the weapon in the hands of the deceased-- I do not know his name, but I think there were two witnesses besides the defendant as to that.

MR. MELLEEN: If you Honor please, I think my recollection is very clear about that; the two witnesses who saw the revolver in the hands of the deceased were, besides Sansone, Scirpoli and Guerra.

THE COURT: Then, Gentlemen, we will have all the testimony read that you have already requested to hear and if, after that reading, there is still further testimony that you would like to hear, any gentleman may simply suggest it.

THE ELEVENTH JUROR: We would like to hear only the testimony with regard to the actual shooting.

THE COURT: Is that what all the jurera what?

SEVERAL JURORS: Yes sir.

(The stenographer repeats the testimony requested.)

A JUROR: I would like to hear the testimony of Officer McMahon.

THE COURT: Yes.

(The stenographer repeats the testimony.)

THE COURT: Now, Gentlemen, is there any question? Anything further you desire?

THE ELEVENTH JUROR: The last part of the request of Counsel, the last part of it which was stricken out; you struck out part of the last charge. May we have that repeated?

(Repeated by the stenographer.)

THE COURT: I think of one thing, Gentlemen, where the Court says "When one without fault himself"-- the law means fault in bringing on the attack which resulted in the defendant's shooting the other. It does not mean any distant fault. It does not mean any inherent fault in the defendant himself; but it means fault in bringing on the act which the defendant claims caused him to shoot the other is self-defence.

THE THIRD JUROR: Would it be proper, your Honor, to ask to have the clause read that was subsequently stricken out? That is, the clause read by defendant's attorney

which was subsequently stricken out, in order to make the whole thing clearer?

THE COURT: Anything which is stricken out -- and I am glad you called the Court's attention to that -- must be stricken from your memory just as completely as it is stricken from the record, and it is to be disregarded absolutely by you when you are considering the case. The reason why it was stricken out was because it was incompetent as evidence, and therefore inadmissible, and for that reason you should not consider it.

Any other question, Gentlemen, with regard to the evidence or on any other point?

(No answer)

THE COURT: You may retire.

The jury again retired at 6:43 P.M.,

The jury returned to the court room at 12:18 A.M., (May 25th, 1910) and rendered the following verdict:

We find the defendant guilty of Manslaughter in the first degree, and recommend him to the leniency of the Court.

MR. MELLEEN: If your Honor please, I should like to reserve the privilege until day of sentence to make such motions as I may be advised to make?

THE COURT: Yes, you may reserve your motions until

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that date.

Mr. MELLER: Would your Honor remand the defendant until a week from Friday?

THE COURT: Friday, June 3rd; I will do that.