

START
2396
CASE

COURT OF GENERAL SESSIONS OF THE JUDGES

City and County of New York, Part V.

THE PEOPLE OF THE STATE OF NEW YORK

-against-

CHARLES ROSSI CHIAFALO, co-indicted with Peter Bianco and Sam Sacco.

Before

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

New York, January 11, 1918.

The defendant is indicted for attempted 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: HUNTINGTON W. MERCHANT, ESQ.

MR. MERCHANT: Your Honor, the defendant objects to proceeding with the trial at this time, and with the same jury impaneled before which Sam Sacco, a co-defendant herein was tried, on the ground that in the event of conviction the defendant here must be sentenced for from five years to life; that Sam Sacco on separate trial was convicted at this term by a jury selected from the same panel before which this defendant must be tried, and that Sam Sacco was sentenced to twenty

Years by your Honor; that by reason of the facts and circumstances it is necessary that this information must come to the knowledge of the jurors sitting on the trial of this defendant. The defendant, therefore, moves that this trial be adjourned until the next term.

THE COURT: Your motion is denied. I think it is unnecessary to state the reason; here will be no juror permitted to serve in the trial of this case who served on the other case, unless as a special request of the defendant. Secondly, no jurors were present during the trial of Sacco except the twelve men who were impanelled, the other having been excused. The defendant's counsel may inquire of each juror as to whether or not he heard anything about the Sacco case, and as to whether or not he will accept the instructions of the Court that the question of Sacco's guilty is not at all concerned in this issue.

MR. MERCHANT: Exception.

The jury is duly impaneled and sworn.

Mr. McDONALD opens to the jury as follows:

MR. MCDONALD: May it please the Court and the gentlemen of the jury, the defendant Charles Rossi Chiafalo, alias Charles Young, alias Charles Rossi, was co-indicted with Sam Sacco and Peter Bianco, charged with attempted murder in the first degree as a second

Offense, and assault in the first degree as a second offense.

The People will prove by their witnesses that on August 20, 1917, the complaining witness, Dominic De Luca, between the hours of eight and nine o'clock was sitting with his brother and one Robert Rossie outside of his father's saloon, was sitting there with Joe Praino and one or two others. The People will show that this defendant was driving a car, and drove a little distance, passing or coming within sight of the saloon premises where this complaining witness was sitting. The car went a certain distance away, around the block, time enough for them to go around the block, when they appeared again and then stopped at a certain place, a church on 110th Street. We will show then that the defendant and Sam Sacco and Peter Bianco appeared on the scene. Peter Bianco stood in front of the saloon premises and fired shots at the men assembled there, sitting in front of the saloon. We will show that the defendant Young and another was seen firing from behind one of those lunch signs that are usually outside of saloons, a sort of a triangular piece of tin or wood resting upon the ground and extended from the ground three or four feet up. We will prove that this defendant and this other man started to fire at the group of men sitting in front of this saloon. That

Then Dominic DeLuca, the complaining witness was shot in the arm, the bullet entering the forearm, from where it was subsequently removed by a doctor. He sort of dodged into the saloon and then went into the drug store, and there Sam Sacco fired shots.

MR. MERCHANT: I object to any openings to the jury or to the introduction of any evidence as to any attempted crime or alleged crime subsequent to the alleged crime which the District Attorney has just described, as not within the terms of the indictment and is further not within the terms of the bill of particulars demanded by the defendant and ordered by the Court to be served upon the defendant.

THE COURT: He is not on trial for any other crime, but if the People can establish a connection or relation between any other act, and the act complained of in the indictment, they have a right to do that; - not for the purpose of showing the committed any other crime; they may wish to establish a motive for the commission of this crime.

MR. MERCHANT: We are only prepared to meet that for which the defendant is indicted; under the bill of particulars served by the People they limit their crime to about 8:30 in the evening of August 20, 1917, at this particular corner of 110th Street and Second Avenue.

THE COURT: That is the crime for which he is on trial.

MR. MERCHANT: But we do not come to meet any other crime; he is not so indicted.

THE COURT: I have ruled he is not so indicted, and unless it is proved that he is guilty of committing the act charged in this indictment he will be acquitted. But in the course of the proof it may be necessary to refer to other acts of his, if any, for the purpose of connecting him with the crime charged in the indictment, and therefore your objection is overruled.

MR. MERCHANT: I note an exception, and I would like to note further that it is not part of the res gestae and that it is subsequent to the alleged crime. If part of the res gestae of course I understand it would be admissible.

THE COURT: I overrule your objection.

MR. MERCHANT: Exception.

THE COURT: When the attempt is made to introduce any evidence that you consider improper, then you may object and I will rule on it at that time, but I do not see any reason now to limit the scope. An opening, of course, amounts to nothing. Facts can only be proved by the witnesses that come on the stand, and no matter what the District Attorney says, the jurors will pay no attention to it except that which is supported on

the stand here. He may outline in a brief way what the People intend to prove.

MR. McDONALD: (Continuing) Of course you understand this is only for the purpose of giving you a general idea of what we intend to prove. We will show that the defendant was one of two or three who came up for the special purpose of shooting at the De Lucas, and that the De Lucas were attacked because they would not shoot one Ciro Morelli and Vinc Morelli. We will show by another witness that he was shot because he would not shoot de Lucas and because the De Lucas would not shoot Ciro and Vinc or Vincent Morelli. In other words, Sam Sacco brought up this defendant himself to shot the De Lcas, because by reason of some trouble they had had with Vince and Ciro Morelli, because the De Lucas would not shoot the Morellis, they came up and attacked De Luca while sitting in front of the saloon. Those are the facts in a general way. That gives you a general idea of the whole scheme.

DOMINIC DE LUCA, of 106 East 113th Street, a witness called by the People, being duly sworn, testified as follows:

THE COURT: The Court takes a recess of fifteen minutes.

Gentlemen of the jury, remember during recess that

the law forbids you to talk about this case among yourselves or with any strangers You must not form nor express any opinion on the case until you have heard all the evidence on both sides. The evidence is the only this that concerns you and you will wait until you hear the entire case and when the Court submits the case to you then you will decide it and not before. You must keep an open mind until the end of the case.

TRIAL CONTINUED;

DOMINIC DE LUCA, recalled to the stand:

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your address?

A 106 East 113th Street.

Q On the 20th of August, last, did your father keep a saloon?

A Yes sir.

Q Where did he keep it?

A On the corner of 110th Street and Second Avenue.

Q What corner?

A Southeast corner.

Q In the City and County of New York?

A Yes sir.

Q Did you say the southeast corner?

A Yes sir.

Q Were you there at any time during the evening of August 20, 1917?

A Yes sir.

Q About what time were you there?

A I was there between eight, until about half-past eight.

Q In the evening?

A Yes sir.

Q Well, about that time where did you go?

A I was shot

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and I went in the drug store.

MR. MERCHANT: I move to strike out that answer.

THE COURT: Strike it out, it is not responsive.

Q Did you go outside the saloon?

A I was sitting down in front of the saloon.

Q You say that was between eight and half-past?

A Yes sir

Q Were you sitting there with any one?

A With my brother, Robert Russo, Joe Praino standing alongside of me and Daniel Fortunash, standing alongside of my brother.

Q You say you were sitting where?

A In front of the saloon.

Q Just describe the saloon.

BY THE COURT:

Q Where is the saloon?

A On the corner of 110th Street and Second Avnue.

Q Were you sitting at 110th Street side or the Second Avenue side or where?

A On the right hand going into the saloon.

Q On which side; street or avenue?

A On the avenue and 110th Street.

Q The entrance is on the courner?

A No, it is right off the corner, the entrance is on the avenue.

Q Right off the corner?

A Yes.

Q And you were sitting near the entrance?

A Yes sir.

MR. McDONALD: I offer in evidence three photographs. Mr. Merchant just looked at them.

MR. MERCHANT: I will concede they are, I will concede they are photographs; let the witness prove the correctness of them, although I think they are the same now the conditions are the same as the conditions were at the time of the alleged crime was committed.

THE COURT: Do you waive the calling of the photographer?

MR. MERCHANT: Yes, but I want him to prove they are correct representations of the scene of the crime.

BY MR. McDONALD:

Q I show you this picture and I ask you if that represents the front view of your father's saloon, at 110th Street and Second Avenue?

A Yes sir.

MR. McDONALD: I offer them in evidence.

BY THE COURT:

Q Does that photograph represent the conditions as they existed on the 20th of August, 1917?

A Yes sir, only the sign ain't here, and the doors were open.

MR. McDONALD: Subject to those corrections.

BY MR. MCDONALD:

Q There was a sign there and the door was open?

A Yes.

BY MR. MERCHANT:

Q How about the seats outside the saloon?

A The seats were right near the saloon ***ight near the cellar,

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three chairs, right from the cellar over here to the door (indicating).

Q On the corner side of the door or toward the center of the lock?

A The other side.

Q Toward the middle of the block?

A The right hand side as you go into the saloon.

Q Otherwise that is a correct representation of the Saloon as it was the night of the shooting?

A Exactly.

Photograph marked People's Exhibit 1 in Evidence.

Q Will you describe the character of the doors that were on that saloon that night?

A They were swinging doors?

A Swinging doors.

Q Were those swinging doors open or closed?

A Closed.

Q You mean by a swinging door a half door which you push against to go in or out?

A Yes.

Q And the bottom of the door about 18 inches from the Sill of the doorway; that is the bottom of the door was about that high from the level of the floor?

A Well, they are up from the ground.

BY MR. MCDONALD:

Q I show you this photograph and ask you if that in a general way represents the drug store and your corner, or the corner of your father's saloon at 110th street and Second Avenue?

A Yes sir, it is just the right picture.

MR. McDONALD: This takes in the saloon and the drug store, and I offer it in evidence. It takes in both corners of the street.

Picture marked People's Exhibit 2 in Evidence.

BY THE COURT:

Q Does that show the same conditions as they existed that night; the drug store was there that night?

A Yes.

Q Is it still there?

A Yes.

Q And it is on the opposite corner?

A Yes.

Q Was the drug store on the other side of Second Avenue or on the other side of 110th Street?

A The same side as the saloon is but on the opposite corner.

Q Was it the opposite side of the Second Avenue or the opposite side of 110th Street?

A Of 110th Street.

Q It is on the same side of Second Avenue?

A Yes.

Q The saloon on one corner of 110th Street and the drug store on the other corner of 110th Street?

A Yes.

Q The drug store was on the north corner and on the south corner was the saloon?

A Yes sir, exactly.

BY MR. McDONALD:

Q Now you say you were outside there by eight o'clock and you were sitting down?

A Yes sir.

Q Whose else was sitting down?

A Robert Russo and my brother.

Q How long did you remain there?

A About half an hour.

Q Did anything happen?

A Yes sir.

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Q Just tell us what happened.

A A young man by the name of John Pogano and Charley Young --

Q That is this defendant?

A Yes, -- stepped from around the sign. John Pogano fired a shot and hit me in the arm and Charley Young fire two other shots and they ran up 10th Street. (110th Street?).

Q Ran where?

A Up 10th Street.

Q In what direction?

A Second to Third Avenue.

Q They man towards Third Avenue?

A Yes sir.

Q What happened then?

A I went inside and I told my father I was shot.

Q Never mind what you told your father.

A I went inside for a few minutes and went out to the drug store.

Q What happened then?

MR. MERCHANT: I object to that as subsequent to the commission of the alleged crime, not part of the res gestae, irrelevant, incompetent and immaterial; not within the bill of particulars served, or within the terms of the indictment.

THE COURT: He says this defendant ran away.

MR. McDONALD: Yes sir, but they came back again to the drug store.

THE COURT: Anything that he did in or about that time I will allow him to testify to. Objection overruled. Exception.

THE WITNESS: I understood you to say --

BY THE COURT:

Q If you do not understand the question it will be repeated to you. What was the last time you saw Young that night, this defendant.

A When he fired the two shots at me.

Q And ran up 110th Street?

A Yes.

BY MR. McDONALD:

Q You did not see him again after that?

A No sir.

Q Where did you go then?

A Into the drug store.

Q Did you see Sam Sacco --

A Yes sir.

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial, not within the issues.

MR. McDONALD: I haven't finished my question yet.

THE COURT: I will allow it.

MR. MERCHANT: Exception please.

Q Did you see Sam Sacco at any time before you saw him at the drug store?

A No sir.

Q Did you see Sam Sacco at the drug store?

A Yes sir.

Q Tell us what happened there.

A While I was going over to the drug store I heard a shot and I fell on the floor, and I seen Sam Sacco fire two other shots at me, running down towards the church, which is about three houses away from the saloon, get into an automobile and went down First Avenue, and I went into the drug store.

Q You say you saw Sam get into the automobile?

A Yes

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Q Where was this automobile?

MR. MERCHANT: I move to strike out the answer as incompetent, irrelevant and immaterial.

Motion granted.

Q Where was this automobile?

A Right near the church.

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

THE COURT: Strike out the testimony about Sacco.

Objection sustained.

MR. McDONALD: I think we can show there was an automobile there, and take it for what it is worth.

THE COURT: I have sustained the objection.

Q Now you say you were shot in the arm?

A Yes sir.

Q Tell us where or show us where.

A (Witness showing on right forearm above wrist).

Q Is that where it went in? (indicating)

A Yes sir.

Q And is that where it came out (indicating)?

A It did not come out, the doctor took the bullet out.

Q Was it taken out there?

A Yes sir.

THE COURT: Will you concede, Mr. Merchant that he was shot?

MR. MERCHANT: I concede there is a wound there on the arm, and I have heard his testimony that it was the result of a shot.

THE COURT: You will have to prove every part of the case then, Mr. McDonald, if he does not make that

concession.

Q Where was Young when you saw him?

A In back of John Pogano, coming from the sign.

Q Just tell us exactly where this sign was?

A The sign was right on the corner of the saloon.

Q Do you mean the intersection between 110th Street and Second Avenue right up near the saloon?

A Right on the Avenue.

Q On the Avenue?

A Yes sir.

Q What kind of a sign was it?

A It is a sign four feet five inches high and two feet two inches wide.

Q It was a sign, a lunch sign?

A It told you they have lunch, soup, sandwiches and so on.

BY THE COURT:

Q Was it attached to the building or standing separate?

A My father has two hooks on it.

Q Was it attached to the building or standing separate?

A Attached to the building, that is, the frame of the window.

Q How was it attached to the building?

A With two hooks.

Q How far did it extend from the building if at all?

A I don't know, your Honor, I cannot exactly tell you.

Q Don't you know the size of the sign; was it flat against the wall?

A Yes sir.

Q Or did it extend out from the wall?

A No, it did not

Extend out from the wall.

BY MR. McDONALD:

Q What sort of a sign is it?

A It is a lunch sign.

Q Is it triangular in shape like that? (indicating)

A No sir.

MR. MERCHANT: Mr. McDonald illustrating as if opening a book at 45 degrees, with the pint upwards.

Q Where was Charley Young with the relation to that sign?

A Just coming from the back of it.

Q From the back of the sign?

A From around the sign.

Q Did you see Peter Bianco there?

A Yes sir.

Q Where was Peter Bianco?

A Right near the mud gutter.

Q Near the gutter?

A Yes sir.

Q Was he facing the saloon?

A Yes sir.

Q And facing toward where you fellows were sitting?

A Yes.

Q You say you were sitting on a chair?

A Yes sir.

Q I show you this chair and ask you if that is the chair you were sitting on previous to the shooting?

A Yes.

Q Take a look at it, please.

A (After looking at it) Yes sir. Here is the way I was sitting on it (indicating)

Q Wait a minute; is that the chair?

A Yes sir.

Q What was its condition when you brought it out to sit on on the 20th August, 1917?

A It was in good condition.

MR. MERCHANT: I object to that as incompetent,

Irrelevant and immaterial and I move to strike out the answer.

THE COURT: I will allow it.

MR. MERCHANT: Exception taken.

Q Now then did you see it after you were shot?

A No sir. This is the first time, outside of two or three days ago, when Sacco's case went on.

Q I show you it now and ask you if it is in the same condition now as it was at the time you brought it out?

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial. He has not seen until two or three days ago, since he was sitting on it at the time of the shooting.

THE COURT: I will allow it.

MR. MERCHANT: Exception.

A No.

MR. McDONALD: I offer it for identification.

Chair marked People's Exhibit 3 for Identification.

Q In what respect does the chair differ?

MR. MERCHANT: Objected to, let him state the condition before and now. Also it called for a conclusion.

Question allowed and exception taken.

A The chair is broke on the right side and there is a hole right here (indicating)

BY THE COURT:

Q It was not broken that way and that hold was not in

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it the night you say on it?

A No sir.

Q Otherwise it is the same?

A Yes sir.

BY MR. McDONALD:

Q Was there anything said before the shooting took place? On the 20th of August?

A Yes sir.

Q When was that?

A About two weeks before the shooting.

Q With whom did you have that talk?

A With Sam Sacco.

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

THE COURT: You have not connected Sam Sacco with this shooting as yet. He said three men came there, Bianoc, Pogano and this defendant and that they shot at him and that this defendant run away. He does not say what became of the others.

MR. McDONALD: I will connect Sam Sacco.

THE COURT: When you connect it I will allow the evidence.

MR. MCDONALD: Your witness.

CROSS-EXAMINTION BY MR. MERCHANT:

Q How old are you, De Luca?

A 23

Q Where were you born?

A U. S.

Q You are now in the army?

A Yes sir.

Q How long have you been in the army?

A About three and a half months.

Q That would be, say in October?

A September?

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Q Immediately prior to that what was your business?

A Driver.

Q What kind of a driver?

A Express wagon.

Q And for whom?

A Myself.

Q Did you own it?

A Yes sir.

Q How long were you a driver of an express wagon?

A Two years.

Q Did you own the horse, too?

A Yes sir.

Q Where did you live in August, 1917?

A ***106 East 113th Street.

Q With whom?

A My wife.

Q How long had your father had a saloon at the south-east corner of 110th Street and Second Avenue?

A About two years.

Q Was it your custom during August, 1917, to sit in front of that saloon during the evening?

A Yes sir.

Q Now, you say that you were sitting there that evening?

A Yes sir.

Q Between eight and eight thirty o'clock?

A Yes sir.

Q And that you saw Charley Young and this defendant at 8:30 then?

A Yes sir.

Q How many of you were sitting in front of the saloon?

A Three sitting.

Q You were facing in what direction, west?

A West.

Q You were sitting on the Avenue?

A Yes sir.

Q That is to say you were sitting on the avenue side

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Of the saloon?

A Yes sir.

Q The Second Avenue side of the saloon?

A Yes sir.

Q Facing towards Third Avenue?

A Towards the west, yes.

MR. McDONALD: I did not offer this plan in evidence, I will offer it in evidence the diagram showing the location of the drug store, the saloon, the avenue and the street.

MR. MERCHANT: I have no objection, subject to correction. I am told by the District Attorney that it is approximately correct.

MR. McDONALD: Yes, subject to corrections.

Diagram marked in Evidence as People's Exhibit 4.

Q Now you were sitting at half-past eight on August 20TH , 1917, with two companions in front of your father's saloon?

A Yes sir.

THE COURT: He said three companions.

Q Facing Third Avenue?

A Yes.

Q Three companions?

A Yes, three sitting.

BY THE COURT:

Q And was there one standing?

A Two standing.

Q That makes five all told?

A Yes.

Q Yourself and four companions, - five all told?

A Yes.

BY MR. MERCHANT:

Q What were their names?

A My brother, Antonio DeLuca, Robert, Eusso, Joseph Praino, and Daniel Fortnash.

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Q Which ones were sitting?

A Robert Russo and my brother and onio*** DeLuca.

Q You were standing?

A I was standing.

Q You said your brother, and who else was sitting?

A Robert Russo and myself.

Q Were your chairs near the curb or near the house wall?

A Up against the window.

Q Were they on four legs or tipped back?

A On the four legs.

Q Were all three of those sitting, sitting south of the doorway?

A I don't understand that, about the doorway.

Q Well, they are facing third Avenue,?

A Yes, they faced west.

Q Were you sitting in front of that part of the saloon which is toward 110th Street from the doorway or which is toward 110TH Street from the doorway or which is toward 109th Street from the doorway?

A Toward 109th from the doorway.

Q In what order were you sitting; who was nearest 110th?

A I was nearest 110th and we were sitting facing Third Avenue.

Q Who was next to you?

A Robert Rossie sitting on my left and Joseph Praino standing on my right.

Q Please mark on People's Exhibit 4 in Evidence with a cross where you sitting.

A (Witness indicating by marking with a cross)

Q And put your initials next to it.

A ***(Putting his

Initials). D. D. L.)

Q Put a cross where the next man was sitting next to you.

A (Witness indicating).

Q That was who?

A Roebert Rossie,

Q Make an R.R. opposite that to indicate Robert Rossie.

A (Witness indicating)

Q And a cross for the third man.

A (Witness indicating)

Q His name was what

A My brother, Antonio DeLuca.

Q Make an A. D. L..

A (Witness indicating by marking A. D. L.).

Q You say there were two men standing?

A Yes sir.

Q Who were they?

A Joseph Praino and Daniel Fortnash.

Q Will you please indicate where Joseph Praino was standing by a cross.

A (Witness indicating)

Q In the doorway?

A Yes sir.

Q Please put J. P. near that cross.

A (Witness indicating).

Q And who else was there?

A Danny Firtnash.

Q Where was Fortnash standing?

A Alonside of my brother.

Q Please put a cross where he was.

A (Witness indicating).

Q And his initials.

A (Witness indicating).

Q Now you have testified that there was a lunch sign which attached to the front of the saloon by two hooks?

A Yes sir.

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Q Will you please indicate by a straight line the lunch sign on this People's Exhibit 4. Just indicate the please where it was.

A If you give me the picture I will show it better.

Q I ask you to indicate on the plan of you can.

A I could not locate on the plan.

BY THE COURT:

Q Don't you understand the diagram?

A Yes: in the picture you could see the frames.

Q Please indicate on that if you can where it was.

Was it towards 110th Street or towards 109th Street?

THE COURT: Jurors will not express say comment on the evidence or talk while the case in going on; just listen to the evidence.

A Here (Witness putting a cross mark).

Q Was it toward 110th Street or toward 109th Street.

A It was straight to the Avenue.

Q Was it near 110th Street than you were or nearer 109th Street than you were?

A Nearer 110th Street.

Q Can you indicate on that diagram about what part of Second Avenue near 110th Street that lunch sign was, or was it on 110th Street?

A Yes sir.

Q Was it on Second Avenue?

A Yes.

Q It could not have been on both sides.

A No sirl.

Q Was it around the corner of 110th Street?

A On 110th Street, on Second Avenue.

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Q Right on the corner?

A Yes sir.

Q Can you indicate on that diagram where the sign was?

A I marked it.

BY MR. MERCHANT:

Q You marked a cross there. Can you mark a line? Mark a straight line.

A (The witness rubs out the cross). I can show you the bottom, not the top. It stands this way, it is high.

BY THE COURT:

Q Does your father still keep that saloon?

A Yes.

Q Has he got that lunch sign?

A Yes.

THE COURT: Well, we will have it brought here.

BY MR. MERCHANT:

Q Just mark that "L.S." to indicate the lunch sign?

A (Witness marking "L.S").

Q On the night in question, August 230th last, when you were sitting there with your companions, what were you doing?

A Talking to Joseph Praino.

Q What was Robert Rossie doing?

A Sitting down.

Q Talking?

A They were talking, my brother, Robert Russo and Danny Fortunash.

Q You were then facing toward 110th Street, were you?

A Yes, sir.

Q How long had you been facing toward 110th Street before you saw Pogano?

A A few minutes.

Q How long?

A About four or five minutes, or three or four minutes.

Q How long had you known Pogano?

A I never knew him.

Q When had you seen him last?

A The night he shot me.

Q You never saw him until he shot you?

A Yes, sir.

Q You met Charlie Yong once in Sing Sing?

A Yes.

Q How did you happen to meet him there?

A My brother and Sam --

MR. McDONALD: I object to that.

THE COURT: I think it is immaterial. You can ask him how long he knew Charlie Young, if he did know him.

Q You went to Sing Sing to see your brother, did you not?

A No, sir.

THE COURT: I will exclude that as immaterial.

BY THE COURT:

Q Did you ever see Charlie Young before that night?

BY MR. MERCHANT:

Q Had you ever seen Young before that night you say he shot you?

A Yes, sir.

Q Where?

A In Sing Sing Prison.

Q When?

A Well, I could not exactly tell you when.

Q About how long before?

A I don't remember.

BY THE COURT:

Q Well, can you not refresh your recollection; just think about it?

A I can't remember.

BY MR. MERCHANT:

Q A month?

A Oh, longer than that; I can't remember when.

Q Six months?

A I can't remember.

BY THE COURT?:

Q Is that the only time you ever saw him?

A Yes, sir.

Q You saw him once in Sing Sing?

A Once or twice.

Q You never saw him any other place but is Sing Sing?

A Yes, sir.

Q Until the night of this alleged shooting?

A Yes, sir.

BY MR. MERCHANT:

Q You never knew him except to meet him just once or twice in Sing Sing, when you say, you cannot remember?

A Yes, sir.

Q You did know him?

A No, sir.

Q You never had any quarrel with him?

A No, sir.

Q You never had any quarrel with Pogano?

A No, sir, never knew him.

Q When did you next see Charlie Young?

A That is the only time I see him, the last.

Q After you say he shot you?

A I did not see him after that.

BT THE COURT:

Q You see him now, don't you?

A Yes.

Q Is this the first time you say him?

A I seen him two or three days ago.

Q When did you next see him?

A Two or three days ago when Sam Sacco's trial was going on.

BY MR. MERCHANT:

Q It becomes important for me to know. Well you please try and remember how long it was since you had see Charlie Young until August 20th, 1917?

MR. McDONALD: Of course, the form of that question is objectionable.

MR. MERCHANT: Very vital on the question of identification.

MR. McDONALD: I object to this statement of counsel.

THE COURT: He has given you his best answer.

Q Was it more than a year before August 20th, 1917?

A I can't give you no answer.

Q Do you remember every person whom you have seen once, how long ago you can't say?

A No, sir.

Q How did you happen to remember Cahrlie Young, whom you say you saw once in Sing Sing, just how long ago you don't know, and whom you had never seen before or since except in the excitement of being shot?

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

Objection sustained and exception taken.

THE COURT: I will allow the first part of the question.

Q How do you happen to remember Charlie Young?

A By having a good conversation with him up in Sing Sing Prison.

Q What did you talk about up there?

A About many things. He also asked me to send him up some stuff, which is such as macaroni, cheese, tomato sauce, salmon and so on.

Q What else did you talk about?

A I don't remember what else we were talking about.

Q That is all you can remember that you were talking about?

A Yes, sir.

Q That is not a long conversation. You have told us that in thirty seconds?

A No, sir.

Q Was that all the time you were talking to him in Sing Sing?

A No, sir, I stayed there over an hour.

Q You remember definitely that you stayed over an hour?

A Yes.

Q You remember definitely what you were talking about?

A Not all.

Q You don't?

A No, sir.

Q Don't remember clearly meeting him there?

A Yes, sir.

Q And yet you cannot remember whether it was a month or five years ago?

A No, sir.

MR. McDONALD: I object to that; already answered.

THE COURT: He said he could not remember the time.

Q What light was there on August 20th -- surrounding that saloon?

A The lamps in the saloon?

Q What lights; what was the condition on the street of the light. Was there any electric light there, street lamps?

A There is only a red light which is a fire box, on the corner.

Q Where was that?

A That is right near.

Q Indicate on the chart and put I. L.?

A Right about here (indicating by making I. L.).

Q What other lights were there in the neighborhood?

A The saloon lights, three big lamps.

Q Where were those three lamps?

A In the saloon, right in back of the window.

Q Inside of the saloon?

A Yes.

Q Will you please indicate by circles where they were?

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A I can't indicate that there.

Q You say it is your father's saloon and he owns it for years?

A Yes.

Q You know that saloon, don't you?

A Yes.

Q Don't you know approximately about where those lights were?

A Not on this sign.

Q They were indicate the saloon?

A Yes, sir.

Q You cannot indicate at all where they were?

A I may if you give me the picture.

Q Were they electric lights?

A No, sir, lamps and gas lamps.

Q Was there a window there?

A There is three window there.

Q Three saloon window?

A Yes.

Q Were the three lights in those window?

A There was a light in each window.

Q Then there were lights in the saloon?

A Yes, and lamps also. The lamps are right there on the picture.

Q Indicate them please on the chart?

A I can't.

Q Can't you show the place about where they were on the chart?

A No, sir.

Q Why not?

Mr. McDONALD: Objected to.

Q Well, there were three lights in this saloon, which you cannot show us on the chart, which you cannot indicate on the chart?

A Yes.

Q What other street lighting was there? Was there an electric street light?

A Not that I know of.

BY THE COURT:

Q The fire box was attached to an electric light?

A I told him that.

Q Any other?

A Not that I know of.

BY MR. MERCHANT;

Q Was there any kind of light on any one of those four corners at 110th Street and Second Avenue?

A On the drug store side there is a big lamp post.

Q Indicate on the chart where that lamp post is, please?

A Right here (indicating).

Q Was that an electric light?

A One of them big lamps.

Q One of these high electric lights?

A Yes, sir.

Q Incandescent lights?

A I don't know what that is.

Q Well, call it electric light and mark it E. L.?

A (Witness indicated by marking E.L.).

Q That is an electric street light?

A It is a light, I don't know what kind of a light it is.

BY THE COURT:

Q You are not an expert on lights?

A No, sir.

BY MR. MERCHANT:

Q Weren't there windows on the drug store?

A Yes.

Q Well, weren't there lights in those windows?

A Yes, sir.

Q Then as you stopped your talking, whom were you talking to?

A Joseph Praino.

Q Were you looking over towards this light?

A Yes.

Q That is you were facing towards this electric light?

A 10th Street; it is towards 111th Street.

BY THE COURT:

Q Were you looking north or west?

A Looking towards 111th Street.

BY MR. MERCHANT:

Q Which way?

A Towards 111th Street.

Q And as you were looking towards 111th Street, facing as you say this white electric light, it was lighted that night, was it not?

A It was lighted.

Q You saw two men come around the corner, one of whom you never saw before and the other whom you saw once before, and they began to shoot you up?

A Yes.

THE COURT: As I recall the testimony, he said he saw him once or twice in Sing Sing.

THE WITNESS: Once or twice.

Q Are you now prepared to say whether you saw Charlie Young once or twice at Sing Sing?

A Yes, sir.

Q How often?

A Once or twice.

BY THE COURT:

Q Which was it?

A In Sing Sing?

Q Was it one time you saw him or twice?

A I could not remember, your Honor.

BY MR. MERCHANT:

Q Yet you sat on this corner, talking on this evening

and facing towards this bright electric light and saw two men come around the corner, one of whom you had never seen before, and the other whom you had never seen but once or twice before at Sing Sing and you say that they began to shoot and you state they were Charlie Young, and who was the other?

A John Pogano.

Q Did you hear the report first? Was that the first you knew, when you heard the gun go off?

A The first shot I heard hit me in the arm.

Q The first thing you knew of it was when you were hit in the arm?

A Yes.

Q And you did not see Charlie Yong until after you were struck in the arm?

A I seen them when they came with the gun in their hand.

Q You just said the first thing you knew was when you were hit?

A The first shot I was hit in the arm.

Q Whom did you see shoot first?

A John Pogano.

Q Where did they come from, Young and Poga no around the sign.

Q Were they standing or running or walking?

A Just stepped out from the sign.

Q The sign you said was five foot four, didn't you?

A four five inches.

Q What did you first see of Charlie Young, what part of him?

A In the back of John Pogano, coming from around the sign.

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Q That is what you saw first?

A Yes.

Q You recognized his back, John Pogano's?

A No, sir.

THE COURT: He said he saw him coming from the back of John Pogano.

Q What do you mean from the back of John Pogano? Did you see him come around the corner?

A Around from the sign.

BY THE COURT:

Q You saw him come from behind John Pogano?

A Right in the back of John Pogano.

Q You mean behind him?

A Yes.

BY MR. MERCHANT:

Q He was taller than the sign, wasn't he? The sign was four feet five inches?

A Yes.

MR. MERCHANT: Stand up, Young.

(The defendant stands up).

Q Did you see him until he got up behind the sign?

A Yes.

Q Then you saw him behind the sign first?

A No, sir.

Q Where did you first see Pogano?

A When they stepped from behind the sign.

Q Who shot first?

A John Pogano.

Q How often did he shoot?

A Once.

Q Where did his bullet go, if you know?

A In my arm.

Q Then Charlie Young did not hit you?

A No, sir.

Q How many flashes or report being shot off, all told did you see?

A Do you mean at first.

Q At this time when they stepped from behind the sign?

A John Pogano and Charlie Young stepped from behind the sign.

Q How many shots did you hear or flashes did you see?

A Three shots.

Q Did you see the flashes or just hear them?

A I seen the flashes.

Q Then you saw three flashes?

A Two flashes.

Q But there were three shots fired?

A Yes.

Q What happened to you as soon as you were hit?

A I just fell down with my head in the door.

Q Did you fall forwards?

A Just this way (indicating).

Q Off the door?

A Yes, sir.

Q Flat to the sidewalk?

A On my side.

Q On the sidewalk?

A Right near the door.

Q Which way were your feet pointing when you fell, towards Second Avenue around towards the saloon?

A Sideways.

Q That is up and down the Avenue?

A Sideways, 9th and 10th Streets.

Q Just mark here where you lay as you fell; that is, where your head and your feet were and the position of your body?

A Right this way (indicating).

Q Will you mark that with D. D. L., -- falling?

A (Witness indicating).

Q At which end was your head?

A Right here (indicating).

Q Towards the doorway?

A Yes.

Q Your feet were towards the curb?

A Yes.

Q And your head was facing in which direction?

A Right out 10th Street, right out to where the red light is.

Q Were you in great pain after the shot?

A No, sir.

Q Had you ever had any quarrel with Charlie Young?

A No, sir.

Q Had you any reason to dislike him?

A No, sir.

Q Had he any reason to dislike you?

A No, sir.

BY THE COURT:

Q So far as you knew?

A Not that I know.

(At this point, the lunch sign was brought into court).

BY MR. McDONALD:

Q I show you this sign, and I ask you if that is the sign that was in front of the saloon on the 20th day of August, 1917?

A Yes, sir.

Q Is it in the same position now as it was at the time that you saw it on the 20th day of August, 1917, outside of course of the bill of fare, which may have been different?

A No, it is the same way now. That bill of fare was the same way. It was painted on.

BY THE COURT:

Q That is the sign?

A Yes, sir.

Q It has not been changed any?

A No.

Q It is just as tall now as it was then?

A Yes.

Q And just as broad?

A Yes.

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Q And it stood on the ground in the same way as it stands there?

A Yes.

Q And those are the two little hooks there, -- they are the hooks that hold it to the building?

A To the frame of the window.

MR. McDONALD: I offer it in evidence.

Lunch sign marked People's Exhibit 5 in evidence.

Q It stood out from the wall of the building?

A Yes.

Q Assuming that the Clerk's desk is the wall of the building, just show how the sign stood out. Was it flat against the wall or did it stand out?

A For instance this is the saloon (indicating). This corner is the same as the window, right up this way (indicating).

Q When you say these men came from behind that, they came behind that way?

A Yes.

BY MR. McDONALD:

Q Did you see Peter Bianco there?

A No, sir, not behind the sign.

Q You say Peter Bianco did not come from behind this sign?

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

Q At the time you saw him, he was on the sidewalk?

A Yes.

THE COURT: He testified he was near the gutter.

BY MR. MERCHANT:

Q Did Peter Bianco fire any shots?

A Yes, sir.

Q How many did he fire?

A Three or four shots.

Q Right there on the corner at the same time?

A Not on the corner.

Q I am asking you the time you say that Charlie Young fired the shot?

A No, sir; after Charlie Young fired them.

Q He was not with Charlie Young at that corner?

A I did not see him with him.

Q Or with Pogano at that time?

A Yes, sir.

Q He was not with him?

A No.

BY THE COURT:

Q How far was Bianco away from Pogano and Young when he fired the shots at you?

A He was right in front of the door you might as well say.

BY MR. MERCHANT:

Q Did Pogano fire three or four shots?

A Pogano fired one shot.

Q And you say Yong fired how many shots?

A Two shots.

Q And Bianco fired three or four shots?

A Three or four shots.

Q You said you only heard all told two or three flashes. I forget which?

A At first, yes, sir.

Q You mean immediately after you say that Young fired the shot, Bianco fired shots at you from the curb?

A About five minutes after.

Q You were still lying on the sidewalk here?

A In the saloon; coming out of the saloon.

BY THE COURT:

Q AS I understand your testimony, you say you got up

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From the chair after getting shot and went into the saloon?

A Yes.

Q And you stayed in there a few minutes?

A Yes.

Q When you started to go out, going to the drug store, that is when Bianco fired?

A When fired, yes, sir.

THE COURT: If that is the testimony, I will allow him to state if anyone else fired.

MR. MERCHANT: Exception to your Honor's question.

I object as incompetent, irrelevant and immaterial.

BY THE COURT:

Q Did anyone else fire at you at that time?

A Yes, sir, going toward the drug store.

THE COURT: The jury will determine whether this is part of one transaction or not. I did not understand his testimony on direct. I thought that Bianco and Young and Pogano fired just about the same time, but he says Pogano fired first, Young second, then when he went into the saloon and stayed there a minute or two and he was coming out to go to the drug store to be treated, Bianco fired how many shots?

THE WITNESS: Three or four shots.

Q Did anyone else fire at you on your way to the drug store from your father's saloon?

MR. MERCHANT: Objection and exception, your Honor.

A Sam Sacco.

MR. MERCHANT: Here he has testified that Charlie

Young fired a shot and ran away. How can it be pertinent to show three or four other people shot him afterwards?

THE COURT: I will submit that question to the jury as to whether they were acting in concert or not. If Charlie Young was there and did not fire a shot at all, if he was concerned in any act committed by Sam Sacco, he is just as guilty as Sacco. I do not know how much weight the jury will give this.

MR. MERCHANT: I object to that as not within the indictment. It is not within the bill of particulars. I am not prepared to meet that. This was after the transaction. It is not part of the res gestae.

THE COURT: The Court rules that that is a question for the jury to determine, whether it was a separate assault or part of the assault alleged to have been committed by Young.

MR. MERCHANT: We are not prepared to meet any act subsequent to such charges as are mentioned in the indictment.

THE COURT: The Court rules that that is a question for the jury to determine. If the jury determines that it was a subsequent and independent transaction then they will not give any weight to it in determining the guilt or innocence of this defendant . If two or more people were concerned in an attempt to kill this man, they are all equally guilty, whether they were there present

Or not, or whether they fired shots or not. Lieutenant Becker was put to death for killing a man when he was miles away from the place where the man was killed. The law is that if he aided, abetted or advised, or was in any way concerned in the killing, why he is just as guilty as the man who fires the shot. So for the purpose of these gentlemen of the jury determining whether or not he was concerned in any shooting by Sacco at that time I am going to allow this is evidence. The Court of course expresses no opinion on the fact. The Court merely submits to you whatever evidence is presented, for your judgment and determination. You are the sole and exclusive judge of the acts. I merely say that the testimony is competent or legal and proper.

MR. MERCHANT: I except to your Honor's instructions to the jury, on the ground that there is no evidence of a conspiracy here. Sam sacco*** and Bianco are not in any way tied up by the slightest evidence with this defendant, and I also except to your Honor's reference to the Becker case.

THE COURT: That is the best illustration of the law that came to my mind at that time. I think the jurors understand that clearly.

MR. MERCHANT: Exception to that.

THE COURT: There is no evidence as to a conspiracy, but that may be supplied. When I ruled in the beginning g,

I did not understand the testimony of this witness, when I excluded the testimony about Sacco.

MR. MERCHANT: Exception on the ground there is no evidence of a conspiracy, and the impression created in the mind of the jury cannot be expunged.

THE COURT: You are protected by my ruling. My desire is to have them receive this evidence with the full understanding of the conditions under which it is received. I told them distinctly that if it is not proved to their entire satisfaction that Sacco and this defendant were acting in concert at that particular time when Young is alleged to have fired the shot, why Young is not bound by any act of Sacco's, but if it does appear that they were acting in concert, then even if Young had not been there and had not fired a shot, under the ruling of the Becker case he would be liable for the acts of Sacco, acts tending to carry out a corrupt conspiracy. I do not decide that there was a conspiracy, or that Young or Sacco were concerned in it, but I am merely allowing in this testimony.

MR. MERCHANT: I wish to introduce at this time the bill of particulars by the District Attorney, which I think is very pertinent on the question. It limits this crime to the particular time and place. I offer your Honor's order and the bill of particulars served by the District Attorney.

Order marked Defendant's Exhibit A and bill of particulars marked Defendant's Exhibit B.***

BY MR. McDONALD:

Q You say Sam Sacco short at you?

A Yes.

Q How many times did he shoot?

A Three times.

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial. There is no evidence of any conspiracy here, and I take an exception .

Q Did you have any talk with Sam Sacco previous to the 20ht of August, 1917?

MR. MERCHANT: Objected to as not binding on the defendant.

THE COURT: I will allow it.

MR. MERCHANT: Exception please.

A Not on the 20th day of August.

Q Before the 20th day of August, 1917?

A Yes.

Same objection, same ruling and exception.

Q Where was it you had this talk with him?

A In the College Inn Cabaret, 125th Street West.

Q How long have you known Sam Sacco?

A For years, about ten years. I met him at the College Inn about three weeks before.

Q About three weeks before the 20th of August you met him in College Inn at 125th Street and where?

A Near 8th Avenue.

Q Did you have a talk him there?

A Yes.

Q Tell us what was said?

MR. MERCHANT: I renew my objection. It is very prejudicial.

THE COURT: I will allow it.

MR. MERCHANT: Exception, please.

THE COURT: If it is not connected with the defendant they will not consider it, and it will not be prejudicial, but if it shows a conspiracy to kill this person, why, it will be very proper, and proper to admit it because he is bound by any act of Sacco's, if he was in conspiracy with Sacco to kill this person. Of course, if there is no evidence of that the jury will not find it as a fact. The court does not find any facts.

Q We went downstairs in the toilet.

Q Who was that?

A Me and Sam Sacco, and he asked me to kill Vinc Morelli and Ciro Morelli, two brothers, and I told him that I would not do it. So somebody come walking down the toilet and we went upstairs. So then we went downstairs again and he told me, Sacco told me to come downstairs again. We went down again and he told me that it was passed word over from Brooklyn by a fellow named Andrea that me and my brother should kill Vinc Morelli and Ciro Morelli. I told him, "For what reason, you know I am working; I would not do such a thing". So he said, "He brings ice into your father's saloon, and you are the nearest one that can get to him and kill him". I said I would not do such a thing. So we went upstairs and the third time he took me and my brother downstairs, told us to

come down. We again went down and he asked my brother to put Vinc Morelli and Ciro Morelli --

BY MR. MERCHANT:

Q Was your brother present there at the time?

A Yes. He asked me and my brother to kill Vinc Morelli and Ciro Morelli because we were the nearest, the ones that could get nearest to them, so my brother said, "No, I would not do such a thing". He said, "Well, if you don't do it you will be killed", and he was trying to talk to us and tell us that if we did that he would be the big king in Harlem and would make a lot of money, and if there was a chance of getting pinched, there was a barrel of money in back of us, that we would get out of it, and not to be afraid. My brother said, "If you want to be a friend of mine don't talk to me like that". So we went upstairs and sat down drinking.

MR. MERCHANT: I move to strike out all this testimony as incompetent, irrelevant and immaterial and not within the pleadings to the indictment, - not within the bill of particulars. It is so prejudicial that it cannot be expunged from the minds of the jury. It does not connect this defendant in any possible way. I also move that the jury be instructed to disregard it.

THE COURT: Motion denied.

MR. MERCHANT: Exception.

MR. MERCHANT: I move to withdraw a juror and to have a mistrial declared on the ground of this evidence being

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admitted.

Motion denied and exception taken.

BY MR. McDONALD:

Q Did you have any further talk with Sacco?

A No sir.

Q Not before the 20th of August?

A Yes sir.

Q After Sacco fired at you, what did you see Sacco do then?

A Run down Tenth Street near the church where there was a big black car standing.

Q An automobile?

A Yes.

BY THE COURT:

Q Did you see that yourself?

A Yes sir, I seen that myself.

BY MR. McDONALD:

Q This car was between what avenues?

A First and Second, three houses away from the saloon.

Q At a church?

A Near the church.

Q On 110th Street?

A Yes.

Q What happened after you got into the drugstore?

MR. MERCHANT: I renew my objection on the same ground, to protect my rights and my client.

THE COURT: He said he saw Sacco run away. I will allow that question. It is for the jury to say whether it is part of the same transaction or not.

MR. MERCHANT: I object on the same ground and I take an exception.

THE COURT: Yes, you have an exception. If you say you object on the same grounds I will make the same ruling

and you have an exception.

A I went into the drugstore and a young men came from behind the counter and started to bandage my arm and I heard six or seven more shots, and he ren one way or the other, and others in the telephone booth and glasses were broken, that is all I know. Then the doctor came in, about a half an hour after and bandaged up my arm and put me in an ambulance and another young fellow about thirteen years old came walking into the drugstore shot in the thigh and they put him in the ambulance with me.

THE COURT: Never mind about the other fellow.

Q You were taken to the ambulance with another person?

A Yes.

Q Where were you taken to?

A I was taken to the Harlem Hospital.

Q How long did you stay there?

A I stayed there about three or four days.

Q What doctor treated you?

A If I ain't mistaken it is Dr. Greenberg took the bullet out of my arm.

Q Did you see who fired the other shots while you were in the drugstore?

A No sir.

MR. McDONALD: That is all.

THE COURT: We will postpone any further cross-examination till twenty minutes after two.

Gentlemen of the jury, you will please remember the rule which forbids you to discuss this case with anyone

and that also means that must not talk about it among yourselves. There must be no discussion among you about this case until you hear all the evidence on both sides. You must keep an open mind on the question of the guilt or the innocence of the defendant until the time comes when the Court says you must decide it, that is at the end of the case after the Court gives it to you. So keep your minds open on that point until then. That is the time to decide it and not before that. And do not visit the scene of this alleged crime. Remember that you are not to go to 110th Street and look at it yourselves. You must decide this case on the testimony produced here before you. Now, please be back at twenty minutes past two.

Recess.

Afternoon Session.

Trial continued.

DOMINIC DELUCA, recalled to the stand:

BY MR. McDONALD:

Q From the time that you heard the first shot until the time that you heard the last shot fired that night, about how long a time expired?

A Just a few moments. I went right in and told my father that I was shot.

Q Answer the question, please. A few minutes.

A A few moments, a few minutes.

CROSS-EXAMINATION BY MR. MERCHANT CONTINUED:

Q By a few moments do you mean three or four minutes or

Fifteen or twenty minutes?

A A few minutes. I did not have no watch to look at a watch.

Q After you were shot did you go into the saloon?

A Yes.

Q How long were you in there?

A A few minutes and walked right out.

Q What did you do while you were in there?

A I told my father I was shot.

Q Did you come out immediately then?

A Yes sir.

Q You don't know how long it was between the shooting of the first and the last shot, except you say it was a few minutes?

A Yes sir.

Q How long have you known Sam Sacco?

A About ten years.

Q Do you know him pretty well?

A Yes sir.

Q He lived in the same neighborhood with you?

A No sir.

Q You used to meet him around at clubs?

A No sir.

Q How did you happen to meet him there; how did you happen to meet him there. When did you used to see him?

A In 109th Street, in a café.

Q And during this period of ten years you used to meet him there quite often?

A Yes sir.

Q Every week or two?

A Every day.

Q Do you know his friends, too?

A Some of them.

Q You used to go around with him also?

A No sir.

Q Just used to meet him in this cafe and talk to him?

A Yes sir.

Q That is the same cafe where you had the talk you have

spoken of?

A No sir.

Q Where was that?

A In the College Inn, in 125th Street and Eighth Avenue.

Q When were those conversations, what day?

A Probably on a Saturday night.

Q What night?

A On a Saturday night.

Q How long before the time when you shot?

A About three weeks.

Q Did you see him after that Saturday night again until you saw him the night you say you were shot?

A No sir.

Q How long were you with him that evening, do you think?

A To about one o'clock.

Q From when, to one o'clock?

A From about eight.

Q Was there anyone else there at these conversations?

A Yes sir.

Q Who else?

A My brother.

Q At all three conversations?

A No sir.

Q Most of the time he was trying to get you to do this, to shoot somebody, wasn't it?

A Yes.

Q Who was it he wanted you to shoot?

A Vinc Morelli and Ciro Morelli.

Q How did he open the first conversation when he asked you to shoot these men?

A He told me that he was sent over by the Brooklyn fellows, one of them named Andrea.

Q Had he often talked to you about those fellows?

A No sir.

Q Did he say he would give you a gun to do it with?

A Yes.

Q You say the first conversation took place and then you went downstairs?

A We were downstairs.

Q When the first conversation ended where did you go?

A Upstairs at the table.

Q Was that where the second conversation occurred?

A No sir.

Q Where did the second occur?

A Downstairs in the same place.

Q Did your brother go down with you the second time?

A No sir.

Q He was not there at the second conversation?

A No sir.

Q He was there at the first?

A No sir.

Q At neither conversation?

A No sir.

Q Was he there at the third one?

A Yes.

Q Did Sacco ask your brother to do this shooting, too?

A Yes sir.

Q Did anybody ever ask you to shoot a man before, to murder a man?

A No sir.

Q And yet you have known Sacco for ten years?

A Yes sir.

Q And he picked you out and you talked five hours to him while he was asking you to murder two men. Did it take you five hours for you to make up your mind?

A No sir.

Q How soon did you make it up?

A We went down three times. We were down there about twenty minutes at a time.

Q Then it took you three times twenty minutes to decide definitely that you would not shoot the two men?

A Yes sir.

MR. MERCHANT: That is all.

JOSEPH J. PRAINO, of 231 West 108th Street, called as a witness on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q What is your business, Mr. Praino?

A Private detective.

Q By whom are you employed?

A Dominick Riley.

Q The Dominick Riley Detecitve Agency?

A Yes sir.

Q Do you know the complaining witness, Dominic DeLuca?

A I do.

Q Do you know the defendant Charles Young?

A I do.

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

A I did.

Q Where was he when you saw him?

A In his father's saloon, 110th Street and Second Avenue.

Q About what time was it on that day that you saw him?

A About six o'clock that evening.

Q Where was he when you saw him, inside the saloon?

A Yes.

Q Did he remain there any length of time?

A Yes.

Q Did you come outside the saloon any time that evening?

A Yes sir.

Q About what time did you come out?

A About eight o'clock that evening.

Q Did anyone come with you?

A Dominic and Tony and Bobbie

Russo, and another fellow they called Danny.

Q What did you do and what did you see these other men who came out with you do?

A Dominic was sitting on a chair and I was standing alongside of him and his brother and the rest were standing against the rail of the saloon.

Q How long were they sitting there before anything happened?

A About a half hour or three-quarters of an hour.

Q Now just tell us what you saw happen?

A Well, about half-past eight or a quarter to nine, -- no, about half-past eight I noticed a big black automobile coming ***west through 109th Street, crossing east towards First Avenue, and I left the boys standing there near the saloon and I walked to 109th Street on the northeast corner of Second Avenue and I noticed the big black automobile stop in front of Willie Willie's café and there I recognized Same Sacco.

MR. MERCHANT: I ask that that part where he recognized somebody be stricken out as not responsive.

THE COURT: I Will allow it to stand.

MR. MERCHANT: Exception, please.

A (Continued) Sam Sacco and Charles Young leaving the automobile, and there was two or three others in the car.

BY THE COURT:

Q Who is Charles Young?

A This defendant, - and entered this Willie Willie's café.

THE COURT: Mr. Merchant, I would suggest you tell your client not to make any comments on the evidence. He

must keep perfectly quiet.

A (Continued) then I returned back to where the boys were standing and I stood there, and said, --

Q You said something to the boys?

A Yes, I said something to the boys.

Q What happened then?

A About fifteen or twenty minutes after I heard some shots coming from the direction of 110th Street towards us, and there I seen crouching behind a sign, a lunch sign, this Same Sacco and this Charles Young, firing towards us. Then I hear another shot coming from the direction of the street towards us and I noticed this Peter Bianco, who I got in Albany when he was wanted for murder previous to that --

THE COURT: Strike that out, the reference to a previous matter.

BY THE COURT:

Q You noticed this man Peter Bianco do some shooting?

A Yes sir, and in the meantime this Dominic said, "I am shot", and as he said that I gave chase to Peter Bianco, running towards Third Avenue in 110th Street, between Second and Third Avenue. When I reached about half the block he darted in some building and I returned. As I returned I went to the crowd and there was still shooting going on, and as there was shooting going on I noticed Joe Hurley make for his hip pocket and as he done that Dominic's brother shot this Joe Hurley.

MR. MERCHANT: I object to this.

THE COURT: Strike out about this man making for his hip pocket.

Q Did you see the automobile again that night?

A No sir, not that night.

Q Did you see Young again that night, or Sacco?

A At the Third Branch.

Q What, if anything, did you see Young do that night besides, as you say, crouch behind the sign?

A He was shooting at us.

Q Is that the sign (pointing to People's Exhibit 5 in evidence)?

A Yes.

BY MR. McDONALD:

Q You say that is the sign that was standing on the corner?

A Yes.

Q You say you did not see Young again after that?

A Not until he was brought to the Third Branch.

BY THE COURT:

Q When was that, the same night?

A During the morning.

Q The next morning?

A Yes sir.

MR. McDONALD: That is all.

CROSS-EXAMINATION BY MR. MERCHANT:

Q What is your name?

A Joseph j. Praino.

Q What is your last name?

A Praino (Spelling p-r-a-i-n-o).

Q What is your business?

A Private detective.

Q With what agency?

A Dominick Riley Detective Agency.

Q How long have you been with them?

A About three or four weeks.

Q Before that what was your business?

A Sane business for ten years.

Q With whom were you before you went to Dominick Riley's?

A The Manhattan Detective Agency.

Q How long since you left them?

A What do you mean, how long since I left what? I do not quite understand the last question.

Q When did you leave the Manhattan Detective Agency?

A I think it was in June.

Q Of this year?

A No, the last year.

Q 1917?

A June or July.

Q What were you doing in August, 1917?

A I was working for myself.

Q What line?

A Investigating for different attorneys.

Q As detective?

A No sir, as an investigator.

Q How long have you known Sam Sacco?

A Quite a while.

Q How long?

A Probably three or four or five years; I don't recollect.

Q Where did you first meet him?

A In the neighborhood.

Q What do you mean by the neighborhood?

A Of where he lived.

Q Where did he live?

A I knew he had a brother living in 110th Street.

Q Where did he live?

A 229, something like that, East

110th Street. I am not quite sure of the number.

Q Did you live in that neighborhood?

A I lived in 108th Street for the last twenty-five years.

Q So you know Sam Sam Sacco well?

A Yes sir.

Q Are you a friend of his?

A Yes sir.

Q A friend of his for four or five years?

A Yes sir.

Q When did you first meet the complaining witness, Dominic DeLuca?

A I went to school with the two brothers.

Q You have known them for a number of years?

A Yes sir.

Q Now, coming down to the night of August 20th last, you say you got to Dominic's father's saloon about six o'clock in the evening?

A Yes sir.

Q And coming now to the time of the shooting, about eight o'clock at night, who were there at the saloon or outside of this saloon?

A The two DeLucas, this Danny and this Bobbie and I.

Q Who is Danny?

A Danny Fortunash.

Q Fortunash?

A Yes, Fortunash.

Q What does he do, if you know?

A He sells papers in 111th Street. He has a newsstand there.

Q Where is he now?

A He ran away.

Q He ran away?

A Yes sir.

Q Do you know why?

A From what I know, that this Charley Yong gave him \$100 to go away.

Q He told you that, did he?

A Fortunash told me that himself, yes.

Q Do you know where he is?

A To my recollection I think he is in Albany, if I am not mistaken.

Q Have you got his address?

A No sir.

Q Can you get it for me?

A Not I, no.

Q Mr. Praino, about eight o'clock who was there, Fortunash, you and Dominic and his brother and who else?

A This Bobbie.

Q What is his last name?

A I think Russo or Rossi; I don't know for sure. I know he is held in the House of Detention now.

q Russo or Rossi?

A Something like that.

Q How long do you know him?

A I know him for about a year of so; a little over year. I am not quite sure.

Q He you say is in the House of Detention?

A As far as I know he is supposed to be there.

Q Well now, were you there at the time you say the first shooting occurred?

A Yes.

Q At the time of the first shooting who was in front of the saloon?

A We all were standing there. Dominic was sitting down on a chair and I was standing up the step of the saloon in the doorway there; they had some chairs there then.

Q You were in the doorway?

A No, right alongside of that little window. I was taking to Dominic and all at once I heard shots.

Q Dominic was sitting down and you were in the doorway talking to him?

A Yes sir.

Q Who was next to Dominic?

A I think his brother, if I am not mistaken.

Q And he was standing up?

A No, they were sitting down on the rail. There is a rail there.

Q What is Dominic's brother's name?

A Tony.

Q Antonio; what kind of a rail is that?

A An iron rail, about that high from the ground (indicating about three feet).

Q How high up is that rail from the street?

A I should judge about two or three feet.

Q Can you point out the place on People's Exhibit 1, what you mean by the rail. Mark it with an "R", if you will?

A This here in here (indicating).

Q Do you mean this woodwork or do you mean the base of this window?

A The woodwork which comes out; it is an extension.

Q What is that woodwork?

A That leads into the basement, down into a cellar. This cellar goes down underneath the salon. Here is where I was standing (indicating). The rest of the boys were all along there (indicating).

Q Then came you and next to you came Dominic and next to him way Tony?

A I think; I am not positive.

Q And next to Tony was who?

A All the rest were standing there together.

Q You say you saw Sacco and Charley Young?

A Yes sir, behind

That sign there.

Q Whom did you see first, Sacco or Young?

A I noticed the two of them blazing from their revolvers towards us.

Q Did you see Pogano?

A I don't know who he is.

BY THE COURT:

Q The man whom you pursued; you said you pursued a man, did you not?

A Yes sir, by Bianco.

BY MR. MERCHANT:

Q Oh, I don't mean Bianco; I mean Pogano; did you see him?

A No sir.

Q Did you see them fire the shot?

A Yes sir.

Q Or did you hear it first?

A I first heard one shot and then as I looked they were blazing still at us.

Q Did any shots hit you?

A No sir; thank God they did not.

Q How long is it since you had seen Charley Young before this?

A I don't recollect how long. But I don't know him to talk to.

BY THE COURT:

Q Had you ever seen him in your life before that night?

A Yes sir.

BY MR. MERCHANT:

Q About how long before?

A I noticed him on Broadway several times. I seen him at 109th Street and Third Avenue with Sam Sacco.

Q When did you see him on Broadway?

A About a month or

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so ago, I am not sure.

Q Oh, you mean since this shooting?

A No, before the shooting.

Q Where did you see him with Sam Sacco?

A At 109th Street and Third Avenue, northeast corner.

Q When?

A Before the shooting also.

Q Those are the only times you ever saw him before this night, August 20th?

A Yes, that is the only time I ever saw him.

Q How did you know him on Broadway?

A Why, Tony DeLuca, - I was with him on Broadway one day and he was across the street and he said, "There is a friend of mine on the other side". I said, "Who is he?" He said, "Charley Young".

Q He was across Broadways?

A Right at 44th Street and Broadway.

Q You said you saw him across Broadway?

A We were walking across and he said, "There he is, right on the other side", as were were xrossing towards that direction.

Q Where did you see this automobile?

A Coming through 109th Street from west.

Q Running westerly?

A Running easterly.

Q You were talking most of the time while you stood in the doorway, to Dominic?

A Not all the time; the way I was standing I could see to 108th Street and Second Avenue.

Q Are automobiles more or less frequently passing up in that neighborhood?

A Very few.

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Q Very few automobiles?

A Yes sir.

Q Isn't 110th Street a car street?

A Yes.

Q The next main thoroughfare below 125th Street?

A Not there. It is a very slow traffic street, but the trolleys are there.

Q There are few automobiles pass there?

A Past Second Avenue.

Q What happened to Dominic at that time that he was shot?

A I don't know because I was running after Peter Bisnco.

Q Which way did you run; towards Third Avenue into 110th Street, Third Avenue?

A Yes sir, because he ran through the block and darted into a hallway there.

Q You ran west, then?

A Yes sir.

Q You mean west on 110th Street?

A Yes sir.

Q How long was it between the time you saw the automobile and you came back to this saloon before the shooting?

A No even two minutes.

Q Did you say anything to Sacco?

A How could I talk to Sacco?

Q You said you saw Sacco at the automobile?

A Yes, leaving the automobile and going into this cafe, but I was on the corner.

Q Did you say anything to him?

A No.

Q Did you say anything to Young?

A No sir, but I said something to the boys when I went back there.

Q So you don't know what happened after Dominic fell; did he fall, if you know?

A I don't know that because I chased after this Petie through the street.

Q Those are the only time you ever saw Young, however?

A Yes sir.

Q What name did you know him by?

A Charley Young.

Q Where did you see this automobile first?

A Coming through 109th Street.

Q Could you see who was in it?

A I noticed at the time when it was passing by there were four or five people in it.

Q What was a block away?

A Yes.

Q Over a block away?

A The reason I know this care is --

Q I did not ask you hat. I asked you if it was over a block away?

A An avenue block, yes.

Q Over a block away?

A Yes.

Q Because you had to go across the street, and then a block?

A Yes.

Q Did you notice who was in it?

A Until it stopped near the cafe, then I noticed the two of them coming out with the others.

Q Where is the cafe that you say you saw Sacco going into?

A About three or four buildings from 109th Street towards going east, on the south side.

Q Of 109th Street?

A Yes.

Q You cannot see that café from Dominic's saloon?

A No.

I walked up to the corner when this car passed by.

BY THE COURT:

Q You say you could not see in from Dominic's saloon?

A No.

Q And you did not recognized anyone in the car when you first saw it, did you?

A No sir.

Q And you knew before you went to 109th Street that there was a saloon down there, three or four doors up?

A A Café, not a sloon.

Q Well, a café, - didn't you?

A Yes.

Q And you knew that people went to that cafe from time to ti me, didn't you?

A Yes.

Q And you knew that automobiles went there from time to time?

A No sir, never.

Q You never saw an automobile going through 109th Street east?

A Oh yes, a lot of automobiles go through there.

Q You said very few automobiles went through there?

A Through Second Avenue, I said.

Q Which is correct now?

A Going north and south on Second Avenue, very few automobiles go through there.

Q That is not what you said. You could not recognize anyone in the automobile, could you?

A Not when it went through the street, no.

Q Why did you walk from Dominic's saloon down to 109th Street?

A Because I noticed this automobile for about a week coming around with them men in it.

Q You could not recognize the men, could you, you just said?

A Not at that particular moment, but I recognized the car.

Q You said you saw it with those men in it and you said you could not recognize the men?

A Not at that night, no.

Q So that you don't know whether they were the same men or not?

A They were the same, when I seen them leave the automobile and enter this cafe in 109th Street.

Q I did not ask you that. I asked you, from 110th Street could you see that they were the same men?

A No, not very well, but you could see four men.

Q What kind of a car was it?

A I don't know the make myself. It was a seven-passenger black touring car.

Q In the usual form of a seven-passenger black touring car?

A Yes.

Q Nothing unusual about the car, was there?

A No.

Q An ordinary black touring car?

A Yes.

Q You saw this car pass where you could not recognize the men and you say there was nothing unusual about the car?

A Yes sir.

Q What led you to walk down the block?

A If you want me to tell you why I will tell you why. The reason was because this automobile made about seven or eight trips previous to that, to shoot these men down, and I noticed these men in that car.

MR. MERCHANT: I move to strike out the answer.

THE COURT: That is the reason he gives; you asked

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for it.

Q You went down to look at it?

A Yes sir.

Q Is that the reason you went down to look at it?

A Yes.

THE COURT: Your motion to strike out is denied, Mr. Merchant.

MR. MERCHANT: Well, I will not except, your Honor.

Q You did not recognize those men, did you, until you went down there?

A I seen them leaving the machine to enter this cafe.

Q But you did not know who the men were until you got down there, did you?

A No sir.

Q Therefore you don't know that they were the same men that you saw in the car, that you say had come there six or seven times to shoot the people up?

A Then I knew they were the same men.

Q You did not know them?

A Not until I seen them leave that machine.

Q Well, where did you see them in the car before?

A On several trips they made before that.

Q When?

A In the evenings during the weeks previous.

Q When?

A I said seven or eight trips before that.

BY THE COURT:

Q Can you specify the evening?

A About two weeks previous.

Q Within two weeks?

A Within two weeks.

Q What do you mean by several times?

A Every night they would come around to see if the coast was clear.

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Q For two weeks?

A Yes sir.

BY MR. MERCHANT:

Q Where did you see them during every night for two weeks?

A Making the turns from 9th Street through 10th Street Second Avenue, around in a circle like.

Q The same men in the car every night?

A Not all the same men. Only two I recognized, Charley Young and this man Sacco.

Q And they were in there every night for two weeks coming around from 110th Street and Second Avenue into 109th Street?

A Yes, at the times I seen them.

Q You said every night for two weeks?

A I said the previous two weeks, they were coming around at night for about seven or eight times, during those two weeks.

Q Where were you when you saw them these seven or eight times?

A Always at the saloon door.

Q Outside?

A Yes sir.

Q Well, did you notify the police that these men were coming up there to shoot you up?

A Yes, the police knew it for about three or four weeks before that.

Q Did you notify them?

A On several occasions I did.

BY THE COURT:

Q You mean as to this particular undertaking?

A Yes.

BY MR. MERCHANT:

Q Whom did you notify?

A Why, Captain Jones and DeMartini and Enright.

Q Who was Enright?

A Captain Enright.

Q Is he up in that neighborhood?

A He is in the Third Branch, yes sir.

Q And yet you continued to sit outside this saloon every night?

A Yes sir.

Q Did these other men see this car with the men in it pass through seven or eight times during the preceding two weeks?

A I presume they did.

Q They spoke of it?

A Yes sir.

Q Talked it over among themselves?

A Yes, because a few nights before the shooting went on --

Q I did not ask you that. You went down alone to see these two men, did you?

A To see the car on the 20th of August, yes.

Q Why didn't you ask one or two of those other fellows to go along with you?

A I didn't need them.

Q You said these men were up there to shoot you up?

A Not to shoot me up; to shoot the DeLucas.

Q Well, you knew Sacco and the DeLucas were friends, didn't you?

A At one time they were, until Sacco wanted the DeLucas to kill Vincent and Ciro Morelli.

Q You don't know anything about that except what DeLuca told you?

A Bobbie Russo also.

Q That is all you know about it?

A Yes sir.

MR. MERCHANT: If the Court please there are one or two questions I want to ask this witness but I do not or two questions I want to ask this witness but I do not want to ask them now. I would like to have the right the right to call him

for cross-examination on Monday.

THE COURT: You will be here Monday?

THE WITNESS: Yes, I have been subpoenaed here for Monday.

MR. MERCHANT: That is all for the present for this witness.

THE COURT: Well, come back on Monday.

MR. McDONALD: I will postpone my redirect examination until he finishes his cross-examination.

DR. IRVING GREENBERG, of 1721 Fulton Avenue, Bronx, called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You were ambulance surgeon at the Harlem Hospital on the 20th of August, 1917?

A Yes sir.

Q Where is that hospital located?

A At 137th Street and Lenox Avenue.

Q As the result of a call did you go any place between the hours of eight and nine or 9.30?

A Yes sir.

Q Where did you go?

A I don't know exactly.

Q 110th Street and 2nd Avenue?

A Yes sir, a drugstore at 110th Street and 2nd Avenue.

Q Did you see anybody there?

A Yes.

Q Did you see Dominc DeLuca?

A Yes.

Q Did you do anything for him?

A I bandaged his right arm temporarily.

Q What was the matter with him?

A He had a bullet wound in the right forearm. I bandaged it and took him to the hospital?

A Yes, a littler chap named Socarato.

MR. MERCHANT: Objected to as immaterial.

THE COURT: I will allow it.

MR. MERCHANT: Exception, please.

Q What was the matter with him?

A The bullet went in the left leg.

Q How long did Dominic DeLuca remain in the hospital?

A Four days.

Q How long did Socarato, they boy, remain there?

Objected to as incompetent, irrelevant and immaterial.

Objection sustained.

THE COURT: I merely allowed it as part of the transaction of taking him to the hospital. We are not concerned here with the shooting of Socarato.

BY THE COURT:

Q Did you extract the bullet from his arm?

A No sir.

Q That was done by the surgeon?

A Yes.

Q You merely dressed the wound and brought him there?

A Yes.

Q To which surgeon?

A Dr. Holtzman.

Q Were you present when that was done?

A Yes.

Q You saw the bullet taken from his arm by Dr. Holtzman?

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A Yes sir, at the hospital.

BY MR. McDONALD:

Q Do you know to whom the doctor gave that bullet; was it the police officer?

A I think a detective.

Q Detective Price?

A I don't know.

THE COURT: Mr. Merchant, do you dispute that there was some shooting there and that he was shot?

MR. MERCHANT: I am not interposing any objection. I have no doubt that is the bullet wound and the doctor has proved it. I am not disputing there was a bullet wound there.

MR. McDONALD: That is all.

CROSS-EXAMINATION BY MR. MERCHANT:

Q Doctor, have you your card with you; did you make out a card at the time of this card?

A I happened to take the chart along to refresh my memory. I have not got the card.

Q Do you remember what time it was when you got to the drugstore?

A Some time in the evening; I don't remember.

Q Your chart would not show that accurately?

A No.

BY THE COURT:

Q By the chart you mean a sort of history of the case?

A Yes sir.

Q Generally it refers more to changes in a patient's condition when in the hospital?

A When brought in.

Q This was so, Doctor, when he was brought in?

A After fixing him up in the accident ward he was admitted to Ward 3 at

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10.30 P.M.

BY MR. MERCHANT:

Q What time?

A At 10:30 to the ward. That means he got to the ward after being dressed and given temporary treatment which may have lasted about two hours.

Q Where was the hospital?

A Lenox Avenue and 137th Street.

BY THE COURT:

Q You first treated him in the drugstore?

A Yes.

Q Then you treated the other man there?

A Yes sir.

Q Then you took both to the hospital?

A Yes sir, and gave them emergency treatment.

Q They were put in what you call the accident ward?

A Yes.

Q And then they received emergency treatment there?

A Yes.

Q And then since it was advisable to keep him in the hospital he was sent to a ward?

A Ward 3.

Q For permanent and further treatment?

A Yes sir.

MR. MERCHANT: That is all.

ROBERT ROSSIE, called as a witness in behalf of the People, being duly sworn, testified as follows:

Residence: 221 West 114th Street.

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a little bit hard of hearing, are you?

A Yes sir.

Q Well now, if you don't hear all the questions that are asked of you why don't answer them.

A Yes sir.

Q Do you know Dominic DeLuca?

A Yes sir.

Q How long have you known Diminic DeLuca?

A About seventeen years.

Q Do you know Sam Sacco?

A Yes sir.

Q How long have you known Sam Sacco?

A About a year and a half.

Q Do you know the defendant Charles Young?

A Yes sir.

Q How long have you known him?

A About five months and a half.

Q Five months before August 20th?

A No sir, from that time until now.

BY THE COURT:

Q From the time you first met him until now, is that it?

A Yes sir.

BY MR. McDONALD:

Q Did you know him before the 20th of August?

A No to speak to.

Q Had you ever seen him before the 20th of August?

A Yes sir.

Q How often?

A I seen him at State's Prison with me.

Q How long had you seen him in State's Prison with you?

A I seen him about three months.

Q You were there three months while he was there?

A Yes

Q Did you work in the same shop?

A No sir.

Q What did you do up there?

A I worked in that cart and wagon shop.

Q What did he do?

A I don't know what shop he worked in.

Q Did he work in any shop?

A Not as I know of.

Q Where would you see him up there?

A Sometimes I would see him standing around the mess hall.

Q What name did you know him by?

A Just Charley Young.

Q That is the only name you ever knew him by?

A Yes sir.

Q Did you see him after you came out of prison?

A Yes.

Q How many times?

A About four times.

Q Did you take a ride in an automobile with him at any time before the 20th of August, 1917?

A Yes sir.

Q How long before?

A About three weeks.

Q Previous, before the 20th of August?

A Yes sir.

Q Where did you go?

A I went to Brooklyn with him.

Q Who was with you?

A Sam Sacco.

Q Anybody else?

A Charley Young.

Q Charley Young, this defendant here?

A Yes sir.

Q What was Charley Young doing?

A He was driving the car.

Q What kind of a car was it?

A A Packard.

Q How was it painted?

A Black, dark paint.

Q Do you know how many passengers it could seat?

A Seven maybe.

Q How many went down to Brooklyn, or over to Brooklyn with you that night?

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial, not connected.

A Three girls and three fellows.

THE COURT: It may be connected. If it is not connected

It will not you any harm. It is preliminary testimony. If it is not developed any further it will amount to nothing.

MR. MERCHANT: Exception, please.

Q You say three girls went with you?

A Yes.

Q How long did you remain over there?

A I remained in Brooklyn about five minutes.

Q Did you come back?

A Yes.

Q Where did you go when you came back?

A Stopped at the Hotel Remington.

Q Where?

A 46th Street between Broadway and Sixth Avenue.

MR. MERCHANT: I again renew this objection. This is some weeks prior to this shooting.

THE COURT: He is accounting for his acquaintanceship with Charley Young and the extent of it. It may save you a lot time on cross-examination. I will allow it.

MR. MERCHANT: Exception. Please.

Q Now then, did you have any talk with Sacco?

A Yes.

Q Before you got to 46th Street or afterwards?

A Afterwards.

Q Well now, when you got to 46th Street, did anybody leave the car?

A Yes sir.

Q Who left the car?

A The three girls.

Q Anybody else?

A No sir.

Q Did Sam Sacco leave the car?

A Sam Sacco left the

car but got back into it again.

Q Did he say anything when he left it?

A He said he was going up to get a raincoat.

Q Was the defendant Charley Young there all this time?

A Yes sir.

Q Now then, did Sam Sacco say he was going upstairs for anything?

A He said he was going up in the house for a raincoat.

Q What kind of a night was it?

A It was a fine night with the stars shining.

Q Did Young leave the car?

A Yes sir.

Q What did he say he was leaving the car for?

A He also went to get his raincoat.

MR. MERCHANT: I object as incompetent, irrelevant and immaterial and not shown to have any connection.

Objection overruled. Exception.

Q Did Charley Young leave the car?

A Yes sir.

Q Where did he go?

A Into the Hotel Remington.

Q Did he come back again?

A Yes sir.

Q Did he have anything with him; I mean did he have a raincoat?

A No sir.

Q Did these two men get back into the car?

A Yes.

Q What happened then?

A He said, "We will ride Robbie home."

Q Who said that?

A Charley Young. I said, "Never mind, I will pay my fare home." They insisted upon driving me home so I said all right. When we got to 110th Street they did not stop because I lived in 110th Street. Sacco said "We will go up and see Nic Todo in the Bronx." We went to the Bronx and we stopped the car right opposite a lot

Q Before you got to this lot was anything said to you by Sacco.?

MR. MERCHANT: I know what is coming and I object most strenuously.

THE COURT: The District Attorney knows the limitation of his right and I assume he will not exceed them. I am going to allow him to prove a conspiracy, if he can.

MR. MERCHANT: Here is a most peculiar night trip to the Bronx with an over coat when it is clear, three weeks prior to this occurrence. It can have no connection with the res gestae.

THE COURT: The District Attorney may surprise you by supplying the connection. I will give him that opportunity anyway. He knows that he must not bring in any matter that refers to any other crime but the one committed in 110th Street. I do not care about any other transaction between Sacco and Young

and this witness except those bear on the establishment of a deliberate plan to kill De Luca by Young and Sacco and others, or by Sacco using Young as his agent or anyone else as his agent. That I will allow.

MR. MERCHANT: Exception. I object as incompetent, irrelevant, immaterial, not shown by statement or otherwise to be connected with the alleged crime charged, in the res gestae, and liable to be harmful to the defendant.

THE COURT: I overrule the objection and I direct the District Attorney to be extremely careful to confine his evidence to the limit I have indicated. He may prove a conspiracy if he can.

MR. MERCHANT: Exception, please.

Q On the way up did you have any talk; was there any talk between you and Sacco or you and Charley Young or you and Charley Young and Sam Sacco.

A Yes sir.

Q What was the talk? Just tell us the talk.

A Sam Sacco said to me how did I come to be such good friends with Antonio De Luca. I told Sacco that I was everybody's friend if I could be so he said to me I showed more friendship to Delucas than I did to him. So he said to me, "If you are my friend you are the only man can get near enough to Antonio De Luca." He said, "therefore, you can kill him for, me" He said, "And you will never go to jail Charley Young said that he could get any amount of bail

For me if I was arrested. So I told him no. I would not kill nobody. I said, "Antonio De Luca never asked me to kill anybody, I don't see why you should ask me." So he dropped the matter, said no more about it.

Q You went in the machine further than 110th Street, didn't you?

A Yes sir.

Q You went up to about how far?

A As far as 149th Street.

Q We will stop there; did you see Charley Young and Sam Sacco again after that?

A I seen them the night that they shot at us at 110th Street and Second Avenue.

Q That was the 20th of August, 1917?

A Yes sir.

Q Where were you?

A I was seated in front of Guiseppi DeLuca's saloon.

Q That is where?

A 110th Street and Second Avenue.

BY THE COURT:

Q Is that the father of Antonio and Dominic De Luca?

A Yes.

BY MR. McDONALD:

Q You were sitting outside saloon were you?

A Yes sir.

Q Who was there besides yourself?

A Antonio De Luca Dominic De Luca, us three sat there.

A fellow by the name of Danny stood up. He stood in the doorway. As we were sitting there Antonio De Luca was talking.

Q Anyone else besides you four?

A No.

Q Did you see Joe Praino there?

A Joe Praino stood out about three feet from us near the gutter.

Q Just tell us what you saw.

A As we were sitting there Antonio De Luca started to crack a joke or one thing or another.

Q Tell us what you saw.

A Well, four shots were fired, - three or four shots and as we jumped up I turned around and I seen Pogano and Charley Young standing next to him.

Q Charley Young and Pogano?

A Yes.

Q You mean Charley Young, this defendant?

A Yes.

Q What were they doing?

A I seen Pogano shooting at us and Charley Young standing next to him.

Q Did he have anything in his hand?

A I could not see, because the sign was blocking him too much.

Q What sign; is that the sign you mean (pointing to People's Exhibit 5 in Evidence)?

A Yes.

Q Did you see his hand?

A No sir.

Q Now then how many shots were fired?

A Four or five shots I did not count them because I was too excited.

Q Did you see Peter Bianco there?

A Yes.

Q Where was he?

A He stood more to the street.

Q More towards the gutter?

A More towards the gutter.

Q What happened then?

A After the shots were fired Dominic hollered out "They got me." So we all walked Dominic into the saloon and Dominic was shot in the arm.

So Antonio De Luca goes outside of that saloon, so I heard three shots outside the door. When we came out Danny was taking Dominic to the drug store. So I came out and stood on the corner. I got mixed into the crowd one way or the other and there was five or six shots, - three or four other shots fired into the side of the drug store. As I get to the corner I seen Sam Sacco backing out of the drug store with a gun in his hand.

Q Did you see where they went then?

A No sir, I ducked into the crowd. I did not pay no more attention to them.

Q About what time was it?

A About half-past eight.

MR. MERCHANT: I would like to have De Luca stand up. I want the height of these two men compared simply on the record.

(The witness Rossie stops down from the stand and stands beside Dominic DeLuca, and then the witness returns to the stand).

MR. MERCHANT: May it be noted on the record that Rossie is perhaps a couple of inches taller than Dominic De Luca.

THE COURT: Yes.

CROSS-EXAMINATION

BY MR. MERCHANT:

Q Is Rossie your right name?

A Yes.

Q What is your right name?

A That is the name I am under now, Rossie.

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Q Have you ever been convicted?

A I was.

Q When?

A February 20th, 1915.

Q What for?

A For burglary, third degree burglary.

Q You served a sentence?

A Two years and four months, yes sir.

Q Have you ever been convicted of any other crime?

A No sir.

Q You served in Sing Sing, was it?

A Tghat is the only place I ever was.

Q I did not hear your true name; is it Rossie?

A I said my name was Rossie.

BY THE COURT:

Q Is there any other name you ever had?

A Ryan.

BY MR. MERCHANT:

Q Which is your right name?

A Ryan is my right name.

Q You are not an Italian, is that it?

A No sir.

BY THE COURT:

Q How old are you, Rossie?

A 24 at the present time.

Q How long have you been out of Sing Sing?

A Since March 9th.

Q How often did you see ***Harley Young in Sing Sing?

A About three or four times.

Q How was he dressed in Sing Sing? Did he have a uniform on?

A Just the same as myself.

Q Civilian clothes?

A Prison pants. He might have had a different shirt of collar.

Q No stripes however?

A No, we did not wear stripes

Q You had civilian clothing?

A Yes, dark grey.

BY MR. MERCHANT:

Q Now this automobile ride to the Bronx of which you Speak took place at what time?

A At twelve o'clock or half-past twelve at night.

Q I mean what date?

A I don't remember the date.

Q How long before August 20th , the time of the shooting?

A I can't remember.

Q A month?

A It was the early part of the month.

Q To the best of your recollection.

A The early part of the month of August.

Q About three weeks?

A Thre or two and half weeks.

Q How long have you known Sacco?

A About a year and a half.

Q Where did you know Sacco?

A I knew Sacco to talk from Comstock prison.

Q Was he also in Sing Sing?

A Yes sir.

Q Did you know him also in Sing Sing?

A Not to talk to.

Q Are you good friends with Sacco?

A I thought I was until the time he shot me.

Q Up to that night you thought so?

A I thought I was his friend until the night he shot me.

Q He did not shoot you, did he?

A Yes sir.

Q Were you hit?

A Four time I was hit.

BY THE COURT:

Q When did he hit you?

A In the Bronx.

Q Not the night of the 20th of August?

A No sir.

Q Your changed your opinion about his friendship after that, did you?

A I certainly did.

BY MR. MERCHANT:

Q Charley Young has no grudge against you that you know of, has he?

A Not as I know of.

Q He did not have nay on August 20th that you know of?

A I don't know. There was shooting that night, that is all I know.

Q He did not have any grudge, did he?

A I could not say.

Q That you know of.

A I don't know what he had up his sleeve; not as I know of.

Q When was it Sacco shot you, after August 20th or before?

A That was before.

Q Before August 20th?

A Yes.

Q Do you mean it was between this ride you had in the early part of the month and August 20th that you were shot?

A Yes sir, that is, the first shooting happened.

Q How long after this talk you had was it that De Kuca was shot?

A About two weeks after that, he fired the other shots at us.

MR. McDONALD: Did your Honor understand that?

THE COURT: It was about two weeks after

that that they fired the other shots. I suppose he means that the 20th of August was two weeks after the time he was shot.

BY THE COURT:

Q Is that what you mean?

A Yes.

BY MR. MERCHANT:

Q Did Sacco tell you on this ride to the Bronx why he wanted you to kill De Luca?

A Well, there were some shots fired at Sacco.

Q Is that what he said?

A He told me that Antonio De Luca fired some shots at him, but I already knew it.

Q You knew De Luca had fired at Sacco?

A I did.

Q Did you tell that to Sacco, that you knew it?

A He knew that I knew it.

Q Did you tell him that?

A No.

Q Then how did he know that you knew it?

A Because he knew I was in the neighborhood. I live in the neighborhood where the shooting took place.

Q You knew that De Luca had fired shots at Sacco?

A I certainly did. I heard it.

Q Did you see him do the shooting?

A I did not see him do the shooting.

BY THE COURT:

Q It was common talk?

A Just talk around the fellows

BY MR. MERCHANT:

Q Well, De Luca had not fired any shots at Charley

Young that you know of?

A Not as I know of.

Q Now you say that on this evening of the shooting at 110th Street, when the shooting began I am talking about, at the time it began, Praino was out by the gutter, and where were you standing?

A I was sitting.

Q Where were you sitting?

A In front of the saloon.

Q What were you sitting on?

A A chair.

Q Now, Rossie, you were sitting down, and who else was sitting down if any one?

A Antonio De Luca and Dominic De Luca.

Q They were both sitting down on chairs, too?

A Yes sir.

Q And Praino was near the gutter?

A Yes.

Q Was there anyone else there?

A A fellow named Danny standing there.

Q What is his last name?

A I don't remember his last name.

Q Dan?

A Danny, that is all I know him by.

Q Where were you in relation to Dominic who was shot?

A Dominic was on my right hand side.

Q You are Robert Rossie?

A Yes.

Q Whom did you see first of those doing the shooting?

A I seen Pogano first.

Q Whom did you see after you saw Pobano?

A I seen Charley alongside of him.

Q Were they behind this sign, People's Exhibit 5 in Evidence?

A Yes sir.

Q Both of them behind it?

A Yes sir.

Q What is the first thing that attracted your attention to them?

A The way I looked at them I seen them.

BY THE COURT:

Q Didn't anything attract your attention?

A The shots, that is all, brought my attention to it.

Q You heard shots and then you turned?

A Yes.

BY MR. MERCHANT:

Q What did Dominic do.

A Dominic jumped up and he said he is shot.

Q What did he do as soon as he jumped up, walked up into the saloon?

A Yes.

Q He walked right into the saloon?

A Yes.

Q And the shooting went on after he had gone into the saloon?

A After Dominic got into the saloon everything was disappeared.

Q Then there was Dominic and his brother Antonio and you and then Pogano and what is the name of the other man?

A Danny.

Q And had you all been there together for how long, half an hour?

A Pogano was to with us at all.

Q I know that, I did not mean to say Pogano, I meant to say Praino. There were Praino and you and Denny and Antonion and Dominic De Luca. How long had you all been together there; for some time?

A Praino was not with us. Praino was standing out on the street.

Q Had he been there with the group of you?

A No sir.

Q He had not been talking to you at all?

A No sir.

Q He had not been over with you boys?

A No sir.

Q He was just standing there in the street? And

A Yes sir.

Q Now I want to ask you again and please answer if you can. Did Sacco all you why he wanted you to shoot De Luca?

A Well, I told you that answer before.

Q Did he tell you why?

A I told you, he told me I was the nearest man that could get close to him. I was the closest man to get to him.

Q What did you say to that?

A I told him I would not do it.

Q How long did he talk to you about it?

A Say about five minutes.

Q Did he tell you that he had asked De Luca to kill some one else and he De Luca would not do it?

A I knew he did.

Q How did you know it?

A Because Antonio De Luca told me.

Q By the way, did you tell the policeman to warn these people?

A I told nothing at all. It told nobody.

Q You did not tell the police to warn the people that Sacco wanted to kill?

A I told nobody.

Q But you knew Somebody might he killed.

A I did not know exactly they would follow out their threat. I did not think they would.

Q You heard threats?

A So often they threaten ; they threaten so many people and never carry out their threats.

Q WEven after you were shot you did not notify the police about this?

A No, I thought he would leave us alone.

Q You thought after shooting you he would leave the rest of you alone?

A I thought he would leave me alone anyhow.

Q Well, he did not shoot you again?

A No. I suppose once is enough I guess.

BY THE COURT:

Q Did you shoot you the same night he spoke to you about killing Antonio?

A That is the night he shot me.

Q The night you went up to 149th Street in the automobile?

A Yes.

Q And this defendant was there?

A Yes, he drove the automobile.

Q Did they shoot you in the automobile?

A After they took me in the lot and shot me.

Q And left you there?

A Yes, I walked out after he got away.

BY MR. MERCHANT:

Q What are you doing now?

A I am held as a witness now.

Q In the House of Detention?

A Yes.

Q How long have you been held there?

A I have been held since August 20th, but I have been in different places.

BY THE COURT:

Q What do you mean by that?

A In different prisons they can serve me.

Q You have been kept in different prisons of detention you mean?

A Yes.

BY MR. MERCHANT:

Q Do you know Fortnash?

A I know Danny, if that is Fortnash.

Q He was Danny?

A Yes.

Q Do you know what he does?

A I runs a paperstand.

Q He skipped his bail recently, didn't he?

A understand he did.

MR. MERCHANT: That is all.

BY MR. McDONLAD:

Q \$25,000 bail was it?

THE COURT: How does he know? If you think that question is material we can have it looked up in the record. It would be hearsay as far as he is concerned.

I think we will adjourn now. We will resume the case at half-past ten Monday morning.

MR. MERCHANT: Is it understood that Praino will come back Monday?

MR. McDONALD: All my witnesses will be here Monday.

THE COURT: Gentlemen of the jury, the Court will now take a recess until 10:30 o'clock Monday morning

In the meanwhile remember the admonition that I have given you before, that you are not to discuss this case with anyone. That injunction applied also to talks among yourselves. You must not talk to your fellow jurors about this case, just as you are forbidden to talk about it to strangers. You must not visit 110th Street and Second Avenue. You must not make any inquiries on your own account. You must get the story from the witnesses that appear upon the stand. You must keep an open mind and hear all that is to be said by both sides, and do not form any opinion nor express any opinion on the questions of the guilt or the innocence of the defendant until the case is submitted to you, by the Court at the end of it for your decision. That is the time to decide it, to make up your minds and not before that. You will please come back at half-past ten o'clock Monday morning.

PEOPLE vs. CHARLES ROSSI CHIAFALO.

TRIAL LCONTINUED.

New York, January 14, '18 Monday, 10:30 A.M.

MR. MERCHANT: If the Court please, I have reason to believe that one important witness for the Defendant is avoiding service of a subpoena. I had him here under subpoena on Friday and have been trying to serve him ever since. I have his affidavit here if the Court wants to judge of his importance, and I shall know about eleven or half-past whether they have been able to serve him. If not I was going to ask the Court if he will delegate an officer to try to get service on him.

THE COURT: Yes, I will.

MR. MERCHANT: I had in mind about recalling the witness Praino for cross-examination, but I have decided not to recall him.

MR. MCDONALD: I am through with him also, your Honor.

MARGARET DE LUCA, of 2135 Second Avenue, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MCDONALD:

Q You are a sister of Dominic De Luca?

A Yes sir.

Q You are the daughter of the man who owns the

liquor store on the southeast corner of Second Avenue and 110th Street?

A Yes sir.

Q Where do you live?

A 2135 Second Avenue.

Q One which side of the street is that?

A Right opposite the saloon and 110th Street.

Q You mean your father's saloon?

A Yes sir.

Q Where were you on the 20th day of August, 1917, about eight o'clock?

A I was downstairs. I was right across the street from my father's saloon, outside.

Q Did you see your brother Dominic any time that night?

Q Well, he was sitting down outside the saloon.

Q Was there anybody else with him?

A Yes sir.

Q Who was with him?

A There was Robert Ross, my brother Tony De Luca and John Fortnash, and Joe, that fellow over there, Joe.

Q Did you see anything happen?

A Yes sir.

Q Just tell us what you saw?

A Well, I saw the fellows turn the corner from 110th Street and they got right in back of the sign. I saw the fellows.

Q What did you see them do?

A Well, there was a little short fellow in back of the sign, and Charley Young in back of him with a revolver in his hand.

MR. MERCHANT: I move to strike out, "and Charley in back of him."

THE COURT: Motion denied.

BY THE COURT:

Q By back you mean behind?

A Yes sir.

Q You mean this defendant when you say Charley Young?

Q Yes sir.

BY MR. McDONALD:

Q What did you see them do?

A Well, I saw him have a revolver in this hand, but I did not see him shoot.

Q Did any shooting take place there?

A Yes sir.

MR. MERCHANT: Objected to. She said she did not see him shoot.

Objection overruled and exception taken.

A I saw the other fellows shoot, Peter Bianca and Sacco but I did not see him.

Q But you did see a revolver in his hand?

A Yes sir.

Q About how many shots did you hear fired?

A About four shots.

Q What happened then?

A Then my brother entered the drug store and I went over the drug store and as I stopped by the car- tracks I saw that automobile in 110th Street by the church.

Q You saw that automobile in 110th Street?

A By the Church.

MR. MERCHANT: I object to the District Attorney leading the witness.

THE COURT: Objection overruled, the District Attorney did not lead.

Exception taken.

Q Did you see anybody getting into this automobile?

A No, but I saw other fellows in it.

Q Can you tell us who those other fellows were?

A No. I could not see them.

Q What did you do after you saw this automobile?

A I went into the drug store.

MR. MERCHANT: I object to any further testimony as after the alleged shooting.

Objection overruled. Exception taken.

Q Did anything happen in the drug store while you were in the drug store?

A While I was in the drug store --

MR. MERCHANT: I renew my motion; that is I object to the testimony.

Objection overruled. Exception taken.

A Then I had more shooting. As I was looking out I saw the defendant Charlie Young and Sam Sacco.

Q About how many shots were fired while you were in the drug store?

A About seven or eight shots.

MR. McDONALD: That is all.

CROSS EXAMINATION BY MR. MERCHANT:

Q How old are you, Miss De Luca?

A I am 18.

Q How long have you known Peter Bianco?

A I don't know him very long.

Q How long?

A About five or six weeks before the shooting.

Q Where did you first meet him?

A He lived in 110th Street, Second and First Avenue, and that is where I used to see him.

Q Was he a friend of your brother Dominick?

A Well, I don't know whether he was a friend of my brother's or not.

Q Where did you meet him then; did you meet him through your brother?

A No, well, he lives in 110th Street, First and Second Avenue, and of course I lived right near there and I used to see him when he used to go up to his house.

Q Did you know him to speak to?

A Not to speak to.

Q You simply knew him by sight?

A By sight.

Q I show you a chart, People's Exhibit 4 in evidence and ask you if you will point out on the chart where you were when you saw two men behind the lunch sign?

BY MR. McDONALD:

Q Do you understand the diagram?

A Well, here is the saloon (indicating).

Q Now here is the drug store.

MR. MERCHANT: Let her explain, Mr. McDonald.

Q (Continued) This is Second Avenue and that is 110th Street and there is your father's saloon and there is the drug store?

A Well, I was opposite.

Q You were opposite the saloon?

A Yes, on Second Avenue.

Q Well, counsel wants you to fix where you were?

BY MR. MERCHANT:

Q Where were you, Miss DeLuca?

A Right opposite the

Saloon, Second Avenue and 110th Street.

Q Where, on the sidewalk?

A Yes, near my building on the sidewalk.

Q What do you mean "near my building"?

A Well, 2135 Second Avenue.

Q What do you mean by my building, where you lived?

A Yes.

Q where is the building 2135 Second Avenue?

A This is opposite my father's saloon.

Q Is it on the corner, the building where you lived?

A Not on the corner.

Q How far from the corner?

A One building away from the corner.

Q On Second Avenue, one door from 110th Street?

A Yes, about one building away from the corner (indicating west side of Second Avenue).

Q With whom do you live there, with your father?

A My father and one of my brothers and my mother and my sister.

Q Is that an apartment house, that building that you live in?

A Well, yes six families live in it. It is a tenement house.

Q I ask you where do you live?

A On the third floor.

Q Front or back?

A Well, they are flats; back and front.

Q Where were you when you saw your brother and these other men in front of the saloon?

A I was outside in the street.

Q On the sidewalk?

A On the sidewalk.

Q Well, now, will you mark on the chart where you were on the sidewalk at the time you saw your brother?

A If this is opposite the saloon, I was over here (indicating).

Q Will you put a mark on the chart please where you were standing on the sidewalk? This is the sidewalk, from here to there (indicating sidewalk).

A Well, about there (indicating).

Q No, you are marking the building. Just mark on the sidewalk?

A Well a littlerfurther away from that (indicating).

Q Just put a mark there, put a circle?

A (Witness marks with a circle).

Q Were you standing or sitting?

A I was sitting.

Q What were you sitting on?

A Well, a box.

Q What kind of a box?

A Well, it was a soda box.

Q Who was with you?

A Well, my cousins were there but after they went away, about a half an hour before the shooting, I was by myself. I left by myself.

Q You were alone?

A Yes, I left by myself.

Q Nobody with you?

A Nobody.

Q What is there on the ground floor of that tenement house, a store?

A Yes, two stores.

Q What kind of stores?

A One is a fruit store and the other is a dry goods store.

Q Were they open or closed?

A They were open.

Q Were you sitting near the door or near the front of the store?

A In front of the dry goods store.

Q You say no one was with you for about half an hour?

A No one was with me.

Q What were you doing, reading?

A I was reading a story book.

Q How long had you been reading?

A I was reading about two hours before the shooting.

Q Which way were you facing?

A I was facing the saloon.

Q What was the first thing that attracted your attention to your brother, the shots going off?

A I was reading and I shut the book, and I looked over two or three minutes and that is when I saw the fellows come over. I was looking there.

Q How long after you saw the fellows, as you call them, was it before the shooting?

A It was not very long.

Q About five minutes?

A About two or three minutes.

Q When you first saw the fellows, did you see they had guns in their hands?

A I saw them take a gun from the pocket.

Q And about two or three minutes after you saw the shooting?

A Yes, sir.

Q You say you saw two fellows?

A I saw Pete Bianco and Sam Sacco.

Q You saw two fellows; I did not ask you who. How many did you see?

A In back of the sign?

Q Yes.

A Well, there were three fellows in back of the sign.

Q When you first looked over and saw them, did they all have guns in their hands?

A Yes, they all took the guns from

Their pockets.

Q Where did they come from; did you see them coming?

A I saw them turning the corner of First Avenue.

Q You saw them take their guns out and then two or three minutes afterwards, you heard the shots, is that right?

A Yes.

Q You know the three fellows, who were they; name them if you know them?

A Sam Sacco and there was another fellow but I don't know that fellow and the defendant Charlie Young.

Q What did the third fellow whom you don't know look like?

A I knew he was a short fellow.

Q Who came first around the sign, the short fellow or Sacco?

A The short fellow.

Q He came first?

A Yes.

Q And after him who came?

A Charlie Young was in back of him.

Q And after him who came?

A Well, Sam Sacco was on the other side.

Q How long have you known Sam Sacco?

A I have known him quite long but I never used to see him.

Q Well, I ask you how long you have known him?

A Well, I know him about six years but I never used to see him.

Q Have you seen him since you knew him six years ago, and the night of the shooting?

A Yes, sir.

Q Where did you meet Sacco?

A Five or six weeks before the shooting. I was with my brother Tony DeLuca. I was down

To my aunt's house downtown on 18th Street.

Q Sam Sacco was with your brother?

A No, I was by myself and coming home, we got off the station at 106th Street and Third Avenue and we were walking down and on 109th Street and Third Avenue on the northeast corner there is a saloon there and as I passed by there was Charlie Young and Sam Sacco and a few other fellows who I don't know, and Sam said to my brother, "Hello, Tony", and my brother said, "Hello, Charlie" so we passed by, and I said to my brother, "Who is that fellow Charlie". He said, "That is Charlie Yong a friend of mine that I know from Sing Sing".

Q That is what your brother said to you?

A Yes.

Q And was that the first time you ever saw Charlie Young until the night of the shooting?

A Yes.

Q And you never saw him again until the shooting?

A I saw him once before, before the shooting.

Q Where was that?

A I was with my sister-in-law the other time.

Q What is her name?

A Mary DeLuca.

Q Where did you see him the time you were with you sister-in-law, Mary DeLuca?

A We were going on 12ns Street and Third Avenue. We walked up to 118th Street and 119th Street on Third Avenue and as we were walking there was an automobile and the automobile stopped and in the automobile there was Charlie Young, Sam Sacco and two other girls. I know one of the girls but I girs but I don't know the other girl.

Q Those are the only two times you ever saw Charlie Young before the night of the shooting?

A Yes , sir.

Q What light was there where you were sitting when you first saw the coming around the sign?

A Where I was sitting?

Q Yes. Was there any street lamps or anything of that kind?

A Well, right in front of the dry goods store.

Q What light was there right near where you were sitting on the box?

A There is the lights in the stores.

Q There was no street lamp?

A There is one on the corner further down.

Q On which corner?

A 110th Street corner.

Q You mean on 110th Street and Second Avenue?

A Yes, sir.

Q On which corner?

A The corner opposite the saloon and 110th Street.

Q Do you mean the drug store?

A Across the street from there.

Q You mean the drug store is across the street from the saloon. Is that the corner where the light is?

A There is a light there and there is another light right opposite.

Q Right opposite on what other corner?

A Corner of 110th Street and Second Avenue.

Q What did you see your brother Dominick do after he was shot?

A After he was shot, he went to the drug store.

Q Right over to the drug store. What did he do, get right up from the chair and walk over to the drug store?

A He

Stepped right in the saloon, he showed his arm to my father and he went to the drug store.

Q How do you know he showed his arm to your father?

A Because I saw him get up and walk in.

Q Did you see your father?

A I did not see my father.

Q Then you don't know whether he showed his arm to your father or not?

A Well, he went to the counter and showed it to my father.

Q Did you see him do that?

A No, I saw him go in.

Q Then you don't know, do you?

A When he went in there?

Q But you did not see him do it?

A No.

BY THE COURT:

Q You could not see into the store, could you?

A I was outside.

THE COURT: Please answer the question put to you. You said you could not see.

BY MR. MERCHANT:

Q As soon as he was shot, did he get right up and walk in?

A Yes.

Q Right away?

A Yes.

Q How long was he in there?

A A few seconds.

Q How long was he in there?

A He was not in there very long, he just showed his arm and walked out.

Q How long was he in there, five or ten minutes, would you say?

A No, he just walked in and went out again.

Q Immediately after you saw Charlie Young, did you say

And Sam Sacco and the littler short fellow fire the shot, what did they do?

A After they shot, they ran away again.

Q Where did they run?

A 110th Street and First Avenue.

Q Towards First Avenue?

A They turned the corner again and went away.

Q Did you stay just where you were in front of your home?

A Yes, I got up.

Q You did not move; you were watching then, what was going on?

A Yes.

Q After they ran away, did all three of them run away together?

A Yes, they did.

Q Did they throw their revolvers away before they ran?

A I don't know.

Q When did you see them again running back?

A I did not see them come running back.

Q Did you see Dominick come out of the saloon?

A Yes, sir.

Q Did you see him as he came out of the saloon and before he went to the drug store, fall?

A I don't know. I did not see that.

Q Did you see him fall before he went into the saloon?

A I don't know.

Q He did not fall after he was shot?

A No, he did not.

Q He did not lie on the sidewalk after the was shot, did he?

A No, I did not see him.

Q Well, you were watching him all the time?

A Yes, sir.

Q And you say you saw him get up and go into the saloon?

A Yes.

Q The he did not fall after he was shot. He did not fall to the sidewalk and lie there?

A No, he did not.

Q You are very sure of that?

A Yes.

Q Now, you sat there in front of your apartment house and saw what was going on?

A Yes, sir.

Q Is that correct?

A Yes, sir.

Q You saw Dominick come out of the saloon?

A Yes, sir.

Q How did he go to the drug store; did he go alone?

A Yes, he went alone. He walked over to the drug store.

Q All alone?

A Yes, sir.

Q And you did not see Sam Sacco come back?

A No.

Q You were watching all the time, looking down 110th Street and at the saloon and at the drug store weren't you?

A Yes, sir.

Q And you did not see Charlie Young come back did you?

A No, I did not, but when --

Q Did you see the littler short fellow come back?

A No, I did not.

Q What did you next after you saw Dominick walk into the drug store?

A When I saw Dominick walk into the drug store, I watched a while and I saw everybody go in.

Q Wait; he said he was alone. What did you next see after you saw Dominick walk into the drug store?

A Then I went over to the drug store. When I saw my brother go in, I

went over.

Q Did you go over before you saw everybody go in or after?

A After I saw everybody go in.

Q Who was everybody that went in?

A Everybody; all the people -- all around the drug store. There was a big crowd there.

Q Then you went in?

A Yes.

Q How long did you say it was after you saw the three men come up 110th Street behind the sign and when you went into the drug store?

A When I went in the drug store, I was in the drug store and there was such a crowd around my brother that I could not watch him, so I looked outside the windows.

Q How do you mean you were looking outside the windows?

A From in the drug store.

Q You mean you were outside the drug store looking in the window?

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

Q Looking out of the windows?

A The windows of the door.

Q Was your brother between you and the windows of the door?

A No, my brother was sitting on a chair.

Q He was back of you?

A Yes, in the back; I could not see him.

Q Why were you looking toward the windows, toward the door?

A Because I was left there by myself and I was looking outside.

Q Why weren't you looking over to where your brother was?

A I could not see him. There was everybody around him, a

big crowd.

Q The reason you were looking through the windows of the door was that you were left there by yourself?

A Yes.

Q How many people would you say were in the drug store while you were looking out of the windows of the door?

A I don't know, there was a big crowd.

Q What did you see next?

A Well, there was more shooting going on.

Q No, what did you see next?

A I was looking outside to the street there and I saw Charlie Young and Sam Sacco, they were shooting. That is what I saw, and there was a big crowd outside.

Q Did the crowd do anything?

A No, it was just moving back.

Q Whom were they shooting at?

A I don't know who they were shooting at.

Q Could you see in what direction they were shooting?

A Right outside of the drug store, in the gutter.

Q Were they shooting up or down the avenue?

A They were shooting there with their guns in their hands. I don't know where they wanted to shoot.

Q How long was that after you first saw them behind the sign?

A Right after I went to the drug store. That was about five minutes after.

Q About five minutes after the first shooting; but you didn't see them come running back up 110th Street?

A No, I

didn't I was in the drug store then.

Q How far did you see them run when you saw them running away?

A I saw them turning the corner but I was not looking after them, because I was looking at my brother, to see whether anybody got hurt or not.

Q When did you first talk over what you saw that night and with whom?

A I did not talk it over with nobody.

Q Have you talked it over with anybody since that night?

A No.

Q You have not talked it over with your brother?

A With nobody; Well, I didn't see my brother at all since then.

Q You have not seen them until today?

A No, because my brother was in the hospital all the while, and my other brother was arrested.

Q You have not seen Dominic until today?

A Not since today.

Q Since the night he was shot?

A I did not see him for about three weeks.

Q You did not talk it over with him then?

A No.

Q Did you talk it over with your other brother?

A My other brother is not here. He is arrested.

Q Did you talk it over with your father?

A No.

Q You live with your father?

A Yes.

Q You live with your father?

A Yes.

Q Did you talk it over with any of neighbors up there who saw it?

A No.

Q You have not mentioned it to anybody?

A No.

Q Were you a witness on the trial of Sam Sacco?

A Yes, sir.

Q Did you see Dominick then?

A I did.

Q What did this littler short fellow look like?

A I don't know what he looked like. I could not describe him.

Q Miss DeLuca, how do you know he was with your brother Dominick in front of the saloon that night. It was not light enough to distinguish them from where you were sitting, was it?

A Sure, you can see them. It is very light.

Q You could see those people that you knew; well, whom do you say was there?

A Robert Ross and my other brother Tony DeLuca and Dan Fortunash and my brother Dominic was there too.

Q Which side of the street did Sacco, Young and the unknown man come to wards the sign at 110th Street?

A Right on the corner, the same side.

Q Around the corner; that is when you saw them first?

A Yes.

Q These two times you have spoke of, once when you were passing the store and one other time, were the only times you ever saw Charlie Young until the night of the shooting?

A Yes, sir.

Q Now, just one or two other matters I want to get a litter clear. You saw the three men and three men and you saw them all draw their revolvers?

A Yes, sir.

Q And then two or three minutes later, you saw them shoot?

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A Yes, sir.

Q And when you saw them draw their revolvers, did you make some outcry or call out to the man in front of the saloon?

A No.

Q You were just watching them?

A Yes, sir.

Q And when you saw them draw their revolvers didn't you think they might be going to shoot somebody?

A I saw them shoot into the fellows and my brothers but I did not make a sound.

Q You did not warn your brother after you saw them draw their revolvers and before they shot?

A Yes.

Q You had two or three minutes to do it in?

A (No answer).

THE COURT: The Jury will determine how much time she had to do that.

BY THE COURT:

Q You said your house was on the other side of the street where you Lived?

A Yes, sir.

Q And opposite the saloon?

A Yes, sir.

Q Second Avenue is a wide Avenue?

A Yes, it is right across the street from the saloon.

Q There is an elevated railroad on Second Avenue, isn't there?

A Yes, sir.

Q That is between where you were standing and where the shooting took place?

A Yes.

BY MR. MERCHANT:

Q Where was this automobile that you saw that night?

A 118th and 119th Street and Third Avenue.

Q I mean the night of the shooting?

A That was Second and First Avenue, right near the church.

Q What street?

A About half way.

Q What street was it on?

A 110th Street.

Q It was on 110th Street?

A Yes, sir.

Q And between Second and First Avenue?

A Second and First Avenue.

Q When did you first see the automobile?

A When I ran over to the drug store.

Q How far was it from the corner?

A About half a block.

Q You could not see who was in it, could you?

A No, sir.

Q You don't know whether it had anything to do with Sam Sacco, do you?

A No, sir.

Q What made you notice the automobile?

A When I went over to the drug store I stopped near the car tracks and I looked down, because I saw the fellows come from that direction, and I looked down and I saw the automobile and I just went over to the drug store.

Q You know Rossie, don't you?

A Yes.

Q What is his name, Robert Rossie?

A Robert Rossie.

Q Did he tell you he saw the automobile up there too?

A Well, I didn't speak to him at all.

Q You did not discuss it with him?

A No, sir.

Q Did you say you saw people in the automobile when you

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looked down at it?

A Yes, sir.

MR. MERCHANT: That is all.

MR. McDONALD: That is all.

WILLIAM J. ENRIGHT, an Officer of the Third Branch Detective Bureau, called as a witness on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the Police Force of the City of New York and you were such on the 20th of August, 1917?

A Yes, sir.

Q Did you visit the premises on the southeast corner of 110th Street and Second Avenue?

A Yes, sir.

Q About what time of the day or night?

A Well, I should say around between nine and ten o'clock in the evening.

Q I show you this chair People's Exhibit 3 for identification and I ask you if you saw that there that night?

A I did.

Q Is it now in the same condition as the time you saw it?

A Yes, sir.

Q You brought that chair down to the Property Clerk of the District Attorney's office?

A Yes, sir.

Q And there left it?

A Yes, sir.

MR. McDONALD: I now offer it in evidence.

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial and that there is no evidence of injury to the chair caused by the bullet.

THE COURT: Objection sustained. I do not see why

You have the chair here.

MR. McDONALD: Except this man was sitting on it, and it shows the bullet came from that side, as shown by the chair.

THE COURT: Whether he was sitting down or standing up is not material; whether they shot him or not is the question and if they did that as result of premeditation and deliberation, to kill, it was an attempt to commit murder. Was there any shooting there or not, and who did the shooting, and what was the intent?

Q Do you know Daniel Fortunash?

A I do.

Q Did you see him on the 29th day of August, 1917, when he appeared before the Grand Jury?

A I did.

Q Have you seen him since that time?

A I did not.

Q Did you know whether he lived?

A 2166 Second Avenue.

Q Have you visited his place of residence?

A Several times.

Q Have you been able to find him?

A No, sir.

Q Have you had any conversations with anybody in his home?

A Yes.

Q Did she say who she was?

A Yes.

Q Who was that?

A His sister.

Q What did she say about her brother Daniel Fortunash?

MR. MERCHANT: I object as incompetent, irrelevant and immaterial.

MR. McDONALD: I want to show we have been unable to find him. We want to account for the failure

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To find the witness.

THE COURT: The defendant brought that out. He said he had been looking for him and tried to find him.

Q How many times did you visit his home?

A Seven or eight times.

BY THE COURT:

Q You have not been able to serve him with a subpoena?

A No. sir.

Q And you have a subpoena for him, from the people?

A Yes.

Mr. McDONALD: That is all.

CROSS EXAMINATION BY MR. MERCHANT:

Q Since August 20th, Fortunash has been indicted, has he not?

A Yes, sir.

Q Do you know whether or not his bail has been forfeited?

A I don't know.

THE COURT: I will exclude that as immaterial. If it were material that could be shown by the records of the court.

MR. MERCHANT: That is all.

MR. McDONALD: Will you concede the prior conviction of the defendant?

MR. MERCHANT: I will concede it.

MR. McDONALD: May I read into the record the prior conviction of this defendant as it has been entered?

THE COURT: Yes.

MR. McDONALD: Well, the defendant concedes --

BY THE COURT:

Q Is that true in the indictment, that you were convicted before of a crime?

THE DEFENDANT: Yes, sir, it is true.

MR. McDONALD: The defendant admits that he has heretofore been convicted, on the 7th day of May, 1912, before the Hon. Thomas C. O'Sullivan, a Judge of the Court of General Sessions in and for the *** of New York, -- the said Charles Rossie Chiafalo was in due form convicted of a felony to wit, of the crime of criminally carrying a firearm concealed upon his person, and on such conviction was sentenced by the Court to a term of three years in the state prison.

BERNARD J. DEVANEY, an officer of the Second Branch Detective Bureau, called as a witness in behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are an officer of the Police Force of the City of New York and you were such on the 20th day of August, 1917?

A I was.

Q You are attached to what branch?

A Second Branch Detective Bureau.

Q What is your rank?

A Acting Detective Sergeant.

Q Did you see the defendant Charles Young at any time on the 20th day of August, 1917?

A About 12:30 on August 21st.

Q You mean midnight?

A Yes sir.

Q Go ahead; where did you see him?

A 46th Street between Broadway and 6th Avenue.

Q Was he with anybody?

A He was.

Q With whom was he?

A Three others.

Q What did you do?

A I placed them under arrest and took them to the Second Branch Detective Bureau and from there to the Third Branch Detective Bureau.

Q Did you after that get an automobile?

A I did.

Q Do you know whose automobile that was?

Objected to. Question withdrawn.

Q Then you took them to the Third Branch?

A Yes sir.

MR. McDONALD: That is all.

MR. MERCHANT: I may want this officer as a witness

for myself on the defense, and I ask that he remain in court, your Honor. I have no cross-examination but I have no cross-examination but I may want him as a witness.

THE COURT: Well, you may remain here, Officer; that is, remain within call. You do not have to remain in the room.

MR. McDONALD: Your Honor, may this officer, DeVaney, go back to the Grand Jury room?

THE COURT: Why certainly, as long as he is within call so that we know where he is when we want him.

MR. McDONALD: The People rest.

MR. MERCHANT: If the Court please, I have here the original subpoena for Kudwig L. Cohen, a doctor, and also a copy. He is evidently avoiding service. His address is 75 West 47th Street. I ask that a police officer be delegated to get that man.

THE COURT: If you do not need Officer Enright any more, you can send Officer Enright to get him, or get some officer. I understand he was not subpoenaed for to-day.

MR. MERCHANT: No sir, but we have been endeavoring to subpoena him ever since Friday.

MR. MERCHANT: If the Court please, I move to strike out all evidence as to the alleged shooting at the drugstore, all evidence as to the alleged conversation had in the automobile going to the Bronx between DeLuca, I think it was, and this defendant and Sam Sacco, - all evidence

Subsequent to the immediate alleged shooting outside of the saloon, and the immediate surrounding circumstances, the res gestae, and I move that the jury be instructed to disregard the same on the ground that first, such evidence is incompetent, irrelevant and immaterial. Second, on the ground that it is prejudicial to the defendant. Third, on the ground that it is subsequent to the alleged crime, and has no connection therewith. Fourth, on the ground that it could not be introduced as part of an alleged conspiracy, the indictment herein not being for conspiracy, but, in the first court, an attempt at murder in the first degree, and the second count, assault in the first degree.

THE COURT: The motions are denied.

MR. MERCHANT: Exception, please.

MR. MERCHANT: I move the Court to advise the jury to acquit the defendant on the ground that no prime facie case has been made out.

THE COURT: Motion denied.

MR. MERCHANT: Exception, please.

MR. MERCHANT: I would like to have brought from the Clerk's office the original papers, the indictment in the case of People against Pogani, for this same crime. I desire to examine them.

THE COURT: They may be sent for.

DEFENDANT'S CASE.

CHARLES ROSSI CHIAFALO, of 115 West 49th Street, the defendant, called as a witness in his own behalf, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERCHANT:

Q You are one of the defendants in this indictment?

A How old were you when you came to this country?

A About fifteen or sixteen.

Q Where do you live?

A 115 West 49th Street.

Q What is your father's name, - Chiafalo?

A Chiafalo.

Q And Rossi is your mother's name, is it not?

A Yes sir.

Q By which name have you usually been known?

A Rossi.

Q How did you happen to be called Charley Young?

A The fellows called me that when I was a boy.

Q Did you ever change your name for the purpose of concealing your identity?

Mr. McDONALD: Objected to.

THE COURT: Allowed.

A No sir.

BY THE COURT:

Q You have been known as Charley Young?

A By the police.

Q And in Sing Sing you were known as Charley Young?

A I never go by that name.

Q Did not Judge O'Sullivan send you away as Charley Young?

A No, as Charles Rossi.

Q But you are Charley Young?

A My name is Charles Rossi Chiafalo.

Q But you are Charley Young that these people have been speaking about?

A There is many Charley Youngs.

Q Do you understand my question; you are the Charley Young that they have been speaking about, these witnesses?

A Yes sir.

BY MR. MERCHANT:

Q When did you leave Sing Sing, Rossi, after this conviction?

A 1915.

Q What month?

A In November.

Q Since leaving Sing Sing in November, 1915, where have you lived?

A I lived home with my sister.

Q Where is that?

A 224 East 13th Street.

Q After that how long did you live there?

A I lived there until I worked for Mr. Jacobs.

Q When was that, do you remember?

A Left the latter part of 1916.

Q Where have you lived since then?

A I lived in 222 West 28ht Street.

Q How long did you live there?

A I lived there, -I worked for Mr. Feinberg for about two months; I was working with Mr. Feinberg on 38ht Street.

Q I will come to that in a moment. Since then, and until you were arrested under this indictment, where did you live?

A Always there.

Q You were arrested about one o'clock in the morning of August 21st 1917?

A Yes sir.

Q And you were taken to the Tombs that morning?

A No sir.

Q When were you taken to the Tombs?

A The next day.

Q August 21st?

A August 21st, yes.

Q That is the same day you were arrested. You were arrested at one o'clock in the morning?

A I was arrested at one o'clock in the morning.

Q What time were you taken to the Tombs?

A About ten o'clock- no, about eleven o'clock.

Q Now, between one o'clock in the morning and ten o'clock in the morning where were you?

A I was down in the Third Brnach.

Q The Third Branch, Borough of Manhattan?

A Yes sir.

Q And you remained in the Tombs?

A Yes sir.

Q Until, - was it November 14th?

A Yes sir.

Q Of last year, - and then you were bailed?

A Yes sir.

Q Now, after leaving Sing Sing what did you do for a living?

A I worked for Mr. Jacobs and Mr. Feinberg.

Q What is Mr. Jacobs's business?

A He is in the ticket office business.

Q Where did you work for him?

A Across the way from the Opera House.

Q What Opera House?

A Metropolitan Opera House.

Q How long did you wrok for him?

A About three months.

Q Then whom did you work for?

A Feinberg.

Q What does he do?

A He is in the same business.

Q Where did you work for him?

A On 40th Street.

Q How long did you work for him?

A A couple of months.

Q Then whom did you work for?

A For myself.

Q What did you do to make your living?

A Driving a car, hacking.

Q An automobile?

A Yes.

Q You continued to drive a car for a living until you were arrested on August 21st, in the early morning?

A Yes sir.

Q Do you remember the 20th of August, 1917?

A Yes sir.

Q Beginning, say, at six o'clock in the evening of that day, do you remember what you did from that time on?

A Yes sir.

Q Where can you begin, Rossi, as to what you did; can you begin at six o'clock?

A About six.

Q What did you do and where you on that day?

A Well, I generally go to the Times Square Building in the evening.

Q First, you were living at the time of your arrest at the Hotel Remington, were you not?

A Yes sir.

Q And you had your automobile, you owned your car?

A Yes sir.

Q Where was your stand?

A 46th Street.

Q Now, on this day where were you about six o'clock in the evening?

A Six o'clock in the evening I was in the Times Square Building. I used to go and call on a man who has got a machine over there. They used to have over-calls, and then give them to me.

Q You mean you used your car?

A Yes.

Q Go ahead?

A I was over there about an hour or so. Then

I go over to 46th Street, and wait there until Mr. Shelly, who has got a office there.

Q Where was Shelly's office?

A 163 West 46th Street.

Q What time was that?

A All evening I was there, sometimes.

Q I am speaking of this particular night, August 20, 1917?

A I was there about half-past seven.

Q Where did you do from there?

A Eight o'clock I left the front of the hotel and went to the doctor's office.

Q What was the name of the doctor?

A Dr. Cohen.

Q Where was his office at that time?

A 75 West 47th St.

Q How long were you there?

A About half an hour, or twenty-five minutes.

Q Was he treating you as a physician?

A Yes sir.

Q About what time did you leave there?

A About half-past eight.

Q Where did you go from there?

A I went right over to Mr. Bushman's office.

Q Where does Mr. Bushman live or where was Mr. Bushman at that time?

A In his office in 46th Street.

Q What was his business?

A In the automobile business.

Q Is his place of business across from the Remington Hotel?

A No, it is away over near the James Drugstore, across the way.

Q What is the address of Bushman's place of business?

A 160, I think.

Q On 46th Street?

A Yes sir.

Q He is a garage owner?

A He is an automobile owner, Bushman

& Brown.

Q What time did you get there?

A I was there about twenty-five minutes, or twenty minutes to nine.

Q What happened, if anything, there?

A I spoke to Mr. Bushman about a call that he sent to Coney Island, and that call was mine.

Q About a call?

A Yes sir.

Q What do you mean by a call, a call for an automobile?

A Yes. They called for my automobile, and this woman was in a hurry to go to Coney Island.

Q How long, by the way, have you known Dr. Cohen, or had you known him before?

A Since the 13th of August.

Q How long had you known Bushman, about?

A About a month.

Q Had you had any business relations with Mr. Bushman?

A No sir.

Q Was anything said at Bushman's about a telephone call for you?

THE COURT: I will exclude that as immaterial.

MR. MERCHANT: Exception.

THE COURT: What he said is immaterial, or what anyone else said to him. Just confine yourself to the legal evidence.

Q From Bushman's, where did you go?

A I got a call from across the street to answer the telephone.

Q Where did you go, what did you do?

A I answered the telephone

call.

Q Where did you go from Bushman's?

A Across the street to answer the telephone call.

Q Did you answer the telephone call?

A Yes sir.

Q Where was it you answered the telephone, what place?

A Mr. Shelly's office.

Q Where is that?

A Across the street from Bushaman's.

Q From that placr where did you go?

A I got a call Mrs. Fields to go up to 776.

BY THE COURT:

Q Where did you go; you are not answering the question?

A I am answering the question.

Q Where did you go?

A I went over to get my car in front of the hotel and I went up to 776 8ht Avenue, to Mr. Jackson's.

BY MR. MERCHANT:

Q Between what streets on 8ht Avenue is that?

A Between 47th and 48th Streets.

Q What time did you get there, about?

A About five, seven or eight minutes of nine; before nine o'clock.

Q Who was there?

A Mr. Fields, Mr. Jackson, Mr. Jacob-sen, - I don't know how you pronounce his name, Jacobsen, and her brother.

Q Do you know the name of the brother?

A I don't know the name, except I only met him twice.

Q You had only met him twice?

A Yes sir.

Q How often had you met Mrs. Field?

A She lives in the

Same house where I used to live.

Q How long have you known Mrs. Jackson?

A Only a few Times.

Q Who else was there?

A Mr. Jacobsen.

Q How long had you known him?

A I met him twice; two or three times.

Q They were all at the apartment?

A Yes sir.

Q At Mr. Fields's?

A At Mrs. Jackson's apartment.

Q How long did you stay there?

A I stayed there until half-past eleven or a quarter to twelve.

Q Then what did you do then?

A Then I look Mrs. Field for a ride.

Q An automobile ride?

A Yes sir.

Q What time did you get back to the Hotel Remington?

A About a littler after twelve, I guess.

Q About what time were you arrested?

A Half-past twelve or a quarter to one.

Q During the day of August 20th, 1917, were you at any time at or in the neighborhood of 110th Stret and 2nd Avenue?

A No sir.

Q Borough of Manhattan, City and County of New York?

A No sir.

Q You know Sam Sacco?

A Yes sir, from Sing Sing.

Q Do you know Peter Bianco?

A No sir.

Q When did you first see Peter Bianco?

A In the Tombs.

Q Do you mean after August 20th, 1917?

A Yes sir.

Q Do you know John Pogano?

A Yes sir.

Q How long have you known him?

A A Couple of months. I bought a car for him, a Stutz car.

Q What do you mean by a couple of months?

A I don't remember the date.

Q I mean a couple of months before August 20th?

A Yes sir.

Q Sometime in June, let us say?

A Yes sir.

Q That was last summer?

A Yes sir.

Q Between about one o'clock on the morning of August 21st, and nine or ten o'clock of the same morning you say you were at the Third Branch Detective Bureau, after your arrest?

A I reached the Third Branch Detective Bureau.

Q How long were you there?

A I was there right after two o'clock, I think.

Q Until in the morning, they took us over to the Coroner's inquest.

Q When was the Coroner's inquest?

A August 21st. They took us to Headquarters first and then to the Coroner's inquest.

Q What time was that, when they took you to the Coroner's inquest?

A I don't remember, about eleven o'clock, or half-past eleven.

Q During the time that you were at the Third Branch Detective Bureau did you state certain things which you said you had done on the evening of August 20th, 1917, to Mr. Joyce, Assistant District Attorney?

MR. McDONLAD: Objected to.

THE COURT: Objection sustained. It does not make any

Difference what he said to Mr. Joyce.

MR. MERCHANT: Exception.

THE COURT: If the People had attempted to bring out any statement made by him, contradicting him, if the statements did not agree, It would be competent. There had been no testimony given of any statement by him that I recall.

MR. MERCHANT: Will your Honor hear me on that.

THE COURT: That is an elementary proposition of law. Please proceed. This is the time for him to make any statement that he wishes to make to this jury.

Q Were you at any time on the 20th of August at or near De Luca's saloon?

A No sir.

Q Or the drugstore opposite?

A No sir.

Q Or this café or dance hall that they speak of in 109th Street?

A No sir.

Q Or in 110th Street?

A No sir.

Q All in the Borough of Manhattan, City and County of New York?

A No sir.

Q These places are all in this city and county; were you at any of those places on that day?

A No sir.

Q Have you ever had any quarrel with De Luca?

A No sir. I never saw him since I am out of jail.

Q Had you any falling out at any time or any enmity against De Luca?

A No sir.

Q Did you ever take a ride in the Bronx with Sam Sacco and

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De Luca and discuss the killing of somebody?

A No sir.

Q Or say that you could get ample bail, plenty of bail?

A No sir.

Q If such a shooting was done?

A No sir.

Q Did you ever talk over with Sacco or Pogano or anyone else the shooting, or the idea of shooting Dominic De Luca?

A No sir.

MR. MERCHANT: Your witness.

THE COURT: There is no testimony that he took a ride to the Bronx with De Luca, as I recall.

BY MR. MERCHANT:

Q Did you ever take a ride to the Bronx with Rossie?

A No sir.

Q And discuss the shooting of some man?

A No sir. I would not have him ride in my car.

Q Or anyone else?

A No sir.

BY THE COURT:

Q You would not have Rossie ride in your car?

A I would not have no ex-convict ride in my car, because I was honest.

CROSS-EXAMINATION BY MR. McDONLAD:

Q Did Sacco ever ride in it?

A No sir.

Q How long have you known Sacco?

A From in Sing Sing prison.

Q Did you know Rossie up there too?

A No sir, I never spoke to the man.

Q Sam Sacco lived at the Hotel Remington?

A I don't know.

Q You lived at the Hotel Remington?

A Yes, there is lots of people lives there.

BY THE COURT:

Q Didn't you live there?

A Yes.

BY MR. McDONALD:

Q How long have you lived there?

A Couple of months.

Q When did you live there a couple of months, before the shooting or after?

A Before the shooting, before the 20th of August.

Q That is the only shooting we are concerned in now, the 20th of August, or alleged shooting, at 110th Street, on the 20th of August. Did you know Sacco there?

A No sir.

Q Did you know Sacco as being a man who frequented 46th Street and the corner of Broadway?

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial; no charge of conspiracy here.

THE COURT: It is not necessary to make out a charge of conspiracy. These three are indicted for the shooting. If it be proved that there was a corrupt agreement between them to kill De Luca, or to shoot DeLuca, each, one is liable for any act the others did in carrying out that agreement.

MR. MERCHANT: Exception.

THE COURT: They have a right to question him as to his relationship with Sacco.

MR. MERCHANT: Exception, please.

THE COURT: That will be one of the questions for the

jury to decide, whether there was a conspiracy or not.

MR. MERCHANT: Exception.

Q (Question repeated)

A No sir.

BY THE COURT:

Q Did you understand the question?

A Yes.

Q But you do not know him?

A No.

BY MR. McDONALD.

Q Did you ever see him around there?

A I seen him a few times.

Q Prior to August 20th?

A I did not see him that day.

BY THE COURT:

Q Prior to that; did you see him for a month before?

A I saw him a few times.

Q Q Under what circumstances did you see him?

A Just to say hello, how are you, and pass by.

BY MR. McDONALD:

Q Where was he then when you saw him?

A I don't remember where I saw him.

Q At these times you did say hello to him, wherever he was?

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

Objection overruled. Exception.

A I met him once in the Times Square building.

Q About when was that?

A I don't remember.

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Q And you met him again after that, did you?

A I seen him a few times on the street and said hello and passed by him. I never had any conversation with him.

Q You passed by him in 46th Street?

A No, Broadway.

Q Where was your stand?

A I had no particular stand at all.

BY THE COURT:

Q Where was your stand: where did you say your stand was, on direct examination?

A Only on 46th Street I used to get my calls there.

Q Where did you say it was, your stand?

A 46th Street.

Q Did you have a stand or not?

A No stand. I used to get my calls.

Q Then you were mistaken when you said you had a stand?

A I said I used to get my calls, like from Shelly's office.

Q Where was Shelly's office?

A 46th Street, No. 143.

Q Near what place is that?

A Near Broadway.

Q That is where the Hotel Remington is?

A That is 129, Hotel Remington.

Q And the place where you saw Sam Sacco was near where your stand was?

A No, I saw him on Broadway.

BY MR. McDONALD:

Q By the way, did you live at the Hotel Remington alone?

A Yes sir, at that time.

Q All the time at the Remington alone?

A At that time.

Q What do you mean by that time?

A August 20th.

Q You lived at the Remington two months, didn't you?

A About that.

Q Previous to the 20th August, 1917?

A About two months.

Q Were you living there along?

A When I got arrested, yes.

Q Well, for the two or three months were you living there along?

A No, I lived with my wife for a few days.

Q What is your wife's name?

A Anna Marks.

Q Is your wife in court?

A No sir.

MR. MERCHANT: She's outside.

Q Is that Anna Marks (Pointing to a person in court room)?

THE COURT: If there are any witnesses in the court room they must be excluded.

A She is outside.

Q When were you married to her?

A Last week.

Q Where were you married?

A In the City Hall.

Q What took you so long to remember it?

Objected to.

Objection overruled. Exception.

A She is a Jewish girl and I am a Christian fellow and her mother did kind of -- I don't know, -disagreement between mother and her, and so she convinced herself to marry me.

Q What was the reason took so long to remember when I asked you the question, when were you married?

A I just told you about a week. I wanted to remember the day I got

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Married.

Q You lived with this young lady at the Hotel Remington for two or three months previous to August 20th?

A Not two or three months.

Q About how long?

A She went to the country in Maine.

Q You sent her to the county in May?

A No, Maine, and when she came back I sent her home to her mother.

BY THE COURT:

Q When did you begin to live with her as your wife?

Objected to.

Objection overruled. Exception.

A September sometimes, last year.

Q You told Mr. McDonald you lived with her before the 20th of August?

A Oh, I mean 1916, about a year, over year.

Q You were living with her over a year as your wife before being married?

A Yes.

Q Why didn't you tell that when he asked you?

A I must have misunderstood.

Q And you were living in the Hotel Remington with her as your wife?

A Not in the hotel.

MR. MERCHANT: I object. It appears he is married to her. It is immaterial.

THE COURT: It is material on the question of his credibility.

MR. MERCHANT: I move to strike it out.

Motion denied. Exception.

BY MR. McDONALD:

Q What does this girl do; what did she do while she was living with you?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled. Exception.

A She does nothing since she is with me.

Q Since she is with you she did nothing?

A I have been keeping her, supporting her.

Q What did she do before she went with you?

MR. M ERCHANT: Objected to as incompetent, irrelevant and immaterial and highly prejudicial.

THE COURT: I will allow it.

MR. MERCHANT: Exception, please.

THE COURT: The jury have a right to know what kind of a man he is. If he had not taken the stand it would not be material, but on the question of his credibility, it is, since he has taken the stand. The jury must determine how much credence they will give his statements, and they have a right to know of any criminal, vicious or immoral acts in his career.

MR. MERCHANT: Exception.

Q What did she do before she went with you?

A She was working with a show.

Q What show?

A Thompson.

Q How long have you known her?

A I only met her over a

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Year ago.

Q How long before you took her to live with you at the hotel, or elsewhere?

Same objection.

Objection overruled. Exception.

BY THE COURT:

Q How long had you known her when you began to live with her as your wife, without being married?

A Maybe three weeks; I don't remember, maybe more.

BY MR. McDONALD:

Q Who married you?

A The alderman in the City Hall.

Q Who was he?

A I don't know his name.

Q When did you get the license?

A Last week.

Q Where?

A In the City Hall.

Q You don't know who married you?

A I don't remember his name.

Q What day of the week was it?

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial, prejudicial to the defense.

Question allowed. Exception.

A I don't remember; I can give you the paper.

Q It was last week, however?

A Yes.

Q You say you went to the Times Square building on the 20th of August, 1917?

A Yes.

Q Do you mean the Times Square Auto Company?

A The Times Square Building.

Q Where is that?

A In front of the subway.

Q Where?

A On 42nd Street and 43rd Street and Broadway.

Q About what time did you go there?

A About six or half-past six.

Q Did you see anybody there?

A I seen a lot of fellows there.

Q Do you know any of them; can you recall any of the men you saw there that time?

A Certainly, I saw some fellows selling newspapers.

Q Can you recall any?

A I don't know their names.

Q You do recall what time you went there, don't you?

A In the evening. I don't know what time. I would not mark it in the book what time I had been there.

Q In answer to your counsel's question you said you got there at six o'clock, is that true?

A After six or before six; something like that.

Q Are you sure it was about six?

A No, I ain't sure.

Q What time was it?

A I just answered I don't know what time it was.

Q You remained there how long?

A Maybe twenty minutes, may be half an hour.

Q Then where did you go?

A I went back to 46th Street.

Q Where was your car during this time?

A At 46th Street, in front of the Hotel Remington, near the church.

Q What time did you leave Miss Marks that day?

A My wife?

Q Miss Marks, your wife?

A My wife was home in Flushing.

Q When did she go to Flushing?

A She went to Flushing about two weeks before the 20th.

Q So she had been in Flushing two weeks?

A With her mother.

Q You came back from the Times Square Building at about half-past six?

A I don't know what time I came back.

Q Where did you go?

A Right back to 46th Street.

Q To where?

A To the hotel, to wash myself; then I came down and I went to Dr. Cohen.

Q Did you go any place between the time you went to the Times Square Building and the Hotel?

A No.

Q You went right upstairs?

A I was standing right there near the car and then immediately went to see the doctor, right before eight o'clock sometime. I took a wash and went over to Dr. Cohen. He was ready to go out.

Q Who?

A Dr. Cohen. He gave me hell because I did not come around before that.

Q You say you go there about what time, to the doctor's office?

A About eight o'clock; or a little after eight.

Q Now, which is it, eight o'clock?

A A little after eight.

Q How long did you remain in the doctor's office?

A Twenty-five minutes or a half an hour or so.

Q You were being treated for what?

MR. MERCHANT: Objected to as incompetent, irrelevant

and immaterial.

THE COURT: I do not see how that has any bearing, but I will allow it.

MR. MERCHANT: Exception, please.

BY THE COURT:

Q Just state what you were doing at the doctor's office?

A I was getting massage treatment, and treatment for my bladder, you know. (Witness pointing to his groin)

THE COURT: The jury are not obliged to believe him, that he went to the doctor. Let him state what his disease was and why he went there. If he had any disease it may be some evidence in his favor. The nature of the disease is not the reason.

BY MR. McDONALD:

Q Just state what you were doing at the doctor's office?

A I did not explain it right.

Q How long did you remain there?

A Twenty-five minutes or half an hour.

Q Then did you go right up in your car?

A No sir.

Q You left the car down at the Hotel Remington?

A Yes.

Q Was anybody with it?

A No sir.

Q What did you do then?

A Then I went over to Mr. Bushman's office.

Q About what time was it that you went there?

A It look about five or ten minutes.

Q You left Bushman's about what time?

A A quarter to nine, as soon as they called me across the street to answer the telephone.

Q About twenty minutes to nine?

A May be a quarter to nine.

Q Where was the doctor's office?

A 75 West 47th Street, right near 6ht Avenue.

Q Then where did you go?

A I went right to 46th Street, Mr. Bushman's.

Q Where did you go?

A To Mr. Bushman's, right straight to Mr. Bushman's.

After you met Mr. Bushman Where did you go?

A Across the street to answer the telephone.

Q Bushman was on the street, was he?

A Yes sir.

Q He was right in front of his office?

A Yes sir.

Q Why did you cross the street, to Mr. Shelly's place?

A The man called me, that there was a telephone for me.

Q Didn't Mr. Bushman tell you there was a telephone call?

A No, Mr. Bushman was talking to me with regard to a call for the car.

Q What call?

A Call for me. The party was calling for me and I was not there and she said she wanted the car because they were in a hurry to go to Coney Island, some woman. He was just after telling me, "I sent one of my cars". I said, "I don't car; I got another call tonight, that is all right, you done right".

Q When did you receive the other call?

A Right after, I got the telephone call.

Q When did you get the telephone call?

A I gog the telephone

call twenty minutes to nine or a quarter to nine.

Q Where?

A In Shelly's office.

Q You mean you got the call yourself?

A I was in front of Mr. Bushman's place.

Q Mr. Bushman told you what?

A Mr. Bushman said, "There was a woman looking for you for a call to go to Coney Island". I said to Bushman, "What did you do?" He said, "I sent one of my cars". I said, "That is all right, I have another call. Mrs. Field was supposed to call me up for a ride at eight o'clock".

BY THE COURT:

Q Then you did not get any telephone call at all?

A I did get one in Shelly's office.

Q Bushman told you there was a call?

A That was a different call, your Honor.

Q Did you receive any call in person that night; yes or no?

A By telephone, yes sir.

Q Did you receive it?

A Yes sir.

Q Why did Mr. Bushman have to tell you there was a call?

A Because the lady was looking for me. She was my customer.

Q She was there in person?

A In person.

Q Bushman told you the woman had come there?

A Yes sir, the woman called to Bushman looking for me.

Q Then the woman had come to his place?

A Yes sir.

Q You did not see the woman?

A No.

Q You did not call that a telephone call, did you?

A It was a call for the car.

Q Did Bushman tell you there was a call for you?

A No.

Q He told you there was a woman there?

A There woman called there for me.

Q Do you speak English well?

A A little bit.

Q Are you born in this country?

A No.

Q How long have you been here?

A Sixteen or seventeen years.

Q Would you live to speak Italian?

A No sir, I rather speak English.

Q Well, open your mouth wide when you speak, and speak English?

A Yes.

Q You know the difference between Bushman telling you there was a telephone call and telling you there was a woman there?

A I did not say that.

Q Now, take your time and begin all over again and just answer the questions.

BY MR. McDONLAD:

Q You say you came back from the doctor's office and met Mr. Bushaman?

A Yes sir.

Q That is right, is it?

A I met Mr. Bushman.

Q After you met Mr. Bushman what did you do?

A I was talking to Mr. Bushman.

Q After you had talked with Mr. Bushman what did you do?

A Another man called me from across the street to answer the telephone.

BY THE COURT:

Q Another man called you?

A Yes.

Q Who was that other man?

A One of Mr. Shelly's office men. I don't know which one.

Q It was not Bushman?

A No.

Q But while you were talking to Bushman a man came over from Shelly's office?

A Right after I left Bushman, from across the street they called me over to the telephone. Mr. Bushman was about three or four feet away from me.

Q You and Mr. Bushman did not say a word about any telephone then?

A No.

Q Bushman told you there was a woman there looking for you?

A Yes sir.

Q And then you went to Shelly?

A I answered the telephone.

Q Then they told you there was a call on the telephone and you answered?

A They said, "There is a telephone for you, Charley". I answered the telephone.

Q And these two cases were on different sides of the street?

A Yes.

BY MR. McDONALD:

Q You talked to somebody there?

A Yes sir.

Q Who was that?

A Mrs. Fields.

Q You talked on the 'phone with her, you mean?

A Yes.

Q When did you meet Mrs. Field first?

A In the Hotel Remington. Her husband is a performer.

Q When did you first meet Mrs. Field?

A When I met her during the month of August.

Q That same month of August, 1917?

A About a week or two before.

Q How many times did you meet her there?

A I generally saw her every night standing in the lobby. I tipped my hat and passed by.

Q How did you know her name was Fields?

A I took her out in the car one night.

Q When was that?

A The week before, I guess.

Q What week was it?

A August, the week before the 20th.

Q The week before the 20th

A Yes.

Q What day of the week was that?

A I don't remember the day of the week. Mrs. Jackson I took.

Q Who introduced you to her?

A I got an introduction to Mr. Roy, some fellow, one day walking in the hotel or sitting in the lobby.

Q Do you know who introduced you, if anyone did?

A A young fellow from Washington, some big, tall fellow, I don't know his name.

Q Who was he?

A I guess the name I don't remember.

Q Who was he?

A I don't know. He is a moving picture man.

Q He introduced you to Mrs. Fields in the lobby of the Hotel Remington?

A Yes, right in the front of the hotel, in the lobby. They always sit down in the front of the hotel, and naturally people know you and introduce you to one another. A few days after took her for a ride.

Q A few days after you met her you took her for a ride?

A About two or three days after.

Q When did you make the appointment with her to take her out riding.

A I did not make no appointment.

Q Did you just happen to come along, as she was in the lobby of the hotel and you invited her for a ride?

A Yes.

Q Did you take anybody else with you?

A No.

Q What time did you go out?

A In the evening.

Q Is she a married woman?

A Yes. I used to take a lot of them girls, mothers, sisters, daughters and all them people. They asked me for a ride and I give them for about ten, fifteen or twenty minutes a ride.

Q Where were you with Mrs. Fields on this night?

A Which night?

Q The night you took her out for a ride?

A Which night?

Q Did you take her out along on two nights; did you take her out alone for a ride on two nights?

A I answered that question yes, that I took her out the first time.

Q The first time was when?

A I don't remember the day.

Q Do you know where you went?

A Yes.

Q Where did you go?

A Away uptown.

Q Where did you go.

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

Q We went up to where the camp is.

THE COURT: I will allow it; it may be connected.

Q Where did you go?

A Where that camp is, the soldiers' camp, I don't know what's the name of the place.

Q Van Cortlandt Park?

A Away up town.

Q Van Cortlandt park?

A I think so, I ain't sure. Some place up there.

Q What is your occupation?

A Chauffeur.

Q Don't you know where Van Cortlandt Park is?

A No, because I do private calling. I sin't got no hacking license. I do private calls.

BY THE COURT:

Q Do you have to have a different license to go to Van Cortlandt Park or Coney Island?

A No sir.

Q You have been to Coney Island, however?

A Yes.

Q So that because you had no license is not reason you don't know?

A We don't know all the places.

Q As a matter of fact you do not know?

A No.

Q Where Van Cortlandt Park is?

A No sir. I know there is a soldiers' camp there.

BY MR. McDONALD:

Q What time did you leave the hotel that night on the first ride that you took with Mrs. Fields?

A I don't remember.

Q What time did you come back?

A I don't remember.

Q Now, the second night you went out with Mrs. Fields?

A I did not go out the second night.

Q I thought you said you took Mrs. Fields out alone twice for a ride?

A A few times I took Mrs. Field for a ride and Mrs.

Jackson.

Q I thought you said you took Mrs. Fields out riding twice?

A A few times; more than twice, maybe. I don't remember how many.

Q When was the second time you took her out?

A We went away with Mrs. Jackson.

Q When?

A I don't remember the day.

Q Now then, you say the first time that you took Mrs. Fields out was when?

A I don't remember, I said.

Q Well, it was not the day you met her?

A A few days after.

Q Do you remember when you met her?

A I don't remember.

Q Was it sometimes in August?

A Sometimes may be in August.

Q Well, was it in August?

A I don't remember.

Q You said it was the week before the 20th August, is that right?

A No sir.

Q Did you say that?

A As far as I know, I don't remember.

Q Was it a week before the 20th of August you first met this Mrs. Fields?

A Maybe three weeks; may be two weeks; I don't remember.

Q Well, it was not any longer than three weeks?

A I don't remember. What is the use of my lying?

Q Do you remember the first time you took her out?

A No sir.

Q Do you remember the fourth time you took her out?

A I remember the last time I took her out.

Q How many times did you take her out?

A A few times.

Three or four times; I don't remember. I did not mark it down.

Q How many times did you take her out?

A Maybe three or four times, may be more. I was in company with Mrs. Jacobsen once.

Q Do you mean Mrs. Jackson?

A Yes.

Q You call her Mrs. Jacobsen?

A Well, there is a Mr. Jacobsen and Mrs. Jackson. One night we went out for a ride together.

Q When was that?

A I don 't remember the night. I remember that time we went out for a ride. I remember the first time we went out for a ride and I remember the last time and it was a couple of more times I don't remember clear, because she was sick, Mrs. Field.

Q How do you know that?

A She asked me to give her a ride in that time she was sick.

Q When was that?

A I don't know, I can't answer. I don't remember the date.

Q Was she sick only one day?

A I don't know if she was sick two or three or four days or a week. That is up to her. I seen her a couple of times. Sometimes I see her in a day and may be not for two or three days.

Q On the night of August 20th did you use your car at all that night?

Gentlemen of the jury, the Court will take a recess until two o'clock. Remember what I have told you, The

law requires me to admonish you that you must not discuss this case with anyone. You must not talk about it among yourselves nor discuss it with strangers and you must not form or express an opinion on the question of the guilt or innocence of the defendant until you hear all the evidence, all that is to be said on both sides. In other words, you must keep an open mind on the case until you hear all the evidence, and then when it is committed to you at the end, that is the time to decide it and not before that.

Be back, please, at two o'clock.

Recess.

Afternoon Session. Trial resumed at 2 P.M.

CHARLES ROSSI CHIAFELO, the defendant, re-called to the stand for further cross-examination:

MR. MERCHANT: If your Honor please, may I have Peter Bianco sent over from the Tombs to save time?

THE COURT: Yes.

CROSS-EXAMINATION BY MR. McDONALD CONTINUED:

Q On the night of the 20th of August did you use your car at all that night?

A Yes sir.

Q Describe that car.

A A Packard car.

Q A seven-passenger?

A Yes sir.

Q How was it painted?

A Dark blue.

Q What time did you take your car out that night or that day?

A I did not take it out that day.

Q Who took it out?

A Some kid working in the garage.

Q Was the working for you?

A He generally do my work in the night.

Q When did he take it out?

A About two or three o'clock in the afternoon.

Q Were you with him when he took it out?

A No, I was in 46th Street.

Q Where?

A In the hotel.

Q Did you see him take it out?

A I did not see him in the garage when he took it out but he brought it over to the hotel to me.

Q Then you saw him at two or three o'clock?

A In the afternoon, yes sir.

Q Did it remain there then all day?

A He went over to 43rd Street.

Q He took it away?

A Yes sir.

Q Did he bring it back again?

A Yes.

Q What time?

A Right after seven or half-past six, something like that. He went in the garage because he had to do some job.

Q Did he bring it back to the hotel?

A Yes.

Q And left it there?

A Yes.

Q You saw it there in front of the hotel about six or seven o'clock?

A Yes sir, seven o'clock.

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Q That was after you had come back from the Times Square Building?

A Yes.

Q Did you see it before you went over to the Times Square Building?

A When I came back?

Q Yes?

A Yes.

Q You saw it after you came back?

A Yes sir.

Q What did you do then?

A I left the car there.

Q Where, in 46th Street?

A In 46th Street.

Q In front of the hotel?

A Yes.

Q How long did you leave it there?

A Until a quarter to nine o'clock, went over to the apartment house for Mrs. Jackson.

Q What was the number?

A I got the license number.

Q The number of the apartment house, I mean, at Mrs. Jackson's?

A 776 Eighth Avenue.

Q That is between what street?

A 47th and 48th Streets.

Q On what side of the way?

A On the east side of the way.

Q Did you go upstairs?

A Yes, sir.

Q What floor does she live on?

A Apartment 8.

Q What floor?

A I don't know what floor; maybe the second floor or the third, apartment 8.

Q How many times had you been to Mrs. Jackson's apartment before the 20th of August, 1917?

A A couple of times.

Q When was it you went there before?

A I don't remember. I was there the night we took a ride.

Q When was that?

A The week before may be.

Q Was that the first time you were there, a week before the 20th of August?

A As far as I remember. Once or twice, I don't remember distinctly.

Q The first time you went there, who did you see?

A I met Mrs. Jackson's brother.

Q What is his name?

A It started with an "L", -- Leonard.

Q Leonard Jackson?

A No, Leonard is the last name I suppose, but I know they call him Leonard.

Q Who else was there besides Mrs. Jackson and Leonard?

A Mrs. Jackson, Mr. Leonard and Mrs. Leonard, Mrs. Fields and Mr. Jacobson.

Q Did you take Mrs. Field over from the hotel?

A No, sir.

Q She was there?

A She was there.

Q That was not where you met Mrs. Field originally, was it, the first time?

A No, sir.

Q What time was it that you went up there that night; I mean the week before the 20th of August?

A I don't remember.

Q Was it late or early in the night?

A I don't remember, I remember it was in the evening, one night, I took them as far as I don't know just where. After talking a ride with Mrs. Jacobson, Mrs. Field and Mr. Jacobson, I took them as far as the apartment and left them there.

Q Where did you take them to?

A Well, took a ride up town.

Q Where did you take them from?

A I don't remember what place I took them from.

Q Do you know where you met them?

A Wait until I think about it.

MR. MERCHANT: Louder, please, I cannot hear you at all.

THE COURT: This witness has a bad habit, after apparently having finished his answer, of mumbling some few words that we cannot understand or hear. You have all the time you want to answer questions and if you don't understand the question say so.

Q I don't remember. I know I took a ride with them one night before.

Q Where did you go?

A We went uptown.

Q Where?

A Way up in the Bronx.

Q Where?

A On the west side.

Q Where?

A I don't know the place, in that park which was mentioned here before.

Q Van Cortlandt Park?

A I suppose; where the camp is for the soldiers, near the elevated station.

BY THE COURT:

Q Soldiers were in Pelham Bay Park also. Is that Van Cortlandt Park you mean?

A In the west side, I know.

Q You don't know anything about those parks?

A No, sir. We stopped in and had a few drinks and we came right back.

Q You said in your last answer up in the Bronx and then you said up on the west side. Which is it?

A The west side, what do you call it? Bronx and Manhattan. I don't know nothing about the city.

Q Which was it, the Bronx, or was it the west side?

A I am describing how we go up.

Q Well, how did you go up?

A We went up to Broadway and way up and hit the elevated, where the subway goes up. On the left hand side there is a restaurant and we stopped in the garden and had a few drinks.

Q Who drove the car?

A I had a kid driving the car.

Q You were not driving it?

A No.

Q You were not sitting with him?

A No, I was sitting inside and then I brought him all the way back.

Q You were sitting in the rear, were you?

A Yes.

Q With Mrs. Jackson and Mrs. Field?

A Yes.

Q Who else?

A Mr. Jacobson.

Q What time did you come back? -- that is the week before, on that trip?

A I don't remember, sir.

Q Well, lets get down to the 20th of August now; what time was it you went to Mrs. Jackson's?

A Maybe it was ten may be 5 minutes to 9 o'clock.

Q Whom did you see when you got upstairs?

A Mrs. Field, Mrs. Jackson, her brother and Mr. Jacobson.

Q Her brother?

A Mr. Jacobson.

Q Are you sure it is her brother?

A As far as I know.

Q How long did you remain there?

A Until about half past eleven or twelve.

Q Then where did you go?

A Then we took a ride for Mrs. Field to Broadway to 153rd Street and back again on Riverside Drive. I got off at 46th Street and I went home. I left Mrs. Field in the car with the boy who was driving the car and I went home.

Q You say you came down to 46th Street?

A When I got off 46th Street, yes.

Q Did you get off in front of the hotel?

A No, sir.

Q What time was it you got off at 46th Street?

A I don't know what time it was; about 5 minutes before I got arrested.

Q About what time was that?

A I did not look at the watch.

Q What part of 46th Street did you go to?

A I went home, in front of the hotel.

Q What number 46th Street or what part of it?

A Between Broadway and Sixth Avenue.

Q You got out of the car between those avenue?

A No, sir, I got off at 46th Street and Broadway.

Q On the corner of 46th Street and Broadway?

A Yes.

Q And you went home?

A I went right straight home, and I met a man, he wants hire the car from me, he has go a child to christen. He asked me how much I wanted.

Q Where did this talk take place?

A About two doors away from the hotel.

Q What was the name of the man?

A This man got arrested with me, I don't know his name, Julius or Jack. I call him Jack.

Q He was arrested with you?

A Yes.

Q You say you left this Mrs. Fields in the car?

A Yes, sir.

Q Did she get out?

A No, sir.

Q When you went out riding with her that night, were you and this girl sitting in the back seat?

A Yes, sir.

Q What was the name of the man driving the car?

A I call him Spanish Onion.

Q Did you leave the car in his possession?

A Yes. He worked in the garage. He generally does a call for anybody that pays him.

Q Did you give him the car to hack with?

A No. When I get a call some time and I cannot go, I send him.

BY THE COURT:

Q How many cars did you have?

A I had two. One belonged

to my brother-in-law but I sold that one.

Q On the 20th of August, how many cars did you have?

A One car.

BY MR. McDONALD:

Q Did you see Mrs. Fields passing the hotel that night on August 20th while you were standing talking to anybody?

A After 12 o'clock.

Q When you came home from the ride?

A No.

Q Did the car leave the place where you left it?

A The car left.

Q Where did it go?

A I don't know.

Q With Mrs. Fields in it?

A Yes.

Q She went out at 46th Street, or at least the car went off?

A Yes, sir.

Q Did you tell the driver where to go?

A I don't remember.

Q What conversation did you have with Mrs. Fields about her remaining in the car?

A I don't remember what conversation we had.

Q Did you know that she was going to stay in the car?

A Yes.

Q Had she said anything about staying in the car?

A I don't remember what she said.

Q Why did you leave her in the car then?

A When I went over to the hotel to go home?

Q Why did you leave her in the car there?

A Generally

she wants to take a ride in the car and it was late and I had to go home because in the morning I was supposed to get up early, and I got off.

Q And did she?

A She was to ride in the car that night. I don't remember whether she said it or not.

Q What name were you married under down at the City Hall?

A Charles Rossie Chiafalo.

Q And the name of the girl?

A Hanna Marks.

Q What day was it you were married?

A I don't remember the date, last week home time.

Q Are you sure it was last week?

A Yes, sir.

Q What was the name of the Alderman?

A He is a big man, I don't know his name. It must be on the paper.

Q Have you got the papers with you?

A No.

Q Who had got that?

A My wife.

Q Do you know a girl named Duffy living on 17th Street?

A Yes, sir.

Q Are you married to her?

A No, sir.

Q Sure about that?

A Sure, positive.

Q Did you ever live with her?

A Yes, sir.

Objected to. Objection overruled and exception taken.

Q How long did you live with her?

A Nine years ago.

Q Were you married to her then?

A No, sir.

Q Did you have any children with her?

A No, sir.

Q Sure about that?

A Sure about it.

Q Did she ever have any child while you were living with her?

Objected to as incompetent, irrelevant and immaterial.

Objection overruled and exception taken.

A She has got one.

Q While you were living with her, did she have any child?

A She has got one, I say.

Q Did she ever have that child while you were living with her?

A Yes, she has got one.

BY THE COURT:

Q She might have had one yesterday; you do not mean that; while you were living with her did she have any child?

A Yes, sir.

Q Did she have one child?

A Yes.

BY MR. McDONALD:

Q As a matter of fact, she has got a boy, hasn't she?

A No.

Q What is it, a girl?

A Yes.

Q This was born while you were living with her?

A No, sir.

Q How long were you living with her?

A I was working in a moving picture house.

Q How long were you living with her?

A I don't remember.

Q Was it a year?

A I don't remember.

Q Was it five months?

A I don't remember, sir. I was

Only a young boy then.

BY THE COURT:

Q Did you live with this woman as your wife?

A We were only friends.

Q You never lived with her as your wife?

A No, sir.

Q But you said you did. Didn't you understand the question when you were asked that question?

A She was a married woman.

Q That does not make any difference; you could live with a married woman as your wife?

A I don't know that.

Q What did you mean when you told the jury you were living with her?

A We were friendly. I used to go up in her house and visit her.

Q You never lived her as her husband?

A No.

Q Or as your common law wife or mistress?

A No, sir.

Q She was never your mistress?

A No, sir.

Q And you were not the father of her child?

A No, sir; the child was about twelve or thirteen years.

Q I asked you distinctly when this child was born, if it was born when you were living with her, and I understood you to state when you were living with her. You should understand the questions before you answer. Do you want to change that testimony about Duffy?

A No, what I said is true.

Q But you said things which are apparently contradictory.

Q What is the truth; did you ever live with Mrs. Duffy or Miss Duffy, whatever her name is?

A No, sir. I never

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lived with her.

Q As her husband?

A No, sir.

Q Your relations with her were friendly; you were visiting her as a friend?

A Yes, sir.

Q And you have nothing to do with any child she might have had?

A No, sir.

BY MR. McDONALD:

Q where did she live at that time?

A 18th Street.

Q What number?

A It was four or five hundred, I don't remember; something like that.

Q How long were you visiting this Mrs. Duffy?

A A few months, five or six months.

Q And that was about when?

A About nine years ago, about ten years ago.

Q How many times have you been convicted?

A Sent to prison?

Q How many times have you been convicted?

A Sent to prison? I got suspended sentence.

BY THE COURT:

Q How many times have you been convicted; sentence may have been suspended?

A I got two suspended sentences.

Q Just explain that to you Court. What were the crimes?

A 1910 or 1909, I don't remember the date.

BY MR. McDONALD:

Q What was that for?

A Carrying a concealed weapon.

BY THE COURT:

Q That is the first one?

A Yes.

Q In what court?

A Special Sessions.

BY MR. McDONALD:

Q What name did you give then?

A Charles Rossie.

Q Sure about it?

A Well, Rossie or Chiafalo, one of those two.

Q Did you have another suspended sentence?

A Two suspended sentences.

Q When was the second one?

A About a few months after; about a year after, I don't know.

Q What was that for?

A Carrying concealed weapon.

Q You got a suspended sentence on that too?

A That is the time I got shot.

Q That is the time you got shot?

A Yes.

Q How soon was that after the first conviction?

A I don't remember that.

Q Was it a year or two?

A I don't remember.

Q What do you mean when you say you got shot?

A I went into a restaurant and they shot me.

Q Did you do any shooting in the restaurant?

A No, sir.

Q Did you have a gun with you?

A No, sir, it was found in front of me, the gun.

BY THE COURT:

Q And you were convicted in Special Sessions of having a

gun at that time?

A Yes.

BY MR. McDONALD:

Q How many times were you shot that time?

A Four times.

Q And you don't remember the date?

A No.

Q Now, any other convictions?

A Five days.

Q When was that?

A The time they arrested me in a taxi cab robbery.

Q When was that?

A 1912.

Q What was the charge?

A They charged me with being implicated in a taxicab robbery, \$25,000.

Q What were you convicted of?

A Disorderly conduct.

BY THE COURT:

Q You got five days in the work house for disorderly conduct; is that all?

A I was placed under \$500 bond to keep the peace in Brooklyn.

Q Were you convicted?

A They placed me on a bond.

Q You mean the Court put you under bond?

A Yes, sir.

Q Of what offense?

A Suspicion.

Q There is no such offense known to the law?

A I don't know what the charge was.

Q There was some charge pending over there in the Magistrate's Court, was it?

A Yes.

Q And he put you under \$500, bond to keep the peace?

A Yes.

BY MR. McDONALD:

Q As a matter of fact, didn't you get six months in the

work house?

A No, sir.

Q Sure of that?

A Sure. I was placed under bond.

BY THE COURT:

Q Were you ever in the work house six months?

A No, sir.

Q Or for five months?

A No, sir.

Q Only five days?

A Yes, sir. I was in the hospital those five days.

Q You were never in the work house then as I understand?

A I was to have my finger prints.

Q In the work house?

A After five days.

Q When the five days were over, they took you over there to take your finger prints?

A Yes.

Q Mr. McDonald has asked you if you were there six months. You could not forget that if you were there six months, could you?

A No, sir.

BY MR. McDONALD:

Q Well, in 1912, what were you convicted of?

A Carrying a concealed weapon.

BY THE COURT:

Q Is that the conviction mentioned in the indictment that has been referred to?

MR. McDONALD: Yes, sir.

Q Is there any other conviction?

A That is all I remember.

Q You were never in Elmira?

A No.

Q Or the Penitentiary?

A No, sir.

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Q And only once in States Prison?

A Yes, sir.

BY MR. McDONALD:

Q How long have you known Sam Sacco?

A I met him in the prison.

Q What prison?

A Sing Sing Prison.

BY THE COURT:

Q When was that?

A 1913, I don't remember when but I met him in prison.

Q How long were you in prison on this?

A I done three years and a half.

Q The full three years and a half?

A No, sir, I got three and a half to seven years, and I done by three and a half and I came out.

Q How long did it take you to do the three and a half years?

A Three and a half years.

Q And it was some time during that three and a half years that you met Sacco?

A Yes, sir.

Q How long before you came out was that?

A A year and a half or two years.

Q You say you knew him in prison for a year and a half or two years?

A Something like that.

BY MR. McDONALD:

Q You say Sam Sacco never role in your car?

A No, sir.

Q While you were in it?

A Yes, sir.

Q Did you ever have Robert Rossi in the car?

A No, sir.

Q You were saying, at least at one time during your direct examination that you were on 103rd or 130th Street in the car, don't you remember that?

A No, sir.

Q You remember going to Willie Willie's to stay?

A No, sir, I don't even know the man; never met him.

Q You don't know where it is?

A No, sir.

Q Did you ever live in the neighborhood of 110th Street?

A No, sir.

Q Did your sister live there?

A No, sir.

Q You know Tony DeLuca?

A Yes, sir.

Q And Dominick?

A I met him once in prison. He came up with his brother.

Q What do you mean?

A He came up to visit me with his brother.

BY THE COURT:

Q Which one was in prison?

A Tony DeLuca.

Q Did Dominick come up there?

A Yes, sir.

Q And made your acquaintance?

A Yes, sir.

BY MR. McDONALD:

Q What was it; did Tony go to visit you too?

A Yes, the two brothers came up to visit me.

Q Was Sam Sacco there too?

A No, sir.

Q Sacco was in prison at that time, wasn't he?

A No, sir.

Q Did Sam Sacco go up with the two DeLucas to see you?

A I don't remember.

Q When was it that they came up to see you?

A I don't remember the date. I know he came up there with his brother to visit me.

Q And Sam Sacco?

A No, sir. I don't remember if Sacco was there. I used to have many visitors come up.

Q Was Sacco a frequent visitor up there?

A He came up there, yes.

Q To see you once?

A Yes. He used to come up to see other people.

Q Did he talk to you while you were up there?

A Yes, sir.

Q Where did you go with Mrs. Fields on this night, the 20th of August?

A I took Mrs. Fields from 776 Eighth Avenue; we went up over Broadway as far as 153rd Street and crossed over to Riverside Drive, and back again to 46th Street and then I got off.

Q Did you stop any place to have a drink?

A No, we stopped for gas, in eighty some old street.

Q Did you drive the car over there to 776 Eighth Avenue?

A Yes, sir.

Q Where did you get Spanish Onion from?

A From the garage.

Q Did you 'phone this man that you call Spanish Onion?

A I passed by through 49th Street, because the garage is on Eighth Avenue and he was putting a tire on. I said, "When you get through, come over to 776 Eighth Avenue, I am leaving the car in front of the door". He was fixing the battery

of the car when I came down from Mrs. Fields.

Q The battery of your car?

A Yes.

Q And you were up there how long?

A From 9 o'clock to half past 11 or quarter to 12.

Q And you did not mention any special time for Spanish go get the car?

A No, I told him as soon as he got through to come over there. He was putting on a tire for somebody.

Q Did he go upstairs?

A No, sir.

Q Did you look out of the window?

A No, sir, the apartment is in the back. I left the car outside in front of the door.

Q On the avenue?

A Yes, sir.

Q And you never looked out to see if it was still there?

A No.

Q What were you doing in the Jackson apartment?

A Mrs. Fields called me up for a ride.

Q When did she call you up?

A Before nine; a quarter to nine or twenty minutes to nine, something like that. Before nine o'clock, I am sure.

Q How did she call you up?

A She told me she was going to call me up, she was going with Mr. Jacobson and Mrs. Jackson to take a ride.

Q When did she tell you that?

A I met her in front of the hotel.

Q When was that?

A The same night.

Q What time was that?

A I don't remember the time.

Q Was that before you went to the doctor?

A Yes, sir, a little before.

Q And after you came back from the Times Square Building, you met her in front of the hotel?

A Yes, when I came down from my room.

Q You don't remember what time it was?

A No, sir.

Q Tell us everything that was said?

A She said she is going to meet Mrs. Jackson in the restaurant in 47th Street -- Mr. Jacobson, -- and they are going up to the apartment and then she would call me up. As soon as they reached the apartment, she said she was going to call me up in time to be over there to take a ride. When we were in her apartment, some friends of Mrs. Jackson's come in, a soldier, which I did not see him, he was in the other room.

Q What are you telling us?

A I am telling you now.

Q Well, how did she know where to call up?

A She knew my telephone number in Shelly's office.

Q When had you given her that?

A She had my card. She knew my number and called me up several times.

Q Did you give her your card?

A Yes.

Q When did you do that?

A Before. She always got me down there, because every time she passed by she always seen me in the front of the office. She knows I back, that I was getting my calls there.

Q You say you had given her your card?

A Yes.

Q When did you give her that?

A Before.

Q Before when?

A May be three or four days, I don't remember if I gave her a card or not, but she knows my telephone number.

Q She does?

A Yes.

Q Where did she get that?

A From me.

Q When did you give her that?

A Naturally I can't remember when, but I know I gave her the telephone number. If she gave her the same night or three or four nights previous, I don't know.

Q What is the telephone number?

A 3666 Bryant.

Q What name?

A Mr. Shelly's.

Q Is it there under your name?

A No sir. They know me. I used to get the calls there.

Q Do you know how she knew that she could get you there?

A She asked for me the first time I have called.

Q Did Mrs. Field know she could get you there any time she wanted?

A I told her. She was going to call me up.

Q Is that the time you told her where she could get you?

A I told her before.

Q When was that?

A I don't remember, I don't know.

Q What time was it Mrs. Jacobs called you up that night?

A Mrs. Jacob did not call me up; - Mrs. Field, twenty minutes to nine or a quarter to nine, right after I was speaking to Mr. Bushman.

Q About what time was it she left you to go to the 47th Street restaurant?

A She had an appointment over there in the restaurant with Mrs. Jackson. She worked over there.

Q What time was it she left you?

A I don't remember the time. I did not look.

Q How long before she called you up?

A She called me up about twenty minutes of nine.

Q How long before she called you up was it she left you to go to the 47th Street restaurant?

A Maybe an hour maybe three-quarters of an hour, I don't remember. I can't put down the time when I talked to the people.

MR. McDONALD: That is all.

RE-DIRECT EXAMINATION BY MR. MERCHANT:

Q Rossi, on the evening of August 20, 1917, did you

see any lawyer. I mean see him on the street/

A Yes.

Q Who was it?

A Mr. Lash.

MR. MERCHANT: That is all.

BY MR. McDONALD:

Q Who else did you see that night?

A I saw the doctor and Mr. Bushman and Mr. Lash I seen talking to the barber.

Q What time of the day was that?

A About a quarter to nine I saw him, when I crossed him from answering the telephone, but I did not speak to him.

Q You say you did not talk with Mr. Lash?

A I don't remember if said, "Hello", I don't remember, but I saw him talking with this barber, right on the sidewalk in front of the barber-shop. It was about two doors away from Mr. Shelly's office.

Q You did not have any long conversation with him at all?

A No.

Q You don't know whether you said "Hello" to him or not?

A I don't remember if I said "Good evening", or anything.

Q Did he talk to you?

A I don't remember.

Q Did he see you?

A I suppose he did.

BY THE COURT:

Q How have you known him?

A Maybe six or seven months.

Q You knew him on this night?

A I spoke to him once. I knew him to see him.

Q But you knew him before the 20th of August?

A Yes.

Q You had met him when?

A I met him once.

Q Under what circumstances?

A He had a case for a case for a friend of mine, named Slosman.

Q What kind of a case?

A I don't know.

Q How did you come to know a lawyer if he had a case for a friend of yours?

A I met him in the court, in the courtroom.

Q Were you a witness in the case?

A No sir.

Q How were you interested in the case?

A I was not interested in the case at all.

Q How did you come to meet the lawyer?

A I think I came down about Mr. Cesare Barra on account I had a case in the traffic court.

Q It was a man who had a case for a friend of yours, and you saw him in court once?

A Yes.

Q And you never had any talk with him?

A Not as far as I know.

Q And yet he remembered you and you remembered him?

A I got an introduction, that was all.

Q Then you must have said something if you were introduced?

A I don't know what the conversation was. I know it was that Barra case I had, a case in the traffic court for the eight foot law, and Mr. Barra was my counsel and I came over to get him.

Q Did Mr. Barra introduce you to Mr. Lash?

A No sir.

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Q Someone else did?

A Yes.

MR. MERCHANT: That is all.

MR. McDONALD: No further questions.

DR. LUDWIG L. COHAN, of 75 West 47th Street, a witness called on behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERCHANT:

Q Dr. Cohan, you are a regular practicing physician in New York State?

A I am.

Q Where is your office?

A 75 West 47th Street.

Q Where was your office in August, 1917?

A 75 West 47th Street.

Q Do you know the defendant, Charles Rossi, sitting here?

A I do.

Q When did you first meet him?

A On the 13th of August, 1917.

Q Do you recall the 20th of August, 1917?

A Yes sir.

Q Can you state whether or not you saw the defendant on that day?

A I did see him.

Q Where?

A In my office.

Q About what time?

A About eight o'clock.

Q In the afternoon in the morning?

A In the evening.

Q How long did he remain at your office?

A Until about 8:30.

Q Where you treating him professionally at the time?

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A I was.

Q Do you recall that particular day?

A I do.

Q Have you any particular reason that brings it to your mind, any record of any kind?

A I keep a card system.

Q Have you got the card with you?

A I have.

Q Will you produce it?

A (Witness producing card).

MR. MERCHANT: I offer it for identification.

Card marked Defendant's Exhibit C for identification.

Q I show you a card marked Defendant's Exhibit C for identification. Is that the card to which you refer?

A That is.

Q Do you keep similar cards for each and every patient?

A I do.

Q Is this the card which you kept for this defendant?

A Yes sir.

Q What entries are you accustomed to make on these cards?

THE COURT: I will exclude that as immaterial.

MR. MERCHANT: Exception.

THE COURT: That card is not admissible in evidence and I will not allow the contents in evidence by indirection.

MR. McDONALD: May I see the card?

MR. MERCHANT: Is only marked for identification.

THE COURT: The People have a right to examine anything you show this witness. If it is shown to the witness it must be shown to the District Attorney also upon his request. Any paper that is shown to any witness must be shown to the opposing counsel.

Q Did the defendant on the 20th of August, 1917, pay you any money for professional services?

A He did.

Q After looking at the card, Defendant's Exhibit C for identification are you prepared to say that it was on that date, August 20th, and at the time at which you testify between eight and eight-thirty P.M.

THE COURT: I will exclude that question. He has not stated that he needed any refreshing of his recollection.

BY THE COURT:

Q You remember this without your card, do you not?

A Yes, I do.

MR. MERCHANT: Your witness.

THE COURT: If he needs the paper to refresh his recollection he may refresh it, but his money is perfect on the subject, I understand.

BY THE COURT:

Q Isn't it?

A Yes sir.

CROSS EXAMINATION BY MR. McDONALD:

Q Whatever days did he see you?

A On the first day he came, August 13th.

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Q What other days?

A August 20th.

Q What other days?

A That was all.

Q What time did he come there?

A About 8 o'clock.

Q On the 13th of August?

A I don't remember on the 13th of August, what time it was.

Q You remember the 20th?

A I do.

Q What time did he come on the 27th of August?

A He did not come on the 27th of August.

Q What time did he come on the 3rd of September?

A He did not come on the 3rd of September.

Q On the 10th?

A He did not come then.

THE COURT: If you refer to part of the card I will let it all in evidence. It is proper to admit it on cross examination, but the witness cannot corroborate himself any writing of his own. That is an elementary principle. He may refresh his recollection, but if you cross-examine him about it, if part of it goes in it will all go in. You have a right to cross-examine on it if you wish to.

Q What arrangement did you make with him?

A In price?

Q Yes.

A \$3 per week.

Q How often used he to come?

A Come every day.

Q When was that arrangement made?

A On the 13th of August.

Q Did he come every day?

A He came every day.

Q For how long?

A Until the 20th of August inclusive.

Q Did he pay you anything then?

A He did.

Q On the 13th of August?

A On the 20th of August.

Q Did he pay you anything on the 13th of August?

A He did.

Q What did he pay you then?

A \$3.

Q Take a look at this card? When did you put those red ink marks on there?

A I did not put those marks on.

MR. MERCHANT: You can put the card in evidence.

MR. McDONALD: I will offer it in evidence.

Card marked People's Exhibit 6 in evidence.

A Those were not put on mby me but by my clerk.

Q When were they put on?

A 20th of August.

Q Why weren't they put on the 13th of August?

A Because I made the price on the 13th at \$3 a week.

Q On the 13th of August?

A Yes, and then when he came around on the 20th of August my clerk he filled that in.

Q Do you know when your clerk filled these red ink marks in on the card?

A I don't know when.

Q You say you did not fill them in?

A I did not.

Q Did you put these pencil marks on it?

A I put just \$3 per week on there.

Q What does that mean (indicating)?

A Receipts when due.

Q Is it your custom to put down four weeks ahead?

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A We do that sometimes.

Q Do you know whether that writing was put down on the 20th of August?

A I don't know that.

Q You did not mark anything on this card at all in the red writing?

A Just the \$3 per week.

Q That is in black ink.

A That was made on the 13th of August.

Q Do you have any other cards or accounts with you?

A No sir.

Q Do you write the history of the case?

A I did not.

Q Where was the history from this card received?

A My clerk wrote the history. I dictated it.

Q What did you do on this card?

A I wrote down the \$3 per week when I received the first payment.

Q Is that all you put down?

A Yes sir.

Q Just the \$3 a week?

A Yes sir.

Q Did you write Charles Rossi's name?

A No. I dictated that to my clerk.

Q You wanted to be sure about the \$3 a week?

A When I received the \$3 I marked down \$3 a week so as to be sure.

Q On this card?

A Yes.

Q And then you handed it to your clerk?

A I took the money.

Q You handed the card to your clerk?

A I put the card into the receptacle where I keep them.

Q What did you treat him for?

A Chronic gonorrhoea.

Q What time did Rossi come in on the 14th of August?

A I don't remember that.

Q What time did he come in on the 15th of August?

A I don't remember?

Q What time did he come in on the 16th?

A I don't remember.

Q Was it night or morning?

A In the evening.

Q What are your offices hours?

A From one to eight.

Q One to eight at night?

A From one P.M. to eight P.M.

Q What time was it he came in on the 13th?

A I don't remember?

Q On the 16th?

A I don't remember.

Q On the 17th?

A I don't remember.

Q What time on the 18th?

A I don't remember.

Q Did he come in on the 18th?

A I don't remember.

Q Did he come in on the 19th?

A I don't remember that.

Q Did he come in on the 14th?

A I don't remember.

Q Have you seen him since he was indicted?

A Yes, I treated him lately.

Q He was in your office when?

A About ten days ago.

Q Did you make out a new card for him?

A No.

Q There is no record here is there?

A On that card, no, there is no record.

Q Have you any record of his recent visits?

A I don't think we have any.

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Q Do you know whether you have or not?

A I have not looked it up, I am not positive.

Q It would be under Rossi, wouldn't?

A Yes.

Q That was the name he gave you on the 13th of August?

A Yes sir.

Q What address did he give you?

A Somewhere around my neighborhood, I don't remember.

BY THE COURT:

Q What is your neighborhood?

A 47th Street, No. 75 West.

BY MR. MCDONALE:

Q Were you treating him under the old agreement?

A At the same price.

Q \$3 a week?

A Yes.

Q How much did he pay you then, lately?

A For three or four weeks, \$3 a week.

Q When did he first pay you \$3 a week under the second period of the visits?

A About four weeks.

Q When did he start in?

A About five or six weeks ago.

BY THE COURT:

Q But you say you have no record of it.

A We did not keep a record of the last eight, because we were not sure how long he was going to be treated; maybe for a few days and maybe a week or two.

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Q You have a card for all your clients?

A Yes.

BY MR. MCDONALD:

Q You did not keep a record of the last one?

A I may have it, if I took it up, I might come across it.

Q You did not look up for the entire record of Rossi?

A I was supposed to bring this record to the District Attorney, Mr. Brothers. That is why I got it.

Q Why didn't you bring it to Mr. Brothers?

A I did bring it. That is I gave it to counsel.

Q Who?

A Counsellor Merchant.

Q When did you give it to counselor Merchant?

A When I was called down here a few weeks ago.

Q Did you give it to Mr. Merchant to give to Mr. Brothers?

A Yes, Mr. Brothers asked me whether I would do him a favor and produce the card.

Q Why didn't you?

A I did.

Q You did not give it to Mr. Brothers.

A It was arranged through the counsel Mr. Merchant, to produce the card.

Q Did you arrange with Mr. Merchant to give it to Assistant District Attorney Brothers?

A I arranged with Mr. Brothers to give it to him, to give it through counsel, to produce the card.

BY THE COURT:

Q Did you arrange it with Mr. Brothers?

A Yes.

Q You told Mr. Brothers you would send it down by Mr. Merchant?

A Yes.

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Q Is that it?

A Yes sir.

BY MR. McDONALD:

Q And you say you have not looked for the other card?

A No.

Q Will you look for it?

A I will.

Q And bring it down?

A I will, if I find it.

Q Suppose you come back anyway and let us know whether you have it or not?

A I will do that.

Q Why did you wait until 8:30 on the night of the 20th of August?

A I waited until 8 o'clock, When I was closing up and washing my hands, Rossi came in and I told him the next time if he comes in so late I would not treat him anymore, because it does not pay me to charge a man just \$3 a week and wait for him until after 8 o'clock.

Q You did not know he was coming that night?

A Well, I was just closing up, washing my hands and he came in. That is how I remember about what time he did come in, because I remembered telling him that if he doesn't come in the next time until as late as he did then, that I would not treat him anymore.

Q What time did your last patient leave before 8 o'clock that night?

A I don't remember.

Q Don't you wash your hands after you treat each patient?

A Yes. But then I washed up and put on my coat and turned off the light.

BY THE COURT:

Q How long have you known Rossi?

A Just from the 13th of August, I never saw him before.

Q He was not any special patient of yours?

A He was recommended through another patient.

BY MR. MERCHANT:

Q These cards you keep in the ordinary course of business, card People's Exhibit 6?

A Yes sir.

Q Did you give Rossi a receipt since December first?

A Yes.

Q As a matter of fact, you brought this card to me at my request, or sent it to me?

A Through the request of Assistant District Attorney Brothers, through you.

Q That is, you never spoke to Mr. Brothers directly about it, but you spoke to Mr. Merchant?

A I spoke directly to Mr. Brothers in this building somewhere.

Q And at my request you came down and spoke to Mr. Brothers and told him that Rossi had been to your office that night?

A Yes.

Q When was that?

A Several weeks ago.

Q Who first spoke to you about whether Rossi was at your office that night or not?

A When I was called down here.

BY THE COURT:

Q You have been a doctor many years?

A Yes. 13.

Q Where were you educated?

A In this country.

Q What college?

A Physicians and Surgeons, Columbia

University.

Q A graduate from Columbia?

A Yes.

Q What college did you go to before you went to medical college?

A I went to high school.

Q You are a regular graduate to the P. & S.?

A Yes sir.

Q Sure?

A Positive.

Q And you have been practicing in New York 13 years you say?

A Yes.

Q I ask you a very plain question. I ask you who first spoke to you about Rossi's whereabouts on the 20th of August?

A The Assistant District Attorney.

Q How did the Assistant District Attorney know that you knew where he was on the 20th of August?

A When I was called down to the District Attorney's.

Q Do you mean to say no one had spoken to you about this case until you were called down by the District Attorney?

A I heard about the arrest.

Q He was the first one you heard about it from or who first spoke to you?

A Some little boys around there.

Q Who were the boys that were around there?

A There was a fellow named John.

Q John what?

A John Garafelos. I don't remember the others.

Q Have you ever been a witness before in a criminal case?

A Civil cases but not incriminal cases.

Q In a criminal case?

A No, I don't remember that.

It may have been quite a few years ago, not lately.

Q You ought to remember. You have been practicing 13 years. It is quite an important event in your life to be here?

A Positively.

Q We want your best recollection and we want the truth. You understand I am not making any suggestions not to tell the truth but we want to know how this case was first called to your attention?

A Some of the boys came up and told me that Rossi was arrested.

Q When was that?

A That was several days after the 20th.

Q Did that interest you?

A It did.

Q Did they tell you what he was charged with?

A That he was arrested for some crime committed. I don't remember the case exactly, that Rossi was arrested on some murder committed or something of that sort.

Q Some trifling thing of that kind?

A A serious matter.

Q But it made no impression on you? You don't know what the crime was?

A No, they themselves didn't know.

Q How did they come to talk to you about it?

A This John Garafelos, he came up. He was up there practically every day.

Q What did he say to you about the case?

A He said

Charley Rossi was arrested and held for some crime. I don't know what just. That is about all as far as I remember.

Q Was anything said about your connection with Rossi at that time?

A He was a patient. That is about all I know.

Q Did they tell you the details of the crime as to the time when it was committed?

A No.

Q Who first suggested that you should be a witness in this case, or to see the District Attorney?

A The counsel sent me up.

Q Which counsel?

A Counsellor Merchant;

Q You went to see Counsellor Merchant?

A I never seen Counsellor Merchant until I met him in the District Attorney's office in this building.

Q Somebody purporting to come from the Counsellor came to see you?

A Yes.

Q Who was that came from the Counsellor, or said he came from the Counsellor?

A I don't remember, I never saw the party. My clerk saw the party and he told me.

Q He told you what, your clerk?

A That they wanted me in reference to the trial of Rossi.

Q That who wanted you?

A That the lawyer wanted me.

Q That Rossi's lawyer wanted you?

A Yes.

Q When was that?

A I don't remember.

Q It was not yesterday, was it?

A No.

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Q Was it a week ago?

A That must have been about six or seven weeks ago.

Q That was the first time it was ever suggested to you that you might have to be a witness?

A Yes.

Q Was that before this talk about Mr. Brothers or after?

A That was before. That is I was told that they wanted me. I was not in the office at the time.

Q But you went down to see Mr. Merchant?

A No, I never saw Mr. Merchant until I met him in the District Attorney's office.

Q After this talk about your clerk telling you that a message had been sent to you, didn't you do anything at all.

A No, I was not positive where to go or what to do.

Q Then you heard again?

A Yes.

Q How did you hear the second time?

A A young lady came up to see me.

Q What was her name?

A I don't know. She told me that Mr. Merchant would like to see me down at the assistant District Attorney Brothers' office.

Q She did not intimate to you anything to you about the nature of the communications you were to make?

A No, she simply said the District Attorney wanted me to come down to testify.

Q Now as I understand, it you remember distinctly now on the 20th of August dictating these entries to your clerk?

A Which part?

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Q The entry concerning the 20th?

A The 20th; the card will show.

Q You said you did not need anything to refresh your recollection at all and you needed no card or anything else, is that so?

A Yes.

Q Do I understand you to say that your recollection of the visit of this men is so clear that you remember every detail of it?

A Yes, I remember it on Monday night.

Q It happened on August 20th?

A Yes, Monday night.

Q But that is the only visit of which you can give any details?

A As soon as I heard of this arrest my memory kind of came back to the last day that I saw him. I ever passed the remark, "Rossi was only in to see us a few days ago in the office." and we were wondering how he did not show up after the 20th and my memory came back to the 20th when I heard of the arrest.

BY MR. McDONALD:

Q But could not that have been on the 19th of August?

A No, that was the 20th of August, because that is the date I received the \$3.

Q But you did not make any entry of having received the \$3.

A I received the #3 in person and the clerk put it down on the card whatever it is.

BY THE COURT:

Q That is not your handwriting?

A No. That is his.

Q You do not know when he made the entry?

A As a rule --

Q I am not speaking about the rule. Are you willing to swear to the jury that you saw him make that entry on the 20th?

A No.

Q But you do remember all the other things you told us?

A Yes.

BY MR. McDONALD:

Q What is the name of your clerk?

A Mr. George Murphy.

Q Is he supposed to be in the office?

A Yes sir.

Q All day?

A Most of the time. He does the writing and he does all assisting taking charge of the telephone he acts as an interpreter.

Q Did the defendant give the name of Charley Young, or did you know him as Charley Young?

A During the time I was treating him I heard the name Charley Young passed.

BY THE COURT:

Q What do you mean by "passed"?

A The name was brought up, of Charley Young.

Q While you were treating him?

A Yes.

Q How do you mean?

A A friend of his came up with him, and he passed the remark about the name, of Charley Young.

Q You never had any friends of his present while you were treating him; what kind of treatments is you give him?

A I gave him wash outs and electrical treatment for the rectum.

Q You did not have any of his friends present while that operation was going on?

A They were in the reception room.

Q You mean you heard some one call him Charley Young?

A Yes, that is it.

Q But had written down Charley Rossi?

A My clerk did.

MR. McDONALD: That is all.

BY MR. MERCHANT:

Q You knew him by the name of Charley Rossi?

A Yes.

Q You said you were a graduate of the P. & S., Columbia? That is Columbia University medical school?

A Yes sir.

Q And after looking at this card, People's Exhibit 6 in evidence, you are able to say it was that day, August 20th that he was there?

A Yes sir.

Q After looking at this card?

A Irrespective of the card.

MR. MERCHANT: That is all.

SIDNEY R. LASH, of 51 Chambers Street, a witness called on behalf of the Defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERCHANT:

Q Where do you live?

A I live at 10 Pinehurst Avenue.

Q You are attorney and counsellor of law of this State?

A Yes sir, I am.

Q You know the defendant Charles Rossi?

A Well, I

don't know what you mean by knowing him.

Q You know him by sight?

a Yes.

Q Do you know him to speak to?

A Yes sir.

Q How long have you known him?

A Well, I should say:- I was introduced to him, I think, in June of 1916.

Q And from June, 1916, until August, 1917, did you see him from time to time?

A I could not say that I said. I remember seeing him at Times Square one day, to the west of the Times Square building but I did not speak to him.

Q However in the month of August, 1917, you knew him by sight, did you not?

A Yes sir.

Q You are not particularly friendly, are you?

Objected to and objection overruled.

Q You are not a particular friend of his?

A No, I am not. I have reason to be otherwise.

Q Do you recall seeing Rossi after six o'clock at night one *** during the latter part of August, 1917?

A Yes, I do.

Q Could you, without making a legal and particular investigation, say what particular date in August that was?

A Do you mean could I now?

Q I mean could you have done it when I first telephoned you about it?

A No, I could not place the date.

Q Since then have you made or caused that examination to be made?

A At the instigation of your office.

Q Since then have you made or caused that examination to be made?

A I did not cause it to be made. Mr. Merchant caused it.

Q Well, has such investigation been made?

A Yes.

Q Are you now prepared to say on what day or what evening you saw Rossi?

A Basing my testing entirely upon the examination of the record.

Q Who made that examination?

A My cousin.

Q What is his name?

A Ralph Lauer.

Q Will you say what time of the evening it was that you saw *** on this evening you speak you sepak of?

A That I could not do, with any definiteness. I can place it approximately.

Q Approximately at what time?

A Well, I should say anywheres from 8:10 to 8:30. I would not want to place it any closer than that. It might be a little earlier or a little than that.

Q Would you say some time then between 8 and a quarter to nine?

A Yes, that would be reasonable.

Q What evening was that?

A It was Monday evening, August 20th, 1917.

Q Where did you see him?

A About, I should say, about from 90 to 100 Street, east of Broadway on the southerly side of 46ht Street.

MR. MERCHANT: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q How many times did you see the defendant here?

A I don't remember seeing him but twice other than the night in question.

Q When was the first time?

A I tried a case I think it was in June, 1916, in Special Sessions, Part VI. That is, I intended to try it but pleaded my man guilty.

Q Never mind that; when?

A I think it was June, 1916. I can refresh my recollection and place it definitely as to the date if your let me examine the records of Special Sessions, but in the month of June, 1916.

Q You did not have to look up the records before you came here?

A I did not. I have not given this case any time. There is no reason why I should, I am not interested in it.

THE COURT: Please not answer the attorney like that. Just answer questions.

BY THE COURT:

Q You did not look it up?

A I did not look it up.

Q Didn't you know you would be asked about it?

A I did not think I would be asked that question.

Q Did you know that you would testify to here?

A Yes, but I did not think I would be asked that particular question.

BY MR. McDONALD:

Q You say you saw him on the second occasion where?

A On the westerly side of the Times Square building.

Q When?

A I don't remember when; I have not the slightest

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recollection.

Q Was it after the trial of the case in Special Sessions?

A Yes, some months after.

Q Did you have any conversation with him?

A I did not.

Q Did you have any conversation with him when you met him in June? 1916?

A Yes, I did.

Q You say you saw him again on the 20th of August?

A Yes.

Q About what time?

A Well, I should judge it was anywhere from 8 to 8:10 to 8:30.

Q What time did you leave your office that day?

A About a quarter to five.

Q Where did you go?

A I went up to 36th Street.

Q Where did you go in 36th Street?

A I visited a club there.

Q Then after that how long did you remain in the club?

A I have my dinner there; about 7 o'clock.

Q Then what?

A When I finished dinner I walked westerly to the easterly side of Broadway, up Broadway to 46th Street and saw a client.

Q What is the name of the man you saw at 46th Street?

A Felix Patridito. He is a client of mine. I defend him in a case in Nassau County.

Q Patridito?

A Patridito (Spelling).

Q What time did you finish dinner?

A Well, I should say approximately half-past seven or twenty-five minutes of

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eight.

Q You left your office at a quarter to five?

A Yes.

Q And went to this club?

A Yes.

Q And you remained there; you were not eating there all the time?

A I was not.

Q You say you finished your dinner about time?

A Just rudely estimating, I don't know, it takes me at least half an hour to eat.

Q What was it the defendant said to you on the 20th of August?

A He did not say anything to me.

Q Did he pass you?

A I passed him.

Q As you just left the barber?

A I had not been in there yet.

Q Were you talking to him?

A To whom?

Q To the barber?

A Yes sir.

Q Where?

A In his barber-shop, after I passed Young.

BY THE COURT:

Q This Patridito is a barber?

A He runs a barber shop at 46th Street. I defended him.

Q What number in 46th Street is that?

A I think 165 West 46th, just right east of James' drug store.

Q Near the Remington Hotel; where is the Remington Hotel?

A I think that is east of that.

Q You know that neighborhood pretty well?

A No, but I know the Remington Hotel because I happened to be attorney in the case of Boudoin against Bouroin, the famous divorce

case and the co-respondent was caught in that hotel. That is the reason I know.

Q This barber you defended in Nassau County?

A Yes

Q That is why you went there to get a shave?

A No sir.

BY MR. McDONALD:

Q You say you had not gone into the barber shop?

A Not yet.

Q But that the defendant passed you?

A No, he did not pass me.

Q You passed him?

A Yes. He was stationary. He was standing still opposite the barber shop, on the other side of the street.

Q And this was at what time?

A I fixed ait at about 8 o'clock or 10 minutes after. I could not fix the time with any definiteness.

Q The second time you met him was in the day time or in the night time?

A I think it was a Saturday afternoon. I am not sure.

Q Did the defendant speak to you on the night of August 20th?

A No, he did not. He has a good reason for not.

Q I did not ask you that.

THE COURT: I told you to answer questions.

BY THE COURT:

Q You did not speak to him and he did not speak to you?

A No sir.

Q You just passed on and went to the barber shop?

A Yes.

Q And you are willing to swear now you saw this man and not anyone else at that place and at that time?

A I do not see how it could be anybody else.

BY MR. McDONLAD:

Q Who did you speak to about this case?

A A Woman who came to my office and said she was the wife of the defendant.

Q When?

A sometimes after he had been arrested and bail fixed.

Q When was that?

A I don't remember the date.

MR. McDONALD: That is all.

BY MR. MERCHANT:

Q I also spoke you afterwards about it?

A The first time I never spoke to you, Mr. Merchant, about it was a day or so ago.

MR. MERCHANT: That is all.

THE WITNESS: Your Honor, may I speak to counsel before he withdraws me as a witness? I think some things should be explained here by documentary proof in justice to the defendant and to myself.

THE COURT: Counsel understands his business. He may recall you if necessary.

ERNARD BUSHMAN, of 162 West 46th Street, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRCT EXAMINATION BY MR. MERCHANT:

Q Mr. Bushman, where do you live?

A 162 West 46th Street.

Q What is your business?

A Automobile renting.

Q Where is your place of business?

A 162 West 46th Street.

Q How near to the Remington Hotel is that?

A Well, ten doors east.

Q On the other side of the street?

A Yes sir.

BY THE COURT:

Q That is, the Remington Hotel is toward the east?

A Yes.

Q They said it was 129; you are nearer Broadway?

A Yes.

Q And the other is nearer 6th Avenue?

A Yes, and on the other side.

BY MR. MERCHANT:

Q Do you know the defendant Charles Rossi?

A Yes sir.

Q By the way, you know this man, Mr. Lash, Who just left the stand?

A No sir.

Q Or Dr. Cohen, who has testified here?

A No sir.

Q How long have you known Rossi?

A I suppose I spoke to him a half dozen times in my life.

Q How long; when did you first see him?

A Around the 3rd or 4th of August, 1917.

Q Do you recall having seen Rossi on August 20th, 1917?

A Yes sir.

Q Do you recall that of your own independent recollection or do you have to have some papers to refresh your recollection or other memoranda to fix the date for you?

A I have a record to fix the date.

Q At what time was it; in the day or evening, that you saw Rossi on August 20th, 1917?

THE COURT: You have a right to exhaust his recollection before you make use of any papers.

A Witness may swear after looking at a paper that his recollection is refreshed. The record we are not concerned with at all.

BY THE COURT:

Q You say you saw him on the 20th of August?

A Yes sir.

Q You remember that now?

A Yes sir, I do.

Q Without any aid?

A Without the aid of anything.

Q What time on the 20th of August did you see him?

A About twenty-five or twenty minutes to nine.

BY MR. MERCHANT:

Q In the afternoon or in the morning?

A In the evening.

Q Where did you see him?

A Right in front of my office door.

Q Did you have any talk with him at that time?

A Yes.

Q Did you notice where he was coming from?

A He came from the Auto Renting office.

Q Did you see where he went?

A He went towards 6th Avenue, that is all.

Q How long were you talking to him?

A Two minutes, possibly

a minute.

Q What did you say to him and what did he say to you?

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

THE COURT: I will allow it.

A I told him he lost a call and that I took the call.

Q Do you mean somebody wanted to rent his automobile?

A Yes.

Q You knew that he had an automobile and that he rented it?

A Yes.

Q Go ahead?

A I said?

A I said, "charley, there was a customer here looking for your car and I could not see you or could not see your car, so I took the call". He said, "Oh, that is all right", and walked towards 6th Avenue. That is all I know about it. I marked the call in the book, which I do in every other call. They are all numbered.

Q Do you put down in the book the day and hour?

A Yes sir. I rent them out by the hour and that is why I must have the time.

Q You say you have a memorandum of that?

THE COURT: I will exclude that question.

MR. MERCHANT: I will try to get it out properly.

THE COURT: You cannot refer to any memorandum.

His entries are no evidence. On cross-examination that can be brought out.

Q Well, you never had any social relations with Rossi; I

mean you never have been a particular friend of his or anything?

A No. He came into the office in the early part of August and told me he had a car and sometimes he has extra calls to give away and if I would take them. I said I would gladly take them. That is why I am in business. That is the way I came to meet him.

MR. MERCHANT: Your witness.

CROSS-EXAMINATION BY MR. McDONALD:

Q How many cars have you?

A Two running now. I had six.

Q How many did you have on August 20th, 1917?

A Two.

Q You receive calls right along, don't you, for those cars?

A Yes.

Q And you make a record of each call that you receive?

A Yes.

Q At the time you saw him on the 20th of August you say it was about what time?

A Twenty-five or twenty minutes of nine.

Q When did you see him before the 20th of August?

A Possibly four or five days before, I don't know.

Q Where did you see him?

A Passing the office, to say "Hello", or something like that.

Q Do you know about what time of the day or night it was?

A No, I do not.

Q How often did you see him?

A I should judge about six or seven times in my life.

BY THE COURT:

Q Well, prior to the 20th of August about how often?

A Say about six times prior to the 20th.

Q And since then have you seen him often?

A Since then he came to ask me to be a witness.

BY MR. McDONALD:

Q You say you have not, since he was indicted on this charge?

A He was in the office and asked me would I come down here, so I told him I was busy. Then they gave me a summons to come down.

Q You looked up the 20th of August?

A Yes, and I offered it to the District Attorney's office.

Q To whom?

A One of the District Attorneys.

Q What was the name of the call?

A I don't know the party's name, so I marked "C. Young" on the book.

Q Did you do the marking?

A Yes.

Q Did you receive a call any other time that night?

A Oh, I judge I received half a dozen calls that night.

Q Did you send your cars out for those calls?

A Yes.

Q At the time you saw the defendant, by the way, what name did you know him by?

A Charley Young.

Q Did you ever know him under the name of Rossi?

A No, I did not. I didn't know nothing about him until after he was arrested.

Q You know him since August?

A Yes.

BY THE COURT:

Q How many calls have you in your book, "C. Young", prior to August 20th?

A I have one.

Q One other?

A One other al he gave me.

Q When was that?

A 12th of August.

Q He did not give you this one?

A His customer asked for him.

Q Some one over the phone asked for Charley Young.

A They came to the office.

Q What did they say?

A They said, "Is Charley Young's car here?" I said, "No, I don't see his car."

Q Was his car ever in your place?

A No.

Q He did not store his car in your place?

A No.

Q where was his place for doing business?

A I don't know.

Q But some persons that you don't know came to your place and asked if Charley Young's car was there?

A Yes, a lady.

Q And when Charley Young's car was not there they took one of yours?

A That is right.

Q Was that the first or last call you had that night?

A Well, I could not say. Possibly it was in between, it was possibly the third call that night.

Q What bargain did you make with the lady that came there?

A Five hours for \$15. To Coney Island.

Q She wanted to go to Coney Island?

A To the Hotel Biltmore first and from there to Coney Island, so I said five hours, \$15.

Q And you collected your \$15?

A Yes, and sent out

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the car. The driver collected the \$15.

Q And your car came back?

A Yes.

BY MR. McDONALD:

Q Do you know a young man that hangs out around 46th Street by the name of Spanish Onion?

A No sir.

Q You say you talked to Rossi and then he went towards Sixth Avenue?

A Yes sir.

Q Did you see him go to an office across there, across the street, to Shelly?

A I call him. He was in the street and I called him over and told him he lost a call.

Q It was not the other way, about the Shelly people calling to him while he was talking to you?

A I don't know that.

Q Did Shelly people call to the defendant Rossi while he was talking to you and say there was a telephone call for him?

A I did not see that.

Q If it happened while he was talking to you, you would know about it?

A Surely I would.

Q You say that after the conversation on that you had with Rossi, Rossi went towards Sixth Avenue?

A Yes sir.

Q He did not go across the street to the Shelly automobile renting people?

A No sir, he did not.

BY THE COURT:

Q Is Shelly's an automobiles renting place, too?

A Yes, right opposite my office.

Q A rival in business?

A Well, --

Q It is not connected with you at all?

A No sir, not at all.

Q Where did you see Charley Young come from?

A He was on the opposite side of the street? I should judge almost in front of Shelly's office and I called for him, called him over and told him about this call he missed, \$158 call.

BY THE COURT:

Q Why did you tell him you had the \$15 call?

A You see it is customary to tell him because they sometimes they want commission on anything like that.

Q You did not have any arrangement about a commission?

A When he first came into the office he said, "If I give you extra calls will you give me commissions?" and this was really his customer. That is the way you do in line of business. I wanted to tell him that if his car was there I would not have taken the customer from him but his car was not there and I took the call.

Q His car was never stored in your place?

A No.

Q You store cars in your place?

A Not in the office, 49th Street and Eighth Avenue.

Q But you never have anything to with storing his car?

A No, I did not know where it was stored.

BY MR. McDONALD:

Q When this woman came to your office did you go across the street to see if Rossi was there?

A No.

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Q Did you go out of the office to see if he was in the neighborhood?

A I looked up and down the street and I said, "I can't see him." Then I phoned the Benjamin Renting Company, in the Fitzgerald Building, because he told me, "Sometimes I will be there." I phoned and said, "Is Young there?" They said No. I said, to her, "I don't know where he is." Then she said, "I will engage your car." and I made a price and she went and I marked it in the book.

BY THE COURT:

Q When did you first talk about this incident after day?

A The next day, someone told me that this fellow was arrested.

Q Is that all they told you?

A They told me he was mixed up in some shooting affair, and so two or three days afterward I should judge, his wife same into the office and she said she was Mrs. Young.

Q Did you ever know anyone up there as his wife?

A She identified herself to me as his wife. I never saw the woman at all until that day. She said, "I am Mrs. Young, and Charley is in trouble." She said, "Do you remember talking to him?" I said, "Yes, I told him he lost a call." That was all. She said, "Did you mark that call down?" I said, "Yes, it is in the book."

Q Had you ever seen that lady before that night?

A No sir.

Q The lady that came in and said she was Mrs. Young?

A No, I never saw her in my life.

Q You took her word for it when she said she was Mrs. Young?

A Yes. The other lady I never saw her in my life either, the lady that took the car.

BY MR. McDONALD:

Q Were you down here in the last week in the Sacco case?

A No sir.

Q Is this the first time you have been down?

A This is the first time.

MR. McDONALD: That is all.

BY MR. MERCHANT:

Q You don't know Sacco, do you?

A No sir, I never heard of him.

Q You came down at my request and talked to Mr. Brothers, didn't you, the Assistant District Attorney?

A Yes.

Q Some couple of month ago?

A Yes.

MR. MERCHANT: That is all.

MR. MERCHANT: Your Honor, I will call Mr. Sale, out of order because he is a working man.

THE COURT: You may call him.

LEONARD SALE, or 778 8th Avenue, called as a witness in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERCHANT:

Q Mr. Sale, where do you live?

A 778 8th Avenue now.

Q You are a brother of Mrs. M. Jackson?

A Yes sir.

Q Do you know the defendant, Charles Rossi?

A Yes sir. I know Charles Rossi.

Q Where were you living on August 20th, 1917?

A 776 8th Avenue.

Q With whom?

A Mrs. Jackson.

Q Your sister?

A Yes sir.

Q That was an apartment house, was it?

A Yes sir, Apartment 8.

Q Do you recall the evening of August 20th, 1917?

A Yes sir, I remember that evening.

Q Were you at the apartment that evening?

A Yes sir.

Q What time did you get there?

A I came home from work about six o'clock.

Q Who was at the apartment when you got there?

A There was nobody there when I got there.

Q Who came in, if anybody, later?

A Mrs. Jackson, Mr. Jacobsen and Mrs. Fields came in later.

Q About what time did they come in?

A About 8.30 it was.

Q Did anyone else come in after that?

A It was about close to nine o'clock when Charley Rosai came in.

Q Did you, after Mrs. Fields came to the apartment, did you observe or did you do anything?

A She called Charley Rossi a few minutes after she was there.

Q On the telephone, do you mean?

A Yes sir.

Q Did you hear her calling up?

A Yes.

Q You were present at the time?

A Yes sir.

Q How long did Rossi stay at the apartment?

A He stayed until a little after twelve, when Charley left.

Q Were you there during that time?

A Yes sir, I was there all the time.

Q This is the Charley Rossi here, to whom you refer (pointing to defendant)?

A Yes.

Q The defendant here?

A Yes, that is Charley Rossi.

MR. MERCHANT: Your witness.

CROSS-EXAMINATION BY MR. McDONALD:

Q What other name do you know this defendant by?

A I know him only as Charley Rossi.

Q Did you ever hear him called Charley Young?

A No sir. I know him by no other name but Charley Rossi.

Q Did you ever hear him called by the name Charley Young?

A No sir.

Q when did you see him before August 20th?

A I met him near the first of August. I met him in my sister's apartment.

Q Where was that?

A Apartment 8, 776 8th Avenue.

Q What was the occasion; how did you happen to meet him there?

A Through my sister.

Q Was he visiting your sister?

A He was with Mrs. Fields visiting my sister.

Q On the 1st of August?

A No. Before August I met him.

BY THE COURT:

Q How do you spell that, Fields?

A Fields; I don't know, I think it is Fields (spelling) F-i-e-l-d-s.

Q That is the name you mean?

A Yes.

Q Does she live at your house?

A No.

Q Did she live at that house?

A No sir.

BY MR. McDONALD:

Q When was it you met Charley Rossi the first time?

A The first time was somewhere around the first of August; I seen him come around the first of August?

A Yes, somewhere around the first of August I met him. And that was the second time I seen him on the 20th of August.

Q Where was it you saw him the first time?

A In Apartment 8, 776 8th Avenue.

Q He was visiting your sister with Mrs. Fields?

A Yes.

Q You don't remember the day, however?

A I don't remember the day, but I am positive of the 20th when he was there.

Q Why are you so positive about the 20th?

A Because I heard of Charley Rossi committing some murder a few days after, and I did not see how he could commit a murder on the 20th when he was at my sister's apartment.

Q Who told you about that?

A My sister told me.

Q What did she tell you?

A She said Charley was arrested

for a murder on the 20th of August. I said, "I don't see how he could be committed for murder when he was up that time".

Q When did she tell you that?

A About two days after it happened.

Q Was it two or three days?

A It was two days after it happened.

Q After what happened?

A After he was arrested.

Q Didn't you read it in the paper?

A No sir.

Q Your sister was the one who told you about it?

A Yes.

Q And then you recalled it, did you?

A She said it happened on the 20th.

Q That is what she said?

A Yes.

Q And then what else did she say?

A That is all.

Q Didn't she say something that you remember that Charley was up there on the 20th?

A She said, "Charley was here on the 20th", she did not see how he could be arrested for murder when he was up there on the 20th.

Q Then you said what?

A "I don't see how he could be arrested for murder when he was here".

Q You said the same thing?

A Yes, the same thing.

Q What do you work at?

A I am an acetylene welder for Bliss.

Q Did your sister, the first time you met the defendant, go out riding with him?

A The first time I met Charley Rossi I was not home all evening.

Q Where did you meet him?

A I met him in Apartment 8, and

I went out in the meanwhile.

Q What time of the day or night was it?

A In the evening. The first time I met Charley Rossi was in the evening around eight o'clock.

Q Then you went out?

A Yes.

Q What time did you come back?

A I came back in the evening around twelve o'clock.

Q Was Charley Rossi there?

A No sir.

Q Was Mrs. Fields there?

A No sir.

Q Was your sister there?

A Yes sir.

Q Who is Mr. Jacobsen?

A He is a friend of my sister.

Q He does not live there?

BY THE COURT:

Q Is there a Mrs. Jacobsen too?

A Mrs. Jackson.

Q A Mrs. Jacobsen?

A I don't know that.

Q There was no such person at this number?

A No sir.

Q It is Mrs. Jackson?

A Yes. There is a Mr. Jacobsen an a Mrs. Jackson.

Q Your sister is a widow?

A Yes.

Q And Mr. Jacobsen is a friend?

A Yes sir.

Q And Mrs. Fields is a friend?

A Yes sir.

Q Do you know Mrs. Rossi?

A Yes.

Q Where did you meet her?

A I just met her here, up at my sister's apartment, lately.

Q How long ago?

A I guess the other day.

Q What day?

A If I ain't mistaken I think it was Saturday.

Q Last Saturday?

A Yes sir.

Q Your memory is good enough to remember it was Saturday?

A Yes.

Q What time Saturday?

A I don't know exactly the time; I don't remember exactly.

Q What did she say?

A She is the one that served the summons.

Q What else did she say?

A I don't know. That is all she said about it.

Q You did not ask her what it was about, or anything else.

A No sir; I knew the trouble.

Q You knew you would be summoned?

A Yes sir.

Q The did not need any summons to bring you down here, did they; you were willing to come down?

A Certainly.

Q You got the subpoena to come down?

A Yes.

Q Who spoke to you about the case before you got the subpoena?

A My sister spoke to me about the case first.

Q When?

A The day the case was supposed to come here.

Q That was last week?

A Yes.

Q That is the first time your sister spoke about it?

A She spoke to me about it before, a couple of days after Charley was fined.

Q Fined?

A He was committed for murder.

Q How do you know Charley was committed for murder?

A My sister told me.

Q When did she tell you?

A She told me a few days after.

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Q How many days?

A About two or three days after.

Q She said Charley was arrested for murder?

A Yes sir, on August 20th, "and he was up here August 20th", I said to my sister.

Q Was there anything said about the time that this murder was supposed to have taken place?

A I heard it was supposed to be committed around nine o'clock, and he was at our apartment at that time.

Q You heard all that discussed, then?

A Yes sir.

Q Who was at your house on the 19th of August?

A I don't just remember about the 19th. I was not positive about that day. It was not so interesting for me as the 20th.

Q How was the 20th interesting?

A Because I met Charley Rossi and I did not see how he could be arrested for murder when he was at our apartment at the time.

Q How do you know it was not the 19th he was at your house?

A I am positive. That is one thing the good Lord left me, a good mind.

Q You do not know what happened on the 19th or 18th of August?

A No.

Q Or the 17th?

A No, it was not important to remember.

Q Who told you to remember this?

A I figured I could not see how he could be arrested on the 20th when he was at our apartment and I also remember you got to remember the truth.

Q You knew at once you would be a witness for Charley, did you not?

A I thought I could do him some good when he was really

at our apartment that time.

Q What people do you work for? The Bliss Torpedo Works?

A The ammunition works.

Q The E. W. Bliss Company?

A 53rd Street by the river, in Brooklyn.

Q How old are you?

A Nineten.

Q How long you lived in New York?

A Since July.

Q Where did you come from?

A I came from Detroit.

Q And Mrs. Jackson came from Detroit with you?

A My sister was here at the time.

Q How long has she been here?

A About a year.

Q What does your sister do for a living?

A She is a waitress.

Q Where?

A She worked in the St. Regis restaurant.

Q Who else lives permanently in that apartment?

A Nobody but my sister and I.

Q How many rooms have you?

A Four rooms.

Q How much rent do you pay?

A \$56 a month now.

Q For those four rooms?

A Yes, furnished.

Q How much were you paying in August?

A I don't remember just what. We get cheaper rates in the summer.

Q Jut you and your sister?

A Yes.

Q And she came here how long before you?

A About a year.

Q And then you came on East and got work and you went to live with her?

A Yes.

Q And just you two occupy that \$56 apartment?

A Yes.

Q And she is a waitress?

A Yes.

Q What do you ***ke a month?

A I work on a premium basis. I make \$6 and \$4 a day and on my overtime I make \$8 or \$9 a day.

Q I mean how much do you make a day?

A On the average I make \$4 to \$6 a day.

Q That is, in a week you get from \$24 to \$36?

A Yes.

Q That is what you draw down every week?

A Yes.

Q Including overtime and regular time?

A Yes.

Q That depends upon the amount of overtime, whether you have \$24 or \$36?

A Yes.

Q And your sister is still a waitress at the St. Regis?

A She is not working now.

Q When did she cease to be a waitress at the St. Regis?

A She was working in there before I came to New York, as a waitress.

Q And after you came to New York?

A She was still working as a waitress.

Q She was working in August as a waitress?

A Yes sir.

Q The night these people came to your house she was waitress?

A Yes.

Q What were her hours?

A Her hours at that time I think was from ten to eight.

Q Ten in the morning to eight at night?

A Yes.

Q Where did she take her meals?

A She took her meals at the St. Regis and once in a while she would eat her meals at home

with me.

Q On this particular night in August do you remember where she took her dinner or supper?

A That night she took her supper in the restaurant.

Q There was no supper in the house that night for her?

A No.

Q And she was then a waitress?

A Yes.

Q Do you mean at the corner of Fifth Avenue and 55th Street, the St. Regis?

A 7th Avenue and 48th Street, I mean. 7th Avenue and 48th Street, right of the corner from the Columbia Theatre.

Q You did not mean the St. Regis Hotel?

A No, the St. Regis restaurant.

Q What kind of a restaurant is that?

A A restaurant.

Q Like a Childs restaurant?

A Yes.

Q A popular priced or cheap restaurant?

A No, it is not a cheap restaurant.

Q A restaurant with a white sign?

A Yes.

Q And with pies and apples in the window?

A Yes sir, St Regis Bakery.

Q Not the St. Regis Hotel?

A No sir.

BY MR. McDONALD:

Q What was the name of this man who was up there, Jacobs?

A Yes.

Q Jacobs or Jacobson?

A Jacobs.

Q Are you sure about that?

A Yes sir.

Q Jacob?

A Yes.

Q You called him Jacobson before?

A Well, I might have made a mistake. I know him by Jacob.

Q Did anybody go out on this 20th of August?

A No sir, not until twelve o'clock and then the soldier went out. There was a soldier visiting my sister. He was going to France.

Q He went out at twelve o'clock?

A Yes.

Q What time did the others go?

A A little after twelve.

Q Who?

A Charley Rossi, Mrs. Fields ; and Mr. Jacobson went out a few minutes after they went -- Mr. Jacob.

BY THE COURT:

Q What were they doing?

A Sitting and talking.

Q The whole evening?

A Yes sir, until they went.

Q Was there piano there?

A No, we have a victrola.

Q Was there any music or dancing?

A They were using the victrols.

Q But the evening was mainly spent in talking?

A Yes.

Q In which room were they?

A In the parlor.

Q Did the parlor overlook the street or yard?

A It is a rear apartment.

Q Does it overlook anything; has it any outlook on the area?

A On a court area.

Q The other room are what?

A They are all court areas.

Q Are they bedrooms?

A There is two bedrooms, one parlor and one kitchen and one bath.

Q Four rooms and bath?

A Yes sir.

Q And they were in the parlor all night?

A Yes.

Q How many people?

A Mr. Fields, Charley Rossi, Mr. Jacob, my sister, and this soldier and myself. Frank Austin is the soldier. He is serving his time with the United States army in France.

BY MR. McDONALD:

Q I thought you said Mrs. Jacobs; who was that?

A Mrs. Jackson, my sister.

Q If you said Mrs., you did not mean it?

A No sir, Mr. Jacob.

Q Have you ever been out riding with Charley Young?

A No, I don't know him by Charley Young, but Charley Rossi.

BY THE COURT:

Q Do you know whether it is Ross or Rossi?

A Ross.

Q How do you spell it?

A Ross (Spelling) R-o-s-s. His name might be Rossie, but I must have misunderstood. I call him Ross. I don't know for sure whether his name is Ross or Rossi.

BY MR. MCDONALD:

Q Only twice did you see him up in your sister's apartment?

A Yes.

Q That was sometime around August 1st and the 20th?

A Yes.

Q How often did you see Mrs. Fields there?

A I don't know just now. Mrs. Fields visited my sister quite often.

Q Every night?

A No, Occasionally; a few times a week.

Q For how long a period?

A She always has been a friend of my sister.

Q You mean as far as you know?

A Yes.

Q Since you have been here in this city?

A Yes. I met Mrs. Fields in New York through my sister.

BY THE COURT:

Q You did not know her when you lived in Detroit?

A No.

Q Have you any profession or trade?

A I am an acetylene welder by trade.

Q Where did you learn that?

A I learned that in Chicago.

Q Before you went to Detroit?

A Yes sir.

Q How long were you in Chicago?

A Fourteen years.

Q Where were you born?

A Mount Horn, Wisconsin.

Q You worked at that trade in Detroit and came here and got a job in the Bliss Works?

A I learned the trade in Chicago and left there and went to Detroit and worked for the Cadillac Motor Company, and came here to work for Bliss.

Q Working steadily?

A Yes sir.

BY MR. McDONALD:

Q How often did Jacobs come to 776?

A He visited occasionally, a few times a week.

Q How often did you see this soldier there?

A I met him the first time on August 20th there, a friend of my sister's. He came to visit my sister before he went to France.

Q And that was the first time you ever saw him?

A The first time I ever seen the soldier.

Q Did you ever see Mrs. Fields and Mrs. Jacobs in your sister's apartment at the same time?

A With my sister, Mrs. Fields

and Mr. Jacobs. Mrs. Fields, Mr. Jacobs and my sister came home on August 20th together.

Q Did you ever see them together in the apartment on other nights previous to August 20th?

A The night they came home together, they were together and then Charley Ross came.

Q I mean before the 20th of August?

BY THE COURT:

Q Before the 20th of August was that same party ever together?

A They were never together, only in company.

Q Were Rossi and Mrs. Fields and your sister and Mr. Jacobs, and who else?

A My sister and myself.

Q Your sister is Mrs. Jackson?

A Yes.

Q There was no Mrs. Jacobs?

A Mr. Jacobs.

Q How many ladies were there?

A Two ladies, my sister, and Mrs. Fields.

BY MR. McDONALD:

Q Where is the telephone in that apartment?

A It is in the hallway.

Q Where; what part?

A As you go into the stairway.

Q Who went out to the telephone?

A Mrs. Fields.

Q Did you go out with her?

A No sir, it is right near the apartment, The 'phone is in our doorway, in the hallway, the private hall.

Q The telephone is in the private hall?

A Yes.

Q How did you know where Mrs. Field telephoned to?

A I heard her mention Charley Rossi; she asked if this was Charley

And I knew then who it was.

Q What did she say, "Charley" or Charley Rossi"?

A Charley Ross: I was not positive whether Ross or Rossi. I heard her say Charley.

Q What was said; do you know whether it was Ross or Rossi?

A I am not positive. I know it was Charley.

Q Do you know what number it was she called up?

A I did not take notice.

Q What else did you hear her say?

A That was all I heard. She asked Charley to come over and take us out for a drive. In the meantime the soldier came up visiting my sister and we did not go out for a drive. We stayed home and talked with the soldier, my sister and I.

Q How soon after Mrs. Fields telephoned did the defendant come there?

A Charley came there, -- she called a little after eight and Charley was there a few minutes before nine.

Q Did she talk with Charley?

A Yes.

Q At the time she called him a few minutes after eight?

A Yes sir. It was about half-past eight when she got home and a few minutes after they were home she called Charley Rossi.

Q Then it was after half-past eight?

A No.

Q When you said a few minutes after eight, you did not mean half-past?

A A few minutes after half-past eight.

Q You are sure it was not after nine?

A No; it was before nine.

Q How are you so positive?

A Because there was an alarm

clock in the parlor and I notice it. They were home at 8:30 and she called a few minutes after, and in a few minutes Charley Ross came there.

Q Do you remember what time the soldier came?

A The soldier came, I don't exactly remember. It was after Charley came.

Q You did not look at the clock for the soldier, to see what time he came?

A No sir, I was not in the room where the clock was when the soldier came.

Q Didn't you say the soldier came first, before Charley came?

A No, Charley Ross came first and the soldier afterwards.

Q Is not the reason you say that they did not go out for a ride because the soldier came before Charley came?

A A few minutes before; we had not got started for a ride. We were going to but did not go. The soldier came and we entertained the soldier.

Q What time did the soldier leave?

A Twelve o'clock.

Q You looked at the clock?

A I am not positive if it was on the dot, but near twelve o'clock.

Q This was a seven-passenger car?

A I am not positive about the car; it was downstairs. I never rode in it.

Q Did you see it?

A No.

Q Do you know whether it was downstairs or not?

A Not positively.

Q Did somebody tell you it was downstairs?

A Yes.

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Q Who?

A My sister.

Q Did she leave the room at any time?

A No sir.

Q How did she know?

A I don't know; she told me.

BY THE COURT:

Q When Rossi came in did he say anything about the car?

A Not to me. I was not in the room all the time.

Q If he said anything you did not hear it?

A I would have heard it.

Q Did he leave the room at any time?

A No sir. I was there all the time and he never left the room.

Q Charley Ross never left the room for any purpose?

A No sir.

Q He was in the parlor three and a half hours?

A Yes.

BY MR. MERCHANT:

Q You say the soldier is in France now?

MR. McDONALD: Ojected to as hearsay.

BY THE COURT:

Q The soldier said he was going to France?

A Yes.

BY MR. MERCHANT:

Q You have not seen him since?

A No.

Q You don't know Mr. Lash, the witness who testified, or Dr. Cohen or Mr. Bushman?

A I don't know any of those fellows.

MR. MERCHANT: That is all.

(The defendant's witnesses who have not yet testified are called into the courtroom and are directed by the Court to appear tomorrow.)

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THE COURT: Gentlemen of the jury , the Court will take a recess until 10:30 o'clock tomorrow morning. Meanwhile, remember the admonition which the law complete me to give you at ever adjournment, namely, you are not to talk about the case with any stranger nor are you to discuss it among yourselves. You will refrain from forming any opinion or expressing any opinion until you hear all that is to be said. You know there are two sides to every story and you will have to hear the whole story on both sides, and the argument of counsel, and after you retire, that is the time to decide it, after the Court submits it to you for your decision.

Please come back tomorrow at half-past ten.

Adjourned to Tuesday morning, January 15, 1918, at 10.30 o'clock.

PEOPLE vs. CHARLEY ROSSI CHIAFALO.

TRIAL CONTINUED.

New York, January 15, 1918.

Tuesday, 10:30 A.M.

MR. MARIE JACKSON, of 776 Eighth Avenue, a witness called on behalf of the Defendant, being duly sworn, testified as follows.

DIRECT EXAMINATION BY MR. MERCHANT:

Q Where do you live, Mrs. Jackson?

A 776 Eighth avenue.

Q Where did you live on August 20th, 1917?

A That is where I lived then. I live 778 now.

Q Is that an apartment house?

A Yes.

Q In what apartment did you live?

A At that time I lived in apartment 8. Now I live in apartment 21.

Q Do you know Charley Rossi sitting at the table, the defendant?

A I do.

Q How long have you know him?

A About from the latter part of July, 1917.

Q Last July?

A Yes sir.

Q Do you recall the 20th day of August, 1917, the evening of that day?

A That I met with Charley?

Q I say do you remember the 20th of August, 1917.

A I do.

Q Did you on that day see Charles Rossi?

A I did.

Q At what time?

A Why he came over to my apartment about five minutes to nine.

Q Who was at your apartment when he arrived?

A Mr. Fields, Mr. Jacobson and my brother and myself.

Q Did anyone else come in subsequently?

A Shortly after, Charley did, yes, a friend of mine.

Q Who came in?

A Frank Austin is his name.

Q Is he a soldier?

A He is.

Q Do you know where he is now?

A Yes, she is in France. I received a letter from him.

Q Was Mrs. Fields there, before Rossi came in?

A She came with me and Mr. Jackson (Mr. Jacobson?) from my business.

Q What time did you, Mrs. Fields and Mr; Jacobson reach the apartment?

A 8:30.

Q Did you observe Mrs. Fields do anything after she reached the apartment and before Rossi Came?

A Why yes. After we came home we took off our wraps and she called up Mr. Rossi and told him to come over.

Q You mean on the telephone?

A Yes sir.

Q Is that telephone in your apartment?

A Yes sir.

Q How long did Rossi remain at your apartment that evening?

A Oh, it was 12 o'clock. He was there at 12 o'clock yet. He left shortly after 12.

MR. MERCHANT: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q What is this man's name, Jacobs or Jecobson?

A Jacobson.

Q Are you sure about that?

A I surely am.

Q How long do you know Frank Austin?

A I have known him ever since I was in New York.

Q How long have you known Frank Austin?

A Year; over a year.

Q Did he live at your house before the 20th of August, 1917?

A He did.

Q How many times.

A Once.

Q When was that?

A That was that night he came up there, when he got released from Syracuse, and he was going to sail abroad.

Q I said before the 20th. He has been up there several times.

Q When did he come to your house first?

A That I do not recall. He has been there a number of times with his mother and sister.

Q I did not ask you with whom he came.

A I am just telling you he was there three or four times.

Q When was it he first came?

A I don't recall that.

Q Did he come with his mother and sister then?

A Yes, the first time he came, he came with his sister.

Q Was it a year ago?

A It was in April when he first came to the address where I am living now, of 776.

Q Where did you live before that?

A I lived in Brooklyn.

Q What number, Brooklyn?

A 247 Ninth Street.

Q Did he live with you over there?

A No, he did not. I was just rooming there.

Q In April when he first visiting you, you say it was some time in April?

A Yes.

Q Then he visited you frequently, did he?

A Yes.

Q How often?

A I cannot recall how often.

Q When was it the last time he was there before the 20th?

A It was quite a while, because he was in camp in Syracuse.

Q When was it he was there the last time before the 20th of August?

A I don't remember.

Q Was it a week?

A Why no, he was in camp in Syracuse quite a while. I don't remember how long they were in camp.

Q Was it two weeks?

A I don't remember.

Q Do you know whether it was a week or a year?

Q I know it was not a year. It was possibly a month.

Q And the time before that?

A I don't remember.

Q He met Mr. Jacobs there, did n't he?

A He did .

Q Quite a few times?

A No, he did not, quite a few times, that was the first time he met that party there.

Q He did not know Charley Young?

A He did not know him only that night.

Q You know him as Charley Young?

A I do

Q And you also know him as Charley Rossi?

A I met him under the name of Rossi.

Q Do you know him as Charley Young?

A Yes.

Q When did you hear that he was called Charley Young?

A I heard about a week before he was arrested.

Q What was the occasion?

A We were talking about Charley Young, I said, I know Charley Rossi and know Young.

Q Did the mere fact that they mentioned the name of Charley Young remind you of the defendant Charley Rossi?

A That is it.

Q Was there anything in the same of Yong that could remind of the defendant's name Rossi?

A When the person explained to me I understood.

Q Who was this person that you were talking to?

A I don't care to mention his name.

Q Why not?

A Why should I?

Q There is nothing improper, is there?

A No, but he is not in the case whatsoever. He is not even a witness.

Q There is nothing improper about talking over the name of some one, is there?

A No, but I do not care to mention the name.

Q Was it a gentleman?

A Why certainly he is a gentleman.

Q It was not a lady friend of yours?

A No, it was not.

Q Did he bring up the conversation?

A Why yes, We were talking about him having his car, and everything and I told him I know a fellow who got s car and his name is not Young, but Rossi. The car he gave me was Rossi on it.

BY THE COURT:

Q Tell the District Attorney the name of this person.

A His name is Bernstein.

Q What else?

A Leo Bernstein.

THE COURT: Answer every question that is put to you whether you want to or not, unless answer will tend to incriminate you or degrade you and then you may say so, and you will be excused from answering on those grounds only.

BY MR. McDONALD:

Q How long do you know Mr. Jacobson?

A Since last April.

Q You met him about the same time that Rossi started visiting you at 776?

A No, I did not. I told you I met Rossi in July.

Q I mean Frank Austin?

A I knew Frank Austin long before that.

Q Probably I did not make myself clear; I asked you if you met Jacobson at the same time that Frank Austin started visiting you at 776 Eighth Avenue?

A Yes.

Q Where did you meet Mr. Jacobson?

A He had a place of business. I happened to be employed for him.

Q His place of business at that time was where?

A On Sixth Avenue between 45th and 46th Streets.

Q What was his business?

A A restaurant business it was at that time.

Q You were working for him then?

A I did.

Q How many times did he visit your house?

MR. MERCHANT: I object to that as incompetent and immaterial.

Objection overruled and exception taken.

A I just can't recall the times he visited my apartment.

Q Did he visit you frequently?

A He did.

Q How often?

A Why I can't explain to you how often.

Q Two or three times a week?

A Well, he has been there several times.

BY THE COURT:

Q How many times, a hundred times?

A No.

Q Ninety times?

A I said about seven times.

THE COURT: I understood you to say several times.

BY MR. McDONALD:

Q When was it that he visited your house before August 20th?

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial and not proper cross-examination.

THE COURT: I think it is proper cross-examination.

MR. MERCHANT: Exception, please.

A I don't remember.

Q Do you remember any time that he did visit you except the 20th of August?

A Why yes, I can remember he visited me several times before then but I don't remember the day because there was nothing happened like as happened

on the 20th of August.

Q Something happened on the 20th of August?

A It did.

Q What happened?

A Charley Rossi was in my apartment and then I heard he was committed for this crime and I did see how he could be committed because I knew he was in my apartment at the time, on the 20th of August.

Q That was the first time he had ever been in your apartment, Charley Rossi?

A No sir.

Q He had been there before?

A Yes sir, one afternoon.

Q When was that?

A One afternoon he came up.

Q When?

A About a week before that.

Q Did he come there with anyone?

A Yes, with Mrs. Fields.

Q In the afternoon?

A Yes sir, he did.

Q How long did he remain there?

A About an hour.

Q Did he leave with Mrs. Fields?

A Yes, he did.

Q It was not in the night time he visited you there?

A No sir.

BY THE COURT:

Q Were you there when he came there?

A I certainly was.

Q Are you not employed during the day?

A Not after three o'clock.

Q What are your hours of employment?

A Seven to three.

Q Your brother said they were from ten to eight

A At that time they were, on August 20th they were.

Q Have they changed from seven to three?

A Yes.

Q When?

A About this fall sometime.

Q A week before the 20th of August what were your hours?

A The same. When I first went to the St. Regis I had from 10:30 to 8.

Q How do you know he was there in the afternoon if you were working?

A I was there after three o'clock.

Q You say your hours were form ten to eight?

A Not on the 20th of August.

Q I understood you to say they were on the 20th of August.

A On the 20th of August, yes.

Q What were your hours on the 20ht of August?

A Ten to eight.

Q And the 13th of August?

A They were that also.

Q What do you mean by that?

A Ten to eight.

Q And you say you were present in your house one afternoon at three o'clock when Charley Rossi came?

A I was off on a Wednesday. Wednesday was my day off.

Q It was a Wednesday he came?

A Yes, It must have been.

THE COURT: Strike out "it must have been."

A I was off every Wednesday. That was my day off.

Q What day of the week was it this 20th of August?

A It was on a Monday.

Q And the 13th, the week before would be on a Monday, not on a Wedensday?

A Yes.

MR. MERCHANT: She said he had been there once before.

THE COURT: About a week before she said.

Q You said about a week before, didn't you?

A I said sometime the week before.

Q Is that what you said?

A Yes.

(Testimony of the witness on that point is re-read by the stenographer).

BY MR. McDONALD:

Q You mean he came sometimes during the week before the 20th of August?

A Yes.

Q Is that what you mean?

A Yes; it must have been on a Wednesday afternoon.

THE COURT: Strike out "it must have been on a Wednesday afternoon." Do not volunteer anything, but just answer questions.

Q Who introduced you to the defendant?

A To Mr. Rossi?

Q To this defendant here.

A I met Mr. Rossi in the restaurant first of all.

Q Where?

A He used to come in to eat in the St. Regis restaurant and then it was on that afternoon he came up to my apartment and I had an introduction to him.

Q Who introduced you to him?

A Mrs. Fields.

Q You met him first at the restaurant?

A Yes sir.

Q He was a customer there?

A He was.

Q And he asked you where you lived?

A He did not.

Q How did he happen to go up to your apartment?

A Because Mrs. Fields was a friend of mine.

Q Had he been in your restaurant with Mrs. Fields?

A No, he had not.

Q Had you spoken to him about Mrs. Fields?

A No, I had not.

Q How did he happen to bring this Mrs. Fields up to your apartment?

A That I don't know.

Q How long do you know Mrs. Fields?

A I have known her for about five or six years.

Q Do you know Mrs. Rossi?

A I knew her when I saw her; not very well however.

Q Have you seen the defendant Rossi since the 20th of August?

A Why yes, I seen him since.

Q Where?

A He came up to my apartment to talk about this affairs.

Q What was it he said when he talked to you about this?

A He just asked me, - he did not understand how they could him guilty when we all know he was in my apartment.

Q What else?

A He asked me if I would go for a witness, "I said I would . He asked me would my brother go, I said he would.

BY THE COURT:

Q What was said about the 20th of August?

A He asked me if I remember and I said yes.

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Q Remembered what?

A That he was in my apartment.

Q Is that all?

A Yes.

Q Wasn't there anything said about the time he came?

A No sir.

Q And the time he went away?

A No sir.

Q And what he did?

A No.

Q What did you do that night there, the 20th of August?

A We did nothing but sat and conversed.

Q For how many hours?

A A about four hours.

Q Two ladies and three gentlemen?

A Yes sir.

Q What did you talk about in that?

A We talked about the war and things like that in general.

Q It took four hours to discuss the war; was there any dancing?

A No sir.

Q Any music?

A Yes sir, we had a victrola there.

Q Did Young leave the room?

A No sir.

Q He never left the room from the time he came in until he went out at 12 o'clock?

A No sir.

Q You are quite sure of that?

A Yes.

Q You kept your eye on him?

A He did not leave the room because if he left the room he would have to ask me where to go.

BY MR. McDONALD:

Q You say you conversed four hours. You don't mean that, do you?

A I said just what I meant.

Q What did you say?

A That we were conversing about

four hours up there?

Q You don't mean that Charley was conversing four hours, do you?

A He was up there till 12 o'clock.

Q You are ready to change that now, aren't you?, about the four hours? What time were they conversing for, for four hours?

A Mr. Rossi did not leave there until about 12:30 or mighty close to it, around 12 or 12:30.

Q Did you ever go out riding with Rossi?

A Yes, we did, one evening.

Q When was that?

A That was before he was up to the apartment on August 20th.

Q When was it?

A I don't recall the date.

Q Was it a week or two weeks before the 20th?

A About two weeks.

Q Then he did not need to be introduced to you then on Wednesday, did you? You remember you said Mrs. Fields or Miss Fields introduced Charley Rossi to you on Wednesday before the 20th.

A I did not say exactly that.

Q What did you say?

A I said I met him to my apartment a week or so before this affair. I did not mention the exact time.

Q Didn't you say some time during the week, and we had that read to you. You said sometime during the week before the 20th of August. Now what is it, madam?

A I just don't remember the exact date or the day or the time.

Q (Previous question read by the stenographer).

Q I don't remember when I went out for a drive. We were out one evening, and we met him on the street and he invited us for a drive.

Q Who was out with you?

A Miss Jacobson and Mrs. Fields and I.

Q Where was it you met him?

A Right in front of the hotel when he went to take Mrs. Fields home.

Q What hotel?

A Remington Hotel.

Q 46th Street?

A Yes.

Q Where did you go?

A Just went to Riverside drive and back.

Q How far up did you go?

A I don't know how far it was. I am not acquainted away out in New York. We went away out and run into Broadway.

Q How long were you gone?

A I guess about an hour.

Q Then Mrs. Fields introduced you to the defendant, did she?

A I knew Rossi then. I had met him. I had an introduction in my apartment to him.

BY THE COURT:

Q Who drove the car that night?

A Mr. Rossi.

Q He did not sit in back with you?

A Mr. Rossi sat in back when?

A Did he?

A He drove the car.

Q That is, he sat in front?

A Yes sir.

Q Where did you sit?

A In back.

Q You are quite sure you had a ride that night?

A Yes.

Q When was that ride?

A I don't remember the date or the day.

Q Was it before the 20th of August?

A Yes sir.

Q Do you get rides very often?

A No sir, that was the first ride I ever had in his car.

Q And you could not remember the date?

A No sir.

Q Approximately; how long before the 20th of August?

A If I am not mistaken I think it was on a Saturday night.

Q Just the Saturday before the 20th, two days before the 20th?

A I think it was very shortly before that.

Q It was not a couple of weeks before then?

A No.

BY MR. McDONALD:

Q When did you tell your brother?

A About the case?

Q Yes.

A When I heard of it a couple of days afterwards.

Q Who told you about it?

A Mrs. Fields told me about the case.

Q When did she tell you?

A About two days afterwards.

Q Wednesday or Thursday?

A I think on a Wednesday.

Q She came over to your apartment?

A Yes.

Q What did she tell you?

A That Mrs. Rossi was under arrest for murder.

Q Did she tell you anything else?

A No, that he was just here in jail, she told me.

Q Did she tell you anything about when it occurred?

A Yes, she told me it was supposed to be the night that they

there.

Q Then did she say anything else?

A No, we only talked, had a conversation, saying I did not understand how it could happen when he was up there.

Q Did you ask her where it happened?

A She said she heard it happened up in 110th Street.

Q Where did Rossi let you off on the Saturday night when you went out riding?

A At my apartment.

Q Did Mr. Jacobson go with you, too?

A He took Louise home, I think.

BY THE COURT:

Q Who is Louise?

A Mrs. Fields.

Q What do you meant by saying he took her home?

A Naturally he rode to the hotel with her.

Q They stopped at your house and let you out?

A Yes.

Q The the machine went off with Louise. Driving Mrs. Fields back to the hotel?

A Yes.

Q You do not know where they went, however?

A No, I took their word for it. They said they went back to the hotel.

BY MR. McDONALD:

Q Did you ask them?

A No. He said he would take Mrs. Fields home, "And I will go home on the subway."

Q You said you took their word for it?

A Yes. Didn't he say he would take Mrs. Fields home in the automobile and would ride in the subway and go himself?

Q This Mr. Jacobson said that?

A Yes, Mr. Jacobson.

Q Did you ask Mr. Jacobson if he took Mrs. Fields home?

A No, why should I?

THE COURT: Strike out the last part of the answer, after "No".

Q Where did the car go?

A I don't know.

Q Did Mr. Jacobson and Mrs. Fields remain in the car when you got off at 776 or 778 Eighth Avenue?

A Yes.

Q They remained in the car?

A Yes.

Q And then Rossi was still driving?

A Yes.

Q Mrs. Fields was in the front seat?

A She was in the back seat.

Q And you were in the back seat, too?

A Yes.

Q And Rossi was driving?

A Yes.

Q Did he remain there until the car started away?

A Why I never noticed. I went right into the apartment.

Q About what time was it that night that the car left?

A At one o'clock I should judge.

Q In the morning?

A Yes.

Q What time did you meet him?

A It was about twelve o'clock.

Q And you met him at 46th Street?

A Right in front of the hotel.

MR. McDONALD: That is all.

RE DIRECT EXAMINATION BY MR. MERCHANT:

Q Miss Jackson, do you know Mr. Bushman who testified

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here?

A I do not.

Q Or Mr. Lash, a lawyer?

A I do not.

THE COURT: Those questions are immaterial and I will excuse them.

MR. MERCHANT: Exception, please.

Q Do you know Dr. Cohan?

THE COURT: I will exclude that.

MR. MERCHANT: Exception, please.

Q Mrs. Jackson, is there any reason that makes you think that the afternoon that Rossi was at your apartment was a Wednesday?

A Why that is the only time it could be, because that was my day off.

Q You worked in a restaurant?

A Yes, I did.

Q And you did on the 20th of August?

A Yes.

Q On the 20th of August last you were working there?

A Yes sir.

BY THE COURT:

Q What were your wages in that restaurant?

A \$4 a week.

Q How much rent did you pay for this apartment?

A \$56 a month.

BY MR. MERCHANT:

Q You also took your meals there?

A I had my meals there.

Q In addition?

A Yes, that is why they don't pay me any more, because we figure on our tips.

MRS. LOUISE FIELDS, Hotel Remington, 46th Street and Broadway, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

BY MR. MERCHANT:

Q I think if you lift your veil the jury can hear you more clearly. You live at the Hotel Remington?

A Yes sir.

Q Where did you live on August 20th, 1917?

A The Remington Hotel.

Q Do you know, and did you then know Charles Rossi, the defendant here?

A Yes sir.

Q Do you remember the 20th day of August , 1917?

A Yes sir.

Q Did you see the defendant on that day?

A Yes sir.

Q What part of the day?

A In the evening.

Q What time in the evening?

A Well, I saw him about nine o'clock in the evening.

Q And where did you see him?

A At Mrs. Jackson's apartment.

Q Mrs. Jackson, the witness who has just testified?

A Yes.

Q How long have you know Rossi?

A I know him since the first part of last summer.

Q How long have you known Mrs. Jackson?

A I have known Mrs. Jackson about five years.

Q On the evening of the 20th of August did you go alone to Mrs. Jackson's apartment, or with whom did you go?

A I went with Mrs. Jackson and Mr. Jacobson.

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Q About what time was it when you went to the apartment?

A About half-past eight.

Q After you got to the apartment and before Rossi arrived, did you do anything?

A I called him on the 'phone.

Q Did he answer the 'phone himself?

A No, he did not answer it himself.

Q Did he subsequently talk over the 'phone to you? At that time?

A Yes sir, he talked. I asked for him and they sent him to the 'phone.

Q Do you know his voice?

A Yes sir.

Q After you telephoned did he come to the apartment?

A Yes sir.

Q About how long afterwards?

A About fifteen minutes.

Q And about what time did he reach there?

A Well, I think maybe he got there around nine or ten minutes, - I don't know exactly, somewhere around there, because I did not get home until 8.30.

Q I did not understand what time you said he go to the apartment?

A Around about nine or ten minutes to nine.

Q How long did you remain at the apartment that evening?

A Until about twelve o'clock.

Q How long did Rossi remain there?

A He remained the same as I did.

Q Who else was there at the apartment that evening?

A Mrs. Jackson and Mr. Jacobson and Mrs. Jackson's brother.

Q Do you know his name?

A Mr. Sales.

Q Leonard Sales?

A Yes, and there was a soldier boy there, but I don't remember his name.

MR. MERCHANT: That is all.

CROSS-EXAMINATION BY MR. McDONALD:

Q Are you known under any other name, Madam?

A No sir.

Q Are you known as Mrs. Davis?

A No, that was my name before I was married.

Q You don't use that name?

A Not now, no.

Q When did you use it last?

A Before I was married Five years I have been married.

Q You are living at the Hotel Remington?

A Yes sir.

Q How long have you lived there?

A I have lived there about, - when I first came to New York I lived there. I moved away and I came back there again and I have been there this last time about two months, I think.

Q Before the 20th of August?

A I lived there on the 20th of August and I moved and then I moved back again.

Q Where did you move to?

A 48th Street.

Q What number?

A 315 West 48th Street.

Q That is between 8th and 9th Avenue?

A Yes sir.

Q When did you move from the Hotel Remington, on the 20th of August?

A No, I did not move at that time. It was later that I moved.

Q When did you move?

A From the Remington I moved, I don't know just exactly the date, but it was after the 20th of August; probably three or four weeks after the 20th.

Q Sometime in September?

A I think so.

Q How long have you know the defendant Rossi?

A Well, I met him the first of last summer.

Q When?

A I don't know just exactly the date.

Q About when?

A Well, I think probably the first part of August or sometime there.

Q The first part of August, you think?

A Yes sir.

Q Where did you meet him?

A I called him up to drive the car. I called him as a customer, or they called him for me at the hotel when I first met him. That was the first time he took me out.

BY THE COURT:

Q He asked you how you met him. What was the first time he took you out or the first time you met him?

A The hotel called the machine for me and that is the first time I met him.

Q The hotel called a machine and he drove up with the machine, is that it?

A Yes.

Q When was that?

A That was last summer, but I don't know just exactly the date.

BY MR. McDONALD:

Q Did you go out with him this day that you asked the hotel to provide a machine for you?

A Yes.

Q Was the defendant driving the car then?

A Yes.

Q And you went out alone?

A Yes.

Q Did you ask the hotel office for a touring car?

A Yes for a car.

BY THE COURT:

Q Not a taxicab?

A No sir.

Q Where did you go, do you remember?

A Through the park.

Q Which park?

A Central Park.

Q That is all?

A Yes sir.

Q And then back to the hotel?

A Yes.

Q How did you become acquainted with him that day; did you talk to him during the ride?

A No, I did not; not that day.

Q He asked you how you became acquainted?

A I did not talk to him.

Q How did you become acquainted with the man?

A Because I met him after that. We called him and then I talked to him.

Q How did you come to meet him?

A I called him up.

Q How do you mean, you called him up?

A At the garage, to come over to Mrs. Jackson's. That was the second time.

BY MR. McDONALD:

Q When was that?

A The second time, the 20th.

Q That was the second time?

A Yes.

BY THE COURT:

Q You mean you had never gone out with him but that one time when you called him up and had a ride with him all alone through the park?

A That was not the 20th of August.

Q When was that?

A That was before that.

Q How long before?

A Well, about I think, about a week.

Q Then you did not see him or speak to him until when?

A I saw him and spoke to him.

Q Where did you see him?

A I passed him on the street.

Q What street?

A From the hotel to 46th Street and Broadway.

Q He did not stand in front of the hotel with the machine, did he?

A No.

Q Where did he stand?

A 46th Street, in front of the barber shop there.

Q That is near Broadway?

A Yes.

Q The hotel is nearer 6th Avenue?

A Yes.

Q That is all the intercourse you had with him riding in the car this day you wanted a ride, and then you saw him on the street and talked to him in the intervening week, is that so?

A Yes sir.

Q What did you talk about?

A Well, just nothing in general; just everything.

Q Then you called him up on the 'phone, you say?

A On August 20th.

Q To come to Mrs. Jackson's house?

A Yes sir.

Q You had never gone there with him before?

A No sir.

Q You are sure of that?

A Yes sir.

Q You had never been in Mrs. Jackson's with him before the 20th of August?

A No sir.

Q You were not there, were you, Wednesday afternoon? With him?

A I don't think so, not before the 20th.

Q Well, you would remember it if you were, wouldn't you, with a strange man in an apartment one afternoon?

A Yes.

MR. MERCHANT: Exception to your Honor's line of question.

THE COURT: Your exception is noted.

Q You would remember that?

A Yes.

Q What did you tell him that night when you called him up on the telephone?

A I told him we wanted to go for a drive. I just called him up and asked to take us out for a drive.

Q Did you say who else it was?

A Yes, Mrs. Jackson and Mr. Jackson and myself.

Q Mr. Jackson?

A No, Mr. Jacobson.

Q You did say Mr. Jackson?

A No; Mr. Kacobson. I did say Jackson, but I meant Mr. Jacobson. I meant Mrs. Jackson and Mr. Jacobson.

Q Where did you 'phone him?

A I 'phoned from Mrs. Jackson's apartment.

Q At what hour?

A I think about a quarter to nine. It was between 8.30 and nine o'clock.

Q You called up what place?

A I called up a little garage by the barber shop; I had a card with the number on it. I don't remember the telephone number.

Q That was the place where you could get Rossi, is that so?

A Yes sir.

Q You called him up and said what -- did you get him?

A I got somebody else on the 'phone. I asked for him.

Q Well, he came to the 'phone?

A Yes.

Q What did you say to him?

A I told him --

Q You told your lawyer you knew his voice?

A Yes.

Q And you knew you were talking to him?

A Yes.

Q What did you say to him?

A I asked him to take us for a ride, - if he could take us for a ride and he said yes, - that he would be over in a little while. So he came over in about ten or fifteen minutes, I think.

Q Did you say where you wanted to go?

A No.

Q Did you say anything about the price of the ride?

A No.

Q Did you expect to pay for it?

A Sure.

Q Price was no object. You did not even mention it?

A No, Mr. Jacobson was with us he told us to call for the car, so I did not ask anything about that.

BY MR. McDONALD:

Q What else did you say to him over the 'phone?

A That is all I said over the 'iphone.

Q Didn't you tell him where to come to?

A Yes, to Mrs. Jackson's.

Q Tell us everything you said?

A That is all I said. I asked him to come over there.

Q Did you tell him to come to Mrs. Jackson's apartment, No. 8, 776 8th Avenue?

A Yes.

Q You gave him the address and everything?

A Yes.

Q Did you call him Charley Young?

A Yes sir, - who I asked for.

Q Over the 'phone?

A Yes.

Q You did not ask for Charley Rossi?

A No, I did not know him by that name then.

Q Did he tell you his name was Charley Rossi?

A That was on his card.

Q You say now that this first drive was how long before the 20th?

A I think about a week.

Q And he and you went out along?

A Yes sir, early in the evening.

Q Now, did you go out with him again?

A No sir.

Q You went out of course on the 20th?

A Yes sir.

Q But between that first ride, the week before the 20th, and the 20th, you never went out with the defendant Rossi?

A No sir.

BY THE COURT:

Q Where did you go on the 20th?

A To Mrs. Jackson's apartment.

Q Didn't you say you went out with him riding on the 20th?

A He came to Mrs. Jackson's on the 20th, to take us out, but she got company so we did not go until twelve, and he took me home.

BY MR. McDONALD:

Q At twelve o'clock he took you home?

A Yes sir.

Q Now then, did you go out riding with him at any other time?

A No sir.

Q Did Mrs. Jackson?

A Not that I know of.

Q When you were with her did Mrs. Jackson go out riding with him?

A No, we did not go out that night.

Q When you went riding with the defendant, Mrs. Jackson or Mr. Jacobson were not there?

A No, we intended going but we did not go.

Q That was the 20th you intended going?

A Yes.

Q Did the defendant take you home that night?

A Yes sir.

Q From 778?

A Yes sir.

Q Did Mr. Jacobson go along with you?

A No sir.

Q He remained upstairs in Mrs. Jackson's?

A I think he went home before, I am not sure.

Q Before you left?

A Yes sir.

Q What time did Austin leave?

A I don't know just exactly what time.

Q Did you see Rossi, or Charley Young as you know him, before nine o'clock that night?

A That day I saw him on the street when I went to dinner.

Q What time was that?

A I think it was, I judge maybe it was half-past seven or so.

Q Did you talk to him then?

A I just spoke to him.

Q What did you say to him?

A "How do you do".

Q That is all?

A Yes sir.

Q And you went right on?

A Yes sir.

BY THE COURT:

Q Where did you go to dinner?

A At the St. Regis restaurant.

Q You men you went from the Remington Hotel; you did not take your meals in the hotel?

A No, I did not that night.

Q But you went to the St. Regis restaurant?

A Yes sir.

Q Where is that?

A That is on 47th Street, off Broadway.

Q You went from the hotel to the restaurant and you saw him and you said "How do you do"?

A On the corner of 46th Street and Broadway I saw him.

BY MR. McDONALD:

Q That is where Mrs. Jackson works?

A Yes sir.

Q Did you meet her there that night?

A Yes.

Q Where did you meet Jacobson?

A I met him there too. I had an engagement to have dinner with him there.

BY THE COURT:

Q Jacobson is the proprietor, isn't he?

A No sir.

Q What does he do there?

A He is a contractor, I think.

Q He has nothing to do with the St. Regis?

A Not as I know of; I don't know.

Q You did not know him as the proprietor?

A No.

Q You had this engagement with Jacobson to dine at the St. Regis, is that so?

A Yes.

Q And Mrs. Jackson waited on you?

A Yes sir.

Q She was a waitress there?

A Yes sir.

Q What happened after that dinner?

A Well, we waited for her to get through work; she got through about eight o'clock so we went over to her house, her apartment, and that was on August 20th when we called up Mr. Rossi.

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Q What time did you get to the hotel on the 20th of August after leaving Mrs. Jackson?

A I was there probably at half-past twelve.

Q You mean this was after you had been to Mrs. Jackson's?

A Yes sir.

Q On your return, not from dinner, but after this evening, at half-past twelve at night?

A I think it was around that time.

Q What do you work at?

A I do not work.

MR. McDONALD: That is all.

BY MR. MERCHANT:

Q You are married, aren't you, Mrs. Fields?

A Yes sir.

Q Your husband supports you?

A Yes sir.

BY MR. McDONALD:

Q How much do you pay at the Hotel Remington?

A Fourteen dollars a week.

Q Fourteen dollar a week for a room?

A Yes.

AARON JACOBSON, of 1487 Westchester Avenue, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERCHANT:

Q You live in the Bronx, Mr. Jacobson?

A I do.

Q Were you living there sometimes in August last year?

A I was.

Q Do you know Charles Rossi, the defendant?

A I do.

Q When did you first see him?

A The early part of August.

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Q 1917?

A 1917.

Q Do you know Mrs. Jackson who has testified here?

A I do.

Q And Mrs. Fields?

A Yes.

Q And Leonard Sales, Mrs. Jackson's brother?

A Yes.

Q Do you recall the evening of August 20th, 1917?

A Yes, I do.

Q Where were you that evening?

A At what time?

A Well, we will begin at eight o'clock?

A At eight o'clock sharp, or around eight o'clock?

Q No, around eight o'clock?

A I was around 47th Street on Broadway.

Q At the restaurant?

A Yes sir.

Q St. Regis restaurant?

A Yes.

THE COURT: DO not lead the witness, Mr. Merchant.

Q Where were you?

A About eight o'clock I had dinner at the St. Regis, 47th Street near Broadway.

Q What time did you leave there?

A About a quarter past eight.

Q With whom did you leave, with anybody?

A With Mrs. Jackson and Mrs. Fields.

Q Where did you go?

A To 776 8th Avenue, Mrs. Jackson's apartment.

Q What number is that, do you know?

A 776 8th Avenue.

Q What number apartment?

A Apartment 8, I believe.

Q And did you all three go to the apartment?

A We did.

Q What time, about, did you reach there?

A About 8.30.

Q After that did you notice Mrs. Fields do anything?

A Mrs. Fields, upon arriving at the apartment, took her coat and hat off and went to the 'phone and called up a certain party.

Q Did you hear what she said?

A I heard that she was asking for Mr. Charles Rossi.

Q Did you see Rossi after Mrs. Fields went to the telephone?

A I did.

Q About how soon after?

A Just about nine o'clock.

Q In the evening?

A In the evening.

Q Where did you see him?

A At the apartment.

Q Did he come to the apartment?

A He did .

Q How long did he remain there?

A Until about twelve o'clock.

Q Was there anyone else at the apartment that evening, in addition to those you mention?

A There was.

Q Who?

A A Party by the name of Frank Austin.

Q What is your business?

A I am a builder.

Q Where is your office?

A 101 Park Avenue.

MR. MERCHANT: Your witness.

CROSS-EXAMINATION BY MR. McDONALD:

Q How long have you been a builder?

A For the past seven years.

Q How long have you known Mrs. Jackson?

A Since the early part of 1917.

Q Did you employ Mrs. Jackson?

A I have, at one time.

Q When was that?

A Beginning from March 17th, until about July, 1917.

Q As what?

A As a waitress.

Q Where?

A At 785 6th Avenue.

Q You were a restaurant keeper?

A I had a interest in the restaurant.

Q What was the name of the restaurant?

A Hygrade Restaurant.

BY THE COURT:

Q You mean you personally employed her?

A I had an interest in the restaurant.

Q You did not pick her out as a waitress?

A No.

Q She was a waitress there?

A Yes.

Q You knew all the waitresses there?

A Yes sir.

Q How many were there?

A About nine.

BY MR. McDONALD:

Q How did she remain there, working?

A I only had the restaurant about nine weeks.

Q And she remained there all that time?

A Yes.

Q Did you visit her at 778 8th Avenue while she was working for you?

A I did.

Q You had that restaurant from the beginning of March to the middle of May, for instance?

A March 17th to about the early part of May or the latter part of May; nine weeks.

Q When did you first visit Mrs. Jackson?

A The latter part of February.

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Q Before she was employed by you?

A Before , yes.

Q Where did you meet her?

A At the restaurant.

Q Which restaurant?

A 785 6th Avenue.

Q You were eating there as a customer?

Q I was.

Q An you talked to her then?

A I did .

Q And arranged to call at her home?

A I did.

Q Are you a married man?

A No, I am not.

Q When was it you first called at her home?

A In the early part of March.

Q That was at No. 778?

A No, over in Brooklyn. At that time she lived in Brooklyn.

BY THE COURT:

Q Where did she live in Brooklyn?

A I can't remember that any more.

Q Did she have an apartment there?

A No, just stopping with a family over there.

BY MR. McDONALD:

Q When did she move to New York?

A The letter part of March.

Q Did you visit her frequently there?

A I did.

Q At 776 8th Avenue?

A At first she was stopping somewheres in 43rd Street between Broadway and 8th Avenue and then she moved to 778 8th Avenue.

Q Did she have an apartment there?

A She did.

Q Was her brother there at that time?

A In 43rd Street?

Q Yes.

A No.

Q How many times did you visit her there?

A Probably four or five times, to the best of my recollection.

Q When did she move to 776?

A To the best of my knowledge I think it was around April.

Q When was it her brother came?

A Either in June or July.

Q She had an apartment when she moved there in April to 776, didn't she; she moved into an apartment, didn't she?

A Yes.

Q A furnished apartment?

A Yes.

Q Did you visit her very often?

A I did.

Q Twice a week?

A No, about four times a week.

Q Did you visit her four times a week preceding the 20th August, for instance, beginning on the 13th?

A I believe I did.

Q Don't you know?

A I do not.

Q It was your custom to visit her four or five times a week?

A Yes.

Q What time did you meet her on the 19th of August?

A I cannot recall very well.

Q Do you remember the 18th of August the time you met her?

A If I met her on the 18th, I met her right after work, about a quarter past eight.

Q Now, on the 15th, when did you meet her?

A I don't know.

Q On the 17th when did you meet her?

A The same as the

19th . If I met her at all I met her around eight or half-past eight.

Q It was your custom to meet her after work?

A Yes; either wait for her or go to her apartment.

Q On the 19th where did you meet her, at her home or the restaurant?

A I don't remember that.

Q On the 15th where did you meet her?

A I said before, I don't recollect.

Q I am asking you now whether it was at the restaurant or at her home?

A I don't know.

Q Did you meet her in the morning or in the night-time?

A In the evening.

Q That was because it was your custom to go there in the evening?

A Yes.

Q That is the only way you have to recollecting, is it?

A Yes.

Q How long have you known Mrs. Fields?

A The early part of August, 1917.

Q Did you also know her as Mrs. Davis?

A I have heard of the name.

Q You hear who use it, Mrs. Jackson, for instance?

A Possibly.

Q You have heard of the name of Mrs. Davis being used for Mrs. Fields?

A Yes.

BY THE COURT:

Q You mean you heard people call her Mrs. Davis, is that

what you mean?

A Yes.

BY MR. McDONALD:

Q You say you met her in the early part of August?

A Yes.

Q Where did you meet her?

A At the St. Regis restaurant.

Q Did someone introduce you?

A Mrs. Jackson did.

Q She was a waitress there?

A Yes.

Q And this girl was sitting down at a table, this Mrs. Fields?

A Yes.

Q You were having dinner there?

A I was.

Q That was the first time you had seen Mrs. Fields; you had not seen her up I Mrs. Jackson's apartment before the first part of August?

A I don't think so.

Q Do you know?

A I don't believe I have known Mrs. Jackson at that time for more than two or three weeks, from the first of August.

Q Mrs. Jackson or Mrs. Fields?

A I mean Mrs. Fields, pardon me.

Q When did you meet Rossi?

A Oh, around the 12th or 15th of August, last year.

Q Where was it you met him?

A I met him at 46th Street, between Broadway and 6th Avenue.

Q You were with whom?

A Mrs. Fields and Mrs. Jackson.

Q Did you do anything?

A Mrs. Jackson introduced me to Mr. Rossi.

Q That was when, you say?

A Around the 12th or 15th of August.

Q Did anything happen; did you go any place or do anything?

A No place at all.

Q Where was it that took place, at 46th Street between Broadway and 6th Avenue right near the Remington?

A Yes.

Q You were taking Mrs. Fields home?

A Yes.

Q Where had you come from?

A From the Garden.

Q From the Garden restaurant?

A Yes.

BY THE COURT:

Q Where is that?

A 50th Street and Broadway.

BY MR. McDONALD:

Q Did you meet Mrs. Fields there or had you taken them both there?

A We had taken them, Mrs. Jackson and I had taken Mrs. Fields to the Garden.

Q And Rossi was there?

A I met him at 46th Street and Broadway about half-past one in the morning, on the way taking Mrs. Fields home.

Q Did you go out in his machine that night?

A We went out in the machine one night. I don't think it was the same night, however.

Q when was that?

A A few nights later.

Q Than the 15th?

A Yes.

Q That would be three or four days before the 20th?

A Probably the 17th or 16th or 18th.

Q That is about as near as you can come to it?

A Yes.

Q Whom were with?

A Mrs. Jackson, Mrs. Fields and a few friends of Mr. Rossi.

Q Who were those friends of Mr. Rossi?

A I don't know.

Q Were they introduced to you?

A They were.

Q Do you remember who they were?

A No.

BY THE COURT:

Q Were they men or women?

A Men. There was a chauffeur and a friend of Mr. Rossi.

BY MR. McDONALD:

Q Didn't Rossi drive?

A On the way back he drove the car.

Q Didn't he drive all the time?

A Not all the time, no.

Q You are sure that there were friends of Rossi's besides you and Mrs. Jackson and Mrs. Fields?

A Yes.

Q Where did you go that night?

A We had been up Broadway somewhere about Broadway and 190th Street and we stopped off at the Inn there and had a few drinks and came back again.

Q What time did you start out on this ride?

A It may have been around eleven o'clock.

Q At night?

A Yes.

Q Where did you meet Rossi?

A On 46th Street.

Q You and Mrs. Fields and Mrs. Jackson?

A Yes.

Q Where were you coming from?

A I don't know.

Q Did Rossi speak to you?

A Yes.

Q Just tell us what was said this night that you went for this ride?

A Rossi just made a suggestion for to get a ride.

Q What did he say?

A "Let us go for a ride".

Q Did he stop you?

A We passed in 46th Street and started

talking to him; we stopped.

Q You stopped and talked to him?

A The three of us.

Q What did you say?

A He said, "Let's go out for a ride". We said all right.

Q What happened?

A We went up Broadway to 190th Street.

Q Were these other persons two or three men?

A Two men.

Q Two friends of Rosi's?

A Yes.

Q Was Sam Sacco one of them?

A I don't know.

Q Were these men in the car when you got in?

A Either in the car or around the car.

Q Did he introduce these men to you and Mrs. Jackson and Mrs. Fields before you got in?

A He did.

Q What did he say?

A "Meet So and So", a natural introduction.

Q By the way, Mrs. Fields, you say, introduced you to the defendant?

A Mrs. Fields introduced me to Mr. Rossi.

Q What name did she give him?

A Charles Rossi.

Q Are you sure about that?

A I am positive.

Q That was when?

A On the 12th or 15th of the month.

Q When she 'phoned him on the 20th, you were in the front room, were you?

A Yes.

Q In the parlor I suppose it is called?

A Yes.

Q The telephone is where?

A Right in the hallway.

Q Was the victrola being played at that time?

A I do not recollect that.

Q When she went to the 'phone was the victrola being played?

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A I don't know.

Q You say you heard her call a number?

A Yes.

Q And then call for Charley Rossi?

A Yes.

Q So you heard that anyway?

A Yes.

Q There is no doubt in your mind about that?

A Not in the least.

Q Was the victrola playing at that time?

A I don't know.

Q You would have heard Mrs. Fields talking over the 'phone if the victrola had been playing in the room?

A It depends where I was standing. If I was standing at the door I could have heard her asking for the number and name. If I had stood over in the corner I would not.

BY THE COURT:

Q How big is this room?

A About ten by thirteen.

Q What do you mean by ten; was it as long as the jury box?

A A littler shorter than that.

Q That is about thirteen feet, isn't it?

A It is more than thirteen feet.

Q Those are the actual measurements, are they?

A I do not go by the inch.

Q How many apartment were there on a floor in the house?

A Two, I believe.

Q What kind of an apartment was this?

A A four-room apartment.

Q And how was it located?

A It was in the rear of the building.

Q You do not have two apartment, one in the front and one in the rear, in a house like that; there must have been three apartments on a floor?

A Two or four.

BY MR. McDONALD:

Q Where were you standing?

A Somewheres in the parlor.

Q were you near the door so that you could plainly hear?

A I do not know how near the door I was, but I heard Mrs. Fields ask for some number of the Bryant exchange and asking for the Charles Rossi. I could not say whether I was two or three feet from the door.

Q Were you near enough to the door to hear positively that she asked for Charles Rossi?

A Yes.

BY THE COURT:

Q Not Charley Young?

A No, Charles Rossi.

BY MR. McDONALD:

Q Did you go riding with him on any other night?

A No, I did not.

Q What time did you leave the apartment on the 20th?

A Aroudn half-past twelve.

Q The defendant and Mrs. Fields had already left?

A Yes.

Q You did not leave with them?

A No.

Q You left right after that?

A Yes.

Q You remind upstairs?

A I did.

Q You say it was about what time when you left?

A About half-past twelve.

Q How long had they gone before you left?

A About half

an hour.

Q You remained upstairs about half an hour?

A Yes, they left about twelve and I left at half-past twelve.

Q You did not leave with them?

A No, I did not .

Q You of course have seen Mrs. Jackson since then?

A Yes.

Q Have you talked to her about the case?

A Yes, she told me about it.

Q When?

A About two days after the arrest of Charles Rossi.

Q What did she say?

A "Did you hear about Charles Rossi?" I said, "No what about him?" She said, "He was arrested on a charge of murder". I said "What?" "On a charge of murder". It surprised me to hear of anybody being arrested for being charged with murder, being in my company. It was something unusual, out of the ordinary.

Q What else was said?

A I said, "What did he do?" She said, "He is accused of either killing or attempting to kill somebody up in Harlem". I said, "When did it happen?" She said, "About nine o'clock, Monday night." I said, "Monday night, why he was in our company on Monday night, how can he be accused of killing somebody. It is rather at nine o'clock and at the same time to be accused of a murder up in Harlem."

Q This is what she said?

A What I said an what she said. She told me he was arrested for either killing or attempting to kill a person in Harlem.

Q And she said this killing occurred at nine o'clock Monday night?

A About nine o'clock.

Q Was Leonard Sale there at that time?

A I don't know.

Q This was only two days after the 20th of August?

A Yes.

Q Was he there?

A I don't know.

Q Your recollection is not very good as to that, the 22nd of August, is it?

A I don't know whether he was there or not.

Q Have you given us all the conversation she had with you about the 20th of August with reference to this murder?

A At that time.

Q Yes?

A We probably talked about Charles Rossi.

Q When did you see Mrs. Jackson after that, after the 22nd; you say it was the 22nd you called again?

A About the 22nd; about two days later.

Q That would make it Wednesday or Thursday?

A Either Wednesday or Thursday.

Q You don't know?

A I do not.

Q Did you talk to Mrs. Jackson then about it?

A I did.

Q What did she say then?

A Repeated the same thing again.

Q What did she say?

A That he was arrested.

Q You had already known that?

A Well, she told me that. She informed me that he was arrested.

BY THE COURT:

Q She told you that the first time?

A Yes.

Q He wants to know about the second time. Did she repeat

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that he was arrested?

A I don't know about that.

Q That is what he asked you?

A I did not understand him.

BY MR. McDONALD:

Q What was it she said about the murder on the second time after you visited her, after the 20th of August?

A There was nothing said about it at all then.

Q There was nothing more said about it?

A No.

Q How long were you there on the 20th of August?

A Until half-past twelve.

Q And you got there at about nine o'clock?

A About 8.30.

Q What were you doing all that time?

A Just sitting in the front room and conversing.

Q What time was it Frank Austin left?

A About half-past eleven.

Q What time did he come in?

A About half-past nine.

Q Did you have any conversation with Mrs. Fields about the car?

A That night?

Q Yes?

A No.

Q On the way over from 46th Street?

A Not my recollection.

Q Did you suggest to Mrs. Fields that she should call up somebody to bring a car over and take for a ride?

A I did not.

Q You are sure about that?

A Sure.

Q You did not as a matter of fact tell her to call up anybody?

A I did not.

Q You did not tell her to call up Charley Rossi and take you all out for a ride?

A No.

MR. McDONALD: That is all.

MR. MERCHANT: That is all.

PETER BIANCO, of 234 Hoyt Street, Astoria, Long Island, called as a witness on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MERCHANT:

Q Bianco, you are one of the defendant in this criminal action, are you not?

A Yes.

Q Charged with an attempt to shoot Dominic De Luca?

A Yes.

Q You pleaded guilty, did you not, to assault in the first degree?

A Yes sir.

Q And are now in the Elmira Reformatory?

A Yes sir.

Q That is, you pleaded guilty to this charge?

A Yes sir.

Q Do you remember the 20th day of August, 1917 when this shooting occurred?

A Yes sir.

Q What time in the evening did the shooting occur?

A Well, I could not tell you exactly the time.

Q Well, about what time?

A Well, it was about half-past seven or eight o'clock, half-past eight; around that, I could not tell you exactly the time.

Q Where did the shooting occur?

A It occurred by the saloon.

Q Where?

A Right in front of the saloon.

Q At 110th Street and 2nd Avenue?

A Yes sir.

Q In the Borough of Manhattan, City and County of New York?

A Yes sir.

Q Where were you standing when you fire the shots?

A I was standing right in front of De Luca, Dominic De Luca.

Q Right where?

A About four or five feet away from De Luca.

Q Did you fire at De Luca?

A Yes sir.

Q Do you know whether or not you hit him?

A No sir.

Q Do you know whether or not you hit him?

A No sir.

Q How many shots did you fire?

A Three or four shots.

Q Was De Luca alone there or were there others with him?

A There were others with him.

Q Who were the others?

A These was Robbie, and another fellow by the name of Danny.

BY THE COURT:

Q You mean Robert Rossie, do you?

A Yes.

Q And then a man named Danny?

A Yes.

Q Anyone else?

A And Tony De Luca.

Q And Praino?

A That is all I seen.

Q How about Praino, do you know him (the witness Praino standing up in courtroom); did you see him there that night?

A No sir.

Q He was not sitting down with the others?

A No sir.

BY MR. MERCHANT:

Q What direction did you come from before the shooting?

A I came from Long Island. I charged at 57th Street and I got off at 111th Street and 2nd Avenue and walked up 2nd Avenue.

Q You mean you got off the elevated railroad?

A Yes.

Q Where did you get off the elevated?

A In 111th Street and 2nd Avenue.

Q Where did you go from there?

A I walked right up towards the saloon.

Q You walked down from 111th Street?

A Yes.

Q Came down on 2nd Avenue?

A Yes sir. I was going up to my cousin's house at the time.

Q You said you came down from 111th to 110th Street?

A Yes sir.

Q What happened when you got in front of the saloon?

A Dominic picked up a chair and told me, he said, could I express just the words he said; he said to me, "You dirty cock sucker, are you around here again?" And he picked up the chair and wanted to hit me with it. As soon as he picked up the chair to hit me, I pulled out and I shot (indicating motion with right arm).

Q Is that the man (indicating Dominic De Luca)?

A Yes.

Q What did Dominic do after you shot at him?

A I don't know what he did after I shot at him.

Q How far from Dominic were you?

A About four or five feet.

Q Did you fire at him pointblank, right at him?

A I turned around and I shot at him (indicating by making a half turn and then a motion with his right arm).

BY THE COURT:

Q Show the jury how you did it. You have not a gun to-day, have you?

A No. He was sitting this way (indicating).

Q What were you doing?

A I pulled out, - I had a gun in my back pocket (indicating right hip pocket). I pulled it out and I shotat*** him (indicating by making a half turn).

Q You were not sent to Elmira for hits offense?

A No.

Q You are a graduate of Elmira?

A Yes.

Q You have been there before?

A Yes.

Q For another crime?

A Yes.

Q You have not been sentenced as yet for this crime?

A No.

Q You are merely sent back to Elmira Reformatory?

A Yes.

BY MR. MERCHANT:

Q But you pleaded guilty to this crime?

A Yes.

BY THE COURT:

Q The former crime was what?

A Manslaughter.

Q Shooting, also?

A Yes sir.

BY MR. MERCHANT:

Q Where did you go after firing these shots?

A I ran up to 110th Street and went up some building.

Q In which direction?

A 2nd and 3rd Avenue.

Q When you fired these shots did anyone make any outcry?

A I did not pay no attention to that. I went right ahead.

Q Did you run?

A Yes sir.

Q Where did you go next after running down 110th Street?

A I ran up some building.

Q Do you know what building it was?

A Those new houses. I ran up the second new house. I could not tell you the number.

Q Where did you go then?

A I went up to the roof and came down the next building and went out through 111ht Street.

Q Where did you go then?

A I walked up 3rd Avenue to 117th Street, walked down 2nd Avenue, took the "L" and went home.

Q Home to Long Island?

A Yes. sir.

Q What did you do with the gun?

A I threw it on the roof.

BY THE COURT:

Q When were you arrested?

A I was arrested on September 7th in Philadelphia.

Q What was the calibre of the gun?

A 38.

BY MR. MERCHANT:

Q You went home?

A Yes sir.

Q How long did you stay home?

A A few days and then I went to Philadelphia.

Q Where were you arrested?

A I was arrested in Philadelphia.

Q Did you remain in Philadelphia from August 27th until you were arrested there?

A Yes sir.

Q You did not come back to the city until you were arrested?

A Yes sir.

Q When were you arrested in Philadelphia?

A September 7th.

Q When were you brought back to New York?

A I stayed there about eleven days; they kept me in Philadelphia. Ten or eleven days I was kept there.

Q That would be about the 17th or 18th?

A Yes.

Q When you came back here where did you go?

A To the Third Branch.

Q How long were you there?

A I stayed there maby from eight o'clock at night to three in the morning. Then they brought me to 125th Street station house.

Q How long were you there?

A Overnight; until morning.

Q Where then?

A Then I was brought to Headquarters for my finger prints.

Q How long were you there?

A Just took my finger prints and went out.

Q Then to the Tombs?

A Yes sir. Then I was brought in court.

Q And after that?

A After that to the Tombs.

Q Then did you plead guilty?

A I pleaded guilty.

Q That was on October 10th?

A I don't know the date exactly.

Q Had you any reason to dislike Dominic De Luca before you shot him?

A I don't understand you.

Q Had you any reason to dislike Dominic De Luca before you shot him?

A He picked up a chair and tried to hit me with it.

Q How long have you known De Luca?

A A good many years.

Q How old are you?

A I am twenty years old.

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Q How long ago was it that you were convicted of this other crime of manslaughter?

A 1915.

Q What kind of weapon did you use there?

A I did not use no weapon. I was just an accomplice.

Q Did you see anyone else shooting when you were shooting?

A No sir.

Q Do you know Charley Rossi here, one of the defendants?

A The first time I seen him in my life was in the Tombs.

Q That is, you mean after being brought back from Philadelphia, as you have stated?

A Yes sir.

Q You never knew him before?

A No; never seen him before in my life.

Q You did not see him up there at 110th Street and 2nd Avenue that night, August 20th?

A No.

Q Did anyone else fire the gun off?

A No sir, I did not see anyone else.

BY THE COURT:

Q You did not see anyone else there?

A No, your Honor.

MR. MERCHANT: Your witness.

CROSS-EXAMINATION BY MR. McDONALD:

Q The case you were sent to Elmira for was for being concerned in the killing of one Joseph Talentino?

A Yes sir.

Q How old were you then?

A Seventeen years old.

Q This gun that you had this night, where did you get that?

A About three weeks before the shooting I was eating in a Chinese restaurant between 115th and 116th Street and 3rd

Avenue. While I was sitting there some fellow came over to me and he said, "I got a gun; will you borrow a dollar on the gun?" I gave him a dollar. I never seen him since.

Q You don't know who he is?

A If I seen him I would know him.

BY THE COURT:

Q What did you do with the gun?

A After I bought the gun?

Q That was not buying it, was it. You loaned him a dollar and took the gun as security?

A Yes.

Q You expected him to come back and pay you the dollar?

A Yes.

Q Then you did not buy it?

A No sir.

Q What did you do with it when you held it as security?

A I kept it home.

Q You did not have it home this night?

A That was the night.

Q You say you had it with you on the corner of 110th Street and 2nd Avenue?

A Yes. I took it with me that night.

Q You put in your pocket?

A Yes.

Q Concealed it on your person?

A Yes.

Q To pay a social visit to your cousin?

A Yes.

Q He was going to play a mandolin or something for you?

A Yes.

BY MR. McDONALD:

Q You say that you loaded it before you left?

A It was

loaded.

Q That was the first time you had carried it since the time you brought it?

A Yes sir.

Q You had visited your cousin, however, between the time you bought this gun and the time you went there on the 20th of August?

A Yes.

Q Lots of times?

A Well, maybe once a week, or twice.

Q How many time had you visited your cousin between the time you bought the gun and the 20th of August?

A I could not tell you; more than once.

Q When did you buy the gun?

THE COURT: He said he never bought it, that he loaned a fellow a dollar on it.

Q When was it you loaned this dollar on it?

A A few weeks before the shooting.

Q Don't you know whether you visited your cousin any time between that time and the 20th of August?

A Yes, I did visit him. I used to visit my cousin quite often.

Q Ever night almost?

A No sir. Not every night; maybe once or twice a week.

Q This 20th of August was the first time that you carried the gun, was it?

A I carried it home that night.

Q The night you loaned the dollar on it?

A Yes.

Q The next night you carried it was when?

A The night when I went up to my cousin's house.

BY THE COURT:

Q Was the gun worth a dollar?

A Yes sir.

Q You considered it good security?

A Yes sir.

Q Even if you did not know the man?

A The gun was worth a dollar.

Q You did not know the man?

A If I seen him I would know him.

Q He was a stranger to you?

A Yes.

Q He picked you out?

A Yes.

BY MR. McDONALD:

Q There were other people in that restaurant, were there?

A Yes.

Q Who were these men sitting in front of De Luca's saloon when you came along?

A Dominic De Luca was sitting there on the end.

Q What end?

A I could not tell you.

Q The end nearest to you was he?

A Yes.

Q He was the first one you came to?

A Yes.

Q He was sitting nearest to 110th Street?

A Yes. Next to him was Danny and Robert Rossie.

Q Were they sitting or standing?

A Sitting down. The four of them were sitting down and one on the end was Tony De Luca.

Q He was standing or sitting down?

A Sitting down.

Q Just tell us again what happened as you came along.

A When I went up towards the saloon he was the first one

I was going for, you understand.

Q He was the first one you would meet?

A Yes.

Q As you walked out?

A Yes. He picked up a chair, he said, "You dirty cocksucker, are you around here again?" He picked up a chair and started to hit me. I pulled out and shot (indicating).

Q Where did you have the gun?

A Right in my back pocket (indicating right hip pocket).

Q Did he hit you with the chair?

A No sir.

Q How close to Cominic were you?

A Four or five feet. I could not tell you exactly.

Q You were facing right into the saloon?

A I was standing just this way (indicating sideways).

Q Were you pointing your gun right into the saloon where these men were sitting or standing alongside the wall?

A Well, for instance, this is the saloon right in front of me. They sitting this way (indicating). I pulled out and shot this way (indicating by pointing in front of him).

BY THE COURT:

Q You were not near that sign, were you? (People's Exhibit 5 in Evidence)

A I did not take notice of any sign.

Q You would have seen that sign; you know that saloon?

A Yes.

Q You have seen that sign up there?

A Yes, but not that night.

Q Before that night?

A Yes.

Q And that sign was where?

A I could not tell you exactly. I know they got another sign up there.

Q They have not got any sign up that stands on the sidewalk except that one (indicating People's Exhibit 5 in Evidence).

A The other one was higher up.

Q But that is the one that was standing on the ground about where they were sitting?

A I did not take notice.

Q You were standing out from the building?

A Facing to it, yes.

BY MR. McDONALD:

Q Why didn't you walk down on the other side of the street or run away before you fired the shots?

A What side of the street?

Q They were on the east side of the Avenue and you were on the east side of the avenue?

A Yes.

Q Why didn't you cross over to the west side of the avenue instead of passing their saloon?

A My cousin only lives a few doors away from there.

Q Your cousin lives where?

A A few houses away.

Q Why didn't you run away or back away when he took the chair up to you?

A I did not mean to kill him or anything. I was just trying to scare him.

Q Why didn't you run away?

A His brother beat me up that morning.

Q And you were angry at him?

A Well, he told me

I was the net one that was going to get it, I don't know why.

Q What do you mean by that; do you mean you were the next one to be killed?

A Yes.

Q That is what you understood?

A Yes.

BY MR. MERCHANT:

Q Who told you that?

A Tony De Luca.

BY THE COURT:

Q And that is the reason why you did not back away?

A Yes.

Q That is the reason why you went there with a gun ready to do up De Luca, or any one that interfered with you?

A If they would have bothered me I would shot to scare them.

Q Did you shoot to scare Polentino?

A I did not shoot him.

Q But you were concerned in it?

A Yes.

Q You knew they were going to kill him?

A No.

Q What do you mean by saying you pleaded guilty to his death if you had nothing to do with it?

A My statements convicted me.

Q That is, you were not well posted on the law, is that it? You made a statement that you thought would excuse you but it did not, is that it?

A I don't understand.

Q You said you were guilty here?

A Of manslaughter?

Q You pleaded guilty to assault in the first degree.

A Yes, this is the crime.

Q What is assault in the first degree?

A It is an assault in the first degree?

A It is an assault.

Q With a stuffed club or with a chair?

A That could be assault, too.

Q Could it be assault in the first degree? Did you know what you pleaded guilty to?

A I pleaded guilty to assault in the first degree in this case.

Q That is an assault with a revolver with intent to kill?

A Yes.

Q Why did you plead guilty to assault, with intent to kill, if you did not intend to kill him? You come into court and you say you were guilty.

A Yes, I was guilty of shooting him.

Q You did not plead guilty of shooting; you pleaded guilty of shooting with intent to kill, but you were not guilty at all, were you?

A The reason why I shot him was because he picked up a chair.

Q If you shot in self-defense, and if your own life was in danger, and you were obliged to shoot in order to save your life, that was not a crime at all. Why didn't you say that? You did not tell that to the Judge that took your plea,*** did you?

A I did not say a word.

Q You said you were guilty?

A Yes.

Q You know what guilty means, don't you?

A Yes.

Q What does it mean?

A Guilty of the crime.

Q What does guilty mean?

A The crime that I committed.

Q That you did commit the crime charged?

A Yes.

Q But now you say you are innocent?

A I am not innocent. I admit I shot him.

Q Well, if your story is true that you shot in self-defense and you intended to scare him, you are innocent of intending to kill him.

A That is what I meant to do.

Q That is why you ran away tp*** Philadelpyha?

A I heard he was shot and I ran away to Philadelphia.

BY MR. McDONALD:

Q How long do you know Sacco?

Objected to and objection overruled and exception.

THE COURT: This your witness and he has a right to be questioned concerning his associations with criminals.

A For the past three or four years.

Q Where did you meet him?

A He used to come to my house quite often to see my brother in 110th Street.

BY THE COURT:

Q He is a friend of yours?

A Not a friend of mine but of my brother.

Q A family friend?

A Just brother's friend.

BY MR. McDONALD:

Q How frequently did you see Sam Sacco, how often?

A I have not seen Sam Sacco since the last time he was sent away.

BY THE COURT:

Q When was that?

A I could not tell you, your Honor, the date.

Q How many times was he sent away to your knowledge.

A I have read in the paper the other day he was sent away quite often.

Q That is the first thing you knew about it?

A I knew he had been away before.

Q You had not seen him between the 20th of August and the last time he went away, as you put it?

A Yes.

Q You did not know that he had come out, is that so?

A Exactly.

BY MR. McDONALD:

Q You ran away to Philadelphia?

A Yes.

Q What name did you go under in Philadelphia?

A I did not have no particular name, all different names, Frank Bruno, Pete White.

Q Any others?

A That is about all.

Q Did you have any other names?

A That is all.

BY THE COURT:

Q What is your right name?

A Peter Bianco.

Q That means white, does it not?

A Yes.

Q Bruno does not mean white, does it?

A No.

Q What does that mean?

A I don't know.

Q Is that the opposite of white?

A That don't mean the opposite of white.

Q It means a color?

A Bruno, - I could not tell you.

Q Why did you take that name of Bruno? You had no reason for that?

A No, your Honor.

BY MR. McDONALD:

Q Did you tell this story to detective Couvins?

A No sir.

Q When he brought you back from Philadelphia?

A No sir.

Q Did you tell Couvins anything about this lifting up of a chair?

A No sir.

Q Where did Couvins take you to?

A He took me to the Third Branch.

Q Did you tell them anything there?

A No sir.

Q Why not?

A Because I was not getting any justice there.

Q You were not getting justice?

A No sir.

Q Where did they take you then?

A From there they took me to 125th Street station house.

Q Did they give you any justice there?

A I just was over there for over night.

Q Did they give you any justice there?

A They just put me in a cell. What justice was that.

Q Didn't they talk to you?

A Nobody spoke to me there.

Q Where did you go then?

A From there they brought me to Headquarters to get my finger prints.

Q Did you talk to anybody there?

A No sir.

Q You would not talk?

A There was nobody to speak to.

Q Weren't there any detectives there?

A Yes, but nobody spoke to me.

Q Did officer Couvins speak to you?

A Yes.

Q Did you tell him?

A No sir.

Q Then where did you go?

A Then from there I was brought in the court house.

Q Where?

A I was brought in the same court room and then he sent me downstairs and sent me to the Tombs.

BY THE COURT:

Q You were brought in to plead on September 21st, weren't you? That was the month after the shooting, and you said you were not guilty. The clerk asked you how you plead and you said not guilty.

A Yes, but I asked Mr. Smith to a please and he told me he could not offer me any

Q You asked Mr. James Smith, the Assistant District Attorney for a plea?

A I don't know if his name is James but it is Mr. Smith.

Q The man in Part I?

A Yes.

Q What did you say to him?

A I asked him would he come down in the pen and give me a plea. I asked him and he said, "I could not do nothing for you."

Q What plea did you ask for?

A I asked him for a reasonable plea.

Q What was that?

A I asked him if he wanted to

give me a plea.

Q If he would permit you to plead, you mean, to a smaller or lesser degree of crime than the one you were charged with? and he said no?

A Yes.

Q He made no promise?

A He just said to plead to my indictment.

Q He made no offer to give you a plea to the indictment?

A He asked me when I came in the court if I wanted to plead to my indictment as a first offender and I told him no.

Q When did you change your mind and plead to the indictment?

A I don't remember that date.

Q The 10th of October, it says here.

A Yes.

Q That was about three weeks later?

A Yes.

BY MR. McDONALD:

Q During that time you were in the Tombs, weren't you?

A Yes.

Q Did you see Sam Sacco in the Tombs?

A Yes sir.

Q Did you see Charley Young in the Tombs?

A Yes sir.

Q Did you talk to Sam Sacco?

A Yes sir.

Q About this case?

A Yes sir.

Q Did you talk to Charley Young about this case?

A Yes.

BY THE COURT:

Q Who is Charley Young?

A That fellow there (pointing to defendant).

Q Is that the name you knew him by?

A That

was the name I knew him by.

Q What other name?

A Charles Russo also.

Q Not Rossi?

A I don't know, Russo or Rossi.

Q You do not care much about name a anyhow, do you?

A Well.

BY MR. McDONALD:

Q What was said at that meeting between you and Sacco and Young?

MR. MERCHANT: Objected to as incompetent, irrelevant and immaterial, subsequent to the crime, and having no bearing on the guilt or the innocence of the defendant.

Objection overruled and exception taken.

A We never had a meeting together. I spoke to Charley Young.

Q What did you say to him?

A I just told you I spoke to Charley. The first time I met him was in the Tombs. There was a runner that lived in 112th Street so he told me he said, "What they got you for?" I told him. I explained it. He said, "You know that they got another fellow in here by the name of Charley Yong and Sam, they are upstairs." That was the first.

Q Charley Young and who?

A Sam Sacco, Charley Young was upstairs on the second tier.

Q And Sam was upstairs?

A Yes.

Q That was the first time you knew why *** and

Charley were in there?

A Yes. So this runner said. --

BY THE COURT:

Q What is the runners name?

A We used *** to call him Charley. He told me they got a fellow here, Charley Young; when we got out at 2 o'clock; - we are allowed to go out at 2 o'clock.

Q You were allowed out in the yard?

A No, around the tier, and I stopped him and I asked him and he told me "They got me for something which I don't know nothing about."

Q Who was this?

A Charley Young.

Q You did not know Charley Young, did you?

A No sir.

Q How did you come to stop him?

A This runner showed him to me.

Q Was the runner there, too?

A Yes sir.

Q This was after the runner had talked to you about two other men being in the Tombs for some crime?

A The runner was there and showed me him, Charley Young.

Q So then what?

A I asked him what they got you here for? And he told me.

Q You knew that they had him there for, didn't you?

A I wanted to ask him to make sure.

Q You wanted to be sure of it?

A Yes, and he told me. "They got me for a crime which I don't know nothing about."

Q What else was said?

A That was all he had to say.

Q Didn't you ask him what crime he was in for?

A Yes.

he told me. He said for a shooting match in 110th Street.

Q Did you ask him when?

A He told me the fellows name and he said, "De Luca was shot and they are blaming me for it"

Q What did you say?

A I told him" they got me here for the same thing."

Q Then what did he say?

A That was all I told him.

Q Didn't you say he had not anything to do with it?

A No, I did not tell him right away.

Q Did you see him later?

A Yes.

Q When?

A I used to see him quite often. We were on the same tier.

Q You and he were on the same tier?

A Yes.

Q You used to walk out together?

A Well sometimes I would walk with him, sometimes not.

Q And he would talk about this case with you of course?

A Once in a while he would mention his case, and that he was in there for nothing at all.

Q When was it you told him that you were the one that did the shooting?

A After I made the statement to District Attorney Swann.

Q After you made a statement?

A Yes.

Q You had seen Young hadn't you?

A Yes.

Q Several times?

A Yes.

Q And talked with Young, hadn't you?

A Yes sir.

Q You talked several times with him over there on the tier?

A Yes sir.

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Q When you were first brought to the District Attorney's office you did not want to talk, did you?

A Which District Attorney is that?

Q Any District Attorney's office?

A The only time I talked was with District Attorney Swann.

Q Wasn't it Mr. Fitzpatrick you talked to?

A I spoke to Mr. Swann first.

Q That was after you talked to Charley Young?

A Yes.

Q Have long had you been in the Tombs?

A A few days.

Q How many days, four or five?

A I could not tell you exactly.

Q You had talked with Charley Young during those four or five days, did you?

A I was there a few days before I made a statement.

Q What do you call a few days?

A Two, three, four or five.

Q You are not going any higher, are you?

A That is all.

Q You say you talked to Charley Young about this Shooting?

MR. MERCHANT: Object as already answered.

Objection overruled and exception taken.

A Yes sir.

Q When was it you told Charley that you were going to take all the blame for it?

MR. MERCHANT: Objected to as not proper cross-examination.

Objection overruled and exception taken.

A I made my statement to District Attorney Swann. He sent me to Mr. Fitzpatrick. Then the following day I told him about it. I said I was the one that committed that crime.

BY THE COURT:

Q You told whom?

A I told Charley Young and Sam Sacco.

Q After you saw the District Attorney?

A Yes sir.

BY MR. McDONALD:

Q Why didn't you tell him before you went over to the District Attorney's office?

Objected to as incompetent, irrelevant and immaterial; objection overruled and exception taken.

A I did not want to let anybody know my business.

Q Then why did you tell them the following day?

A Because I had already told it to District Attorney Swann.

Q When was it you saw Sacco?

A I seen him when I walked around.

BY THE COURT:

Q So that the jury may know, will you describe these tiers in the Tombs prison in detail?

A There is sort of tiers that you walk around, There is first, second and Third tiers.

Q They are floors?

A Yes.

Q Then there are little rooms called cells all around on the four sides?

A Yes sir.

Q And in front of the cells there is a platform?

A Yes, and bars.

Q But outside of the cells there is a place to walk on?

A Yes.

Q Then there is a court or a place in the center?

A Yes.

Q And those walking around walk on this space, three or four feet wide, called a tier?

A Yes sir.

Q About two men can pass together?

A Yes.

Q Three men could not?

A No.

Q But two men could walk abreast around that place?

A Yes.

Q And that is also railed off?

A Yes.

Q You were not on the same floor with Young or Sacco?

A I was on the same floor with Young?

Q And Sacco was down below or up above?

A Up above.

Q What story were you on?

A I was on the second, and Charley was on the second.

Q And Sacco?

A On the third.

Q He was just one flight up above you?

A Yes.

Q So the day after you went to the District Attorney you called up to Sam on the tier above you, and you told him outloud so that they could all hear you?

A Yes.

MR. MERCHANT: I object to anything being said about Sacco.

THE COURT: Objection overruled. He has testified to that. I merely wanted the jury to understand the circumstances.

MR. MERCHANT: Exception, please.

Q It was while you were out exercising?

A Yes.

Q You exercised in the Tombs yard also?

A We do not go now, when it is cold.

Q But when you were in there in the fall and summer, you were allowed to go out in the yard and exercise?

A Yes.

Q Was Charley even down there with you?

A Yes.

Q And Sam Sacco?

A Yes.

Q Before you went to District Attorney Swann?

A No, we haven't been out in the yard then.

Q You were not let out in the yard before you saw District Attorney Swann?

A Yes sir.

BY MR. McDONALD:

Q Did you talk with somebody before you went to the District Attorney's office?

MR. MERCHANT: I object to any conversation between Sacco and this witness.

THE COURT: I will allow it. It is the question of his credibility.

MR. MERCHANT: Exception, please.

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A Yes.

Q Did you talk to him about this crime?

A Yes sir.

Q Did you tell him that you were going over to the District Attorney's office?

A No,

Q Why didn't you tell Sam Sacco?

A Because I did not want to let everybody know my business.

Q But Sam Sacco was a friend of your brother's?

A Yes.

Q There was no reason in the world why you should not tell Sacco.

A He was not friend of mine, but a friend of my brothers.

Q He had visited your house?

A Yes.

Q Was there any reason why you would not tell Sam Sacco he was charged with the same crime you were?

A I did not want to let him know my business. I did not want to tell him.

BY THE COURT:

Q You knew you were guilty; you did the shooting?

A Yes.

Q You knew they were two innocent men kept there?

A Yes.

Q And it never occurred to you for a month or more to say. "These are innocent men. I am the man who did it."

A They are innocent.

Q But the District Attorney wants to know why you did not say so at once? Why it took you a month or more to say that?

A I only was there a few days when

I wrote District Attorney Swann.

BY MR. McDONALD:

Q Why didn't you tell Sam Sacco, who was a friend of yours?

A I did not want to tell him.

MR. McDONALD: That is all.

BY MR. MERCHANT:

Q Did you have counsel?

A No sir.

BY THE COURT:

Q Did you not have Mr. Weissager?

A They assigned him to me.

Q But you had him?

A Yes.

Q You were arraigned at the bar and the Clerk asked you if you had counsel and you said no, and they asked you if you means to employ counsel and you said No, and then you asked the Court to assign you a lawyer and he assigned Mr. Weissager?

A Yes.

Q You had counsel then?

A Yes, but he came down to see me only once.

BY MR. MERCHANT:

Q Did you talk to him before you pleaded guilty?

A Through my counsel?

Q Yes.

A Yes.

MR. MERCHANT: That is all.

MR. MERCHANT: I want to offer in evidence the indictment filed August 29th, 1917, in this County, People against John Pogano, together with endorsements

thereon.

MR. MCDONALD: I object to that as having nothing to do with this case.

MR. MERCHANT: It is an indictment for the same crime against Pogano.

THE COURT: The indictment is only a charge. I will exclude that.

MR. MERCHANT: I would like to have the record clear on this point. Is there any objection on the ground that the paper offered, which I will have marked for identification, is not the original indictment, filed in this County? If so, I shall offer proof of that fact so as to have the record straight.

THE COURT: I will exclude the indictment.

MR. MERCHANT: Exception, please.

MR. MERCHANT: I ask that it be marked for identification.

Paper marked Defendant's Exhibit D for Identification.

MR. MERCHANT: I understand it is excluded.

THE COURT: It has no bearing on the case. It is entirely incompetent, irrelevant and immaterial.

MR. MERCHANT: Those are the grounds, your Honor?

THE COURT: Yes.

MR. MERCHANT: Exception, please.

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MR. MERCHANT: The defendant rests.

THE COURT: Gentlemen of the jury, the Court will take a recess until 2 o'clock. Meanwhile you will remember the admonition I have given you, not to discuss the case among yourselves, nor with others, nor to come to any conclusion on the question of the guilt or the innocence of the defendant until the case is submitted to you by the Court at the end thereof.

TRIAL CONTINUED. 2 P.M.

DOMINIC DE LULCA, recalled in rebuttal testified as follows:

REBUTTAL BY MR. McDONALD:

Q Peter Bianco said on that night of the 20th of August, that you picked up a chair --

A No sir.

THE COURT: Do not answer the question until you hear it.

Q And made a motion as if to strike him. Did you pick up any chair that night?

A No sir.

Q Did you get up from your chair at any time that night before you were shot?

A No sir.

Q When was the first occasion that you saw Peter Bianco?

A After Charley Young, Sam Sacco and John Pogano had shot at us.

Q Did you call him a dirty cocksucker?

A I did not call him at all.

MR. McDONALD: That is all.

BY MR. MERCHANT:

Q Did you Bianco that night?

A Yes sir.

MR. MERCHANT: That is all.

MR. McDONALD: The People rest.

MR. MERCHANT: Defendant rests.

MR. MERCHANT: If the Court please I move to strike all evidence introduced bearing on the matters subsequent to the alleged shooting in front of this saloon, and the circumstances immediately following

it; to strike out all evidence bearing on the alleged shooting at the drug store; to strike all evidence of conversations had between Sacco and others not in the defendants Rossi's presence; to strike all evidence of a ride in an automobile alleged to have been taken by the defendant Rossi and Sacco, and I think the other person Robert Rossie, in which it was said in substance that Rossi said he could get all the bail he needed If Dominic, I think it was, would shoot some men, - on the ground that such testimony is not a indictment for conspiracy, and therefore that such evidence is not within the pleadings and also on the ground that it is prejudicial.

THE COURT: I wish you would divide up your motions, Mr. Merchant; the ride that Rossi testified to was three weeks before the shooting, as I understand it. The was not subsequent.

MR. MERCHANT: Well, I separated that.

THE COURT: If you make that particular motion first, I will deny it.

MR. MERCHANT: I move first to strike out the conversations about the ride to the Bronx, to which your Honor referred.

Motion denied and exception taken.

THE COURT: That evidence is submitted to the jury for the purpose of proving deliberation and premeditation, a plot to kill De Luca. They can believe it or not. It is for them to say what weight they will give it, but it is perfectly competent testimony.

MR. MERCHANT: I move to strike out the other evidence as subsequent to the shooting in front of the saloon to which I referred.

THE COURT: If the jury finds that is all part of one transaction, the result of a plain to kill De Luca, they may consider it. If it is not connected with the actual shooting of De Luca they will ignore it.

MR. MERCHANT: Then the motion is denied and I except.

MR. MERCHANT: I move that the jury be instructed to disregard the evidence subsequent to the shooting in front of the saloon to which I have already adverted.

THE COURT: I can only refer to my ruling, that if it be part of an attack on De Luca to kill him, it is properly in evidence; if not, if it refers to a subsequent matter, not connected with the attack on De Luca, why the jury must ignore it.

MR. MERCHANT: Exception, please.

MR. MERCHANT: I now make a motion that the jury be instructed to disregard the evidence as to the automobile

ride to the Bronx.

THE COURT: I have denied that.

MR. MERCHANT: I ask that the jury be instructed to disregard that.

THE COURT: The jury will consider it for the purpose I have indicated. The burden is on the People to prove premeditation and deliberation, and intent to kill, and it is for the jury to say what weight they will give it.

MR. MERCHANT: I now move that the Court advise the jury to acquit the defendant on the ground that no cause of action has been proven against him under the indictment.

THE COURT: The motion is denied.

MR. MERCHANT: Exception, please.

MR. Merchant sums up to the jury.

MR. McDonald sums up to the jury.

MR. MERCHANT: There is no evidence of any negotiations between Sacco and this defendant and Bianco.

He *** said this Peter Bianco was the "fall guy" for the others.

THE COURT: The District Attorney is merely drawing his conclusions from the statements made from the evidence. I understand Bianco did talk with Rossi about the case, and finally told him he was killed. The jury must draw their own conclusions from the testimony. Counsel on both sides have a right to give their views on the testimony and if you agree with them and deem their deductions to be proper, you will give them weight, otherwise you will ignore them.

Is that satisfactory, Mr. Merchant?

MR. MERCHANT: Yes sir, that is my idea exactly.

MR. MERCHANT: Mr. McDonald has made reference about the plot to kill Vinc and Ciro Morelli, and he refers to this defendant as one of the "Sacco crowd".

THE COURT: The People claim that his defendant and Sacco were concerned in that transaction.

MR. MERCHANT: They have introduced no evidence as to that.

THE COURT: There is testimony that this man urged him to do what Sacco requested him, and promised to get him bail. I do not know what weight the jury

will give to it. The jury will determine *** they will believe that or not, and if they believe it, what weight they will give it, and if they believe that the shooting has been connected up by that testimony, why that is sufficient foundation for a verdict. If they do not believe it, or if it does that the killing had any connection with it, why they must acquit him. It is not my purpose to mention the facts in my charge, because the testimony has been summed up by both counsel. The jury will be guided by their own recollection. If I should mention any evidence or facts, it is not for the purpose of controlling the judgment or recollection of the jury, but merely in ruling on the matters which are brought to my attention by counsel.

MR. McDONALD: (Summing up). In Praino's testimony and in Rossie's testimony, Rossie said he knew all about it. So did Praino, that is about the shooting at 110th Street. It was common talk in the neighborhood.

MR. MERCHANT: I think that is improper.

THE COURT: Counsel must confine themselves to evidence, or to inferences which may fairly be drawn from the testimony. This testimony about the common talk was about the shooting of Sacco by De Luca.

MR. MCDONALD: (Summing up to the jury). Well, there was a feud.

MR. MERCHANT: There is no evidence of that.

THE COURT: If Sacco made up his mind to shoot De Luca, that is evidence of murder, if the jury so consider it, and if this defendant made up his mind to help Sacco, he is just as guilty as Sacco.

MR. MERCHANT: Exception, your Honor. This is an attempt to introduce pernicious generalities which are not specifically part of the evidence in the case. Talk about gang feuds and that kind of talk is prejudicial.

THE COURT: You brought out the shooting of Sacco by De Luca, and there was common talk about that shooting, one of the witnesses testified to. It is not necessary for the People to prove that Sacco had any motive, but they may prove motive if they can. The law is not concerned with the motive for a crime. Every man must obey the law. A man who shoots another, from whatever motive, is guilty of a crime unless he does it in self-defense. The People has to prove deliberation and premeditation, and intent to kill, before they can sustain the first charge in the indictment. The jury will disregard Mr. McDonald's summing up unless it is in accordance with their recollection of the testimony. The Court has not right to find any facts. There is only one way to prove facts and that is by

calling witnesses to testify in your hearing and presence. My duty is just to state the law to the jury and to remind counsel that they must confine themselves to the evidence and to deductions which may properly be drawn from it.

MR. McDONALD: (Summing up to the jury). This defendant has the greatest motive for testifying falsely. He has -- three times convicted for possessing and carrying a gun. - -

MR. MERCHANT: I ask the jury that the jury be a ***monished, and that your Honor Will instruct the jury on that specific point. I do not think that is fair tactics.

THE COURT: The District Attorney has a right to refer to his convictions on the question of his credibility.

MR. MERCHANT: For that sole purpose.

MR. McDONALD: That is all I am doing it for.

MR. McDONALD: (Summing up to the jury) This defendant was very precise about the happenings of August 20th but he did not even know when he was married to this girl last week. He lived with her I the Hotel Remington for over a year.

MR. MERCHANT: That is not so.

THE COURT: He had lived with this woman as his

wife since September, 1916, and was married to her last week, as I recall the testimony. He said he lived with her about a year before he married her. The jury may consider that on the question of credibility.

MR. MERCHANT: I except to your Honor's ruling.

THE COURT: The law is that any criminal, vicious or immoral act may be shown against a witness when he takes the stand, and I say that is a vicious and immoral act, for a man and woman to live together in unlawful relation and it may be considered by the jury on the question of his credibility, and they will give it such weight as they think it should receive.

MR. MERCHANT: Exception, please.

(At 4:30 P.M. the Court takes a recess)

THE COURT: Gentlemen of the jury, the Court will excuse you now until 10:30 o'clock tomorrow.

In the meanwhile you must remember the admonition that I have given you; you must not discuss this case with anyone. You must report to the Court if anyone should attempt to discuss it with you and you must not decide it yet until it is submitted to you for your decision. Keep an open mind then till tomorrow morning and the case will then be given to you for your decision.