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COURT OF GENERAL SESSIONS OF THE PEACE

City and country of New York, Part V.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

SAMSAC CO.

Before

HON. JOSEPH F. MULQUEEN,

Judge,

and a jury,

New York, January 7, 1918.

The defendant is indicted for an attempt to commit murder in the first degree as a second offense, and assault in the first degree as a second offense

Indictment filed August 29, 1917.

APPEARANCES:

For the People: ASSISTANT DISTRICT ATTORNEY McDONALD, ESQ.

For Defendant: W. R. DUEL, 3SQ.

A jury is duly impanelled and sworn.

Mr. McDonald opens to the Jury.

Mr. McDONALD: As I have already told you, the defendant, sam sacco, co- indicated with Charles Yound and Peter Bianco in an attempt to commit murder in the first degree as second offense and assault in the first degree as a second offense.

The People expect to prove that on the 20th day of August, 1917, at about the hour of 8:30 P.M. the complaining witness, Dolnick DoLucca was sitting with his

his brother and two other men outside of the saloon kept by his father, on the southeast corner of 110th Street and Second Avenue; that the defendant appeared from behind a sign, accompanied by Charles Young and by Peter Bianco and started shooting, firing three or four shots, and at that time one of those shots struck the complaining witness, Dominick DeLucca in the arm going through the upper part of the arm. Thereupon the people around the place scattered. A few minutes there after DeLucca went over to the drug store across the street and while he was in the drug store, the defendant and two others, Charles Young and Peter Bianco fired more shots at the complaining witness. We will show that pedestrians -- a boy was shot as he was watching this shooting affray, and that an innocent passer-by was shot in the ankle. Meanwhile, to give you the whole history of the case, after the first shooting, the brother of the complaining witness, seeing the three men firing, ran some place and got a gun and while the shooting was taking place outside of the drug store, he fired, killing a brother of this defendant. So you will see that there was a general gun fight around and about this place at the time. That in a general way gives you the facts of the case, and they will be brought out more in details by the witnesses produced by the People.

PEOPLE'S CASE.

MR. McDONALD: The Defendant's counsel concedes that the defendant was previously convicted, and I will read into the record the prior conviction.

MR. DUEL: Yes, as charged in the indictment.

MR. McDONALD: The defendant through his counsel concedes that on the 21st day of May, 1915, before Judge Wadhams, in the Court of General Sessions, the defendant was convicted of a felony, to wit:- the crime of criminally having and carrying a fire-arm concealed upon his person, and was sentenced to Sing Sing prison for two and a half years.

MR. DUEL: Yes.

DOMINIC DE LUCCA, of 106 East 113th Street. a witness called on behalf of the People, being duly sworn, testified as follows:

MR. MCDONALD: I offer in evidence a diagram, subject to corrections of the place of the occurrence.

MR. DUEL: No objections.

THE diagram is marked in evidence as People's Exhibit I.

MR. McDONALD: I offer in evidence three pictures or photographs of the premises at 110th Street and Second Avenue, southeast corner, there being no objection by counsel for the defendant.

MR. DUEL: No objection.

The photographs are marked in evidence as People's Exhibit 2, 3 and 4.

DIRECT EXAMINATION BY MR. McDONALD:

Q You are now in the army, are you ?

A Yes, sir.

Q To what regiment do you belong?

A 306 Infantry.

Q Where are you stationed?

A Company L.

Q Where are you stationed?

A I don't understand you.

Q Where are you, at Yaphank?

A Yaphank, Long Island.

Q Do you know the defendant, Sam Sacco?

A Yes sir.

Q How long do you know the defendant?

A For about eight or nine years. We were kids, brought up together.

Q Where, in this City?

A Yes sir.

Q Did you see him on the 20th day of August, 1917?

A Yes sir.

Q Had you seen him previous, -about three or four weeks previous to August 20th, 1917?

A No sir.

Q About what time did you see him on the 20th of August, 1917?

A It was about twenty minutes to nine.

Q About where were you at that time?

A Going over to the drug store.

Q Previous to that where were you?

A Sitting in front of the saloon, right next to Joseph Priano, Robert Rossie, my brother and another fellow named, Danny.

Q You say you were sitting in front of the saloon?

A Yes.

Q Whose saloon is that?

A My father's saloon.

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Q Tell us how you were sitting with regards to the corner?

A Well for instance, this is the saloon (indicating) Here is the crosstown, the corner of 110th Street. I was sitting as I am now. Robert Rossie alongside of me on my left and my brother alongside of Robert Rossie, and Danny standing alongside of my brother, and Joseph Priano between the door and me.

Q Between the doore and you?

A Yes.

Q Was anybody else sitting there?

A No sir.

Q What part of the front of the store were you at?

A The door is right in the front.

Q Show us on which side, on People's Exhibit 3 in evidence; where you were, what part of the store?

A On the left (indicating).

Q Point it out there.

A Right here, We were all sitting here. (indicating).

Q Put a cross there.

A Where I was sitting?

Q Yes.

A (Witness indicating by marking a cross mark).

Q Now put your initials there, also.

A (Witness indicating by marking initials).

Q Now, what sort of a chair were sitting on, a wooden chair?

A A wooden chair, yes sir.

Q Now then, just tell us what was the first thing that happened?

A The first thing I seen, some fellow by the name of John pagano and Charley Young stepped from out a sign and John Pagano fired one shot and hit me right on the right arm.

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Q Is that the chair you were sitting on? (Showing a chair to the witness).

A Yes sir.

Q Just before any shooting occurred, what was its condition?

A o. K. The same as every other chair in the saloon.

MR. DUEL: I move to strike out the words, "The same as every other chair".

THE COURT: I will strike it out.

A. The chairs are all one kind.

THE COURT: Strike that out. Just answer the questions that are put to you.

Q And you say you were sitting on this chair?

A Yes sir.

Q Now then just tell us what happened?

A I was sitting on the chair when I seen some fellow by the name of John Pagano and Charley Young step from behind the sign and John Pagano fired the first shot and hit me on the right arm. I fell and Charley Young fired two more shots.

Q Who?

A Charley Young fired two more shots, and they both ran up in 10th Street and Third Avenue. (110th) When I picked myself up I seen Peter Bianco and Joseph Sacco right near the mud gutter.

Q Joseph Sacco, that is no this defendant?

A No, that is the brother; Peter Bianco fired three or four shots and I laid on the floor again. I got up afterthat and I went over to the drug store with a fellow named Danny, that was standing alongside of my brother. As we got to the

door of the drug store I heard another shot and I laid down on the floor this way (indicating) and looked back and Sam Hurley fired two more shots at me. He ran up to the Church, which is about three houses away from the saloon.

Q Did you see him?

A Yes, he got into a big, black car standing there. I got in the drug store and I told Danny to call up the Harlem Hospital.

Q Never mind what you told Danny. What did you do then?

A The fellow from behind the counter of the drug store was bandaging up my arm when I heard six or seven other shots fired outside. Then they took a little boy inside and another young man inside. He looked to be an old man to me. I did not recognize him. Then I seen his young wife came in and started crying.

Q Whose?

A Hoe Sacco's.

Q Did you see this defendant after that?

A No sir. She started crying and she said, "Oh, my husband, your brother is the cause of his death, your brother is the cause of his death." She said it twice. Then the officers came in there. After a little while a doctor came in and picked me up and the other boy, and they put the two of us in the ambulance and took us to the Harlem Hospital. The next morning I seen another youn man about two beds away from me saying they picked him up in 112th Street. He was shot in the right leg.

MR. DUEL: I move that the witness's statement

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what he heard another man say, be stricken out.

MR. McDONALD: No objection.

MR. DUEL: At this time I move to strike out the of this testimony respecting what Joseph Sacco's wife said in the drug store, claiming Samuel is the cause of the brother's death.

THE COURT: Motion granted.

Q You say you were shot?

A Yes, on the right arm.

Q Show us where?

A Right here (indicating forearm above the wrist).

Q Is that where you were shot?

A Yes. This is the way I was sitting (indicating).

Q How long did you remain in the hospital?

A About four days.

Q Did that wound go right through your arm?

A The doctor took the bullet out. It did not go through.

Q Just look at this chair(handing chair to the witness), what was its condition at the time you sat in it, previous to any shooting?

A The same as this other side.

Q Did you see it after the shooting?

A No sir, I did not.

BY THE COURT:

Q When was the first time you saw it after the shooting ?

A When I took it out from the saloon and put it near the door and sat on it.

Q After the shooting?

A After the shooting I did not

see it. This is the first time.

Q Was that the chair you were sitting on?

A Yes sir.

THE COURT: He said he never saw it from that time to this.

THE WITNESS: That is right, your Honor.

MR. McDONALD: I offer to have this chair marked for identification.

Chair marked People's Exhibit 5 for identification.

Q Is this chair now in the same condition as it was when you sat in it?

A No sir.

Q What changes are in it ?

A It is broke there.

There is a bullet hole in the bottom.

Q Here? (indicating)

A Further down (indicating on the right side of railing of chair).

MR. McDONALD: That is all.

CROSS EXAMINATION BY MR DUEL:

Q How many shots in all were fired?

A I could not tell you.

Q About how many?

A Well, about 15 shots.

Q Within the space of what time?

a Within the space of about half an hour.

Q Where were you during that hlaf hour?

A Well, I was in front of the saloon and I was in the drug store.

Q How long were you in front of the saloon after the first shot was fired?

A About seven or eight minutes.

Q How many shots were fired before you got to the

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drug store, after you left the saloon?

A About seven or eight .

Q Was that still while you were on the street?

A Yes.

Q How many shots were fired while you were in front of the saloon and going to the drug store?

A Three of them.

Q That made a total of about ten while you were exposed on the street to the shooting?

A Yes sir.

Q About ten shots?

A While I was on the street, yes sir.

Q How Many people did you see fire shots at you?

A I seen John Pagano and Peter Bianco and Sam Sacco, which is Samuel Hurley.

Q Which one fired first?

A John Pagano.

Q How many did he fire?

A One.

Q How far was he from you when he fired that one ?

A Right near where the sign of the saloon is, where it says, "Lunch".

Q Does that show on any of these pictures? Where is that sign?

A It is right on the corner of the window.

Q Can you point out its location on this picture, although it is not there, on Exhibit 3?

A Here is where it is located (indicating).

Q Put a cross mark there.

A (Indicating by a cross mark)

Q Does it project out from the building into Second Avenue?

a No sir, just straight.

Q Does it project into 110th Street?

A No sir.

Q What do you mean, straight?

A Straight to the avenue. You can see it on both sides, going up or going down.

Q Do you mean it projects out from the building line like this (indicating) ?

A No, it is hooked this way (indicating at right angles).

Q Straight out into the avenue?

A Yes.

Q Does that sign reach all the way to the ground or only to the bottom of the window?

A Right to the ground. She stands on the ground.

Q How high is it?

A I don't know. may be it is about three feet.

Q Do you know wheter that sign has been moved from the window or not?

A No sir, it was not removed.

Q It is still there?

A Yes sir. Of course, my father laced it in when he closes up the place.

Q Every night?

A Yes. He puts that sign out every morning about 11 'o'clock.

MR. DUEL: I assume from that, this picture was taken at a time when the saloon was closed.

MR. McDONALD: Yes. That picture is only to give a general idea.

Q How high does that sign reach above the ground?

A About three feet.

Q Who was the next one who fired a shot at you?

A Charley Young, he fired two other shots.

Q He fired how many?

A Two other shots while I was lying on the floor.

Q Where were you lying on the floor?

A Right in the doorway, with my feet out, the saloon doorway.

Q Where was Charley Young?

A In back of John Pagano.

Q Did you see John Pagano at the same time that you saw Charley Young?

A John Pagano was the first man I seen.

MR. DUEL: I move to strike that answer out as not responsive.

THE COURT: Well, he answers your question indirectly.

Q You saw Charley Young fire two shots after John Pagano fired the first shot?

A Yes sir.

Q You saw him back of the sign?

A No, he was out from the sign, about six inches out from the sign, the two of them together.

Q Exposed to your view?

A Yes.

Q Where was John Pagano at that time?

A Right next to Charley Young.

Q In toward the sign?

A About six inches away from the sign.

Q And so was Charley Young?

A Yes sir.

Q They could not both occupy the same place, could they?

A Yes sir.

Q When you fell on the floor of the saloon door did

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you fall in with your head towards the door of the saloon?

A Towards the door you mean?

Q Towards the door of the saloon?

A Yes.

Q With your feet out?

A Yes sir.

Q How were you able to see these two men if your head was inside the door?

A I could not see them men when I fell down after they had fired.

Q I thought you just stated you saw them after you fell down, you saw Charley Young fire.

A After I fell down they both run to 10th Street and Third Avenue.

Q That is not what you testified to before.

A That is what I testified to .

Q Who fired the shots after that?

A Peter Bianco, standing alongside of Joe Sacco.

Q After Charley Yound fired his two shots, what did you do?

A I got up and I was going into the saloon to tell my father I was shot in the arm and I was going to the drug store. While I was going out I seen Peter Bianco and Joseph Sacco standing near the gutter.

Q How far were you from the saloon at that time?

A When I seen them?

Q Yes.

A Well, I was just going to out of the door.

Q What part of the gutter were they in, down toward 110th Street?

A Straight to the door.

Q Straight in front of you?

A Yes.

Q Who did you see there?

A Peter Bianco and Joseph Sacco.

Q What did you do?

A I seen Peter Bianco with Joseph Sacco go for his pocket. I got behing the door and there was three or four other shots fired.

Q Who fired those shots?

A Peter Bianco.

Q What door did you get behind of?

A On the right hand door of the saloon.

Q Inside?

A Yes sir.

Q What did you do after that?

A After them shots was fired I went out with a fellow named Danny to the drug-store. As I got near the door of the drug store Sam Sacco fired a shot and I laid on the floor and seen him fire two other shots and he ran down to where there was a big, black car standing near the Church, three houses away from the sallon, and the car shot down First Avenue.

Q How many shots did you say he fired then?

A Three shots.

Q In your first testimony you said two shots?

A No sir.

Q I have it written down here. However, if your recollection is better, all right. You do not want to revise your testimony, you make it three?

A He fired one shot and I fell on the floor and then he fired two other shots at me and rund down near the Church where there was a big, black car and he got in and the car went down First Avenue.

Q Again you fall; I suppose with your head inside the drug store?

A Then I went into the drug store.

Q When you fell, you fell with your head towards the door of the drug store?

A No, I was near the door. I did not fall to the drug store. I fell still right on the floor and pretended to be dead. I made out the shot hit me. so he would not come in after me again.

Q But you lifted your head around to see which way Sam ran?

A I was lying that was. I could see him right to the other side.

Q Who was it got into that car?

A He was the only man I seen.

Q Nobody else in the car?

A I did not see. The back of the car was facing Second Avenue.

Q How far away was Sam when he shot you?

a Right in front of the sallon, on the opposite corner.

Q Would that be the southwest corner of 110th Street and Second Avenue?

A Southwest corner. Near the shanty. There is a shanty there, That is like on the avenue, the shanty.

Q I show you this diagram, People's Exhibit 1. Make a cross where this sign is, the De Lucca Cafe.

A Here is the front door of the saloon. Right alongside of the saloon there is a shanty, right here (indicating). It is right up against the saloon. It is on 10th Street (110th).

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Q An appurtenance of the saloon?

A Yes, exactly right up against the saloon.

Q This is your cross here?

A Yes.

Q Just put your initials there.

A (Witness indicating by making initials).

Q How far back from the building line is that shanty?

I mean from the Second Avenue building line?

A I could not tell you. 15 or 20 feet, I could not tell you.

Q Ten feet?

A I could not tell you; I don't know.

Q How long has your father owned that saloon?

A He owns that saloon a little over two years.

Q And you have been around there for two years?

A Yes.

Q And you don't know how far back from the building line that shanty is?

A No sir.

Q That is, the Second Avenue building line?

A No sir.

Q Now where were you when you say Sam Hurley or Sam Bacco fired that first shot?

A Right on the opposite side, right here (indicating), going into the door.

Q In other words, he let you get completely across the street?

A Yes sir.

Q To the drug store?

A Yes sir.

Q Over to where you made this made this mark here, before he fired that first shot?

A Yes.

Q Then you dropped down?

A Yes.

Q And then two more shots were fired?

A Yes.

Q Your head way away from him, wasn't it?

A Yes sir.

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Q But I suppose you doubled it around so that you could look back from this shanty?

A No, I didn't double it around. I just dropped this way (indicating).

Q Now initial this other cross marked place, please.

A (Witness marking with initials).

Q How long a time elapsed between the time that John Pagano fired the first shot and Sam Sacco, as you said, fired the last shots?

A About fifteen or twenty minutes.

Q How many policemen were around at the time Sam fired the last shot?

A I did not see any.

Q Have you ever been convicted of a crime?

A Yes sir, once.

Q Weren't you in the Catholic Protectory twice?

A Yes sir, my father put me there.

Q Weren't you in the penitentiary?

A Yes sir, that is the time I was convicted.

Q For horse stealing ?

A No sir.

Q What was it for?

A For petit larceny.

Q You mean that is what you were convicted of? Weren't you arrested for stealing a horse and wagon?

A No sir, that was not the crime.

BY THE COURT:

Q What were you sentenced to the penitentiary for?

A For stealing a case of eggs.

BY MR. DUEL:

Q Weren't you arrested in May, 1915, for participating

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in a shooting match up there in Harlem where a man named Maleno was killed?

MR. McDONALD: That is objected to.

Objection sustained and exception taken.

THE COURT: Mr. Duel, you have been in the District attorney's office long enough to know that it is improper to inquire about an arrest, unless there is a conviction.

Q Did you know a man named Genero Jidici?

A No sir.

Q Did you ever hear that name mentioned?

A No sir.

Q Did you ever mention that name in the Third Branch Detective Bureau the night you were shot?

A No sir.

Q You did not?

A No sir.

MR. DUEL: That is all.

RE DIRECT EXAMINATION BY MR. McDONALD:

Q When was it that you had a talk with this defendant just previous to the shooting?

A It must have been about four weeks before that, in the College Inn cabaret, in 125th Street near Ninth Avenue.

Q What was it the defendant said?

A He called me down in the latrine, that is the toilet, and he asked me,- he told me rather, that he was sent to me by the Brooklyn people to kill Ciro and Vinc Morelli,- that is the two brothers. So I told him I would not do anything like that. So we went upstairs and he called me down again and he said to me that I should not put him off, that it would be bad,

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so Sam same downstairs and we went up again. At the third time he called me and my brother down and we both went down there and he said to my brother" You are the nearest fellow to Ciro."

Q Who is Ciro?

A Ciro Morrelli. That is Vinc Morelli's brother. He said, "You will have to put him out of the way or other wise it will be bad for your." So my brother said, "I would not do a thing like that. If we want to be good friends don't talk to me about anything like that." He said, "I was sent over by the Brooklyn people." My brother, he said, " I don't know them people, so I would not do it."

Q Is that all the conversation?

MR. DUEL: I move that this conversation be stricken out as immaterial to this case.

THE COURT: It is always permissible to show that a defendant made a threat.

MR. DUEL: If any threat was made, according to this conversation, it was a threat to kill a man named Ciro, through the agency of Dominic.

THE COURT: A threat to injure the De Luccass if they did not kill these other man, the Morellis. I will simply allow it as some evidence of a threat, and I warn the jury that they must not be prejudiced against the defendant on account of the alleged conversation, other than to view it in the nature of a threat, if they

find that it was threat. It contains some slight evidence of a threat.

Q Did he say anything further to you at any time?

A No sir.

Q Did he say what would happen to you in case you should not do what he asked you to do?

MR. DUEL: Objected to as leading the witness.

Q Tell us all that happened?

THE COURT: If he said anything further in the way of a threat he may say so.

A He told us that we would be killed. A few days after that I heard that this Robert Rossie was shot in the Bronx.

Q What did he say?

A He told us we would be killed.

Q You say that was all the conversation with my brother, which I don't know.

Q He did not have any further conversation with you before the 20th of August?

A No sir.

Q Now you say you were in front of the saloon at the time you were shot?

A Yes sir.

Q That is in the Country of New York?

A Yes sir.

Q 110th Street and Second Avenue?

A Yes sir.

MR. McDONALD: That is all.

RE CROSS EXAMINATION BY MR. DUUEL:

Q Where is the College Inn located?

A In 125th Street near Ninth Avenue.

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Q Between Ninth and what avenue?

A Ninth and Eighth Avenues. Between Ninth and Eighth.

Q You mean between Eighth and Manhattan?

A Right near the corner of Ninth Avenue. I have been there three or four time.

MR. DUEL: That is all.

JOSEPH J. PRIANO, of 231 East 108th Street, called as a witness on behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business?

A Private detective.

Q By whom are you employed?

A Captain Riley's Detective Bureau.

Q Do you know Dominic DeLuca?

A I do.

Q Do you know the defendant, Samuel Sacco?

A I do.

Q Were you in the saloon premises of the complaining witness on the 20th day of August, 1917?

A I was.

Q At what time of the day?

A I was there from six o'clock in the evening.

Q Until when?

A Until the shooting happened, until about eight thirty or nine o'clock.

Q Did you remain inside of the saloon all the time>

A No si, I was standing outside in front of the doorway.

Q About what time did you go outside of the saloon?

A I should judge about eight o'clock, something like that.

Q Did anybody go out with you ?

A Yes, the two DeLuca brothers and a few others.

Q Dominio Delucca?

A Yes.

Q And Tony DeLuca?

A Yes.

Q And who else was there?

A A couple of others, boys.

Q Where did you go when you went out of the saloon?

A stood in front of the doorway.

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Q Did anybody sit down?

A Yes sir.

Q Were there chairs outside of the saloon?

A Yes.

Q Leaning up against the window?

A Yes.

Q Where were you standing?

A Right near the window, and Dominic was sitting down.

Q That last witness here?

A Yes, that man in uniform (indicating Domino DeLuca).

Q Mark on there where you were standing, on People's Exhibit 3 in evidence?

A I was standing right here (indicating).

Q Mark it with your initials?

A (Witness making a mark and a cross).

Q You say Dominic was sitting alongside of you?

A Yes, on a chair.

Q and you were standing up?

A Yes sir.

Q And how long had you been outside of the saloon before any shooting took place?

A About half an hour, I should judge.

Q Tell us what happened at the time of the shooting, or just previous?

A Previous to the shooting I noticed a black touring car coming from West on 109th Street, shooting east. I said to Dominic --

Q Never mind what you said to Dominic, You said something to Dominic?

A Yes. Then I walked to 109th Street and Second Avenue, the northeast corner, down to the middle of the block and I noticed this black touring car stopped in front of a cafe. I afterwards came back to the saloon where the boys were standing and I stood there. About twenty or twenty-five minutes after that.

the first thing I know, I heard shots come in our direction . I noticed two men crouching behind a big sign, a lunch sign, and another young man who I got in Albany, that was wanted for murder, by the name of Peter Bianco--
MR. DUEL: I move to stike out the last part.

THE COURT: Strike it out. Leave out these allusions, and the jury will disregard that.

Q (Continued) This Peter Bianco was in the car tracks, firing also in our direction.

Q Who were these two men?

A Crouching behing the sign?

Q Yes.

A One I know as Charley Young, and this defendant here.

Q The defendant Samuel Sacco?

A Yes.

Q This sign you talk about; what kind of a sign was it?

A A lunch sign. It was made of tin with a wooden frame.

Q A sort of triangular sign resting on the ground?

A It was resting on the ground.

Q Where was this sign placed?

A Right near the corner of the saloon.

Q But on the Avenue?

A On the Avenue.

Q You say you were standing up there during all that time?

A Yes.

Q What happened after you saw these two men crouch behind a sign?

A I seen the shots come and we ran. Then I heard Dominc Say, "I am shot". As he said that I gave chase after this Bianco. I think a police officer was behind me through Tenth Street

(110th Street?), who tried to get this fellow, but he got away from us. I came back, and as I went to the drugstore I noticed a party shooting into the drugstore after Dominic, and as he done that I noticed Dominic's brother Antonio pull out and shoot this othher man. I made for his hip pocket and killed him. I told Dominic, "Don't run away; stand there, we will all go up to the Branch", because the Detective Bureau knew this for several weeks, this was supposed to come off.

MR. DUEL: I move to strike out what the Detective Bureau knew.

THE COURT: Strike it out.

THE COURT: (Addressing witness) The jury will pay no attention to anything you , if you do not refrain from making sneh remarks. Such remarks only show bias on your part. Just answer the questions put to you. The jury have a right to consider whether you are bissed or not, and all those things that you interject, notwithstanding my warnings to you not to do so, simply are proff of bias; do you understand that?

THE WITNESS: Yes.

THE COURT: So please answer the questions that are put to you and nothing else.

Q Where was Peter Bianco standing at the time of the firing?

A In the middle of the car tracks.

Q What car tracks?

A The Second Avenue Railroad.

Q And the other two men?

A Were crouching behing this sign.

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Q They were shooting where?

A Towards us, towards the doorway.

Q Just show us where this lunch sign was on the night you are talking about. Mark it there on People's Exhibit 3 with your initials. A Just about there (marking with initials).

Q That is about where the sign is?

A Yes, right at the corner of the saloon.

Q At the intersection of the street and avenue?

A Yes sir.

Q How long do you know Sacco?

A A good number of years.

Q About how long?

A About ten or fifteen years, I think.

Q There is not any doubt about that he was one of the men who was firing from behind the sign, in your mind?

A No.

Q How far away from him were you?

A I should judge about--

Q The length of this window?

A About the whole length of the window. I was on the opposite side of the door.

Q About how many feet is that window?

A About 25 or 30 feet.

MR. McDONALD: Your witness.

CROSS -EXAMINATION BY MR. DUEL:

Q What is your full name?

A Joseph J. Priano.

Q What is your nationality?

A Italian.

Q What is your business?

A Private detective.

Q You are a private detective about how long?

A About ten years.

Q Where are your offices now?

A 225 Fifth Avenue, connected with Captain Riley.

Q Are you employed by him or are you associated with him?

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A I am employed by him.

Q How long have you been employed by him?

A I am with him now about two weeks, or a little over two weeks.

Q Who were you employed by before that?

A That Manhattan Detective Agency, and before that Brown's Detective Agency and before that ray's Detective Agency.

Q During what period of time were you employed with those three concerns?

A Always.

Q Who were you employed by in August, 1917?

A If I am not mistaken I think it was the Manhattan.

Q So from the Manhattan you went to Riley?

A I left the Manhattan and then done work of my own accord through different attorneys, divorce actions, and so forth, and then to Hiley.

Q Are you a divorce specialist?

A No, not a specialist. All criminal cases.

Q Whom were you with before you went to the Manhattan?

A Fay's Detective Agency.

Q You did not mention that before?

A And Brown's Detective Agency.

Q Brown's, Fay's, the Manhattan and Hiley's?

A Yes sir.

Q What other concerns?

A That is all.

Q Those are the only ones?

A Yes.

Q When were you working for Fay?

A Over a year ago.

Q When did you first go to work for him?

A I do not recall.

Q When did you work for Brown?

A When he first got into business, I was manager of the concern, 391 Kest 149th.

Q How long were you with him?

A Until his death, about two years ago.

Q In other words you worked for him about seven or eight years?

A I do not know how long he was in business before he died, and after he died the firm went out.

Q You said you were a private detective for ten years?

A Yes.

Q And you only worked for four concerns?

A Yes, but I was three years with one, worked four years for another, and so forth.

Q You said you worked for the Manhattan concern in August, 1917?

A Yes.

Q And then for Riley and for Fay before that?

A Yes.

Q Then I asked you how long you were with Brown and you did not know?

A I should judge for four years; I am not sure.

Q How long were you with Fay?

A About a year and half. I don't know for sure.

Q How long were you with the Manhattan?

A About two years or so.

Q What named do you go by?

A Always as Joseph J. Priano.

Q You never used any other?

A No sir.

Q Under no circumstances?

A No sir.

Q How long have you know the DeLucca brothers?

A I went to school with them; since boyhood.

Q They have been friends of yours all your life?

A Always.

Q You never have been convicted of crime, of course?

A No sir.

Q Have you been employed by anybody in this case?

A No sir.

Q Have you received any expense money from anybody in this

case?

A No sir.

Q You come here to testify in this case, therefore, solely out of your interest in justice?

MR. McDONALD: He comes in answer to a subpoena.

Question withdrawn.

Q How long have you known the defendant?

A About ten or fifteen years.

Q Did you ever visit at his house?

A No sir. I always met him in the street.

Q Did he ever visit at your house?

A No sir.

Q Did you ever take a drink with him?

A No sir, I do not drink.

Q What do you mean by visiting him in the street; did you see him in the street?

A I met him and talked to him many a time.

Q When did you talk to him last, before this shooting?

A I don't recollect that.

Q Approximately?

A How could I remember when I talked to him last?

Q When did you see him last before the shooting; you say you saw him in the street and have known him for about fifteen years?

A I might have probably seen him a month before that, for all I know.

Q Haven't you any recollection of the last time you saw him, and where, before the shooting?

A On one occasion I met him in 109th Street and Third Avenue, northeast corner, talking to a couple of boys.

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Q What was that occasion?

A Just passing by, and I said hello.

Q What made you single out 109th Street and Third Avenue?

A I know he always hung out there.

Q So you might have seen him there?

A I know he hanged there.

Q When do you think that was?

A I don't know. It might have been a month or two months before the shooting.

Q Or three or four months?

A I could not tell.

Q And before that when did you see him?

A I wish I would know, I would tell you. I would often see him passing by.

Q Did you see him last spring, in April?

A I would not say that. I think he was in jail at that time, if I am not mistaken. I met him in Ossinning.

Q Do you remember; have you any clear recollection of having seen him before the shooting?

A I said probably a month before or a week before, I am not sure.

Q There is no doubt in your mind, however, that he was the man, Charley Youn, or Archafalo. You know him as Charley Young?

A Yes.

Q Behind the lunch sign?

A Yes.

Q At the time of the firing of the shots?

A Yes.

Q You say as soon as the shot from Peter Bianco's gun in the car track went off, when the shots of the two men went off, you ran after Bianco?

A I ran after him through Tenth Street(110th?), going towards Third Avenue. I think a young police officer was behing him.

Q Did you see that police office later?

A No, not from that day to this.

Q How far did you run, as far as Third Avenue?

A No sir, about to the middle of the block. Then I came back.

Q Where was Dominic when you came back?

A I think he was in the drugstore.

Q Don't you know where?

A I am quite sure he was in the drugstore.

Q Is every detail of this scene in your memory?

A There is no doubt in my mind he was in the drugstore.

Q Inside of the door?

A Yes sir.

Q There is no doubt in your mind somebody was firing shots?

A Yes sir, right into the drugstore.

Q Who was that?

A I could not tell. There was a big crowd there.

Q What did you do when you saw that?

A When I seen the shots going into the drugstore, Antonio DeLucca comes from--

Q I am asking you what you did?

A I stood there in the crowd.

Q You did nothing?

A No sir.

Q How long did you remain there on the scene?

A For about a half an hour afterwards.

Q Then where did you go?

A Then I went with Antonio DeLucca to the Third Branch Detective Bureau.

Q Whot did you see there?

A I went there and I seen Captain Prince, Enrigh; Inspector Craig was there and a couple of others.

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i don't know who they were.

Q Did you stay with them all night?

A Yes.

Q Helping them with the case?

A No, not helping with the case. I just told the two brothers to confess and tell the truth.

Q What two brothers?

A The DeLucca brothers.

Q To confess?

A Yes, to tell the truth of how the shooting was.

Q They had not committed any crime, had they?

A The borhter committed murder in self-defense by shooting Joe Hurely.

Q Joe Sacco?

A Yes.

Q You told him to confess?

A I told him to tell the truth.

Q Did he do it?

A Yes sir.

Q He confessed, did he?

A Yes.

Q That he killed in self-defense?

A Well, he told how he shot him.

Q Then what did you do after that?

A Then I went home.

Q What time did you get home?

A About six or seven o'clock that morning.

Q You did not go home until they were through examining these people, did you?

A What people.

Q What they had under examination?

A I was not in the room where they were. I was in another room.

Q Did you see this defendant there?

A I did.

Q What time was that?

A Sometime during the morning. I do not recollect when it was.

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Q One or two o'clock?

A I could not tell you the exact time.

Q Three or four o'clock?

A I could not tell you the exact time when it was.

Q Why not?

A I did not pay attention.

Q Can't you apporportion that night in some way?

A I know it was all morning they were bringing them in. At the first batch they brought in Charley Young and a couple of others in a touring car. After a while they brough him in. It may have been an hour or two after that.

Q Did they bring in any more batches after that?

A That I do not recall.

Q They brought in two batches anyway?

A That I know, yes.

MR. DUEL: Your Honor, I desire to have the witness write the name of Joseph Shoemaker on this piece of paper.

A Why should I write that name?

THE COURT: I so direct you. You write anything that Mr. Duel tells you to write. You are here now subject to the orders of the Court.

Q Write Joseph Shoemaker (spelling name out to the witness).

Witness writes the name as requested.

Mr. Duel: I offer that for identification.

Paper marked Defendant's Exhibit A for identifaction.

MR. DUEL: That is all.

ROBERT ROSSIE, of 221 EAST 14th Stree, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR.McDONALD:

Q Do you know the defendant, Samuel Sacco?

A Yes sir.

Q How long do you know him?

A About a year or a year and a half.

Q Did you seehim on the 20th day of August, 1917?

A Yes sir.

Q Where were you at that time?

A Sitting in front of Le Lucca's saloon.

Q Abut what time was it?

A About half past eight.

Q In the evening?

A Yes sir.

Q Who was there in front of the saloon?

A Antonio De Lucca, Dominic De Lucca, myself and a fellow named Danny.

Q When was it that you saw the defendant before the 20th of August, 1917?

A I seen him in the moth of August the night he shot me.

MR. DUEL: I object to that.

THE COURT: I will strike it out.

Q About how long before the 20th of August had you seen and talked with the defendant Sacco?

A I could not explain that. The only way I can explain is the night I was shot on.

Q Was it a week or two weeks before the day--

THE COURT: What difference does it make when he saw him before this? If he was present there on this

night that we are investigating about, let him say so. Whether he saw him before or after, that may be brought out on cross-examination.

MR. McDONALD: I want to bring out that the defendant asked this man to shoot Tony De Lucca.

THE COURT: All right, but bring out what he saw that night first.

Q Just tell us what happened that night, the 20th of August, 1917?

A That night I was sitting in front of the saloon, the three of us; myself was the third man. The fourth man was standing.

Q Who were the three men?

A Tony De Lucca, Dominic Delucca and myself were sitting and Danny stood up.

Q A man name Danny?

A Yes.

Q Fortunash; have you heard his name since?

A Yes.

Q Is it Fortunash?

A Yes.

Q Who else?

A Just those four.

Q Did you see Joseph Priano there?

A He was standing out in the street, right on the corner, like on the corner.

Q Not close up against you?

A He was about three or four feet from us?

Q Just tell us what happened?

A We were sitting there. While we were sitting there we were talking to one another.

Tony DeLucca was talking. So all of a sudden somebody fired three or four shots from the corner.

Q From Where?

A From behind the lunch sign.

Q where was this lunch sign?

A It was right on the corner.

Q Just mark on People's Exhibit 3 in evidence, where the sign was.

A The sign was over here and we sat here (indicating). The shot came from here. (indicating).

Q Did you see who was shooting?

A I seen a fellow named Pagano shoot and Charley Young stood next to him, and Sacco I did not see. I seen Sacco backing out of the drug store after firing three or four shots into the drug store.

Q Well, before you tell us about that. Just tell us what happened at the corner saloon there.

A While the shots were fired Dominic De Lucca was the only one that was hit.

Q Where was he hit?

A In the arm. So he jumped up and hollers, "They got me." So Dominic and three or four, the whole lot of us sitting there, we goes inside with Dominic into the Saloon. So about three or four minutes after I heard three more shots outside of the door. In the meantime I didn't go out to see who was shot. Danny walked out with Dominic to look over to the drugh store, into the drug store. I remained in the saloon about two minutes and I waked outside the door.

Q Outside of which door?

A Outside of the saloon.

Q The front door?

A Yes sir, and I stood on the amongst the crowd and then I heard about three shots

and I turned around and I seen Sacco backing out of the drug store door.

Q This defendant?

A Yes.

Q What was he doing?

A He was firing shots into the drug store.

Q That is where you saw Dominc De Lucca going with Dan Forthunash?

A Yes.

Q Did you see the gun in his hand?

A Yes sir.

Q Then what did he do? What did you see?

A Well, then after he fired the shots into the drug store, I got in amongst the crowd. After that I could not see anything because there was nothing else happened.

Q Did you see where Sacco went?

A I did not brother, no sir.

Q Did you have a talk with Sacco previous to that night?

A No sir.

BY THE COURT:

Q How long have you known Sacco?

A About a year and a half.

Q Didn't you ever have any talk with him about DeLucca?

A not that night.

Q On any time before that night?

A Then I would have to tell you how I was shot.

Q Please answer my question yes or no. Did you ever have a talk with him about DeLucca?

A Yes sir.

Q How long before this 20th of August?

A About

three weeks.

Q Tell us what he said to you at that time?

A Well, that time I met him down at 46th Street and Broadway, him and Charley Young, and another fellow, I don't know his name. So he said to me, "Well, come on, we will take a ride to Brooklyn in the automobile." Three fellows and three girls. So one of the girls passed a remark, "Who is the three fellows?" So Young said, Charley, Robbie and Sam.

Q What did the defendant say to you?

A After while we were in the car, while coming uptown he asked me would I kill Antonio DeLucca.

Q Did you go the Brooklyn with him?

A Yes.

Q And on your way home from Brooklyn, what then?

A He said he would take me home. He said to me, "We will take you up to 110th Street. On the way up he said will I kill Antonio De Lucca.

Q Will "I" or "You".

A Will I kill him.

Q He meant you?

A yes.

Q He said Will you kill him Antonio DeLucca?

A Yes.

Q He did not ask you whether he should kill him or not?

A No.

Q But he asked you to kill him, you say?

A Yes.

Q What did you say to that?

A I said to him, "No, I can't kill him." So he said to me, "All right, say no more about it." Then he said, "We will go up to see Nic Todo in

in 149th Street.

Q Did he ever say anything more to you about deLucca?

A No sir. He shot me.

THE COURT: Strike out about the shooting and the jury will disregard that.

BY MR. McDONALD:

Q Did he tell you why he wanted you to shoot DeLucca?

A He had some trouble with De Lucca.

THE COURT: Strike that out. Anything that he said about De Lucca I will allow, and you may tell it.

Q What did he say the reason was that he wanted you to shoot De Lucca?

A He had trouble with him.

Q Is that what he said?

A Yes sir.

Q Did he tell you why he wanted you to do the shooting?

A He said I was the only one who got near enough to him.

Q You are the only who got near enough to De Lucca?

A Yes.

Q To shoot him?

A Yes sir.

Q What did you say then?

A I told him, No, I would not kill him.

Q Did he say anything about why you could near enough to De Lucca to kill him, rather than he?

A Because he knew I was De Luccas's friend.

Q Did he tell you why he wanted you to shoot the DeLuccas; any reason for it?

A Well, it was because of the trouble he had with De Lucca.

Q Did he tell you what the trouble was?

A I knew

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the trouble, he did not have to tell me.

Q Did he tell you what that trouble was?

A He said De Lucca fired three shots at him.

Q He said that De Lucca fired three shots at him?

A Yes.

Q Did he say when or why?

A Yes sir.

THE COURT: What difference does that make, Mr. McDonald? We are not concerned with his reason. It is merely admitted for the purpose of showing motive or threats.

MR. DUEL: There has been no motive established as yet.

THE COURT: It is not necessary to prove it, but they may prove it if they can. The fact that he did the shooting must be established to the jury, and that it was not justifiable, that it was not done in selfdefense.

Q Do you know whose car that was that you went down to Coney Island in that night?

A Yes sir.

Q Whose car was it?

A Charley Young's.

Q He is the man that is co-indicated with the defendant?

A Yes sir.

Q When you came back did you stop with the car in 46th Street?

A Yes sir.

Q Did the defendant leave the car?

A Yes sir.

Q Where did he go?

A He said he was going up to

get a raincoat. He came down and Charley went up to get a raincoat. So when he came down, rather when he were riding in the car, every once in a while the car would jump up and down and I could feel he had a gun stuck in his belt.

Q The defendant do you mean?

A Yes sir.

Q Did anything happen to you that night?

A Yes sir.

THE COURT: Well, that is entirely immaterial.

MR. McDONALD: Your witness.

MR. DUEL: Your Honor, I unfortunately had some papers in my office which it was impossible to get to me by now. It is a quarter to one and it is necessary for me to have those papers to cross examine this witness on them and therefore I would like to have an adjournment.

THE COURT: I will adjourn the matter until two o'clock.

THE COURT: Gentlemen of the jury, the Court will take a recess until two o'clock. Meanwhile you must be extremely careful not to discuss this case among yourselves or with any one else. The time to discuss this case is after you have heard all the evidence on both sides, when the Court submits it to you, and then you will decide it and not before that. So keep your minds open and listen until the end of the case. Please come back at two o'clock.

TRIAL CONTINUED:

ROBERT ROSSIS, recalled for cross examination, testifies as follows:

CROSS EXAMINATION BY MR. DUEL:

Q How long have you know Sam Sacco?

A About a year and a half.

Q You first met him in prison?

A The first place I talked to him was in Comstock prison.

Q What were you there fore?

A Third degree burglary.

Q How manytimes have you been there?

A Once.

Q Did you go to see him when you came out? When did you come out?

A I came out March 9th, 1917.

Q And Sam came out after you did?

A Yes,

Q And you saw him afteer he came out?

A Yes sir.

Q You never had any trouble with him, did you?

A No sir.

Q Did you make a statement against him at any time in connection with this case at Police Headquarters of the Third Branch Detective Bureau ?

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

THE COURT: He may say Yes or No.

A Yes sir.

Q You did?

A Yes sir.

Q After that you were placed in the House of Detention ?

A Yes sir.

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Q You are there now?

A Yes sir.

Q When you first entered the House of Detention where were you sent?
Where was it located?

A Over here (Witness indicating).

Q Over in the building? beyond the Tombs?

A Yes.

Q Overlooking the yard of the Tombs?

A Yes.

Q Weren't you accessible to a window that overlooked the yard of the Tombs?

A Yes sir.

Q Did you ever throw any messages over into the yard, into the Tombs yard?

A No sir.

Q While the prisoners were walking around there?

Q No sir.

Q I show you a board, a piece of a board which has some metal tied around it and I ask you whether you did not throw that over into the yard of the Tombs?

A I did not write it.

MR. DUEL: I ask that witness answer the question I ask him.

THE COURT: Strike out the answer.

Q Did you throw that over into the Tombs?

A No sir.

Q I show you some writing on this board and I ask you whether you wrote that?

A No sir.

Q You did not?

A No sir,

MR. DUEL: I ask that this be marked for identification, your Honor.

Piece of wood with piece of metal marked Defendant's

Exhibit B for identification.

Q After you had been detained in the House of Detention across from the Tombs you were sent up to another prison for detention, were you not?

A Yes sir.

Q Where were you transferred to ?

A 53rd Street.

Q Wasn't Dominic De Lucca confined there?

A No sir.

Q Now you are sure that you saw Pagano and Charley Yound fire those shots from behind the lunch sign at the corner of the saloon?

A I seen Pagano fire shots while Charley Young was with him, but at that time I did not see Sam.

Q When did you see Sam?

A I seen Sam after the shots were fired through the drug store.

Q You saw Sam shoot into the drug store?

A Yes sir.

Q Didn't you say on your direct examination that you saw Charley fire shots with Pagano?

A I don't know what you mean by direct examination.

Q When Mr. McDonald asked you questions?

A No sir.

Q You did not?

A No sir.

Q Did you see Charley fire any shot at any time?

A No sir. I seen him alongside of the man that fired the shots.

Q How many shots were fired altogether?

A There were about four shots fired.

Q Were those four shots fired at the time that you were all standing by the saloon?

A We were sitting by

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the saloon, yes sir.

Q Were those four shots all fired by Pagano?

A Peter Bianco fired some shots from the street.

Q He was out where?

A About four feet from where they stood, from where Pagano stood.

Q What did you do when you first heard the shots fired?

A I jumped up and looked around.

Q Then what did you do?

A Then I walked into the saloon.

Q How long did you remain inside?

A I remained inside about five minutes.

Q Did you come out alone?

A Yes sir.

Q Where was Dominic when you came out?

A Dominic he was in the drug store.

Q How long before had he gone out?

A I don't know. I can't remember how long he went out.

Q How far were you from the drug store when you saw Sam fire the shots into the drug store?

A I was about ten feet from him; ten or fifteen feet from him.

Q Were there any other people around?

A Yes sir.

Q Many?

A I don't know how many were there.

Q Any policemen?

A Yes sir.

Q How near?

A How near was the policeman?

Q Yes.

A A policeman fired a shot at him to get him to stop.

BY THE COURT:

Q Who do you mean by him?

A Sacco.

Q The policeman fired a shot at Sacco?

A Yes.

BY MR. DUEL:

Q How long do you know Charley Young?

A To speak to Charley Young I know him about five months and a half.

Q You say Charley did not fire a shot that you saw?

A I did not see him.

Q You know Charley is indicated in this case, don't you, indicted with Sam?

A I do not know it.

Q You know Dan Fortunash, don't you?

A Yes.

Q I show you a word here and ask you whether this word was written by you?

A I got to see the whole letter before I can tell.

BY THE COURT:

Q Did you write that word or not?

A I could not say so.

Q Look at that word there. Did you write that word?

A I could not answer, your Honor.

Q You do not know whether you did or not?

A I could not answer, I got to see the whole letter first.

BY MR. DUEL:

Q I show you this letter which begins with, " Well, Danny". and it signed "Robbie", and ask you whether you wrote that note?

A (After reading note)

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BY THE COURT:

Q Can you read that?

A Yes sir.

Q Do you understand it?

A Yes sir.

Q Have you read it?

A Yes sir.

Q Did you write that?

A Yes sir.

MR. DUEL: I offer it for identification. Letter marked Defendant's Exhibit C for identification.

MR. DUEL: I offer it in evidence.

MR. McDONALD: No objection.

Letter marked Defendant's Exhibit C in evidence.

Defendant's exhibit C is read to the jury.

BY MR. DUEL:

Q I show you this paper and ask you whether you wrote that? (Handing paper to witness).

A (After reading paper) Yes sir.

MR. DUEL: I offer it for identification.

Paper marked Defendant's Exhibit D for identification.

Q I show you another paper and ask you whether you wrote that?

A (After reading paper) I don't remember this one. I ain't got my name signed on it.

Q Is that why you don't remember it?

A Yes sir. I generally sign my name when I write something.

Q To refresh your recollection, you will observe that this paper signed "Robbie" (Defendant's Exhibit 0 in evidence)

is written in the same kind of ink and you say that is your writing?

A Yes sir.

Q Also that the writing on there is similar to this paper which does not bear your signature.

MR. McDONALD: I object to that.

THE COURT: Those statements made by you are improper. You may submit the papers to him; he said he wrote and signed one and did not write the other, as I understand it.

MR. DUEL: Is there any objection to this going in evidence, Defendant's Exhibit D for identification?

MR. McDONALD: No objection.

Paper marked Defendant's Exhibit D in evidence.

THE COURT: You may show that this witness by word either spoken or written, made statements which contradict the evidence he gave here today. That is the only purpose for which it is admissible. If you claim it has that effect it may be received in evidence.

Defendant's Exhibit D in evidence read to the jury by Mr. Duel.

MR. DUEL: I offer this paper for identification. Paper marked Defendant's Exhibit 3 for identification.

BY THE COURT:

Q Who is "Charley" that that letter is addressed to?

Q Charley a Young.

BY MR. DUEL:

Q In other words, you are perfectly willing to testify in favour of anybody that would help you?

A I don't know the meaning of that.

Q (Previous question read by stenographer).

A All I can say is what I seen, the truth; that is all I know.

BY THE COURT:

Q Were you ever charged with shooting of De Lucca?

A No.

Q You were simply detained as a witness?

A Yes sir.

Q And there was no criminal charge pending against you at any time?

A No.

Q You did not need any help from anyone?

A Not in this case?

Q Is there any other charge pending against you?

A No sir, not at the present time.

MR. DUEL: I object to that, your Honor.

THE COURT: I merely want to find out whether there is any basis for your question.

MR. DUEL: There are various kinds of help that can be rendered to people.

THE COURT: My questions bring out whether the help that you refer to, if he did ask for it, did not refer to any danger he was in on account of any connection with this particular crime.

MR. DUEL: I consider that as highly improper and prejudicial to this defendant, and I ask your Honor to disregard our colloquy and your questions.

THE COURT: My questions will be considered by them. The remarks of counsel and of the Court are not intended for them and the jury will disregard them. The statements made by the witness to questions to which his statements are answers will be considered by them.

MR DUEL: I except to the latter part of your Honor's ruling.

BY MR. McDONALD:

Q While you were confined in Jefferson Market prison did you see Charley Young?

A Yes sir.

Q Charley Young is indicated with this defendant?

THE COURT: That is in evidence.

MR. McDONALD: That is all.

MARGARET DELUCCA, called as a witness on behalf of the People, havin been first duly sworn, testified as follows: (3135 Second Avenue, N.Y. City)

DIRECT EXAMINATION BY MR. McDONALD:

Q You say you live at 3135 Second avenue?

A Yes, sir.

Q And near what street is that?

A 110th street.

Q 110th street?

A Yes, sir.

Q Are you a sister of Dominick DeLuca?

A Yes, sir.

Q The complaining witness in this case?

A Yes, sir.

Q And where were you living on the 30th day of August, 1917?

A Well, 110th street, downstairs.

Q Do you know the defendant Sam Sacco?

A Yes, sir, I saw him.

Q Well, do you know him?

A Of course I know him.

Q Well, did you see him on the 30th day of August, 1917?

A I saw him.

Q Did you see your brother there that day, at 110th street?

A Well, my brother was outside, sitting down.

Q Where?

A Second avenue window of the saloon.

Q Where was he sitting?

A Outside.

Q Your father's saloon?

A My father's saloon.

Q That is on the southeast corner of 110th street and Second avenue?

A Yes, sir.

Q Now, who else was sitting there besides your brother?

Q Well, there was Robert Rossie.

Q That is the last witness?

A The last witness, and my

other brother, Tony, and there was Dan, the newspaper fellow from 111th street.

Q And who else?

A Joe was standing outside by the window, by the door, that fellow over there (pointing).

MR. McDONALD: Joe Priano.

Q Well, where were you when you saw the defendant?

A I was across the street, right opposite the saloon.

Q You live on the opposite side to the saloon?

A Right opposite the saloon.

Q On the avenue?

A On the avenue.

Q Where was the defendant when you saw him?

A I saw him coming from First Avenue on 110th street, and they got in back of the sign, and they came forward.

Q How many were there?

A Well, Sam Sacco, Cnarley young and Peter Bianco, the three of them.

BY THE COURT:

Q You saw them walking ?

A They came from First avenue.

Q They were walking on 110th street, on the uptown or downtown side of the street?

A The side of the saloon.

Q Which is the downtown side?

A The side of First avenue.

Q They were not walking on the avenue when you saw them?

A They came from First avenue.

Q What street were they on?

A From First avenue and 110th street.

Q I did not ask you anything about First avenue. Which side of First avenue, on the uptown or downtown side?

A Downtown side.

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Q And in which direction were they going when you saw them first?

A I didn't see them when they were walking.

Q But you said you did see them walking?

A From First Avenue.

Q In which direction were they walking when you saw them?

A They came up 110th street and they turned down Second Avenue.

Q You said you saw them on 110th street. In which direction were they walking when you saw them first? Do you not understand?

A I saw them coming first on 110th street.

Q They were on 110th street all the time, you say; is that true or false?

A That is true.

Q In which direction were they going on 110th street, when you saw them?

A In the direction of the saloon.

Q That is on Second avenue?

A Second avenue.

Q They were coming towards the saloon on 110th street, you are sure about that?

A Yes, sir.

THE COURT: All right. Now go on.

BY MR. McDONALD:

Q Just tell us what you saw?

A They got in back of the sign.

Q What sign is that?

A The lunch sign.

Q Where is that lunch sign?

A Facing Second avenue.

Q Firht on second avenue?

A On Second avenue.

Q Right on the sidewalk near the window?

A Near the window of the stand.

Q Of the saloon?

A Yes, sir.

Q Who got behind the sign?

A Charley Young and Sam Sacco got behind the sign.

Q You saw them get behind the sign?

A Yes, sir, and Peter Bianoc was more near the gutter.

Q Just tell us what you saw them do, if anything?

A They got in back of the lunch sign; they were looking at the window to see what fellows were standing outside; when they saw all the fellows outside, they took out their guns and started to shoot.

Q What took out guns?

A Sam Sacco and Peter Bianca-- the three fellows took out their guns, and started to shoot.

Q Where were they shooting?

A Right at the first window, and the fellows were at the Second avenue window.

Q Who were they shooting at as they fired their guns?

A The fellows were all in a bunch.

Q By the fellows you mean your brother, your two brothers and Robert Rossi and Joe Priano?

A And Dan was there, too.

Q And Dannie Fortunash?

A Fortunash.

Q How many shots were fired?

A There was about four shots fired near the saloon.

Q And then what happened?

A Then Peter Bianca ran to 110th street and Second avenue, towards 110th street to Second and Third avenue.

Q Ran towards Third avenue, down 110th street?

A Yes.

Q What happened then?

A Charley Young and Sam Sacco ran to First avenue and 110th street. Then my brother was taken to the drug store.

Q You saw your brother go across to the drug store?

A He was taken to the drug store.

Q That is right across the street from the saloon?

A Yes.

Q What happened then?

A Then they were all in the drug store. I went over to see what happened. As I ran, I saw an automobile in 110th street, and a chair--

Q Did you hear any more shots fired?

A I went inside.

Q Into the drug store?

A I was looking outside and the fellows came back and they began shooting.

Q Which fellows?

A Sam Sacco and the other fellows; they all came back and started to shoot again.

Q Where were they shooting?

A Outside by the drug store.

Q Into the drug store were they shooting?

A It was outside.

BY THE COURT:

Q They were standing outside. Did you see in which direction they were shooting?

A Right near the drug store, outside.

BY MR. McDONALD:

Q Did you see Sacco with a gun in his hand?

A Yes, sir, I did.

Q Then what happened after you heard the shots in the drug store, what happened then?

A Well, then I ran in back of one of the counter; I went outside to the back door, and somebody took me home; I don't know what happened after that.

MR. McDONALD: That is all.

CROSS EXAMINATION BY MR. DUEL:

Q When you saw Sam Sacco and Charley Young behind the sign, and Peter Bianca, you saw them draw their guns, which ones did you see fire shots?

A Well, I saw Sacco, and I saw Bianca.

Q Did you see Charley Young fire any shots?

A The three of them; I didn't watch Charley Young after I saw Peter Bianca.

Q Then you didn't see Charley Young fire?

A He had a gun in his hand but I was not watching him.

Q You must have been watching him to see him have a gun in his hand?

A (No answer).

Q Where was Peter Bianca standing?

A More near the gutter, towards the street.

Q On the sidewalk?

A On the sidewalk.

Q But nearer the gutter?

A Nearer to the gutter.

Q How many shots were fired in all?

A Well, near the saloon only about four shots.

Q How many shots fired over at the drug store?

A At the drug store about seven or eight shots.

Q Now what did you do after Peter Bianca ran down toward Third avenue, and Sam and Charley ran over towards First Avenue, where did you go?

A I was standing near the building still; I was watching.

Q That is the southeast corner of 110th street and Second avenue?

A Yes, sir.

Q How long did you stand there?

A I stood there watch--

ing the fellow; I thought nobody got hurt; I was looking at them.

Q How long did you stand?

A I was not very long. Then I saw my brother go over to the drug store.

Q Didn't he walk over there himself?

A I don't know whether somebody took him,--

Q Anybody help him, or was he walking alone?

A He ran himself and my mother after him.

Q Did he run or not?

A He was walking quickly.

Q Then he was not being carried over?

A I don't think so.

Q You saw Sam Sacco and Charley Young come back?

A They ran on to First avenue on 110th street.

Q That is, they ran towards First avenue?

A Towards First avenue.

Q Then you saw them come back?

A While I was in the drug store I saw them come back; I was looking outside; there was more shots going on.

Q Outside the drug store--

THE COURT: She said she was looking outside.

Q Where were you when you first saw Sam and Charley come back from First avenue?

A I was in the drug store, looking outside of the window, the door.

Q Inside, looking out?

A Inside, looking out.

Q Through what window did you see them?

A The door what you come in.

Q Through the door, and where were they, Sam and Charley?

A They were outside; right out in the gutter.

Q Did they fire any shots?

A That is when I heard the shots, and they were shooting.

Q Did you see who did the shooting; did they fire all the shots?

A Who?

Q Sam and Charley?

A The three fellows came back again and started to shoot.

Q Did Peter Bianca come back?

A I didn't see Peter Bianca come back; he ran on 110th street to Second Avenue.

Q Now confine yourself to the point where you were, just inside the door of the drug store, looking out, and you saw Sam and Charley and some more shots were fired at Dominick DeLucca inside the drug store?

A Inside the drug store.

Q Did Charley fire any of those shots?

A Charley did.

Q He did. You will swear to that? (No answer).

Q Did Sam fire any of those shots?

A Sam, too.

Q You saw them do that, both of them? (No answer).

Q What made you say a minute ago that a third man came up? Did or did not a third man come up?

A Sam Sacco ran on Third Avenue; I didn't see him come back.

Q You didn't see Sam Sacco come back?

A Peter Bianca.

Q You saw only two men outside?

A Two men outside.

Q How far from you were they when they fired those shots in?

A They were on the sidewalk.

Q Were you in front of the door?

A I was in front of the door, but inside the drug store.

Q Where was Dominick?

A Inside.

Q Back of you ?

A Away back of me.

Q So these bullets must have gone past you; didn't they?

A Passed me; everybody thought the bullets came inside and everything started to break inside the drug store.

Q What did you do after that?

A After that I was taken in back of the drug store, and somebody took me home then.

MR.DEUEL: That is all.

VINCENT SUCARATO, called as a witness on behalf of the People, being first duly sworn testified as follows: (347 East 109th street, N. Y. City)

DIRECT EXAMINATION BY MR. McDONALD:

Q How old are you, boy?

A Thirteen, going on fourteen.

Q Keep you voice up, will you. Were you on Second avenue and 110th street, on the 20th of August, 1917, about eight o'clock?

A No, sir, I was on First avenue.

Q And did you hear anything?

A I heard a few shots. Then I ran up Second avenue.

Q Where did you go to ?

A Near the drug store, in the middle of the crowd there.

BY THE COURT:

Q What street did you run on?

A (No answer).

BY MR. McDONALD:

Q You ran through one hundred and what street?

A 109th street.

Q 109th street to Second avenue?

A Yes, sir.

Q Did you go up Second avenue to 110th street?

A Yes.

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Q To the drug store there?

A Yes, sir.

Q Did you hear any shots there?

A No, sir. After a while a couple of more shots went off, and so I ran, and I fell down on my knees.

Q Did anything happen to you?

A Yes, sir, I was shot in the left leg.

Q In the left leg?

A Yes, sir.

Q Did you see who shot you?

A No, sir.

Q How long had you been standing at the drug store at that time?

A Ten or fifteen minutes.

Q Were you running away?

A I heard a few shot; I don't know where I was running, you see, and I ran out in the middle of the street and I fell on my knee.

Q Were you then taken to the hospital?

A Yes, sir.

Q How long did you remain in the hospital?

A Around three or four weeks; I am not sure.

Q Did you see who the ones were who fired the shots?

A No, sir.

Q You were just a spectator?

A Yes, sir, I wanted to go and look and see what was the matter.

Q How many people did you see-- withdrawn. Did you see anybody firing?

A No, sir.

MR. McDONALD: That is all.

MR. DEUEL: No cross-examination. Your Honor, I move that his testimony be stricken out as incompetent, irrelevant and immaterial, as against this defendant.

THE COURT: I will allow it.

MR. DEUEL: Exception.

THE COURT: Simply corroborates the statement that shots were fired.

MR. McDONALD: That is all it is used for, your Honor.

THE COURT: It is part of one transaction. That is the theory on which it is admitted; a continuation of the story.

BY MR. McDONALD:

Q About how many shots did you hear altogether?

A First I heard three, and then the second time I heard two or three; I was not sure.

MR. McDONALD: That is all.

OFFICER CARLTON HUNGER, called as a witness on behalf of the People, being first duly sworn, testified as follows: (65th Precinct).

DIRECT EXAMINATION BY MR. McDONALD:

Q You were on post on the 20th of August, 1917, at Second avenue and 110th street?

A Yes, sir.

Q In the neighborhood of Second avenue and 110th street?

A Yes, sir.

Q About 8:15 p.m. of that date?

A Yes, sir.

Q Well, did you hear anything?

A Yes, I was standing on the corner, about 8:30, on 109th street, when I heard shots.

Q 109th street and where?

A And Second avenue.

Q Tell us what you did then.

A I heard several shots

fired. I looked in the direction of 110th street and I ran up there, and there was quite a crowd in front of the saloon on the southeast corner. I asked who got shot.

Q Never mind whom you asked. They told you something?

A Yes, sir.

Q And then what did you do ?

A Why, the crowd told me somebody did the shooting--

THE COURT: Never mind what the crowd told you . What did you do ?

A I proceeded towards Third avenue, on 110th street, chasing somebody, running.

Q You ran after somebody?

A Yes, sir.

Q Where did you go?

a Towards Third avenue on 110th street.

BY THE COURT:

Q Did you get anyone?

A No, sir; I could not identify the fellow running, so I still chased him until I lost him in the crowd there; there was a crowd there. I got about half way from Second and Third avenue and they said he made to a hallway in one of the apartment houses--

Q Never mind what the crowd said, to you. As a result of hearing something you went into a certain hallway?

A Yes, sir.

Q And did you see the men you were after there?

A No, sir.

Q What did you do then?

A Proceeded towards thereof.

Q Did you find him up there?

A No, sir.

Q Did you come back again?

A Yes, sir.

Q Where did you go then?

A Back to the scene of the shooting.

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Q Where?

A Second avenue and 110th street.

Q What did you do or see there when you got there?

A When I reached 110th street, on the northeast corner, I heard more shots fired, which came from in front of the drug store on the northeast corner.

Q What did you do then?

A I ran over in the crowds to see if I could get anybody that was doing the shooting.

Q Yes. Did you get anybody?

A No, sir.

Q What did you do then? Did you go in the drug store?

A No, sir.

Q What did you do ?

A Went on the signal box at 109th street and Second avenue, and called for help.

Q After calling for help, did you come back again?

A Yes.

Q Where did you go?

A Back to the drug store; I entered the drug store.

Q Tell us what you saw in the drug store?

A I got inside the drug store, there was a young man there that got shot in the arm.

Q Was that the complaining witness, DeLucca. Stand up, DeLucca.

A Yes, sir. I also saw a young boy in there, about the age of thirteen.

Q Was that Sucarato? Stand up. (Witness Sucarato stands up)

A Yes, sir, and some people drew my attention -- said there was a man across the street--

MR. DEUEL: Never mind what they said.

Q What was the matter with the boy you saw in there?

A He

was shot, to my knowledge, in the hip, or thigh.

Q What happened then?

A Why, I left the store. Then my attention was called to a man on the other side that was shot. I left the store and went over, and I looked at this man; he seemed to be unconscious.

Q Did you notice what the condition of the drug store was?

A I didn't pay particular attention to it, but there was glass on the floor.

Q Afterwards did you go to the hospital with DeLucca and Sucarato?

A No, sir.

Q Did you call up the ambulance? The ambulance was called was it?

A An ambulance was sent on the way.

BY THE COURT:

Q Did you arrest anyone?

A No, sir.

Q You made no arrests?

A No, your Honor.

MR. McDONALD: That is all.

MR. DEUEL: No cross-examination.

MR. McDONALD: I would like to call the doctor, your Honor.

THE COURT: What do you want the doctor for?

MR. McDONALD: To testify to the wounds, sir.

THE COURT: Can you not stipulate, Mr. Deuel, that he was taken to the hospital and Dr. Greenberg treated him, if that be the fact. You do not dispute that he was shot?

MR. DEUEL: No, he was got a scar on his arm.

THE COURT: You do not dispute that, but the question

is, who shot him and under what circumstances.

MR. DEULE: That is it precisely, your Honor.

MR. McDONALD: Except that there was taken out of the arm of DeLucca, a bullet which we claim to be a 38 calibre bullet, and that bullets of the same calibre were found in the room of the defendant after the time of the arrest.

MR. DEUEL: In other words, the Distric Attorney does not want the concession. If he had said that before we would not have that explanation.

THE COURT: He can state a bullet was taken out. The jury will disregard the statement about the bullets found in his room after the arrest.

MR. McDONALD: I only offer this to you as an explanation of why I wanted the doctor.

THE COURT: The doctor can testify as to the bullet being taken out, but he does not know anything about the calibre of the bullet.

MR. McDONALD: But he can identify the bullet that was taken out of DeLucca's arm, and we can show--

THE COURT: Do not say what you can show, because I will not allow you to show anything of the kind. You will find the same bullets in any place in New York; there are probably millions of them.

WILLIAM J. ENRIGHT, called as a witness on behalf of the People, being first duly sworn, testified

as follow: (Third Branch Detective Bureau).

DIRECT EXAMINATION BY MR. McDONALD:

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

A Yes, sir.

Q What is your grade?

A First grade detective.

Q And were you so on the 30th day of August, 1917?

A Yes.

Q And then did you have occasion to go to 110th street and Second avenue at any time during the evening of that day?

A Yes, sir.

Q About what time did you go there?

A About 8:30, or 8:40 in the evening.

Q Just state what you found when you went there?

A Why, when I got to 110th street and Second avenue, there is a drug store on the northeast corner, there was a large crowd of people around that drug store, probably a thousand people out on the sidewalk, around the drug store. I went in the drug store and I found the body of a man whom I afterwards learned was Joseph Sacco, dead on the floor, shot to death. I found a boy about thirteen years old by the name of Vincent Sucarato--

Q This witness here? (Stand up, Sucarato)

A Yes, sir. He was there and his shirt was turned up here (illustrating) and he was shot there in the hip, probably a little below, through the hip (indication). Another man named Dominick DeLucca was shot through the arm, right through the arm (indicating).

A Short time afterwards, why I located, or information came to me

that a man named Frank Hayti, or 258 East 112th street, had also been shot there, and I went up there and found he was shot through the ankle--

MR. DUEL: I move to strike out the latter part.

THE COURT: Strike it out. Strike that out about Frank Hayti. We are only concerned with the shooting of DeLucca.

Q What did you do then, afterwards?

A Domenick DeLuca told me--

THE COURT: Never mind what DeLucca told you. Officer, you are an old detective, and you know you cannot recite any conversation you had with third persons. You had a talk with Dominick DeLucca.

THE WITNESS: Yes, sir. And from what I heard, I went back to the Third Branch Detective Bureau.

Q Did you see anybody there at the Third Branch Detective Bureau?

A Yes, sir.

Q Whom did you see there?

A I saw a man named Charley Young, or Charley Archafalo.

Q You interviewed Charley Young?

A Yes, sir.

Q And then after you had this talk with Charley Young, did you do anything?

A I directed two men to go to 158 West 46th street, and bring to the Branch a man named Samuel Sacco, this defendant here.

Q And did they come back with him?

A They did.

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Q Officers Caputo and Quayne?

A Yes, sir; they didn't locate him at that address.

THE COURT: You do not know whether they located him or not. You only know that from hearsay.

THE WITNESS: Yes, sir.

THE COURT: They brought him back to the static house?

THE WITNESS: Yes, sir.

THE COURT: If you had any conversation with him, you may state it. Did you have a talk with him?

THE WITNESS: Yes, sir.

THE COURT: With Sacco?

THE WITNESS: Well, I heard him make a statement to the Assistant District Attorney.

THE COURT: Well, anything you heard him say concerning this crime, of an inriminatory nature, you may testify to.

Q Did you view the premises at the southeast corner of 110th street and Second avenue?

A I did.

Q Did you see anything there?

A Not at that time, no.

Q When was it that you next visited the saloon?

A The following morning.

Q About what time?

A Oh, I think it was nine o'clock.

Q And did you find anything then?

A Yes, sir, there was a bullet hole in the jamb of the door, goint into the liquor store, and one own at the basement store.

Q Going into the liquor store?

A Yes, sir.

Q Did you take out the bullet?

A Well, I didn't

Q Were you there when it was taken out?

A I was not.

Q You were not?

A I was not.

Q Now then, at the time you visited the saloon, on the night of the 20th, did you see a chair there?

A Yes, sir.

Q Where was that chair?

A In the possession of John DeLuca, the proprietor of the saloon, the father of Dominick DeLuca.

Q And is this the chair that you saw there that night (showing a chair)?

A Yes, sir, that is the chair. There (indicating) is the bullet hole in the chair.

THE COURT: Did you make any mark on the chair, besides placing the tag on?

THE WITNESS: No, sir, only the tag.

MR. DEUEL: Did you put a mark on?

THE WITNESS: A tag.

THE COURT: You don't call that a mark?

THE WITNESS: I identify that chair.

THE COURT: By The bullet hole?

THE WITNESS: By the bullet hole.

THE COURT: Independently of the tag?

THE WITNESS: Independently of the tag, I identify it.

MR. McDONALD: I offer it in evidence.

(People's Exhibit No 5, a chair, formerly marked for identification, now in evidence).

THE COURT: Any Cross-examination?

MR. DEUEL: No cross- examination.

THE COURT: Do you remeber what time he was brogut to the Detective Bureau? Have you any memorandum showing that, officer?

THE WITNESS: Around three-thiry in the morning, between three-thirty and four.

THE COURT: All right.

WILLIAM B. CAPUTO, called as a witness on behalf of the People, being first duly sworn, testified as follows:
(Third Branch Detective Bureau)

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police force of the City of New York, and you were on the 30th of August, and you still are?

A Yes, sir.

Q What is your grade?

A Second grade detective.

Q Did you arrest the defendant Sacco on the 20th day of August, or the morning of the 21st August, 1917?

A I did.

Q Where did you leave from?

A I left the Third Branch Detective Bureau.

Q At about what time?

A It was about two a.m. on the morning of the 21st.

Q Previous to leaving the branch at that time, had you

see a man known as Charley Young in the Branch?

A Yes, sir.

Q And you say then you left the Branch?

A Left the Branch Detective Bureau.

Q Where did you go?

A We went to 158 West 46th street which is a furnished room house. We made inquiries in that furnished room house for a man by the name of Sam Sacco, the defendant. We learned there that the defendant Sam Sacco, the defendant. We learned there that the defendant Sam Sacco had moved that very day to the Hotel Hemington, which was across the street, in the same street, West 46th street, and there we made inquiries of the Clerk, if there was a man living there by the name of Sam Sacco. He said, "No, I have nobody here by the name of Sam Sacco. We have here a man by the name of Rossie, who came in here today." We said, "We want to go up in that room." He said, I believe he said his room was upstairs, room 19, to the best of my recollection. We went up there and seen the defendant--

Q Where was the defendant?

A In bed. There was a girl in there with him. We told him that "You are under arrest". He said, "What for?" We told him, "For a shooting at 110th street and second avenue in the early part of the evening of the 20th." He said, "You got me wrong. I was not there." Well, we said, "Come on. You have got to come to the Third Branch Detective Bureau." He said, "All right." We waited there until he dressed, packed all his clothes in a trunk, left word with the agent, with the clerk downstairs, to have

his property sent to his mother's home on Third avenue. We brought him to the Third Branch Detective Bureau in an auto mobile. We arrived there about five o'clock that morning, or a little after.

Q Then you booked him?

A No, the District Attorney was there, and--

THE COURT: Which District Attorney?

MR. McDONALD: Mr. Joyce.

THE WITNESS: Assistant District Attorney Joyce.

MR. McDONALD: That is all.

MR. DEUEL: No questions.

MR. McDONALD: If your Honor please, the People rest.

MR. DEUEL: I am caught, at the rate the case was going this morning, your Honor, and from what the District Attorney told me, I thought--

THE COURT: You can make your opening this afternoon. Make your motions to dismiss, if you want to, if you have motions. Get rid of that. Then if you want an adjournment to offer testimony, I will give it to you. Let us do all we can tody.

MR. DEUEL: Your Honor, I move to dismiss the People's case on the ground that there is insufficient probative evidence to warrant a conviction as the case now stands, because the irreconcilable statement concerning the shooting , and the connection of this defendant with the shooting that have been made by the eye witnesses to the shoot-

ing, it seems to me that the statements made by the various eye witnesses as to the participants in the shooting, their positions at the time, together with the fact that so many shots were fired by it is alleged the same individuals within a period of fifteen or twenty minutes at 110th street and Second avenue at 8:30 in the evening, is so improbable, so impossible, so unlikely that, as a matter of law, the People's case does not stand; it is not a prima facie case.

THE COURT: The motion is denied.

MR. DEUEL: Exception.

THE DEFENDANT'S CASE.

MR. DEUEL: Gentlemen, we are concerned with two propositions, one of them is conceded. The other proposition is not. The fact that Dominico DeLucca was shot through the arm is conceded. He bears the scar. The chair is here with its scar, and in all probability the shots were fired at 110th street and Second avenue on that night, in fact I will show you that shots were fired there, and by the men that fired the shots that did wound Domenico DeLucca. The other proposition is whether or not the defendant now before you on trial, fired any of those shots, or was there present. That he did fire the shots, that is denied. I think I will establish to your satisfaction the whereabouts of the defendant during that day and even-

ing, which will show you the impossibility of his being on the scene at the time mentioned. It may be necessary, of course, in the development of the defendant's case, to show that a murder was committed a few minutes after the first shots were fired at Domenico DeLuca, and that a man was thereafter taken from the highway into this drug store as well. I think when all of the defendant's evidence is in, you will reason the same conclusion as I have, that this defendant was not there present.

I do not think-- it is needless for me to keep you any longer. The matter is so simple. It is simply a question of putting in the testimony to you. There is no reason why I should go over it in detail now. Unfortunately, anticipating that the District Attorney would occupy the full day, I let my witnesses go home this morning, and told them to be right here the first thing tomorrow morning.

Now, your Honor, I would like to have an adjournment until tomorrow morning.

THE COURT: You will begin the session with the submission of your testimony tomorrow morning?

MR. DEUEL: Precisely.

THE COURT: Now, Mr. McDonald, has that doctor arrived?

MR. McDONALD: Not yet, your Honor.

THE COURT: I do not want you misunderstand my ruling. You can prove that a bullet was taken from DeLuca's

arm by the doctor, if you can connect that bullet with the defendant. The mere finding of such cartridges in his house would not be such proof.

MR. McDONALD: I will rest.

THE COURT: It is conceded that DeLucca was shot and that the doctor would so testify if he were here, and that he took a bullet out of his arm.

MR. DEUEL: I will concede that.

THE COURT: I am anxious to have done, because I told the District Attorney that I would not allow the doctor to testify, or allow him to prove from anything that had developed up to date, that cartridges of similar calibre were found in his room. You understand that. That proof might be properly connected, but there is nothing shown up to date that connects it. The doctor alone would not be sufficient to connect that. You can prove one thing at a time. If you will stipulate that the doctor had charge of DeLucca, and examined his arm, and took a bullet out of it--

MR. DEUEL: I will stipulate that the bullet that Mr. McDonald produced here, was the bullet that the doctor took out of the arm of Domenico DeLucca.

THE COURT: That will save a lot of time.

MR. DEUEL: That is stipulated.

MR. McDONALD: May I put that in?

THE COURT: You may put the bullet in.

MR. McDONALD: Lieutenant Price has it. I told him to keep it until I called him here.

THE COURT: Now, gentlemen of the jury, the rule is that you must not talk about this case in which you been impaneled, with anyone. You understand that. That means you must not discuss it among yourselves, and above all that you must not talk about it with dtrangers. You must neither form nor express any opinion until you have heard all the evidence here, all that is to be said by both sides. You must keep an open mind until the court submits the case to you, if it should submit it to you , for your decide on. That is the time to decide it, and not before that.

You will please be here at half-past ten tomorrow morning.

(Whereupon the trial was adjourned to Tuesday morning, January 8, 1917, at 10:30 o'clock).

PEOPLE V. SAM SACCO.

New York, January 8, 1918.

TRIAL RESUMED.

SAM SACCO, the defendant called as a witness in his own behalf, being first duly sworn, testified as follow: (1975 Third avenue, New York City)

DIRECT EXAMINATION BY MR. DEUEL:

Q How old are you Sam?

A I will be 24 years old in May.

Q Where were you born?

A United States; New York City.

Q You are of Italian parcentage, of course?

A Yes.

Q Where do your parents live in New York?

A They are in Europe at the present time.

Q What relatives have you in New York?

A I have a sister and two brothers.

Q Where does your sister live?

A 1975 Third avenue, New York City.

Q What is her name?

A Mrs. Rose Maio.

Q What is your brother's name?

A James Sacco.

Q Sacco, you have been convicted of a crime, have you not?

A Yes, sir.

Q What crime?

A I first was convicted of robbery in the second degree; I pleaded guilty before Judge Swann.

Q When?

A In 1910.

Q That is your first conviction, is it?

A Yes, sir.

Q How long did you serve that time?

A I done twenty months in Elmira Reformatory.

Q After that were you convicted again?

A Yes, sir.

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Q Of what?

A Having a gun in my possession.

Q When was that?

A I was arrested in January 26, 1912.

Q Did you serve time for that?

A Yes, sir.

Q Were you convicted again?

A Yes, sir.

Q When?

A In May no, I was convicted again in September. I was arrested for simple assault.

Q What year?

A 1914.

Q Did you serve time for that?

A Yes, sir.

Q Were you convicted after that?

A Yes, sir.

Q When?

A In May, 1915.

Q What was the crime?

A Having a weapon in my possession.

Q And you served time for that?

A Yes, sir.

Q When did you come out of jail, Sam, the last time?

A May 16, 1917.

Q After you came out of jail the last time, you worked, Sam?

A Yes, sir.

Q Where did you live?

A I lived with my sister at 1975 Third avenue.

Q You know the DeLuccas, do you not?

A Yes, sir.

Q You have known them for some time?

A I know them for several years.

Q Have you at any time had any trouble or words with them of any sort?

A No, sir.

Q On the 20th of August, 1917, Domenick DeLuca appears to have been shot in the arm; did you fire the shot?

A No, sir.

Q If is stated that that occurred at half past eight or nine o'clock that evening, at 110th street and second avenue, in front of the saloon; were you there in the neighborhood at that time?

A No, sir.

Q Where were you on August 20th in the evening?

A Coney Island, at a banquet.

Q Where was that banquet?

A Sixteenth street.

Q What time did you go down there?

A I arrived there about a quarter to nine.

Q Where were you living that day?

A In the Remington Hotel, 46th street and Broadway.

Q What time did you get back from the banquet?

A Quarter after one.

Q Where did you go after that?

A Right directly to the hotel.

Q Without mentioning any names, I do not think it is necessary-- there was a young lady who was living with you at that hotel, was there not?

A Yes, sir.

Q After you got back to the hotel did you buy any news paper?

A Yes, sir.

Q Did you read anything in that newspaper?

A Yes, sir.

Q What did you read that attracted your attention?

A The death of my brother.

Q What was your brother's name?

A Joseph Sacco.

Q What was that news items; what did it say?

THE COURT: How is that material?

MR. DEUEL: It is material in this respect--

THE COURT: He read a news article, containing the article concerning the death of his brother Sacco. That is all I will allow. There is no use explaining the record. If you want to specify the manner of his death, whether natural or by violence of any kind, you may do that, but the details as to what he read I think are immaterial.

Q Was that death by violence or not, if you know?

MR. McDONALD: Objected to unless he knows.

THE COURT: He read a news item concerning the death of his brother, whether natural or otherwise.

MR. McDONALD: The objection is withdrawn.

A I read that he was shot.

Q What happened after that in your hotel, with respect to you? You were arrested, weren't you?

A Yes.

Q You were arrested in the hotel at what hour?

A About 2:30 in the morning or later.

Q Where were you taken to from there?

A To the Third Branch Detective Bureau in 116th street.

Q Who took you up to the Third Branch?

A Several detectives.

Q What happened when you got to the Third Branch?

A I was brought up there. I went up the stood. One of the detectives, a grey beaded follow, seen me there. This detective seen me

once before. He said, "Aha, I thought you were a working fellow." I said, "I am." He said, "Come upstairs." Take me upstairs in the room, and I seen Dominick DeLucca, Tony DeLucca, Robert Rossie, and another fellow I don't know, and Detective Caputo. Then the greyheaded detective asked me if I knew Robert Rossie. I said, "Yes, sir, I have been acquainted with the man in State's Prison, at comstock." He said, "Are you a friend of his?" I said, "Yes, sir." And this detective turns around and says to Robert Rossie, "Do you know this man?" --

"Yes, sir." -- "Are you a friend of his?" -- "Yes, sir."

He said, "What did this man do to you in the Bronx?" He says, "That man shot me four times in the Bronx." I repeated back to him, I said, "Did I shoot you four times in the Bronx?" He did not answer. He put his head down.

Then I was taken to another room by the same detective, and he sat me on a chair. I sat down. There was Charley Young in there. When I seen this Charley, one detective had hold of him under the arm.

MR. McDONALD: I object to this.

THE COURT: I do not see what bearing it has. The detectives are not on trial. The detective has not testified to any confession that I recall.

MR. DEUEL: Well, perhaps I am a little premature with that.

THE COURT: The question is, whether he shot DeLucca or not, with intent to kill, with deliberation and premedi-

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tation.

Q You did not shoot him?

A No, sir.

Q You were not there present?

A No, sir.

MR. DEUEL: Your witness.

THE COURT: He may testify concerning any statement alleged to have been made by any of the other witnesses, if that is the purpose of it.

MR. DEUEL: I was, perhaps, a little premature.

CROSS EXAMINATION BY MR. McDONALD:

Q You say the first time time you were arrested, was in 1910?

A Yes, sir.

Q That was for robbery?

A Robbery. I pleaded guilty to it.

Q You used a gun in that case, didn't you?

A No, sir.

Q Was there a gun used?

A Yes, sir.

Q You did not use it?

A No, sir.

q One of the other men arrested with you used a gun?

A Yes, sir.

Q You say you were arrested again in 1912?

A Yes sir.

Q And convicted?

A I pleaded guilt.

Q And that was another pistol affair?

A Having a concealed weapon in my possession.

Q What do you call a concealed weapon, a pistol?

A A pistol.

Q You were arrested again in 1914?

A Yes, sir.

Q And sent to the Island for six months?

A Yes,sir.

Q Did you use a pistol on that occasion?

A No, sir.

Q In 1915 you were convicted again, weren't you?

A Yes, sir.

Q You did twenty months in Elmira, you say?

A Yes, sir.

Q Thirteen months, that is the regular time, isn't it?

MR. DEUEL: I object to the insinuation of the District Attorney.

THE COURT: I will allow it.

MR. DEUEL: Exception, if your Honor please. I think the rules of the Elmira Reformatory are immaterial in this case.

THE COURT: He may ask him if he was detained there twenty months.

MR. DEUEL: Exception.

A I was reported sometimes for laughing, sometimes for my bed not being made right, and sometimes for a little dust being on the wall, and sometimes for a drop of water on the floor, which calls for your losing time.

Q And they kept you there for seven months for that?

A Yes, sir.

Q How old were you when you first went to prison?

A 17.

Q That is when you went to Elmira first?

A Yes, sir.

Q In 1912, what sentence did you get?

A Three years.

Q At Sing Sing?

A Yes, sir.

Q And in 1914, six months on the island?

A Yes.

Q In 1915, you were convicted of carrying a weapon?

A Yes.

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Q What was that?

A A pistol.

Q You had it on your person at that time?

A It was found on the floor.

Q Did you plead guilty?

A Yes, sir.

Q It was your pistol, however?

A I pleaded guilty.

Q It was your pistol?

A Yes, sir.

Q You were sentenced to what?

A Two and a half years in State's Prison.

Q When did you come out of prison?

A May 16, 1917.

Q What have you been doing since then?

A I worked until July 22nd.

BY THE COURT:

Q At what?

A For J. C. Hoffman, in a paper factory.

Q What capacity, driver, laborer, or what?

A Taking out the machine.

BY MR. McDONALD:

Q How long did you work there?

A Six weeks, from June 1st of July 21st.

Q Where were you living at that time?

A 1975 Third avenue.

Q With your sister?

A Yes, sir.

Q Then where did you move to?

A 148 West 46th street.

Q What did you do there?

A I left 148 and moved to 158 West 46th street.

Q how long did you remain in 148?

A About two weeks.

Q Were you working at that time?

A No.

Q Were you working at all?

A No, sir.

Q Were you livig there with anyone?

A Yes, sir.

Q With whom were you living?

A A girl.

Q What is her name?

A Caroline Sorro.

Q Is she a prostitute?

A No, sir.

Q Has she been convicted of prostitution?

A No, sir.

MR. DEUEL: I object to that, and I move that the answer be stricken out.

THE COURT: He said no. He has answered it. If a man lives with a prostitute it is a disgraceful act, and it may be a criminal act, but he said no, that he did not.

MR. McDONALD: I think he said she had been convicted of prostitution.

MR. DEUEL: He said no. I ask your Honor to ask the jury to disregard all this matter pertaining to the girl.

THE COURT: This is proper cross-examination for the purpose of attacking his credibility. If a man knowingly lives with a prostitute I will charge the jury that that is a matter that affects his characted to the extent that they may consider it on the question of his credibility. They can determine what weight they will give to it. He has answered no to the question, therefore it is not binding on him, so that it does not affect him in any way.

MR. DEUEL: I am afraid I was a little more concerned about the girl than I was of him when I made my objection.

Q You are not married to this your lady?

A No, sir. I

was intending to marry her. I was living as husband and wife.

Q You lived there two weeks?

A Yes, sir.

Q And then you moved to 158?

A Yes.

Q And that is what?

A A furnished room house.

Q You say you lived at 158 how long?

A About two weeks.

Q Did you work while you were living there?

A no.

Q This young lady, what is her name again?

A Caroline Sorrow

Q Miss Sorro?

A Yes.

Q She did not work?

A No, sir.

MR. DEUEL: I object to that, your Honor.

THE COURT: I will allow that.

MR. DEUEL: Exception, please.

BY THE COURT:

Q You were not working, did you say?

A not at the time I lived in 46th street.

Q Were you working between July 21st and the date of your arrest?

A no, sir.

BY MR. McDONALD:

Q How did you pay the expenses?

A My brother joe gave me some money, and before I came out of State's Prison there was a benefit run for me which rendered me eighty dollars, and I received that money on the date of my discharge. And I had coming out of State's Prison about thirty dollars, and I worked for six weeks. For the first two or three weeks I received \$12.00 per week at the start, and then I was given an advance

of three dollars, which made \$15.00 a week, and I only used to pay \$15.00 monthly rent to my sister.

Q Did you pay any expenses of yourself and this girl in 46th street?

A Yes, sir.

Q You say you lived in 154?

A 158.

Q For two weeks?

A Yes, sir.

Q Then where did you go?

A From 148 I went to 158. Then I moved into the Remington hotel on August 20th about between two and three P.M.

Q In the afternoon?

A Yes, sir.

Q And did you take this girl with you?

A Yes, sir.

Q You registered there as what?

A Man and wife.

Q What name did you give there?

A Mr. John J. Rossie.

Q Why did you give John J. Rossie?

A Because I did not want to let no one know where I lived.

Q But you had been receiving money from your brother, hadn't you?

A Yes, sir.

Q And didn't he know where you lived?

a Well, the police did not know where I lived.

Q You registered in the hotel Remington so as not to let the police know where you were?

A Yes, sir, where I lived.

Q Did they know when you lived in 158 and 146?

A not so my knowledge.

Q What name did you give there?

A Rossie.

Q The same name?

A Yes, sir.

Q Charley Young lived there too?

a I found him in that

hotel.

Q You found him in there the day you registered, didn't you ?

A I did not see him there that day.

Q When did you see Charley?

A I did not see him until I went in 116th street, the Third Branch Detective Bureau.

Q Did you know that Charley Young was registered in that hotel?

A No, sir.

Q I thought you said that you did know?

A I did not know that Charley Young registered at that hotel.

Q When did you find out that he was living in the same hotel as you?

A He told me in the Tombs.

Q Why did you change your name in fear of the police?

A Because one afternoon it was too hot to work in the shop, I took a half day off.

Q What shop?

A In the paper shop of J. C. Hoffman. I walked as far as 116th street and Third avenue, and got on a chair and got a shine and Detective Quain comes along and sees me on the chair and tells me to come to the Third Branch Detective Bureau. I goes up there and he asked me what I was doing for a living and I told him. I told him I intend to go straight. He took the name of the place where I was working, took the address of the place where I was living, and asked me for my registration card. I told him I had it in my other suit up at the house. I said if he did not believe me I would go up and get it and go down with him. He said it was not necessary.

So I was afraid that they would harm me right along. I did not go to work after July 21st, and I did not let the police know where I lived.

Q You quit Hoffman?

A Yes, sir.

Q You had not any reason to fear the police, had you?

A If they kept hounding me.

Q They had never framed you; you were always guilty every time you were convicted?

A Yes.

Q They never attempted to frame you up in any way?

A No, but I was shot by one of them.

Q When was that?

A January 26th, 1912.

Q What were you doing when you got shot?

A I was sitting in a cafe. I was working for a tailor in East 110th street, and I came home from my work.

Q That is the time you pleaded guilty for carrying a weapon?

A I did.

Q And he shot you?

A He shot after he took the weapon out of my pocket.

Q You had not done anything then?

A No, sir.

Q You were going right along with him?

A They started hitting me in a cafe and I ran to him, Detective Cassetti and Macini.

Q You were going away from the officers?

A After they started hitting the man, they made an attempt to hit me, and I jumped away.

Q They did not hit you?

A They shot me.

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Q You say that is the time you were shot?

A Yes.

Q You say you were not in this neighborhood that night at all?

A What neighborhood?

Q 110th street and Second avenue, on the night of the 20th of August?

A No, sir.

Q You came home about what time?

A Quarter after one.

Q In the morning?

A Yes, sir.

Q Did you take Miss Sorro down there with you?

A No.

Q Was she home when you came home?

A No, sir.

Q Did she come in after you got home?

A Yes, after I got home.

Q Do you know where she had been?

Objected to . Objection sustained.

MR. McDONALD: That is all.

LENA SACCO, of 2139 Second avenue, a witness sworn on behalf of the defendant, testified as follows.

DIRECT EXAMINATION BY MR. DEUEL:

Q Mrs. Sacco, you are the wife of Joseph Sacco.

A Yes.

Q When was your husband killed?

MR. McDONALD: I object to that unless she knows.

THE COURT: I will allow it if she knows.

MR. McDONALD: She was not there.

A I was there. Don't aggravate me. On the 20th of August.

Q About what time?

A About a quarter to nine.

Q Where?

A On the corner of Second avenue, outside of the drug store.

Q Second avenue and 110th street?

A Yes.

Q And you were there at the time?

A Yes, sir.

Q Just before this occurred, you were at your home on First avenue?

A At my sister's door.

Q Where is that located?

A Between 109th and 110th street on First avenue.

Q You had gone to walk around towards that drug store, had you not?

A I lived in 110th street. We heard shots before we walked up that way. We heard four shots.

Q Who walked up that way with you?

A Two or three other fellos, my husband, I and there was quite a crowd ran up with him when we heard the shots.

Q What street did you run through?

A 110th street.

Q Then you reached the drug store?

A Yes, sir.

Q Do you know your brtoher-in-law Sam?

A Yes, sir.

Q Did you see Sam on 110th street?

A No, sir.

Q When was the last time you saw Sam before that evening?

A the last time I seen him, I could not just remember. It might have been about two months before. He was up to a dinner, him and his sister.

Q Did you see him that evening at all, anywhere in that neighborhood?

A No, sir.

MR. DEUEL: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q You heard some shots when you were where?

A When we were on First avenue we heard four shots.

And you and your husband ran to Second avenue?

A My husband and I and a couple of other fellows ran up towards Second avenue from First avenue.

MR. McDONALD: That is all.

PETER BIANCO, of 234 Hearth avenue, Astoria, Long Island, a witness called on behalf of the defendant, was sworn and testified as follows:

DIRECT EXAMINATION BY MR. DEUEL:

Q Peter, you served time in Elmira?

A Yes, sir.

Q For what crime?

A For a violation of parole.

BY THE COURT:

Q What was the violation of your parole? What were you sent to Elmira for?

A I was sent back to Elmira for violation of parole.

Q What were you sent there for the first time?

A For man slaughter.

Q Then you were afterwards charged with failing to live up to the rules, and they sent you back?

A Yes.

Q What was the particular failure, in which you did not live up to the rules?

A I do not understand.

Q What did they consider to be a violation of your parole?

A This crime here.

BY MR. DEUEL:

Q What is this crime here you committed?

A Attempted murder.

Q Against whom?

A This DeLucca.

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Q Dominick DeLucca?

A Yes.

Q When did it occur?

A It occurred on August 20th.

Q What did you do that evening?

A I shot him in self defense.

Q Where ?

A At 110th street and Second avenue.

Q About what time?

A I could not tell you the time exactly.

Q Well, was it in the morning, noon or afternoon?

A It was evening.

Q Was this man Sacco with you?

A No, sir.

Q That is this defendant. Do you know him?

A Yes, sir.

Q You are sure he was not with you ?

A Yes, sir.

MR. DEUEL: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q How long do you know the defendant, Sacco?

A I know him for the past three or four years.

Q Where did you meet him, or how?

A I knew him through my brother.

Q Where did your brother live?

A No lived in 100th street at the time.

Q 110th street, between Second and First avenue?

A Yes.

Q Sam Sacco used to visit with your brother?

A Yes.

Q Very frequently?

A Well, may be once or twice a week.

Q How long do you know the DeLuccas?

A I was born and brought up there. I knew them quite a while.

Q This manslaughter conviction that you speak of, that

was for the killing of one Joseph Talention?

A As accoplice.

Q Did you plead guilty?

A Yes, sir.

Q And you have pleaded guilty of assault in the first degree upon the DeLucca case?

A Yes, sir.

Q Where did you go after the shooting?

A I went to Philadelphia.

Q How many shots did you fire?

A Three or four shots, I don't remember.

Q And where were they fired from? Where were you standing when you fired these shots?

A Five or six feet away from DeLucca.

Q Where were you, on the sidewalk or on the street?

A on the sidewalk.

Q Near the gutter?

A It was right between the middle of the sidewalk and gutter, about five or six feet away.

Q Were you facing DeLucca?

A When I shot him I turned around. I did not mean to kill him, just to scare him.

Q Where did you get the gun?

A About three weeks before the shooting I was eating in a chopsuey restaurant, on 115th, between 115th and 116th street on Third avenue. While eating, some fellow came up to me and sai, "Will you loan me a dollar on this gun?" I said, all right, and I loaned him a dollar. He never came back for the gun.

Q So you carried that gun for about three weeks?

A No, I kept the gun home.

Q What was the name of this fellow, do you know?

A no

Q The fellow that you got the gun from?

A I don't know. He comes from 114th street, but I don't know his name.

Q So you fired three times at him?

A Three or four times.

Q Did you stand in front of the saloon when you fired the shots?

A They were sitting in front of the saloon.

BY THE COURT:

Q Where was the saloon?

A 110th street and Second avenue, on the corner.

Q DeLuca's saloon?

A Yes.

Q And DeLuca was sitting outside?

A Yes.

Q Was anybody else with him?

A Yes.

Q Did you know any of the others?

A Yes, sir.

Q Who were they?

A Dominick DeLuca, Robert Rossie, DeLuca's brother, and some fellow by the name of Dany.

Q They were sitting in front of the saloon?

A All sitting in front of the saloon.

Q Which way did you approach the saloon.

A I came from 111th street, and walked up to 110th street and Second avenue.

Q Did you walk on First or Second avenue?

A Second avenue. I got off the "L" station at 111th street and Second avenue, and walked down.

Q Is this saloon on the uptown or downtown side?

A It is on the downtown side.

Q Near 109th street, no near 111th street?

A Yes, sir.

Q So you walked down?

A Yes.

Q Were you alone?

A Yes.

Q Where did you stand?

A I stood right in front of the saloon.

Q There was something said about a restaurant sign; were you near that?

A I don't know of any restaurant down around there.

Q A free lunch sign.

A In front of the saloon?

Q Yes.

A I did not see any.

Q Do you know the saloon?

A Yes.

Q Were you in it often?

A No, I don't think I had been in that saloon once.

Q But you had seen it before that time?

A Yes, sir.

Q Where did you start from to do this killing ?

A I lived at Astoria, Long Island. This Tony DeLucca beat me up in the morning.

Q You left your house with the deliberate intention of going to shoot him?

A No, I was going to my cousin's house.

Q What time did you make up your mind to shoot DeLucca?

A I did not make up my mind to shoot DeLucca. I just carried this gun to defend myself. I went along Second avenue, and this Dominick DeLucca seen me pass, he said, " You dirty"-- do you want me to express the full meaning?

Q Say anything that happened.

A He said, "You dirty cocksucker, are you around here again?" He picked up a chair and tried to hit me. I turned my back and I shot.

Q You shot three or four times?

A Yes.

Q That is all you know about it?

A Yes.

Q Where does this brother of yours live that you were going to ?

A He is doing time at the present.

Q Was he doing time then?

A Yes.

Q How could you go to see him if he was doing time? You mean he was in prison?

A My brother, but I was going to see my cousin.

Q Where was your cousin living?

A He lives a few houses anyway from DeLucca's saloon.

Q Where is that?

A On Second Avenue.

Q Above 110th street, or below?

A Between 109th and 110th.

A And you say you had to pass DeLucca's saloon to see your cousin?

A Yes.

BY MR. McDONALD:

Q Just show us how you shot?

Where were you standing and how was DeLucca standing ?

A He picked up a chair. He was sitting this way (witness indicating by sitting on the chair, facing the back of the chair, with one leg over each side of the chair). He said to me, "You dirty cocksucker". I turned my back (indicating a half turn).

Q Did you turn your back to him?

A Halfway.

Q Pointed your arm at him?

A No, sir, I did not point at him, I just fired. I don't know where I was firing. I know I did not mean to kill him, because if I wanted to Kill him, I was right there and I could have done it there.

Q When you finished firing the three or four shots, what did you do?

A I run up 110th street.

Q Towards Third avenue?

A Yes.

Q Did anybody follow you?

A There was lots of people there, all looking at me; quite a number of people.

Q Did anybody run after you?

A Nobody run after me.

Q Where did you go?

A I run up in a building, and went up the roof, came down the next building, and went out through the yard and got out 111th street.

Q Then where did you go?

A I walked up to Third avenue.

Q Did you hear any more shooting at all?

A No.

Q You never heard another shot?

A No.

Q Just show us on People's Exhibit 3 where you were standing when you fired the shots, and were was DeLucca, and make a mark.

A Which DeLucca?

Q First, where were you standing?

A I was standing about here (indicating).

Q Put a letter "B" there.

A (indicating by mark "B").

Q Where were these four or five men that you saw?

A About four men. Here Dominick was sitting, no, I made a mistake where I put "B", it should be here (indicating by making another "B"). This is where Dominick was sitting (indicating).

Q The doors were probably open on August 20th, and they are closed on the picture?

A Yes. This is where Dominick was sitting; next to him I ain't sure whether it was Robbie or Danny. Then there was the other brother, Tony, he was sitting way at the end. No, I think I am mistaken. This has got me puzzled. I got it now. I was standing about here (indicating by making

mark "B"). Here is where Dominick was sitting (indicating).

Q Put a "B" there.

A (Witness indicating by marking B). Here is where those two other fellows were sitting (indicating). There were four chairs all in a row. Dominick was sitting here (indicating to the right of the saloon door).

Q And you were standing here where the "B" is?

A Yes.

Q You say you went home; what time did you arrive home?

A I don't remember what time it was.

Q Did you tell your father anything about what had happened?

A No, sir.

Q You remained home all night?

A Yes, sir.

Q Then did you leave home the following day?

A No, sir.

Q When did you leave home?

A About two days after.

Q Where did you go?

A To Philadelphia.

Q What name did you go under in Philadelphia?

A Well, I used to have Pete White, Bruno, all different names. I did not have any particular name.

Q Where did you live?

A I lived on 17th street.

Q How long did you live there?

A As long as I was there. I left New York on the 22nd, and I got arrested on the 7th of September in Philadelphia.

Q You were arrested by whom?

A By Detective Couzzins.

Q You were brought back to New York?

A Yes.

Q Were you taken to the Third Branch?

A Yes, sir.

Q Did you make any statement there?

A No, sir.

Q Did you refuse to make any statement?

A I did not make

any statement at all. Yes, I refused.

Q Did they try to compel you to make a statement?

A Yes.

Q What did they do to you?

A Beat me up.

Q You did not make it, however?

A No, sir.

Q You would not confess to any crime just because you were being beaten, were you?

A I was not getting any justice there. That is why I did not want to make any statement. I will do it now because I am in court.

Q You are sure that no harm will come to you here?

A Yes.

Q Were you then taken down to the Tombs?

A I was brought from there to where you get your finger prints.

Q At Headquarters?

A Yes.

Q Then where were you brought?

A From there to the Tombs.

Q Where were you placed?

A On the second tier.

Q Did you see Sam Sacco there ?

A Yes, sir.

Q When did you see him?

A The following day. I just seen him on the walk.

Q did you see Charley Young there, too?

A Yes, sir.

Q You talked to them, didn't you?

A Yes, sir.

Q What was it they were saying?

A There was some runner on the tier who knew I was implicated in that case, and he told Charley, he said to Charley Young, "They got that fellow in Philadelphia," for that shooting match in 110th street." So Charley came over to me and he said, " Is that right?" I told him yes. I told him the case.

Q Didn't you know that they had Charley?

A No, sir.

Q Did Charley tell you then?

A He told me was implicated.

Q When?

A In the Tombs.

Q In that same talk that you had with him?

A Yes, sir.

Q What happened then?

A Then I wrote a letter to District Attorney Swann.

Q Did you talk to Sacco before you wrote to the District Attorney?

A Yes, sir. I see Sam Sacco in the Tombs.

Q Did you talk to Sacco before you wrote to the District Attorney?

A I just told him about the case.

Q What did you tell him?

A That they had me on that case at 110th street and Second avenue.

Q Where did you see Sam Sacco then?

A In the Tombs.

Q Was he on your tier?

A No, sir.

Q How did you talk to him?

A You could see them when they walked around.

Q Did you talk to him then?

A Yes.

BY THE COURT:

Q What tier were you on?

A Second tier.

Q And he was on what tier?

A The third.

Q When you say tier, you mean floor?

A Yes.

Q You could walk around the space there?

A Yes.

Q He was walking on the third floor and you were walking down on the second?

A Yes.

Q And you had a talk about this affair?

A Yes.

Q And there were hundreds of other prisoners present?

A Yes.

Q Tell us what you said to him and what he said to you?

A I seen him there and I asked him about why they had him there and he told me about it. He said, " They got me here on the case which I don't know nothing about", and I looked at him. Then I told him my story. That was about all I had to say.

BY MR. McDONALD:

Q Then you decided to write a letter to the District Attorney?

A Yes, sir.

Q After you had this talk?

A Yes, sir.

Q Why didn't you say you wanted to see the District Attorney when you were arrested?

A I did not have no chance.

Q Why?

A I got arrested and they brought me to Head quarters, and from there they brought me to the Tombs.

Q When was it you wrote to the District Attorney?

A The following day.

Q After the talk with Sam Sacco and Charley Young?

A It was not exactly the following day; I don't remember. A few days after I think it was.

Q A few days after you had a talk with Charley Young and Sam Sacco you wrote the District Attorney, asking for an interview?

A Yes, sir.

Q What day were you arrested?

A September 7th, wasn't it?

Q Don't you know?

A I don't know exactly the day, the 7th or 8th.

Q Don't you know that you did not make a statement to the District Attorney until after you had been in the Tombs about

seventeen days?

A No, I was kept in Philsdelphia about eleven days.

Q You were kept in Philadelphia about eleven days?

A Yes.

Q That would bring you back to New York about when, the 19th or 18th?

A About that.

Q About the 19th?

A Yes.

Q Then you were lodged in the Tombs?

A Yes.

Q And you were there at least five days before you made the statement to the District Attorney?

A About two or three days.

Q When did you write the letter to the District Attorney?

A I don't remember the day I worte the letter.

Q How many days did you write the letter before you made the statement?

A I was there a few days in the Tombs before I wrote the letter; there two or three days.

Q Two or three days before you wrote the letter?

A Yes.

Q Where did you get the money from that you went to Philadelphia with?

A I was working for the Long Island Freight Department and I got paid. I got about twenty-two or twenty four dollars, and I gave that to my parents, so the day I left I told my parents I needed the money, and I got it and I went away.

Q You pleaded guilty to assault in the first degree?

A Yes.

MR. McDONALD: That is all.

MR. DEUEL: (addressing the jury) Gentlemen, in the case of Bianco, there is this note upon the indictment, "Bianco pleads guilty to assault in the first degree as a

first offense. Sentence deferred and defendant returned to Elmira Reformatory. Bench warrant lodged therein for return for disposition on this indictment."

BY MR. DEUEL:

Q Concerning your relations with Dominick DeLuca, you said that you had the gun when you went to your cousin's house that afternoon to defend yourself with?

A Yes, sir.

Q Had you any reason to fear any bodily harm?

A Yes.

MR. McDONALD: I object to that.

THE COURT: I will allow it.

Q What was the reason that you feared bodily harm?

A Because I was beat up that morning, by Tony DeLuca. I knew I was going to pass that saloon so I thought I would carry a gun in case they bothered me, to scare them.

BY THE COURT:

Q Who was this cousin you were going to see, a man or woman?

A A man.

Q What is his name?

A Tony.

Q Tony what?

A Purdo.

Q Why were you so anxious to see Tony Purdo, that you had to pass the saloon?

A Because my cousin called me up about five o'clock, he said, "Say, Pete, you got anything to do tonight?" I said, "No". He said, "Come to the house", he said, "We have got a mandolin, and we will pass the night".

Q So you were not so much afraid of passing DeLuca's saloon?

A I was beat up that morning and I thought they would

not bother me any more.

Q But just as soon as you struck the saloon the firing began?

A He told me, he said, "You around here again, you cocksucker". Then I fired the shots.

Q You had never been in the saloon?

A Not while he owned it.

Q You had never been in the saloon?

A Never while he owned it.

Q How long did he own it?

A I do not know.

Q Had you ever been in the saloon before he owned it?

A I used to go there when I was a small boy.

Q How long ago was that?

A About eight or ten years ago.

Q Where did this beating take place?

A Took place between 110th and 111th street on Second avenue, by the candy store.

Q You were living in Astoria, you say?

A Yes.

Q What time did it take place?

A In the morning, I don't remember.

Q What time in the morning?

A Nine or ten or eleven o'clock.

Q But you were working, you say?

A At the present time I was not working there.

Q You said you worked in a frieght department and got \$ 22 that you gave to your parents?

A Yes, I was working with them, but I was not working at the present time.

Q You mean on that day you were not working?

You took a day off?

A I left the Long Island freight department about two

or three weeks before this occurred, before this shooting.

Q You were not doing anything then?

A My father has a house over in Astoria, and I was helping him to fix up the house and painting, helping my father.

Q On the 20th you had off?

A I went to 111th street and Second avenue to buye some shingles.

Q For this Astoria house?

A Yes, sir.

Q And while there DeLucca beat you up?

A Yes, sir.

Q For no reason?

A For no reason whatsoever.

Q He did not like you?

A He met me a few days before he beat me up, at Third avenue and 115th street, and he said to me "Remember, Pete, you are the next one is going to get it". I did not know what he meant. I tried to convince him what it was.

He said, "You are the next one that is going to get it". I didn't know what for. I never done him nothing.

Q He just took a dislike to you?

A Yes.

Q What did he beat you with that day?

A With a stick.

Q He did not use a gun?

A No.

BY MR. McDONALD:

Q Why didn't you tell your father about the shooting?

A I did not want to give him all that trouble, to let him know about it.

Q Did you see anybody going towards the drug store after you did the shooting?

A No, sir.

Q Did you take any time at all to see whether anybody had gone to the drug store?

A I stopped at the corner and turned

around. I did not see nobody.

Q You mean you stopped at the corner of the street and avenue there?

A On the other side, I just stopped and turned around and went ahead.

Q You mean the drug store corner?

A No, sir, on the west side corner.

Q You went across the street?

A Yes, sir.

Q And stood there a few minutes?

A No.

Q You just walked across the street?

A I was running and I turned around and I went ahead.

Q Did you know that you had shot Dominick DeLuca that night?

A I didn't know I shot him, no, sir. I know I fired shots.

Q What did you do with the gun?

A I threw it on the roof of this building where I run up.

Q A tenement house, was it?

A Yes, sir.

Q You say you came down that same building again?

A No, sir, I went down the next building.

Q Who was it called you that name as you came along?

A Dominick DeLuca.

Q Not Tony?

A Domicik.

Q You are sure about that, are you ?

A Yes, sir.

Q At least Tony was the one you had the argument with?

A Yes, sir.

Q And Tony was the one that picked up the chair, was he?

A Dominick was the one.

Q Oh, Dominick.

A Dominick.

Q Are you sure about that?

A Yes.

Q Dominick is the one that picked up the chair?

A Yes.

Q And called you, what was it?

A A dirty cocksucker.

Q Did he say anything else?

A That is all he said.

Q Dominick?

A Yes.

Q Now you know Dominick, don't you?

A Yes, sir.

(Mr. McDonald requested Dominick Delucca to stand up.)

Q Is that the one?

A Yes.

Q Your recollection is just as good today as it was on the 24th of September, isn't it?

A I don't undersand what you mean.

Q You remember this occurrence very strongly, don't you?

A Yes, sir.

Q You are positive about this?

A Yes, sir.

Q Do you remember talking to the District Attorney up in the office on the top floor?

A Yes.

Q Do you remember talking to the District Attorney up in the office on the top floor?

A Yes.

Q Do you remember being asking, "What were they doing?" and you made this reply, " They were sitting in front of the saloon.

They had chairs out there; so this Tony who was sitting right at the end, he seen me first, and , excuse me, for talking like this, but he picked up a chair and he said, "You dirty cocksucker, are you around here again?

A And he picked up the chair and wanted to make a swing, and as soon as he picked up the chair and wanted to make a swing, I shot him."

A Dominick DeLucca.

Q Didn't you say Tony?

A Dominick.

Q Didn't you say Tony did it in your direct examination today?

A It was Dominick.

Q Dominick had never had any fight with you, had he?

A No, that is his brother.

Q Dominick had never had any fight with you?

A I never had anything to do with him.

Q Tony was the only one that was fighting with you?

A Yes.

Q He had licked you that morning?

A Yes.

BY THE COURT:

Q Did you tell the District Attorney that Tony did these things which you now say Dominick did?

A No, sir.

Q You are sure you did not tell him?

A Yes.

Q There was a stenographer present then, wasn't there?

A Yes.

Q He wrote down everything that was said?

A Yes.

Q But he did not take down what you said correctly. You said Dominick and he wrote Tony?

A Yes.

Q He knew the family, I suppose?

A Probably that was a mistake.

Q Not your mistake?

A No, sir.

MR. DEUEL: I object to this.

THE COURT: I want the facts.

A I am positively sure the way they were sitting.

Q You are asked whether you told the District Attorney that Tony did these things that you say now Dominick did?

A Yes.

Q Tony and Dominick are two different persons?

A Yes.

Q You are sure of that?

A Yes.

Q You do not want to change the testimony you gave here today at all; today you have given us the true version?

A Yes.

Q What you said today is the truth?

A Everything I am saying today is the truth.

MR. McDONALD: That is all.

MR. DEUEL: The context of the previous testimony clearly indicates that there was a mistake made in the transcript.

THE COURT: Of course, the jury will disregard that statement. It clearly indicates that to Mr. Deuel, perhaps.

SAM SACCO, the defendant, recalled.

BY MR. DEUEL:

Q Sam, I show you a board, with a piece of metal attached to it. have you seen that before (showing Defendant's Exhibit B)?

A Yes, sir.

Q You had it in your possession?

A Yes, sir.

Q And you gave it to me?

A Yes.

Q How did that come into your possession?

MR. McDONALD: Objected to.

THE COURT: If it is to contradict the people's testimony I will allow it.

MR. DEUEL: It contradicts the testimony of Charely Rossie. There is something written on that board.

THE COURT: If it contradicts any testimony given by

the People, I will allow it.

MR. DEUEL: It does, in my opinion.

THE COURT: The jury will determine whether there is any contradiction or not.

MR. DEUEL: I claim there is a contradiction.

Q How did that Defendant's Exhibit B for identification come into your possession?

A Yes, sir.

Q When?

A During one day when I was walking in the yard there, in the Tommbs yard. Sometimes once a week and sometimes twice a week they walked. I was walking around there one day and I happened to look up towards the House of Detention, on the top floor when I noticed a fellow motioning to me. While this man was motioning to me, Charley Rossie was with me, and he said, "Sam".

Q Never mind about that; was it sent to you by mail or thrown from the window, or how?

A While walking through the yard this thing was thrown out of the window to me by Robert Rossie.

Q By Robert Rossie from the House of Detention?

A Yes.

Q And was Robert Rossie one of the witnesses here?

A Yes.

MR. DEUEL: I offer this is evidence, Defendat's Exhibit B for identification.

MR. McDONALD: I object to the admission of this things in evidence. It in no way tends to impeach the testimony of Rossie.

MR. DEUEL: I maintain it does, inasmuch as it is identified as coming from the possession of Rossie, and Rossie denies he threw it. This contains a message to the defendant in this case, from the witness Rossie, concerning this case.

THE COURT: I will allow it to go in evidence.

BY THE COURT:

Q It was just in that condition when you received it?

A Yes, but I took the string off it.

(Defendant's Exhibit B for identification now in evidence).

BY MR. DEUEL:

Q This piece of metal was tied to the board like that (indicating)?

A Yes. He put it through the window, hit it with his hand, and it shot through to the yard.

BY THE COURT:

Q Over the prison wall, and it came right to your feet?

A Yes, sir.

Q And you picked it up and read the message?

A I read the message, what is on there.

(Mr. Deuel reads from Defendant's Exhibit B as follows):

"O.K., don't worry, Sam, I am a bum." There is no signature on it.

MR. DEUEL: That is all.

BY MR. McDONALD:

Q Rossie you say was where?

A In the House of Detention, on the top floor.

Q How many feet away is that from where you were?

A It is across the street.

BY THE COURT:

Q This is a twelve story building?

A I don't know how tall it is, but you could see it from the prison yard and he was away on the top floor when he threw that down to me. He put it in the window, which is like wire netting.

BY MR. McDONALD:

Q You could see this wire netting on the top floor?

A It comes like a square box, triangular like. He put it through there and slammed it with his hand, and it came right through.

Q You could see all that from the yard of the Tombs?

A Yes, sir.

Q You could see him do that to the instrument, from the inside of the room, of course?

A Yes, he was near the window. He put that inside of the window, stuck it half out, and hit it and it came into the Tombsprison yard.

Q And Rossie was across the street?

A Absolutely.

Q It went over this big prison wall surrounding the Tombs Yard?

A Yes, but the House of Detention is about seven or eight stories higher than the wall.

Q It is on the south side of the street; there is a street between the Tombs and the House of Detention building?

A Yes.

Q When was it you got that?

A In the month of August.

Q Was that after Bianco had seen you?

A No, sir, before.

Q About when was it you received this?

A The first time

We went out walking in the yard.

Q When was that?

A I went into the Tombs Prison on August 21st, and on the first day we walked in the yard I received that message.

Q About what time was it you received the message?

A About half past two in the afternoon.

Q There were Wardens around, or keepers?

A Keepers standing up against the wall.

Q And you picked that up?

A Yes.

Q And they saw you?

A I don't know whether they did.

Q They were right up against the wall?

A Yes, the keepers.

Q That is the wall on the south end?

A While walking around this side of the yard, towards the further end of the wall, coming about twenty feet away from the wall, over further there is a door on that other side, that is where there were two or three keepers sitting down. I got the note on this side of the yard, and the keepers were over there talking. I don't know whether they seen me pick this up or not, or see it come in.

Q You kept this thing?

A Absolutely.

Q Why did you keep it?

A Because I thought it would do me good.

Q Did you draw any conclusion from the note?

A No.

Q Didn't you think Rossie meant that he was going to testify in favor of you?

A No, sir.

Q What did you think he was sending this in to you for then?

A I don't know why he sent it to me.

Q You are sure it was Rossie sent it?

A Yes, Robert Rossie.

Q Was there anybody up in the window besides Rossie?

A When they came down, Robert Rossie was alone at the window.

Q How was he dressed?

A He had a shirt on and a light grey suit.

Q Did he have a hat on, too?

A No, sir.

Q Did you see his tie?

a No, sir, he did not have no collar and tie on at the time.

Q What did you do with that thing after you picked it up?

A I unravelled the cord around it, and I read it to Charles Rossie;-- Chafalo was with me at the time I unravelled it.

Q You say he was with you when you picked this up?

A Yes.

Q What did you then do with it?

A I unravelled the cord around it, and I read it to Charley Young, what was on the piece of wood. I then wound the cord around it and put it back in my coat pocket, inside. Then I kept it always up to now.

Q You say you did not know what Rossie meant by this?

A No, sir.

Q Were you worrying?

A I was worrying over my brother's death.

Q You were not worrying over the fact that you were charged with attempted murder?

A No, sir, because I am innocent of it.

Q That did not cause you any worry?

A No, sir.

Q What did your brother work at?

A He was working in a garage. He used to go to work about ten p.m.

Q For whom?

A I don't know the name of the garage..

Q What was he, just a washer?

A He used to clean Mayor Mitchel's car.

Q He is the man that you say used to contribute to your support while you were living in 46th street?

A He gave me money as a loan. I asked him to loan me some money.

Q He was the man that was loaning you money, while you were in 46th street, to pay your expenses?

A Not exactly all my expenses, for I had money of my own when I went to 46th street.

CARRIE CARRETTO, of 2843 West 16th street, Coney Island, a witness sworn on behalf of the defendant, testified as follows:

DIRECT EXAMINATION BY MR. DEUEL:

Q Mrs. Carretto, you are running a restaurant and banquet hall down at Coney Island?

A Yes, sir.

Q Did you have a banquet there Monday, August 20th, 1917?

a Yes, sir.

Q You superintended the arrangements there that evening and was there all through the evening that the banquetters were there?

A Yes, sir.

Q I ask you whether or not this defendant Sam Sacco was there that night?

A Yes, sir.

Q You remember that he was there, do you?

A Oh, yes.

MR. DEUEL: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q Where is your place of business?

A 2843 West 16th street Coney Island.

Q You run it there with your husband?

A Yes, sir.

Q Your husband also manages the place?

A Yes, sir.

Q Was he managing it that night?

A My husband, yes.

Q What were you doing?

A I was attending to the place, waited at the tables.

Q Was there any special banquet there that night?

A Yes.

Q What was it?

A It was a banquet. A fellow by the name of Michael Grimaldi run it.

Q What day of the week was it?

A monday.

Q Are you sure?

A Yes.

Q Are you sure it was not Sunday?

A No, it was a Monday night.

Q You say you saw Sacco there?

A Yes.

Q Do you know Sacco?

A If I seen him I know him.

Q Did you know him before that night?

A No, sir.

Q Was there any reason why you paid particular attention to Sacco?

A No, the place was crowede.

Q About how many were there?

A About thirty or forty people; I don't know exactly.

Q All men?

A Yes, sir.

Q No women?

A no.

Q You were just serving the guests around?

A Yes, looking around.

Q You did not have any quarrel with Sacco that night?

A No.

Q There was no quarrel at all in the entire room?

A No.

Q Everything going along nice and gently?

A Yes, sir.

Q You just served the stuff around?

A Yes, sir.

Q That is about all you did?

A Yes.

Q You were not alking to any of the guests at all?

A No.

Q What makes you so clear that you saw Sacco?

A Because I waited on him.

Q Did you wait on any others?

A No, I do not wait on tables; only the place was crowded that night and I had to help with them.

Q You waited on Sacco?

A Yes.

Q Was he sitting at a table alone?

A no, I brought him in. The way I met Sacco, I had to go outside to look at the time, because I left my dishwasher off at nine o'clock. I went out to look at the time. It was a quarter to nine, so I met this fellow outside of the door. My place has all the five doors open. I seen him looking around so I went out and I asked him "Who are you looking for?" He said, "Is there any banquet held here tonight?" I said, "Yes, walk right in." I seen my waiters were very busy and I brought him to a table. There were two men sitting at the table, one Jimmie Costaldo and Tony Terention. I made him sit there, and I went into the kitchen and got what was coming to him.

Q Did he tell you his name was Sacco?

A No, one of the fellows said, "Shake hands with him," and he said, "Hellow sam". That was all I heard.

Q When were you subpoenaed?

A I was not subpoenaed. His sister came around in about four or five days, I don't know how many days exactly, and she asked me if I remember her brother.

Q When was it this sister of his came?

A I don't remember exactly, about four or five days after the banquet was held in the place. I said, "I don't exactly remember if I am sure, because I had so many people." So he showed me his picture and I said, "Yes, I do."

Q You did not remember him then, did you?

A She told me when he was sitting and I waited on him because he was only one of the two parties I had.

BY THE COURT:

Q She showed you his photograph?

A Yes, and I remember he was there.

BY THE COURT:

Q She showed you his photograph?

A Yes, and I remember he was there.

MR. McDONALD: That is all.

MR. DEUEL: Defendant rests.

REBUTTAL.

NATHAN BIRCHELL, JR., of the District Attorney's office, a witness sworn on behalf of the People in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Mr. Birchell, you are a stenographer employed in the Homicide Bureau of the District Attorney's office?

A I am.

Q How long have you been a stenographer?

A Over eleven years.

MR. McDOANLD: Will you concede his ability as a stenographer.

MR. DEUEL: Yes, I know that he is good.

MR. McDONALD: After the defendant concedes that he is a good stenographer, may I proceed to the statement itself?

THE COURT: Yes.

Q Did you take a statement from one Petere Bianca, on the 24th day of September, 1917?

A Yes, sir.

Q Where was that statement taken?

A In the Homicide Bureau of the District Attorney's office.

Q You took that statement in shorthand?

A I did.

Q Did you transcribe those shorthand notes into typewritten form?

A Yes, sir.

Q Those questions were asked by Mr. Fitzpatrick, and Assitant District Attorney?

A Yes, sir.

Q Did you take down the questions and answers correctly?

A I did.

Q And did you transcribe you stenographic notes correctly?

A Yes, sir.

Q Have you got the transcribed notes that you took of the statement of Peter Bianca on September 24th, 1917?

A I have.

Q Will you please turn to page 6 again, to this question (reading) "What were you doing there"-- read that and read the answer.

A (reading)

"Q What were you doing there?

A They were sitting in front of the saloon. They had chairs out there. This Tony he was sitting right at the end and he seen me first, and, excuse me, for talking like this, but he picked up a chair and he say, 'You dirty cocksucker, are you around here again?' And he picked up a chair and wanted to make a swing, and as soon as he picked up the chair and wanted to make a swing I shot him."

MR. DEUEL: I am willing to make a concession, if Mr. McDonald is. I am willing to concede that the word "Tony" was taken down by Mr. Birchell, if the District Attorney will conceed that the rest of that statement is correct.

THE COURT: We do not want any concession. The stenographer can testify either from memory of his original notes, or he can swear that that is a correct transcript of his notes.

BY THE COURT:

Q Do you know the difference between Dominick and Tony?

A Yes, sir.

Q Is there any resemblance in the symbol that might mislead you so that you might write Tony for Dominick?

A No.

Q And you swear positively that he said Tony?

A I do.

Q And you wrote down Tony?

A Yes, sir.

MR. McDONALD: That is all.

MR. DEUEL: That is all.

MR. McDONALD: The People rest.

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MR. DEUEL: I move to dismiss, your Honor, on the ground the People have failed to make out a case.

Motion denied and exception taken.

(Mr. Deuel summed up to the jury).

THE COURT: Gentlemen of the Jury, we will take a recess now until ten after two. In the meanwhile you will remember the admonition that I have given you, that you must not talk about this case with anyone. You must not discuss it among yourselves. You must not form not express an opinion as to the guilt to innocence of the defendant. You must wait until you hear all the evidence that is to be given and when the Court submits the case to you, after all has been said, then you will retire and that is the time to decide, and not before that. So keep your minds open until you hear all that has been said and return here at ten minutes after two.

(Recess until 2:10 P.M.)

(Mr. McDonald summed up to the jury.)

PEOPLE vs. SAM SACCO.

CHARGE TO THE JURY.

THE COURT: Gentlemen of the jury, there are two counts in the indictment in this case; the first charges the defendant with the crime of an attempt to commit the crime of murder in the first degree, as a second offense. I shall discuss the first count. The second may be considered after that without repetition.

It is alleged that in the Country of New York, on the 20th of August in the year 1917, the defendant and two others whose names are given, made an assault upon Dominic DeLucca wilfully and feloniously and of their malice aforethought and with a deliberate and premeditated design to effect the death of him; that they made this assault with a loaded pistol which they wilfully and feloniously and of their malice aforethought and with a deliberate and premeditated design to effect the death of Dominic DeLucca did then and there shoot off and discharge; and that in this way they inflicted a wound upon Dominic DeLucca wilfully and feloniously and of their malice aforethought and with the deliberate and premeditated design to effect the death of him. There is no allegation that he died and therefore the charge is not murder but an attempt to commit the crime of murder. You will notice, therefore, the essential elements of the

charge,- First, that they committed an assault upon Deluca; second, that it was committed feloniously,- that is, without legal justification or excuse; and Third, that it was done with intent to kill and with premeditation and deliberation.

Section 1043 of the Penal Law defines homicide as follows:

"Homicide is:-

1. Murder; or,
2. Manslaughter; or,
3. Excusable homicide; or,
4. Justifiable homicide."

Section 1044 defines murder in the first degree;- "The killing of a human being, unless it is excusable or justifiable, is murder in the first degree when committed.

First, From a deliberate and premeditated design to effect the death of the person killed or of another."

That is the charge that we are concerned with here. The other varieties of homicide, the degrees of homicide or the kinds of homicide, it is unnecessary to call to your attention. As I said before, the defendant is not charged with murder in the first degree, but with an attempt to commit the crime of murder in the first degree, because it is alleged that while he sought to commit

murder, he failed in the accomplishment of his purpose and there fore was not guilty of the full crime of murder, but of the crime known to the law as an attempt to commit the crime of murder in the first degree. It will therefore be necessary for the People to establish, First, that they made an assault on DeLuca; Second, that assault was made with the intent to kill him; and Third, that it was made to carry out a deliberate and premeditated design to kill him. The words, "Premeditation" and "deliberation", have been often defined in the courts and in one case it was said: "Under the statute there must be not only intent to kill but there must also be a deliberate and premeditated design to kill. Such design must precede the killing by some appreciable space of time; but the time need not be long. It must be sufficient for some reflection and consideration upon the matter, for the choice to kill or not to kill, and for the formation of a definite purpose to kill. And when the time is sufficient for this it matters not how brief it is. The human mind acts with celerity which it is sometimes impossible to measure, and whether a deliberate and premeditated design to kill was formed must be determined by the jury from all the circumstances of the case."

As I will explain to you later, you are the judges of the facts and facts can only be proved by witnesses. It is your duty to inquire whether the testimony in this case has satisfied you, First, that the defendant was concerned in the shooting of DeLuca, and second, whether the shooting was done with the intent to kill him, and lastly whether there was not only an intent to kill, but that the intent was the result of a deliberate and premeditated design. If all those things are found by you beyond a reasonable doubt, then you may find the defendant guilty of the crime charged in the first count of the indictment.

The indictment contains an allegation that the defendant had heretofore been convicted of another crime. It is conceded that the defendant was convicted and sentenced for the commission of that crime. Under our law it is within the power of the Grand Jury under such circumstances to indict a defendant as a second offense or to return an indictment as a second offense. Therefore if you find that he was guilty of the crime of an attempt to commit murder in the first degree, since he admits the allegation as to his previous conviction, you may find him guilty as a second offense.

The presumption in a criminal trial is that the defendant is innocent. His innocence is taken for grant-

ed and he is not required to establish his own innocence in the first place. The opposite theory, known as the presumption of innocence is the basis of the American law, and the burden is on the People represented by the District Attorney to present to the jury the evidence to support their contention that he is not innocent, but that he is guilty and the rule is that the jurors after they have heard all the evidence must weigh it carefully, and if they are convinced by that evidence, viewed in the light of the law as the Court states it,- I say, if they are convinced legally beyond a reasonable doubt that the charge is true and that the charge has been supported, then they must find the defendant guilty, otherwise they must acquit him. If the evidence for any reason fails to support the contention that the defendant is guilty, if it fails to overcome the presumption of innocence, to satisfy you of his guilt beyond a reasonable doubt, you must acquit him.

It becomes necessary to define then what is meant by reasonable doubt. You know that doubt means uncertainty. A reasonable doubt means a doubt based on reason and that reason must be found in the evidence in the case, or it might be based on the lack of evidence in the case. A reasonable doubt is not based on a desire to avoid doing your duty if that duty should be disagree-

able. It is not based on prejudice against the law or against any individual. It is not based on sympathy; it is not based on a caprice or a whim. When an honest man on the jury makes up his mind to do his duty, to render an honest verdict: - I say, when an honest man makes up his mind to do his duty, to disregard any question except what his duty requires him to do, to lay aside all prejudice and sympathy, to be absolutely calm, cool and neutral and impartial, and yet finds that he is unable to say that his mind is convinced to a moral certainty by the evidence that the defendant is guilty, then his mind is in a state of reasonable doubt. But if such an honest juror feels convinced to a moral certainty from the evidence that the defendant is guilty, that is all that the law requires. That is what is meant by proof beyond a reasonable doubt. You will notice that I used the term "moral certainty." Absolute certainty is never found outside of science and mathematics. We know that two and two make four; but the People are not obliged to prove their case as clearly as that. All that the law requires is that the mind of an honest juror should be thoroughly convinced not only by a preponderance of evidence, but by such evidence as to remove from his mind the reasonable doubt or the doubt which an honest man might be justified in feeling or having under all the facts

and circumstances of the case. If you have a reasonable doubt on any of the elements of this case you must find the defendant not guilty of the crime charged in the first count of the indictment. You must be satisfied that he was present there, that he was aiding or abetting the others who did the shooting, or that he was actually shooting, as I will explain to you later, -- it is immaterial which, -- or that he concerned in the crime as a principal or agent that he had advised or procured the shooting to be done; if you have a reasonable doubt on that you will acquit him of all the counts of the indictment. If you have no reasonable doubt, if you are convinced beyond a reasonable doubt that he was present or that he aided or abetted in the shooting and you have a reasonable doubt as to whether he had any premeditated or deliberate design to kill this complaining witness, then you cannot find him guilty of the first count and you must take up the second count. The second count charges assault in the first degree. The count is, briefly, that he intended to kill de Luca, and for that purpose assaulted him with a weapon, he and the others, Bianca and Young. That is the only difference between the first and the second count. The first count charges premeditation and deliberation which I have already called to your attention, and the second,

intent to kill. The word. "Intent" means the end sought. What did these men have in mind when they went up there and shot DeLuca; what end did they seek. If you find that they sought his death, that they went there to kill him, that is what is meant by "Intent", the end sought. Under our law, if a man intends to kill another and assails him with a weapon, loaded fire-arm or any other weapon capable of producing death, even if it does not succeed in causing death, that is assault in the first degree.

Assault in the first degree differs from attempt to commit murder merely in the absence of premeditation and deliberation.

Section 240 of the Penal Law is as follows:- "A Person who, with an intent to kill a human being or to commit a felony upon the person or the property of the one assaulted or of another, assails another with a loaded fire-arm or any other deadly

weapon or by any other means of force likely to produce death -- is guilty of assault in the first degree."

First, does the evidence satisfy you that there was any shooting there at all. Secondly, does it satisfy you as to the identity of the assailants, the person who did the shooting, and thirdly, does it satisfy you as to their intent?

Intent must be proved as a fact. It has been

said by courts that intent is the operation of a man's mind; it is looked up in his heart and the only way to prove it is by showing its visible manifestation; you can see a pistol; you can hear the report or see the flash of a gun, but intent is looked up in a man's mind. There is a principle of law or rather a rule of evidence that you can infer a man's intent from his acts. You may find that a man intended the reasonable and necessary and ordinary consequences of his acts. In other words, if a man takes a loaded fire-arm and stands a few feet from another and discharges that firearm and the bullet enters his body and kills him, why that is sufficient evidence of an intent to kill.

So here, the People are not obliged to prove that these men came up there and said, "We are going to kill you". You may find their intent from their acts. The act of shooting a man at close range in the way that has been testified to would justify the inference that they intended to kill. If the evidence does not satisfy you, however, that there was an intent to kill - that there was an intent as Bianco said, - to injure him, to hurt him, why then the crime would be assault in the second degree, not assault in the first degree. So that under this indictment you may find this defendant guilty of the crime of an attempt to commit the crime of murder in the first degree as a second

offense, as charged in the indictment. or guilty of the crime of assault in the first degree as a second offense; not an attempt to commit an assault because if one discharges a weapon at another, whether he hits him or not, it is a crime. It is assault; either assault in the first degree or assault in the second degree, just as it was accompanied by an intent to kill or merely an intent to injure.

You understand that the jurors are the sole and exclusive judges of the facts. it is the duty of the Court to instruct you in the law and to state to you the legal principles which are applicable to this case and which should guide you in your decision. You must take the law from the Court. The definitions of homicide, attempted murder, assault, the burden of the People, and the rights of the defendant, you must take without question. The facts are only to be found by you and they can only be proved in one way and that is by the statements of witnesses (and the exhibits admitted in evidence). Statements of counsel on either side or comments by the Court have no weight as evidence, and they are not to be considered by you in any way. If counsel in summing up have drawn conclusions from the evidence that seem to you proper and logical, why you should pay respectful heed to them, but if the deductions of counsel seem to you to be un-

founded, then you must ignore them and be guided by your own views of the evidence. I mention the words credibility of witnesses; since facts can only be proved by witnesses and since witnesses may differ, it is for the jury to determine whom they will believe. You must decide how much of the testimony of each and every witness you will believe. The word, "credible," means worthy of belief. A thing is credible when it ought to be believed, when it commends itself to your reason and judgment; and while there are not rigid rules to guide you in the discharge of your duty, you should employ the common and usual methods and you should be guided by reason and experience in determining the question of credibility. If you were the credit man of a great business corporation and an application were made for trust of credit, you would investigate the applicant in order to decide how much credit you would give him; and so here, you may consider the manner of the witness on the stand, the character of the witness as disclosed on cross-examination, the interest of the witness in the controversy, if any, the relationship of the witness to the case, the motive which may or may not exist and may impel or lead a witness to tell what is not true. Even if you find that a witness has an interest in the controversy or a motive which may have influenced him or here to testify falsely, it would be grossly unfair to disbelieve the testimony of the witness solely on

that ground, because a witness may tell the truth, notwithstanding the existence of a motive to do otherwise. It is for you to decide whether it has been shown that any witness has such motive. One of the proper functions of cross-examination is to show that a witness is biased or prejudiced, and has a motive to testify falsely. So it may be shown that a witness has previously been convicted of a crime, or has committed vicious or immoral acts. In other words, every witness that takes the stand makes an appeal to you for credence, and you must weigh that appeal carefully. You must consider the character of the person who gives the testimony, as disclosed by the evidence, and taking all those elements into account, decide on his or her credibility and then after having selected the testimony that you regard as credible, weigh that very carefully and honestly. You must be calm, cool and neutral. You are not retained on one side of the other. You are not partisans. You are to be absolutely impartial and weigh that evidence carefully and coolly and then if you find that the law has been violated, that it has been established beyond a reasonable doubt that the defendant has committed a crime, you must fix which crime it is, an attempt to commit the crime of murder in the first degree, as charged in the first count or assault in the first degree or assault in the second degree, under the second count of the indictment.

I realise at this time it may be a great hardship on you to sever as jurors. You are compelled to abandon your own private affairs for the time being and that often involves very great sacrifice on the part of a juror. The welfare of the State depends on the faithful performance of jury duty just as much as the existence, the safety and the honor of the nation depend on the loyalty and bravery of our soldiers in time of war. The country is at war and our soldiers must defend us from the acts of those who would destroy us. The law must be respected. Every one must be secure in the enjoyment of life, liberty and property, and such security depends altogether on the faithful administration of the law. The judge has a very simple function to perform, in a criminal trial. He simply rules on the legal questions that arise and sees that the trial is conducted according to law.

The District Attorney has done his duty to the People in this case. Counsel for the defendant is entitled to the thanks of the Court for the manner in which he has discharged his duty. He has given to his client all the service that skill and ability could render. It now remains for you to do your duty. You must determine to be absolutely honest men and to be faithful to the trust that is imposed upon you. It is very great responsi-

bility and the law will be vindicated by an honest verdict. You must banish every thought from your minds but the desire to do your duty. You must not consider the consequence of your verdict. It is no concern of yours what happens to the defendant. if he is convicted; because he should be pronounced guilty by you if he has been proved guilty to your satisfaction ; and if he has not been proved guilty to your satisfaction, it is equally your duty to say so and to render a verdict of not guilty.

The question is not as to the character of the defendant except on that one point of his credibility. Whether a man has been convicted ten times heretofore is no proof whatever that he is guilty of the charge contained in this indictment. You understand that. You may consider all that testimony on the question of his credibility. The law is that a man who has been convicted of crime, a man who lives with a prostitute, a man who does disgraceful acts, criminal acts, may be questioned about such matters, if he becomes a witness. If the defendant had not taken the stand as a witness no reference would have been permitted to them, except for the purpose of proving the conviction mentioned in the indictment, so that he may be convicted as a second offense. I say this because the question is not what kind of a character he has. That is not in issue. He has been

convicted of crime heretofore, and therefore under this indictment, if he is proven guilty, why you must find him guilty as a second offense. The proof that the law requires must relate to the acts done at the corner of 110th Street and Second Avenue on that night. If there was an assault committed on DeLuca there with intent to kill him and that intent was the result of a deliberate and premeditated design to kill him and the intent was carried out by the discharge of a loaded pistol at DeLuca and the others there, or if there was an attempt to kill any one there in DeLuca's party and De Luca was shot, -- I say if there was an attempt to murder anyone who was sitting there with De Luca that night, and this defendant was concerned in it, whether he did the shooting or not, if he aided or abetted, counseled or advised in it, he is guilty under the first count of the indictment, whether he was present at the shooting or not. You will remember that in the Becker case, although the defendant was not present at the shooting, the law upheld his conviction because it was charged and proved to the satisfaction of the jury, that he had instigated others to commit the crime. So here, whether this defendant did the shooting or not; if he aided or abetted or advised the others to do it, he is guilty of the crime. Justifiable homicide or justifiable assault could be only done

in self-defense. There is an absolute lack of evidence of self-defense in this case. The defendant has not claimed it. He said he was not there. If he was not there on that night, if you have a reasonable doubt as to his whereabouts at the time of the shooting, you must acquit him under the evidence in this case, but if you have no reasonable doubt that he was present and that he was concerned in the shooting and that there was an attempt to kill, why then he may be found guilty either under the first or second count; or if there was an assault made without any intent to kill the crime would be assault in the second degree. I hope I have made myself clear, Weigh the evidence, what actually happened that night, If you are satisfied beyond a reasonable doubt that there was an attempt made to kill De Luca, accompanied by premeditation and deliberation or intent to kill, you may find the defendant guilty; if he was concerned in the crime, if he has been connected with that by the evidence. If you have a reasonable doubt as to whether there was any premeditation or deliberation,- as to whether this was a sudden quarrel that came on up there, that the meeting was entirely unexpected, that the shooting occurred without deliberation or premeditation, it would then be assault in the first degree or second degree if you think the shooting was not done with intent to kill, if the intent was merely

to injure these persons sitting there, -the crime would be assault in the second degree. We are not concerned with the motive of anyone who shoots up another in the street, - that does not concern us; the question is, what was done? Was there an attempt to murder there? Was there assault in the first degree or assault in the second degree? Was the defendant concerned in it? Are those facts established beyond a reasonable doubt by the evidence? Weigh the evidence fairly, calmly, and impartially and pronounce an honest verdict and then you will be doing your duty, whether it be guilty or not guilty. If it be an honest verdict, that is a vindication of the law.

Have you any requests, Mr. Duel:

MR. DUEL: Just one request, your Honor, and that is that you instruct the jury if they disbelieve any material facts stated by one of the witnesses, they may disregard all the story of that witness.

THE COURT: Well, I cannot charge that, Mr. Duel. The rule is that if you believe that any witness committed perjury, you may disregard all the testimony of such witness, although you are not obliged to. As I told you you are the sole judges of the credibility of the witness. You must say what witness you are going to believe. When a witness takes the stand, if he deliberately and knowingly testifies falsely on a material point in the case, he

is guilty of another great crime known as perjury. If the defendant was not there and he was not seen there by the People's witnesses and yet all those who said that he was there, if they know that he was not there, if they deliberately and knowingly testified falsely on that point, they would be guilty of perjury and you could disregard all their testimony. And so, when the defendant took the stand if he was present there and deliberately and knowingly said that he was not there, he was guilty of perjury and you may disregard all of his testimony. The same rules for testing the credibility of the witnesses apply to all the witnesses on both sides. There is not one special rule for the People's witnesses and a different rule for the Defendant and his witnesses. Do not decide the case from one isolated piece of evidence. Take all the evidence on both sides and weigh it calmly and coolly as men conscious of your great responsibility, and then if you are firmly impressed as I say to a moral certainty that the charge has been proved, say so by a verdict of guilty and fix the crime. If you have a reasonable doubt of his guilt of any crime, then acquit him. But if a witness through inadvertance should make a miss statement, why there would not be any reason for disregarding all the testimony of such witness. A witness might say that a thing was black when it was blue or white, and

if he believed it was black when he said it was black there is no moral turpitude in that. But of course, if you do not agree with his statement, if you think he was mistaken why you will not be influenced by any testimony unless you believe to to be true.

THE COURT: Is that satisfactory, Mr. Duel?

MR. DUEL: That covers it very nicely, thank you.

THE COURT: Mr. McDonald, is there anything?

MR. McDONALD: Nothing, your Honor.

THE COURT: Once more your verdict should be either guilty of an attempt to commit the crime of murder in the first degree as a second offense, or of assault in the first degree as a second offense, or assault in the second degree as a second offense, or not guilty. I do not want two verdicts. Only one verdict for one crime or not guilty.

The jury retire at 3:45 P.M.

The jury return at 4:50 P.M.

THE CLERK OF THE COURT: Gentlemen of the jury, have you found a verdict?

THE FOREMAN. No sir.

THE COURT: I have sent for the jury because I received this communication from the Foreman (reading), "Hon. Judge Mulqueen; Please send in and have read to us testimony of Rossie relative to raincoats on auto-

mobile trip. Foreman."

I cannot send the testimony in to the jury. Any testimony you wish to have read, we will read it in open Court.
(The stenographer reads the testimony requested by the jury consisting of that contained on pages 35 to 38).

THE FOREMAN : What time was it that this automobile went uptown?

THE COURT: I do not think the hour was mentioned.

MR. DUEL: There is no time mentioned in that testimony.

MR. McDONALD: NO.

THE COURT: If there is any further testimony you want read or any further instructions from the Court on the law, it will be given to you otherwise you may retire.

THE FOREMAN: No, I don't think so.

THE COURT: Then you may retire again.

JUROR NO. 8: Your Honor, was this automobile trip a long time before the night of the murder?

MR. McDONALD: Three weeks, the testimony says.

MR. DUEL: Yes, that was before, three weeks before.

The jury retire at 5 P.M.

The jury return at 10:40 P.M.

THE CLERK OF THE COURT: Gentlemen of the jury, have you agreed upon the verdict?

THE FOREMAN: We have.

THE CLERK OF THE COURT: How do you say, have you found the defendant at the bar guilty or not guilty?

THE FOREMAN: Guilty, as charged in the second count.

THE CLERK OF THE COURT: Harken unto your verdict as it stands recorded. You say you find the defendant guilty as charged in the second count of the indictment, so say you all?

THE COURT: Guilty of what?

THE FOREMAN: Will you please read the second count?

THE CLERK OF THE COURT: Guilty of assault in the first degree as a second offense, as charged in the second count of the indictment.

THE FOREMAN: We do.

The defendant's pedigree is taken.

THE COURT: If defendant wishes I am ready to impose sentence now.

MR. DUEL: First I desire to make a motion on the record.

THE COURT: You can reserve your motions or make them now if sentence is to be imposed now.

MR. DUEL: I make the motion that the verdict that has been rendered be set aside as against the weight of evidence and on account of the exceptions taken at the

trial.

THE COURT: I will deny your motion. I think the verdict is amply warranted by the evidence.

MR. DUEL: Exception;

THE COURT: If the defendant wishes, I am wready to impose sentence now.

MR. DUEL: The defendant is ready for sentence now.

THE COURT: I am goint go send him to State's prison for twenty years, as a warning to others. I give him this sentence not because I have any feeling of vindictivensess against him, but to let him know that in the City of New York we want the law to prevail, and those who do not like that may leave New York and we wish them Godspeed.

THE CLERK OF THE COURT: Your Honor, I did not make formal statement to the defendant.

THE CLERK OF THE COURT: Sam Sacco, what have you now to say why judgment should not now be pronounced against you according to law?

MR. DUEL: Nothing further; your Honor has passed sentence.

THE COURT: Well, I shall pass it again; I will re-sentence him.

MR. DUEL: No, once is sufficient, your Honor.

THE COURT: I sentence you to State's prison for twenty years, Sacco.

MR. DUEL : Is that the maximum or minimum sentence?

THE COURT: That is the maximum sentence.

THE DEFENDANT: (In person) What was I convicted of?

THE COURT: You were convicted of the crime of assault in the first degree as a second offense. The maximum punishment for your crime as a first offense is ten years, and for the second offense the law provides that you may receive double the maximum. You will be taken to State's prison, and under the new dispensation you can get out in about eight years, if you behave yourself.

MR. DUEL: Will your honor grant a stay of a week?

THE COURT: Yes, I grant one week's stay, or he may have a longer stay.

MR. DUEL: One week is sufficient, your Honor.