

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,

Defendant in Error,

v.

PASQUALE DELISO,

Plaintiff in Error.

On Error to
Middlesex Oyer
and Terminer.

BRIEF FOR PLAINTIFF IN ERROR.

Pasquale Deliso having been convicted of murder in the first degree and sentenced to death in the Court of Oyer and Terminer of Middlesex County, prosecutes this writ of error to reverse said judgment, the Chancellor having refused a writ of error into the Supreme Court. (Case, page 339.)

The evidence on the part of the State tended to show that one Luigi Tenace was shot at Port Reading, Middlesex County, and died some ten days later in the Alexian Brothers Hospital in Elizabeth.

The shooting occurred somewhat after midnight in the shanty where the deceased Tenace was living with his son and his brother, who were present at the time and were the principal witnesses for the State.

The Tenaces, as well as the defendant and a number of other witnesses on both sides, were laborers employed by the Philadelphia and Reading Railroad Company on their coal docks at Port Reading and resided in shanties belonging to Devita and Company, who provided the shanties and maintained a provision store for the accommodation of the laborers so employed to the

number of several hundred. The shanties were of one story and each consisted of a single room and were arranged in rows adjoining each other under one roof.

The testimony of the Tenaces was to the effect that the occupants of the shanty had been asleep and were aroused by the breaking of the window immediately above the cot where Guiseppe Tenace (the brother) was lying, followed by the introduction through the window of a club by means of which some person on the outside proceeded to beat Guiseppe. The assailant having desisted from this attack disappeared and the deceased man was bathing the leg of his brother where it had been injured by the beating, when three pistols were pointed through the window and demand was made to open the door. "If you don't I will kill you." Shots were also fired through the window but did not take effect. Domenico Tenace, son of the deceased man (about 18 years of age) opened the door and two men came in, one of whom is said to have been the defendant.

The Tenace brothers sought refuge under their cots (or both under the same cot). The other man employed himself in beating Guiseppe with a club while the man whom Guiseppe and Domenico identify as the defendant, and who had a pistol and a club, dragged Luigi Tenace from under the cot, and after beating him with the club and threatening to kill him and having made him kiss the hand of his assailant, shot him in the head inflicting the wound from which he died. Two shots were fired, the first of which did not take effect. The defence was a denial that the defendant had been one of the attacking party or had any connection with them. His story, which was corroborated throughout by his companions, was that he was returning with two friends named Russo and Romanulo to his shanty (which was next but one to that occupied by the Tenaces), when they saw three others of the Italian colony named respectively Cierrelli, Sacco and Parente (who have since disappeared), go to the window of the shanty, break it and fire some shots into the shanty and

afterward enter the door of the shanty when other shots were heard.

The defendant with Russo and Romanulo remained about 20 feet from the shanty while the assault was in progress, but were unarmed and did not interfere.

Cierrelli is said to have strongly resembled the defendant and the theory of the defence was that Cierrelli had been mistaken for the defendant.

No motive was shown for the commission of the crime by defendant.

I.

THE COURT ERRED IN PERMITTING THE STATE TO CHALLENGE A JUROR PEREMPTORILY AFTER THE ADMINISTRATION OF THE OATH HAD BEEN BEGUN.

Sections 80 and 81 P. L. 1898, 896 preserve the rule which has always prevailed that peremptory challenges cannot be made after the juror is sworn.

And the right to challenge does not continue until swearing is complete but terminates when the ceremony begins.

State vs. Lyons, 41 *Vroom*, 635, 642-643.

Leary vs. North Hudson Co. St. Ry. Co., 40 *Vroom*, 67.

In *State vs. Lyons* (above cited), this court held that a peremptory challenge interposed after the clerk had commenced to administer the oath came too late and was properly disregarded.

That also was a capital case and the jurors were being sworn separately, the juror concerning whom the question arose being the tenth.

In the present case the parties by agreement (*p.* 7 *bottom*) were being called upon alternately to challenge first, and when the juror Moore was drawn the State in accordance with this practice was called upon first (*p.* 9, *l.* 30), and challenged to the favor.

The juror having been sworn and examined upon voir dire the challenge was disallowed, and no further challenge being interposed by the State, the question was put, "Does the defence challenge?" which was answered in the negative and thereupon the juror having placed his hand upon the book, the clerk began to administer the oath to the juror, and after several words of the oath had been uttered by the clerk, the Prosecutor said "The State challenges peremptorily."

Counsel for the defendant objected that the challenge was too late, the oath having been begun. The court, however, sustained the challenge and discharged the juror, to which ruling an exception was duly allowed (pp. 11-12).

There was no claim that sufficient time for challenge was not allowed to the State before the oath was begun. After the overruling of the State's challenge to the favor there was time enough for the defence to be called upon and to respond as they did in the negative. Good faith and the order of challenge which had been agreed upon, required that the State's peremptory challenge should have been made before the defence were called upon. But if a departure from the agreed course of challenge were permissible, there was abundant opportunity for the State to act before the swearing of the juror was commenced.

This case therefore is ruled by the Lyons case (as well as by *Leary vs. North Jersey St. Ry. Co.*, 40 *Vroom* 67), to the extent that the right of the State to peremptorily challenge this juror had ceased to exist at the time that it was sought to be exercised.

The process of selection so far as concerned this juror was complete, and he had been chosen as one of the twelve who were to try the issue.

Even if the court in its discretion might have discharged the juror for a sufficient cause which was not discovered by the State till after the oath was begun, it is clear upon all of the authorities that he could not be discharged arbitrarily or without cause.

In *Aaronson vs. State*, 27 Vroom 9, 10, Chief Justice Deasley in sustaining the right of the court for reasonable cause to discharge *before being sworn* one of the special panel of forty-eight required to be served upon the prisoner in cases such as the present, said:

"Nor do we think there is any substance in the suggestion that the power thus conceded will be liable to be abused, for it is certain that the court cannot arbitrarily and of its own motion excuse any of these jurors from service in the given case; for if no ground for the dispensation existed, the judicial action would be erroneous and could be reviewed by means of a writ of error."

To the same effect are *State vs. Williams*, 3 Stew. (Ala.) 454, 473; *Van Blaricum vs. People*, 16 Ill. 364; *Williams vs. State*, 32 Miss., 389; *Smith vs. State*, 55 Miss. 410; *Finn vs. State*, 5 Ind. 400; *Meyers vs. State*, 20 Ind. 511; *Hildreth vs. City of Troy*, 101; N. Y. 234; *People vs. McQuade*, 110 N. Y. 284; *Williams vs. State*, 63 Ark. 527; *Greer vs. Norvill*, 3 Hill (S. Car.) 262.

In most of the cases above cited the judgment was reversed because of the erroneous exclusion of a competent juror regularly drawn.

In *People vs. McQuade*, 110 N. Y. 284, the court said: "The legal right of a defendant may be violated as well by excluding competent jurors as by admitting incompetent ones. He is entitled in all cases to a fair and impartial jury, but he is also entitled to insist that the jury shall be selected according to methods established with a view to secure just and impartial administration of the jury system. The law provides for the exclusion of incompetent jurors from the panel, and also of a limited number by peremptory challenge. There must be either legal cause or a peremptory challenge to justify setting aside a juror properly drawn. The court cannot arbitrarily and without cause set aside a competent juror."

The exclusion of this juror arbitrarily and without cause, was legal error and exception having been duly

taken thereto (p. 12), it is assigned as error (p. 341, pl. 4); as well as specified as cause for reversal under section 137 of the Criminal Procedure Act, *P. L.* 1898, 915.

The illegal action of the court in discharging this juror changed to that extent the personnel of the jury. If the legal right of the defendant had not been violated the excluded juror, Moore, would have been one of the twelve upon whose decision the life of the defendant depended, and one of those who found him guilty would not have served. It is impossible to say that if the substitution thus unlawfully brought about had not taken place the result might not have been different.

Jurors equally impartial often differ entirely in their views of the facts. It is this that causes juries to disagree—often because a single juror differs irreconcilably from all the others. And in countless instances, where a disagreement is not produced, the differing views of a single juror have radically changed the verdict which would otherwise have been rendered.

The error, therefore, is clearly one which “may have prejudiced the defendant in maintaining his defence upon the merits.” *Crim. Proc. Act* 1898, 915 *Sec.* 136.

But if it were otherwise the Constitution, in providing that “The right of trial by jury shall remain inviolate” (*Constn. N. J. Articles* I, *Pl.* 7), protects the defendant not only in the right to have a jury, but in the right to have it selected according to law, and the Legislature cannot provide that a judgment which violates the right in either respect shall not for that cause be reversed.

II.

THERE WAS ERROR IN RESPECT TO THE EVIDENCE AS TO THE ALLEGED OCCURRENCE AT CANSARANO'S SHANTY.

The Court, against repeated exceptions of the defendant, permitted one Cansarano to testify (pp. 100-

110), that on the night that Tenace was shot and near the same time, certain persons of whom the defendant was one, broke in the door of the shanty in which Cansarano was sleeping and commanded that he should "light the electric or we will kill you all"; that when he lit the electric light he saw the defendant by the door; that another man who had already entered the shanty said to the defendant who was outside that Cansarano and his companion were Mondanardos, to which the defendant replied "If they are Mondanardos they must die" (p. 105, l. 30); that defendant also said "You are from Mondanarda and you have got to die" p. 109, bottom). That defendant thereupon entered the shanty and he and his companion proceeded to beat the occupants of the shanty with sticks.

So much of the above recited testimony as related to the assault and the threat, was apparently admitted in the expectation that the State would prove that Tenace also was a "Mondanardo"—that is, had come from a village in Italy of that name. The State, however, failed to show this, but on the contrary, proved by the son of the man who was killed that he and his father came from a different village (p. 116). Motion was then made by counsel for defendant (p. 120, l. 30), to strike out the testimony of Cansarano as to the occurrence at his shanty as irrelevant, incompetent and immaterial, and because no connection had been made by the State which entitled that testimony to be given against the defendant. The Court withheld the decision of the motion until the close of the State's case, promising to deal with it then, whether the motion was renewed or not, and allowing an exception to the refusal to grant the motion at the time it was made (p. 121). The State having rested, the Court did accordingly deal with the matter as follows (pp. 191-192):

"The Court: I think the testimony of the witness was entirely competent to show the presence of the defendant in the neighborhood, but I do not understand that Mr. Strong objected to that. The objection was to the

evidence of the witness as to an assault upon him at what I call the other shanty. That evidence could only have been admitted to show a motive on the part of the prisoner, and that I understood was the object with which it was introduced. I think the State has failed in that respect, and that the jury must disregard the testimony of the witness sworn this morning whose name I cannot recall—Cansarano, who testified to an assault upon him at the other shanty. The evidence as to the assault upon him is stricken out. The only bearing of his evidence, as I recall it, if it is at all competent, is so far as it may tend to show that the defendant was in the neighborhood.

“Mr. Strong: It leaves it somewhat in doubt, I must confess, to my mind as to how much of the testimony is in the case.

“The Court: Well, I think I shall have to say to the jury under the circumstances that all the testimony of Cansarano they are to regard is that which tends to show that he was present at some time that evening in the neighborhood. He did say he saw him there at the door.

“Mr. Berdine: Two different hours. At nine o'clock.

“Mr. Marsh: No; nine o'clock he said it was a different man.

“The Court: That is as far as I can go, Mr. Strong.

“Mr. Strong: Then I suppose there goes with it the statement which the witness said that he defendant made with reference to Mondanardo and so on.

“The Court: That must go out.”

The Court also refused a motion then made to strike out the whole of Cansarano's testimony and allowing an exception to such refusal (p. 193).

The result of the judicial action, therefore, was to strike out the evidence as to the assault on Cansarano (p. 192. l. 10), and as to the threats as to the occupants of the shanty because they were Mondanardos (p. 192. l. 32). In addition to this the Court said: “I think I shall have to say to the jury that all the testimony of

Cansarano they are to regard is that which tends to show that he was present at some time that evening in the neighborhood."

This last remark cannot be deemed effective for any purpose. It is not definite or decisive. It does not amount to a direction to the jury. It is a mere expression of what the Judge *thinks* he will have to say to the jury, referring, perhaps, to what he might say in his charge; but he neither then nor at any other stage of the case did say it. The charge contains no reference to the matter.

It is clear beyond all controversy that in the absence of the expected evidence of a motive common to the shooting of Tenace and the breaking and entering and assault committed at Cansarano's shanty, the evidence of these distinct and unconnected crimes, was incompetent.

Clark vs. State, 18 *Vroom*, 556, 558.

Leonard vs. State, 31 *Vroom*, 9.

State vs. Raymond, 24 *Vroom*, 260.

Meyer vs. State, 30 *Vroom*, 310.

Parks vs. State, 30 *Vroom*, 573.

State vs. Sprague, 35 *Vroom*, 419.

Bullock vs. State, 36 *Vroom*, 557, 574.

State vs. Hendrick, 41 *Vroom*, 41.

"There is a class of cases in which the knowledge, good faith, motive or intent of a party is material, on which evidence collateral to the main subject is sometimes admitted; but the competency of such evidence is limited to facts which are so connected with the subject in controversy as to make it apparent that the party had a common purpose in both transactions. 1 *Tayl. Ev. Sections* 327, 338, 348; 11 *Am. and Eng. Encycl. L.* (2d ed.), 510, 514, and cases cited in the notes; *Jordan vs. Osgood*, 109 *Mass.* 457, 463; *Cary vs. Hotailing*, 1 *Hill* 311, 316; *People vs. Dimick*, 107 *N. Y.* 13, 32; *King vs. Ellis*, 6 *Barn. & C.* 145. But on the trial of a criminal charge it is not relevant to show that the defendant has committed other similar crimes which are not con-

nected in any way with the one in question. 11 *Am. & Eng. Encycl. L.* 2d ed. 2, 513; *Boyd vs. United States*, 14B U. S. 450; *Commonwealth vs. Jackson*, 132 Mass. 16; *People vs. Gibbs*, 93 N. Y. 470, 473."

Bullock vs. State, 36 *Vroom*, 557, 574.

(1) The effect of the incompetent evidence of the assault and battery and threats at Cansarano's shanty was not removed by the action of the Court. It is not every case in which the admission of incompetent testimony *can* be cured by striking it out. In order to prevent a reversal of the judgment "*it must appear that the illegal testimony was so eradicated from the case that its admission could not have injuriously affected the accused.*"

Bullock vs. State, 36 *Vroom* 557, 576.

In *Throckmorton vs. Holt*, 180 U. S. 552, cited with approval by this Court in the *Bullock* case, it is said (p. 567): "There may be instances where such a strong impression has been made upon the minds of the jury by illegal and improper testimony that its subsequent withdrawal will not remove the effect caused by its admission, and in that case the general objection may avail upon appeal or writ of error."

The same rule was laid down in *Hopt vs. Utah*, 120 U. S. 430, and in *Waldron vs. Waldron*, 156 U. S. 361.

In each of these three cases the Supreme Court of the United States reversed the judgment below because of the admission of improper testimony, the effect of which the Court had sought to remove by striking it out. It is said by the Court in *Waldron vs. Waldron*, 156 U. S. 361, 383, that the curative effect of the correction in any particular instance depends upon whether or not, considering the whole case and its particular circumstances, the error committed appears to have been of so serious a nature that it must have affected the minds of the jury despite the correction by the Court."

In the present case it cannot be doubted that the

testimony concerning what occurred at Cansarna's shanty *must* have had an affect upon the minds of the jury which could not have been eradicated by merely striking out the testimony.

(2) But *secondly*, the action of the Court, whatever may have been its efficacy with respect to the testimony as to the assault and battery and threats left in the case, the matters covered by the exceptions on pages 101, 102 and 103, namely, *the evidence that the defendant and others with force had broken in the door of Cansarano's shanty demanding that he should "light the electric or we will kill you all."*

This part of the testimony was not admitted with any view to its being rendered competent subsequently, but because deemed to be in itself competent without more, for the purpose of showing defendant's presence in the vicinity of the crime; hence, the failure of the evidence of common motive which was necessary to legalize the proof of the assault and threats against Mondanardos, did not affect the standing of this testimony which had been admitted regardless of any such connection. The reception of this testimony was justified by the Court on the express ground that it tended "*to show that the defendant was in the neighborhood about the time that this crime is alleged to have been committed*" (p. 102, l. 25). So therefore when the Court retained in the case at the close of the evidence on the part of the State so much of Cansarano's evidence as "*tends to show that he (defendant) was present at some time that evening in the neighborhood*" (p. 102, l. 20), the jury would naturally understand that the evidence admitted expressly for that purpose was retained. Certainly it was not struck out nor were the jury instructed to disregard it. If it were even doubtful whether the language of the Court in striking out a part of Cansarano's evidence extended to this portion of it the judgment must be reversed.

In the Bullock case this Court reversed the conviction because the evidence of another crime which had been improperly received, had not been with sufficient dis-

tinctness withdrawn from the consideration of the jury.

And see *Throckmorton vs. Holt*, 180 U. S. 552, 567.

The rule is that the judgment must be reversed if the *illegal evidence may have been harmful*, and it is incumbent upon the party who introduced the evidence to make it clear that it could not have been.

Buckman vs. Bergholz, 8 *Vroom*, 437, 441.

Ryan vs. State, 31 *Vroom*, 552.

Bullock vs. State, 36 *Vroom*, 557.

State vs. Henson, 37 *Vroom*, 601, 618.

State vs. Sprague, 35 *Vroom*, 419, 426.

It was not at all necessary for the State to go into the objectionable details of the occurrence at Cansarano's shanty in order merely to show the presence of the defendant near the scene of the crime. A few simple questions as to whether the witness Cansarano had seen the defendant that night and at what hour and where, would have answered every legitimate purpose and would have left the introduction of the circumstances at the option of the defendant's counsel upon cross examination. Instead, however, of pursuing this course, the prosecutor was permitted first to prove the burglarious entry into Cansarano's shanty in all its details, and then to show that the defendant was one of the party concerned in it.

Evidently the ostensible purpose of showing the presence of the defendant in the neighborhood was a mere pretext to get into the case matter which did not properly belong there, and which was distinctly prejudicial to the defence.

It would seem that in fairness and if the purpose were simply to prove the presence of the defendant in the neighborhood, such evidence should have been entirely reserved for rebuttal in case the defendant should deny that he was in the neighborhood.

The two Tenaces having testified directly and positively to the crime and having identified the defendant as the perpetrator of it, it was not essential for the State to prove the presence of the defendant by other testi-

mony. Cansarano, in fact, was allowed in rebuttal to reiterate the statement that the defendant was at Cansarano's shanty that night (p. 326, l. 10).

III.

THE COURT ERRED IN REFUSING TO PERMIT THE DEFENCE TO PROVE THAT BARTONI HAD PROPOSED TO THE BOY TENACE THAT HE SHOULD MAKE A FALSE IDENTIFICATION OF THE FIRST MAN CAUGHT, AND THAT THE BOY HAD ACQUIESCED THEREIN.

Domenico Tenace, son of the man who was shot, testified that he recognized the defendant as the one who had done the shooting. He was asked on cross examination if Bartoni, his uncle, had not said to him that he Domenico, must say that the first man caught was the one who shot his father, and just as soon as the first man was caught they would get the right man.

The boy denied that anything to this effect was said to him, and the defence at the proper time offered to prove by one Luigi Manuci that he had heard Bertoni make the proposition and that the boy had said nothing in reply. The offer was overruled and exception was allowed (pp. 222-224).

The evidence was competent as attacking the credibility of one of the main witnesses of the State.

If the defense had been able to show an express assent to this proposition surely it would be competent. The Judge declared that if the offer went to that extent he would admit it (p. 223, l. 30).

But the ascent need not have been express.

The defense was entitled to have the jury consider (as evidence that he did in fact assent though not in words) that the proposition had been made and that the boy had remained silent, and that he afterward on the stand denied that the proposition was made.

The denial of the boy was important as showing a desire to conceal the making of the proposition which he would not naturally do if he had not assented to it.

IV.

THERE WAS ERROR IN PERMITTING THE STATE TO CONTRADICT RUSSO UPON IMMATERIAL POINTS.

The defendant and Russo and Romanulo who were in his company at the time the shooting took place, testified that he did not do it, that he had no club or pistol, and that the crime was committed by three other Italians, Sacco, Parente and Ciarrelli, who ran away that night or the next day and have never been seen since. Ciarrelli is said to have strongly resembled the defendant.

The statement of the defendant and his companions was that they were in the vicinity of the shanty at the time that Tenace was shot, and saw Sacco, Parente and Ciarrelli go to the window and afterwards enter the door and heard the shots, but did not see what occurred in the shanty.

Domenico Russo, one of the two companions of the defendant, testified that after the shooting of Tenace, he and Romanulo, the other companion, left the defendant in the vicinity of the shanty and went home to bed. On cross examination Russo swore that he, Russo had no gun or pistol that night and did not own one (p. 281, l. 20; p. 300, l. 30), and that he did not see Cansarano that night (p. 281), and was not in Casarano's shanty (p. 300, l. 20).

In rebuttal, Cansarano, against objection and exception was permitted to testify that Russo was in his shanty and had a double-barreled gun with him on the night in question (p. 325), the time of night not being stated.

He was further permitted to testify that the defendant was with Russo on that occasion (p. 325).

Another witness for the State, Sanzone, also testified in rebuttal that he saw Russo on that night about 12.30 in Cansarano's shanty with a double-barrelled gun (p. 324).

The testimony of each of these witnesses was duly

excepted to on the ground of being a contradiction of Russo upon an immaterial issue.

Surely it was wholly immaterial whether Russo had a gun or pistol or whether he was at Cansarano's shanty.

(There were separate exceptions covering each of these points.)

Whether Russo was in Cansarano's shanty or not and whether he had a gun or not, had no relevancy whatever to the issue and would not have been provable independently of the purpose of contradiction. Such being the case contradiction should not have been allowed. The contradiction was undoubtedly prejudicial to the defendant.

As the case stood the two Tenaces swore that the defendant had committed the crime. On the other hand Russo and Ramanulo testified that they were in the immediate company of the defendant and therefore in a position to know, and that he did not commit the crime.

Putting aside the defendant's own denial, the opposing witnesses were evenly balanced in number. The contradiction of one of the defendant's witnesses tending as it did strongly to impeach his credibility, may have turned the scale against the defendant.

If Russo swore falsely in saying that he had no gun or pistol the jury might properly apply the maxim *falsus in uno, falsus in omnibus*.

V.

THE COURT ERRONEOUSLY STATED THE EVIDENCE IN THE CHARGE.

It was proved that the defendant was seen by the son of the deceased man, a boy of 18, who now swears positively to the identity of the defendant, about half an hour after the shooting, in the immediate neighborhood of the act.

The testimony of McDonald is that the boy was with him when defendant came out of another shanty and by the light of a bonfire was plainly visible and recog-

nizable; that he made a run at the boy, but ran away on seeing McDonald and was pursued by him, the officer firing his revolver at him. Three other men (the same three who defendant and his two companions said had done the shooting and who have since disappeared) ran away at the same time and in the same direction with the defendant although they came from a different place (pp. 175-178).

McDonald and the boy were within twenty feet of defendant at that time, yet nothing was said by the boy (p. 182). He did not then identify the defendant or say that he was the man who had shot the boy's father half an hour before.

The defense naturally urged it as a strong point against the boy's later identification that he had not identified defendant on this occasion.

The judge in charging the jury thought it worth while to notice this point, and in arguing against it says (p. 487): "But you will observe that the officer did not seem to require identification, but himself assumed, not unnaturally, I think, that the men who seemed to him to be attempting to escape were the guilty parties."

This is a misstatement of the testimony.

There is no evidence that the officer at that time assumed that the men who were running away were the guilty parties.

He says that he *ran after the defendant because the defendant had run at the boy* (pp. 182-183).

There is nothing to show that the officer any more than the boy, at that time, connected the defendant with the shooting of Tenace.

This misstatement of the evidence is important, and there being nothing to support it, it is reversible error.

Smith & Bennett v. State, 12 Vroom, 370.

VI.

THERE WAS ERROR IN THE CHARGE WITH RESPECT TO THE CRIME.

The Court charged (p. 330, bottom): "In the present case there is nothing which would reduce the offense to manslaughter, and the prisoner, if guilty, is guilty of murder."

And again (p. 332, top): "The testimony of the boy Domenico and the brother Joseph is uncontradicted that there was a threat to kill; that Luigi was dragged from under the cot and pleaded for mercy and kissed the hand of his assailant and was shot. *If you believe that, the guilty person was guilty of murder in the first degree.*"

The elements stated in the passage last quoted do not in law constitute murder in the first degree. They are only evidence which may justify the inferences of an intent to kill and of deliberation and premeditation.

But these are inferences, not of law but of fact, and as such are to be drawn by the jury if drawn at all.

The circumstances referred to are not conclusive of an intent to take life. It is quite possible to entertain a reasonable doubt whether the defendant (if he was the guilty person) intended to take life. Both the threat to kill and the firing of the pistol may have been intended merely to inspire terror. He may not have intended that the shot should take effect. No motive was shown and nothing was said at the time of the shooting in any way explanatory of the threat. There was neither provocation nor resistance. It may well be that the purpose of the assailants went no further than to give the Tenaces a beating and a scare in mere wantonness, but without intention to do serious injury.

The first shot fired did no harm. It may be that the second was intended to be harmless also, and that its fatal effect was due to some sudden motion of Tenace not anticipated by his assailant.

If this was the true theory the crime was not murder in the first degree but manslaughter.

According to the story of Joseph Tenace the same threat was made when they came in first, but they went out afterwards without having inflicted any serious injury (pp. 83-84). So also in regard to the occurrence testified to by Cansarano. The threat there was that being Mondanardos they must die, &c. Yet there seems to have been no attempt to put the threat into execution; there was a mere beating with a stick (pp. 105, 109-111).

The jury should have been permitted to consider this theory, and it was error of the most prejudicial character for the Court to take from the jury the right to convict of manslaughter, or of any other offense than murder in the first degree.

VII.

THE JUDGMENT DOES NOT DETERMINE THE MANNER IN WHICH THE DEFENDANT SHALL SUFFER DEATH.

The judgment is (p. 9, l. 23, &c.) "that the said Pasquale Deliso shall suffer death in the week beginning on the first day of December, nineteen hundred and seven in accordance with the law provided for that purpose."

Whether the penalty shall be inflicted by hanging as heretofore or by means of electricity is left indeterminate.

The judgment for this reason is void.

The act entitled "An act concerning the infliction of the penalty of death," approved April 4, 1906, by its terms took effect on the first day of March, 1907, and applies to all convictions for crimes punishable by death, committed on or after that date. *P. L. 1906, 112, 115, Section 14.*

Whether the judgment is to be executed in accordance with this statute or in accordance with the previous law, cannot be determined from the judgment record.

The date alleged in the indictment is August 25, 1907, but the date in an indictment is purely formal and in-

deed might as well have been omitted.

Ketline v. State, 30 *Vroom*, 468.

VIII.

THE VERDICT SHOULD HAVE EXPRESSLY DETERMINED THE DATE OF THE CRIME IN VIEW OF THE EFFECT WHICH THE DATE HAS IN DETERMINING THE METHOD OF EXECUTING THE SENTENCE.

The verdict in a criminal case should determine every element necessary to render certain the nature of the judgment.

IX.

THE STATUTE OF 1906 CONCERNING THE INFLICTION OF THE PENALTY OF DEATH IS UNCONSTITUTIONAL.

The scheme of the statute is that the Judge shall, by warrant appoint a week within which the sentence is to be executed, the time of execution within said week being by the statute expressly left to the discretion of the principal keeper of the State Prison to whom the warrant is directed. *Section 4 P. L. 1906*, 113.

This is an attempt to delegate to a purely executive officer a matter which properly belongs to the judiciary. It is therefore contrary to *Article III. of the State Constitution*, which provides that no person or persons belonging to or constituting one of the departments shall exercise any of the powers properly belonging to either of the others except as herein expressly provided.

The provision of *Section 5* of the act of 1906, requiring that the defendant shall be kept in solitary confinement and no person allowed access to him without an order of some Court, except officers of the prison, his counsel, physician and priest or minister and the members of his family, is void as not within the title of the act.

Section 5 does not properly concern the infliction of

the penalty of death. This is a material portion of the act, and being void, the whole act is void.

For the reasons above urged (and also upon all the grounds specified in the assignments and specifications filed) the judgment should be reversed, and a new trial ordered.

ALFRED S. MARCH
and
ALAN H. STRONG,
Of Counsel.

Writ
Judgm
Jury
Evi
Morg
Josep
Charl
Theo
Dom
F
Guise
Dom
Mich
Ang
John
Rich
Dr.
Dr.
Char
Fran
Dr.
E
Dr.
Dr.
Stel
Jose
Sylv
Tom
Lui
Rap
Don
Bar
Pec
Ma
Jan
Ric
Jos
Do
He
Gi
Pa
Pa
An
Do
Jo
M
Ch
A

INDEX

	PAGE.	
Writ of Error	2	
Judgment	3-6	
Jury Empanelled	7-15	
<i>Evidence for State.</i>		<i>Direct.</i>
<i>Evidence for State.</i>		<i>Cross.</i>
Morgan F. Larsen.....	15	20
Joseph De Vita.....	25	25
Charles Monahan	26, 29	27, 31
Theo. Antonio	36	
Domenio Tenace	37, 79, 81	46, 79
Recalled	116	118
Guisepe Tenace	81	88
Domenio Cansarano	99, 115	113
Michael McDonnell	121, 133	127
Angelo Bartoni	134	137
John F. Archipello.....	145	150
Richard A. Peltier.....	152	
Dr. Arthur Sterns.....	155, 162	158, 162
Dr. Lawrence Doyle.....	163	167
Charles R. Moke.....	172	
Frank DeLucca	172, 181	179
Dr. John L. Suydam.....	182, 191	183
<i>Evidence for Defence.</i>		
Dr. J. Warren Rice.....	193, 196	196
Dr. J. L. Suydam.....	198	
Stella Russo	198, 204	202
Joseph Barcelona	205, 208	207
Sylvester Delesandro	209	
Tony Masena	211	214
Luigi Manuci	220, 231	225, 232
Raphael Deliso	233	236
Donato Manuci	240	242
Bartholomew Ciadello	244, 248	247, 250
Pequedro Pasquale Deliso.....	251	253
Maria Manuci	253	255
James Garrity	258	
Richard A. Peltier.....	267	
Joseph De Vita	268, 274	273
Domenio Russo	275	280
Recalled.....		300
Herbert Fleming	285, 290, 291, 292	288, 290, 291
Giavanni Romanulo	293	298
Pasquale Deliso	300, 322	313
Patrick Coughlin	327	
Rebuttal.....		
Antonio M. Sanzone	323	
Domenio Cansarano	325	326
John Archipello	327	
Michael McDonnell	327	
Charge to Jury		330
Assignments of Error, &c.....		339

New Jersey Court of Errors and Appeals.

THE STATE OF NEW JERSEY,
Defendant in Error,

vs.

PASQUALE DELISO,
Plaintiff in Error.

CASE.

Appearances.

For the State,

PROSECUTOR GEORGE BERDINE.

For the Defendant,

ALFRED S. MARCH

and

ALAN H. STRONG.

WRIT OF ERROR.

New Jersey. [L.S.]

The State of New Jersey to the Honorable Francis J. Swayze, Judge of the Court of Oyer and Terminer of the County of Middlesex. Greeting:

10 Forasmuch as in the record and process and also in the giving of judgment upon a certain indictment against Pasquale Deliso for the murder of one Louis Tenerregge, whereof before you he hath been indicted and is thereof convicted by a certain jury of the county taken between the State of New Jersey and the said Pasquale Deliso as is said, manifest error hath inter-
 20 vened to the great damage of the said Pasquale Deliso as by his complaint we are informed; we being willing that such error, if any there be, should in due manner be corrected and that full and speedy justice should be done in that behalf, do command you that if judgment be thereon given, then you do distinctly and openly send under your seal the record and proceedings aforesaid with all things touching and concerning the same and including the entire record of the proceedings had at the trial of said indictment, to our Court of Errors and Appeals in the last resort in all causes at Trenton, on the thirtieth day of November instant, together with this writ, that the record and proceedings aforesaid being inspected, we may further cause to be done there-
 30 upon what of right and according to law ought to be done.

Witness, the Honorable William J. Magie, our Chancellor and President Judge of our Court of Errors and Appeals, at Trenton aforesaid this thirteenth day of November, in the year nineteen hundred and seven.

L. D. DICKINSON, Clerk.

ALFRED S. MARCH, Attorney.

(Indorsement to Writ of Error.)

Writ of Error returnable Nov. 30, 1907.

ALFRED S. MARCH, Attorney.

Presented to me in open Court Nov. 13, 1907.

F. J. SWAYZE, J.

The answer of Francis J. Swayze, Esquire, Judge of the Court of Oyer and Terminer within named. The record and proceedings of the plea whereof mention is within named, with all things concerning the same to the Court of Errors and Appeals in the last resort in all causes within specified at the day and place within contained, I certify in a certain schedule to this writ annexed, as I am within commanded.

Francis J. Swayze,
Judge

*State of New Jersey,
Middlesex County, to wit.*

Be it remembered, that at a session of the Court of Oyer and Terminer, held at New Brunswick, in and for the said County of Middlesex, on the first Tuesday of April, in the year of our Lord one thousand nine hundred and seven, before the Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Theodore B. Booraem, Judge of the Court of Common Pleas in and for the said County of Middlesex, the same being the April Term of the said Court of Oyer and Terminer; in the year aforesaid, according to the form of the statute in that case made and provided, upon their oaths of, Fred Garretson, Edward Q. Gridley, Walter D. Rice, John E. Clayton, John N. Carpender, Jr., Philip Smith, Fred M. Little, Leonard Furman, William J. Kern, William H. Johnson, Amzi A. Duncan, Alexander S. Conover, John O. Cozzens, George W. Benner, J. E. Marryott, Andrew Ely, William H. Gulick, James B. Archer, R. C. Lockhart, A. DeHart Voorhees, Enos A. Mount, Howard R. Valentine, David J. Perrine, good and lawful men of the said County of Middlesex, duly summoned and then and there empaneled, sworn and charged to inquire in behalf of the State of New Jersey and for the body of the County of Middlesex, it is presented in manner and form, to wit:

20

30

Middlesex Oyer and Terminer, of April Term,
A. D. 1907.

Middlesex County, to wit.

10 The Grand Inquest for the State of New Jersey, and for the body of the County of Middlesex, upon their oath present, that Pasquale Deliso, late of the Township of Woodbridge, in the said County of Middlesex, on the twenty-fifth day of August, in the year of our Lord one thousand nine hundred and seven, with force and arms, at the Township of Woodbridge aforesaid, in the county aforesaid, and within the jurisdiction of this Court, wilfully, feloniously and of his malice aforethought did kill and murder one Louis Tenerregge, against the form of the statute in such case made and provided, and against the peace of this State, the government and dignity of the same.

GEORGE BERDINE,
Prosecutor of the Pleas.

20 And afterwards, that is to say at a session of the said Court of Oyer and Terminer holden at New Brunswick aforesaid, in and for the County of Middlesex aforesaid, on Wednesday, the twenty-fifth day of September, in the year of our Lord one thousand nine hundred and seven, of the term of September, of the said Court of Oyer and Terminer, before the Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of New Jersey, and Theodore B. Booraem, Judge of the Court of Common Pleas in and
30 for said County of Middlesex, here cometh the said Pasquale Deliso, under the custody of Andrew S. Church, Esquire, Sheriff of the said County of Middlesex (in whose custody in the Jail of the County aforesaid, for the cause aforesaid, he the said Pasquale Deliso had been before committed) being brought to the Bar in his proper person, by the said Sheriff, to whom he is here also committed,

And the said Pasquale Deliso now here in his proper person having heard the said indictment and forthwith being demanded concerning the premises in the said

indictment above specified and charged upon him how he will acquit himself thereof, he sayeth through the interpreter that he is not guilty thereof, and thereof for good and evil he puts himself upon the country,

And George Berdine, Esquire, Prosecutor of the Pleas of the State of New Jersey, in and for the County of Middlesex, who prosecutes for the State of New Jersey in the behalf, does the like.

Therefore let a jury thereupon here come, to wit, on Monday, the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and seven, as yet of the term of September, and at the same aforesaid session of the said Court of Oyer and Terminer, before the Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Theodore B. Booraem, Judge of the Court of Common Pleas in and for the said County of Middlesex, of good and lawful men of the said County of Middlesex, by whom the truth of the matter may be the better known, and who are not kin to the said Pasquale Deliso, to recognize upon their oath whether the said Pasquale Deliso be guilty of the murder in the indictment aforesaid above specified, or not guilty, because as well the said George Berdine, Esquire, who prosecutes for the State of New Jersey in this behalf, as the said Pasquale Deliso have put themselves upon the said jury.

And now, to wit, on the said Monday, the twenty-eighth day of October, in the year of our Lord one thousand nine hundred and seven, at the same aforesaid session of the Court of Oyer and Terminer at New Brunswick aforesaid, in and for the County of Middlesex aforesaid, as yet of the term of September of said Court of Oyer and Terminer, before the said the Honorable Francis J. Swayze, one of the Justices of the Supreme Court of Judicature of the State of New Jersey, and Theodore B. Booraem, Esquire, Judge of the Court of Common Pleas in and for the said County of Middlesex, here comes as well the said George Berdine, Esquire, who prosecutes for the State of New Jersey,

in this behalf, and the said Pasquale Deliso in his own proper person under the custody of the said Sheriff as aforesaid,

And the jurors of the said jury by the said Sheriff, for the purpose empaneled and returned agreeably to the statute in such case made and provided, to wit: Howard M. Van Cleef, William C. Buckelew, William B. Sutphen, Thomas Smith, Ernest L. Stults, William Norman, Joseph Cathcart, Adam Eckert, Lewis H. Hoagland, James T. McDowell, Henry S. Garretson, Frank Anness, being called come, who being elected, chosen, tried and sworn to speak the truth, of and concerning the premises, upon their oath say that the said Pasquale Deliso is guilty of murder in the first degree as above charged in manner and form as in and by said indictment is above alleged against him.

And upon this it is forthwith demanded of the said Pasquale Deliso if he hath or knoweth anything to say wherefore the said Justice and Judge as aforesaid here ought not upon the premises and verdict aforesaid to proceed to judgment and execution against him, who nothing further saith unless as he before had said,

Whereupon all and singular the premises being seen, and by the said justice and Judge as aforesaid here fully understood, it is considered by the Court here that the said Pasquale Deliso shall suffer death in the week beginning on the first day of December, nineteen hundred and seven, in accordance with the law provided for that purpose.

30

Francis J. Sweeney,
Judge

Middlesex Oyer and Terminer.

THE STATE v. PASQUALE DELISO.	}	On Indictment for Murder.
-------------------------------------	---	---------------------------

[Filed November 15, 1907.]

10

Testimony and proceedings upon the trial of the above indictment before the Honorable Francis J. Swayze, Judge, and a jury.

Appearances.

For the State: Prosecutor George Berdine.

For the Defendant: Alfred S. March and
 Alan H. Strong.

20

New Brunswick, N. J., October 28, 1907, 10 a. m.

The Prosecutor: I move the case against Pasquale Deliso, for murder.

The Court: Sheriff, will you see that the prisoner is brought in. The prisoner is in court. Let the jury be returned.

(A jury of twelve men was then impaneled as follows.)

30

Frederick C. Ayres, called.

The Clerk: Juror, look upon the prisoner. Prisoner, look upon the juror. Do you challenge?

Mr. Strong: Does who challenge? Are we called upon to challenge or the State first?

The Court: I cannot make any rule as to that. If counsel choose to challenge alternately or be called upon alternately, it is a convenient rule.

The Prosecutor: I am perfectly willing.

The Court: Very well. The State then may say whether it challenges or not.

The Prosecutor: To the favor.

(Juror sworn on voir dire.)

Examined by the Prosecutor.

Q. Have you any conscientious scruples against capital punishment?

A. I have, Mr. Berdine.

10 Q. What are they? Talk to the Court, not me.

A. Well, the fact that efforts have been made to abolish capital punishment in certain places to my mind is evidence that it is not altogether right.

By the Court.

Q. No; but are your conscientious scruples against capital punishment so strong that they would lead you to violate your oath as a juror to render a true verdict according to the evidence?

20 A. I wouldn't attempt to violate my oath, your Honor, but I certainly think I could never sit on a jury and condemn a man to death.

Q. Suppose the evidence convinced you that the prisoner was guilty of murder in the first degree and convinced you beyond a reasonable doubt, would you then hesitate to render a verdict of guilty of murder in the first degree?

A. I should have to, I suppose. I should want to obey the law, but I do not believe all laws are just laws; in that way I should take exception.

30 Q. The question, I suppose, is whether or not you would consider that your duty as a juror would require you to render a verdict according to the law and the evidence regardless of its consequence to the prisoner.

A. With my present conviction I do not see how I could possibly do it.

The Court: Are there any further questions on either side? I think I must sustain the State's challenge. The juror may stand aside.

Whereupon the defendant, by his counsel, prays

a bill of exceptions, which is hereby allowed and sealed accordingly.

F. J. SWAYZE, J. [L.S.]

George B. Phillips, called.

Challenged peremptorily by defendant.

Howard F. Van Cleef, called.

Being examined on voir dire, the juror was found satisfactory to both the State and defendant, and was sworn.

10

Charles A. Dunham, called.

Challenged peremptorily by defendant.

James E. Noye, called.

After being examined on voir dire, the defendant challenged.

Herman Minnick, called.

Challenged peremptorily by defendant.

20

William C. Buckalew, called.

Being examined on voir dire, the jury was found satisfactory to both the State and defendant, and was sworn.

Peter B. Bennett, called.

Challenged peremptorily by defendant.

Peter F. Moore, called.

The Clerk: Prisoner, look upon the juror. Juror, look upon the prisoner. Does the State challenge?

30

The Prosecutor: To the favor.

Juror sworn on voir dire.

By the Prosecutor.

Q. Have you any conscientious scruples against capital punishment?

A. I have not, but I have formed an opinion.

Q. What do you mean by formed an opinion?

A. Well, I honestly think the man is guilty, that is, only from hearsay and reading papers.

Q. Do you mean that your condition of mind is such now by reason of the reading of the papers that you think the man is guilty before he is tried?

A. Under my oath I could not judge that way—

Q. Tell us what you mean.

A. From reading the papers I think the man is guilty. According to the evidence under my oath I would have
10 to vote for the defendant either way, for or against.

Q. The condition of your mind is such that if the testimony produced here warranted the conviction of the man of murder in the first degree beyond a reasonable doubt you would vote for or against such a verdict?

A. It would have to be very clear in my mind that the man is guilty to vote for a conviction.

Q. Would it have to be clear in your mind in any case?

20 *A.* Yes.

Q. Then how is this different from any other case?

A. Well, the evidence has got to be very clear to me one way or the other.

Q. You have been on other juries, have you not?

A. Yes, sir.

Q. Hasn't the evidence in other cases where you have convicted been clear?

A. They have.

Q. Then why is this case any different than any
30 other that you have tried?

A. No.

By Mr. Strong.

Q. Is your condition of mind such notwithstanding what you have read in the papers that you could keep your mind open and render such a verdict as the evidence seems to you to indicate?

A. Yes, my mind would be very clear.

Q. In other words, what you have read in the papers, from that reading you have formed such a strong opin-

ion that you could not render a verdict one way or the other as the evidence indicated?

A. I couldn't say that under the oath. Under my oath I would have to be bound by the evidence.

Mr. Strong: Does the Court sustain the challenge?

The Court: No; I overrule the State's challenge.

The Clerk: Does the defence challenge?

Mr. Strong: No.

(The Clerk began to administer the oath to the juror.) 10

Mr. Berdine: The State peremptorily challenges.

Mr. Strong: I submit it is too late. After the oath has been started and after the State has challenged to the favor and has not challenged further and the defense has been called upon to challenge, it is too late, it seems to me.

The Court: I think the State ought to interpose a peremptory challenge before the administration of the oath has begun, for the purpose of securing orderly procedure. In this case, however, the Clerk had barely started to administer the oath when the challenge was interposed. I will sustain the State's challenge. 20

Mr. Strong: Will your Honor allow it to appear that the juror had placed his hand upon the book and that the Clerk had begun to administer the oath and had uttered a considerable portion of the oath before the State interposed its challenge. Under those circumstances—there is a decision, but I do not recall it now. 30

The Court: A case I tried, a civil case—some one against the North Jersey Street Railway Company.

Mr. Strong: Whether it was the supreme court or the court of errors and appeals I do not know, but the court ruled that the challenge was too late after the oath had begun to be administered. I

think this case comes directly within that authority.

10 The Court: Well, that turned largely upon the construction of the new act allowing six peremptory challenges, although something was said about what I said about what I had said as to the administration of the oath. You may have it appear upon the notes that the juror had, as I think the fact was, put his hand upon the book and that the Clerk had begun to administer the oath when the State interposed the challenge.

The Prosecutor: He just said, "Do you solemnly swear," and stopped.

The Court: I cannot say exactly how far it had gone, but that I think, will protect the rights of everybody.

20 Mr. Strong: I think it ought to appear further—I don't know as it does appear, the method that we are pursuing in our challenges; that is, that the parties are being called upon to challenge alternately; that the State, of course, it appears had challenged to the favor and that challenge being overruled had interposed no further challenge that then the defence were called upon to challenge and announced that they had no challenge, and it was after that that the oath had begun to be administered, and in the course of the administration of the oath the State challenged peremptorily.

30 The Court: I understand that to be the fact. It may appear upon the record.

Mr. Strong: And we have our exception?

The Court: You have your exception.

Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.

F. J. SWAYZE, J. [L.S.]

William B. Sutton, called.

The juror being examined on voir dire proved satisfactory to both parties, and was sworn.

Frank Jennings, called.

The juror was examined on his voir dire by the prosecutor. The defendant challenged peremptorily.

Silas White, called.

Challenged peremptorily by the State.

Theodore Thorne, called.

Challenged peremptorily by the State.

Charles W. Fisher.

Juror did not answer his name, and the Court directed Sheriff to ascertain cause of his absence. 10

Isadore P. Hirsh, called.

Challenged peremptorily by the State.

James A. Manning, called.

Challenged peremptorily by the State.

Thomas Smith, called.

Being examined on voir dire the juror was found satisfactory to both sides, and was sworn. 20

Ernest L. Stultz, called.

Being examined on voir dire, the juror was found satisfactory to both sides, and was sworn.

Jacob H. Hoagland, called.

Challenged peremptorily by defendant.

William Norman, called.

Being examined on voir dire, the juror was found satisfactory to both sides, and was sworn. 30

Frank Victory, called.

Challenged peremptorily by the State.

Joseph Cathcart, called.

Being examined on voir dire, the juror was found satisfactory to both sides, and was sworn.

W. S. Hurley, called.

Challenged peremptorily by defendant.

Charles A. Prickett, called.

Challenged peremptorily by defendant.

Adam Eckert, called.

Being examined on voir dire, the juror was found satisfactory to both sides, and was sworn.

John Sutcliff, called.

It appearing that this juror is a public officer, he was excused by the Court.

David S. Dye, called.

Challenged peremptorily by defendant.

10 *Louis H. Hoagland*, called.

Being examined on voir dire, the jury was found satisfactory to both sides, and was sworn.

William H. Petty, called.

It appearing that the juror was ill, by consent of counsel he was excused by the Court.

Norman H. Boynton, called.

Challenged peremptorily by defendant.

20 *Anthony Silzer*, called.

Challenged peremptorily by State.

S. Byron Brewster, called.

Challenged peremptorily by defendant.

Charles Anderson, called.

It appearing that this juror is on board of registration he is excused by Court.

James McDowell, called.

30 Being examined on voir dire, and found satisfactory to both sides, the juror was sworn.

Frederick J. Cox, called.

Peremptorily challenged by defendant.

John Nelson, called.

Peremptorily challenged by defendant.

William J. Magie, called.

Peremptorily challenged by State.

William H. Johnson, called.

Peremptorily challenged by defendant.

William Voorhees, called.

It appearing that this juror is on board of registration he is excused by Court.

George B. Rule, called.

Both sides consent to this juror being excused by Court.

Hugh A. Nelson, called.

Challenged peremptorily by defendant.

10

Spencer Dayton, called.

Challenged peremptorily by defendant.

John R. Holzkorn, called.

It appearing that this juror is deaf, he is excused by Court.

John R. Dunham, called.

It appearing that this juror is sick, both sides agree to his being excused by Court.

Henry B. Garrison, called.

20

Juror being examined on voir dire, is found satisfactory to both sides, and is sworn.

Lewis A. Howell, called.

Peremptorily challenged by defendant.

Laffert Totten, called.

Peremptorily challenged by defendant.

Frank Anness, called.

Juror being examined on voir dire and found satisfactory to both sides, he is sworn.

30

(The Prosecutor opened the State's case.)

Morgan F. Larsen, sworn.

Direct Examination, by the Prosecutor.

Q. What is your business?

A. Civil engineer and surveyor.

Q. Where do you live?

A. Perth Amboy.

Q. Do you know the location around Port Reading?

A. Yes.

Q. Will you look at that map?

A. Yes.

Q. Go over by it, won't you. Did you make it?

A. Yes, sir.

Q. What does it purport to show?

A. It shows the location of the dwellings or shanties at what they called the Italian settlement or colony at Port Reading near the Port Reading coal docks.

Q. Does that represent the scene of this supposed
10 offense?

A. Yes.

Q. Will you take the stick and explain the different places to us?

A. The magnetic needle denotes the north direction. This is what you might call the main road into the settlement and as I have marked it here, these are the dwellings and this is the storeroom, this is the store, the bakery, and these are some more dwellings below the bakery, to the west here some dwellings, some shanties, and stable here; while further west and directly
20 south of the main shanties has been a small addition built, and also been a small addition built here; this is an outhouse and this is a fence (indicating).

Q. Where is the main highway?

A. The main highway is right here (indicating).

Q. In which direction would be the Sound, or water?

A. Easterly.

Q. The east there?

30 *A.* Yes.

Q. What are those dwellings as you call them or shanties used for?

A. Why, people live in them.

Q. What class of people—Italians or what?

A. Oh, all Italians.

Q. Is that the outline of what is known as De Vita's place at Port Reading.

A. Yes.

Q. Can you point out the dwelling where Tenace, the dead man, was supposed to live?

A. Yes, sir.

Objected to.

The Court: That is, is he able to do it?

Q. Can you point out the dwelling in which he lived?

The Court: You have to show first that the witness has knowledge on the subject.

Q. Have you any idea as to where those Italians lived, especially Tenace.

A. Well, when I came up there to measure—

The Court: All you know is what somebody told you? **10**

The Witness: Yes.

The Court: You may, however, ask him whether the buildings delineated upon the map were pointed out to him by some one, and identify them in that way.

Q. Were the buildings on that map indicated to you by anybody?

A. Yes, sir. **20**

Q. By whom?

A. Why, I don't know the man's name. He is head man out there.

Q. What buildings did he indicate?

A. He took me around and he says—

Mr. Strong: I object. Does your Honor allow him to state that somebody pointed out the buildings as being the place?

The Court: I think he may testify whether some one pointed out to him one of those buildings as being the place where the deceased lived. It will not be evidence, however; that the deceased lived there until there is some other testimony produced. **30**

Q. Do you know who pointed it out?

A. Yes.

Q. Who?

A. The head man up there.

Q. Is he here?

A. Yes.

Q. Where? This one—Mr. De Vita?

A. Mr. De Vita, yes.

Q. Had he anything to do with these dwellings?

A. Why, he seemed to be the superintendent.

Q. Is he the one that kept the store at this place?

A. Yes.

Q. General store at this particular place?

A. Yes.

Q. Did he indicate the dwelling in which Tenace
10 lived?

A. Yes.

Q. Which one?

Mr. Strong: I object. I wish an objection when he goes to state which one was indicated.

The Court: Yes.

The Prosecutor: We do not—

The Court: You may ask him whether either
20 of the buildings indicated there, delineated there, was indicated to him by DeVita as the place where the decedent lived.

Mr. Berdine: Ask the question.

Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.

Q. Go ahead and indicate it?

A. Yes he showed me the place, the shanty the deceased lived in and said—

Mr. Strong: I object. Perhaps your Honor's
30 question contemplates a further question. He was going on to answer.

You will have to go step by step in this, as there is an objection.

Q. Which building did he indicate to you as the one in which Tenace lived?

Mr. Strong: I object, and I ask an exception.

Which exception is hereby allowed and sealed accordingly.

A. The shanty directly south of the main shanty—that is an addition to the main buildings, the original shanties.

The Prosecutor: Will the Court let us mark the point?

The Court: Yes, let him designate it by letter.

Q. Put some letter there, so we can see it.

The Court: Let him mark it with letter A.

Witness indicates by a letter "A."

10

Q. Now will you describe that particular shanty.

A. It is a small shanty, built out of plain hemlock boards, not finished or plastered inside; it is 11 feet 6 inches by 18 feet, the floor.

Mr. Strong: Give me the dimensions again?

The Witness: 11 feet 6 inches by eighteen.

Q. Go ahead.

A. It has a door in the middle here at the south side and a window about in the middle of the eastern part of it. It has also a large window at the—you might say the southeast corner, and a small window, which was covered by a screen, about one foot square.

20

Q. How do you get access to the particular shanty that you are describing?

A. Why, the usual way is to come right down here, what we call the main roadway.

Q. When you get there, how do you get in, through a door?

30

A. Yes.

Q. That opens right out in the yard or field?

A. Yes.

Q. Do you know what is in there? Do you know what is inside of the room?

A. Yes. There was a bed—

.. Mr. Strong: I object. At what time is he speaking?

The Prosecutor: At the time he made the map.

Mr. Strong: When was that?

Q. When did you make the map?

A. About a couple of months ago.

Mr. Strong: I don't know. My information is that the contents and the internal arrangement of the building are quite different from what they were at the time in question.

The Court: I do not know how the witness can enlighten us as to the condition of things at the time of the alleged homicide.

10

The Prosecutor: I cannot tell. I only want to indicate what might be in there.

The Court: I overrule this question.

Cross Examination, by Mr. Strong.

Q. You spoke of a main driveway. That, I understand, leads north and south on the westerly end of these what you have marked dwellings there?

A. Yes, sir.

Q. Is that a regular road?

20

A. No, I wouldn't—well, it has been driven over and of course it has the marks of wagon wheels, but it is not really a road, because these buildings were evidently built right out in a field, and then up to a point about one hundred feet from here there is a well defined road.

Q. About to a point 100 feet to the north of the most northerly dwelling; is that you indicated?

A. Yes, sir.

30 Q. And is this roadway leading along the westerly end of the shanties, is that the main entrance, the means of access to the settlement?

A. Yes, sir.

Q. Now then it leads to what other road?

A. That leads out to what they call the Woodbridge Road. It is a road from Port Reading to Woodbridge.

Q. From Port Reading to Woodbridge?

A. Yes, sir.

Q. How does that road run from Port Reading to Woodbridge; describe the general location?

A. That runs about in an east and west direction practically.

Q. So that this road which you have mentioned forms a right angle with it?

A. Approximately, yes, sir.

Q. How far away does it form that angle with the main road?

A. How far from the shanties?

Q. Yes.

A. I have my book over there.

Q. Well, refer to that if you have notes that will assist you. 10

A. It is about 1200 feet to here.

Q. 1200 feet from the Woodbridge and Port Reading road to what point?

A. To the point right here, opposite the store.

A. Opposite what you called the store room?

A. Yes, sir.

Q. That is 1200 feet out to the main road?

A. Yes, sir.

Q. How far is it from either Woodbridge or Port Reading upon the main road from the corner of this road entering the settlement? 20

A. Why, I should judge that was right in Port Reading, about the center of Port Reading.

Q. That is, the corner is in Port Reading?

A. Yes.

Q. Which way is Woodbridge there?

A. West.

Q. How far?

A. I should judge it would be—Woodbridge, the town itself would be a mile. 30

Q. Now this accurately represents or delineates the dwellings or shanties?

A. Yes, sir.

Q. How high are they; more than one story?

A. No; they are not. These here are all one-story buildings.

Q. Where do you mean?

A. These dwellings here. I don't know whether there is an attic in here.

Q. You mean the two upper or northerly sections marked dwellings?

A. Yes, sir.

Q. Now then coming down to the dwellings where you have put the letter A, what character are they?

A. Why they are the size indicated, about $6\frac{1}{2}$ to 7 feet high.

Q. More than one story?

A. No; I didn't notice any.

10 Q. Then this shanty that you have marked A has a southerly exposure and an easterly and a westerly exposure?

A. Yes, sir.

Q. A window each way?

A. Yes, sir.

Q. And a door on the south?

A. Yes, sir.

Q. On the north it adjoins another dwelling; is that right?

20 A. Yes, sir.

Q. And that other dwelling fronts which way?

A. This dwelling here, you enter here, through the door here.

Q. You enter from the north?

A. Yes, sir.

Q. What is the size of the window towards the west in the shanty marked A.

A. That is 2 feet wide, 2 feet $2\frac{1}{2}$ inches high.

30 Q. What is the height of it above the ground, if you have that?

A. $3\frac{1}{2}$ feet from the bottom to the ground.

Q. That is measured on the outside or on the inside?

A. Outside. All measurements are outside measurements.

Q. Is there a floor?

A. Yes, sir.

Q. And is the floor raised or not above the surface of the ground?

A. Very little.

Q. About level with the ground?

A. About, I should say, level. At least I went inside and I didn't notice that it came up.

Q. So that the height of $3\frac{1}{2}$ feet from the ground outside would be approximately the height from the floor inside?

A. Yes, sir.

Q. Now the window on the easterly side, what dimensions have you on that?

A. Why it is,—one window there is 2 feet 3 inches wide by 1 foot $8\frac{1}{2}$ inches high. 10

Q. What height from the ground?

A. 3 feet 9 inches from the ground.

Q. Are there two windows looking toward the east?

A. Yes, sir; a large window and a very small one.

Q. Which one are you referring to now?

A. The larger window.

Q. Have you shown the location of that on your map?

A. Yes, sir.

Q. And also the location in the small one?

A. Yes, sir. 20

Q. Now this large window that is nailed shut, isn't it, or was it in use as a window when you were there?

A. It was in use as a window.

Q. Open?

A. Yes, sir.

Q. How about the other one, the small one?

A. Why, they simply have a screen nailed in it, a screen netting.

Q. A mosquito netting?

A. Yes, sir. 30

Q. Was it open?

A. Yes, sir.

Q. Any shutters on it-

A. No.

Q. No shutter on either of them?

A. No; none on either.

Q. Was there any glass in any of the windows?

A. Yes, there was a glass in some. They had put in some boards too on the westerly one there.

Q. The westerly one was boarded up?

A. It was not boarded up; there had been a board shoved in where a pane had been broken.

Q. Was there a sash in that window?

A. Yes, sir.

Q. How far is the window, the westerly window, from the rear of the back wall of the shanty?

A. I will have to look at the map and make a subtraction here. It is about 6 feet 4 inches.

Q. 6 feet 4 inches from the back wall?

10 *A.* Yes, sir; and then the width of the window is 2 feet.

Q. What space does that leave between the front wall?

A. About 3 feet 4 inches.

Q. The door which you located as looking to the south, that seems to be in the middle of the shanty; is that right?

A. No, it is not quite in the middle; it is 8 feet 4 inches to the westerly side and 7 feet 4 inches to the
20 easterly side; it is a foot off of the center.

Q. There is no other door but that, is there?

A. There is no other door, no. There appears, though, as though there had been a door boarded up.

Q. Which way?

A. Right here. It was located, but it was boarded up, so I considered it was not a door; it was boarded up.

Q. As you indicated, that would have led from shanty marked A backward, northerly into the adjoining shanty; is that right?

30 *A.* Yes, sir.

Q. That you say was boarded up?

A. Boarded up when I was there, new boards.

Q. What say?

A. New boards. I don't know how long they had been there. There wasn't any door when I was there, so I didn't put it in.

Q. It had the appearance of a door having been cut out there at some time?

A. Yes.

Q. And nailed up afterwards?

A. Yes, sir; it was nailed up.

(Map offered and marked S 1.)

Joseph DeVita, sworn.

Direct Examination, by the Prosecutor.

Q. Look at that map; the preceding witness said you had pointed out the house to him where Tenace lived. Is that so? 10

A. Yes.

A. Which is it?

(Witness indicates.)

Q. Does that map correctly state the various locations?

A. Yes.

Cross Examination, by Mr. Strong.

Q. Who did you say lived there?

A. Why, at that time— 20

The Court: Take the stand here.

A. I don't remember the name, but the man is dead, the killed man.

Q. What name did you know him by?

A. I know him by his right name, but I don't remember.

Q. Don't you remember it?

A. No; I don't remember. I think it was Luigi Tenace. I think that is the man's name. 30

Q. That is the way you always heard it, was it?

A. Yes.

By Mr. Berdine.

Q. You mean by that man when you said was killed, that was shot there?

Objected to.

Q. Well, the dead man, you expressed it?

A. Yes, sir.

Q. Whose death is the subject of this inquiry?

Objected to.

The Court: He can't tell that. You may show if you like that Luigi Tenace was found dead there or killed at a certain time.

Mr. Strong: I don't know whether this witness knows it.

10

Charles Monahan, sworn.

Direct Examination, by Mr. Berdine.

Q. What is your business?

A. Photographer.

Q. Do you recall going to Port Reading?

A. I do.

Q. The scene of this matter?

A. I do.

Q. Will you look at that map?

(Witness examines map.)

20

Q. Did you take photographs of places in the vicinity indicated by that map?

A. I did.

Q. See if they are the photographs? (Four photographs handed witness.)

A. Yes, sir.

Q. Will you try to indicate what those photographs, or tell what those photographs indicate?

By Mr. Strong.

30

Q. When were they taken?

A. I haven't the exact date of that; it was about three weeks ago or a month, not more than that.

Q. About the first of October?

A. Somewhere along there.

By Mr. Berdine.

Q. Now will you go on.

A. These were photographs of a shanty, the exterior and the interior of a place where a shooting match occurred, pointed out to me—

By the Court.

Q. Do you know of your own knowledge the shooting match occurred there?

A. Only what I was told, yes.

The Court: Strike that out. You will have to be a little careful.

By the Prosecutor.

Q. Who pointed it out to you?

A. A man by the name of Moore, and a man that kept a grocery store there. **10**

Mr. Strong: I suppose he will say, if he looks at this map, that it is this shanty? (Indicating).

The Prosecutor: Certainly. Are you willing to have these introduced or let them go on?

Mr. Strong: Let me see them.

Cross Examination, by Mr. Strong.

Q. This photograph—I don't know how to identify it; the State has not so far—represents what? **20**

A. Exterior of the building that was pointed out where the shooting occurred.

Q. Can you show on that map where the building is?

A. I should judge it was down here somewhere. Of course, I am not acquainted with this map.

Q. The road comes in from the Port Reading and Woodbridge road?

The Prosecutor: Don't you explain. He had his finger on the right place. **30**

Q. Here is where the road comes down?

A. Yes.

Q. And you recognize the shanties as right there?

A. It looks very much like it to me.

Q. This photograph which you have represents what view of the place; that is what I want to get at.

A. Well, that looks to me to compare with this map, looking this way.

Q. That is looking northeasterly?

A. Yes.

Q. Looking northeasterly at what?

A. Well, I took the picture to show this shanty in the direction of the other one connected with it.

Q. On that picture where is the road that enters the Italian settlement?

A. To the left. It does not show. It is to the left of this picture.

10 The Court: I suspect the jury do not hear all this, you stand so close to him. You had better take the chair.

Q. Now your picture shows a telegraph pole in the foreground doesn't it?

A. It does, yes.

Q. And it shows another one on back to the left of that picture?

A. Yes, sir.

Q. Where are those telegraph poles with reference to the road that leads into the settlement?

20 *A.* Well, for instance, if here is the building, over here is the road in this direction coming in here.

Q. Well, I don't understand that either.

The Court: Can you tell us by the points of the compass?

A. I cannot.

Q. That is the road?

A. The road comes in just about this direction right to the point of this building. I was only there once
30 or twice.

Q. Does it pass the westerly end of the building?

A. I won't be sure about that. I am not sure about the points of the compass there. It passes the grocery store and comes in along this way.

Q. Where do you understand is the shanty that you went there to take.

A. This is it right here on the end.

Q. On the end?

A. Yes.

Q. It shows the window in the westerly end of it?

A. It does, yes, sir.

(Photograph marked A for identification.)

Redirect Examination, by Mr. Berdine.

Q. Now will you tell us what each photograph here indicates?

A. That photograph ("A") I suppose that is the building which was pointed out to me where the shooting occurred. This is one taken a little closer. These are two different photographs taken of the interior. **10**

Mr. Strong: As you go along you better have them identified.

A. This is a photograph of the same building only a little closer, doesn't show so much.

Q. Different view of it?

A. No; same view only showing a little closer.

(Photograph marked "B".)

Q. What is this?

A. This was the interior, taken at different directions. **20**

Q. Of what?

A. Same building.

Q. Interior of the building?

A. Yes, sir.

Q. Of the entire building or the small room?

A. Just small room in back here.

Q. Was it a living room?

A. There was no one in it when I went there, but after I went there the second time some one lived in it. **30**
Photographs marked "C" and "D.")

Q. Now it has been said here by two witnesses that the scene of this occurrence is marked "A" on that map; will you go look at that?

(Witness examines.)

Q. Now with reference to what you have seen of this map and these photographs what do they indicate so far as the location of the building is concerned?

A. With reference to the location of A this building

seems to give it pretty near right with that map, as far as I can see.

The Court: Well, just describe it on the map if you can tell.

A. I can't tell exactly because I never saw the map before.

Q. Is your map or any part of the photograph and that map within the range of the photograph?

10 A. This looks to me just where the letter A is.

Mr. Berdine: Suppose I use George DeVita to indicate it.

Mr. Strong: I suppose there is no doubt that this represents the shanty in question. I am willing to concede that these are views of the shanty in question.

Mr. Berdine: And that the interior is the interior of the room where this dead man lived at the time.

20 Mr. Strong: Yes. Of course, these were taken some time afterwards. We understand that these pictures represent the outside and the inside views of the shanty in question.

Q. Is there any indication of that bullet hole in any of these interiors?

A. There is one here.

Q. Where?

A. Right there. There is another over here, each
30 side of that little window.

Q. Well up in the side wall?

A. Yes; there is one and there is the other.

Q. Will you mark it?

Witness marks on photographs with "X."

Mr. Strong: Have you got it marked?

Witness: Yes, each hole is above those two crosses.

Mr. Berdine: I offer the photographs.

Recross Examination, by Mr. Strong.

Q. The photograph "C" was taken from what point and represents what view of the interior?

A. Well, now, as near as I can tell, I was looking towards a place they call Cartaret. I didn't just examine the points of the compass.

Q. Now tell me where was your instrument in taking that picture? Were you inside?

A. Inside, yes.

Q. Inside of the shanty? 10

A. I was.

Q. Which wall of it were you looking at. That is what I want to get at. Were you looking at the front of it or the back of it or which side?

A. Looking at the front of it. This door comes out on the front, you know.

Q. The door which was shown in that picture is a door which leads out of the front?

A. To here.

Q. That is the front door of the shanty? 20

A. There is the door. There is another room inside here. It comes towards the front of the building.

Q. What I want to know is whether that door shown in the picture C leads out doors into the field or whether it leads into another room?

A. It leads into another room.

Q. Into an adjoining room?

A. Yes, sir.

Q. And that room is behind the shanty in question; is that right; back of it? 30

A. No; it is toward the front; it is not behind it.

Q. Well, where is the entrance? Suppose you wanted to go into that shanty from outdoors how would you go in?

A. Come in from here at the back.

Q. The entrance is on the opposite side from the door which you show there?

A. Yes, sir.

Q. That door shown in that picture is shown as boarded up, is it?

A. No; the boards were off when I took the picture.

Q. The boards were off?

A. Yes, sir.

Q. Doesn't it indicate boards there?

A. No, it doesn't; that is another room you see there. That is looking through a doorway.

Q. Look at your picture again. Do you say that that does not indicate a boarding in the place of the door there?

10 *A.* No; that is open.

Q. That was open at the time you took your picture?

A. Yes; because I walked through there.

Q. Was there a door swinging, to open and shut?

A. No, sir.

Q. Now then the picture marked D, which way is that looking?

A. Taking the opposite direction.

Q. In the opposite direction?

20 *A.* Yes. I took this one here and this one from back this way.

Q. Then when you took the picture D which way was your instrument with reference to the door leading into the adjoining room?

A. The instrument was right here.

Q. Right in front of it?

A. Yes, sir.

Q. And you were looking then toward the side of the building where the entrance would be?

A. Yes, sir.

30 *Q.* Is the entrance shown there?

A. No.

Q. Where is the entrance in that picture?

A. The entrance is over here further.

Q. That is, the entrance is over to the left?

A. Over here. I couldn't get it on account of the light shining in the lens of the camera.

Q. In picture D you do show a window on the right of it?

A. Yes, sir.

Q. Can you tell from the points of the compass whether that is the westerly side of the shanty?

A. Well, now, that is a window that looks to me just about where the letter A is, somewhere on that side.

Q. Well, the letter A covers the whole shanty?

A. Well, on this end of it.

Q. You think that this window shown in D is the window which looks out of this end, that is, the left hand end as you look at the map of the shanty? **10**

A. Yes, sir.

Q. Then that I understand to be the westerly end?

A. Yes.

Q. Who was with you when you took these pictures?

A. Why, a man by the name of Moore, I believe.

Q. Moore?

A. He is a sort of railroad detective over there, and the man that keeps the grocery store.

Q. You took them at the request of the Prosecutor, did you? **20**

A. I did.

Q. Now these two holes which you called bullet holes, one was fresher than the other, wasn't it?

A. It looked to me so, yes.

Q. And quite different in appearance in that respect?

A. Yes, sir.

Q. Which was the one that was fresh?

A. The one on the right.

Q. On the right of your picture?

A. Yes, sir. **30**

Q. And the other one had the appearance of being pretty old, didn't it?

A. Well, it didn't look to me as fresh as the other one.

Q. Can you be entirely certain that that one which was the older of the two was a bullet hole or might it not have been a hole of some other character?

A. Well, it looked to me more like a bullet hole because everything was torn as it went through.

Q. If you had not been told that there had been

what you called a shooting match in that place you would not have considered it a bullet hole, would you?

A. Well, I wasn't sure of the place when I went there and that is the reason I looked around for evidence.

Q. You looked around for bullet holes?

A. I did.

Q. Because of what you had heard?

A. Yes, sir.

10 *Q.* Aside from what you had heard, you wouldn't have noticed these at all, would you?

A. Not unless I wanted to be sure of the right place.

The Urosecutor: We offer them in evidence.

Q. Just tell me the fresher of these two bullet holes, what kind of looking hole was it? Was it a plain, round hole, or was it splintered; describe it as well as you can?

20 *A.* Well, it was very different from a nail hole. It wasn't a nail hole. Looked to me as if something had went through very forcibly and torn the wood as it went through. It was in a downward direction.

Q. Assuming it to be a bullet hole, as though it had been shot from above?

A. It looked to me so, yes.

Q. How high was it from the floor?

A. Oh, I should judge about 4 feet, somewhere around 4 feet or something like that.

30 *Q.* Did you notice whether it appeared on the outside of the board and went through the board?

A. Yes, it went all the way through; both holes.

Q. Did it have the appearance of going straight through, or did it go through obliquely?

A. A downward direction, both of them?

Q. A downward direction?

A. Yes, sir.

Q. But did it have the appearance of having been fired straight at the board—I mean as though a person had pointed—if it was a pistol—had pointed a pistol directly in front of him or in a slanting direction to the board?

A. Well, it looked to me as if the person was very high, the way I looked at the hole. It went this direction—downward—both of them.

Q. But speaking now of the direction from one side to the other, whether the person had held his pistol pointed directly toward the wall or in a slanting direction?

A. Slanting direction.

Q. Slanting direction to the wall?

A. Yes.

10

Q. In which direction did it slant?

A. Just about this way, towards that door. Slanted toward the door, toward the window indicated in this picture.

Q. Slanted in which direction?

A. That window towards this door.

Q. As though it might have come from the direction of that window, of course, toward the place where the hole was; is that what you say?

A. Yes, sir.

20

Photographs marked Exhibits S 2, S 3, S 4, and S 5, respectively.

Mr. Theo. Antonio was called by the State to act as interpreter in Italian.

Mr. Strong: If the Court please, our information is that this person, the interpreter, has been acting on the part of the State in preparing the case, and it seems to me as if that is rather objectionable. We ought not to have a person who has shown an interest and activity on either side.

30

The Prosecutor: The information is not correct, because he has not been.

The Court: Have you assisted the prosecutor in the preparation of this case?

The Interpreter: No, sir.

Mr. Strong: Ask Mr. Peltier.

The Prosecutor: We had an entirely different interpreter from him just to cover this. The only thing we have done is what we wanted him to interpret here.

The Court: You may, if you like, Mr. Strong, examine the interpreter upon his voir dire as to what part he has taken.

Theo. Antonio, Sworn on voir dire.

10 The Court: It is incumbent upon the defense to Sustain the challenge to the interpreter.

Examined by Mr. Strong.

Q. Have you rendered any assistance in preparing this case on the part of the State?

A. No, sir.

Q. What?

A. No, sir.

Q. Haven't you been with Mr. Peltier to the locality there and taken statements and made interpretations for
20 him?

A. No, sir.

Q. Not at any time?

A. No, sir.

Q. Do you know Mr. Peltier?

A. Yes, sir.

Q. Have you had any communication with Mr. Peltier in this case?

A. Why, only yesterday, that is all, he told me to appear here in court this morning.

30 Q. Never until yesterday?

A. Not until yesterday, yes, sir.

Q. Had you given any information to the prosecutor or to Mr. Peltier with reference to the witnesses in this case?

A. No, sir; I have not.

Q. Then do I understand that you have had no communication with either the Prosecutor or anybody connected with the Prosecutor's office or with Mr. Peltier at any time about this case until yesterday?

A. Until yesterday, yes, sir.

Q. That is so, is it?

A. Yes, sir.

Q. Do you know a man by the name of Dominico Russo?

A. I don't know that I do, no. I don't recall him by name.

Q. Do you know a man by the name of Jerry Raponi?

A. Yes, sir.

Q. Have you not within the past three weeks or a month been down to this neighborhood near Port Reading with Jerry Raponi and interrogated some persons in regard to this case? 10

A. No, sir. I was down there Saturday, but on different business altogether.

Q. Not connected with this case?

A. Not connected with the case whatever.

Q. Did you go with Jerry Raponi?

A. No, sir; just accidentally met him, is all.

Q. Did you know the man who was alleged to have been killed? 20

A. No, sir; I don't know him.

Q. Did you go down to the hospital to see him?

A. No, sir; I did not.

Q. Did you go down there to see any person who had been injured by shooting?

A. No, sir.

Q. Do you know what hospital I refer to?

A. I don't know. I don't know where the man was.

The Court: He may be sworn to interpret. 30

Interpreter sworn by clerk.

Domeinio Tenace, sworn and examined through Interpreter Mr. Theo. Antonio.

Direct Examination, By Mr. Berdine.

Q. Where were you on Sunday night, August 25th of this year?

A. In my shanty.

Q. Where was your shanty?

Q. By the board. (The Interpreter.) He means by the commissary; they call it board.

Q. Where was that?

A. At Port Reading.

Q. Does he know DeVita?

A. Yes, I know him.

Q. Did you have a shanty near DeVita's store; is that what he means?

A. Yes.

10 *Q.* Where were you on that night? On the 25th of August?

A. In my shanty.

Q. Who else was there?

A. My cousin and my father.

Q. What was the name of your cousin?

A. Joseph Tenace.

Q. Is he here.

A. Yes.

Q. Point him out. Tell him to stand up?

20 *A.* There he is standing over there (indicating.)

Q. Who else was there?

A. Me, my cousin and my father.

Q. What was the name of your father?

A. Luigi Tenace.

Q. Is he the man that was shot?

A. Yes.

Q. What were you doing there?

A. I was working on the dock.

30 *Q.* What were you doing in this particular shanty with your cousin and father?

A. Was sleeping.

Q. Well, now, tell us what took place there at the time that you refer to on Sunday, August 25th?

A. About a month ago at my cousin's house by the postoffice—two nights sleeping at the shanty, about nine o'clock I went to bed. After twelve o'clock I heard my cousin crying.

Q. His cousin or uncle?

A. Oh, uncle.

Q. Go ahead?

A. I woke up a.. asked him what he was crying for.

Mr. Strong: I object to his stating the conversation.

The Court: Do not repeat what the uncle said at present. I cannot say that it may not be competent, but its competency will have to be shown.

Q. Go ahead.

A. He said they are killing me—

Objected to.

10

By the Court.

Q. Who said that, the uncle?

A. Uncle said to him.

Q. Is that Luigi?

A. No, Joseph.

By the Prosecutor.

Q. Is that the dead man?

A. No; he is referring to the uncle now.

20

Q. Did he see anyone there then?

A. Yes.

Q. Who?

A. That man there (indicating defendant.)

Q. Who is that man?

A. Deliso.

Q. The defendant, I presume, that is enough?

The Court Well, you must determine that. Point him out, who you saw there?

30

A. There he is there. (Indicating.)

The Prosecutor: Have you any objection to having him stand up. Will you let him stand up?

Mr. Strong: I know he is comfortable where he is.

Q. What is his name?

Q. Pasquale Deliso. That is, I heard it from others that is his name.

Q. He is the defendant here in court?

Mr. Strong: I object; he doesn't know that.

The Court: Yes, the boy probably doesn't know what that means. If you think there is any doubt about identification you may have the boy go to the man that he says he saw there that night and put his hand right upon him, if you like.

Q. Come down and put your hand on the man that
10 you saw there that night?

Witness leaves stand and places hand on defendant.

The Court: Now you can come back.

Q. Now go on with your story and tell.

A. Going back he says that I woke up and I saw my uncle crying. He says I seen Deliso—I woke up and I seen Deliso with a club hitting him about the head and arms, and they broke the window. My father says, "Get a little water and a towel," and I was putting on
20 my pants.

Mr. Strong: Where was Deliso when his father said this?

A. He says he was hiding under the window. They saw me putting on my pants and they was hiding.

Q. Go ahead.

A. Well, I was putting on my pants. They seen me there and they fired three shots through the window.

Q. Who fired the shots?

30 A. He says that Deliso says "Open the door; if you don't I will kill you."

Q. Who fired the shots?

A. Deliso.

Q. Were the shots fired after or before he said "Open the door?"

A. He says that they pointed the revolver through the window at me and they scared me and I opened the door and Deliso and some other man—

Q. Go ahead.

A. And the rest of them was outside of the door,

Q. When was the shot fired, before or after the door was opened

Mr. Strong: He hasn't said any shot was fired.

Q. What did Deliso do after the door was opened?

A. He went straight to my father.

Q. What did he do?

A. My father was afraid and he hid under the cot.

Q. What did Deliso do?

A. Deliso says, "Come out," that I am going to kill **10**
you.

Q. What did Deliso do?

A. He pulled my father from under the cot and he broke his arm with a club.

Q. Go ahead.

A. And my father was begging to let him alone, saying that I am your friend, and Deliso says no, you have got to die to night.

Q. Go on.

A. He took my father and he raised his hand and **20**
my father kissed his hand four times, and then afterwards he shot him.

Q. Where did he shoot him

A. Right here (pointing at head.)

Q. What did he do after he shot him?

A. After he shot him he picked his head up in his hands, held it towards the light and he says, "I did it. I have got to go away."

Q. Who said that?

A. Deliso. **30**

Q. What else did he say or do?

A. He says that I came out of the shanty—all of us came out of the shanty and they fired five or six shots at us.

Q. Are you sure that this is the man that shot your father?

A. Yes.

Mr. Strong: Wait, wait.

The Court: Do you think that that is the way to do it?

Mr. Berdine: He identified him as the one that fired it I only want to clinch it by the assurance.

The Court: I think I will exclude that question. Perhaps it was answered. If so, the answer must be stricken out. I think the objection to the question is that it was leading, and leading on a very material matter.

10 Q. What was the condition of the night when this took place, light or dark?

A. He says that it was light; that running along the road he could pick up a needle.

Q. Was there any light other than the light from the heavens there? Was there any electric light or gas light or anything of that sort?

A. He said there was an electric light there.

Q. How near the place?

The Interpreter: He is talking about the shanty—electric light in the shanty.

20 Q. Was there any light outside?

Mr. Marsh: Did he say in the shanty?

The Interpreter: Yes, he says in the shanty where he was.

Q. Was that lighted?

A. Yes.

Q. When did you next see him?

A. He says there was yard lamps out there.

Q. How near this particular shanty?

30 A. They was close, he says. I don't exactly know, because I didn't measure.

Q. Close to the shanty. Large or small?

A. Lamps, he says.

Q. After the shooting of the father what did Deliso, the defendant, do?

A. He says that he went away.

Q. Where did he go?

A. I don't know.

Q. When did you next see him?

A. The policeman came to me and brought me to New York and I identified him in New York.

Q. How soon after?

Mr. Strong: One moment. Did he identify him?

The Interpreter: Yes; he says he knew him.

Q. How soon after this shooting did he see him in New York?

The Court: Let me ask you. You have associated with you some one who understands Italian? 10

The Prosecutor: Two of them and both of them are good.

Mr. Strong: Of course, the expression of the witness was that he knew him.

The Interpreter: Kanisho—meaning identify or knew him.

The Court: The difference between recognize and identify is not very great in Italian or English. 20

Mr. Strong: Well, identification may imply a pointing out.

The Court: Well, I suppose, Mr. Berdine, all that you desire to show is that this boy did not see the defendant from the time of this occurrence until he saw him in New York.

The Prosecutor: That is the point.

The Court: I think then I will say that the jury may disregard the use of the word "identify". That will obviate your objection, Mr. Strong, as far as I can obviate it. 30

Mr. Strong: Yes.

Q. After this occurrence when did you next see this man Deliso, and where?

A. In New York.

Q. Where?

A. In New York.

Q. Whereabouts in New York?

A. He says I don't know. In New York; I am only—

Q. What sort of place—in police headquarters?

A. He says there is policeman there, that is all I know, but I don't know place it was.

Q. Who else was there beside Deliso and you?

The Court: Is this important? We are wasting a good deal of time.

Q. When next did you see your father after the shooting?

10 *A.* I seen him in there all the time.

Q. Where was he taken from the shanty after the shooting?

A. Brought him to my uncle's house.

Q. From there where did you take him?

A. To the hospital.

Q. Where?

A. In Elizabeth.

Q. Do you know the name of the hospital?

A. I don't know.

20 *Q.* Did you see him at the hospital in Elizabeth?

A. The three of us was there in one room.

Q. Who was with you there?

A. He says me, my uncle and my father and some other man. He says he went in some other room. The three of us was in one room and this other man in another.

Q. How long was your father in Elizabeth in the hospital?

A. About ten days.

30 *Q.* What became of him while there?

A. He died.

Q. Where?

A. In the hospital.

Q. Did you see him after he was dead?

A. Yes. He says after I seen him they brought us here.

Q. When you saw Deliso in New York in the presence of the policemen what did you say to Deliso?

A. He says why, I didn't say anything but I started to cry and I may have fainted.

Q. Did you make any accusation against Deliso in his presence?

Objected to.

The Court: Do not lead. He says that he did not say anything and started to cry. Of course you may refresh his memory in a proper way, but do not lead.

Q. Did you make any statement then to Deliso at that time while in New York?

10

Objected to as having been answered. Question permitted.

A. No; I didn't say anything. I only says that *that is him*.

Mr. Strong: Wait, wait.

Q. Tell me what he said to him. Tell me what he said to Deliso in New York.

Objected to.

20

The Court: He has not said he said anything to Deliso. He said, "*I only said that is him.*"

Mr. Strong: He didn't say it in his presence apparently or to him.

Q. I say tell me what you said to Deliso while in New York in the presence of the police officer?

The Court: He has said he did not say anything.

I will allow you in view of the difficulty of examining the witness who does not speak the language to direct his attention to a specific thing, if you think that he said something.

30

Q. Do you recall that in New York you saw Deliso in the presence of the policemen.

A. Yes.

Q. What did you say?

Objected to, as repetition, and that the witness has said he did not say anything.

The Court: You may ask what he said to anybody in the presence of Deliso and in his hearing.

Q. Well, what did you say to anybody in the presence of Deliso and in Deliso's hearing?

Objected to that he has not said or implied that he said anything to anybody in his presence.

The Court: Yes, I was a little hasty.

10 Q. Did you say anything to anybody while in New York in the presence of the policemen and in the presence of Deliso?

Mr. Strong: And in his hearing?

A. I says that is him.

Q. To whom did you say that?

A. I said it to him.

Q. To whom?

A. To Deliso, yes.

20 *Cross Examination of Domeinio Tenace, through Interpreter Theo. Antonio.*

By Mr. Strong.

Q. Who else was present in New York when he said that?

A. Me, my uncle and the police.

Q. What is the name of your uncle?

A. Guiseppe Tenace.

Q. Was he the brother of your father?

30 A. Yes.

Q. Is he present in court?

A. Yes.

Q. Was this uncle the same person who was in the shant on the night that he testified to?

A. Yes.

Q. When you were in New York and saw Deliso he defendant what were you there for?

A. I was in the hospital and there was a telephone came and the police came there and brought me there.

Q. The telephone came from whom?

A. Some policeman there. He says he is the man who came to Elizabeth after him.

The Prosecutor: Is he here in court?

The Witness: Yes. (Indicating.)

(A man arises in court room.)

Q. Is that the man standing up?

A. Yes.

Q. He came and took you over to New York, did he?

A. Yes.

10

Q. Did you know what you were going to New York for?

A. No; he just came to us and he brought me to New York and he says to identify somebody, to know somebody.

Q. When you got to New York this man took you up—do you know where he took you in New York?

A. To the office of the police.

Q. When you got there who did you see first?

A. The police.

20

Q. Did you see Deliso, the defendant, when you first went in?

A. He says when they brought me in they showed him to me in the lock-up.

Q. Was he locked up in a cell?

A. He don't know. They went down stairs in a place; I don't know whether they call it a cell or not.

Q. Was the defendant brought out into the same room where you were?

A. Yes, the police brought him out and they ask me did he know him and he said yes, that is him.

30

Q. How many persons were brought out and shown to you?

A. He says they take out a whole lot of people there, and I says that's him there. He says I would know him if he was among the whole country.

Q. How many did they bring out before you?

A. I don't know. He says I seen Deliso and said that's him.

Q. Didn't you say that there were Deliso and your uncle and yourself present at that time?

A. Yes.

Q. Was there anybody else there except yourself your uncle and Deliso?

A. He says me, my uncle and a whole lot of people; I don't know whether they were police or not.

Q. Did the police have policemen's clothers on, uniform?

10 *A.* Some was in uniform and some was in citizen's clothes.

Q. Were there any Italians there besides yourself and your uncle and the defendant?

A. I don't know.

Q. He doesn't know, he says?

A. He says I don't know.

Q. How near were you to Deliso in New York when you said that is him?

A. About from there to where I am.

20 *Q.* Four or five feet?

A. He says just as close as he is to me.

Q. Did you see where Delisocame from when he came into the room where you were??

A. He says I was in a room and they brought him there.

Q. Who brought him there?

A. Those two gentlemen sitting there. (Indicating.)

Q. Sitting next to Mr. Stricker?

A. Yes, them two there.

30 *Q.* They came in, those two men came in with the defendant, did they?

A. He says there was a whole lot there, but them two came in.

Q. And brought the defendant in?

A. Yes.

Q. Did they have their hands on him?

A. No.

Q. He walked. Did the defendant walk between those two men?

A. Yes.

Q. Where were the others when these two men brought Deliso in?

A. He says where they brought him.

Q. They were in the room?

A. In the room.

Q. They were in the room before Deliso came in with these other two men, were they?

A. Yes.

Q. How long have you known Deliso, the defendant?

A. He says since he killed my father. 10

Q. Had you ever seen him before that night?

A. No; I didn't know him.

Q. How long had you lived in this place at Port Reading?

A. About a month—little over a month.

Q. Were you working?

A. No.

Q. Your father was working, was he?

A. (The Witness.) Yes.

Q. And you lived with your father? 20

A. Yes, I lived with my father.

Adjourned till 2 P. M.

Afternoon Session, 2 P. M.

Cross Examination, of same witness resumed, by Mr. Strong.

Q. How old are you? 30

A. I am over eighteen yearrs old.

Q. When were you eighteen years old?

A. I don't know.

Q. What?

A. I don't know.

Q. How do you know you are eighteen year old?

A. My mother told me.

Q. Is your mother in this country?

A. No.

Q. Where is she?

A. Italy.

Q. When did you come to this country?

A. I left there the 24th of March.

Q. Did you come with your father?

A. Yes.

Q. When did you go down to Port Reading docks?

A. He says we work a couple of months around other wheres and then we went to Port Reading.

10 *Q.* Did you go there at the time your father did?

A. Yes.

Q. Do you know what time it was that you went there?

A. No.

Q. How long was it before the night when your father was killed?

A. We have been there about a month or a little over.

Q. How long had your uncle been down there?

20 *A.* The same as us.

Q. Did he go there the same time your father and you did?

A. Yes; the three of us went there together.

Q. Did you all come from Italy together?

A. No; only me and my father.

Q. The night when your father was killed, you were asleep until you were waked up by hearing your uncle crying?

A. Yes.

30 *Q.* That is true, is it?

A. He says I was asleep and I heard my uncle crying and I woke up.

Q. You woke up because you heard your uncle crying was that it?

A. Yes.

Q. Whereabouts were you sleeping in the room?

A. We was sleeping in the shanty.

Q. How many beds were there in the shanty?

A. Three.

Q. How were they placed?

A. My uncle's bed was under the window, mine was in the middle; my father's was at the other side.

Q. Was your uncle's bed right under the window?

A. Yes; he says there is the window and the bed was right under it.

Q. What does he say?

The Interpreter: He says yes. For instance, that is the window and the bed was right under.

Q. Right against the wall? 10

A. Yes.

Q. Then whereabouts was your bed? How far was it from the other bed?

A. It was close to each other.

Q. Was there any place to walk between his bed and his uncle's bed?

A. Yes, there was a little space.

Q. About how wide?

A. I didn't measure it.

Q. Tell me the best you can how wide was it between 20
your uncle's bed and your bed?

A. He says I ain't no mechanic; I don't know how far apart they were.

Q. Can't you tell? Tell about how wide it was.

A. I don't know.

Q. How wide was your bed?

A. Said two persons could sleep on that bed.

Q. How wide was your uncle's bed?

A. For one person.

Q. Only one person. How wide was your father's 30
bed?

A. One person.

Q. Did you say that only one person could sleep on your uncle's bed?

A. Yes.

Q. How many persons did you say could sleep on your bed?

A. Two could sleep on it, but they would be crushed up

Q. Now was the space between your uncle's bed and your bed as wide as your uncle's bed was?

A. No.

Q. Not so wide?

A. No.

Q. Was your bed right opposite to the door as you came in from the outside?

A. He says the three beds was together and the door was right near.

10 *Q.* Ask him again whether his bed was directly opposite the door?

A. Yes, right in front of the door.

Q. And as you came in the door your uncle's bed was on the left side and your father's bed was on the right side; is that so?

A. He says the door comes in that way and his uncle sleeps there and I sleep there and my father sleep here.

Q. Ask him my question again.

20 (Question repeated by stenographer.)

A. He is saying as you come in the door this way my uncle's bed was on that side.

Q. That is the right side?

A. He says coming in that way it is the left side.

Q. Coming in the door? Ask him whether he means coming in the door?

A. Yes.

30 *Q.* That is, coming in the door, his uncle's bed was on the left and his father's was on the right; is that right?

A. Yes, and I was in the middle.

Q. Now when you waked up where was your uncle?

A. He was on his cot.

Q. Where was your father?

A. The same.

Q. On his cot?

A. Yes.

Q. What was the first thing you saw when you waked up?

A. I seen that they was killing my uncle with a club from in the window.

Q. Who did you see in the shanty?

A. He wants to know who you mean.

Q. I want to know who did you see in the shanty when you woke up first?

A. Why, he is talking about the outside of the shanty. He says where the window was broken.

Q. Was there anybody in the shanty when you woke up except your father and your uncle and yourself?

A. That is all, us three.

Q. Where was the man who was beating your uncle? **10**

A. He says he was outside; he broke the window and stuck his arm in the window.

Q. How many persons did you see at the window?

A. Three.

Q. Three persons at the window?

A. Yes.

Q. Outside?

A. Yes.

Q. And the first you saw one of those persons was beating your uncle through the window with a club; **20** was that right?

A. Yes.

Q. What was the next thing that happened after you saw that?

A. He said that my father says get some water and get a towel, we want to bathe him.

Q. When your father said that, was the man still beating your uncle?

A. No.

Q. Had the man stopped beating your uncle then **30** when your father said that?

A. They was hiding behind the shanty.

Q. Did you see them?

A. They broke the glass, they licked my uncle and then they hid.

Q. Then after they had beaten your uncle they went away, so that you could not see them at the window? away, so that they could not see them at the window?

A. He says they only stopped down behind the window.

Q. Could you see them?

A. How could I see them.

Q. Well, do you say that you could not see them?

A. I couldn't see them from inside.

Q. Then after that what was the next thing?

A. My father was bathing his leg with a towel and I was putting on my pants. While I was putting on my pants there was three guns pointed to me and they says, "Open the door. If you don't I will kill you."

10 *Q.* Where were the three guns pointed?

A. From in the window.

Q. Had there been any guns pointed before that?

A. No.

Q. You had not seen any pistols in the hands of anybody until you saw these three guns—three pistols or guns pointed through the window. Is that what you say?

A. I saw them when they pointed them to me saying open the door or I will kill you.

20 *Q.* Was that the first time you saw anybody have a pistol that night?

A. Yes.

Q. Had there been any pistol shot fired up to that time that night?

A. No.

Q. Whose leg was your father bathing?

A. The leg of my uncle.

Q. And where was he bathing the leg of the uncle?

A. On his cot in the shanty.

30 *Q.* On the uncle's cot?

A. Yes.

Q. And where were you?

A. I was in the shanty.

Q. Whereabouts?

A. In the shanty putting on my pants.

Q. What part of the shanty?

A. By them.

Q. Between your bed and your uncle's bed was it that you were putting on the pants?

A. I was facing my uncle and my father by the window.

Q. Were you between your bed and your uncle's bed?

A. I was in the shanty near them putting on my pants.

Q. Is that all that you can tell us as of the part of the shanty you were in?

A. Yes, that is all. I was putting on my pants.

Q. Had they knocked at the door? Had anybody knocked at the door before you saw these three men pointing their pistols in the window?

A. No; we was sleeping. 10

Q. Had anybody knocked at the door of your shanty up to the time that you saw these three men at the window with pistols?

A. They broke the window.

Q. Ask him whether anybody had knocked at the door up to that time?

A. No; they broke the window.

Mr. Berdine: Suppose you put the question?

The Court: Put the question.

The Interpreter: I try to put the question to him but he does not answer it. 20

Mr. Strong: Did he finally answer it?

The Interpreter: He says no.

Prosecutor: What did he say no to?

The Interpreter: That they did not knock at the door before the time they had pointed the revolvers through the window.

Q. When they pointed the revolvers through the window what did they say? 30

A. Open the door. If you don't I will kill you.

Q. What did you do then?

A. I got afraid and I opened it.

Q. Where were your father and your uncle when you opened the door?

A. They hid under the beds.

Q. Under which bed?

A. Under their beds.

Q. Did you hide under your bed too?

A. No. While I was opening the door they rushed

in and they hit me with the club. He says my arm still pains.

Q. Where was your father when the men came in the door?

A. Under the bed.

Q. Under which bed?

A. I seen them go under the bed.

Q. Which bed was your father under?

A. Got under the bed—I don't know which one.

10 *Q.* How many men came in the door when it was opened?

A. Two.

Q. What did these two men do when they came in?

A. One had hold of my uncle beating him and the other went to my father, and some was outside.

Q. Were there more than two came in?

A. No; only two.

Q. Who were the two that came in?

A. Deliso and another.

20 *Q.* Who was the other?

A. The other man ran away. He is the one went to my uncle.

Q. Do you know who the other one was?

A. Yes, I know him by sight.

Q. What was his name?

A. I don't know.

Q. Where did you ever see him before?

A. I have seen him in the shanties.

30 Mr. Strong: Didn't he say first that he didn't see him anywheres and then said afterwards he saw him in the shanty? I am speaking to you, Mr. Interpreter.

Mr. Berdine: I object.

The Interpreter: I will ask him the question over again.

Mr. Strong: I want to know what he said to you before. Didn't he say he hadn't seen him anywheres?

The Interpreter: He says I seen him in the shanties.

Mr. Strong: Didn't he say I haven't seen him anywheres?

The Interpreter: I don't think he did.

Mr. Strong: You say he did not?

The Interpreter: I don't think so.

Mr. Berdine: You are questioning the Interpreter?

Mr. Strong: I am questioning the Interpreter. Our information is that he did not get the whole answer.

10

The Court: You may put the question again to the witness through the Interpreter.

Q. Did you say first in answer to my last question that you had not seen this other man anywheres?

Mr. Berdine: Put the question and the answer.

The Court: You have to just give us the answer as he gives it, even if unintelligible. You put the the question as Mr. Strong gives it to you and then whatever he answers you tell us.

20

(Question repeated by stenographer.)

A. No. I saw him in the shanties, and if I had seen him amongst the whole country I would know him.

Q. What kind of looking man was he?

A. I don't know. He says I didn't measure him.

Q. Can't you tell us anything about how he looked?

A. He says he was a man.

Q. Is that all you can say?

A. That is all. He says that is the man went to my uncle. He didn't touch my father at all.

30

Q. Did you stay in the shanty all the time while these two men were there after they came in the door?

A. Yes, I was in the shanty.

Q. Didn't you run out of the door as soon as it was opened?

A. No. I couldn't run away. They was in front of the door.

Q. Did they, either of them, put their hands on you?

A. Deliso touched me when he came in the door.

Q. Touched you with what? How did he touch you?

A. With a stick.

Q. Did he hold you?

A. No, he says coming in he gave me—struck at him and he went to my father.

Q. Which hand did Deliso have a stick in?

A. He says he had a stick and the revolver.

Q. Which hand did he have the stick in?

A. I don't know.

10 *Q.* Which hand did he have the revolver in?

A. He had the two of them in his hand; I don't know.

Q. Now when he came in he hit you with the stick and then he went over to your father; is that right?

A. Yes.

Q. Whereabouts was your father then?

A. He says he was under the cot on account he was afraid.

Q. Which cot was your father under?

20 *A.* Says he was under one of them, I don't know which.

Q. What part of the room did Deliso go to when he went over to your father?

A. In the shanty.

Q. What part of the shanty?

A. He says he went in the shanty and went to my father; I don't know what part.

Q. Didn't you run out of the shanty just as soon as they got past you?

30 *A.* No; I stood in the shanty.

Q. What did you do?

A. Says I was crying because they was beating my father.

Q. Did you do anything to prevent them beating your father?

A. No.

Q. Did you call for help?

A. I was asking for help from God.

The Prosecutor: Did he say God or the Virgin?

The Interpreter: He said Virgin. It means the one thing.

The Prosecutor: No; it doesn't.

The Interpreter: God is Jesus and Virgin is Virgin (giving Italian pronunciation).

Q. Go on and tell us more about this, after these two men went one to your father and the other went over to your uncle; what happened next?

A. Says he went to my father and said, "Come from under there," that "I have got to kill you." 10

Q. Did your father come out from under the bed then?

A. No; he caught hold of him and pulled him out.

Q. How did he take hold of your father; where?

A. H esays he got hold of him, part of his body, and pulled him out.

Mr. Berdine: Tell the whole.

A. He said he had to get hold of him some place, and he says he got hold of him, part of the body, and pulled him out. 20

Q. You don't know where he got hold of him?

A. No; he got hold of him.

Q. Which hand did he take to take hold of your father?

A. He said he had to get hold of him some way. He had hold of him and pulled him out.

Q. Did he have his club in his hand then?

A. Yes. 30

Q. What did he do with his club?

A. He broke his arm.

Q. Then he took hold of your father with one hand and he broke his arm with the club in the other hand; is that right?

A. He said he pulled him out and then after pulling him out he broke his arm.

Q. With the club?

A. With the pick handle.

Q. The club was a pick handle, was it?

A. Yes, pick handle, and broke his arm.

Q. Then after he pulled him out and broke his arm, then what happened; go on and tell?

A. He made him kiss his hand.

Q. How did he make him kiss his hand? What did he say?

A. He says, "Kiss my hand," and so my father kissed it.

Q. What did he have in his hand beside the club?

A. A revolver.

10 *Q.* Which hand did he have the revolver in, the hand he kissed or the other one?

Mr. Berdine: I object. That question has been asked three different times and he said he didn't know.

The Court: I will permit it.

(Question repeated by stenographer.)

A. He says he made him kiss his hand and he had it in his hand.

20 *Q.* Where was the revolver when this man was pulling your father from out under the bed?

A. He says if I was pulling him I would put it in my pocket and pull him. He says he couldn't see what he was doing.

Q. You could not see where the revolver was when he was pulling your father out from under the bed, could you?

A. It wasn't like a big bench; it was a little thing.

Q. Can't you tell where the revolver was?

30 *A.* He says he don't know where he had it.

Q. Do you know where it was?

A. He says he had it. He pulled him from under the cot.

Q. Which cot did he pull him out from under?

A. Under the cots they were sleeping. He says it was one of the cots.

Q. Where were you standing? How near were you to this man when he took hold of your father and pulled him out from under the cot?

A. He says I was near him.

Q. How far away?

A. He says I was near, but I didn't measure. I don't know how far. He says I was close.

Q. What do you mean by that?

A. He says I was near, but I didn't have no measure and I couldn't measure it.

Q. Was the man who had hold of your father back to you or was he facing you?

A. He says I was behind him.

Q. And the man was between you and your father, **10** was he?

A. My father was under the bed and I was away from the bed.

Q. Was the man who pulled your father out from under the bed between you and your father?

A. He says I was near him.

Q. Ask him the question again.

(Question repeated by stenographer.)

A. Yes; he says I was there and he was pulling. **20**

Q. When he pulled your father out from under the bed did your father stand up?

A. He says he got hold of him and pulled him out and he says he killed him; he says my father was asking for mercy, that I have got a family.

Q. Did your father stand up or was he lying down, or what position was he in after the man pulled him out from under the bed?

A. He was down.

Q. Lying on the floor? **30**

A. Yes, he was down on the ground; he was asking for mercy. He says don't kill me, that I have children in debts. He says I am not an enemy of yours; I am a friend—we can be friends.

Q. Was your father sitting or lying on the floor, or in what position was he?

A. He was on the ground; I don't know if he was on his knees or not. He says I couldn't take no measurements.

Q. Could you see your father?

A. He says yes; when he pulled him out he was asking for mercy.

Q. If you could see him why can't you tell us what position he was in?

A. He says he was lying down, but when he pulled him out from under the cot that is the way he was.

Q. Lying on the floor, was he?

A. He says I don't know; he was down; I don't
10 know if he was lying down or if he was on his knees.

Q. What did this man do to your father then after he pulled him out from under the cot?

A. He broke his arm with a pick handle.

Q. Did he do anything else?

A. He made him kiss his hands, then shot him.

Q. What position was your father in when he was shot?

A. He was down on the floor.

Q. Was the man who shot him standing over him?

20 *A.* Yes.

Q. How near to him was the man who shot him at the time that he shot him?

A. He had it right near him.

Q. Did he hold the pistol close to his head?

A. He says he had it a little ways from his head.

Q. How far was the end of the pistol away from your father's head?

A. He says I didn't measure it; he says he had it close; he says I didn't measure it.

30 *Q.* How close? You can show us with your hands.

A. He says that I seen that he had it close; I couldn't give you the measure—that much or that much. (Indicating.)

Q. Tell us the best you can how close it was?

A. He says it was close. It was very close. He says it was very close. He says he was lying down and he was over him.

Q. I want you to show as near as you can with your hands how near the pistol was to your father's head when it was fired?

A. He says my father—

The Prosecutor: Stand up and show.

A. He says it was close, it was near.

Q. How near? Show on your head, if he can?

A. He says my father was down and he was over him.

Q. Was it a foot from your father's head?

The Prosecutor: I object.

The Court: This is cross examination. I will permit it.

10

A. He says I haven't no measure, because he was down and he was over him.

Q. Did the man who had the pistol bend over him?

A. He says he was down.

Q. Who was down?

A. My father was down.

Q. Did the man who had the pistol bend over your father?

A. He says he was bending over.

20

Q. He says he bent over?

A. He was bent over.

Q. Show us how the man bent over your father?

A. He says he was down and up, he says. My father was down and he was down and up.

Q. Who was down and up?

A. That man there. (Indicating defendant.)

Q. What do you mean by down and up?

A. He says he was killing my father.

Q. When he fired the pistol shot did you say that he was bending over your father?

30

A. He says he had to see what way he had to shoot him. He had to measure it. He says after shooting him, why, he got hold of his head and turned it towards the electric light.

Q. Was the man bending over your father or was he not at the time he fired the shot?

A. Yes.

Q. Now stand up and show us the position that the man was in when he fired the shot at your father?

A. He says my father was down and he says I don't know how he was, and he shot.

Q. Are you not able to show us the position in which the man was when he shot your father?

A. He says no. He says I know that he — he says he had the gun near him when he shot him.

Q. Were you looking at the man who was shooting your father?

A. Yes, I was there crying.

10 *Q.* Where was the other man all the time?

A. Outside of the door.

Q. Now I ask you where was the other man who came in the shanty with the defendant?

A. In the shanty. He licked my uncle and he was there.

Q. Was he licking your uncle all the time that the defendant was beating and shooting your father?

A. He was licking my uncle with a stick.

20 *Q.* All the time that the defendant was shooting your father?

A. Yes.

Q. How many times did this man shoot your father?

A. Two.

Q. Fired two shots?

A. Two shots.

Q. Did our father have two bullet wounds?

A. No; he didn't catch him, and the second one he put the gun near him.

30 *Q.* Was the man bending over your father when he fired both shots?

A. He says the first he shot him and the second one, why, he bent and caught him.

Q. Was he bending over when he fired the first shot?

A. He says he fired the first shot and he didn't catch him but the second shot he put the revolver close to him and he shot at him. He says he pulled him out and he fired the first shot.

The Prosecutor: As he pulled him out of the bed?

Mr. Strong: No; wait. This is my witness.

Q. Did he fire one shot right after the other?

A. No. He says he fired the first shot and seen that it didn't catch him and he said, "Now I will have to get you."

Q. Who said that?

A. He says then I didn't catch you, so I put the revolver and he shot.

Q. He said, "Now I will have to get you," did he? 10

A. Yes; he says after shooting him, why, he turned his head toward the electric light and he said, "Now I have got him."

Q. When he said that, that was after he had shot your father in the head, was it?

A. He says he shot him and after he shot him in the head he lifted his head up towards the electric light and he said, "Now I have done it and now I have got to go away."

Q. Were you standing in the same place that you had been all the time? 20

A. He says I was there crying.

Q. Did you say or do anything at all except cry?

A. I was crying and saying, "We ain't no enemy of yours," and I was saying, "We didn't do anything."

Q. You said that, did you?

A. He says, me, my uncle and my father was saying that, "Why are you hitting us—killing us? We ain't your enemies." He says, "You have got to die."

Q. Is that all he said? 30

A. He said, "You have got to die tonight." No; only saying that you have got to die tonight.

Q. Why didn't you run out when you had the chance while these two men were beating your father and your uncle?

The Prosecutor: I object.

The Court: It is perfectly proper on cross examination. I will permit it.

(Question repeated.)

A. He says if I had run out, why, there was these other partners outside in front of the door; they would have killed me.

Q. Was that the reason you didn't run out

A. They all was in front of the door and I was inside.

Q. How many were in front of the door?

A. He says they was in front of the door; I didn't count them.

10 *Q.* How do you know they were in front of the door?

A. Because I know. I looked towards the door and I seen them.

Q. At the same time that these men were killing your father were you looking out the door?

A. He says I looked towards the door and I seen the people out there. I was crying that they was killing my father.

Q. Did these men who were outside the door do anything?

20 *A.* No; but they was watching.

Q. How do you know they were watching?

A. He says they was in front of the door.

Q. How near the door were they?

A. By the door, near the door.

Q. Do you mean right close so they were looking in the door?

A. Yes.

Q. Who were they out there that you knew, anybody?

30 *A.* No; I didn't know them.

Q. After the shooting of your father and the man who shot him turned your father's head up and said that he had done it and he would have to go, what is the next thing he did after that?

A. He says they went away, that is all I saw.

Q. Did both of them go away together?

A. He says they went out; I don't know if they went together.

Q. And there were two shots fired that you have told

us about; were there any other shots fired in the shanty before they went?

A. Is that before they went away or after?

Q. Before they went away?

A. No; only heard two shots. After they went away we seen they had gone out and so we ran out.

Q. Who ran out?

A. Me, my uncle and my father. He says they happened to see me running and they fired five or six, seven or eight shots.

10

Q. Did you and your uncle and your father run out as soon as the men had gone away—as soon as the two men had left the shanty?

A. He says yes, me and my father and my uncle went out. He says if we stay here they will kill us all.

Q. Were there any men outside when you went out?

A. He says they was out on the open and they saw me when I came out.

Q. Who were out in the open?

A. It was them.

20

Q. How many?

A. Six or seven.

Q. Was the defendant and the other man who had been in the shanty among the six or seven?

A. Yes.

Q. How far away were they from the shanty when you went out with your father and your uncle?

A. About from here to that wall, or a little further. (Indicating wall of court room.)

Q. What were they doing?

30

A. They was going away. They seen that I was running away and said, "See! see! there he goes," and they fired five, seven or eight shots after him.

Q. Where did you go then?

A. Went to my uncle's.

Q. What is his name?

A. Angelo Bertona.

Q. Is Bertona in court?

A. Yes.

Q. Where is he?

A. Up there.

(Bertona is asked to stand up in court room, and complies.)

A. That is him.

Q. You went to his house that night, did you, right away?

A. After they firing them seven or eight shots I went
10 to the house of my uncle.

Q. Where did your father and your uncle Joseph Tenace go?

A. At the same place.

Q. Did you know any of the men whom you saw that night in the shanty or outside the shanty except Deliso?

A. No; I didnt know them.

The Prosecutor: Did you put the full question to him then?

20 Mr. Strong: I think so.

The Interpreter: I asked him if he knew any of the men outside of Deliso in that crowd, and he said no.

The Prosecutor: Inside or outside of the shanty?

The Interpreter: I didnt ask him inside or outside.

(Question repeated by the stenographer.)

A. He says I only knew the ones that came in the
30 shanty.

Q. Who was the other man in the shanty outside of Deliso?

A. He says it was another man; he is not here; he ran away.

Q. What is his name?

A. I don't know, but he didn't touch my father.

Q. Did you ever see the man who came in the shanty and beat your uncle before that night?

A. He says no; I only knew him that night he came in the shanty.

Q. That is the only time you ever saw him, is it?

A. He says that is the first time I seen him, but if I was to pick him out I would know him among the whole country.

Q. Have you ever seen him since?

A. No.

Q. Never seen him since?

A. No.

Q. Have you ever since that night seen any of the men who were in the shanty or were outside of the shanty? Have you ever seen any of them? **10**

A. No; I didn't see none, because they brought me to the hospital—they brought us to the hospital.

Q. What is that about the hospital?

A. He says they brought us to the hospital.

Q. Who brought you to the hospital?

A. In Elizabeth.

Q. Well, why was he there?

A. He says my arm was hurt.

Q. Oh, dd they take you to the hospital because your arm was hurt? **20**

A. He says to bring me to the hospital and to bring some water to my father that was in bed.

The Prosecutor: What did he say about nurse?

The Interpreter: To bring water to my father who was in bed.

The Prosecutor: Did he say he would act as nurse?

The Interpreter: He said he would bring me for my arm was hurt and to bring water to my father that was in bed. **30**

The Prosecutor: We thought he said nurse his father.

The Interpreter: He says water.

Q. When was it that you were at the hospital in Elizabeth?

A. He says like if tonight the shooting occurred and the next night we went to the hospital.

Q. Was your father at the hospital then?

A. He says the three of us went there at once, at one time.

Q. Where was your father down to the time he went to the hospital?

A. At my uncle's house. He was laying down at my uncle's house.

Q. And did he have a doctor there?

A. He says the same night a doctor came.

10 Q. What doctor was it?

A. He says a doctor came but I didn't know who it was.

Q. Was Dr. Hoagland there the next morning?

A. Yes.

Q. Did Dr. Hoagland examine your father's head?

A. Yes.

Q. Do you remember who was there at the time that Dr. Hoagland was there making that examination?

A. He says no I don't remember; I was crying, thinking of my father that they had killed him.

20 Q. What is that?

A. He says no, I don't remember; I was crying thinking of my father, they was killing him.

Q. Do you know Tony Maseno?

A. He says no, who is Tony Maseno?

Q. Do you know a man that has a close cropped beard?

A. No.

Q. I am mistaken about that. He has a moustache and he is a brother or half brother of Joseph DeVita?

30 A. No; he didn't know him.

Q. Don't you know anybody down there?

A. No.

Q. You were there, living down there a month before your father got shot; didn't you know somebody in the place?

A. He says I didn't know nobody; he says that only two nights we have been sleeping up in the shanty. I had been staying with my uncle,

Q. Had you only been staying two night up at this shanty before the time your father was shot?

A. He says one night we stood there in peace and the next night the shooting occurred.

Q. Where was your uncle's house where you had stayed before that?

A. Near the post office.

Q. Was that near the shanties?

A. No; it was pretty far away.

Q. Which uncle was that, Bartoni? 10

A. Angelo Bartoni.

Q. Now on the next morning after the shooting, at the time that Dr. Hoagland was there examining your father, at the house of Angelo Bartoni, didn't you say to Tony Maseno, or did you say to anybody, in Italian, that the man who had killed or shot your father was a man who had been playing Batemora with Tony Maseno the Sunday morning before?

Objected to. Question allowed.

(Question repeated by stenographer.) 20

Q. I mean the Sunday morning the week before the shooting. Put it that way.

A. I don't know anything about them things.

Q. Do you know what the game of Batemora is?

A. He says no, I don't even know how you play sweep.

Q. That is a game by which you flip or throw a coin or anything against the wall?

A. No; I don't know anything about these things. 30

Q. Did you ever see anybody play that game down there?

A. No; I don't know and I never seen nobody.

Q. Did you on the Sunday before—I mean a week before your father was shot, on that Sunday a week before, in front of DeVita's store, see anybody playing a game like that, flipping coins against the wall?

A. No.

Q. Do you remember going to the hospital at Eliza-

beth and seeing Raphael Deliso, the brother of the defendant?

A. No. He says I don't know nobody.

Q. Do you know Raphael Deliso?

A. No.

Q. Ever seen him at all?

A. I never seen him and I don't know him.

Q. Do you know a man who was in the Elizabeth hospital that had his side cut?

10 *A.* Yes.

Q. Is this the man standing there? Is he the man that you mean? (Indicating a person standing.)

A. Yes, that is the man.

Q. Did you go to the hospital and see this man who had his side cut while he was in the hospital?

A. Yes, we all was there together and I went to see him.

Mr. Strong: You may go, Deliso.

20

The Court: If you are going to seek to contradict him you had better ask him if he said anything to this man.

Mr. Strong: I am going to. I thought it was not necessary to keep him standing there.

Q. Were you at the hospital on the Thursday after your father was shot?

A. Went there on Monday.

Q. You went there on Monday. Did you stay there after the Monday?

30 *A.* Yes.

Q. How long did you stay there?

A. Six or seven days.

Q. Now, on the Thursday of that week, did this man Raphael Deliso, whom you saw here a few minutes ago, in the presence of Luigi Minucy, ask him and Angelo Bartoni—did he ask you, that is, did Raphael Deliso ask you who had shot your father, and did you say that you did not know, that you ran away to Bartoni's house just as soon as the window was broken

and that you did not recognize any one at all?

A. No; I haven't spoke to anybody.

Q. Did you say that?

A. No.

The Interpreter: I would like to get a little at a time.

The Court: If Mr. Strong desires, me may frame a question that will be less parenthetical, if I may so characterize it.

10

Q. Did Raphael Deliso ask you in the presence of Bartoni and of Luigi Minucy who had shot your father?

A. He says I don't know this Minucy and I don't know none of them.

Q. Did Raphael Deliso, the man whom you saw here just now, ask you who shot your father, at any time?

A. No.

Q. Not at any time when you and he were in the hospital?

20

A. No.

Q. And did you say to Deliso, Raphael Deliso, the man who was here just now, that you did not know who shot your father?

A. No; I didn't say anything.

Q. Did you tell Raphael Deliso at the hospital that you ran out just as soon as the window was broken and that you did not recognize any one?

A. No; I never spoke about that to him.

Q. Now, at a nother time, on the Tuesday after the time when your father was shot, were you at he hospital on that day with Raphael Deliso?

30

A. Yes, I went to the hospital.

Q. In the afternoon?

A. I don't know what time it was. It was that day.

Q. Was there another man there named Luigi Manucy?

A. No; I don't know him. I don't know him.

Q. You do not know Luigi Manucy?

A. No; I don't know this Luigi Manucy.

Q. Was Angelo Bartoni there that afternoon?

A. Yes; he was there when they brought us. He brought us there. We did not know where it was.

Q. Now on that day did Bartoni say to you, in the presence of Deliso and in the presence of Manucy, the first man that is caught you have got to say that he is the man that shot your father?

A. No; he never said nothing.

10 *Q.* Did he further say to you we will get the right man just as soon as the first man is caught?

The Prosecutor: Let's get that question right, Mr. Interpreter.

(Question repeated by stenographer.)

A. He wants to know who is it that said that.

Q. Angelo Bartoni said that to these men.

A. He says Angelo Bartoni was thinking about his own family; he never told me nothing like that.

20 *Q.* On Monday morning right after the shooting of your father did you see anybody at Giotanni Russo's store?

A. He says I don't know anything about them things.

Q. Were you and Bartoni together that morning, the next morning, early Monday morning, early before seven o'clock?

A. He wants to know where.

Q. Were you with Bartoni in front of Giotanni Russo's store?

A. No; I don't know.

30 *Q.* You say you were not there with Bartoni?

A. No; I don't know anything about them things.

Q. Didn't you at that time point out a man who was in front of Giotanni Russi's store, point him out to Bartoni as the man who had shot your father?

A. He says yes, I saw him there and now he says that is the man that killed my father. I said that to the police.

Q. What time was that?

A. He says I don't know; I didn't have no watch.

Q. Was it Monday morning, right after the shooting?

A. Yes.

Q. Early in the morning? . . .

A. Yes, it was early.

Q. About six or seven o'clock?

A. No; I don't know what time it was.

Q. You pointed out some man to whom?

The Court: He says to the police.

Q. Who was the policeman?

10

A. He says that man back there.

Q. Who do you mean by the man back there?

A. The policeman back there.

The Court: Let the man stand up.

(Man arises in court room.)

Q. The man standing up?

A. Yes, that is the man.

Q. Who is the man standing up?

A. And he says he went there and he didn't find him.

20

Q. Did you point out this man that you saw at Russo's store? Did you show him to the policeman?

A. He says I told it to somebody else and he told the police.

Q. Did you see the man in front of Giotanni Russo's store and did you tell somebody that that man was the man that killed your father?

A. He says I seen him there.

Q. He saw who?

A. Deliso.

30

Q. You saw the defendant?

A. Yes.

Q. You say that he was in front of Russo's store at that time?

Q. It was near the store.

Q. Where did he go?

A. I don't know.

Q. Where did you see him? What was the last you saw of him?

A. He says then they brought him to see him when I saw him in New York.

Q. Oh, no; when you saw this man, the defendant, in front of Russo's store on the next morning after the shooting, what did you see him do?

Q. I didn't do anything.

Q. Did he stay there?

A. I don't know.

Q. Did you see him run away?

A. I seen him there and then I didn't see him any more.

10 *Q.* Who was with you when you saw him there?

A. He says there was some people there, but I didn't know them.

Q. Was Angelo Bartoni with you at the time you saw the defendant?

A. No.

Q. Was not Angelo Bartoni with you at the time that you saw some man in front of Russo's store, and did you not point out that man as being the man who shot your father, and did not Bartoni follow that man and

20 try to catch him?

A. No.

Q. Did Angelo Bartoni ever follow anybody that you know of as being the man who had shot your father?

A. No; he didn't go after nobody.

Q. Did you ever point out anybody to Angelo Bartoni as the man who shot your father?

A. No; I never show him no one.

Q. Not on the Monday morning after the shooting, or at any other time?

30 *A.* Never. He never asked me nothing and I never told him nothing and nobody else neither.

Mr. Strong: Luigi Manucy come forward.

(Manucy comes to bar.)

Q. Do you know this man?

A. No.

Q. Have you ever seen him before?

A. No.

Q. Was this man at the hospital in Elizabeth when you were there with Raphael Deliso?

A. No; I don't know him. There is lots of people there. I didn't know them all.

Q. Now then did Raphael Deliso on the Thursday after the shooting, and while you and Deliso were in the hospital did he ask you—

The Court: Is not this the same question that has been put before?

Mr. Strong: Yes. At that time he did not say he knew anything about this matter. Now I want to put it to him as being in the presence of these men. 10

The Court: You must break it up so it is comprehensible to the witness.

Mr. Strong: I was going to give it to the stenographer in its entirety and let the interpreter get it in sections.

The Court: That doesn't help, because the stenographer has to repeat it in sections.

(Question repeated.)

Q. (Continuing)—in the presence of this man Luigi Manucy, now standing here, and the presence of Angelo Bartoni, who had shot your father? 20

The Court: Suppose you stop there?

The Prosecutor: That is part of the question that has already been answered and there is nothing to indicate that the witness knows this man or is conscious of ever having seen him.

The Court: It seems to me Mr. Strong, that that we are wasting time. He says he never has; he don't know this man; that there were a lot of people at the hospital. He doesn't say this man may not have been there, but it is quite useless, it seems to me, to ask him the same question that has already been asked him, and you will see the only difference is the man is present, and since he denies this man— 30

Mr. Strong: So long as I am not to be excluded from the foundation of rebuttal.

The Court: I think you have laid a foundation for contradiction.

The Prosecutor: I suppose that question will come up later.

The Court: Mr. Strong wants to put himself on the proper footing, and I shall so hold when he goes to attempt to contradict.

Mr. Strong: I will leave that matter where it is then.

Mr. Strong calls for Joseph Barcelona to come forward, and man complies.)

10 Q. Do you know this man standing here?

A. No.

Q. Ever seen him before?

A. No.

Q. Look at him.

A. No; I never saw him.

Q. On the Monday morning following the time when your father was shot, early in the morning, did you and Bartoni go to this man's house in Woodbridge?

20 Mr. Prosecutor: What do you mean by this man's house?

Mr. Strong: This man who is standing here.

Mr. Berdine: He says he doesn't know the man and has never seen him.

The Court: I think Mr. Strong is within his rights. He says he didn't go there?

The Interpreter: He says no.

(Question repeated.)

30 Q. (Continuing:) In Woodbridge, and ask him, or or did Bartoni ask him in your presence if he had seen anybody running—

The Prosecutor: I will object to that.

The Court: I will let him put it.

A. No.

Q. Haven't you tried to get employment on the farm of this man?

Objected to as irrelevant.

The Court: He says he doesn't know him.

A. No; I don't know.

Re-Direct Examination, by Mr. Berdine.

Q. What province in Italy is your father?

A. Province Fuggo.

Q. You said in answer to Mr. Strong's question that you pointed out Deliso to the officer McDonnell. Do you recall that?

A. He said if I had pointed to him in front of the officer, why I would have got him. He says I told the police that he was there, but he had gone away and did not find him.

10

Q. Now wasn't that in New York instead of Cartaret or Port Reading?

Objected to; objection sustained.

Q. Where was it that you pointed out the man Deliso to the officer?

Mr. Strong: I object to that as not redirect examination, and I think the witness has been entirely specific on that point and ought not to be helped out.

20

The Court: I will permit it.

(Exception noted to defendant.)

A. In New York.

Recross Examination, by Mr. Strong.

Q. Was McDonnell in New York?

A. He says those two.

Q. What two do you mean?

A. He wants to know which you mean, the one that brought him to New York?

30

Officer McDonnell asked to rise.

Q. Did you see that man over there?

A. That is the man that brought me.

Q. What did he say?

A. That is the man that brought me to New York.

Mr. Strong: Mr. McDonnell, come up here.

A. He says that is the man that brought me to New York.

Q. Did this man bring you to New York?

A. He says he come after me in Elizabeth and brought us to New York.

Q. Did you tell this man here, McDonnell, that you saw Deliso in front of Russo's store in Port Reading?

A. He says yes, I told him that he was there. When he went there he did not find him

Q. Did you see the defendant then the morning after the shooting?

10

The Court: Oh, no; let me suggest that we are dealing with a boy who speaks a foreign language and you should say did you see Pasquale Deliso the defendant.

Q. Did you see Pasquale Deliso, this man—did you see him Monday morning after your father was shot, in front of Russo's store?

A. Yes, I saw him.

Q. Who was with you when you saw him?

20 *A.* Nobody. He says there was other people there, but they were minding their own affairs.

Q. What time in the morning was that?

A. He says I don't know what time it was.

Q. Was it before you had had your breakfast or afterwards?

A. He says I was all killed up; I didn't eat.

Q. Was it six o'clock or seven o'clock?

The Court: Oh, you have gone over it. I must stop you.

30

Q. When you saw Pasquale Deliso in front of the store in Port Reading why didn't you call out to somebody that that was the man who had killed your father?

A. I didn't call nobody.

Q. I say why didn't you?

A. He says if I called in people were they police; could they take him?

Q. How long after that was it that you told McDonnell?

A. He says when I saw him.

Q. How long did you see him after that?

A. I didn't have no watch; I don't know.

Q. Was it the same day?

A. Yes.

Q. Was it in the morning?

A. Same morning.

Q. Where did you see McDonnell?

A. In Port Reading.

Q. Did you go to hunt him up as soon as you saw
Pasquale in front of Russo's store? 10

A. No; I didn't go look for him.

Mr. Marsh: Didn't he say what was the use
of looking for him? Didn't he add that?

The Interpreter: He says why should I go and
look for him. He says my arm was broke. He
says I seen him pass.

Redirect Examination, by Mr. Berdine.

Q. Did you tell your uncle you had seen him at that
time? 20

A. No.

Mr. Strong: Which uncle do you mean?

Q. Bartoni. Your uncle Bartoni?

A. No.

Giuseppi Tenace, sworn through Interpreter.

Direct Examination, by the Prosecutor. 30

Q. What relation are you to Louis Tenace?

A. My brother.

Q. Where were you on the Sunday night of August
25th, the night of the shooting?

A. In Bartoni's house. I was there eating.

Q. Were you over at your brother's house that night?

A. Yes.

Q. Over to the shanty?

A. Yes.

Q. What time?

A. He says I went to Bartoni's house and had something to eat there about twenty minutes and then we went to the shanty.

Q. Did he see his brother there?

A. Yes.

Q. Now tell us what took place after he got there to his brother?

A. He says the three of us was in the shanties and
 10 we had a smoke and then we went to bed. He says we were sleeping near the window.

Q. Who was there?

A. Me, my nephew and my brother.

Q. Who does he mean by nephew, the boy?

A. Yes.

Q. Who does he mean by the brother, the one that was shot?

A. Yes, the man that is dead.

Q. Tell him to go on and tell the story?

A. He says while we were sleeping, he says, all of a
 20 sudden I heard a knock by the window, and I says, "Oh, they are going to kill me." He says, my brother woke up and he says, "What is the matter," and I says, "They are killing me."

Q. Was there glass in the window?

A. The window was broke.

Q. Who broke the window?

Mr. Marsh: Just a minute. Our Interpreter
 30 says he did not give the right answer. The Prosecutor asked if there was a glass in the window and he asked if the glass was broke.

The Prosecutor: I want to find out if the glass was broken.

Mr. Strong: We want the question put as given.

The Court: Of course, I cannot decide it. The interpreter must be relied on.

Q. Who broke the window?

The Court: You better find out whether the window was broken.

Q. Was the window broken while they were tapping on the window?

A. They broke it.

Q. Well, after they broke the window, what? Was anybody hit?

A. I got hit on the leg with a pick handle.

Q. Do you know who hit you?

A. I seen him that night, but he is not here now.

Q. Go ahead. What next after you were hit?

A. He says, after I was hit my brother got up and got some water and a towel and they bathed my leg. 10

Q. After they bathed your leg then what?

A. They got me in the door and they said, "By Jesus, you either open the door or I will kill you."

Q. Who said that?

A. Why, Pasquale.

Q. Was the door opened?

A. So my nephew went and he opened the door, and he says they come in, and the first crack my nephew was hit on the arm. 20

Q. Who came in?

A. Pasquale and another.

Q. Who was Pasquale? Show who he is.

Witness indicates by going to defendant and touching him.

Q. Is he the one who came in and hit your nephew?

A. Yes.

Q. What did they say when they came in?

A. He said, "By Jesus, we are going to kill you tonight." 30

Q. Who said that?

A. Pasquale.

Q. What for?

Mr. Strong: I object. I do not understand that that question is proper. What did he say?

The Court: Better ask whether they said anything else and if so what.

Q. What did they say next; if so, what?

A. He said, after giving us a good licking they went out.

Q. Were you hit?

A. Yes, on the arms and on the legs and on the back.

Q. Who hit you?

A. He says that man has run away.

Q. Did you see or hear any pistol shots?

A. Yes.

10 *Q.* Go ahead; what occurred next?

A. So they came back again and they came inside, and my brother was hiding under the cot.

Q. Before they came back and before they went out the first time, what did he do to either of these men? What did you do to either of these men?

Mr. Strong: I object The man had better give his narrative without assistance. The question was bordering on leading, if not actually leading.

20 The Court: Well, I think this question I will permit.

Question repeated.

A. He was hiding under the cot.

Q. The first time they came in he said they hit him?

A. Yes.

Q. What did you do after they hit you?

A. What could I do? Do nothing.

Q. Did he say anything to them?

A. No. What could I say.

30 *Q.* Either of them ask you to kiss his hand?

Mr. Strong: I object to that as leading.

The Court: It seems to me, Mr. Prosecutor, that that question at present ought not to be asked. You must exhaust a witness' knowledge before you put a leading question.

Mr. Berdine: It is only because they are off the track and I am trying to get him on.

The Court: You may get him on the track if he is off, but it must be done in a proper way.

Q. When your nephew opened the door and Deliso came in, what did Deliso do to your nephew?

Mr. Strong: I object. It does not appear that he done anything to the nephew.

Q. If anything?

The Court: There is testimony from this witness, I think he said Deliso hit his nephew on the arm. I will permit this.

Question repeated: When your nephew opened the door and Deliso came in, what did Deliso do to your nephew, if anything? 10

A. He says he struck him on the arm.

Q. Who was with Deliso at the time that he came in?

A. Him and another.

Q. What did the other one do?

A. He had a stick in his hand.

Q. What did they do to him?

A. They hit me.

Q. Who hit him? 20

A. The fellow ran away.

Q. What did Deliso do to him at the time?

A. Deliso didn't do nothing to me.

Q. What did Deliso say to you at that time?

Mr. Strong: I object.

The Court: Better ask did he say anything, and if so, what?

Q. Did Deliso say anything to you then, and if so what was it? 30

A. He says he was holding him.

Q. Who?

A. Deliso was holding. He says, he was holding me and the other man was licking me.

Q. Was anything said to you at the time?

A. No. What could they say?

Q. Then what occurred after they were striking him?

A. He says, me and my brother was under the cot and Pasquale came in. He say to my brother, "Come

out from under there," he says, "If you don't come out, by Jesus, I will kill you."

Q. What then?

A. He says, he pulled him out, grabbed him by the arm and pulled him out and fired off a shot, shot at him, and after that, why me and my brother kissed his hand.

Q. Why did your brother kiss his hand?

A. He kissed his hand and asked him, "What do you want from me; I have five children."

Q. What else?

A. So they turned around and said, "By Jesus, you have to die."

Q. Who turned around and said, "By Jesus, you have to die?"

A. Pasquale.

Q. After that what happened?

A. Why, he took the gun and got hold of him and shot him, shot him in the head.

20 *Q.* After Pasquale shot Tenace what did Pasquale do?

A. He says, he took hold of him by the head and he looked at the wound there and he says, "I done it," and then they went away, and so we went out.

Q. When next did you see Pasquale?

A. In New York.

Q. Where?

A. He says in the house of the police.

Q. Who was there then?

30 *A.* He says, me, my nephew and two police.

Q. Who do you mean by the nephew, the boy that was on the stand?

A. The boy that was here.

Q. Were there other people around there at the time?

A. He says, there was police there.

Q. Any other people?

A. He says, me, and my nephew and two police and other police that was there.

Q. Do you recall what was said to Pasquale at police headquarters at this time?

A. He says, I don't remember nothing.

Q. While you were at police headquarters, when your nephew and police officers and others were there, in New York, did you hear anything that was said to Pasquale by anybody?

A. He says, what could they tell him?

Q. Did you say anything to him?

A. He says, what could I say. The only thing I knew him. I says, "That's him."

Q. Who did you say it to?

A. At Pasquale. He says, "I kissed your hand four times."

Q. Ask him to repeat that.

Mr. Strong: Let the stenographer repeat it.

A. He says, "Don't you remember that I kissed your hand four times?"

Q. You said to Pasquale Deliso—

Mr. Strong: I object. Let him repeat what you said. Let the stenographer repeat it.

The Court: It has been testified to. If there is anything else you want to bring out you may ask about it.

Mr. Berdine: I want to get it correctly in my head.

The Court: As I understand, he said "That was the man," and he said to Pasquale, "I kissed your hand four times."

(Testimony repeated by stenographer.)

The Court: That comes from the interpreter putting it in the third person, which would imply that Pasquale said it. Of course, counsel do not understand that is so, do they?

Mr. Marsh: Get the exact words he said.

The Court: Now, Interpreter, you undertake to tell us and you say he. Now you give it to us just as he says it.

A. He says, "Don't you remember I kissed your hand four times?"

10

20

30

Cross Examination, by Mr. Strong.

Q. Had you ever seen Pasquale before that night, the night of the shooting?

A. No; I never saw him before, because it was only two nights up at the shanty.

Q. Were you only two nights sleeping in the shanty before that?

A. Yes; one night I stayed in peace and the next night the shooting occurred.

10 *Q.* Where had you been before these two nights?

A. He says, I was boarding with Angelo Bartoni?

Q. How long were you boarding with Angelo Bartoni?

A. About twenty days.

Q. How far away is Angelo Bartoni's house from the shanty?

A. He says, it is pretty far.

Q. Half a mile?

A. He says, it is far—he says, I don't know.

20 *Q.* Did you ever see Pasquale, the defendant, at any time after the shooting until you saw him in New York?

A. No; I saw him the night he shot and the night in New York.

Q. Those are the only two times that he ever saw him before he was arrested?

A. No, he says, just them two times and now.

Q. Since he saw him in New York until now has he ever seen him?

30 *A.* He says I seen him here.

Q. I mean has he seen him more than those three times?

A. No; I never saw him before, just them three times.

Q. Where did you see him first, on the night of the shooting?

A. I seen him that night in the shanty when he come in to lick me.

Q. Did you see him before he came in the shanty?

A. No. When he came in the shanty then I recognized him.

Q. Did you see anybody at the window before the men came in the shanty?

A. I seen them, but I could not recognize because they stooped down.

Q. Do you know who it was that struck you through the window?

A. He says, I couldn't see him, because I was lying in bed asleep.

Q. How long was it after he was struck the blow through the window before these men called out that 10 they wanted to open the door?

A. It was after they hit me they holloed, "You open that door or we will kill you."

Q. But before they called out to open the door your brother had got some water and was wiping your knee, was he not?

A. Yes, sir.

Q. Where did he get the water?

A. He said there was a pail inside.

Q. Where was the man or where were the men who 20 called out to open the door when they called out?

A. They was outside.

Q. Were they at the window or at the door or where were they?

A. By the door.

Q. Was there anybody at the window at that time?

A. No; they was at the door.

Q. Do you know how many were there at that time?

A. No. How can I know how many there were?

Q. Was the door locked? 30

A. It was closed and my nephew opened it.

Q. Was it fastened in any way?

A. He says, it was closed; it was a sort of bolt. He says it was an iron bolt closed it. He said, it never could have been wood, it must have been iron.

Q. Did they try to open the door from the outside?

A. No.

Q. Did you see anybody have a pistol up to that time?

A. He says, I seen two or three persons with revolvers.

Q. I mean up to that time—before that time?

A. From the window.

Q. When did you see anybody at the window with a revolver?

A. He says, I seen him there and he says you come and open the door; if you don't I will show you.

Q. Was that said by anybody at the window or was it at the door?

A. The men by the door.

10

Mr. Strong: Our interpreter says the answer was that the man shot the brother by the door.

The Interpreter: He says the men by the door. You asked him the question where he saw the men with the revolvers and he says the men by the door holloed open the door or we will shoot you.

The Court: I must stand by the official interpreter, of course. You may ask any other question that you think is necessary to clear it up.

20

Q. Did you see anybody at the window with a pistol?

A. Yes, I seen him.

Q. Before the door was opened or afterwards?

A. After the door was opened.

Q. After the door was opened. Who was there at the window that you saw after the door was opened?

A. He says they says, "Either come and open the door or we will shoot."

30

Q. That is after the door was opened, was it?

A. Before the door was opened. There was two or three men there at the window.

Q. Then the door was opened by your nephew?

A. Yes.

Q. Where were you when the door was opened?

A. I was inside.

Q. Whereabouts inside?

A. He says I was on the cot.

Q. Weren't you under the cot?

A. He says that was after that I got under the cot.

Q. When did you get under the cot?

A. He says, after they went out, then we hid under the cot.

Q. After they went out?

A. Yes.

Q. Were you under the cot at all up to the time that your brother was shot?

A. I was under my cot. Me any my brother was together under the cots.

Q. Which cot were you under? **10**

A. Me and my brother was under my brother's cot.

Q. Were you with your brother under the same cot that he was?

A. Me and my brother was under the cot.

Q. Under whose cot?

A. Of my brother's.

Q. Is that the cot that was furthest away from the window?

A. Yes, that was further away from the window.

Q. When did you go over to your brother's cot? **20**

A. He says, when they came back the second time.

Q. What do you mean by coming back the second time?

A. He says, they went out one time and then they came back again.

Q. After they came in first did they go out again and come back?

A. Yes, they went out and they came back again.

Q. The same persons?

A. Yes. **30**

Q. What did they do the first time they came in?

A. They broke the windows and they licked me. He says, they give the three of us a licking, and then they went out.

Q. Were there any pistol shots fired at that time?

A. No. I got a licking.

Q. Were there any pistol shots fired through the window?

A. Yes.

Q. When was that?

A. The first time. They shot and hit the shanty.

Q. Was that before they came in at all?

A. He says they came in and they broke the window and they holloed you either open or we will kill you.

Q. I want to know when the pistol shots were fired.

A. The last time they came they shot.

Q. Were there any pistol shots fired before they
10 came in the last time?

A. The first time they shot and the second time he shot he caught the brother right here.

Q. Well, when was the first time that there was any pistol shots fired?

A. When they broke the windows.

Q. Before they came in at all?

A. No; when they broke the windows they didn't shoot. After they shot.

Q. Well, did they fire any before they came into the
20 shanty?

A. No; they didn't shoot then. The door was locked then.

Q. Did they fire any shots the first time they came in the shanty?

A. No.

Q. Then were the first shots fired after they come in once and gone out and then came back again?

A. Yes; the second time when they came back they shot.

30 *Q.* How many shots were fired?

A. Two shots.

Q. Was that all?

A. One shot went to the shanty and the other shot was caught here in my brother's forehead.

Q. Now the first time they came in where were you when they first came to the door?

A. I was in the cot.

Q. What part of the room?

A. He says, I was sleeping there; and he says that

is the door; and he says my nephew slept in the middle and my brother here on this side.

Q. When they came in first were you on your cot, on your own cot?

A. Yes; I was on my cot.

Q. And was your brother on his own cot?

A. Yes; he was on his own cot?

Q. And where was your nephew?

A. He was near the door.

Q. Wasn't your brother washing your leg over at **10** your cot?

A. Well, then the three of us got together then; that was the first time.

Q. Were the three of you together when they came in first?

A. Yes, three of us got together. My nephew was near the door.

Q. Whereabouts were you then—on your cot then?

A. Near my brother's cot.

Q. When these two men came in what did they do **20** the first time? Now tell us about the first time.

A. They commenced to beat us.

Q. Well, how did they do it?

A. They commenced to fling around there, no matter who they hit, he says, a pick handle.

Q. Did they each of them have a pick handle?

A. Yes, two of them had.

Q. Did any of them strike you?

A. He says, I got a mark on my nose yet.

Q. Which one struck you? **30**

A. The fellow that run away.

Q. Did Pasquale strike you?

A. He says, I wanted to run out and Pasquale was holding me and the other fellow was hitting me.

Q. Did they do anything to your brother at that time?

A. He says, sure, he was hit on the back and he was hit on the arm and he was hit all over.

Q. Did any of you, either you or your brother or your nephew run out?

A. No; none of us. He says, who did we kill that we had to run away.

Q. Did you call for help?

A. He says, who could you call; there was nobody up there.

Q. Did you do anything to help yourself, to resist?

A. He says, I didn't have nothing, how could I defend myself; I was all undressed.

Q. Well, these men beat you with the sticks and they they went out, did they?

A. Then they went out.

10 *Q.* How long was it before they came back again?

A. Maybe in two or three minutes.

Q. What were you doing in the two or three minutes after they went out?

A. He says, I was hiding under the cot.

Q. Was your brother under the same cot with you?

A. Yes; the two of us was there.

A. And where was your nephew?

A. He was near the door.

Q. Was the door open yet?

20 *A.* Yes, the door was open then. He says, because they made us open it.

Q. You did not close it after they went out?

A. He says, they had so beated us all up, how could we move?

Q. When they were there the first time did Pasquale say anything?

A. He says, what could he say? He says, all he says, they commenced to lick us.

Q. Did he say anything?

30 *A.* He says, he had a stick and he had a gun.

Q. But did he say anything to you?

Q. He only says, "Don't move; we are going to kill you."

Q. He said that the first time, did he?

A. Yes; the first time and the last time.

Q. When was it that you kissed somebody's hand?

A. He says, after he had shot my brother in the forehead and had held his head up toward the light, I kissed his hand.

Q. Whose hand did you kiss then?

A. Pasquale's hand.

Q. Did you kiss the other man's hand at any time?

A. No; only Deliso's.

Q. Did your brother kiss the other man's hand?

A. No; kissed Deliso's hand.

Q. Your brother kissed Deliso's hand, did he?

When did he do that? Before he was shot?

A. After he had shot him.

Q. After he was shot? After the shooting these 10 men went away, did they?

A. Yes; they went out and we ran away.

Q. Who ran away?

A. Me and my brother and my nephew.

Q. Was your brother able to run away?

A. He says he was. He was in warm blood yet.

Q. Could he run?

A. Yes; he says a licking will make anybody run.

Q. Did you and your brother and your nephew run all the way to Bartoni's house? **20**

A. Yes.

Q. What time was this?

A. May have been twelve, half past twelve or one o'clock.

Q. Have you any way you can fix the time at all?

A. He says, I could tell the time I went to bed and the time we got up and looked up in the air and pretty near tell by the sky.

Q. What kind of night was it that night?

A. He says, it was a moon out. **30**

Q. Bright moon?

A. Yes, it was nice and bright.

Adjourned till October 29, 1907, A. M.

New Brunswick, N. J., October 29, 1907.

Trial of the cause resumed at 10 A. M.

Giuseppe Tenace, resumed, by *Mr. Strong*, (Continuing.)

Q. What light was there in the shanty that night?

A. Electric light.

Q. How many?

A. One.

10 Q. What part of the shanty was that?

A. Right in the middle.

Q. In the middle of the ceiling, he points?

A. Yes, sir.

Q. Was that electric light broken that night?

A. No; it was not. It was lit.

Q. Was it broken by any of the men who came in that night?

A. No; it was lit.

20 Q. Was not broken at any time while this trouble was going on?

A. No; they didn't touch it at all.

Q. And did it continue burning when you and your brother and your nephew left the shanty after the shooting?

A. Yes, it was lit.

Q. The next morning, that is, Monday morning, did you and your nephew Domeinie Tenace and Bartoni chase a man over toward Woodbridge?

A. No.

30 Q. Did you chase anybody over toward Woodbridge either in company with these others or not?

(Objected to.)

The Court: I will permit it.

Mr. Strong: This is bearing on the question of identification.

The Court: Yes, certainly. I will allow it.

(Question repeated.)

A. No; nobody.

Q. Do you know a man by the name of Joseph Barcelona?

A. No; I don't know him.

Q. Did you see a man who stood up in court here yesterday when your nephew was on the stand?

A. I don't know who it is.

Q. Did you on the Monday morning after the shooting of your brother go over to the house of that man who stood up here yesterday, Barcelona, and inquire if he had seen any one running away? 10

A. I don't know who the man was.

Q. No; I don't ask you that. Did he go over to that man's house on Monday morning? Did you go over to that man's house on Monday morning and inquire if he had seen any one running away?

A. No.

Q. Do you know Angelo Cierrelli?

A. No; I don't know him.

Q. Do you know Guisepe Barretti?

A. No; I don't know him. 20

Q. Do you know Angelo A. Sacco?

A. No.

Q. Do you know Raphael Deliso?

A. Yes.

Q. On Thursday, the next Thursday after this shooting were you at the hospital in Elizabeth where Raphael Deliso was?

A. Yes.

Q. Who else was there that time?

A. He says there was another man there; he is not here now. 30

(The Interpreter): Oh, he says he is there by the door.

(Indicating person in audience.)

Q. Which man is that?

A. Raphael there.

Q. Oh, Raphael was there?

A. Yes.

Q. Was Bartoni there?

A. Bartoni brought us there.

Q. Was Domeinio Tenace, your nephew, was he there?

A. Yes, and my brother.

Q. Was Domeinio Manuci there—Luigi Manuci?

A. He called some other man named Donato, I don't know what he means by that.

Q. Do you know Luigi Manuci?

A. I don't know who he is.

10 The Court: I do not want to interfere, Mr. Strong, but would it be quicker to have Manuci stand up?

(Mr. Strong called Luigi Manuci, and a man comes forward.)

Q. Was this man at the hospital too at that time?

A. No; he wasn't there.

Mr. Strong: That is all right, take a seat.

20 Q. Now on that day at the hospital did not Raphael Deliso ask you in the presence of these persons whom I have mentioned, this question: "Don't you know who shot your brother?" and did you not answer: "No; we are only two months in this place; how could we know. It was so dark in the room; they put out the light. They shot my brother and broke the arm of my little nephew. How could we tell who did it?"

The Prosecutor: To whom is that addressed?

30 Mr. Strong: That is addressed to the witness, and the conversation was between Raphael Deliso and the witness, in the presence of Bartoni and of the boy Domeinio Tenace and of Luigi Manuci.

The Prosecutor: Did you tell where?

Mr. Strong: At the Alexian Brothers Hospital on the 29th of August, Thursday. I have stated all those particulars there.

(Question repeated by stenographer.)

Q. He says, he says that way, but he asked me when we are in the hospital, he asked me, "Those that shot your brother, who are they." I says, "I know them. If they would arrest them I would know them."

Q. Did you say that you did not know who shot your brother?

A. I didn't say nothing to them. What could I say to them?

Q. No; I mean did you say on the occasion that I am speaking of at the hospital, that you did not know who shot your brother?

A. He says, I knew it; I had it in my own heart.

Q. Did you say that you did not know?

A. No; I didn't say nothing. 10

Q. Did you say that they put out the light?

A. No; I didn't say nothing.

Domeinio Cansarano, sworn.

By the Interpreter.

Q. Do you speak English.

A. No.

Mr. Strong: He seems to answer the interpreter's question very well. 20

By the Court.

Q. How long have you been in this country? Understand me?

A. No.

Q. Don't understand me at all?

A. No.

Q. Do you speak any English?

A. Not speak it.

Q. Don't speak it? A little bit, eh? 30

A. Maybe five or six months here.

Q. You have been here six months, eh?

A. Yes.

The Court: You may proceed, Mr. Prosecutor, through the Interpreter.

Direct Examination, by the Prosecutor.

Q. Where were you on Sunday night August 25th of this year about nine o'clock at night?

A. Port Reading.

Q. Whereabouts?

A. Up in the shanty.

Q. Whereabouts in the shanty?

A. At Tony De Vita's.

The Prosecutor: I suppose that counsel will admit that it is part of the shanties here?

Mr. Strong: Oh, yes.

10 The Court: Ask him if it was the same shanty in which Tenace was staying.

Mr. Strong: I do not think he meant the same individual shanty, but that locality.

The Court: Ask him if he lived in the same shanty with the Tenace's.

The Witness: No.

Q. How near the shanty?

A. About 60 or 70 steps.

Q. Now tell us what he saw in front of his shanty at that time we are referring to?

20 Mr. Strong: Nine o'clock.

Q. About nine o'clock?

A. He says, I was going after my bread to eat.

Q. Tell what he saw?

A. He said, before going in my shanty I seen a man—was going past my shanty—and he had a stick in his hand—and he stopped in front of me and he said, "This is him."

30 Mr. Strong: I do not see that this so far connects the defendant in any way. It should not proceed unless it does.

The Court: I suppose the prosecutor means to lead up to that.

The Prosecutor: That is my hope, to get it so we can connect it.

Mr. Strong: You ought to have more than a hope, I think.

The Prosecutor: We expect it to be realized.

Mr. Strong: We would like to be fair. I do not care for things in the case which may be prejudicial.

Q. After this occurrence where did you go?

A. He says I went to my godfather's house where I was boarding because I had left the shanty.

Q. Did he come back to his own shanty after that?

A. After twelve o'clock.

Q. What occurred after you got back to your own shanty?

A. I went in my shanty and locked the door.

Q. Then what occurred?

A. He says, I secured the door with some cords. 10

Mr. Strong: Just a minute. I do not see how this is going to be material. It is an entirely different shanty, different place entirely. So far the defendant has not been introduced into the matter.

The Court: I can't tell, Mr. Strong; I think I will permit it. You may proceed, Mr. Prosecutor.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 20

F. J. SWAYZE, J. [L.S.]

The Court: If I find that it is not connected with the defendant I shall have to strike it out.

The Prosecutor: Certainly; I will be willing to consent to that, of course.

(Answer repeated by stenographer.)

Q. (Continuing) Then we went to bed and about 10 or 12 minutes—he says we was in bed about ten or twelve minutes—and he says we heard somebody passing our door. 30

Mr. Strong: This is all subject to our objection?

The Court: Yes; all subject to your objection and you have the benefit of your exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Q. Then what occurred after that?

A. He says, about a half an hour or three quarters of an hour afterwards, he says, because I was beginning to sleep, and they came and broke the door.

Q. Go on; what next?

A. "Light the electric or we will kill you all."

Q. Go on.

A. He says, "I begged for mercy like and I lighted the electric; don't kill us."

10

Mr. Strong: Now, if your Honor please, if the defendant were connected with this occurrence, which so far he has not been, how can it be proper. Whatever occurred there may possibly have been the subject, or may still be the subject of separate indictment against somebody. It is entirely disconnected with what occurred in this other shanty some sixty or seventy yards away, and is not admissible—it is evidence, in other words, of a distinct crime, which seems to me can have no relevancy to this inquiry. It ought to be excluded unless it is distinctly relevant and material.

20

The Court: I think it is competent for the State to show by this witness that the defendant was in the neighborhood about the time that this crime is alleged to have been committed. I will permit this testimony and you may take your exception. I think, however, Mr. Prosecutor, that we ought to know very soon now whether you are going to connect the defendant with this occurrence.

30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Q. Whom did you see there at that time?

A. As I lit the electric a person came in with a stick.

Q. Who was he?

A. One that I know that work near my gang. He

is not here. He ran away. He says the rest was near the door and he was there at the right hand side.

Q. Who was there?

A. That man.

Q. Point him out. Get down.

Mr. Strong: We understand.

The Court: There is no dispute.

A. This one (indicating defendant).

Q. What did Pasquale say?

10

Mr. Strong: As I understand, all this is under my exception?

The Court: You say it is *res inter alios acta*?

Mr. Strong: Yes; and upon the further ground that he now identifies the defendant, connects the defendant with it and that it is evidence of a distinct offence which is not admissible upon the trial of this indictment.

The Court: I will take the testimony, and you may have your exception.

20

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Q. What did Pasquale Deliso say.

Mr. Strong: If anything.

The Court: You see, Mr. Prosecutor, that does not give Mr. Strong a fair opportunity. You ought to ask whether Pasquale said anything.

30

Q. Did Pasquale Deliso say anything there?

The Court: One moment. The question is, did Pasquale say anything there. He must answer that yes or no.

A. He says, yes.

Q. What did he say?

Mr. Strong: I object upon the grounds already stated.

The Court: I overrule the objection. Take your exception.

(Whereupon the defendant, by his counsel prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

A. The man on the inside says that was—

10 Mr. Strong: I object; that is not an answer.
The Court: The question is, what Pasquale said.

A. He says he have to explain what the man said inside to the man outside.

The Court: Well, now, Mr. Prosecutor, have you any further question?

Q. Was Pasquale there?

A. He was outside of the door; in front of the door.

Q. What did Pasquale say in his presence?

20 The Court: He says he cannot answer that without telling what the man inside said. Now that does not exclude Pasquale's remark, but Mr. Strong must have an opportunity to put in his objection. I suppose the natural question is what Pasquale said there.

(Question repeated: What did Pasquale say in his presence?)

30 The Court: The record stands now that he cannot answer that question without telling what somebody else said.

Q. Did the man inside say anything to Pasquale?

Mr. Strong: I object.

The Court: Warn him to answer this yes or no. Ask him if the man on the inside said anything and tell him to say either yes or no.

A. He didn't answer that yes or no. He answers—

Mr. Strong: We don't want the rest of it.

The Court: Put that again and tell him to say either Yes or No.

A. Yes.

Q. What did Pasquale say then?

Mr. Strong: I object.

Q. What did the man on the inside say to Pasquale?

Mr. Strong: He doesn't say he said anything. I object.

The Court: The question seems to be premature. **10**

(Question withdrawn by Prosecutor.)

Q. What did the man on the inside say to Pasquale?

A. He says, these were other Mondanardos; that means a part of their country or province.

Mr. Strong: The interpreter is telling—

Q. What does that mean—Mondanardo?

Mr. Strong: I object to that. If we are to have the conversation at all we ought to have it just as it occurred and not interpretations of this witness. **20**

The Court: Yes, I sustain the objection. You are asking now as to a conversation and we do not want the witness' explanation of what it may have meant, at present.

Q. Go on and tell what was said between the man on the inside and Pasquale Deliso at that time **30**

A. He says, that we are Mondanardo.

Q. Go on; what else?

A. And Pasquale answered if they are Mondanardos they must die.

Q. What then?

A. But I begged and says why do you want to kill us?

Q. Go ahead.

Mr. Strong: I want my objection to appear more distinctly.

The Court: Now we are getting away from the ground upon which I admitted this testimony. In what aspect of the case can it be competent to show another crime or an attempted crime?

Mr. Berdine: If I could get out the understanding that I have of that Italian phrase it would appear perfectly plain.

Mr. Strong: That wouldn't help us any. It is still a distinct crime if it is anything at all.

10 The Prosecutor: This is right at the time of the occurrence.

Mr. Strong: No; it must be either considerably before or considerably after.

The Court: I will admit this testimony and you may take your exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

20 The Court: I think I see a ground upon which it is competent, and if I am in error, Mr. Prosecutor, the responsibility in part will rest upon you, and you will have to make it competent by what comes here.

Q. What province are you from?

A. Fogga.

Q. In Italy.

A. Italy.

30 Q. Do you know the province from which Deliso comes?

A. He says, from what he hears—

Mr. Strong: I object.

The Court: That is what we do not want. It is evident then that he does not know except from hearsay, Mr. Prosecutor. I do not mean to be understood as ruling that you cannot explain what the word Mondanardo means; that, I think, may properly come out through such questions as you choose to bring it in.

Q. Do you know the meaning of the word Mondanardo?

A. Yes.

Q. What?

Mr. Strong: I object.

The Court: I overrule the objection.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.] 10

A. He says it is a village.

The Prosecutor: Does the Court understand my meaning of Mondanardo?

The Court: Yes. This witness says if you are Mondanardos you must die. Now I will allow you to explain, and he has explained that Mondanardos mean from a certain village.

Q. What province is Mondanardo, the village? 20

A. Fugga—that is the province.

Q. Have you told me all that Deliso said about what he was going to do to people from that province, on that night in question?

Mr. Strong: I object; the question is too general "on that night in question."

Q. At this particular time spoken of, then; that will make it clear.

The Court: Is there still objection? 30

Mr. Strong: Yes, I think that—well I will withdraw the objection.

(Question repeated.)

Mr. Strong: I object to it as leading.

The Court: I think it is not leading. Those being the only grounds of objection I will overrule the objection.

Mr. Strong: The question is not—does not ac-

curately follow what the witness said as to Pasquale's remark, either.

The Court: I think that objection is well taken, Mr. Prosecutor. The question does not accurately state the result of the testimony. As I understand it, what the witness said involved a threat against Mondanardos. Now you ask about what he said as to the inhabitants of the province of Fugga.

10

Q. Have you told me all that Deliso said that night, at the particular time we are talking about, as to what he was to do to the people who came from that particular village or province?

Mr. Strong: I object to that as not accurate. Why should not the question be the simple one, what further if anything Pasquale said, not questioning his intention and rather inviting him to make further statements on a particular matter.

20

The Court: Well, I think the Prosecutor may direct his attention to the particular matter, but the question seems to me still to be objectionable because it assumes a threat against the inhabitants of the province of Fugga, and I understand—if I am wrong counsel must correct me—the threat was—if it was a threat—against the Mondanardos.

The Prosecutor: The people of a village, which is a village in that province.

30

Mr. Strong: Rather it was a threat against particular persons.

The Court: Now let me hear the question. (Question repeated.)

The Court: I think that question is objectionable. I sustain the objection.

Q. In what province was this village of Mondanardo?

Mr. Strong: We got that.

The Court: He says it is in Fugga.

Q. Did Deliso at the time referred to say anything about the people of the village of Mondanardo in the province of Fugga?

The Court: Why don't you say, against the people of the village of Mondanardo?

Mr. Strong: It seems to me, your Honor, that it is hardly relevant to ask him whether he said anything against any particular people. It is leading, it seems to me. It is distinctly inviting a
10
to say something was said against a particular person. Now we have had something in that direction, but that does not authorize him to prompt the witness to say more. Why can't he ask whether he stated all that was said.

The Court: It seems to me that would shorten the matter very much.

The Prosecutor: Simply because the witness is hard to get at. I am trying in my own way to get at what he said, and if it is my blunder I cannot help it.
20

The Court: It is your right to conduct an examination.

Q. Now change the word "about" to "against" and repeat the question.

(Question repeated by stenographer: "Did Deliso at the time referred to say anything against the people of the village of Mondanardo in the province of Fugga?")

Mr. Strong: I object.
30

The Court: I will permit it.

Mr. Strong: I don't know whether I can have an exception to your Honor's ruling on a leading question.

The Court: I am willing to seal the bill if you are entitled to it, but I fear that is not the subject of a bill of exceptions.

(Question repeated.)

A. He only said, "You are from Mondanardo and you have got to die."

Q. Did Pasquale have anything with him at the time?

Mr. Strong: We understand that that interpretation is not quite right.

The Court: In what respect is the translation criticised?

10 *Mr. Strong:* The question was not put accurately, as I understand it, but I do not think that it would change it; I think the answer perhaps would be the same.

(Question repeated.)

A. He wants to know what you mean, in his hand?

Q. Yes.

A. He says, I was inside and I seen his face and I couldn't see what he had in his hands.

Q. When next did you see Pasquale?

A. Then he came inside. He says, as he came in he picked up a stick at the door and he began to hit me.

20 *Q.* Who did?

A. That man there.

Q. Is that Pasquale?

A. Yes, sir.

Q. What did Pasquale say when he began to hit you?

Mr. Strong: I object.

The Court: We are going a good ways now, *Mr. Prosecutor.*

The Prosecutor: I will withdraw it.

30 *Q.* When next did you see Pasquale?

Mr. Strong: I object.

The Court: I think that is permissible. I will overrule the objection. Take an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

A. In the shanty.

Q. Same night?

A. He says, after licking me with his stick. He says, I seen him right there.

Mr. Strong: One minute. Our understanding is that the witness said "after the other man hit me."

The Court: You had better ask him again, Mr. Interpreter.

(Question repeated by stenographer: "Same 10 night?")

A. In the shanty?

The Court: Ask him whether he means that Pasquale licked him with the stick, or some one else?

A. First one and then another.

Q. Did what? I don't understand.

A. He says, while this one here was licking me he broke the stick. (Indicating defendant.) Broke two 20 times.

Q. When next did he see him?

A. Then he didn't have no stick in his hand and he couldn't lick me no more.

Q. When after that did this man see Pasquale?

A. Then he went out. No; I didn't see him.

Q. Have you met him since this occurrence anywhere?

A. No.

Q. Meet him in the county jail? 30

A. When the police brought me there.

Q. Now tell what took place in the county jail?

Mr. Strong: No; we don't want to know what took place in the county jail—generally speaking.

The Court: I suppose you want a conversation. You had better make it competent.

Mr. Prosecutor: I want to show he met him there and identified him.

The Court: Proceed in such a way that I may see that the evidence is competent.

Q. What did you do when you were in the county jail, relating to whatever Pasquale took part in.

Mr. Strong: I object.

The Court: I will overrule the question.

Q. What did you do in the county jail so far as relates to Pasquale?

Mr. Strong: I object.

10

The Court: I sustain the objection. I sustain it, because I do not see at present its competency. It may be competent or it may not, but I do not understand at present.

Q. Did you go to the county jail of this county for the purpose of identifying Pasquale Deliso?

Mr. Strong: I object.

The Court: I will permit that question.

20

Mr. Strong: I wish to state the ground of an objection that his going there with a particular purpose is not competent.

The Court: Well, I will permit it. Take your exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

(Question repeated.)

A. Yes.

30

Q. What did you do there then?

Mr. Strong: I object.

The Court: Mr. Prosecutor, you had better ask if he saw Pasquale.

Q. Did you see Pasquale there at the time you entered?

A. Yes.

Q. Where did you see him, and who was with him?

A. In the cell. He means in the county jail.

Q. Was Pasquale alone or was somebody with him?

A. The jail was full. He was among a whole lot of people.

Q. What was done by you to identify him?

Mr. Strong: I object.

The Court: Question overruled. I suppose that the question you desire to ask is whether or not he can say that the man he saw in the county jail is the same man that he saw in the shanty that night. 10

The Prosecutor: I want to show how it was done, to show that it was not a mixed up job.

The Court: You may ask him.

Q. Was the man that you saw in the county jail the same man that you saw the night of August 25th at the shanties?

A. Yes.

Q. Going back to August 25th, the night at the shanty, what else occurred there while Deliso was there beside his beating you? 20

Mr. Strong: I object.

The Court: Well, I cannot see the competency of that now, Mr. Prosecutor.

Q. Was there or was there not—

The Court: There is only one aspect of the case in which the testimony as to what happened up at the shanty is competent. 30

Q. Was there or was there not a fire there that night when Deliso was there?

Mr. Strong: I object.

The Court: I exclude the question.

Cross Examination, by Mr. Strong.

Q. Where was this shanty that you are telling us about?

A. Port Reading.

Q. Do you know the shanty where Luigi Tenace lived?

A. I know it the morning after the thing occurred.

Q. Where is your shanty with reference to the shanty that Luigi Tenace lived in?

A. About 60 or 70 steps away.

Q. Which direction is it?

A. He says, first you have got to go straight and then you have to turn to the right.

10 Q. Is it one of the same row of shanties?

A. He says, this is my shanty and there is another row of shanties run that way, and that is the commissary and there is another row there; he says he lives in there. He says I saw it the next morning.

Q. Is your shanty in the same row of shanties as Tenace's shanty?

A. No.

Q. You spoke of somebody that you saw in your shanty at nine o'clock in the evening; who was that?

20 A. He was passing outside of my shanty while I was going in my shanty.

Q. Who was passing?

A. A man with a stick in his hand.

Q. Do you know who it was?

A. I don't know what his name is, but if I seen him I would know him.

Q. Was it Pasquale Deliso?

A. No.

30 Q. Have you been talking with anybody about what happened that night?

The Prosecutor: I object. What is the purpose of this question?

The Court: It is ordinary cross-examination. I will permit it.

A. He says, those that came to the shanty and the police that came in the morning.

Q. The next morning?

A. Yes, the next morning.

Q. Who came the next morning?

A. Two police.

Q. Have you talked with any one since that time about it?

A. Why should I talk? He says, they know that they was beating us there and we got it.

Mr. Strong: I move to strike that out.

The Court: Strike it out; it is not responsive.

(Question repeated.)

A. Why should I speak?

The Court: Tell him to answer yes or no. 10

A. No.

Q. How long had you been living in this shanty before the night that you are telling us about?

A. Twenty-four or twenty-five days, but I had only been in Port Reading a little while.

The Court: Mr. Berdine, before the witness is excused, does it appear in the case yet from what village the Tenaces were?

The Prosecutor: Yes, they have it from Fugga. 20

The Court: The Province of Fugga, but I do not recollect that it yet appears they were from the village of Mondanardo.

The Prosecutor: I do not think it does either.

Mr. Marsh: It does not appear.

The Prosecutor: I am told—

The Court: No, no; you must not testify. You may, if this witness knows, ask him, or you may call another witness.

Re-direct Examination, by Mr. Berdine. 30

Q. Did you know the dead man Tenace?

A. No.

Q. Do you know the arrangement of the different villages in the province of Italy near Mondanardo?

Mr. Strong: I object.

The Court: I do not think we can go into Italian geography. It would probably bother us a great deal.

Domeinio Tenace, recalled.

Direct Examination, by the Prosecutor.

Q. Do you know the village from which your father came, in Italy?

Mr. Strong: I object. Just what does that mean? The village from which he came immediately to this country or the village of which his father was a native?

10

Q. Where did your father live in Italy?

A. St. Marcos Lambos.

Q. Do you know where this village is in Italy of Mondanardo?

A. Yes.

Q. Are Mondanardo and the village your father lived in in the same province?

20

Mr. Strong: I object, I think we ought to have that from somebody who knows better than this eighteen year old boy. There must be people he can get it from more accurately, if it is a matter of geography.

The Court: I think your criticism goes rather to the weight of the testimony than to its admissibility. I will allow the question. Take your exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

30

F. J. SWAYZE, J. [L.S.]

(Question repeated.)

Mr. Strong: It does not appear that this witness has any competent knowledge on that point.

The Court: Suppose a boy eighteen years old were asked if New Brunswick and Metuchen were in the same county. Might he not be asked the question and leave you to criticise the weight of his testimony, as to whether he knows about the county lines?

Mr. Strong: That might be so, and if the boy

were asked whether Trenton and Jersey City were in the same state he might not be able to tell.

The Court: That is quite true and you may cross-examine upon it, but I will permit the question. I assume a boy eighteen years of age has ordinary knowledge. I have to conduct the case upon that theory.

(Question repeated.)

A. Yes, sir.

Q. What is the distance between them?

10

Mr. Strong: I object. Even if they are in the same province and even if they are near, the expression of hostility was not against the whole province; it is against a particular village, and it seems to me on that ground that the testimony is incompetent.

The Court: It is quite possible the result of the testimony may be to make the testimony of the last witness, most of it, incompetent.

20

Mr. Strong: But I think on the face of it, inasmuch as the testimony was only against the Mondanardo or the dwellers in Mondanardo, or whatever it is, and this witness now says the defendant comes from another village, it is a matter of no consequence how near or in what province they were.

The Court: Maybe, but I think I will allow the testimony at present.

Mr. Strong: Subject to that exception?

30

The Court: With an exception to you, of course.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed, and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

(Question repeated.)

A. Eighteen miles.

The Court: Now, I would like to ask you, Mr. Prosecutor, in what aspect of the case the testi-

mony of the last witness containing expressions of hostility toward the Mondanardos can be competent.

The Prosecutor: If the Court please, of course we are examining a witness who speaks a foreign tongue. If you do not object, before the State closes its case, if I do not connect it, I will of course have to submit.

10 The Court: I call your attention now to the difficulty.

Mr. Strong: There are one or two questions that I omitted yesterday that I would like to ask this witness to-day.

The Court: If they were really omitted questions you may ask them.

Further Cross Examination, by Mr. Strong.

Q. On Tuesday after your father was shot were you at the hospital in Elizabeth?

20 A. He says, they brought us there Monday and we stayed at the hospital.

Q. He continued there on Tuesday, I understand. In the afternoon of Tuesday, about two or three o'clock, were you in the room where Raphael Deliso was at the hospital?

The Prosecutor: This is a further cross-examination?

Mr. Strong: Further for the purpose of contradiction.

30 The Court: I will permit it. Mr. Strong says he omitted some questions. There must be no repetition. This cross-examination yesterday was very long.

(Question repeated.)

A. No.

Q. Were you any time on that day in the room with Raphael Deliso and Bartoni and Luigi Manuci?

The Prosecutor: Those questions were asked before,

Mr. Strong: This is not the same.

The Court: The questions before related to Thursday. I permit it.

A. No.

Q. Was Bartoni there?

A. No.

Q. Did you hear Bartoni say, or did Bartoni say—

The Court: Is it worth while when he says Bartoni was not there. 10

Mr. Strong: Only to put the question, in order that I may be sure the witness remembers something was stated.

The Court: It seems to me it is hardly necessary. He must say he didn't say it when he said Bartoni was not there.

Mr. Strong: They may say I didn't call his attention to a particular thing—that is the only thing.

The Court: You may ask whether on any occasion he said such a thing. I want to shorten it, because I think it has been quite prolix. 20

Q. Was there any occasion on that day or any other day when you and Bartoni were there and Deliso at the hospital, and Manuci, or when any of those persons were there, when Bartoni said: "If I had caught Angelo Cierrelli there would have been trouble. I would have pierced his heart, because he killed my uncle," meaning your father? 30

A. There was nothing of that thing at all.

Q. Did Bartoni say in the presence of these persons or any of them at the Alexian Hospital on that Tuesday or any other time: "The only men that I know that were in the fight are Angelo Sacco, Guiseppi Barenti and Angelo Cierrelli."

A. No.

Q. Was anything like that said?

A. No.

Q. Did Bartoni say in the presence of these persons or any of them on any occasion at the hospital, that they

had caught the defendant, referring to him as Raphael Deliso's cousin, and that he would get the full penalty if he did not say who shot this man, but that he, that is, the defendant, is not the right man?

A. Who was going to tell me them stories?

The Court: I do not understand the object of this cross-examination. You are asking what Bartoni said.

10

Mr. Strong: What Bartoni said in his presence.

The Court: I do not see how that could under any circumstances be of importance, unless you propose to show that this witness has said something and then contradict him on a material point.

20

Mr. Strong: The only thing that he has said was what I asked him yesterday, but if he was present at the conversation in which some other person was charged, that—not the defendant, but some third person was the man, and saying that the defendant was not the man—if this young man stood up and heard that said and had nothing to say to the contrary, it is of importance, I think, to prove.

The Court: I am only calling your attention to the fact that you won't be able to contradict him; you will have to take his answers.

(Answer repeated.)

Q. Did Bartoni say that in your presence on this occasion?

30

A. No; he never said nothing.

Mr. Strong: I wish to make a motion to strike out the testimony of the witness preceding this witness as to the occurrence at his shanty on that night, on the ground that it was incompetent, irrelevant and immaterial, and there is no connection made by the State which entitles that testimony to be given against this defendant, the testimony of a different crime, and it appearing now that the village of Mondanardo is not the village from which the Tenaces came,

The Court: As the case now stands, I think the testimony of that witness as to threats against the Mondanardoes is not competent. I understand that the Prosecutor proposes to make it competent before he closes the case. I will withhold my decision upon your motion until the State's case is closed. Then I will deal with it whether you renew it or not, Mr. Strong, and you may take an exception to my refusal to strike it out now.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 10

F. J. SWAYZE, J. [I..S.]

Michael McDonnell, sworn.

Direct Examination, by the Prosecutor.

Q. What is your business or vocation in this county? 20

A. Policeman.

Q. Where?

A. Port Reading, Woodbridge township.

Q. In the township wherein is situated the De Vita buildings?

A. Port Reading.

Q. Where were you on the night of August 25th, Sunday?

A. Port Reading.

Q. Speak out louder. 30

A. In Port Reading.

Q. Do you know where the shanties are that have been referred to?

A. Yes, sir.

Q. Were you near those shanties?

A. Yes; I was near them.

Q. Do you recognize the defendant Pasquale Deliso?

A. Yes, sir.

Q. Did you see him that night?

A. Yes, sir.

Q. Where?

A. At the shanties.

Q. Whose shanties?

A. DeVita's

Q. Well, did you know the Tenerege shanty?

A. Yes, sir.

Q. How near that?

The Court: Now the name is Tenace.

10

Mr. Berdine: I call it Tenerege; it is simply because my Italian and yours differ.

The Court: Mr. Strong and I think that ours is the better.

Mr. Strong: Inasmuch as ours is sworn to.

The Court: I understand it is Tenace.

Q. Well, the Tenace's shanty?

A. Yes, sir.

Q. How near was the man Pasquale that night?

20

Mr. Strong: What time?

A. About 125 feet or around there.

The Court: What time of night was it?

A. About one o'clock.

Q. About one o'clock?

A. Yes, sir.

Q. What was he doing when you saw him?

A. He come out of a shanty and he had a stick in his hand and he stood in front of a bon-fire.

30

Q. Do you know whose shanty he came out of?

A. He come out of the shanty right alongside of the fire.

Q. Well, whose shanty?

A. The DeVita's shanty. I don't know but—

Q. Was that the Tenace shanty?

A. No; it wasn't that shanty.

Q. Did you hear any trouble that night or any sound as if of trouble?

A. I heard five shots.

Q. From what quarter did they come?

A. Well, I was out in the road when that occurred, way out in the main road.

Q. From what quarter did the sound of that trouble come?

A. Well, about where this happened.

Q. Didn't you tell me you knew where the Tenace's shanty was?

A. Yes, sir.

Q. Was it from the Tenace's shanty? 10

A. About there. It was quite far away.

Mr. Strong: I object. The witness was over here in the main road, which the engineer says is a thousand feet or more away, so it must have been from that time—

Mr. Berdine: I thought he said 125 feet.

A. I said that is where I seen him at one o'clock.

By the Court.

Q. When was it you heard the five shots? 20

A. About half past twelve or somewheres around there.

Q. Where were you at that time?

A. Out on the road.

Q. How far away from that shanty?

A. About 400 yards.

By Mr. Berdine.

Q. Did you go to it?

A. Went to it, yes. 30

Q. Whose shanty did you go to when you went?

A. I went down and met Angelo Bartoni and I met that little boy.

Q. Did you see Pasquale Deliso?

A. Not at that time but a little after.

Q. When did you see him?

A. About a half hour afterwards.

Q. Where?

A. He was coming out of a shanty with a stick in his hand.

Q. Whose shanty was he coming out of?

A. I don't know. I don't know who lives in the shanty. There is hundreds here.

Q. Can you show it on the map?

A. I don't know whether I could or not.

Mr. Strong: The shanties are not divided in any way there.

10 Q. Have you seen anybody here in court as a witness or otherwise who was in that shanty, so as to identify the shanty?

Objected to.

A. I couldn't identify any shanty on that map.

By the Court.

Q. After you heard these shots when you were 400 yards away where did you go?

A. I went over to the shanties.

20 Q. How soon after that did you see Deliso?

A. About a half hour afterward. The boy was around.

Q. Did you see anybody in the meantime?

A. The boy and Angelo Bartoni.

Q. Are they the two witnesses who were examined here yesterday?

A. Yes, sir.

Mr. Strong: Bartoni was not examined.

(Bartoni was requested to arise, and did so.)

30 A. That is the man, yes.

Q. Ths boy and this man?

A. Yes, sir.

Q. Did you see them in the shanty or outside?

A. They were standing outside and I asked them what was the matter.

Objected to.

A. Never mind the conversation. Did they call your attention to anything in particular?

A. Yes, the boy said—

Q. No; never mind. But they did call your attention to something?

A. Yes, sir.

Q. Then what did you do?

A. Well, I went looking for his father.

Q. Did you find him?

A. No; the shanty was empty; the beds were thrown around the room.

By *Mr. Berdine*.

Q. What was Deliso doing when you came up there? **10**

A. He had a stick in his hand and he come out of the shanty and in front of this fire; that is how I knowed him, and he made a rush for the boy—

Q. Which boy?

A. The boy was standing alongside of me.

Q. What boy is that?

Domeinie Tenace asked to stand up.

A. That one. **20**

The Court: The boy that was examined here yesterday.

Mr. Strong: I move to strike that out as irrelevant and incompetent. That occurred, as I understand, after the shots were fired.

The Court: I will let it stand.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.] **30**

Q. What did you do after your attention was directed to it in this way and you saw Pasquale on that occasion?

A. Why, I made a rush at him, and him and three others run away down to the soft coal yard. He threw the stick away when he seen me.

Q. Who did?

A. Pasquale.

Q. Threw the stick when he saw you?

A. What did you do?

A. I chased him and tried to catch him—only a short distance; he had only to go about 75 yards.

Q. Did you catch him?

A. No.

Q. Why not?

A. He got under the cars.

Q. Did you follow them up?

A. Followed them up.

Q. Did you go any further towards them?

10 *A.* Well, I shot at him.

Q. You shot at him?

A. Yes, sir.

Q. Where was he when you shot at him?

A. Running. Running ahead of me.

Q. Far away from you?

A. Quite a ways, yes.

Q. Where did you see him next?

A. New York.

Q. Where?

20 *A.* 300 Mulberry street.

Q. That is police headquarters in New York, do you mean?

A. Yes, sir.

Q. Did you recognize him there?

A. Yes, sir.

Q. Is that the man?

A. That is the man.

Q. Were you in uniform in New York?

A. No, sir.

30 *Q.* Were you in uniform in Port Reading?

A. Yes, sir.

Q. Had your police clothes on?

A. Yes, sir.

Q. How was the night, light or dark?

A. It was a little bit dark.

Q. Were there any lights burning of any sort around?

A. Yes, there was a fire there; that showed plenty of light to see him.

Q. How about the electric light, any of those?

A. There was an electric light, yes.

A. Was everything around it sufficient to give you a clear view of the man?

A. Yes; everything was. He stood right in front of the fire.

Cross Examination, by Mr. Strong.

Q. Who else with him standing by the fire?

A. There wasn't nobody.

10

Q. What?

A. Wasn't nobody.

Q. Was he the only one by the fire?

A. He was the only one, yes, sir.

Q. Where was this fire?

A. It was right back of the store, towards the other shanties, over.

Q. Back of DeVita's store?

A. Yes, sir.

Q. And it was behind the row of shanties where Tenace's shanty was, wasn't it?

20

A. Well, it was this way, out towards the road, north.

Q. Tenace's shanty fronted toward the south, didn't it?

A. South, yes.

A. And this fire that you speak of was to the north of that shanty?

A. Yes, sir.

Q. And that row of shanties?

A. Northeast, about.

30

Q. And was back of DeVita's store?

A. Back of DeVita's store.

Q. When was the boy, young Tenace?

A. The boy was standing right alongside of me.

Q. Where were you?

A. I was right alongside of the store.

Q. Which way from the store were you?

A. North.

Q. North from the store?

A. Yes, sir.

Q. And who else was with you besides the boy?

A. Why, Angelo Bartoni was a little ways off, I don't know how far he was away, but he laid back a little bit.

Q. What were you doing there, just standing?

A. Standing.

Q. How near was the boy to you?

A. Right alongside, about five feet or so.

Q. How much?

A. About five feet, around there.

10 *Q.* About something like five feet?

A. Yes, sir.

Q. How far away was the defendant Pasquale?

A. He was about forty feet.

Q. Forty feet away?

A. Yes, sir.

Q. And he came out of a shanty, did he, at that time?

A. Looked to me as if he did, yes, the shanty right alongside of the fire, right in front of the fire.

20 *Q.* There wasn't any shanty very near to DeVita's store, was there?

A. Certainly there is. Shanties on each side.

Q. How far was this fire from the shanty that he came out of?

A. About one hundred feet or one hundred and twenty-five something around there.

Q. And he was alone when he came out of the shanty, was he?

A. He was alone, yes.

30 *Q.* And he had a stick in his hand and he walked over to the fire?

A. He walked right in front of the fire and stood there and he seen the boy and he made a rush for the boy and I mad a rush at him.

Q. There was nobody else there with him at all?

A. No; not that I seen until I run him.

Q. What?

A. Until I run him and then three jumped out of another corner—I wouldn't know them; I wouldn't know one of them.

Q. How long did the defendant Pasquale stand by the fire?

A. About a half second or somewhere around there; not long.

Q. Half a second?

A. Yes; while he would be turning around.

Q. And then he turned around and came toward the boy?

A. Yes, sir.

Q. How near did he get to the boy? **10**

A. He didn't get far, because I didn't let him. As soon as he seen me—

Q. How near did he come to you?

A. About twenty feet or twenty-five feet.

Q. He came about half way towards you from the fire?

A. Yes, sir.

Q. And then he saw you and stopped?

A. Started to run.

Q. Where was the boy? Did the boy run away? **20**

A. No; the boy stood right alongside of me.

Q. Stood alongside of you?

A. Yes, sir.

Q. Deliso, you say, was in plain view from the fire?

A. Plain view, yes, sir.

Q. Did you say anything to him?

A. No; didn't get a chance.

Q. What?

A. I didn't get a chance.

Q. Did anybody say anything to him? **30**

A. No.

Q. Did the boy?

A. No.

Q. Did the defendant say anything to you or to him?

A. Didn't say nothing then, no.

Q. There was nothing said at all?

A. No.

Q. When Deliso was right there; is that right?

A. That is right.

Q. And then when he saw you he ran away, did he?

A. He run, yes; he run down the soft coal yard.

Q. You said you followed him?

A. I followed him down as far as the soft coal yard.

Q. What made you follow him?

A. I tried to catch him.

Q. Because he ran at the boy; was that it?

A. Certainly.

Q. You didn't catch him?

10 *A.* No, sir.

Q. Did you fire any shots at him?

A. Fired a shot, yes.

Q. Now there were three others that you saw just after that?

A. Three others jumped out from him; I couldn't tell—

Q. Jumped out where?

A. Another building.

Q. Not the same building?

20 *A.* The south building, the lower end of it.

Q. Do you mean the same row of shanties that Ten-ace's shanty is in?

A. Yes, the same row but on the other end.

Q. Facing to the north, too, I suppose?

A. Yes, facing to the north, yes.

Q. There were three men that jumped out of there?

A. Yes, sir.

Q. And where did they go?

30 *A.* They went down with him—all four of them together.

Q. That is, they all run off in the same direction?

A. Yes, sir.

Q. But they didn't come out of the same shanty that you saw him come out of?

A. No, sir.

Q. And these men that you saw coming out of—these three men, I mean, that run off in the same direction with Deliso, did they fire shots, did you say? Did they fire pistols?

A. No; they didn't.

Q. Were there any pistols fired then?

A. Not then. This was before that.

Q. It was before that that the pistols were fired?

A. Yes, sir.

Q. Did they have any pistols that you saw?

A. No.

Q. How near were you to them?

A. I was about—when do you mean?

Q. Well, I mean when they run off and you ran after them, how near did you come? **10**

A. About forty feet.

Q. And you recognized them?

A. Couldn't recognize the three; I could recognize this man.

Q. No; I mean the other three?

A. Oh, no. I couldn't recognize them.

Q. Why couldn't you?

A. Because they jumped out so quick and their backs was turned to me.

Q. You didn't see their faces? **20**

A. No.

Q. Could you tell whether they had anything in their hands or not?

A. I couldn't.

Q. This was after you had been up to Tenace's shanty and had learned about the shooting of Tenace, wasn't it?

A. Yes, that was after.

Q. Now did you know Pasquale Deliso before that?

A. No, sir! I did not. **30**

Q. Did you see him after that at work at the docks?

A. No; I didn't see him.

Q. The next day were you looking about for the man who had sot Tenace?

A. Yes.

Q. Where did you go?

A. We went down to see if any of them had run away.

Q. And did you follow a man up to Woodbridge?

A. No; I didn't.

A. With Bartoni or with the boy?

A. No; I didn't go to Woodbridge for him.

Q. Well, I might be wrong about going to Woodbridge, but up in that direction?

A. Yes.

Q. You did follow a man up there?

A. Yes.

Q. Who was it, do you know?

A. I didn't know. I didn't see him, but I was after
10 him, that is about all.

Q. How did you come to go up there after a man?

A. Why, Angelo Bartoni sent for me and he said he had a man up to the house—

Objected to.

The Court: Never mind.

Q. Was the boy Domeinio Tenace with Angelo?

A. No; I don't think he was.

20 The Prosecutor: I object. What is the object of the cross examination.

The Court: It doesn't seem to me it is cross examination.

Mr. Strong: Very well; I will leave it where it is.

Q. Were you down on the docks the following morning among the Italians working there?

A. Yes.

30 Mr. Berdine: What is the purpose of this?

Mr. Strong: The next question will show.

Q. Did you see Deliso there at work?

A. No.

Q. Sure about that?

A. Sure.

Q. At that time you were not looking for Deliso were you?

Objected to; question allowed.

A. I didn't know him by name.

Q. Were you looking for anybody in particular at that time?

A. Yes, I was looking for the four that got away on me that night.

Q. The boy was with you, was he?

A. Moore was with me.

Q. I say the boy was with you when you were down on the docks looking for the man that morning, was he?

A. I think he was.

Mr. Berdine: What boy do you mean? **10**

Mr. Strong: I mean the boy Domeinio Tenace.

A. I thing Angelo Bartoni was with me. I don't think the boy was with me.

Q. Will you say now whether he was or not?

A. Well, I won't say because I don't remember him being with me.

Q. You remember Angelo being with you?

A. Yes.

Q. Did you know the names of any persons whom you were looking for that morning? **20**

Objected to as part of the defense; question allowed.

A. I don't know.

Q. You didn't know at that time?

A. No.

Redirect Examination, by Mr. Berdine.

Q. You speak Italian? **30**

A. No, sir.

Q. Do you understand Italian when it is spoken to you or addressed to you?

A. Well, a little bit, but not much; a few words.

Q. Can you understand Italian conversation when it is addressed to you?

A. No.

Angelo Bartoni, sworn and examined through Interpreter.

Direct Examination, by Mr. Berdine.

Q. Do you know Officer McDonnel, the witness that just left the stand?

Mr. Strong: Does he speak English?

By the Court.

10 Q. How long have you been in this country?

A. Twelve years.

Q. What is your business?

A. Why, I work any time by the coal dock.

The Court: Well, try him without the Interpreter.

Mr. Marsh: Mr. DeVita, the Interpreter, said this man could speak English, very good English.

The Court: I will decide that. I think we will try him.

20 *By Mr. Berdine.*

Q. Do you know Officer McDonnel, who just left the witness stand?

A. I want the other fellow to speak for me.

The Court: No; you listen to the Prosecutor. You saw this officer who was on the witness stand?

A. I don't know much.

30 The Court: If you have been here twelve years you ought to understand English, it seems to me. Well, I think we will still try it.

Q. Do you know policeman McDonnell who just left the stand?

(McDonnell asked to arise.)

A. Yes.

Q. Do you know him?

A. Yes.

Mr. Strong: He said first he didn't know him, but on seeing him he says he knows him.

The Court: I didn't understand the witness.

Mr. Strong: He shook his head.

The Court: He shook his head to him, indicating that he didn't understand English.

Q. On August 25th, about twelve to one o'clock at night, did you see Policeman McDonnell?

A. I can't understand everything what he say. **10**

By the Court.

Q. Do you recollect the night that Tenace was shot?

A. (Witness shakes head.)

Q. Don't recollect that night?

A. I don't understand what you say.

Q. You know who Tenace was, don't you?

(Shakes head.)

The Court: You may try it through the Interpreter. **20**

By Mr. Berdine.

(Question repeated: On August 25th, about twelve to one o'clock at night, did you see Policeman McDonnell?)

A. Yes.

Q. In front of the shanties?

A. On the way to the shanty.

Q. How near the Tenace's shanty was he?

A. He says, where I seen him first we was quite a distance away from Tenace's. **30**

Q. Well, how near to the Tenace's shanty did they get?

A. We reached right to near Tenace's shanty.

Q. While they were by Tenace's shanty did they see Deliso the defendant?

A. He says, we was a little ways from Tenace's shanty. He was coming our way with a stick.

Q. Who was?

A. Pasquale Deliso (indicating defendant.)

Q. Could you tell where he was coming from?

A. He was coming our way. He says, maybe he didn't think that was a policeman.

Objected to.

The Court: Never mind. Strike it out.

Q. Was he coming from or toward the shanties?

A. He says, that was in front of the shanty and Pasquale was coming our way, because he was in front
10 of the fire there.

Q. How near to Tenace's shanty was Pasquale?

A. About from here to that house (indicating.) It may be a little further or be maybe a little less.

The Court: He points to the Clerks Office.

Q. Did he see Deliso that night again?

A. He says, I seen him when he was coming with the stick our way.

Q. What did Deliso do?

20 *A.* He says, after he seen that it was Mike McDonnell he run away.

Q. Was Deliso at that time coming from the direction of the Tenaces shanty?

Objected to; overruled as leading.

Q. Where was he coming from with respect to the shanty?

Mr. Strong: Oh, without respect to the shanty.

30 The Court: Where was he coming from?

Q. Where was he coming from?

A. He says, that was by the shanty. He says, he was between the space of one shanty and another where there was a fire.

Q. Whose shanty? Was either of those Tenace's

A. No; it was not Tenace's shanty where Deliso was at that time.

Q. Where was he?

A. He says, he was coming our way with the stick and he seen it was the police and he ran away.

Q. Did you see him in front of or near or in the Tenace shanty that night?

A. He says, no—

Mr. Strong: Well, that is all there is of it.

Mr. Berdine: Tell us the whole answer.

The Court: No; Mr. Strong wouldn't have a fair chance to object.

(Answer repeated.)

Q. Where else did you see him that night? 10

Mr. Strong: If anywhere?

A. He says, when he ran away I didn't see him any more.

Q. When next did you see him after that?

A. I seen him another time in New York.

Q. Where?

A. He says, when the detectives was bringing him in a carriage in New York.

Q. Did you recognize the defendant as the man you saw there? 20

Objected to.

Q. Whom did you see in New York?

A. Deliso.

Q. Is Deliso the one that you saw in New York the same one that you saw in front of the shanties?

A. Yes.

Cross Examination, by Mr. Strong.

Q. What relation are you to Luigi Tenace who was killed? 30

A. He married my sister, and he has five children.

Q. Have you been trying to find out who it was that killed Tenace?

A. No; because he had four other children to support.

Q. Haven't you employed Mr. Stricker in this case and paid him yourself?

Objected to.

The Court: To show the interest of the witness. I think it is—

Mr. Berdine: Mr. Stricker is not taking any part in it.

The Court: If he employed counsel, even if counsel do not take any part, is is admissible to show it on cross examination as showing the interest of the witness. I will permit it.

(Question repeated.)

10

A. He says that the wife had a little property in Italy—

Q. We don't care anything about that.

The Court: Tell him just to answer the question whether he has employed Mr. Stricker.

A. He says through my sister's—

Mr. Berdine: That does not answer the question.

20

Mr. Strong: I think we have a right to the answer. The answer would be responsive if completed.

Mr. Berdine: How do you know?

The Court. Mr. Strong does not object to it as not responsive, and I suppose if he does not object I cannot interfere. I will let it stand.

A. He says it was through his sister that she told him to sell some property that she owned him. He says she has got a little bit of ground there.

30

Q. Did you sell your property in order to raise the money to pay Mr. Stricker to assist in this case?

Mr. Berdine: I object. He has not said he sold his property or anything about it.

The Court: This is cross examination. He is asking if he didn't, and I think that is permissible. I will allow it.

A. He says, I own a house, but I haven't paid anything on it.

Q. That is not the question. Did you not say in

answer to a question just previously that you and your wife had sold your property, or were to sell it, in order to pay Mr. Stricker if the defendant is convicted—that is, if Pasquale Deliso is convicted?

Objected to; objection overruled.

(Question repeated.)

A. He say, no, I didn't say anything of the kind. He says that I said that my sister—

Q. What about his sister? 10

A. He said that she said she wanted her husband defended, that he had left her with five children.

Q. Have you paid or agreed to pay Mr. Stricker for his services in this case?

A. I did not pay him yet—

Mr. Berdine: Mr. Stricker is not assisting the State. He is not assisting us at all.

(Answer repeated.)

Q. Have you recently had a conversation with Raphael Deliso? 20

A. He says, we spoke through friendship.

Q. Yesterday morning, was it?

A. He says we seen each other here in the court.

Q. Did you say to Raphael Deliso then, that if he would pay you the sum of one hundred and fifty dollars, which you had paid Mr. Stricker, that you would discharge Mr. Stricker from the case?

Objected to; question permitted.

(Question repeated.) 30

A. He says, if Raphael Deliso wanted to sell his own country, why, he says, they couldn't buy me that way.

Q. Ask him the question again, please. (Question repeated.)

A. No, sir.

Q. Did you say any part of that to Raphael Deliso?

A. We didn't speak anything about them things. He says, we came here on business, not for them things.

Q. Do you say that you have not been trying to find the person who killed Tenace?

Mr. Berdine: I object. We didn't go into that.

Mr. Strong: I have a right to go into the interest and motives of this man.

The Court: Yes; you has a right to show the interest. I think the question is proper.

(Question repeated.)

A. Yes, I was looking for him.

Q. When did you begin to look for him?

10 A. He says, after it happened, a day after.

Q. Do you know Angelo Cierrelli?

A. No.

Q. Cierrelli, if that is the name?

A. I don't know him.

Q. Do you live down there in the Italian settlement of DeVita's?

A. No, sir.

Q. Where do you live?

A. He says, I live in back of the postoffice at Port Reading.

20 Q. How far away from the Tenace shanty?

A. He says it is pretty far away, but I couldn't say how far.

Q. Is it on the main road from Cartaret to Woodbridge; is that where you live?

A. Yes, sir.

Q. You have a shoemaker shop there, haven't you?

A. I have had one before.

Q. How long have you had a shop there?

A. He says, a little while I had a butcher shop.

30 Q. Where was that?

A. My house.

Q. Is that the same place where you have your shoemaker shop?

A. Yes.

Q. Do you own that property?

A. He says yes, it is mine, but I haven't anything paid on it.

Q. How long have you lived there?

A. Two years.

Q. Isn't it a fact that you have worked on the same dock with Cierrelli?

A. He says there we are Italians, one is from one province and one from another and he says there is here six hundred people work there and therefore we do not know each other.

Q. Do you mean to say now that you do not know Angelo Cierrelli?

A. He says I don't know who this Angelo Cierrelli is. 10

Q. Do you know Antonio Russo?

A. Yes.

Q. I mean Angelo Cierrelli or Cierrello, who is a cousin of Angelo Russo?

A. He says I don't know what he is.

Q. On the morning after this shooting happened did you follow a man from here toward Woodbridge?

A. The morning after the shooting I went and sent for a doctor.

Q. I want to know whether the morning after the shooting you followed a man over toward Woodbridge? 20

A. He says he wants his time in talking.

Q. What?

A. I want time in talking.

Q. Put the question again.

A. He says there was a person standing in front of Gatno Russo's store. He says, knowing that he was working on the docks, but I didn't know his name. He says I don't know whether it is that man that you have asked me first. 30

Q. Did you follow that man over toward Woodbridge? Did he run away and did you run after him?

A. He says he ran away, but nobody went after him.

Q. Didn't you run after him?

A. He says no, I ain't no policeman.

Q. Did you not run after him with a long knife, stil-
leto?

A. He says the longest knife of mine is the one that I clean my finger nails.

Q. Did this man whom you saw in front of Catno .

Russo's place, in running away did he fall in a ditch or water?

A. I didn't see any one fall.

Q. Where did he run, this man that you saw there?

A. He went over in Catno Russo's house and he went out the back door.

Q. Who was with you when you saw this man?

A. He says, there was two or three women there and there was other men with me.

10 *Q.* Was the boy Domeinio Tenace with you when you saw this man?

The Prosecutor: I object; how far are we going?

The Court: It seems to me we are getting now beyond the lines of cross examination.

20 *Mr. Strong.* I want to prove that this man saw a person, who was Angelo Cierrelli, well known to this man; that this man saw him there, as he says, and he saw a man, the man ran through Catno Russo's store and was pursued by this man, in company with the boy and I think McDonnell; that they followed him for some distance, and the man fell in the ditch and this witness caught up with him with the knife and attempted to stab him, and the man got away, and that they followed him up to the house of a man named Barcelona, and there they inquired for this man who was running. Now I think that is important as showing that the attention of this person at that time was directed to an entirely different person from the defendant.

30

The Court: I do not see how it is a cross examination; the examination-in-chief of this witness was very limited.

Mr. Strong: That is true, but he is here as a witness who has employed counsel to assist in the prosecution.

Mr. Berdine: Mr. Strong has made two statements that a lawyer of his standing ought not and would not make in a case. He endeavors to get

before the jury what he expects to prove when he knows it is unfair. We admit no proof of the employment of counsel by this man.

The Court: I think counsel has said enough to show me that this kind of examination might be proper if you called the witness as your own. I do not mean to say that if you call him as your own you might not have the right to cross examine him, but I think I ought to limit this present cross examination.

10

Mr. Berdine: I ask that the jury be instructed not to accept, and statements of counsel bearing upon the part of the proof in the case.

The Court: I have no doubt that the jury will limit their considerations to the testimony submitted in evidence.

Q. Do you know the man whom you saw at Catno Russo's store the morning after this happened?

A. By sight.

Q. Was it Pasquale Deliso?

20

A. It was another.

Q. Have you seen that man since that day?

A. No.

Q. Were you at the hospital in Elizabeth shortly after the murder?

A. He says I brought my nephew, my brother-in-law, or two brothers and a boy.

Q. Did you have a conversation with Raphael Deliso there?

A. Not that night.

30

Q. At any time while Deliso was in the hospital did you have a conversation with him there?

A. Yes, I went to see him.

Q. Do you know what day it was?

A. No.

Q. Did you go there more than one day?

A. I went there about three times.

Q. Were you there on Tuesday?

A. I don't remember the day.

Q. On one of those days, in the week after the killing of Tenace, did you have a conversation with Raphael Deliso in the presence of Luigi Manuci, in which you said "If I had caught Angelo Cierrello there would have been trouble; I would have pierced his heart, because he killed my uncle," or words to that effect?

A. Didn't say anything to that effect.

Q. Did you say any part of that?

10 *A.* Didn't say anything of that.

Q. Did you say this on that occasion, speaking to young Domeinio Tenace: "The first man that is caught, he has got to get the full dose of it. You have got to say that he is the man that shot your father. We will get the right man just as soon as the first man is caught?"

A. I never spoke anything to Domeinio of those things.

Q. Nothing like that?

20 *A.* Nothing of that.

Q. Did you on one of these occasions when you were at the hospital, and after Pasquale had been arrested in New York, say to Raphael in the presence of rested in New York, say to Raphael Delisa in the presence of Luigi Manuci. "They have caught your cousin if he does not say who shot this man, but he is not the right man. If I had caught Angelo Cierrelli I would have pierced his heart and cut him in pieces?" Did you say that?

30 *A.* He says those is all lies that they are putting up.

Q. Did you say any part of that?

A. No; I didn't say nothing.

Q. Did you say, on the day after the shooting about three o'clock in the afternoon to Catno Russo, in the presence of a man named or known as Neapolitan, whose right name is Sylvester Dalesendro, near Catno Russo's house, that if you had caught Cierrelli you would have pierced his heart with a stiletto?

A. No. All lies that they are putting up.

Q. Did you see Pasquale Deliso the next day after the shooting?

A. No.

Q. Didn't you see him at work down on the boat near the dock the following morning after the shooting?

A. The next morning I had a hospital in my house; I couldn't go to work.

A. Answer the question, whether you did or not?

A. No.

Q. Didn't you speak to him and say good morning to him on the dock the next morning? 10

A. He is not even dead. No, never.

Q. Were you on the dock the next morning with Constable McDonnell and the boy Domeinio Tenace?

A. He said, I never went on the dock with the policeman at all.

Q. Have you stated to different persons of the Italians living down at DeVita's that you could settle this case for two thousand dollars?

Objected to.

20

A. No.

The Court: It is answered; I will let it stand.

John F. Archipello, sworn.

Direct Examination, by the Prosecutor.

Q. What is your business?

A. I am a detective attached to the police department in New York. 30

Q. How long have you been there?

A. About five years.

Q. Do you recognize the defendant Deliso?

A. I do.

Q. When did you first meet him?

A. Saw him on Mulberry street, New York.

Q. When?

A. On August 29th.

Q. How did you come to meet him?

A. I was informed that he was wanted in Port Reading for murder.

Mr. Strong: I object and ask that it be stricken out.

The Court: Yes; I will strike it out. You are only asked how you came to meet him. I suppose in consequence of information received from Port Reading he was looking for him, but it is not competent to say what information he received.

The Prosecutor: We do not wish to inject anything that does not properly belong here.

Q. You were informed that he was wanted?

A. I was informed that he was wanted in Port Reading.

Mr. Strong: I object to the information. He may state in a general way that in consequence of some information he did something, but what the information was is certainly not competent, and I move to strike it out.

The Court: I will strike out the answer. Officer you understand the distinction which we lawyers make; you may say that you were looking for him, and if it be the fact, in consequence of some information that you had received, but you have no right to say what the information was.

A. Well, your Honor, you see in this case I haven't received any information.

The Court: The Prosecutor must bring out the facts.

Q. What did you do?

A. I was informed that there was a man—

Objected to; answer excluded.

Q. In consequence of the information you received what did you do?

A. I went looking for the person that I was informed about.

Q. Well, did you find him?

Objected to.

Q. Whom did you find when you looked?

A. This defendant was pointed out to me.

Q. Well, what did you do after he was pointed out?

A. And he was in company with another man, and I followed them for about a half block. At the corner of Crant and Center Market Place I placed them under arrest.

10

Q. Where was he coming from?

A. He was coming out of a saloon there that is frequented by different people, people that live—

Mr. Strong: You need not characterize the people.

The Court: It is objectionable.

Q. Well, he was in the saloon; you picked him up on the street after he came out of that saloon?

A. I brought him up to police headquarters.

20

Q. What did he say to you on the street when you first picked him up?"

A. Well, on the street at first he said nothing, I merely told him that I was a police officer and that he was under arrest, and on the way up I accused him of—

Mr. Strong: I object. We are entitled to that conversation, certainly.

The Court: Well, the officer may say what occurred; what he said to the prisoner.

30

Q. What did you say to him?

A. At the time he was in company of one of these suspicious persons there who lives on these immoral—

Mr. Strong: I object, and ask that that be stricken out.

The Court. It must be stricken out.

A. I accused him of being a thief—

Mr. Strong: I object.

A. That is what I said to him.

The Court: Just give the language.

A. I said to him, "You have been stealing around here long enough." "Why," he says, "No, I am not a thief." "Oh," I says, "yes you are; I know you for the past two or three months," "Why," he says, "no," he says, "I am not a thief." "Why," I says, "sure, you are a thief and the man that is with you is not much better." So he says, "No, you are mistaken; I am not a thief." He says, "Look at my hands," and showed me his hands. They were the hands of a working man. He says, "I come from Port Reading." "Oh, is that so?" So I then took him up to headquarters and I notified—

Q. He said there where he came from Port Reading?

A. Not until we got to headquarters. When we got to headquarters I questioned him. I said, "When did you come from Port Reading." Well, this was on 20 Thursday night; it was August 29th. Well, he says, "I came out here Monday afternoon." So I says, "What did you come from Port Reading for?" He says, "I came out here; I ain't felt very good and I came out here to see a doctor." Oh, I says, "What doctor did you go and see." "Well," he says, I haven't been to see any doctor yet. So I searched him and he had no money on his person, anw we notified the authorities from Port Reading that we had a man—

Mr. Strong: Never mind.

30 A. We notified the authorities at Port Reading, and the morning, it was August 30th, Friday morning, Domeinio Tenace, his uncle—

Q. This boy that was on the stand?

A. This boy that was on the stand, his uncle, who was also on the stand here, and detective Peltier and officer McDonnell came to police headquarters. We took the said people down stairs into a room, which is a large sitting room which is used by detectives there, also for two or three bootblack stands there and several

tables and desks; and then we went outside and got the defendant. Coming in I was ahead of the defendant and there was an officer or two, I am not sure how many there were ahead of me, as they are always marching him out. I was walking ahead of him and Detective Bottie was behind the defendant.

Q. Is he here?

A. He is here present.

Mr. Strong: Will you point out Detective Bottie? 10

Witness: The gentlemen there. (Indicating.)

A. And there were one or two officers behind Detective Bottie. Now when I say officers I do not mean officers in uniform. We call them all officers; they are all officers in civilian dress and practically none of them had uniforms there except officials.

Mr. Strong: Couldn't you make it any shorter.

A. I am just describing it as we went through. We got in the room there and I said to the boy Domenico Tenace, I says— 20

Mr. Strong: I object.

Q. In the presence of him?

A. In the presence of him, yes, and in the presence of the defendant. I says to him in Italian—

Mr. Strong: I object.

The Court: What is the objection.

Mr. Strong: He said in the presence of the defendant. It ought to appear it was in his hearing, I think. It is a large room and a whole lot of people there. 30

The Court: If there is any doubt about it, tell how far away the defendant was.

A. Why, the defendant wasn't no more than three or four feet from me, and it was within his hearing. I said to the boy in Italian—to Domenico Tenace I said, "Look around this room and see if you recognize any one here." He looked around and he says, "That is

the man," and he pointed this defendant, "that killed my father."

Cross Examination, by Mr. Strong.

Q. How was the defendant dressed at that time?

A. He was dressed, I should judge, in a shabby condition.

Q. Were there any others present who were dressed in a shabby condition?

A. Do you refer to the sitting room?

10 Q. I am referring to the persons present at the time that you said—

A. Of the identification?

Q. Yes.

A. Well, there was two or three bootblacks there.

Q. They had their brushes, I suppose? (Illustrating.)

A. Oh, hey aren't holding their brushes like that certainly.

20 Q. But anybody could tell they were bootblacks, couldn't they?

A. Well, I dont know you could tell they were bootblacks unless you knew them.

Q. Were they doing business.

A. They was not working at the time.

Q. How many bootblacks were there?

A. Well, I don't recall. There is sometimes three there; sometimes two, but I don't recall now whether there were two or three.

30 Q. You don't know whether there were any there, do you?

A. What's that?

Q. You don't know as a matter of recollection whether there were any there?

A. There was some there because there is always there.

Q. Yes, that is the reason. Just where they were you don't know, or what they were doing you don't know?

A. They were in the room, but, as I said, I do not remember whether there were two or three.

Q. Outside of the bootblacks, the defendant Pasquale was the only man who was there in poor clothing—shabby clothing, you said?

A. Well, I said he was dressed in a shabby condition; I don't know whether it was shabby clothing that he had on.

Q. What do you mean if you do not mean he had shabby clothing on?

A. He had no collar or tie on.

Q. And he looked like a rough working man, did he? 10

A. Well, you could not tell, that he was a rough working man unless you looked at the hands and saw the calloused flesh there.

Q. You saw the hands and the callous flesh, didn't you?

A. Oh, yes, I saw the hands.

Q. He did not look to be a person of the same class as yourself, for instance, or as Detective Botti or any of the other officers there, who had been out working? Did they have collars on, do you mean? 20

A. Some did not have collars on.

Q. You remember that some had not. Who was there that had no collar on?

A. Well, I can't remember the name; I don't recollect the names; we don't take all the names down. There was a number of people.

Q. How do you remember that there were any of them that had no collar on at that time?

A. How did I happen to remember?

Q. Precisely so. You understand my question. 30

A. Of course that sitting room there is also used as a sort of dressing room. When they have those collars—those sweater shaped collars, come in there and slip them on and go right out.

Q. Other men around there partly dressed and evidently belonged there, is that what you mean?

A. Yes, mostly every one of them belonged there.

Q. And evidently so because they had no collar on or partly dressed, is that what I understand you to say?

A. I did not say they were partly dressed.

Q. What do you mean then?

A. The fact of not having a collar on, I mean they don't have a white linen collar on.

Q. Were they Italians?

A. Italians?

Q. Yes.

A. No; the bootblacks were Italians there, and myself and Botti were about the only Italians there excepting the defendant and Domeinio Tenace and his uncle.

10 Q. Who were there that came in with this defendant when he was brought in from the cell?

A. I explained that to you before.

Q. Do it again.

A. When we brought the defendant in I was ahead of the defendant.

Q. You headed the procession. Now who came in after you?

A. I said I was ahead of the defendant, and there was one or two persons before me, one or two officers

20 who were going in there.

Q. Going in where?

A. In the sitting room.

Q. Yes.

A. And behind the defendant was Detective Botti.

Q. Yes.

A. And there was some people behind him, I don't recall how many there were there, and we walked into the room. There was a line of perhaps five or six people, or perhaps a few more; I don't remember the exact

30 number.

Q. Was the defendant at that time handcuffed?

A. No; we just took him out of the cell; we did not handcuff him.

Richard A. Peltier, sworn.

Direct Examination, by Mr. Berdine.

Q. You are connected with the Prosecutor's office in this case?

A. Yes, sir.

Q. Were you at the county jail at the time of the identification of the defendant by the witness Cansarano?

Mr. Strong: We haven't heard anything about that. I haven't heard that name.

Mr. Berdine: Domeinio Cansarano.

Mr. Strong: I do not think that the question should imply identification.

The Court: No; I think that is assuming what he wants perhaps to prove. 10

Mr. Berdine: Simply to fix the witness' attention on the point I want his testimony on.

The Court: Well, do you say you are doing it by virtually assuming that he is going to prove a crucial point in the case.

Q. On October 23rd were you in the county jail?

A. I was.

Q. What?

A. Yes, sir. 20

Q. Tell what took place in the jail with reference to any attempt to identify the defendant?

A. I brought this witness to the county jail—

Q. Who?

A. Cansarano. I took him—I and the deputy sheriff, Mr. Oldman, took him to go to look in the jail—

(Objected to.)

Q. Tell what was done?

A. I told the witness to go look in the jail and see if he could pick out anybody there he knew. 30

Mr. Strong: I object; it doesn't appear to have been in the presence of the defendant.

The Court: I will admit that.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

Q. Tell what was done?

A. There was about a hundred witnesses in the jail

there, and he went to the jail door and pointed this man out.

Q. Where was this man?

A. Standing about in the center of the corridor of the jail.

Q. How was the condition of affairs with reference to people being around there?

A. There was a whole crowd around him there.

Q. Were you with Cansarano?

10 *A.* Yes, sir.

Q. All the time?

A. Yes, sir.

Q. Tell us how he picked him out or identified him?

A. He pointed him out first and said, "That is the man."

Q. Which man?

A. This man (indicating defendant).

Q. Who pointed him out?

A. Cansarano.

20 Mr. Strong: I object unless it was said in the hearing of the defendant.

A. This man heard it because he came right out when this man heard it.

Mr. Strong: I think it ought to appear first that this man might have heard it.

The Court: I will let it stand.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

30

F. J. SWAYZE, J. [L.S.]

Q. How was this man's position with reference to the other people in the jail?

A. He was about in the center of the jail, as I said before, and there was a lot of people around there, walking to and fro and all over. He stood in the center.

Q. Any suggestion by you as to who—

A. Not a bit, and the minute this man pointed him out he came up to the door.

Q. Who came up?

A. This fellow. (Indicating defendant).

Q. Who was present there with you?

A. Mr. Oldman, deputy sheriff.

No Cross Examination.

Dr. Arthur Sterns, sworn.

Direct Examination, by Mr. Berdine.

10

Q. What is your vocation?

A. Physician.

Q. Where at?

A. Elizabeth, New Jersey.

Q. What relation had you with the Alexian Hospital in Elizabeth on or about the 25th, 26th, 27th and 28th of August of this year?

A. I am one of the attending surgeons, and I was in service during that time.

Q. Did you see the man that we have designated as the deceased in this case?

20

A. Yes, sir.

Q. When?

A. Well, may I use my notes?

The Court: Oh, yes. Made by you at the time?

The Witness: By the hospital.

Mr. Strong: I do not think it is competent unless made by him.

The Court: The note made by you?

30

The witness: No; not made personally.

The Court: How can he use notes made by somebody else?

The Witness: It is a history of the case.

The Court: When did you first see them?

The Witness: I see the chart, of course, every day.

The Court: You see the entries made on that every day?

The Witness: No; I see the entries there, I do

not see them made.

The Court: You saw the entries after they were made?

The Witness: Yes.

The Court: How soon after they were made did you see them?

The Witness. Well, I suppose I make my visit at ten o'clock; I suppose the attending brother made the entries about eight or nine minutes, somewhere along here.

10

The Court: You want to refer to them now for what purpose?

The Witness: Only to be absolutely sure about it.

The Court: Absolutely sure about what?

The Witness: Temperature and pulse and dates.

Mr. Berdine: This is only to fix a date.

The Court: The court thinks he probably could get along without it.

20

Q. Were you there when the man Tenace was brought to the hospital?

A. No, sir.

Q. How soon after he was brought?

A. At my next morning visit.

Q. Twenty-four hours afterwards?

A. No; he was brought in the evening and I saw him next morning.

Q. Were you the first physician?

30 A. No; the house physician, Dr. Doyle was the first physician of the hospital who saw him.

Q. Did you make an examination of him.

A. I saw his as soon as I made my visit and the dressings were removed, so I could see the wounds.

Q. Well, tell us the character of the wound?

A. Well, the man suffered from a broken arm and of a gunshot wound at the left temple.

Q. Point with your finger?

A. About there (indicating.)

Mr. Strong: That is the left?

Witness: Left temple.

Q. What was the nature of that wound?

A. The wound looked like a gunshot wound.

Q. You are acquainted with gunshot wounds, I suppose?

A. Yes.

Q. What was the character of the wound as to whether it was dangerous or not?

10

Mr. Strong: I object.

The Court. On what ground?

Mr. Strong: I think he might describe what it was without suggestion and without characterization.

The Court: Well, I don't think the question is that. He says as to whether it was dangerous or not. I will permit the question.

A. Well, it was a gunshot wound at the left temple, which, as far as the danger is concerned, depends upon the depth of the wound and the extension.

20

The Court: Tell us about this particular wound that you saw.

A. That I saw. Just started to close. There was some swelling of the surrounding tissues.

Q. Was that question clear to you?

A. Not quite.

Q. Was this wound dangerous or not?

30

A. Well, gunshot wounds of the head are dangerous.

Q. Then this was a gunshot wound of the head and was dangerous?

Mr. Strong: I object.

The Court: It is mere repetition.

Q. How often did you see him?

A. Every day, sometimes twice a day, because we had a busy month and I made two visits of it sometimes.

Q. Did he die in the hospital?

A. He died not under my service. We changed service at the first of every two months, and Dr. Irving treated him at his death.

Q. Do you know whether he died in the hospital?

A. Of my knowledge I know he died in the hospital.

Mr. Strong: Did you see him after he was dead?

10 The Witness: No; I only know he died in there.

Mr. Strong: How do you know?

Witness: Because I heard it.

Mr. Strong: That is what I thought.

The Court: I will have to strike it out. You will have to call the persons who saw the dead body.

Cross Examination, by Mr. Strong.

20 Q. How long did you continue in service after the date when he was brought in?

A. Up to the first, that is about four or five days.

Q. And did you see him each day during that time?

A. Saw him each day, probably twice a day. I do not recall exactly.

Q. Did you make any further examination after the first examination.

A. Yes.

Q. When?

30 A. I saw him every day, of course. Do you mean whether I examined the wound or what I did to the man?

Q. Well, I mean whether you made any examination of the wound?

A. Every time I saw him.

Q. How much of an examination did you make?

A. Well, I examined the wound and treated the man according to the symptoms I had.

Q. Well, when you say you examined the wound, just tell us the nature of your examination, the extent of it.

A. Our treatment of the wounds of the skull simply depends upon the symptoms they make. We do not examine with probes.

Q. I am not asking about your treatment generally or your practice, but what examination you made of this particular instance, that is the one thing I care about.

A. Well, I really do not know how to answer except—

Q. Don't you remember what you did? **10**

A. Yes; I examined the man. I felt the wound on the head, I looked after his temperature and pulse, and according to that I treated him.

Q. Now then, you ought to be able to tell me, I should think, just what examination you made.

A. Now his temperature—

Q. Not his temperature. What did you do to him in the way of examining the wound?

A. I carefully felt the skull with my hands, as we always do in such cases. **20**

Q. I don't care what you always do, but what you did in this case. Is it only because you always do it that you say you did it in this case?

A. No; I think it is absolutely necessary to do that.

Q. Of course, but have you a recollection of doing it in this case?

A. Yes.

Q. Tell me what your recollection is?

A. I examined the wound and found an infiltration there of the tissues. **30**

Q. And your examination consisted of a feeling?

A. Yes.

Q. Outside?

A. Yes.

Q. You made no effort to probe the wound?

A. No.

Q. And you attended him some five or six days, did you not?

A. Up until the first.

Q. During the time did he progress favorably?

A. When I left him his temperature was normal, his pulse was normal.

Q. How were his other symptoms?

A. Well, at that time when I went off service he was in good condition.

Q. That is, you thought that he would recover?

Objected to.

10 *A.* Well, that I couldn't—

The Court: I will permit it.

Q. What do you mean by saying he was in good condition?

A. Well, about as good as you can expect a man after—his temperature was normal and his pulse was normal. Those are the two guides we have.

Q. And those conditions existed at the time you saw him last alive?

20 *A.* Yes.

Q. And his temperature was normal and his pulse was normal?

A. Yes.

Q. What opinion did you form at that time as to the probable result of his case?

A. At that time he was in good condition.

Q. But what opinion did you form as to the result of his injury?

30 *A.* Oh, I couldn't form an opinion then because it was only four days or five days after the accident.

Q. Were the indications favorable to a recovery?

A. At that time they were.

Q. You spoke of an injury to his arm; what arm was it?

A. That I couldn't recollect.

Q. You say his arm was broken?

A. It was broken, yes; there was a fracture there.

Q. Of where?

A. Of the radius—of this part of the arm (indicating.)

Q. You are showing us along the wrist?

A. About the wrist, I suppose.

Q. Above the wrist?

A. Above the wrist.

Q. And the right arm, did you indicate?

A. I don't know whether it is the right or left. I am not quite sure about that.

Q. There was nothing in that injury, I suppose, that was dangerous to life?

A. No.

10

Q. You spoke of this as a gunshot wound; do you mean by that a pistol wound?

A. Pistol wound. Gunshot wounds include pistol wounds. I meant pistol wound.

Q. Didn't mean he was shot with a shot-gun or anything of that kind?

A. No.

Q. What was the size of the wound?

A. The size?

Q. Yes.

20

A. Well, I should say about a quarter of an inch with the infiltration around. (Indicating with hands.)

Q. Well, that is somewhat more than a quarter of an inch?

A. Well, about that size, I should say.

Q. Well, your own indication of it, what would you say, a quarter of an inch or more?

A. A quarter of an inch, I should say.

Q. You did not measure the hole, I suppose?

A. No.

30

Q. You could not judge as to the calibre of the weapon I suppose?

A. No; I couldn't tell.

Could you tell as to the direction of the wound?

A. I couldn't say either, because we do not probe wounds.

Q. What say?

A. We do not probe bullet wounds.

Q. Was there any burning or discoloration of the face about the wound?

A. Not around the face, no.

Q. I mean discoloration from powder.

A. No; I didn't see any, didn't notice any.

Redirect Examination, by Mr. Berdine.

Q. I wanted to ask you this: what was the condition of the man other than the wound, his physical condition?

A. Well he was in pretty good condition otherwise.

10 Q. Know how close the pistol has to be—

A. I couldn't tell, because—

Q. Do you know how close a pistol should be to make a discoloration of powder?

A. That depends a great deal upon the pistol and the calibre.

Q. And all that sort of thing?

A. Yes.

Re-cross Examination, by Mr. Strong.

20 Q. Have you any knowledge about that? Do you know anything about it?

A. I don't know anything about it. You mean in this case? No.

Q. I mean as to how near a pistol should be held?

A. Oh, I know it depends a great deal upon the calibre and the pistol.

Q. Upon the calibre, doesn't it?

A. Calibre of the bullet and the pistol.

Q. Did the man submit to treatment?

A. Yes.

30 Q. As far as you know and observed he followed your directions, did he?

A. Yes, sir.

Q. How was it as to nourishment; do you know whether he took nourishment?

A. I couldn't tell you exactly, because they give liquid diet the first week and probably he got the ordinary diet; I couldn't tell you anything about that.

Adjourned till 2 P. M.

Afternoon session, 2 P. M.

Dr. Lawrence Doyle, sworn.

Direct Examination, by Mr. Berdine.

Q. You are a physician?

A. Yes.

Q. In August of this year where were you stationed?

A. Alexian Brothers Hospital, Elizabeth.

Q. Is that the hospital to which this man was sent?

A. Yes.

10

Q. What was your position there?

A. I was house surgeon.

Q. Did this man Tenace come under your direction?

A. He did.

Q. What was his trouble?

A. Why, he had a gunshot wound of the head and a fractured arm.

Q. You mean by fractured arm a broken arm?

A. Broken arm.

Q. What part of the head was the gunshot wound?

A. On the left side right above the ear.

Q. It is described here as the temple; is that right?

A. Yes, right near the temple.

Q. Did you see him from day to day?

A. Yes; every day.

Q. Always under your supervision?

A. All the time.

Q. What was his condition on the 30th of August?

A. Well, on the 30th of August, that was the day after the operation, and he was in a pretty serious condition at that time.

30

Q. What was the nature of that wound?

A. It was a gunshot wound, penetrating wound.

Q. Give it so the jury and all of us can understand it?

A. Well, a gunshot wound usually takes and penetrates.

Q. Was it a dangerous wound or not?

A. All gunshot wounds of the head are dangerous.

Q. How long is it before the crisis is reached in wounds of that character?

A. You couldn't tell.

Q. Does it take one day or a number of days?

A. Sometimes three or four weeks. You have to await developments.

Q. You mean by that the man is always in danger during that time?

10 Objected to as leading.

Q. What was his condition during the week of the actual wounding and the crisis?

Mr. Strong: In this case.

Q. Wounds of this character.

The Court: Confine it to this case.

Q. Go on and tell us in this particular case?

A. In this case he was pretty bad until the 29th; he
20 got awfully bad that night and the next morning Dr. Stern and I performed an operation, and he was in a serious condition all that day; and the next day his temperature went to normal and he was progressing all right; his pulse and everything improved; until the last day—the last day, the day he died, why he went into a comatose condition, got unconscious and died.

Q. In that hospital?

A. In the hospital.

Q. What was done with his body?

30 *Mr. Strong:* I object. Is he speaking from knowledge or information or what?

By the Court.

Q. Were you present when he died?

A. I was the attending surgeon all the time. I was not at his bedside when he died. I was there a half hour before he died, twice.

Q. And did you see him at that time and after his death?

A. I did. I was there about twelve times that afternoon.

By Mr. Berdine...

Q. After his death what was done with his body?

A. We put his body in the morgue.

Q. How did it reach Middlesex county?

A. The undertaker came for him.

Q. You know that?

A. Yes.

Q. Then it was taken over to the undertaker in New Brunswick?

A. Yes.

10

Q. Do ou know an Italian barber whose place is opposite the hospital, by the name of DeLucca?

(DeLucca asked to arise.)

A. I know him. He has not got a barber shop across from the hospital, though. I think it is on Elizabeth avenue.

Q. Did ou see him there on the 30th of August.

A. I did.

Q. Do you know whether the deceased could speak English?

20

A. He could not speak any English at all.

Q. Communication through an interpreter?

A. Intrepreter.

Q. Did you use that man to communicate anything to him.

A. I did.

Q. What did you tell him to tell him as to his condition?

30

Mr. Strong. I object.

The Court. I do not see how that can help us. You have to call the interpreter and let him tell exactly what he told the man. I exclude this question.

Mr. Berdine. I only want to know what he instructed this man as to his condition, not what he said.

The Court. That can make no difference. If you are laying the foundation for a dying declara-

tion, the admissibility will depend perhaps upon what the interpreter told the deceased, but not at all upon what the doctor told the interpreter.

Mr. Berdine. Only to state the man's condition and then he communicated it to him; that is all I wanted.

Q. What was the cause of the man's death?

A. Well, I didn't know when the man died; I found
10 out since the autopsy he died—

Mr. Strong. I object.

By the Court.

Q. Did you make the autopsy?

A. No.

Q. Do you know of your own knowledge of what he died? Aside from what the man who made the autopsy told you?

A. I don't know then.

20 The Court. He says he doesn't know of his own knowledge.

By Mr. Berdine.

Q. Was there anything the matter with him beside the gunshot wound and the breaking of the arm?

A. Nothing else except he had coma. He must have had some pressure of the brain.

Q. What would produce that?

Mr. Strong. I object.

30 The Court. I think the witness may be allowed to state whether or not the state of coma might have resulted from the gunshot wound. I will permit it that far.

A. Well, I thought the gunshot wound would cause an abscess.

Mr. Strong. I object.

The Court. No; the only question is whether the gunshot wound that you observed was of such

a character that the coma might have been the consequence of it.

A. Yes.

Q. What did you say?

A. Yes.

Q. Which led to his death, of course?

Mr. Strong: I object.

The Court: Don't inject that.

10

By the Court... .

Q. The immediate cause of death was the coma, I suppose?

A. That was the symptom of the cause.

The Court. He says the coma was the symptom and not the cause.

By Mr. Berdine.

Q. Can you state the cause of death?

A. I could not, not from my own knowledge.

20

Cross Examination, by Mr. Strong.

Q. When did you first see this man?

A. 26th of August, at night.

Q. That was Monday, wasn't it?

A. Monday night.

Q. At the hospital?

A. At the hospital.

Q. Were you there when he was brought in?

A. I was there.

Q. Did you make an examination then?

30

A. I made an examination and dressed his wound.

Q. What say?

A. I made an examination and dressed his wounds at night.

Q. How much did you examine?

A. Well, I examined the wound.

Q. I want to know what the examination consisted of.

A. Well, in gunshot wounds the only thing you can see is where the bullet enters.

Q. Did you do anything more than to look at the outside of it?

A. No; I didn't. I just looked at the outside.

Q. Then you dressed it?

A. Dressed it.

Q. How frequently after that did you see him?

A. Well, twice a day I made rounds, every morning and every night and then sometimes more often.

Q. Were you in the hospital?

10 A. In the hospital.

Q. And Dr. Sterns came there once a day, did he?

A. Well, once and sometimes twice.

Q. After the first night did you make any further examination of the wound at any time, any more extensive examination?

A. Until the next morning. Dr. Stern came around and both examined him together.

Q. Well, the same kind of examination?

A. Same kind.

20 Q. Did you make any different kind of examination at any time?

A. On the 29th we made an incision.

Q. What you call the operation?

A. Operation.

Q. Where did you make the incision?

A. Right over—on the left side right over the ear, right where the bullet entered.

Q. What did you do then?

30 A. Why, he got in there and he laid bare the skull and couldn't see where the bullet had penetrated the skull and he sewed it up.

Q. Did you find it had penetrated the skull at all?

A. No; didn't see it.

Q. And as far as you know then you would say that the bullet did not penetrate the skull?

A. No; we couldn't see it. We didn't know where it went to.

Q. What?

A. Couldn't tell where it went to.

Q. Did you look to see whether it penetrated the skull?

A. Yes.

Q. Did you find if it had penetrated it?

A. Didn't find it had penetrated; couldn't find it at all.

Q. Then as far as you know it did not penetrate the skull?

A. As far as I know. I didn't know where it went to.

10

Q. What time on the 29th was that?

A. That was in the morning; I couldn't tell the exact time, but usually I operate there in the morning.

Q. And you say after that his condition improved?

A. After the 30th. About, I think the last of the month it was his condition was good.

Q. When was it that he died, what date?

A. On Thursday.

Q. What?

A. I think it was Thursday night.

20

Q. What?

A. Thursday.

Q. What date was that, do you remember. That would be not the first Thursday he was there but the second Thursday.

A. Second Thursday.

Q. Thursday of the second week?

The Court: 5th of September that would be.

A. 5th of September.

30

Q. You say that his condition continued to improve until that day?

A. No; his condition was good that day, until the afternoon of that day. His condition was good in the morning of that day.

Q. When did the coma come on?

A. In the afternoon.

Q. What time?

A. I should judge about two or three o'clock—started to get symptoms, convulsive seizures and then he

went to bed and the coma kept getting deeper and deeper all the time.

Q. What got deeper?

A. Coma, unconsciousness.

Q. He was so that he could walk about, wasn't he?

A. Yes. ..

Q. Up and dressed?

A. Yes, sir.

Q. And walked about the hospital?

10 *A.* Yes.

Q. How long after the commencement of the symptoms of coma—how long was it before he died?

A. About six hours.

Q. He died during the evening then?

A. Yes.

Q. Did he obey the treatment that was prescribed for him?

A. He did.

Q. How was it in respect to taking nourishment?

20 *A.* Well, he didn't want to take nourishment. We had him on liquid diet and he didn't like it.

Q. Did he take it?

A. He took it sometimes.

Q. Other times not?

A. Other times he did not.

Q. Did his refusal to take nourishment have a tendency to weaken him?

Mr. Berdine. I object.

30 The Court: Well, I think that is permissible. I don't know what bearing it may have, but I will allow it.

A. No; he wasn't getting enough liquid diet and would not get enough to nourish him, just soup—not much nourishment in it—soup and milk.

Q. Isn't it a fact that he was getting nearly as much nourishment as he ought to have had in his condition?

Objected to; question permitted.

A. There were one or two days he did not.

Q. What days were those?

A. It was right near the latter end; I guess three or four days before he died.

Q. The last three or four days?

A. Yes.

Q. What effect was that likely to have upon his condition, the fact of his not getting sufficient nourishment?

A. Why, with that diet I do not think it would have any effect. 10

Q. What say?

A. With the diet he was getting I do not think it would have any effect. It would be better for him not getting anything at all.

Q. It was better for him not to take anything?

A. Yes, while his temperature was high.

Q. Well, but his temperature was normal, wasn't it—got to be normal?

A. It was at times.

Q. Well, wasn't it normal down to the last day of his death? 20

A. Yes, it was.

Q. And at that time it would have been beneficial to him—while his temperature was normal it would have been beneficial to him to have had more strengthening food but more of it?

A. We had not changed his diet; he was just on the liquid diet. We usually keep them on liquid diet for two or three weeks.

Q. He didn't take as much of that diet as would be good for him? 80

Q. He couldn't tell you. I didn't see his eating. The nurse told me he was not taking his nourishment.

Q. Did you speak to him about taking nourishment?

A. I did.

Q. What did he say?

A. He said, he couldn't say anything. He speaks Italian. I couldn't understand him.

Q. You did not speak Italian?

A. I brought this thing up and told him to eat it and showed it to him.

Q. Did he eat it?

A. No; he didn't.

Charles R. Moke, sworn.

Direct Examination, by Mr. Berdine.

10 Q. You are one of the coroners of this city, are you?

A. Yes.

Q. Of vocation what else, undertaker?

A. Yes.

Q. Are you the one that brought the body of Tenace from Elizabeth to this city?

A. Yes, sir.

Q. The body of the dead man?

A. Yes.

Q. What did you do with it?

20 A. Took it to my place and there Dr. Suydam performed an autopsy.

Q. Dr. Suydam is the county physician?

A. Yes, sir.

Q. And from there, of course, I suppose you buried it?

A. The body was buried on the following Monday.

Q. That is the same body that you got at Elizabeth?

A. Yes, sir.

Q. Turned over to you by the hospital authorities?

30 A. Yes.

No cross-examination.

Frank DeLucca, sworn.

Direct Examination, by Mr. Berdine.

Q. Where did you live on the 30th of August of this year?

A. 807 Crand Street, Elizabeth.

Q. Speak English?

A. Yes.

Q. Italian?

A. Yes.

Q. Did you remember Dr. Doyle, who was a witness here?

A. Yes.

Q. Did you see him that day?

A. Yes.

Did you see the man who has since died, I have forgotten his name, at the hospital? **10**

A. In the hospital, yes.

Q. What did Dr. Doyle tell you as to the condition of this man?

Objected to; question excluded.

Q. Did Dr. Doyle tell you the condition of this man?

Objected to; excluded.

Q. What did you tell the man that Dr. Doyle said as to his condition? **20**

Objected to as leading.

The Court: The question is what this witness told the dead man as to his condition.

Mr. Strong: First, if he told him anything.

Q. What did you tell the dead man?

By the Court.

Q. Did you tell Luigi Tenace anything about his condition? **30**

A. I asked the dead man how he felt—

Q. Answer yes or no. Did you tell him anything?

A. Yes.

By Mr. Berdine.

Q. What did you tell him?

A. How are ou feeling? He said he felt very weak. He said I believe I am going to die this world.

Q. What did you say to him?

A. Then—I did't say anything then at all. He made the statement then.

Q. What statement did he make?

Objected to.

By the Court.

Q. Is that all that was said between you about his condition?

A. No; we had a big statement wrote out.

10 Q. I am not talking about the statement that was written out; but did you tell us now all that was said between you and him about whether he was going to die or not?

A. Yes.

By Mr. Berdine.

Q. What did he say about his going to die?

Mr. Strong: The witness has said he has given us all.

The Court: He said that Luigi said he believed he was going to die; is that right?

20 (Answer repeated by stenographer.)

Q. What else did he say? Tell us all that he said.

Mr. Strong: He said—

A. He said—

Mr. Strong: Wait a minute. I submit that the witness stated that that was all that he said on that subject. Now the prosecutor says go ahead and tell us all that he said, tell us something more.

30 It is not proper.

The Court: Well, if you think the witness knows more of the conversation that refers to the impending death you may bring it out.

Q. State all that the dead man said to you about his going to die, won't you?

A. He said he was going to die from the wound.

Q. Go on, what he said about his going to die?

A. And he told me who shot him.

Mr. Strong: We don't want that.

A. Well, because I couldn't remember everything, but we wrote the statement there.

By the Court.

Q. When he said he was going to die from the wound what did you say?

A. Well, I didn't say anything to him.

Q. Did he say anything more about dying?

A. Well, we didn't talk about the subject after that, after he said he was going to die.

10

By Mr. Berdine.

Q. Then what just was said?

(Objected to.)

The Court: You see, the preliminary question arises now. We think that the foundation has not been laid for the introduction of a dying declaration.

Q. Was what the dead man said to you translated into English, and put into English in your presence, in writing?

20

(Objected to.)

The Court: Wait.

Mr. Strong: Your Honor has ruled on the preliminary question.

The Court: I said that on the preliminary question, as the case now stands, we think there is nothing to admit a dying declaration. Now it may be that there is something else that the man said that would bear upon that preliminary question; the fact that it may take the form of a written statement would not make it inadmissible.

30

Mr. Strong: Oh, no; but I assumed that—I think perhaps I may have been hasty in it, but still I do not think the Prosecutor will claim anything else than this written paper was a statement regarding the person who had shot him, not touching upon the preliminary question of the man's condition.

The Court: Well, it may have contained a statement bearing upon that. I have seen such dynamic declarations, and I won't admit the written statement without preliminary proof, further preliminary proof as to his sense of impending dissolution, but I do not think that proof is excluded from the case merely because it happened to be written down.

10 Q. Was the statement that the dead man made made to you in your presence at the time you speak of in the presence of Detective Peltier?

A. The statement was—

The Court: No; don't tell what the statement was, excepting so far as it related to his idea that he was going to die immediately.

A. Well, because he felt he was going to die.

By the Court.

20 Q. What did he say about it?

A. He said, "I believe I am going to die."

Q. Did he say anything about how soon he thought he was going to die?

A. Well, now, he didn't say how soon.

By Mr. Berdine.

Q. Was a statement that the man made to you at that time translated by you into English and put on paper by the Detective Peltier in your presence?

30 A. Yes.

(Objected to as leading.)

The Court: I will let it stand as preliminary.

Q. Did you see that statement in writing after it had been translated by you and put in writing by Detective Peltier?

A. Yes. After he wrote it, why, he read them over again and I said to him, to the dead man, if that was all true.

Q. After they were reduced to writing you read them over to the dead man?

A. Yes.

Q. What did he say when you read them over?

(Objected to.)

A. He said that was true, all what was in the statement, and he put a cross mark on it.

(Objected to.)

The Court: The witness has not said anything that was improper yet. 10

Q. Now would you know that paper writing if it was shown to you?

A. Yes; I put my own name down and I think I know my own write.

Q. Look it over; go all over it. (Paper shown witness.) Is that the paper? You can see this.

A. Yes; that is the paper.

Q. Look at the bottom of it; see who witnessed it. 20

A. That is my own writing; that my own writing up here. That is the cross mark what the dead man put on because he couldn't write.

Q. Did you read that paper over to the witnesses in Italian?

A. Yes.

Q. Translating it from English to Italian?

A. Yes; and he said it was all true.

Q. Every part as relates to his statements?

A. To the statements, and he swear and put cross mark down. 30

Q. In your presence?

A. In my presence and the presence of Dr. Doyle and Detective Peltier.

Q. That was made on the 30th of August in the Alexian Hospital?

A. Yes, on Friday afternoon.

(Objected to as leading.)

Mr. Berdine: We offer it for what it is worth.

Mr. Strong: Will you let me see it.

Mr. Berdine: Will the Court look at the preliminary part of it?

(Mr. Strong examines paper.)

Mr. Strong: What is the pending matter?

The Court: The offer is of that paper as a dying declaration.

10 Mr. Strong: I submit there has not been any proper foundation laid for it. The preliminary contents of this paper do not add anything to what the witness has already stated. It starts off by saying, "Having been informed by my physician attending me, Dr. Doyle, that I may die from the wounds and injuries which I received from the hands of so and so, and believing I shall die from the injuries so received of which I am now suffering, I make my dying statement of how I received those injuries and who inflicted them upon me, having full knowledge and belief in the fact that I
20 must surely die from those injuries." I do not think that it appears that he had abandoned the hope of life entirely, which is the condition upon which a statement of this kind would be received. It is true that he says that his attending physician told him that he might die and he believes that I shall die, but it does not appear that he had that firm conviction that the man had lost all hope of life. That is really what must appear and must appear strictly in order to admit this class of evidence, which is entirely exceptional. I submit
30 that there is not either in this paper or out of it a sufficient foundation to admit the declaration.

By the Court.

Q. You have heard what Mr. Strong has just read from that paper, have you?

A. I didn't hear it.

Q. Did this man, Luigi Tenace, say anything about his believing that he would surely die from the wound?

A. So he said.

Q. Used that language?

A. Used that language.

Q. Was it then written down in this paper?

A. It was written down in this paper.

The Court: Now you may cross-examine.

Cross Examination, by Mr. Strong.

Q. Didn't you tell us all that Tenace did not say when he expected to die or how soon he might die? Didn't you tell us that a while ago? 10

A. Why, he didn't say how soon he was going to die. He said, "I believe I am going to die."

Q. He didn't say when he was going to die, did he?

A. Why, no; he didn't tell me when he was going to die.

Q. Or whether he was going to die soon or after a week or after three weeks?

A. He didn't tell me any time; he didn't tell me when he was going to die, but he said he believed he was going to die. 20

Q. That is all he said?

A. Yes.

Q. Then the language which was put in this paper was put in by Mr. Peltier, wasn't it?

A. Yes.

Q. Who was there when this was done?

A. Dr. Doyle and Mr. Peltier and I and the gentleman. 30

Q. Was the dead man in bed?

A. Yes, lying on two pillows.

Q. What was his condition?

A. Why, he was very weak.

Q. Very weak?

A. Very weak, he said.

Q. Did he have difficulty in talking?

A. No, sir; he could talk nicely to me.

Q. He could talk to you?

A. Yes, sir.

Q. Did he have to stop to take breath and go on

again, or did he talk right along the way you and I talk?

A. Well, of course, he had to take a breath every once in a while, but not go ahead like others.

Q. Was he suffering pain apparently?

A. Yes, suffering. He said he had pains.

Q. Said he had pains?

A. Yes.

Q. Did he say where his pains were?

10 *A.* Yes; he told me all over his head.

Q. All over his head.

A. Yes.

Q. Did he complain much of pain and groan?

A. Why, yes, every once in a while they come to me while I was talking to him; he told me he was feeling kind of faint.

Q. When was that?

A. When I was talking to him.

Q. He said he felt faint?

20 *A.* Yes.

Q. Did he faint while you were there at all?

A. No, sir.

Q. Did not become unconscious?

A. No.

Q. Was he in a stupid condition with his eyes shut?

A. No, sir.

Q. Was not stupid?

A. No, sir.

Q. He didn't talk English at all?

30 *A.* Not at all.

Q. Did not understand?

A. Not at all.

Q. When you read this paper over to him in Italian did you tell him that this paper said anything about how soon he was going to die?

A. No.

Q. Or whether he was going to die soon or after a while?

A. No; nothing spoke about it.

Q. Nothing said in either your talk with him or in

reading this paper over to him as to whether he might die soon or after a long while?

A. No; we didn't talk about that subject at all.

Q. And in reading this paper to him you did not read anything of that kind at all?

A. No; because I didn't know when he was going to die and he didn't know.

Q. And you didn't know whether he was going to die soon or after a while?

A. I didn't know when he was going to die, because I ain't no doctor. **10**

Q. And you didn't say anything to him about that in reading the paper or any other time, that he was going to die soon?

A. No; he believed he was going to die; that is all he said.

Q. You and I are going to die some time?

A. Yes.

Q. He believed he was going to die from that wound some time; that is what he said? **20**

A. Yes, that is what he said, that he felt very weak.

Re-direct Examination, by Mr. Berdine.

Q. Did you translate each portion of this paper?

(Objected to as leading; the witness has stated just what he did.)

Q. Into Italian and read it?

The Court: I will permit this preliminary question. **30**

Q. Did you translate it into Italian?

A. Yes.

Q. Each section of this paper?

Q. And convey it?

Mr. Strong: I think the witness should tell just what he did with it.

The Court: It is a very dangerous method of examining.

Q. What did you do with this paper after it was completed?

A. I read him it and I told him in Italian what it meant and I said, "Is that right," and he said, "Yes," after I read it for him; he said, "It is all true what is in there," and he swore and he put a cross mark on it.

Q. I understood you to say you read-

A. Yes, sir.

Q. What did you read to him?

10 A. Well, all what I read what is in the statement.

Q. You mean this statement?

A. Yes, that statement, that is all I know about it. That is all the statement. I translated it to Mr. Pel-
tier and he wrote it out.

Q. And you read every portion of it to him?

A. Yes.

(Objected to.)

Q. How much of this paper did you read to him?

20 A. All of it. All what the writing is on.

Q. Do you mean from beginning to end?

A. From beginning to end, yes.

Mr. Strong: I submit that the foundation is insufficient.

The Court: We think that the evidence does not show such a sense of impending dissolution as makes this paper admissible. The offer is therefore overruled.

Recess till 4.45 P. M.

30 Trial resumed at 4.45 P. M.

Dr. John L. Suydam, sworn.

Direct Examination, by Mr. Berdine.

Q. What is your business?

A. Professionally?

A. Yes.

A. I am county physician of Middlesex County.

Q. Doctor, of course by profession?

A. Yes, sir.

Q. The dead man Tenace who, it has been testified, was brought from Elizabeth here, did you see him after his death?

A. Yes, I saw a man; I think it was that name.

Q. What did you do as county physician?

A. Why, I extracted a bullet from his head.

Q. Well, tell us what you found?

A. I found a bullet. There it is. (Produces bullet.) 10

Q. Where did you find it?

A. Just inside the—

Q. Show it so the jury can understand it.

A. Show it on my head?

Q. Tell us what you did in such a way that the court and all can understand it.

A. Just one minute till I get my notes. On the 6th day of September I opened this man's head and on the left side, just two inches above the periphery of the lobe of the left ear I found the bullet on the inner side of the skull, resting just in that shape on the inner table of the skull, pressing upon the arterial system. 20

Q. Inside of the skull?

A. This was on the inside of the skull, pressing on the artery.

Q. The bullet had penetrated, of course, the outside?

A. Gone clear through the skull—scalp and skull, yes.

Q. In your opinion what was the cause of death of this man? 30

A. The bullet wound.

Q. The bullet wound?

A. Yes.

Cross Examination, by Mr. Strong.

Q. Did you discover where the bullet had entered the skull?

A. Yes, sir.

Q. Where was it?

A. Just two inches, according to my measurement,

from the periphery of the upper side of the lobe of the left ear, I took the measurement.

Q. Directly above the ear?

A. Above the ear aside of the head, yes.

Q. Where was the bullet with reference to the place where you saw it had entered?

A. Just on the inner side of the skull, Mr. Strong.

Q. I mean, had it moved either to the right or left or up or down from the head?

10 *A.* It was right opposite to the aperture.

Q. Right in the aperture?

A. Yes, just gone through.

Q. Had it passed entirely through so it had cleared—

A. It had cleared the inner table of the skull, yes. You could really move it on the inner table of the skull, because before I extracted it I—

Q. Could you see where the bullet had entered the skull?

A. Yes.

20 *Q.* Where was that?

A. Right at this, two inches above the lobe of the ear there had been a gash or cut made in the skin by somebody and a plaster put over that, for I removed the plaster.

Q. Then the bullet was directly in the line with the hole where it had entered the skin, was it?

A. Yes.

Q. Had it gone directly through the skin and then directly through the bone on a straight course?

30 *A.* Yes.

Q. In what way do you say that bullet caused death?

A. The bullet pressed upon the arterial system and there was a leakage of blood there, and by the leakage of blood a hemorrhagic condition occurred, which threw the man into a comatose condition.

Q. In other words, the pressure of the bullet upon the artery had caused the artery to leak, had it?

A. Yes.

Q. It must then have broken the artery to some extent?

A. Yes.

Q. Was that the effect of the direct impact of the bullet or was it the effect of the bullet remaining there and rubbing upon the artery?

A. It was my impression the direct impact of the bullet.

Q. So that the injury to the artery occurred when the shot was fired?

A. Yes.

Q. That is what you mean?

A. That is my impression that I arrived at in my diagnosis, yes. 10

Q. How could you determine that?

A. How could I determine it?

A. Yes.

A. Why from the symptoms that I received of the case, that the man had lived—

Q. No; but you did not see the man before his death at all, did you?

A. No; I did not.

Q. And all that you could know, I suppose, what was you discovered by dissection after his death? 20

A. Yes.

Q. Was there anything in that, in the dissection, the condition of the person which you found after his death, which proved to your mind that the artery had been injured by the direct force of the bullet rather than by erosion, as it is called?

A. Yes, because there was a settlement of blood all over the brain, showing that there had been a hemorrhagic, leaking condition—hemorrhaging going on the brain. 30

Q. If the injury to the artery occurred through the direct impact would you not expect that the man would die at once?

A. No, not necessarily.

Q. Why? Just explain what you mean.

A. Because I think if the direct impact did not rupture the walls of the artery sufficiently to cause a real clotting of the brain—if it just abraded, cut the artery so it was a constant leak in the brain, and it went to

the certain condition until the whole thing gave way and he went into this comatose condition.

Q. Do you think that the hemorrhage from the artery began at once on the shooting?

A. I do. The brain indicated that.

Q. How did it indicate that?

A. By here would be a spot of blood that settled, another portion of the brain another spot, so it was all infiltrated here and there through the brain.

10 *Q.* How do you know that that occurred the first day, occurred immediately after the shot or occurred the first time twenty-four hours or forty-eight hours after the shooting?

A. Then from the record of the temperature—

Q. Well, beside the record of the temperature—I submit to the Court we have no right to have that.

The Court: There is no competent proof of the temperature yet.

20 *Q.* Laying aside all that you were told and taking simply the condition of the brain or the condition of the body as a whole, did you discover anything which certainly indicated that the hemorrhage had come from the direct force of the bullet and had not come from erosion?

A. Yes; by the general condition of the brain, gave that to me.

Q. How did that indicate it?

A. By the infiltration of blood here and there all
30 over which had been standing.

Q. That would indicate that blood had exuded gradually, wouldn't it?

A. Yes.

Q. But it would not indicate at what time it began to exude, would it?

A. Well, the condition in my mind that I saw the brain in indicated to my mind that it had begun at once.

Q. Now, won't you explain why you say that?

A. Well, the condition that I saw the brain in, Mr. Strong.

Q. I want you to tell us, explain to us what that condition was and why it necessarily showed that?

A. The condition was that there was blood infiltrated in spots all through the brain; it was not done all at once.

Q. What was there to show you that the first of it had not occurred forty-eight hours after shooting?

A. Well, I don't know that I could tell the exact time after shooting, but it had occurred shortly after shooting. 10

Q. How do you know that?

A. Why, it is a general condition that—

Q. I want you to tell us what there was in that condition that you say satisfied you?

A. The blood infiltrated the brain in spots as I saw it, that is the one thing I can tell you.

Q. This man is said to have been shot on the 25th of August?

A. Yes.

Q. And he is said to have died on the 5th of September? 20

A. Yes.

Q. Eleven days afterwards?

A. Yes.

Q. Now won't you tell me if you can how you could tell whether any part of that infiltration took place within forty-eight hours after he was shot?

A. I don't believe I could tell you the exact forty-eight hours.

Q. Can you tell whether any part of it took place within three days after he was shot? 30

A. No; I don't believe I could.

Q. Can you tell whether any part of it took place within five days after he was shot?

A. I don't think I could within five days?

Q. In other words, there is nothing from which you could tell when the infiltration did begin?

A. No, but it had been going on for some time.

Q. It had been going on for a few days before he died?

A. Yes, for some time.

Q. And had been gradual, that is what you say?

A. Yes.

Q. Wouldn't that gradual infiltration rather indicate that the injury to the artery had come from the rubbing or erosion of the bullet?

A. No; it didn't to me.

Q. What?

A. It didn't to me, no, sir.

Q. Well, why do you say that? Why do you say the
10 other thing?

A. Because of the position and the condition I found the brain in. I cannot explain it to you any other way.

Q. You have said that already?

A. Yes, sir.

Q. How much opening was there in the artery?

A. The exact size of it I couldn't tell you.

Q. Give us some idea?

A. It was ruptured so it would let the blood out. I did not measure the size of it.

20 *Q.* If the letting out of the blood was so slow and gradual the rupture would have been very small, wouldn't it?

A. Well, it was large enough to cause the man's death.

Q. Oh, I understand you say that, but I want you to tell us how large an opening?

A. I couldn't tell you.

Q. Did you detect any opening at all?

A. Yes, I did.

30 *Q.* Then haven't you an idea how big it was?

A. Well, no, I couldn't tell you exactly, because I didn't measure that part of it, Mr. Strong.

Q. You saw it?

A. I did, yes.

Q. And you looked at it with interest, didn't you?

A. Yes, I did.

Q. As explaining the cause of the death?

A. Yes, and called Mr. Moke's attention to the fact.

Q. Well, I don't care whose attention you called to

it, but that was to your mind an important circumstance that you found an opening in the artery?

A. Yes, sir.

Q. You found, you say, a condition of infiltration not at the immediate point where the—

A. Yes, some there.

Q. But not only there?

A. Not only there; at other parts of the brain.

Q. There were some, as you called them, clots in other parts of the brain? **10**

A. Yes.

Q. What parts of the brain were there any clots?

A. In the base, cerebral portion, in fact, you could see the blood infiltrated all through the brain.

Q. Do you mean that literally?

A. Yes, sir.

Q. Do you mean that blood had infiltrated all through the brain?

A. In a general way, yes, I do, because the brain was in an infiltrated condition. **20**

Q. Well, do you mean only on the outside of the brain or do you mean through the brain or—

A. In through it.

Q. All through it?

A. All through it, yes.

Q. As well as on the outside of the brain, that is, I mean between the brain and the skull?

A. Yes, where this bullet went in, that is what we are talking about now, all over the brain.

Q. When you say all over the brain do you mean all over the exterior surface of the brain inside of the skull or where do you mean? **30**

A. I mean there was an infiltration of blood outside here where the bullet went in and also at the base of the brain, but you could see all through the interior of the brain the blood had infiltrated; these were very marked on the left side and at the base.

Q. Well, would not such a condition as that result in instant death rather than a death from coma, preceded by coma?

A. Well, it was sudden laterally.

Q. You don't know that. It was, as I understand, preceded by a condition of coma for several hours.

A. Two hours, I understood.

Q. You understood two hours, did you?

A. Yes, sir.

Q. Well, the testimony is considerably more than that.

A. That is what I understood.

10 *Q.* Would not the condition of infiltration that you saw there be such—wasn't it such as would cause a sudden death rather than a death preceded by coma?

A. If all of this infiltration occurred at once I think it would.

Q. Well, suppose it had occurred gradually, then what?

A. I don't think it would have been so sudden.

Q. Did it make any difference whether the infiltration is sudden or whether it is gradual or not? Would the quantity of matter determine it?

20 *A.* The quantity is the matter that determines and the parts which it infiltrates as well.

Q. The quantity of infiltration that you saw there, do you say, regardless of whether it was sudden or gradual, that had caused a sudden death?

A. Yes.

Q. Rather than a death preceded by coma?

A. Well, mostly all of those are preceded by more or less coma, Mr. Strong.

30 *Q.* Wouldn't that amount of blood cause paralysis?

A. Yes; it did eventually too.

Q. So were you informed?

A. Yes.

Q. But we haven't had any evidence of it.

A. The man died evidently of paralysis of the pneumogastric nerve.

Q. Whenever a man dies you call that paralysis?

A. No; not necessarily.

Q. If that bullet had been extracted shortly after it

was fired the man's life would probably have been saved, wouldn't it?

Objected to.

The Court: I will allow it. The effect of it I will have to pass on later, perhaps.

A. Did you want my opinion?

Q. That is what I am asking you for.

A. I think it would.

Mr. Berdine: Repeat the question.

10

(Question and answer repeated.)

A. In my opinion.

Re-direct Examination, by Mr. Berdine.

Q. Doctor, is that the bullet?

A. Yes.

Mr. Berdine: We offer the bullet.

Q. In the next place, if the bullet had not penetrated the brain the man would not have died?

20

A. No, sir.

Q. That is the fact, the bullet was there and caused all this disturbance?

A. No doubt about it in my mind.

State rests.

The Court: I reserved Mr. Strong's motion to strike out testimony.

Mr. Berdine: I have endeavored to support what I submitted and I cannot. We thought it was pertinent to show the ugly feeling toward this man and his presence in this vicinity. You know the hours were from nine to half past twelve or one that night.

30

The Court: I think the testimony of the witness was entirely competent to show the presence of the defendant in the neighborhood, but I do not understand that Mr. Strong objected to that. The objection was to the evidence of the witness as to an assault upon him at what I call the other

shanty. That evidence could only have been admitted to show a motive on the part of the prisoner, and that I understood was the object with which it was introduced. I think the State has failed in that respect, and that the jury must disregard the testimony of the witness sworn this morning whose name I cannot recall—Cansarano, who testified to an assault upon him at the other shanty. The evidence as to the assault upon him is stricken out. The only bearing of his evidence, as I recall it, if it is at all competent, is so far as it may tend to show that the defendant was in the neighborhood.

10

Mr. Strong: It leaves it somewhat in doubt, I must confess, to my mind as to how much of the testimony is in the case.

20

The Court: Well, I think I shall have to say to the jury under the circumstances that all the testimony of Cansarano they are to regard is that which tends to show that he was present at some time that evening in the neighborhood. He did say he saw him there at the door.

Mr. Berdine: Two different hours. At nine o'clock—

Mr. Marsh: No; nine o'clock he said it was a different man.

The Court: That is as far as I can go, Mr. Strong.

30

Mr. Strong: Then I suppose there goes with it the statement which the witness said that the defendant made with reference to Mondanardo and so on.

The Court: That must go out.

Mr. Strong: And I suppose the testimony of Peltier as to the supposed identification of Pasquale the defendant in jail—I do not see that that has any relevancy now.

The Court: I decline to strike out that testimony.

Mr. Strong: I pray an exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Mr. Strong: And I wish to make a motion to strike out the whole of the testimony of Cansarano.

The Court: I deny that motion; take your exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 10

F. J. SWAYZE, J. [L.S.]

DEFENDANT'S TESTIMONY.

Dr. John Warren Rice, sworn.

Direct Examination, by Mr. Strong.

Q. Doctor, you are a physician and surgeon practicing in New Brunswick? 20

A. Yes.

Q. How long have you been in practice here?

A. Thirty-three years.

Q. A graduate of what institution?

A. The College of Physicians and Surgeons in 1874.

Q. That is a New York college, isn't it?

A. Yes.

Q. Doctor, did you hear the testimony of Dr. Suydam, given this afternoon, in this case?

A. I did, sir. 30

Q. Assuming that there had been a bullet wound on the left side of the head of Tenace, two inches above the periphery of the ear, as I understand it, and that the bullet had penetrated the skin at that point and had also in the same line penetrated the skull and was found in the aperture at that point, what would have been the proper treatment—

Mr. Berdine: He does not describe all what Dr. Suydam said.

Mr. Strong: Let's see where it is defective.

The Court: What difference can it make in the result of the case, admitting that the treatment was improper to the extent that you propose to go?

Mr. Strong: I want to go to the extent of showing that an operation which is apparently simple and of no danger would have relieved the situation entirely and the man would have recovered. That is my proposition.

10 The Court: That is your offer?

Mr. Strong: That is my offer.

The Court: What do you say, Mr. Berdine.

Mr. Berdine: I suppose that is all true—is the defendant to escape the consequences of his own act.

The Court: Very well; you object to it?

Mr. Berdine: I object to it.

The Court: I sustain the objection.

20 (Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Q. Suppose, doctor, from such a wound as that there had been a infiltration of blood all over the brain, what would have been the effect upon the sufferer?

Objected to; question allowed.

30 A. Why, there would have been two effects. The immediate effect of the infiltration—if it was sudden it would have been paralysis; the secondary effect would have been an inflammation of the brain and the patient would have died of what we call cerebritis, that is, inflammation of the brain; but the immediate effect of a sudden flow of blood into the brain producing pressure would produce paralysis immediately.

Q. Suppose that that infiltration had proceeded gradually; how would the patient or the sufferer have been affected?

A. He would have had paralysis extending over

probably from one set of muscles to the other, dependent upon what portion of the brain where pressure had taken place.

Q. Suppose that the person injured in the way that I have described had lived for ten or eleven days after the injury and had during the latter portion of the time down to the last day been able to walk about the hospital, and his temperature was normal and his pulse was normal; that on the day of his death, early in the afternoon, symptoms of coma appeared, the first symptom consisting of a chill, I believe and coma gradually increasing in depth, and that he died some six hours later: What would that indicate as to the nature of the injury if any to the artery? **10**

A. Well, it would indicate that the artery had—that complete dissolution or continuity of the artery had not taken place at first but from some reason or other, which might have been pressure or sudden rupture of the artery had taken place and hemorrhage was the result of the sudden coma; otherwise he would have paralysis before; he couldn't walk around the hospital with a clot in his brain; he would have been paralyzed somewhere or other. **20**

Q. Did it or not indicate that there had been any hemorrhage up to the last day?

A. I would indicate that there was not.

Q. Would that fact, that there was no hemorrhage at all the last day, indicate whether or no the artery had been injured by the direct force of the bullet or had been injured by erosion? **30**

A. Erosion—pressure, probably.

Q. What say?

A. Pressure probably.

Q. Would the pressure upon the artery be affected or increased by the man's walking about?

A. No; I don't think that would have much to do with it, sir. The symptoms depend upon the presence of the pressure in the brain, and that pressure is due to hemorrhage. Well, that hemorrhage only took place by rupture of the artery and if it had taken place

at first all those symptoms would have occurred at first; but inasmuch as they were delayed so long it indicates, and the result found by postmortem, this infiltration, indicates that the artery did not give way for several days later—or the vein, whatever it might be.

Q. What say?

A. Either the artery or vein, whatever blood vessel it was.

10 *Q.* Now I will ask you this question: If the bullet under such circumstances had been promptly extracted what would have been the probably result?

Objected to; question excluded.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Cross Examination by *Mr. Berdine.*

20 *Q.* What effect did the bullet have as to the death of the man?

A. Well, evidently the bullet had but one effect. I am not allowed to express my opinion as to why it had?

A. Well, evidently the bullet had but one effect. I am not allowed to express my opinion as to why it had.

Q. I didn't ask you that. What effect did it have?

A. Well, it caused the man's death, I suppose, of course.

30 *Q.* That is all.

Redirect Examination by *Mr. Strong.*

Q. In what way did it cause the man's death, in your judgment?

A. I think he died from inflammation of the brain—secondary inflammation of the brain.

Mr. Berdine. I move to strike it out.

The Court. I think it quite proper.

A. Secondary inflammation of the brain due to the presence of the clot.

Q. And that clot was occasioned in what manner?

A. By rupture of the blood vessel.

Q. And the rupture of the blood vessel was occasioned—

A. At that late day.

A. Yes.

A. By an erosion of the blood vessel probably from pressure especially in accordance with the testimony of the County Physician.

Q. Might that bullet have been extracted? 10

Objected to.

The Court: Well, that is offered for the same purpose you have already indicated?

Mr. Strong: Yes, and I think it is proper as part of the general case to show just what the nature of the injury was, what the possibilities were.

The Court: I will sustain the objection.

Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.) 20

F. J. SWAYZE, J. [L.S.]

Q. Assuming the injury which I have stated to you in the former question, would there be any difficulty in discovering that the skull had been penetrated?

A. No, sir.

Mr. Berdine: Don't be in a hurry to answer.

Q. How could that be discovered? 30

A. Provided the probe struck the bullet.

Q. Well, my question embraces the circumstances which I have detailed in the former question, that the bullet remained in the direct line of the aperture just inside of the skull?

A. Oh, we have those cases.

Q. What?

A. Those cases occur every day in large cities; they find the bullet.

Q. Could the presence of the bullet have been detected by a probe?

A. Easily.

Dr. John L. Suydam, recalled.

Further Cross Examination, by Mr. Strong.

Q. Doctor, I understand you that the bullet you discovered upon the autopsy went directly into or through the skull?

10 A. Yes, sir.

Q. In a direction at right angles with the bone, do you mean?

A. Straight through it.

Q. What?

A. Right straight through it.

Q. I asked you whether it was in a direction at right angles with the bone?

A. Yes.

20 Q. Or whether it was a slant?

A. No, direct, straight through it, at right angles.

Stella Russo, sworn.

Direct Examination, by Mr. Strong.

Q. Do you speak English?

A. Not very much.

Q. You understand what I say to you now, don't you?

30 A. Yes, but not all the words though.

Q. Well, where do you live, Mrs. Russo?

A. I live in Port Reading.

Q. What is your husband's name?

A. Giatano Russo.

Q. Whereabouts in Port Reading do you live? I mean in the DeVita shanties or is it somewhere else?

A. No; I live in the house; I don't live up at the shanty.

Q. How far away is your house from the shanties?

A. Oh, not very much.

Q. Does your husband keep a store?

A. Yes, sir.

Q. What kind of a store is it?

A. Grocery.

Q. Do you know Angelo Cierrelli?

A. Yes, sir.

Q. Is he related to you or to your husband?

A. Related to my husband. He is a cousin.

Q. Do you know the day when this man Tenace was killed; do you remember the day? **10**

A. Yes, sir.

Q. That was Sunday, wasn't it?

A. Yes, Sunday night.

Q. Did you see Cierrelli, Angelo Cierrelli, Monday morning?

A. Yes, I seen him about nine o'clock; he came into my store and he came buy five cent cigar; he just told me he wants five cent cigars and he went into the store, and I went out and I saw Angelo Bartoni's wife—

Q. Speak loud so these gentlemen can hear you. **20**
Speak slowly. Now you saw Cierrelli at your store?

A. Yes, sir.

Q. Just tell what he did?

A. He come buy five cent cigars.

Q. Then what?

A. Then he walked through the store.

Q. Did he take his cigars?

A. No; he just told me, then I seen him walking through the store.

Q. Where did he go through the store? **30**

A. He went back the yard.

Q. Out the back way?

A. Yes, sir.

Q. Then where?

A. Then I went out myself too and I see Angelo Bartoni's wife and called her husband and then Angelo Bartoni turned back and went into his house and he went to get the bat.

Q. You say that Angelo went to get the bat?

A. Yes, Angelo Bartoni.

Q. Bartoni did?

A. Yes, sir.

Q. Where did Cierrelli go?

A. Cierrelli run away because you see he run in the house.

Q. You see what?

A. He see Angelo went into the house and he ran away.

A. Yes, sir.

10 *Q.* In which direction?

A. I guess it was Fourth street, in through Fourth street; I don't know if it was Main street; I guess it is Fourth street.

Q. Was it towards Woodbridge or Cartaret or Perth Amboy, or where?

A. Woodbridge.

Q. Towards Woodbridge?

A. Yes, sir.

Q. Did anybody follow him?

20 *A.* No, sir.

Q. Go after him?

A. Yes, sir; Angelo Bartoni ran after him.

Q. Did he catch him?

A. No.

Q. Did Angelo Bartoni have anything with him when he ran after him?

A. The bat.

Q. Did he have the bat with him when he ran after Cierrelli?

30 *A.* Yes, sir.

Q. Have you seen anything of Cierrelli since that time?

A. No.

Q. Now what sort of looking man was Angelo Cierrelli?

A. He had black hair and dark eyes, black moustache and dark face, and I guess fat face he had.

Q. How was he as to size?

A. He was like size of Pasquale Deliso, same size, but he was fatter.

Mr. Berdine: I object, and ask that it be stricken out.

The Court: I think it is proper; I decline to strike out.

Q. Do you know Pasquale Deliso?

A. I know him.

Q. What do you say as to whether or not there was a likeness between Pasquale Deliso and this man Cierrelli?

10

Objected to.

A. He was like him.

Objection overruled.

Q. When you speak of Angelo Bartoni, you know him, do you?

A. Sure I know him. He near by me.

Q. Is he here in court?

A. Sure.

20

Q. Where is he?

A. Sure, he has red face?

Q. Point him out so that we can tell which one you mean?

A. There he is. (Indicating.)

Q. Stand up, Bartoni. (Bartoni arises.) Is that the man?

A. Yes.

Q. The same man who was a witness here in court to-day?

30

A. Yes.

Q. Before Cierrelli started to run did you hear anybody call out anything?

A. No; I hear only his wife call out.

Q. Whose wife?

A. Angelo Bartoni's wife.

Q. What did you hear her say?

Objected to.

The Court: How can that have a bearing?

Mr. Strong: Only to show that there was an

accusation made which caused Cierrelli to run away; that is the idea.

Mr. Berdine: It has not been brought in the case before.

The Court: I cannot see how a statement of Mrs. Bartoni can be evidence either for or against this prisoner. I will exclude the evidence. Take your exception.

10 Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.

F. J. SWAYZE, J. [L.S.]

Cross Examination, by Mr. Berdine.

Q. Are you married?

A. Yes, sir.

Q. Live with your husband?

A. Sure.

Q. What is your business?

20 A. My business is a grocery store.

Q. How tall a man in feet was Cierrelli?

A. I can't tell.

Q. You can't tell?

A. No.

Q. How much weight was he?

A. Weighed about one hundred and sixty or one hundred and fifty pound. I didn't weigh him myself.

Q. One hundred and fifty or one hundred and sixty. You don't know his height?

30 A. Why, he is pretty high.

Q. Well, how high in feet?

A. I don't know.

Q. How long have you known him?

A. Oh, it ain't very much I know him, about three or four months.

Q. How long have you known Deliso?

A. Eh?

Q. How long have you known Deliso?

A. I know before him Deliso.

Q. What?

A. I know him five or six months—more than that;
about eight months.

Q. What way are you related to Deliso?

A. I don't understand.

Q. Are you a relation of Deliso?

A. No; I guess not.

Q. Your husband? ..

VANN

A. No.

Q. Do you know what I mean by relation? 10

A. Yes.

Q. What?

A. You mean if he is something to me. No; he ain't
no relation to me.

Q. To you?

A. No; nor to my husband.

Q. To your brother?

A. No, sir.

Q. Or your husband?

A. No, sir. 20

Q. What province did you come from in Italy?

Objected to. Question allowed.

A. I don't know. I came live here.

Q. How old are you now?

A. Eighteen.

Q. What time was this?

A. When Antonio Bartoni ran after Cierrelli?

Q. Yes.

A. About nine o'clock. 30

Q. What day?

A. On Monday morning.

Q. You are sure that you know Cierrelli?

A. Sure I do.

Q. Seen him since?

A. Sure?

Q. Eh?

A. Yes, I know him.

Q. When did you see him last?

A. I seen him once and then I didn't see no more.

Q. Where has he gone?

A. I don't know.

Q. Have you heard where he is?

A. No, sir.

Q. Isn't Cierrelli a big, heavy man with a broad face, a fat face?

A. He had a fat face. I cannot tell very good.

Q. Eh?

A. I can't tell very good. He was not very much
10 fat face. He ain't too fat face.

Q. Isn't it fatter than Deliso?

A. Yes, a little bit.

Q. Is he bigger than Deliso?

A. He is a little stouter than Deliso.

Q. Isn't he much bigger?

A. No.

Q. Isn't he taller?

A. I guess he is a little shorter than Deliso.

Q. A little shorter?

20 A. Yes.

Q. And stouter?

A. Yes.

Q. And fatter?

A. Yes.

Q. Didn't you come from the same village in Italy that Deliso came from?

A. They say so, but I don't know.

Q. You do not know yourself?

A. No, sir.

30 *Re-direct Examination, by Mr. Strong.*

Q. How old were you when you came from Italy?

A. I think about six or seven years.

Q. About seven years old?

A. No; about five or six.

Q. Five or six years ago?

A. Yes. It is twelve years I am in America now.

Q. You mean you were five or six years old when you came?

A. When I came here.

Joseph Barcelona, sworn and examined through Interpreter.

Re-direct Examination, by *Mr. Berdine*.

Mr. Strong: (Interrupting.) We have an Interpreter whom we have more confidence in than in the Interpreter on the part of the State. I submit that we should be allowed to use our interpreter rather than the one that the State furnishes.

The Court: I have already selected this gentleman as the official interpreter, and the criticisms that have been made have not shaken my confidence in him. I think I shall continue him. **10**

Mr. Strong: My information is that this interpreter has been aiding the State ever since the opening of the case here.

The Prosecutor: That is not so.

Mr. Marsh: The Prosecutor doesn't know about it.

The Prosecutor: The Prosecutor is running the State's case. **20**

The Court: I will continue this interpreter. Now if at any time he misinterprets, call my attention to it and I will see what we can do.

Mr. Strong: There have been occasions when we thought so, but you know how difficult it is to interpret.

The Court: It is extremely difficult, of course.

By Mr. Strong.

30

Q. Where do you live, Mr. Barcelona?

A. At a farm.

Q. Whereabouts is the farm?

A. Woodbridge.

Q. Is it near the village of Woodbridge?

A. He says it is up from Woodbridge.

Q. In what direction?

A. It is first I lived in Woodbridge; I had a small store.

Q. When was that?

A. In August—in September.

Q. This year?

A. Yes. He says I sold it fifteen or twenty days ago.

Q. Fifteen or twenty days now?

A. Yes, sir.

Q. Do you know the day when it is said that a man was killed at De Vita's shanties? Do you remember what day that was?

10 *A.* He says the date I don't remember.

Q. Have you any way of fixing that day?

(Interruption.)

Q. Do you know whether that killing was on St. Pelegrino's day?

A. He says he don't know Pelegrino. He says, only one morning I seen somebody come.

Q. When was it that you saw somebody come, what morning was it?

20 *A.* He says, I don't remember if it was Monday or if it was Tuesday; I was fixing the tent.

Q. Do you know what day of the month it was?

A. He says, I don't know the particular day.

Q. Do you know whether that was the day after the man was killed at DeVita's?

Mr. Berdine. I object. He has not shown that he knows a man was killed.

30 The Court: I suppose perhaps that may be a little misleading. The man was shot on Sunday and did not die for ten days.

Mr. Strong: I mean the day of the shooting.

Q. Do you know whether that was the day after the man was shot at DeVita's?

A. I don't remember.

Q. Well, you say a man came to your place?

A. Yes.

Q. What time in the day was that?

A. It was in the morning.

Q. Can you tell about what time of the morning?

A. It may have been seven, it may have been eight,
it may have been half past eight.

Q. Where were you then?

A. I was helping another man to fix a tent.

Q. Who was the other man?

A. An American.

Q. What is his name?

A. I don't know.

Q. Do you know where he lived?

A. No.

10

Q. A man who came to that place, what did he do?

A. He says, I seen him coming along slow and he
came to ask me and asked me if I was an Italian.

Objected to.

Q. What kind of looking man was he?

A. He says it was a man a little bit bigger than me
and a little bit fatter.

Q. Was he an Italian?

A. Yes.

20

Q. Did you know him?

A. No.

Q. Have you ever seen him before?

A. No.

Q. Have you ever seen him since?

A. I have seen him several times.

Q. Before or since that time? Before he saw him
then or afterwards?

A. I seen him afterwards; the man is in here now.

Q. That is all. You don't know what day that was? 30

A. I don't remember.

Cross Examination, by the Prosecutor.

Q. Where is that man?

A. He means some man back there.

Q. Go point him out. Go put you hand on him.

(Witness indicates Mr. Bartoni.)

A. He says, after Bartoni came, why, the boy came.

Re-direct Examination, by Mr. Strong.

Q. That man came there. Did he have anybody with him?

A. He came alone.

A. No, sir.

Q. Did you see that boy?

10

Objected to; question allowed.

A. Yes.

Q. Where did you see him?

A. He says, after Bartoni came, why, the boy same.

Q. Afterwards?

A. Yes, sir.

Q. How long afterwards?

A. About ten or fifteen minutes or a half hour.

Q. What were they doing there, Bartoni and the boy?

20

A. He says he boy and two others.

Q. Do you know who the others were?

A. He says, I never saw them.

Q. Never saw them before you mean?

A. No.

Q. What did they want? What did they do?

Mr. Berdine: I object.

The Court: Was the boy's attention called to this man's name?

30

Mr. Strong: Yes. The man was produced here and stood up.

The Court: Yes; I think you may contradict the boy if it is on a material point.

Mr. Berdine: It is not; it is only a collateral point at most. The only thing I can recall was some effort was made to show by the boy whether he had asked for work.

The Court: The question of identity is not a collateral point. I think I will permit it.

(Question repeated.)

Q. What did the boy say or what did the man say to you in the presence of the boy?

Mr. Berdine: I object. The boy's attention was not directed to anything of the sort as to what the man said to him.

The Court: I do not see how what the man said can be material. What the boy said may be material as the boy has identified the prisoner.

Q. What did the boy say, if anything, to you? **10**

A. The boy said nothing. He said, three of them came together.

Q. Did you hear the boy say anything at all?

A. No, sir.

Q. Either to you or the others?

A. No, sir. He says, I didn't pay much attention, as I was helping to fix a tent.

Q. Do you know this boy?

A. He says, I know him that I saw him there then.

Q. Have you seen him any other time? **20**

A. No.

Adjourned till 7.15 P. M.

Evening session, 7.15 P. M.

Sylvester Dalesandro (or Neapolitan) sworn and examined through interpreter. **30**

Direct Examination, by Mr. Strong.

Q. Where do you live?

A. Port Reading.

Q. In DeVita's shanty?

A. No.

Q. Whereabouts?

A. On the road of Woodbridge, but it is in Port Reading.

Q. Do you know Angelo Bartoni?

A. Yes.

Q. Is he here in court?

A. Yes.

Q. Do you remember Monday the day after Tenace was shot?

A. Yes, I remember; the day after St. Pelegrino's.

Q. What is St. Pelegrino's Day?

A. On a Sunday.

10 *Q.* On what day of the month?

A. I don't remember right; I think it was on the 25th.

Q. On Monday, the next day after St. Pelegrino's day, did you see Angelo Bartoni?

A. Yes, sir.

Q. Near Giatano Russo's house, was it?

A. Yes, sir.

Q. What time of day was it?

A. It was about eleven or half past eleven.

Q. Who was there?

20 *A.* Angelo Bartoni, Gaetano Russo, me; I don't remember any other was there, but us three was there.

Q. Did you hear Bartoni say then: "I was a few minutes behind. If I had caught Angelo Cierrelli I would have pierced his heart with a stilleto and cut him in pieces?"

Objected to.

The Court: How is that material?

Mr. Strong: It is contradiction of Bartoni, who says that he did not know Cierrelli.

30

The Court: I do not think that evidence can be made revelant here because it is to contradict a witness. It must be otherwise material to the case. I cannot see how Bartoni's statement can be in any way material.

Mr. Strong: The testimony is that Bartoni pursued this man Cierrelli, and denies now that he did so, denies the whole business.

The Court: That may be so that Bartoni is mistaken or even that he is not a credible witness,

I cannot see how Bartoni's statement can be a material issue in this case. We are not trying Bartoni. I exclude it.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

No cross-examination.

10

Tony Masena, sworn.

Direct Examination, by Mr. Strong.

Q. Where do you live?

A. Port Reading.

Q. Port Reading in this county? How long have you lived there?

A. The last fourteen years.

20

Q. Do you know this boy Domeinio Tenace?

A. Yes.

Q. On the morning after the shooting of his father were you at Bartoni's house?

A. Yes.

Q. What time of day was it?

A. I think about half past three, or three or half past three in the afternoon.

Q. Was Dr. Hoagland there at that time?

A. Yes.

30

Q. What was he doing?

A. Why, I think he was examining this Tenace.

Q. The man you mean who had been shot?

A. Yes.

Q. Was young Tenace, that is, Domeinio, was he there?

A. He was there, yes.

Q. Did you ask who is the man—

The Court: You better ask him if he asked the boy.

Q. Did you at that time ask the boy who was the man that killed or shot his father?

A. Yes.

Q. And did he say the fellow played Batemura with you last Sunday?

A. Yes.

10 *Q.* Domeinio said that?

A. Domeinio.

Q. Now do you know who he referred to as—who had played Batemura with you last Sunday before that?

A. We were three fellows playing Batemura—Angelo Cierrelli and Pequedro Pasquale Deliso and myself.

Q. Is that Pasquale Deliso the same man as the defendant in here?

A. No; not him; another fellow been in court this morning.

20 *Q.* Another man, same name?

A. Yes, sir.

Q. Did you give him another name?

A. Pequedro.

Q. That is a different man entirely from this defendant?

A. Yes, sir.

Q. Where had you played Batemura with you that Sunday before?

30 *A.* In front of our commissary store there at the camps.

Q. Was this boy Domeinio there at the time you were playing that game?

A. Yes, sir.

Q. What is the game of Batemura?

A. Well, it is an Italian game; we throw, pitch penny to the wall and we see who can come nearest one each other and get so many points.

Q. What further conversation did you have with the boy at that time?

Mr. Berdine: I object unless it is connected with the case.

Mr. Strong: It is connected with the case.

Q. I mean as to the person he was referring to?

The Court: Is it admissible for any purpose except to contradict the boy, and if so—

Mr. Strong: It tends to show that if the boy said the fellow who did was one who was playing Batemura, it tends to identify which of the three the boy meant. 10

The Court: Yes, this far is of course competent evidence, but now you are asking what further the boy said.

Mr. Strong: By way of indicating which of the three who had been playing Batemura was the one that the boy indicated.

The Court: I will allow you to put that direct question as to whether the boy indicated any one of the three as being the man. 20

Q. Did the boy say anything further which showed which one of the three who had been playing Batemura with you was the one that the boy meant?

A. Yes. He says, "Why, the man who was right alongside to you." "Well," I says, which man you mean? Well, I says, "You mean Pequedro." He says, "There is the lad." I says, "Man, you are mistaken, because he just came from the hospital and this Pequedro slept in the hospital last night." Then I called him in, I called Pequedro in and I says, "This is the man," in the presence of his father, and his father said, "No; that is the man that tall fellow right alongside of him." That means Cierrelli. 30

Q. What sort of looking man is Cierrelli?

A. A slim fellow, just a little taller than I am.

Q. Describe him?

A. Dark complexion, a little black moustache, dark eyes.

Q. Does he look anything like the defendant Pasquale here?

A. Pretty near with the exception of the moustache, a little heavier.

Q. How is he as to size and built as compared with Pasquale?

A. Pretty near. I think a little shorter, just a little bit shorter.

Q. What is your business?

10 A. General merchant.

Q. Have you a store there?

A. Yes, sir.

Q. Have you any other business than that?

A. Yes, in Pennsylvania. Cheese factory.

Q. Have you anything to do with the men who are employed down there and that live in the shanties?

A. Yes. we supply all laborers to the Philadelphia & Reading coal docks.

20 Q. You say we supply all the laborers. Who do you mean by we?

A. DeVita & Company.

Q. Are you one of that company?

A. One of the members, yes.

Q. Is it a corporation or firm?

A. Corporation.

Q. Did you say that the other Pasquale Deliso is here in court?

A. He was a little while ago yes. I saw him.

Q. Do you see him now? Is he here?

30 A. No; he is not here now.

Q. Are you connected in any way or related to the defendant?

A. No, sir.

Cross Examination, by Mr. Berdine.

Q. Who is your partner or other member of the corporation, is he here?

A. Joseph DeVita.

Q. Where is he?

A. Right there.

(DeVita asked to arise.)

Q. Your stores and shanties are the ones referred to on that map?

A. Yes, sir.

Q. And in these photographs?

A. This one. I couldn't tell this. Yes, this is the stable. I remember this. This is our shanties.

Q. I only want to know about it. What province in Italy were you from?

10

A. Salerno.

Q. Anywhere near where this one came from, Deliso?

A. No.

Q. Have you any interest in this case at all, or any member of your corporation?

A. No, sir.

Q. Are you not aware of it?

A. No, sir.

Q. Eh?

20

A. No, sir.

Q. Have you talked with Joseph DeVita?

Q. What do you mean?

Q. About this case?

A. No; I didn't.

Q. Talked to any one about it?

A. No.

Q. When did you first mention these facts that you have narrated here?

A. Well, I know all about case.

30

Q. Haven't you assisted in procuring counsel to defend this man?

A. No, sir.

Q. Are you not aware that your half brother has, Joseph DeVita?

A. I don't know anything about him.

Q. When did you first tell this story to anybody?

A. This morning.

Q. This is the first time?

A. This is the first time.

Q. Who was present at that game you speak of?

A. Well, as far as I know was a lot of fellows there, you know.

Q. What lot of fellows?

A. A lot of people come around, but I remember this boy and his father and I think a couple of lady were there to. I think the women there, lived in the camps.

Q. Plenty of people beside that. You cannot name
10 any one else?

A. No.

Q. You are not sure of them?

A. Yes, I can name different men. Our baker was there; our storekeeper was there.

Q. Somebody connected with your firm?

A. No.

Q. Can't remember any one else?

A. No; those were.

Q. This was Sunday previous when this happened.

20 What else did you do that day?

A. Well, do you mean twelve o'clock?

Q. At any time.

A. Well, I kept store until twelve and then we shut the store and we have dinner, then we opened the store again.

Q. On Sunday?

A. On Sunday, yes.

Q. Go ahead.

A. That is all. Then I went to bed, of course, at
30 night.

Q. What else did you do that day beside keeping a store and then playing this game?

A. That is all I did.

Q. What did you do the preceding Sunday?

A. I don't remember if I was down to Port Reading or was down to Pennsylvania, I don't remember exactly.

Q. What did you do the Sunday afterwards?

A. The Sunday after?

Q. Yes; the Sunday after this game.

A. Well, I was right in the camp; we was dancing.

Q. What?

A. We were dancing.

Q. Where?

A. Over to the camps.

Q. Who with?

A. All Italians.

Q. What did you do the Sunday after that?

A. I think I was in Pennsylvania.

Q. You don't know to a certainty? **10**

A. I am not sure, but I remember I was there.

Q. What day of the month was the Sunday that you speak of that you were playing this game of flipping a coin against the wall?

Q. I couldn't remember the day, but I remember it was on Sunday.

Q. You only know it was Sunday?

A. The week before this happened.

Q. One week or more?

A. No; I think just a week? **20**

A. I remember this: I took a Woodbridge train at 10.03 from Elizabeth, I came from Pennsylvania, and I went up to the camp; that was I remember on Sunday.

Q. Well, did you ever have such a trip as that before on Sunday?

A. Yes, because no train was running to Port Reading at that time to make connection to Philadelphia train.

Q. Have you taken a similar trip on Sunday to the one that you told of now? **30**

A. I often do.

Q. You simply remember the incident of that particular day, is that all?

A. That particular day?

Q. Yes, for the purposes of this case?

A. No, no, not that.

Q. You can't tell me anything else that took place on any other Sunday?

Mr. Strong: He has told you several things.

Q. If so, tell it?

A. I said we took train, I remember well was on Sunday when I played this game because I took the 10.03 train from Elizabeth to Woodbridge, and then I walked over to the camp and I met a lot of fellows, you know, teasing me over game. We played that.

Q. How long did you play it?

10 *A.* Ten or fifteen minutes—five or ten minutes, I can't remember.

Q. How big a crowd was in it?

Q. Well, you know what Italians are, anybody plays or do anything—

Q. Tell the jury? They don't hear.

A. Ten or fifteen or twenty minutes, I can't say.

Q. And you could only remember your own baker and the people in your employ and this man and his father?

20 *A.* Well, lot of fellows that were there. I can remember if I seen them again they were in the game.

Q. How long have you known the defendant Deliso?

A. Why, I used to know him for the last—he was in this country eight years ago working, stayed in our camp for eighteen or twenty months, and then went to Italy again and then came back.

Q. How long has he been back the last time?

A. Oh, two or three months.

Q. How long have you known Tenace?

30 *A.* That is what I am talking about.

Q. I am talking about Deliso? How long have you known Deliso?

A. Oh, Deliso has been Port Reading about, if I don't mistake, six years ago and then went home, went to old country and came back again.

Q. When did he come back?

A. Oh, about four or five months or six, I don't remember exactly, I am not sure.

Q. Was this man's name Deliso mentioned by you to this boy when you were talking to him?

A. No, sir.

Q. His name was not mentioned?

A. No, sir; not this man.

Q. By any one?

A. Not this man.

Q. The other Deliso was his name—

A. Pequedro was mentioned, yes.

Q. This man was not mentioned by you or him?

A. No, sir.

Q. Have you ever mentioned his name to him? **10**

A. No, sir.

Q. Where was the defendant Deliso on the Sunday they were playing this game? You don't know if you saw him at all?

A. I couldn't tell you that.

Q. Was he in the crowd playing?

A. I don't think he was; I don't know.

Q. Was he in the crowd looking on?

A. I couldn't say.

Q. Are you sure he was not there? **20**

A. He wasn't in the game, no.

Q. Do you say that he was not in the crowd?

A. He was not—no, I couldn't say. I couldn't say he was or was not.

Q. You don't know whether he was or was not?

A. No; I don't know; I couldn't say.

Q. It was only the fact that you did not see him?

A. That is all.

Q. Did you see Deliso the Sunday after this morning—the defendant? **30**

A. No; I didn't see him.

Q. Did you see him the Sunday on which the affray took place, the shooting?

A. No, I didn't see him.

Q. Was there another trouble at your place that day?

Objected to.

The Court: What is the object of that?

Mr. Berdine: To see what he remembers of the occurrence there.

Mr. Strong: It is not cross-examination in any way.

The Court: It is permissible to test his recollection. I think I will allow it.

A. Not that day. There was in the evening.

Q. Well, in the evening?

10 A. Yes.

Q. What was it?

Objected to; question excluded.

Luigi Manuce, sworn and examined through interpreter.

Direct Examination, by Mr. Strong.

Q. Where do you live?

20 A. Port Reading.

Q. In the DeVita's shanties?

A. No; down in the street.

Q. Did you know of the shooting of Tenace?

A. No.

Q. Did you hear of it at the time?

A. No, he says.

Q. Do you remember St. Pelegrino's day?

A. Yes.

30 Q. Now the Thursday after St. Pelegrino's day were you at the Alexian Brothers Hospital in Elizabeth?

Mr. Berdine: I object. We have established when Pelegrino's day is.

Mr. Strong: Yes, the last witness said he thought it was the 25th of August.

A. Yes, sir.

Q. Was Raphael Deliso there too?

A. Yes.

Q. Was young Domeinio Tenace the boy there too?

Mr. Berdine: I object. He hasn't shown he knows him.

The Court: Oh, they met here face to face yesterday, Mr. Prosecutor.

A. Yes.

Q. Do you know Domeinio Tenace?

A. Yes.

Q. Did Raphael Deliso on that day at the hospital ask the boy Domeinio Tenace in your presence who had shot his father? 10

Mr. Berdine: Was that brought out?

The Court: Yes, the boy was questioned about that.

(Question repeated.)

A. Yes, sir.

Q. And did the boy Domeinio Tenace answer that he didn't know who shot his father because he, the boy, ran away to Bartoni's house just as soon as the window was broken and the first shots were fired and that he did not recognize any one at all? 20

A. Yes; didn't know nobody at all.

Q. Did Joseph Tenace, the brother of the man who was shot, come in the hospital while you were there that day?

A. Yes.

Q. Did Deliso ask him, that is, ask the brother, in your presence, saying, "Don't you know who shot your brother," that is, who shot the man who died?

A. No. Didn't ask him. The brother says first they broke my head and they broke— 30

Objected to.

Q. The question now is whether Raphael Deliso asked Joseph Tenace if he knew who shot his brother?

A. Yes, and he says that he didn't know nobody, and that he had run away.

Q. Did Joseph Tenace say to Raphael Deliso in an-

swer to that question: "No; we are only two months in this place how could we know?"

A. Yes.

Q. Did Joseph Tenace say further in answer to that question, it was so dark in the room, they put out the light, they shot my brother, how could we tell who did it?"

A. Yes, sir.

10 Q. Now were you there at the hospital also on Tuesday after St. Pelegrino's day?

A. Yes.

Q. Was Raphael Deliso there too?

A. Yes.

Q. Was the boy there?

A. Yes.

Q. Domeinio Tenace?

A. Yes.

Q. Was Bartoni there, Angelo Bartoni?

A. Yes.

20 Q. Did you hear Bartoni say to the young boy this: "The first man that is caught he has got to get the full dose of it. You will have to say that he is the one that shot your father. We will get the right man then just as soon as the first man is caught?" Did you hear Baroni say that to the boy?

Mr. Berdine: I object to that as not contradiction.

30 The Court: I cannot see how that is competent, Mr. Strong.

Mr. Strong: It is likely any other declaration that is made in the presence of a person who would be affected by it. Here is a boy eighteen years old, and here is an older man saying to him, you have got to say that the first man caught did this and then we will catch somebody else. Now if the boy had protested that would have been something perhaps, but that said to the boy and without his protest and with his acquiescence is something to show a concoction of this tale.

The Court: No doubt you had a right to ask it on cross examination, but I do not think you have a right to put in this evidence now. I shall exclude it—Excuse me.

Mr. Strong: I won't argue further if you have excluded it.

The Court: I want to hear anything you have to say.

Mr. Strong: I was only going to say that it seems to me we must have the right to show a conversation between one of the persons who is now making this charge, one who makes the identification, a conversation between that person and another person in which there was a setting up or a concoction and conspiracy to charge this man with the crime. 10

If we could go to that extent your Honor would surely be—

The Court: Certainly, if you say you propose to show that the boy assented to that. 20

Mr. Strong: Only that the boy heard it and said nothing to the contrary. Of course, I do not think we can make this so strong as if he had stated, "Yes, that is what we will do." but that statement was made to him and he did not repudiate it. That acquiescence I think we are entitled to have go to the jury.

The Court: Well, I do not think that the rule as to admissions to which you appeal is applicable. Of course, if you show that the boy assented to that and entered into that plan, why, that you may show; but I do not think that you may show that somebody said to the boy "you tell such and such a story," and the boy simply said nothing. An honest man would say nothing, neither assent or dissent. 30

Mr. Strong: I think the honest man would repudiate it with indignation.

The Court: He might turn on his heel and walk off. I must exclude it.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Q. Did you know Angelo Cierrelli?

A. Yes.

Q. Was he one of the men that was living at De Vita's shanty?

A. Yes.

10

Q. Is he there now? Have you seen him lately?

(Objected to.)

The Court: I think that may be material. You may argue that they have not produced Angelo Cierrelli, or whatever his name is; they have a right to show that they cannot do it.

A. No; I didn't see him.

Q. How long since you have seen him, do you know?

A. He says, before these fights. Before the fights.

20

Q. Have you seen him since Tenace was shot?

A. No.

Q. Do you know Angelo Sacco?

A. Yes.

Q. Was he one of the men living in the shanties?

A. Yes, sir.

Q. Do you know Guiseppi Barretti?

A. Yes, sir.

Q. Did he live down there?

A. Yes.

30

Q. Have you seen either of these men, Angelo Sacco or Guiseppi Barretti since the shooting of Tenace?

A. No.

Q. What sort of a looking man is Angelo Cierrelli?

A. He says, a man of good size. He says stout man, good sized man, a good present man.

Q. He said a medium sized man?

The Interpreter: Robusto means a very stout man. A man with a busto.

Q. What kind of a face had he?

A. A medium face.

Q. Did he have dark hair or hair like yours, light?

(Objected to as leading.)

The Court: Ask him what he had, what sort of face he had.

A. He said he had a face like Pasquale Deliso.

Q. Did he have any hair on his face?

A. He had a moustache.

10

Q. What color?

A. He says it was a little bit lighter than Deliso's.

Q. How was he as compared with the defendant Deliso as to weight, or build?

A. He says, he was something like Deliso, but he was a little bit shorter.

Cross Examination, by Mr. Berdine.

Q. What province are you from?

A. Province of Alena.

20

Q. Do you know what province Deliso came from?

A. Province Alena.

Q. Same province?

A. Same Province.

Q. Are you any relation to Deliso?

A. No.

Q. How long have you known Deliso?

A. He says, since I was a boy I know Deliso.

Q. When did you go to the hospital at Elizabeth?

A. On Monday onè time.

30

Q. What other time?

A. Two days after.

Q. What caused you to go to the hospital?

A. He says, I would go there to see him.

Q. Was he there?

A. Yes.

Q. What was he doing there?

A. He says, he was sick; that he got licked.

Q. Who licked him?

Objected to; question excluded.)

Q. Where were you when these questions were asked by Raphael Deliso?

A. I was in the room where Raphael Delisa was.

Q. Who else was in the room?

A. Me, Raphael Deliso, Angelo Bartoni and his nephew, and that is all.

10 *Q.* What relation is Raphael Deliso to the defendant Pasquale Deliso here?

A. Cousin.

Q. When did you first tell this statement that you have made upon the witness stand?

A. He says it was two days after St. Pelegrino.

Q. To whom did you tell it?

Mr. Strong: I think it is doubtful whether the witness means to say that he told that first or that is the time when he heard this.

20 *Q.* When did you first tell your story?

A. When I was with Raphael.

Q. Where?

A. In the hospital.

Q. Who did you tell it to?

A. To Raphael Deliso.

Q. When?

A. When I went to see him.

30 *Q.* I am speaking of the statements he made upon the witness stand in response to Mr. Strong's questions as to what he heard Domeinio Deliso say.

A. Yes.

Q. When did you tell the story to any one that you have sworn to about statements that you say Raphael Deliso made to the boy Domeinio Tenace and Domeinio Tenace's answer?

Mr. Strong: Raphael did not make the statements to the boy. He asked him questions.

Q. Questions and answers. When did you first tell the statement that you made upon the stand here re-

specting the question of Raphael Deliso and the answers of Domeinio Tenace?

A. I don't remember the day I told him.

Q. To whom did you first tell them?

A. To Raphael Deliso.

Q. Who asked the first question at the hospital when you were there at the time you speak of?

Q. What did he say?

A. He says for two or three minutes I didn't happen to get to the quarrels—

10

Mr. Strong: Who says this?

A. Angelo Bartoni.

Mr. Strong: I don't think this is at all relevant.

The Court: It is cross-examination.

Mr. Berdine: This is only because the witness does not seemingly understand me.

Mr. Strong: I don't think he is talking about what the prosecutor wants at all.

20

The Court: I shall have to let that be cleared up by your re-direct examination.

Q. What quarrels do you have reference to?

Mr. Strong: I don't understand there is any quarrel.

The Court: I think he has said something about Bartoni referring to quarrels. It doesn't seem to me that it is an unfair way to put the question.

(Question repeated.)

30

A. He says, the ones that Angelo Bartoni said, they is the quarrels I am talking about.

Q. What quarrels were they?

A. He says, after two or three minutes, he says, that I find myself in the quarrels. He says, he had heard that they broke the windows and his nephew had run away.

Q. Where was this quarrel that you speak of, in the hospital?

A. Up in the shanties.

Q. Who spoke first in the hospital on the Tuesday following the Monday that he called there?

A. Angelo Bartoni.

Q. At the hospital?

A. Yes.

Q. What did he say?

A. He says that two or three minutes I didn't find myself at the quarrels.

Q. What quarrels?

10 *A.* What they done up in the shanties.

Q. When was he at the quarrels at the shanty?

A. He says when the quarrels was there after nine o'clock, he says, his nephew had heard the windows being broke, he ran out to call his uncle.

Q. Who did?

A. The nephew, the little boy.

Q. Were you at the quarrels up at the shanty?

(Objected to; question overruled.)

20 *Q.* Who spoke first at the hospital on the first Tuesday that you were there?

A. Angelo Bartoni.

Q. What did he say?

A. He says for two or three minutes I didn't find myself up there at the quarrels.

Q. Up where?

A. Up to the shanties.

30 Mr. Berdine: Can the Court tell me how I can get away from the shanties without going into them?

The Court: There is no question for me to rule upon. I do not know that I am called upon to give advice.

Q. Were you at the quarrels at the shanty?

(Objected to.)

The Court: I ruled upon that. I adhere to my ruling. I exclude it as not cross-examination.

Mr. Berdine: I want to get where the witness is at.

The Court: I am afraid you aren't on the right road.

Q. When you were at the hospital at Elizabeth where you said you met Raphael Deliso—do you remember that?

A. Yes.

Q. On Tuesday?

10

A. Yes.

Q. Who spoke first there?

Mr. Strong: He answered that repeatedly.

A. Angelo Bartoni.

Q. What did he say?

A. For two or three minutes I didn't find myself up at the quarrels up at the shanty.

Q. What else was said?

A. He says, I went to see and I didn't find my brother in law. He says, I found him in front of my door. 20

Q. I want to know the conversation that took place at the Elizabeth Hospital when he was there visiting Raphael Deliso?

Mr. Strong: That is what the boy is telling you.

The Court: We have had it several times.

Q. What next was said after that?

A. Angelo Bartoni see Angelo Cierrelli and he chase him with a dagger. He say if I would have caught him I was going to pierce his heart and cut him up in pieces. 30

Q. Where was that said?

A. At the hospital; Angelo Bartoni said it in the hospital.

Q. To whom did he say that?

A. In my presence and in the presence of Raphael Deliso.

Q. What did Raphael Deliso say?

A. He asked the nephew, the little boy, if he knew anybody and the nephew says no, I don't know nobody.

Q. Tell me the exact language that was used?

A. That who used?

Q. Either Raphael Deliso or any one else that spoke?

A. Raphael Deliso says do you know anybody and the nephew, the little boy, he says he don't know nobody.

10 *Q.* That is all the language used?

Mr. Strong: Wait.

A. He said when the window was broke I ran out.

Q. Tell me the precise language used?

A. I didn't say anything else.

Q. Is that all the language, all the questions and answers used in the hospital?

A. He says a couple of days after Angelo Bartoni came to the hospital again and told Raphael Deliso that they had caught your cousin in New York.

20 Mr. Berdine: Well, I don't want that, for the reason that that don't appear on the direct examination. I ask to exclude it.

The Court: You asked the question and I think I shall have to let the answer stand.

Mr. Strong: Did he finish the answer?

The Interpreter: He says they had caught his cousin in New York.

Mr. Marsh: Ask him if he finished his answer.

30 Mr. Berdine: You have no business to do that.

(Interpreter puts question.)

A. He says, when Angelo Bartoni came, he says, they have caught your cousin in New York. He says, poor sucker, he says, it wasn't him but he will have to pay the penalty.

Q. Did he say cousin?

A. Cousin, yes. He says that Pasquale Deliso was never mentioned. He says Angelo Cierrelli's name was mentioned, Joseph Barrenti and Antonio Sacco.

Q. Pasquale Deliso's name was never mentioned in the talk at all in the hospital; is that so?

A. No.

Q. When did you tell this story to any one outside of the hospital first?

A. He says I didn't say it nowhere only said it in the hospital with Raphael Deliso.

Q. Well, has he said it to any one since he was in the hospital?

A. No. 10

Q. Do you know Joseph DeVita?

A. Yes.

Q. Have you talked with him about it?

A. No; he says I ain't be in the shanties, be in the board.

Q. Do you know Tony Masena?

A. Yes.

Q. Have you talked with him about it?

A. No.

Q. Have you told it to anybody? 20

A. Nobody.

Q. Hasn't Cierrelli, the one that you spoke of, a large fat face?

A. No.

Q. Larger face or smaller than his (indicating defendant).

A. Just like Pasquale Deliso.

Q. How about his hair?

A. Says the hair I didn't see; he had his hat on.

Q. How long did you know him? 30

A. About two or three months.

Q. Ever seen him with his hat off?

A. No.

Re-direct Examination, by Mr. Strong.

Q. When you said that Guiseppi Barretti, and Angelo Sacco and Angelo Cierrelli—Antonio Sacco, whichever it was, and Angelo Cierrelli, who mentioned those names?

A. Angelo Bartoni.

Q. And the nephew said it too?

A. The nephew, Domeinio Tenace. He says Domeinio Tenace says, "They broke my head and they shot, my father, and I ran away and I didn't know nobody."

Q. When you said that Pasquale's name was not mentioned at all—

(Objected to.)

10 Q. — did you mean that it was not mentioned by anybody in that conversation?

A. Yes, sir.

Q. Was anything said about Pasquale Deliso having been arrested?

(Objected to; question allowed.)

A. Angelo Bartoni said it at the hospital.

Q. What did he say about it?

(Objected to.)

20 The Court: You may ask him if he means Pasquale's name was not mentioned at all or only was not mentioned in connection with this trouble. You may put that question.

Q. Did you mean that Pasquale Deliso's name was not mentioned at all or only that his name was not mentioned in connection with the shooting of Tenace?

A. No; he means his name was not mentioned there.

Q. About the shooting?

A. About the shooting.

30 *Re-cross Examination, by Mr. Berdine.*

Q. How many times were you at the hospital?

A. Ten or twelve times.

Q. When was this conversation that you last spoke of?

A. Three or four days after.

Q. What day was it?

A. I don't remember the day it was.

Q. What day of the week?

A. I don't remember.

Q. You say you were there Tuesday right after the shooting?

A. Yes; Tuesday I was there.

Q. That is after the Italian holiday mentioned?

A. Yes.

Q. Well, was it on that Tuesday?

A. Yes.

Q. The day that Bartoni said they caught Deliso.

A. No.

Q. What day was it that he said that?

10

A. Two days after that Tuesday.

Q. Was it on Thursday?

A. Yes.

Q. What time of day was it?

A. About three o'clock.

Q. When, in the afternoon?

A. In the afternoon about three o'clock.

Q. Thursday following the 25th at three o'clock in the afternoon?

A. At three o'clock in the afternoon.

20

Raphael Deliso, sworn and examined through interpreter.

Direct Examination, by *Mr. Strong*.

Q. Where do you live?

A. Port Reading.

Q. Do you talk English?

A. Not much.

30

The Court: Don't you talk English at all?

Mr. Berdine: We have had him on the stand and he talks English.

The Interpreter: He talks pretty good English.

The Witness: I understand everything.

Q. Whereabouts do you live?

A. Port Reading.

Q. Are you related to Pasquale Deliso the defendant here?

A. What say?

Q. Are you anyway related to Pasquale Deliso?

The Court: Are you anything to Pasquale Deliso?

Mr. Strong: Is he any blood of yours, related to you?

Witness: I don't understand.

Q. Cousin?

10 *A.* He is my cousin, yes.

Q. On the Thursday after St. Pelegrino's day this year were you at the hospital in Elizabeth?

A. Yes, sir.

Q. When is St. Pelegrino's day, what day is it?

A. The 25th of August.

Q. Now the week following that Thursday you say you were in the hospital, were you, at Elizabeth?

A. Yes, sir.

20 *Q.* Was Luigi Manuci, the last witness, at the hospital to see you?

A. Yes.

Q. On that Thursday?

A. Yes.

Q. Do you know this boy Domeinio Tenace?

A. Yes.

Q. Was he there that Thursday at the hospital?

A. Yes.

30 *Q.* Did you know at that time at the hospital ask the boy Domeinio who had shot his father?

A. Yes.

Q. And did the boy answer you that he didn't know because he, the boy, ran away to Bartoni's house just as soon as the window was broken and that he did not recognize any one at all?

A. Yes, sir.

Q. He said that, did he?

A. Yes, sir.

Q. Did the uncle Joseph Tenace come in that day?

A. Yes, sir.

Q. And did you ask him if he knew—

Mr. Berdine: Don't answer this.

Q. At the same time, at the hospital, same afternoon, in the presence of Manuci, did you ask Joseph Tenace, the brother, if he knew who had shot Luigi Tenace? Did you ask him?

A. Yes, sir.

Q. And did Joseph, the brother, answer, "No; we are only two months in this place, how could we know. It was so dark in the room; they put out the light; they shot my brother; how could we tell who did it?" Did he say that? 10

A. Yes, sir.

Q. Do you know Angelo Cierrelli?

A. No.

Q. Is that the name?

A. Yes, I see him.

Q. Do you know him by sight?

A. Yes, sir.

Q. Do you know Antonio A. Sacco? 20

A. Yes, sir.

Q. Do you know Joseph Barreti?

A. Yes, sir.

Q. When have you see any of those men, any of them?

A. Antonio Bartoni—

Q. No, not Bartoni, but Cierrelli; have you seen him since St. Pelegrino's day?

(Objected to as leading.)

Q. Have you seen Cierrelli? When have you seen Cierrelli yourself? 30

A. I see Cierrelli.

The Court: What was the last time you saw Cierrelli?

Q. When did you see him the last time?

A. Before this trouble.

Q. Have you seen him since that 25th of August, have you seen him?

A. No.

Q. Have you seen Sacco after that time?

A. No.

Q. Tell me what kind of a looking man is Angelo Cierrelli. How does he look? What kind of a man?

A. Oh, just a little shorter than Deliso, a little bigger around.

Q. How is he as to his face. Does he look at all like—

10 A. Just like you, brown.

Mr. Berdine: Did you say brown or broad?

The Court: I understood him to say he was brunete or brown like?

A. Yes.

Q. Did he look at all like Pasquale Deliso?

A. Oh, yes, I think he was like Pasquale Deliso.

Cross Examination, by Mr. Berdine.

20

Q. What were you doing at the hospital? Why were you in the hospital at Elizabeth at three o'clock?

A. Wounded—

(Objected to.)

Q. How?

(Question excluded.)

Q. When did you go there?

30

(Objected to; question allowed.)

A. The Sunday night.

Q. That St. Pelegrino's day?

A. Yes.

Q. When did you come away from the hospital?

A. I was sick.

Q. When did you come out?

A. I come out, left the 14th day of September. No; might have been the 8th of September.

Q. Do you remember being in the courthouse here?

A. Might be 8th of September I come out.

Q. When I was asking you questions as prosecutor. Do you remember my asking you questions here?

A. Yes, sir.

(Question objected to; question allowed.)

Q. Did you not ask the court to let you go because you were so weak you could not stand the examination?

10

(Objected to.)

The Court: What is the object of that?

Mr. Berdine: To show the man was so weak while he was at the hospital there.

Mr. Strong: Because he wasn't able to be a witness here it does not follow he could not make a statement or understand what was said in the hospital.

The Court: I will permit it.

(Question repeated.)

20

A. I don't understand.

Q. What province is Cierrelli from?

Mr. Strong: Angelo Cierrelli.

The Court: What part of Italy is Angelo Cierrelli from?

Q. The same province your cousin is from?

The Court: Well, was Angelo Cierrelli from the same part of Italy as Deliso here?

30

A. Yes.

Q. What was the matter with you in the hospital beside being sick?

(Objected to.)

By the Court.

Q. Now what was the matter with you when you were at the hospital?

A. Well, I was sick.

Q. What kind of sickness?

A. Oh, somebody cut me.

The Court: He says somebody cut him.

By Mr. Berdine.

Q. Did all these people that you speak of come in to see you while you were in that condition?

A. What say?

10 The Court: You do not understand it?

(Question repeated through interpreter.)

A. Yes.

Q. Were you in bed?

A. Yes, I was in bed.

Q. Where was Tenace at that time?

A. The man that is dead?

Q. Yes.

A. I was here and he was over there.

20 Q. Where was young Domeinio Tenace?

A. Him and his cousin was in another room.

Q. Domeinio Tenace?

A. Domeinio Tenace and his uncle was in another room.

Q. Did you see him?

A. Yes.

Q. How near were you to him?

A. He says, this was my room and that was his room, right there.

30 Q. I am speaking of the boy Domeinio Tenace?

A. The boy was about from here out there.

Q. Was not the boy sick, too, hurt?

A. No; his arm was a little hurted, but he was walking around every day.

Q. Where was the boy when he was talking to him?

A. He says, him and his uncle came into my room.

Q. Who came in with them?

A. Angelo Bartoni.

Q. Were they all together?

A. Angelo Bartoni came in first and his nephew came in after and the brother of the dead man.

Q. Who next?

A. And Luigi Manuci was there.

Q. Who else?

A. Nobody else.

Q. What was the first words said by anybody in your presence and hearing?

A. Angelo Bartoni. He says, for another little bit more I would have been in the quarrels; he said, "I would have showed they that they hit my brother in law for nothing." He says, just for two or three minutes that I wasn't there at the quarrel, that they ran away, because he boy came after me right away and I away, because the boy came after me right away and I brother. He says, then I turned around and come back and found him by the house. I found by the house my brother in law and my brother in law's brother. **10**

Q. Who said that?

A. Angelo Bartoni. **20**

Q. What did you say?

A. I didn't say nothing.

Q. Was that all that was said?

A. No.

Q. Who else said anything?

A. Angelo Bartoni spoke again; the next morning Angelo came to the hospital.

Q. What morning was that?

A. On Tuesday.

Q. What was the first day these people were there to see him. **30**

A. They came on Monday, Monday morning.

Q. Who came Monday morning?

A. Angelo Bartoni, Luigi Manuci and the small boy and the small boy's uncle.

Q. Then this conversation was Monday or Tuesday that he speaks of?

A. He says, I don't remember; it was in those two days.

Q. What did he say to them?

Mr. Strong: Do you mean the witness?

A. He said nothing.

Q. When next did they see you?

A. A couple of days Angelo Bartoni came again.

Q. Couple of days after what?

A. A couple of days after Monday, the 27th or 28th of August.

Q. Did you say anything to them then?

10 A. No.

Q. What province are you from?

A. Alena.

Q. Is that the same province as Deliso?

A. Yes, sir.

Mr. Berdine: I think we can agree that there are only two visits to him, Tuesday and Thursday?

Mr. Strong: I am not sure from what the witness said on your cross examination; he spoke as though there might be more.

20

Mr. Berdine: That is all you brought out, Tuesday and Thursday?

Mr. Strong: That is all.

Donato Manuci, sworn and examined through interpreter.

30 *Direct Examination, by Mr. Strong.*

Q. Where do you live?

A. Port Reading. I don't understand too much.

The Court: You don't understand too much? I think we had better try the interpreter.

Q. Where do you live?

A. Port Reading.

Q. How near do you live to the DeVita's shanties?

A. About a quarter of an hour.

Q. About a mile.

A. I don't know what a mile is.

Q. Do you mean it would take about a quarter of an hour to walk?

A. Ten or fifteen minutes to walk there.

Q. How long have you lived there?

A. Five years.

Q. Are you married?

A. Yes, sir.

Q. Do you know Pasquale Deliso the man here? **10**

A. Yes, sir.

Q. How long have you known him?

A. Since I have been born, he says.

Q. Was he at your house on St. Pelegrino's day this year?

(Objected to; question allowed.)

A. Yes.

Q. What time of day did he come to your house on that day? **20**

A. After dinner.

Q. About what time?

A. About two or half past two.

Q. How long did he stay at your house from that time on?

A. He says, from two until twelve or 12.15 or half past twelve or one o'clock.

Q. Do you mean half past twelve or one o'clock at night or in the day time?

A. At night. **30**

Q. Then when he went away did anyone go with him?

A. He said, I, him, John Romanulo, Bartholomew Ciadello.

Q. Did these four go away together?

A. Yes, he says, I went with them as far as the shanty.

Q. From your house?

A. I went with them as far as the shanty.

Q. What shanties do you mean now?

A. He says, these is the shanties, and him and Bartholomew stood here.

Q. Do you mean the shanties of DeVita?

A. Yes, sir.

Q. Where did you leave Pasquale that night?

A. Up by the shanty.

Q. What part of the shanties?

A. Just as soon as you get up by the board there,
 10 he says, the first shanty.

Q. Do you mean the first shanties you come to as you come in from the public road?

A. Yes.

Q. Where did you go then?

A. I says good night and we went to bed.

Q. Did you go back to your house?

(Objected to.)

Q. Where did you go to bed?

20 A. At the house.

Q. At your house?

A. Yes, sir.

Q. Did any one go back with you to your house?

A. Me and Bartholomew Ciadello.

Q. He went back to your house with you, did you say?

A. He says, he lived at one house and I lived at the other, and we left each other at the street.

Q. Now the other two, Pasquale and Romanulo,
 80 where did they go when you left them, did you see?

A. He says, I left them up in the shanties. I suppose they went to bed.

Q. At what time was it when you left Pasquale Deliso and Romanulo at the shanties, as near as you can tell?

A. About half past twelve or one o'clock.

Cross Examination, by Mr. Berdine.

Q. Are you related to Pasquale Deliso?

A. Nothing.

Q. What province in Italy do you come from?

A. Alena.

Q. The same as Deliso?

A. Yes, sir.

Q. Do you know where Deliso lived, what shanty he lived in that night?

A. He says, I don't go to the shanties, I only passed them when I go to work.

Q. Do you know where Deliso's shanty is, or was that night? 10

A. No.

Q. You don't know where Deliso lived that night?

A. I don't know where he stood.

Q. Where did he live that night?

A. He answer my questions, I don't know where he stood.

Q. Ask him where Deliso lived that night?

A. He says, I left him there and me and Bartholomew come back.

Q. Do you know where he lived that night? 20

A. Up in the shanties.

Q. Where?

A. Where I left him. I says good night, but I don't know where he went.

Q. Was that in front or near by Deliso's shanty when he said good night.

A. I don't know where he sleeps.

Q. Do you know where Tenace lived that night?

A. He says, I don't go up to the shanties; I pass them when I go to work. 30

Q. You were to the shanties that night, weren't you?

A. He says, when I accompanied Deliso.

Q. How do you know the hour that he left you.

A. Because he was at the house.

Q. Well, how late?

A. He says, quarter after twelve or half past twelve.

Q. How do you know it was that hour?

A. I have got a watch in my house; to had to go to bed.

Q. Well, how do you know it was that hour?

A. He says, I see the watch and I accompanied him as far as the shanties; good night and I go home.

Q. What time did you go to bed that night?

A. He says, it may have been one or quarter after one; just as soon as I reached the house.

Q. Did you hear any trouble that night?

A. He says, I was at the house.

Q. Did you hear any trouble that night?

10 A. We was playing at the house.

Q. Did you hear any trouble that night?

A. No; he says the shanties is away out and we lived far away.

Q. Did you meet any one else that night?

A. No.

Q. Going to the shanties or coming home?

A. No; me and Bartholomew come home.

Q. Was it light or dark?

A. It was not dark; it was not so light.

20

Adjourned till October 30, 1907, 9.45 A. M.

New Brunswick, N. J., October 30, 1907.

Trial of the cause resumed at 10 A. M.

Bartholomew Ciadello, sworn through interpreter.

Mr. Strong: It might be pertinent to inquire where the interpreter has been just now.

Mr. Berdine: If you want to inquire.

30

The Court: Now, Mr. Strong, you desire to challenge the interpreter, as it were?

Mr. Strong: Well, I perhaps said as much as I ought to say, but it is a fact that he is constantly assisting the State in the preparation of the case, as I am informed.

Mr. Berdine: That is not true, sir. I am running the State's case and you are not.

The Court: If there is a suspicion of that or any ground for it it ought to be put in some for-

mal shape so I can deal with it. If you will put it in formal shape I will deal with it.

Mr. Strong: It is not to the knowledge, I presume of the Prosecutor, but I have constant information coming to me from different sources that this man is assisting in the preparation of the State's case and interviewing State's witnesses and performing services of that kind in connection with the State.

The Court: Well, the interpreter ought to understand—I don't know anything about the fact, but you must understand that you are in court now— 10

The Interpreter: I was there, but Mr. Cook as three Italians there—it is a different case altogether, and he asked me to go over there and act as interpreter for him.

The Court: Very well. Mr. Strong was quite within his rights in raising the objection.

Mr. Berdine: May I ask the Court a question? 20
Occasionally, of course, we cannot find somebody to interpret for us, just a casual thing to fill in—can we use the interpreter?

The Court: You had better not. It is too serious business and he is really a part of the court.

Direct Examination, by Mr. Strong.

Q. Do you understand English?

A. (The Witness:) No.

Q. Where do you live? 30

A. (Through interpreter) Port Reading.

Q. Do you live at the DeVita's camps?

A. No.

Q. How near there do you live?

A. About ten to twelve minutes walk.

Q. Do you live near Dornainio Manuci?

A. Near him.

Q. Are you a married man?

A. Yes.

Q. Got children?

A. I have five.

Q. On Sunday, the 25th of August, this year were you at Manuci's house?

A. Yes. He says that the 25th was two Saint Days, one St. Bartholomew and St. Pelegrino.

Q. Did you see Pasquale Deliso this defendant that day?

A. Yes, he was with us.

10 *Q.* Where?

A. At the Donato Manuci's.

Q. What time was he there?

A. About two o'clock in the afternoon.

Q. And how long after that?

A. He says we went away together; he was there until twelve or half past twelve.

Q. At night do you mean?

A. At night.

Q. Did you go away with him?

20 *A.* He says me and Donato and Deliso and Giovanni, I don't know his last name.

Q. Went away together, is that what he said?

A. They accompanied Deliso.

Q. Where did you go with Deliso and the others?

A. We went to the shanties; when we go to the shanties we says good night and we came home.

Q. Who came home?

A. Me and Donato Manuci.

Q. Where did the other two go?

30 *Objected to.*

The Court: If he knows?

Q. If he knows?

A. We left them at DeVita's shanties and we went back to bed.

Q. Whereabouts at the shanties was it that you left them?

A. He says the first shanty; the beginning of the shanties; the first shanty.

Cross Examination by Mr. Berdine.

Q. Do you know Raphael Deliso?

A. Yes.

Q. Where did you see that day?

Mr. Strong: I object. Are you talking about Raphael or the defendant?

Mr. Berdine: Raphael.

Mr. Strong: I don't think that is—

The Court: I cannot see the competency of 10 that, Mr. Berdine.

Mr. Berdine: I want to show who was there and what he saw and all about it.

The Court: This is cross-examination, Mr. Strong, and I rather think he may.

Mr. Strong: It is not cross examination. He may ask if he please, of course, who was at the house and all that were connected with that, but to ask him about a third person entirely and where he saw that third person seems to me to be entirely 20 beyond the range of cross examination.

The Court: Well, it certainly is within the rule which permits him to test his recollection, and I think it is also cross examination, as tending to throw light upon his credibility as to his movements that day. I will permit it. Of course, I do not want the prosecutor to go into the details of a matter of that kind.

(Question repeated.)

30

A. Didn't see him nowhere.

Q. Who else was at the house of Manuci that day?

A. Me, Giovanni, Pasquale. He says, yes, there was other people came in during the day.

Q. Who were they?

A. I don't know them. He says there was several people came in and I don't know them.

Q. Did you hear of any trouble or disturbance that day?

(Objected to as irrevelant, incompetent and immaterial. Question allowed.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

A. No.

Q. How far is the Manuci's from the shanties?

A. About ten or twelve minutes walk.

10 Q. Do you know where Tenace's shanty is, the dead man?

A. No.

Q. Do you know of any disturbance that occurred in Tenace's house that night?

A. He says, I don't know and I didn't know him.

Q. Well, do you know of any disturbance that took place?

A. No. He says we was enjoying ourselves.

20 Q. Do you know where Deliso's shanty was that day?

A. No; I don't know the shanty.

Q. How long have you known Deliso?

A. I know him since he was born.

Q. Are you from the same province in Italy?

A. The same village.

Q. Are you related to him?

A. No.

Q. Or his wife?

A. No.

30 Q. Or your wife to his or him?

A. No; my wife is from a different country.

Re-direct Examination, by Mr. Strong.

Q. I understand you to say that you were enjoying yourselves at Manuci's house; is that what you said?

Mr. Berdine: The record will show that.

The Court: He is directing his attention to it, that is all.

A. Yes; we had a half keg of beer and we was

drinking and we were enjoying ourselves. We was playing and dancing.

Q. Celebrating the Saint's Day?

A. He says, it was my name. He says it was St. Bartholomew's—two saints came together.

Q. Do you know Angelo Cierrelli?

A. He says I know him. I know him by sight. I seem him on the dock.

Q. Have you seen him lately?

The Court: Is this redirect?

10

A. No.

The Court: Counsel should exhaust the witness on the direct examination.

Mr. Strong: Does your Honor rule that I may not proceed?

The Court: No; I do not, but I warn you, because I want that rule observed more carefully than it sometimes is.

20

Q. Have you seen Cierrelli since the 25th of August?

Mr. Berdine: I object. It is not part of the redirect examination; it is a reopening of the matter.

The Court: I think the objection perhaps is well taken, but I have some latitude in the matter. My desire is to have the witnesses exhausted on direct examination, otherwise we have a re-cross and a re-redirect and there is no end to it. I will permit this, however. I will overrule your next.

30

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

(Question repeated.)

A. No; I didn't see him at all.

Q. Does he bear any resemblance to the defendant Pasquale Deliso?

Mr. Berdine: I object.

The Court: I will permit this question.

Mr. Berdine: I object to it as leading. Ask him to describe him.

The Court: You object because it is leading?

Mr. Berdine: Both ways.

The Court: Well, perhaps it is leading, Mr. Strong. I will let the question be put, however.

I cannot tell whether it is leading when it gets to
10 the witness or not.

(Question repeated.)

A. He says he is a little bit smaller, little bit shorter.

Q. How is he in other particulars as regards the defendant?

Objected to.

A. He says the same face and the same moustache, but he is a little bit shorter.

20 *Recross Examination, by Mr. Berdine.*

Q. Does Angelo Cierrelli look anything like you?

A. He says I saw him those two times that he had been up in the shanties, and very little difference between him—

Q. I am not speaking about him.

The Court: That is not a responsive answer. Let it be stricken out. Put the question again.

30 (Question repeated.)

A. He says he is shorter and I am taller.

Q. Who is shorter?

A. He is.

Q. Who?

A. Angelo Cierrelli.

Q. How are you compared with Deliso as to height?

A. I am taller than Pasquale.

Q. The four of you at Manuci's house used up a half keg of beer, did you, that night?

Mr. Strong: He says that there were others.

(Question repeated.)

A. He says all the people that came there during the day, women and men.

Q. How about Deliso, did he drink?

A. Exery time a round would go around he would drink and he was dancing.

Q. How many rounds did they have?

A. About two or three rounds.

10

Q. Is that all they took that day?

A. He says I drink. He says, I drank.

Q. How about Deliso?

A. He came afterwards.

Pequedro Pasquale Deliso, sworn and examined through interpreter.

Direct Examination, by Mr. Strong.

20

Q. Where do you live?

A. Port Reading.

Q. In the shanties?

A. No.

Q. What do you do? What is your business?

A. Work on the docks.

Q. Were you on the Sunday before St. Pelegrino's day, playing a game of batemura?

A. Yes; me, Tony Masena and Angelo Cierrelli.

Q. Where was that?

30

A. Up in the shanties.

Q. What part of the shanties?

A. By the board. That means the commissary; they call it board.

Q. Is that the store?

A. By the store.

Q. Is that the store known as DeVita's store?

A. Yes.

V. Do you know the boy Domeinio Tenace?

A. Yes, I know him.

Q. Have you seen him in court in this case?

A. Yes, I seen him here.

Q. Was he present when this game of Batemura was being played?

Mr. Berdine: I object. Find out who was present.

The Court: I will permit this.

10 *A.* I didn't know him. He says there was fifty or sixty people surrounded around us.

Q. Do you know whether the boy was there or not?

(Objected to.)

The Court: Mr. Strong, how can you. He says he didn't know him.

Q. When you say you didn't know him what do you mean?

(Objected to. Question permitted.)

20 *A.* Because I didn't see him.

Q. This man Cierrelli that you said was playing the game with you and Tony Masena, what sort of looking man was he?

A. He says a little bit taller than me.

Q. Was he dark or light?

A. Dark.

Q. Had he any hair on his face or was he smooth face?

30 *A.* He had a moustache. He says a beard like mine. —He had a moustache.

Q. Did he look anything like Pasquale the defendant.

(Objected to.)

A. He was a little shorter.

The Court: I have already admitted.

Q. How as to his face?

A. He says his face was something like mine and a sort of black beard.

Q. Had he a black beard?

(Objected to as leading. Question allowed.)

A. He says it was a beard that he didn't shave for four or five days.

Q. Did he let the beard grow long?

A. No.

Q. Did he ever shave his beard?

(Objected to; question permitted.)

10

A. Yes.

Cross Examination, by Mr. Berdine.

Q. What province are you from in Italy?

A. Province Alena.

Q. Same province of Deliso, the defendant?

A. Yes.

Q. Are you related to Deliso?

A. Cousin.

20

Maria Manuci, sworn.

Direct Examination, by Mr. Strong.

Q. Do you speak English?

A. Not much.

Q. Well, we will try it. Are you the wife of Donato Manuci?

A. Yes, mam.

Q. Where do you live?

30

A. Port Reading.

Q. Is it in the village or is it outside of the village of Port Reading?

A. No; in Port Reading.

Q. How far is it from these shanties of DeVita's?

A. About a half hour.

Q. Half hour walk, do you mean?

A. Yes.

Q. On St. Pelegrino's day—Sunday, is it?

A. On Sunday.

Q. This year I mean?

A. Yes.

Q. Were there some people at your house?

A. Two or three.

Q. What?

A. Two or three mens.

Q. Was Pasquale Deliso there that day?

A. Yes; I seen him in about two o'clock afternoon.

Q. What say?

10 A. I seen him on two o'clock it was afternoon.

Q. How long did he stay at your house?

A. Well, he went away on half past twelve.

Q. Do you know who went him? Do you mean at night?

A. I mean night.

Q. Who went away with him at that time?

A. I don't know.

Q. Was your husband there that night?

A. Yes, mam.

20 Q. What others?

A. Two more mens. There is one over there, Johnny, I don't know the name.

Q. Have you seen them in the courtroom? You see one over there?

A. There is one. There he is over there.

(A man stands up.)

Q. Standing up, do you mean?

A. Yes, mam.

30 Q. What others?

A. I don't see him. He ain't here, I don't know.

Q. You don't see any others now? Have you seen the others here in this room?

A. No.

Q. Now did you say that men come afterward?

A. Yes; that is the men; two of them.

The Court: Is that Ciadello?

Mr. Strong: Yes, Ciadello.

Q. Did your husband go out with Pasquale when he went?

A. Yes, mam.

Q. How long was your husband away then?

A. About a half hour.

Cross Examination, by Mr. Berdine.

Q. Have you told us everybody that was at your house that afternoon, Sunday?

A. Yes, mam, I did. **10**

Q. No one else excepting those you mentioned?

A. Yes, that is all, only the two.

Q. Eh?

A. Two or three mens, that is all.

Q. That is all there was there all the time?

A. All the time.

Q. From two o'clock until half past twelve?

A. Half past twelve.

Q. What were they doing?

A. Well, I don't know—the way they do. That was **20**
late, you know. We went away and I closed up.

Q. What were they doing while they were at your house?

A. While they were playing.

Q. Playing what?

A. Playing music, you know; we were dancing.

Q. Have any beer or anything to drink?

A. Well, they took a half keg of beer and we used
to play ourselves.

Q. What? **30**

A. They took a half keg of beer and we were play-
ing ourselves.

Q. They took a half keg of beer and played it them-
selves?

A. Yes.

Q. They didn't drink half a keg of beer?

A. No, mam; two or three glasses and they went
away.

Q. They were the ones that used the beer, were they?

A. Sure, only us.

Q. Nobody else?

A. Nobody else.

Q. You say that he got to your house at four o'clock, or two o'clock?

A. Two o'clock.

Q. Why did you say two o'clock?

A. I don't know what you mean.

Q. Well, how do you know it was two o'clock?

A. Well, I know.

10 *Q.* How?

A. It was around at two or half past two when I seen him.

Q. Who came with him?

A. Only him.

Q. Well, who else was there?

A. The two mens what I said to you.

Q. When did they come?

A. The same time. You know when he come they find the house, them two mens.

20 *Q.* What?

A. When he come the two mens they find the house.

Q. When did they come to the house?

A. Well, it was about half past twelve.

Q. How do you know that?

A. Well, I know. We were eating that time.

Q. How do you know that Deliso came?

A. The same way.

Q. What time did he go away?

A. It was half past twelve.

30 *Q.* How do you know it was half past twelve?

A. I know it.

Q. Tell me how?

A. Well, I know, because it was late. I had to lock the door.

Q. Is that the only reason?

A. Yes.

Q. Did you hear any one else there half past twelve.

A. No; I seen the clock.

Q. Where was the clock.

A. In the house.

Q. Was it a clock or watch?

A. A clock.

Q. Ever tell this story to anybody?

A. No.

Q. Ever talk with anybody since that time?

A. No; nobody.

Q. When did you first hear that Tenace was hurt?

A. Well, they told me, you know.

Q. Who told you?

A. I heard the mens.

10

Q. Who told you?

A. Well, I don't know—the mens.

Q. When?

A. You know the other week, and they say he got hurt.

Q. When were you told?

A. Out in the street.

Q. When?

A. Next night.

Q. How long after?

20

A. A day after.

Q. Who told you?

A. I don't know the man.

Q. How long have you lived there?

A. Me? It is about a year.

Q. When did you hear that Deliso was arrested, the defendant?

A. I don't know anything. I just know. I don't know nothing.

Q. Did you hear that he was arrested?

30

A. No; I didn't know nothing.

Q. Never heard that he was arrested?

A. I never heard.

Q. Did you ever see Deliso after that day?

A. No.

James Garrity, sworn.

Direct Examination, by Mr. Strong.

Q. What is your occupation?

A. Timekeeper.

Q. Timekeeper?

A. Yes.

Q. For whom?

A. The Philadelphia & Reading Railroad.

10 Q. Where?

A. Port Reading, New Jersey.

Q. Do you keep the time of men employed on the docks of Port Reading?

A. Yes.

Q. Do you know Angelo Cierrelli; was he one of the men employed?

A. My time records show that, yes, sir.

Q. Who kept the time record?

A. I do.

20 Q. Was Angelo Sacco another?

(Objected to that the witness has not said he made the record.)

Q. When you say you kept the record what do you mean? I want to know who made the record in it?

A. I make the entries.

Mr. Berdine: Where did he get the information?

30 Q. From what information do you make the entries?

A. From the time card as it is turned in from the piers.

Q. Who makes the card?

A. Well, there is a man has charge of gang of eight men, seven or eight men, and he turns in the cards. I take the time from his cards.

Q. Who turned in the cards in relation to Cierrelli,—who was the man that made the card?

A. I couldn't tell now without looking at the time book.

Q. Have you the time book there?

A. Yes.

Q. Look at that, please, and give me the name of the man who turned in the card.

A. What day do you want?

Q. The week of the 26th of August; that was Monday, I believe. (Witness produces book and examines.)

A. He didn't work on the week of the 26th.

The Court: The question is now who kept the time card from which you got this entry on the 26th of August. You can tell us the name of the man. **10**

A. He did not work on the 26th.

Q. The time card. Who made the time cards of the gang that Cierrelli was in? Who was the time keeper of that gang?

Mr. Berdine: Do you know?

A. Not from the records I have here, no. **20**

Q. Do you recollect—

The Court: One moment. I must strike out the information which he volunteered a moment ago as to whether or not Cierrelli worked there on the 26th of August. That is not evidence as yet.

Q. How many keepers are there down there?

Mr. Berdine: I object. He ought to confine himself— **30**

Mr. Strong: I want to get the information that will enable us to procure the right person. I may as well say that.

The Court: He should be asked if he can tell you the man who kept the time card for Cierrelli's gang.

Mr. Strong: I asked him that and he said he couldn't tell from the book.

By the Court.

Q. Is there any way you can tell?

A. By records I have in the office, yes.

Q. Have you the time cards there, the original time cards?

A. Yes, sir.

Q. That were turned in?

A. Yes, sir.

10 The Court: Don't that settle it.

Mr. Strong: Yes; we will have to have those time cards and the person who kept them. I thought I had secured that.

By Mr. Strong.

Q. Have you the original time cards here?

A. I have for certain days, but not on the 26th, not before the 26th.

Q. That is August 26th?

20 A. 26th, 27th and 28th, but I haven't before that.

Q. You have the time cards for August 26th?

A. Yes.

Q. Look at them and see who turned those cards in to you, so far as relates to Angelo Cierrelli.

A. He didn't work on—

Q. Who turned in those time cards to you?

By the Court.

Q. Where did you get those time cards from?

30 A. From the piers.

Q. What is the name of the man who made them out?

Mr. Strong: Let me see the time cards.

By Mr. Strong.

Q. Have you any of the time cards of the preceding week, I mean here?

A. No.

Q. You only brought the time cards of three days. Were the same men that were the timekeepers in charge

of the same gangs each week or did the men change?

A. No; same gangs all the time.

Q. The men, as far as the time cards show, went by numbers, did they?

A. Yes.

Q. On your record which you have produced here, kept by you, are the numbers given there?

A. Yes, sir.

Q. Corresponding with the numbers on the time card?

A. Yes. 10

Q. And in addition to the numbers are there also the names in your book?

A. Yes.

Q. What was the number of Angelo Cierrelli?

Objected to; question allowed.

Q. I mean as he was known to you and the time-keeper and other persons connected with the railroad; in other words, what was the number that he was known by in his work? 20

A. No. 442.

Q. Now was Angelo Sacco employed there also?

Mr. Berdine: Does he know?

A. I can tell by the time book.

Q. Can you tell by the time book?

A. Yes.

By Mr. Berdine.

Q. You only know from the name in the time book, **30** that his name is in the time book?

A. Yes.

Q. You don't know that he was employed?

A. No, sir; I don't know the name.

By Mr. Strong.

Q. You kept this book and got the names of the Italian men?

A. When they were employed, yes.

Q. And then a number was given to each man, was it?

A. Brass check.

Q. Having a number on it?

A. Yes.

By Mr. Berdine.

Q. Who gave it to him, did you?

A. I can't tell from the record I have here, no.

10

By Mr. Strong.

Q. Were they given out at the office?

A. Yes, sir.

Q. You keep a record of the numbers which were given to the men and the checks; is that right?

A. Yes.

Q. And this book contains that record, does it?

A. We have another book which we call the brass check book; we keep a record of all the names and numbers and when they are given to them.

20

Q. But does this book also contain the number and the names?

A. Yes, this book contains the numbers of the people that worked there during each month.

Q. Now will you look at that book and see whether Angelo Sacco was employed there and tell us what number he was?

Mr. Berdine: I object. He says this is not the original book.

30

The Court: You see, Mr. Strong, as I understand it now, it will be necessary to call the man who kept this time card and he will testify that such and such a number either worked or did not work on such a day; then of course it is necessary to identify that number and give the name of the man, and to do that he must have recourse to this book, so that I think Mr. Strong is under the necessity of making this proof. I will permit it.

Q. Just look at your book then and see whether you find Angelo Sacco?

A. I have here Angelo A. Sacco.

Q. Angelo A. Sacco, what number?

A. 294.

Q. Now have you Guiseppi Barenti?

A. Yes, sir.

Q. What number?

A. 353.

Q. Did the men keep the same numbers or were the 10 numbers changed?

A. Always kept the same number.

Q. Now have you there the name of Pasquale Deliso?

A. The name?

Q. Yes, as employed?

A. Yes, sir.

Q. What number has he?

A. 489.

Q. Now this book which you have here you have told us is kept up from the trimmers' cards as returned 20 to you, or the timekeepers' cards.

A. Well, the gang bosses time, we call it.

Q. What use is this record that you keep?

A. We keep the amount of time to put on the pay-rolls, to pay them off by.

Q. Are the payrolls made from this record of yours?

A. Yes, sir.

Q. And they are paid from this record?

A. Yes, sir.

Q. Are these cards turned in—how frequently are 30 they turned in?

A. Every day.

Q. At the end of the day?

A. Yes, sir.

Q. So that the cards for August 26th would be received by you when?

A. The morning of the 27th.

Q. Morning of the following day?

A. Yes.

Q. Have you kept each of the dates by themselves?

A. Yes, sir.

Q. The red figures at the top of the page indicate the days of the month; is that so?

A. Yes, sir.

Q. And the figures under the red figures at the top indicate what?

A. The hours each man makes.

Q. On that particular day?

10 *A.* On that day, yes.

Q. Now will you look at these cards and tell us who the man was that kept the time of Pasquale Deliso, No. 489—who kept the card and turned the card into you?

A. He was working for the trimmer at that time; he was kept by Patrick Coughlan.

Q. Is he here in court?

A. I don't know.

20 *Mr. Marsh:* He has been subpoenaed, but he has just telephoned to say he was on the way up here.

Mr. Strong: I suppose this book is admissible in connection with the time cards when the time cards are proved?

The Court: I will pass upon it when the time comes. There is no offer at present; he is making a suggestion to me as to the admissibility of this book in connection with the time card. I think the offer is premature.

30 *Q.* State, if you can, whether the defendant, Pasquale Deliso, was paid for labor performed by him for the Port Reading Company on the 26th of August, 1907?

Mr. Berdine: Of your own knowledge.

The Court: You didn't make the payments, did you?

A. He has not been paid yet.

By the Court.

Q. How do you know? Did you make the payments?

A. I assist in making them. That is, the checks come from Philadelphia; they are paid by check.

Q. Each man is paid by check?

A. Yes, sir.

Q. Did you always handle his check?

A. No, sir.

Q. Then you don't know, except from the books?

A. From the records.

10

By Mr. Strong.

Q. Who prepared the pay roll? Who receives the checks when they are returned for the payrolls?

A. They come to the office and they are opened by the chief clerk.

Q. Have you seen the check for payment to Deliso for labor performed on 26th of August?

A. Yes, sir.

20

(Objected to.)

By the Court.

Q. One moment. They don't give a separate check for each day, do they?

A. Oh, no.

Q. For the month, I suppose?

A. **Yes, sir.**

Mr. Berdine: Then you didn't see any such check. I move to strike the answer out. 30

The Court: It must be stricken out as the case now stands.

By Mr. Strong.

Q. Did you return the payroll for the month of August for Pasquale Deliso, the defendant?

A. Yes, sir.

Q. Prepared from what?

A. From the timebook.

Q. Is that the book that you have before you?

A. Yes, sir.

Q. Have you seen a check in accordance with that payroll for the payment to Deliso for the month of August, 1907?

Mr. Berdine: I object.

The Court: I cannot see the materiality of it, Mr. Strong.

10

Mr. Strong: Very well. I will have to ask this witness to remain and keep the book here until the other witness arrives.

The Court: The witness desires to make a correction of a statement. I will allow him to make it. Just tell the jury.

The Witness: I said that the defendant had not received his check for the month of August, but I have a record in my book which shows the signature for the check during the month of August.

20

By Mr. Berdine.

Q. You didn't see him make that receipt or sign it?

A. I say I had the receipt.

Q. You don't know whether he signed it or not?

A. It is witnessed.

Q. You didn't see him sign it, did you?

A. No, sir.

By Mr. Strong.

30

Q. What record have you?

The Court: How can that be material. The question is whether the defendant was working on the 26th of August. It seems to me the only way to prove that is to call the man who had charge of the gang, who made out the time card. I do not think that it would prove or disprove it, the fact that he got a check for the month of August, which may or may not have included this day, and we run into all sorts of inquiries about it.

Mr. Berdine: Do you object if he shows that check to me privately?

The Court: If the State wants to see it the State may make it evidence.

Mr. Berdine: I do not wish to do that.

The Court: I guess we had better confine ourselves to legal evidence. It ought to be a comparatively simple matter to get the head of the gang to testify as to the fact.

10

Richard A. Peltier, recalled.

Direct Examination, by Mr. Strong.

Q. Are you familiar with pistols and the calibre of pistols and the size of bullets that they shoot?

A. Somewhat.

Q. Have considerable experience, haven't you, in the use of fire arms?

A. Well, I have had a revolver for some years. I wouldn't say considerable experience with them. 20

Q. I show you this bullet which has been proved to have been extracted from the head of Tenace, the deceased person, and ask you whether you are able to tell what calibre of pistol—

Mr. Berdine: Just answer yes or no.

A. No, sir.

Q. You cannot tell what calibre?

A. No, sir; it is all bent up. 30

Mr. Berdine: Don't answer any more.

Q. Did you visit the premises where this man was said to have been shot soon after the occurrence?

A. I did.

Q. How soon?

A. Oh—

Q. When were you first there?

A. Probably two or three days after this man was captured in New York.

Q. Two or three days after that?

A. Yes.

Q. Weren't you there the next day or the day after?

A. Might have been; I don't recall it now. I was there a good many times.

Q. I mean when did you first go there?

A. I can't remember—a day or so after this man was captured.

Q. Do you mean a day or so after the man was captured was the first time you went there?

10 A. In relation to this case. I have been there the last three or four years off and on.

Q. Of course I understand that. What I am asking you is as to the first time when you visited this shanty where the shooting is said to have taken place?

A. Two or three days after this man was captured in New York.

Q. And you did not visit the place there until after the man was captured; is that what you say?

20 A. That is right.

No cross-examination.

Joseph DeVita, recalled.

Direct Examination, by *Mr. Strong*.

Q. Mr. DeVita where do you live?

A. Port Reading.

Q. What is your business?

30 A. General merchant.

Q. Do you keep a store?

A. Yes, sir.

Q. What have you to do with these shanties that have been talked about here?

A. Well, I am one of the firm.

Q. One of the firm of DeVita & Co.?

A. Yes.

Q. Do they own the shanties?

A. Yes, sir.

Q. Who are the others in the firm?

A. Well, it is a corporation, you know; there is different stockholders in it.

Q. Antonio Masena, who was on the stand yesterday, is another?

A. Yes, he is president of it.

Q. Do you know this man Pasquale Deliso the defendant?

A. Yes, sir.

Q. Is he one of the men—was he one of the men occupying one of the shanties? **10**

A. Yes, sir.

Q. What shanty was Pasquale Deliso occupying on the 25th of August of this year?

A. Just as he came from Italy, why, he came and was living in one of the shanty and then he moved into another part, about, I couldn't say, about two weeks or three weeks previous to the 25th.

Q. Well, now, my question is what shanty was he occupying on the 25th?

A. Why, this shanty on this last aisle there. **20**

Q. Can you show it on the map there?

A. Yes. (Witness indicates). There is two shanties here. This last one back here.

Q. Is it the one where your pointer rests now?

A. Right here (indicating). There is two here. There is one and one and it is there is a partition.

Q. Now you are indicating on the map—do you see the shanty marked A, do you?

A. Yes.

Q. Is that the shanty that Tenace, the man who was killed, lived in? **30**

A. Yes, sir.

Q. Now then, immediately to the east of that with the space in between—

A. Yes, there is a space between there.

Q. After the space there comes another shanty?

A. Yes, sir.

Q. Now where is the shanty that Deliso occupied?

A. Next to this there is one door here into this shanty and then there is another door to go into the second part.

Q. Then, if I understand you, the shanty that Deliso occupied is the next but one from Tenace's shanty?

A. Yes.

Q. Does it face the same way as Tenace's shanty does?

A. Yes, south.

Q. The door is toward the south?

A. Yes, toward the railroad—the coal yard, I mean. This is coal yard this way, in this direction. The shanties are lying this way to the piers. These are the shanties.

10

By Mr. Berdine.

Q. Which way would be New York on that map?

A. Here.

Mr. Strong: East, I suppose.

Q. Where is the highway or public road?

A. Way up here.

20

By Mr. Strong.

Q. The public road you indicate runs along the top of the map?

The Court: Do you desire to contradict the evidence on this subject?

Mr. Strong: No, sir.

30

The Court: Isn't it a waste of time to have the witness describe the map which the engineer has already described, unless there is some conflict about it.

Mr. Berdine: The witness is shaking his head one way and he is pointing another way.

The Court: Let the witness take the stand, and Mr. Strong will proceed with the examination. There is no use of wasting time over matters that are uncontradicted.

Q. Did you see the defendant Pasquale Deliso on Monday, the 26th of August?

A. No.

Q. Did you see him on that day or in the evening of that day, I mean?

A. I saw him in the evening, yes.

Q. Where?

A. At our store.

Q. What was he doing there?

A. Well, buying groceries and so forth.

Q. After that when did you see him again?

A. I saw him the next day.

Q. What time the next day?

10

A. Well, I couldn't—it was before noon.

Q. That would be Tuesday, was it?

A. No; I saw him in the morning. Tuesday I saw him in the morning and afternoon and evening when he came up for his card, he came into the store.

Q. What I want to know is as to the time on Tuesday that you saw him?

A. Well, I saw him at noon and I saw him in the evening.

Q. In the evening of Tuesday?

20

A. Yes; and I am not positive if it was in the afternoon too; I couldn't say.

Q. Now how soon after the shooting of Tenace did you visit the shanty where the shooting had occurred?

A. Well, in the morning. The night the shooting occurred in the morning I went to New York; I took the eight o'clock train and I wasn't up to my shanties at all.

Q. Not that day?

A. Not that day, but I was up there in the evening. I went by the Tenace's shanty, but I didn't—I couldn't see anything inside, because it was dark. 30

Q. I was under the impression that you had visited it Monday, but you say not at all, not until Tuesday or Tuesday evening?

A. No; Monday evening I said.

Q. But you couldn't see anything inside there?

A. No; because it was dark when I got up to the place. I was in New York. I got home on the six something and I went up to the house—

Q. That is all right.

Cross Examination, by Mr. Berdine.

Q. You have been here since this trial opened?

A. Yes, sir.

Q. Alongside of the defendant?

Mr. Strong: I overlooked a question.

Direct Examination continued by Mr. Strong.

10 Q. When did you go into the shanty to see the condition of it?

A. The next morning, I think.

Q. Do you mean Tuesday morning?

A. Tuesday morning; yes, sir. Tuesday morning, it was about seven or half past seven; I couldn't state the time exactly.

Q. It was daylight then?

A. It was daylight. It was Wednesday that I—

20 Q. Well, now on Tuesday, let me ask you whether you noticed anything as to the electric light in the place?

A. Why, the electric light bulb was—

Objected to as irrelevant, as this is two days after the occurrence. Question admitted.

30 A. The bulb of the electric light was broken and the fixture where the wire was running out was badly torn down, and the remainder of the globe where the brass screwed on it was in the socket; and the beds all around in different shapes.

Q. Where was the electric light, what part of the shanty, do you remember?

A. Right in the middle.

Q. The center of the shanty?

A. Yes; the middle of the whole room.

Q. Does it appear in this photograph anywhere?

A. Yes, sir.

Q. I am showing you S 5. Do you say it shows there?

A. Yes, sir.

Q. Whereabouts; just point it out.

A. Right here.

Q. Hold it up to the jury and show?

A. Right there.

Q. Pointing at the top of the picture?

A. Yes; you can see the cord hanging, the wire.

Q. Does it show the cord hanging?

A. Yes, sir.

Further Cross Examination, by Mr. Berdine.

10

Q. You have been sitting beside the defendant during this trial?

A. Yes, sir.

Q. Are you interested in it?

A. In what way?

Q. Any way?

A. Well—

Q. Yes, or no.

A. Yes.

Q. Have you contributed money to the defense? **20**

A. No, sir.

Q. Have you raised any money to assist in the defense?

A. No, sir.

Q. Do you know any one who has?

A. Well, I don't know who has made it—some one has made a collection. I couldn't say who made it.

Q. Did you suggest it?

A. No.

Q. Do you know the man capable of defraying the expenses of this trial or not? Do you know whether the defendant is capable or able to defray his defense or not? **30**

A. I understood he has got real estate in Italy. That is, I have been told. I never seen it with my own eyes.

Q. But there has been money contributed for his defense?

A. Well, I know his cousins put up some money; I don't know any further.

Mr. Strong: I suppose it is rather aside from cross examination?

Mr. Berdine: You asked about some of my clients.

The Court: It is hardly competent. Of course it is competent to inquire whether this witness has contributed or raised money for the defense.

Q. What province are you from in Italy?

10 A. Salerno.

Q. The same as he is from?

A. No, sir.

Q. How near by?

A. I couldn't say; pretty far.

Q. Have you assisted in getting evidence, the officers and detectives in getting evidence in this case?

A. I assisted just as much as the State, just as much both ways.

Q. We have had no assistance from you?

20 A. I assisted Peltier.

Re-direct Examination, by Mr. Strong.

Q. Are you related in any way to the defendant?

A. No.

A. Or to his wife or he to you or your wife in any way?

A. No.

Q. Any connection whatever between you?

A. No, sir.

30 Q. Have you seen Cierrelli or Sacco or Barenti since the 25th of August?

Objected to, that it has not been shown that witness knows them.

Q. Do you know them?

A. Yes.

Q. Have you seen them since?

A. I only seen Angelo Sacco.

Q. Where did you see him?

A. On Tuesday.

Q. What Tuesday?

A. 27th.

By Mr. Berdine.

Q. Where was he?

A. In Port Reading.

Q. Have you seen him since?

A. No, sir.

Q. Do you know Detective Peltier?

A. Yes, sir.

10

Q. Have you seen him in connection with this case?

A. Yes, sir.

Q. Do you recall telling him that he had the wrong man?

A. Yes.

Q. Why did you say that?

A. Why did I say that? Well, from the information I got.

Q. That is all.

20

By Mr. Strong.

Q. Was that your belief from information that you had received?

(Objected to.)

The Court: I do not see how it can be of importance. The only ground on which the prosecutor had the right to ask it was to show interest.

Mr. Strong: Well, I want to show good faith, that is all, following that same inquiry.

30

The Court: I exclude the evidence.

Domenio Russo, sworn and examined through interpreter.

Direct Examination, by Mr. Strong.

Q. Where do you live?

A. Port Reading.

Q. Do you live in the De Vita camp?

A. Yes, sir.

Q. And work on the Port Reading docks?

A. Yes.

Q. Do you know Pasquale Deliso, the defendant?

A. Yes.

Q. Did you see him on the night of St. Pelegrino's day?

A. Yes, sir.

Q. Where had you been that evening?

A. In the house of Rocco Simuno at the shanty.

10 *Q.* Whereabouts in the shanties is that place?

A. In back of the shanty.

Q. Is that anywhere near the shanty where Tenace was shot?

A. No; it is far.

Q. Which way from Tenace's shanty is the place where you say you had been?

A. He says, the shanty was one way that way and the other was the other way.

20 *Q.* As you come in from the main road going down toward the shanties do you come to Rocco Simuno's house before you get to the shanties or after you pass some of the shanties?

(Objected to; question permitted.)

A. He says, the road comes this way and you turn that way and you have to walk a little way that way and you get to the shanties.

Q. Do you come to the shanties before you come to Rocco Simuno's?

30 *A.* He says when you come to the road of the shanties you turn a little bit that way and then you come to the shanties.

Mr. Srong: Well, we will have to prove the location from some other witness.

Q. When did you leave Simuno's house, what time of the night on that day?

A. About twelve or half past twelve.

Q. Where did you go then?

A. I was going to bed. I was walking along the store, I see—

(Objected to; that the question is answered.)

Q. Where did you go?

A. I was going to bed.

Q. Did you see Pasquale Deliso then?

A. Yes, I found him in front of the store, of De Vita's, him and John Romanulo.

Q. Were those two persons together or separate? 10

A. Yes.

Q. Did you see where they came from?

A. Yes, they was coming from down the street.

Q. And going in which direction?

A. Up to the shanty in front of the store of DeVita's.

Q. Were they going toward the main road or away from the main road?

A. From the main road coming up to the shanty.

Q. Well, now tell us what you saw after that?

A. We stopped. The three of us stopped to talk. 20
While we was talking behind our backs, back of the bakery, three came and passed—Angelo Sacco, Joseph Barreti and Angelo Cierrelli. Angelo Cierrelli had a club in his hand; Angelo Antonio Sacco had a stick and a revolver; and they was going toward a shanty that way; and they stopped there by a window. Angelo Cierrelli broke the window. After they broke the window I heard two shots. After shooting they walked away from behind the door.

Q. From behind the door? 30

A. They walked that way and turned around a door.

Q. Turned around the corner of the shanty?

Mr. Berdine: Let him say what.

Q. Won't you speak louder? Where were you and Romanulo and Pasquale Deliso when you saw these men go to the window?

A. He says, we walked a little bit and we stopped a little ways, about from here to that wall (indicating wall of court room).

Q. After Sacco and Cierrelli and Barreti had gone up to the window where did these three men, Sacco, Cierrelli and Barette, go after they had left the window?

A. They went towards the door?

Q. Then what did you see after that?

A. He says, I saw a small man running.

Q. Which way?

A. This is the shanty and he was going that way, towards the office of the company.

10 *Q.* Do you know who the boy or the small person was whom you saw running?

A. Who knows him? I wasn't near enough.

Q. Now tell us what if anything you saw Cierrelli and Sacco and Barette do at the shanty after they left the window?

A. They was by the door.

Q. What did they do there?

A. They opened the door and the boy ran out.

Q. What then?

20 *A.* They was in there and shot twice more.

Q. In where?

A. In the shanty.

Q. Well, what next?

A. John Romanulo seen that and he says, "Come, boys, let's go home."

Q. Where were you and Romanulo and Pasquale Deliso at that time?

A. About from here to the wall.

Q. From what?

30 *A.* From where they was.

Q. From where who was?

A. Those three.

Q. What next happened?

A. He says, after that we got as far as the store and we stopped there and Pasquale Deliso, and we says good night and we went home.

Q. Who said good night and went home?

A. Me and Johnny Romanulo.

Q. As you said good night to Pasquale Deliso did

you see these other three men, Sacco and Baretti and Cierrelli?

A. He says, they came out of the shanty and they started to go away.

Q. Which way did they go?

A. The way to the bakery.

Q. Was that the same way they had come in the first place?

A. Yes, sir.

Q. When the boy ran out of the shanty, as you say, 10 were there any shots fired?

A. Yes, two or three shots.

Q. From where?

A. In the direction of the yard.

Q. Who fired them, do you know?

A. I don't know; it was dark.

Q. Were they fired by either Cierrelli or Sacco or Baretti?

A. Of course; it must have one of them, but I don't know which. **20**

Q. Do you know in what direction they were fired?

A. I don't know.

Q. Was that before the men Sacco, Baretti and Cierrelli went into the shanty or was it afterwards?

A. Oh, that was after.

Q. After they went in the shanty?

A. Yes, sir.

Q. Did you see which of the men broke the window?

A. I seen Angelo Cierrelli go to the window first.

Q. Did you say that there were shots fired from 30 the window?

A. Yes, when I saw

Q. How many shots?

A. Two.

Q. Do you know who fired them?

A. No. The three of them was together.

Q. Were the shots fired by one or the other of these three men?

(Objected to.)

A. Sure.

Q. Did Pasquale Deliso go into the shanty at any time while you were with him that night?

A. No; he was with us.

Q. Was Pasquale with you all the time that the other men were in the shanty?

A. Yes, he was always with us.

Q. Until when was he with you?

A. He says, until John says, "Boys, let's go home and let's go to bed; we don't want to get in this mix up."

10

Q. Then where did you leave Pasquale?

A. We got to De Vita's store and we said good night, good night and came home.

Q. Did Pasquale have any pistol that night?

A. No.

Q. Did he have any club?

A. No.

Q. Did you notice anything as to the light in the shanty?

20

A. It was out. I couldn't see it.

Q. Did you see it go out?

A. I seen that it was out. I don't know when— He says I was far away; I couldn't see when they put it out. He says, I watched and seen it was out. There was no light there. It was dark.

Q. When did you notice that the light was out?

A. He says that there was no light there; it was out. I didn't see it when they put it out.

30 Q. Was that after the men had gone in the door that you noticed that the light was out?

A. He says they was going in, he seen there was no light there.

Cross Examination, by Mr. Berdine.

Q. Do you know this man Domeinio Cansarano? him; and he is from one province and I am from (Indicating.)

A. He says I seen him on the dock, but I don't know another.

Q. But he has seen him?

A. On the dock, yes.

Q. Did you see him that night?

A. No.

Q. What time of night was this?

A. Twelve or half past twelve.

Q. When did you first meet Deliso the defendant that night?

A. At twelve—quarter after twelve I saw him.

Q. Where? **10**

A. By the shanty as I was going to bed. By the store of DeVita.

Q. What part of the store?

A. By the store, the road that goes up.

Q. Didn't you say you met him in front of the bakery?

A. Right by the store; that is the store.

Q. How near is the store to the bakery?

A. This is the store, for instance, and that is the bakery there. (Indicating wall.) **20**

Q. Did you have a gun that night or a pistol?

A. No.

Q. Do you own one?

A. No.

Objected to; question permitted.

Q. What province are you from?

A. Alena.

Q. Same province as Deliso?

A. He says, the same province. I never was there. **30**
I always was in Naples.

Q. How long have you known Deliso?

A. Since he came to this country.

Q. Related to him in any way?

A. No.

Q. How long did you stay in front of the store that night?

A. Five or six or seven minutes.

Q. Until the row was over?

A. Yes, he says, until they got through there, when he said good night and we left him and we went home.

Q. You were all the time in front of the store?

A. Well, those three remained there—

Mr. Strong: I do not think it is fair to put it that way, that he was in front of the store because the witness has not said anything to indicate that.

10 Mr. Berdine: Yes, he did. He said he was in front of the store. He said he remained in front of the store.

Mr. Strong: I do not think it is fair.

(Question repeated.)

A. He says the first time he was in front of the store. He says then he walked a little bit more and then we stopped when those three passed.

Q. Where were you when the three passed?

A. He says about from here to the wall and we stopped when those three went past.

20 *Q.* Then did you remain in that place all the time until the fight was over?

A. About fifteen steps away from the shanty; about from here to the wall.

Q. Were you in front of the store when you met Deliso?

A. Yes. We was walking from the store. Deliso was coming up.

Q. How far did you go before the row began?

A. About from here to the window.

30 *Q.* Now did you stay in that position all the time?

A. Yes.

Q. While the row was going on until it was over?

A. Yes, until they went in. After the shooting Johnny said, "Come on, boys; let's go home."

Q. Now he was about from here to the window, fifteen to twenty feet, then from the store when the row began and he stood there all the time. Do I so understand you?

Mr. Strong: I don't think he said that.

The Court: You said, do I so understand you. It is quite impossible for the witness to answer that question.

Mr. Strong: I think the question should be re-framed.

Q. Were you fifteen or twenty feet from the store that you have described of the DeVita village when this row began and did you stay there during the row until it was over?

10

A. Not from the store—fifteen or twenty feet away from the shanty.

Q. Which way, towards the store or the other way from the shanty?

A. Towards the store.

Q. What did these people say as they passed you that night?

A. Nothing.

Q. Did you hear what the row was about?

A. No.

20

Q. Had you knowledge of any other trouble that night?

Objected to; question permitted.

A. No.

Q. Why didn't you go in and try to stop this trouble when you heard it?

A. He says, suppose they had hit me too; I wasn't going amongst them to get licked myself.

Q. How long had you known the dead man Tenace?

30

A. He says he may know him. He had only come from Italy a little while.

Q. How do you know that?

A. The brother in law said it, Angelo Bartoni.

Q. How long did this fight last?

A. Maybe six, eight or ten or twelve minutes.

Q. Did you see any officer that night?

A. No.

Q. Police officer?

A. No; then I went to bed.

Q. Why didn't you call the police?

A. He says it was late; where could I find a policeman?

Q. You knew there was policemen in Port Reading, didn't you?

A. I don't know anything about it.

Q. Do you know Raphael Deliso the brother of the defendant?

A. Yes, I know him in this country.

10

Mr. Strong: Cousin?

Interpreter: Cousin.

A. Yes.

Q. How long have you known him?

A. About seven or eight months.

Q. Did you hear the stabbing of him that night?

Objected to; question permitted.

A. No.

20 *Q.* Did you see him that day?

A. No.

Q. Did you see the defendant any other time that day except when you spoke to him?

A. Only at the night; I didn't see him at day.

Q. Did you see Cierrelli any other part of that day?

A. No.

Q. Or any other time that night?

A. Only then.

Q. Who else did you see around there?

30 *A.* Only those three.

Q. Any more than those three there at the time?

A. No; no others.

Q. Did you see a little boy come out of the shanty?

A. He says I seen a little fellow coming out of the shanty; I don't know whether he was small or big.

Q. Where did he go?

A. He was running towards the office.

Q. Would that pass you on his way to the office?

A. No; he was towards the store and he went the other way.

Q. I think I asked the question whether he saw this man there (indicating Cansarano.)

Mr. Strong: He said he did not.

Q. How was the night, light or dark?

A. It was dark.

Q. Moonlight?

A. No.

Q. Moon up?

A. There was no moon.

10

Q. Was it cloudy?

A. It was not cloudy. I could see it was dark.

Q. Was there any light?

A. No.

Q. Did you see any fire, like a bonfire there, a mattress or anything?

A. No.

Q. Was it clear?

A. It was dark. He don't know if it was cloudy or not.

20

Q. Rain?

A. No.

Herbert Fleming, sworn.

Direct Examination, by Mr. Strong.

Q. Where do you live, Mr. Fleming?

A. Highland Park.

30

Q. What is your occupation?

A. Business man.

Q. Have you had experience in the use of pistols and familiar with the calibre of pistols?

A. Well, quite some, yes.

Q. Want to call your attention to this bullet which has been proved in the case to have been—I am identifying the bullet as the same one that has been offered in this case—and I ask you whether you can tell from your knowledge of such matters the calibre of that bul-

let or of the pistol from which that bullet must have been fired?

Mr. Berdine: Don't tell. Answer yes.

Q. Just yes or no, whether you can tell.

A. 32.

Q. I ask you first the question whether you can tell?

A. Yes.

10 Q. Now then I ask you the question what was the calibre?

A. 32.

Q. Do you own a 32 calibre revolver?

A. Yes.

Q. Have you made any experiments for the purpose of determining the effect of firing a 32 calibre revolver at certain distances, as to burning or blackening the substances at which the pistol is directed?

A. Yes.

20 (Objected to, that the witness is not qualified as an expert. Testimony admitted.)

Q. What have you had to do with pistols and revolvers?

A. Oh, I have done a little of practicing shooting with them.

Q. During what period?

A. Well, I couldn't exactly tell you the period of time.

30 Q. Well, approximately how long have you been interested in such matters?

A. Well, three or four years.

Q. Practiced a good deal, did you say?

A. Quite a good deal.

Q. Now my question as to the experiments which you have made. The measurements to which you refer were made when?

A. Yesterday.

Q. And just state what they were, what you did in the way of experimenting.

A. Well, by request, I took a 32 calibre revolver and

shot at a piece of muslin, two pieces of muslin, at a distance of one foot and two feet.

Q. Did you measure the distance?

A. Exactly.

Q. Accurately?

A. Accurately.

Q. Who assisted you, if any one?

A. Edward Grobill.

Q. Is he here?

A. Yes.

10

Q. Now just how did you conduct the experiments?

A. Well, we took a piece of muslin and nailed it against a building. I don't know exactly what the actual measurement of the muslin was, but we put it against the muslin and measured off one foot.

Q. Then what did you do?

A. We shot at the muslin and put a hole through it.

Q. Who fired?

A. Grobill.

Q. What part did you take?

20

A. I done the measurement and fastened the thing up against the building to see that it was correct.

Q. Did you measure it so that you know accurately just how far the pistol was?

A. Yes, sir.

Q. Now have you those pieces of muslin?

A. Yes.

Q. Will you produce them?

Offer objected to.

30

Q. I suppose it was a 32 calibre revolver?

A. 32, Yes.

A. And it was fired with cartridges?

A. Yes.

Q. Well, now I will ask you to produce the muslin to show the effect?

The Court: Mr. Berdine may cross examine.

Cross Examination, by Mr. Berdine.

Q. Have you any objection to looking at that without taking it out of my hand? (Indicating some object held in hands.)

A. Yes.

Q. What is that?

A. It looks like a 38.

Q. Can you tell?

A. Well, not in the position you have it.

10

Q. I am only asking?

A. I can.

Q. What is your business?

A. Lunch room.

Mr. Strong: Let us have that identified, Mr. Berdine; we have a right to have it, so there can be no mistake.

The Court: If you are going to make any use of it it ought to be identified.

20

Mr. Berdine: I will be fair with it.

The Court: Mr. Strong is insisting on his rights.

Mr. Strong: I think we are entitled to have it marked. I don't want to see it.

The Court: I am afraid we cannot mark it, but you are entitled to have it identified.

Mr. Strong: (To witness:) Look at it again, Mr. Fleming, and see if that is the same one he has been looking at? It has been back and forth. (Hands witness ball cartridge.)

30

A. I guess it is.

The Court: Did you say that is the same one that you saw before?

A. It looks to me—

Mr. Berdine: If it is not I am not going to make any further use of it.

The Court: You desire, Mr. Berdine, to make proof that it is the same one?

Mr. Strong: If he is able to say so.

Mr. Berdine: I am not able to say so. I picked it up and layed it down.

Mr. Strong: Picked it up and produced it and handed it to Mr. Peltier and he put it in his pocket and took it out and handed it to you.

Mr. Berdine: I don't know whether it is. I am not going to make use of it.

The Court: I don't suppose it is of sufficient importance. Let it be left with the stenographer and put in an envelope. **10**

Q. How long have you conducted a lunch counter?

A. Three and a half years.

Q. What did you do before that?

A. Worked in a factory.

Q. What?

A. In a factory.

Q. What sort of factory?

A. Paper factory.

Q. How long were you in the paper factory before the lunch counter? **20**

A. Eighteen—twenty-one years.

Q. Have you practiced with a 32 revolver shooting people in the head?

A. No; I guess not.

Q. How many experiments did you make with a 32 revolver upon anything?

A. I haven't any idea. I have done a lot of shooting with it.

Q. I said experiments? **30**

The Court: I do not suppose you have ever experimented with this revolver except yesterday?

A. Yesterday is the first I did it, I guess.

(Mr. Berdine objects to the witness as not an expert. Testimony of experiment allowed by Court.)

Redirect Examination, by Mr. Strong.

Q. Will you produce the pieces of cloth, muslin, I think you said, at which you fired the shots?

A. Yes, sir. (Produces two pieces of muslin.)

Q. This one that I have in my hands is what?

A. Two foot.

Q. What do you mean by two foot?

A. By holding the revolver at a distance of two feet and shooting at it.

10 Q. In producing that result the revolver was held at a distance of two foot?

A. Yes, sir.

Q. 32 calibre revolver?

A. Yes, sir.

Q. Somebody has marked it "2 feet."

A. I marked it myself.

The Court: You had better show it to the jury if it is important.

20 Q. Now I show you the other and this is done at one foot?

A. Yes.

Q. Is it marked "one foot?"

A. Yes.

The Court: Very well; let it be shown to the jury.

Q. This mark there "1," that is your mark?

A. Yes; that is the first shot that was fired.

30

Cross Examination, by Mr. Berdine.

Q. Would the difference in the powder or cartridge make any difference?

A. Well, I wouldn't say it would.

Q. Do you know?

A. No.

Q. Then what do you know about it?

A. Well, I don't know nothing.

Q. That is all; he says he don't know nothing.

The Court: Don't comment at present. Is that all?

Redirect Examination, by Mr. Strong.

Q. Just one thing more. These pieces of muslin were fastened against a board, did you say?

A. Yes.

Q. Was it against a building?

A. Yes.

Q. What was the building? 10

A. It was an out building.

Q. Where did the bullets go?

A. They went through the board that the muslin was against and across a space of about three foot and buried themselves in the other—

Objected to; question allowed.

Q. The board through which the ball went first, that is the board upon which these pieces of muslin were attached; what was the thickness of that? 20

A. A little over three-quarters of an inch.

Q. Did it in each instance go through that?

A. Yes.

Q. And in each instance where did it go after passing through the first board?

A. Across the space of about three feet or a little more and buried into the boards on the other side of the building.

Q. How far did it go into the second board?

A. Partly buried themselves. 30

Q. Each bullet did that, did it?

A. Yes, sir.

Re-cross Examination, by Mr. Berdine.

Q. Would you make a difference in experiments by different revolvers, different makes of revolvers?

A. Did I?

Q. Would it?

A. Yes.

Q. It would make a difference?

A. Yes, sir.

Q. And also a different powder and different cartridges, wouldn't it?

A. Well, naturally so.

Q. Did you have the same character and make of revolver and the same powder and the same cartridge as was used in this case?

10 The Court: I suppose the witness wouldn't know that.

A. No; I don't know.

Q. How about the character of the wood as compared with the man's skull that is shot?

A. I know nothing about a skull.

Redirect Examination, by Mr. Strong.

Q. Now the difference in the revolver, does that depend upon the calibre?

20 A. Yes.

Q. Assuming the same calibre, 32, for instance, are the cartridges for that calibre all of a standard make?

A. I found them so.

Q. What say?

A. I found them so.

Q. Is there any difference in the make of the pistol if the calibre is the same?

A. Well, there is.

Q. In what way?

30 A. Well, some of them are better shooting than others.

Q. How do you mean; in what way?

A. Well, some of them shoots closer than what you will find others. You take one and it is a better shooting gun.

Q. I want to know what you mean by that exactly, a better shooting in what respect?

A. You get a better result from a better made gun.

Q. Do you mean there is a difference in the penetration of the bullet, the calibre being the same?

A. Naturally so.

Q. What say?

A. Naturally so.

Q. You found there is?

A. Yes.

Giovanni Romanulo, sworn and examined through interpreter.

10

Direct Examination, by Mr. Strong.

Q. Where do you live?

A. At the shanties.

Q. At the shanties?

A. DeVita's shanties.

Q. Do you know the defendant Pasquale Deliso?

A. Yes.

Q. Do you know Donato Manuci?

A. Yes.

Q. Were you at Donato Manuci's house on St. Pele- 20
grino's day last 25th of August?

A. Yes.

Q. What time were you there?

A. About half past eleven.

Q. In the morning or evening?

A. In the morning.

Q. How long did you remain there?

A. Stood there until night, half past eleven or twelve
o'clock, or after twelve o'clock.

Q. What was going on at Donato Manuci's house 30
that day?

A. He says, on account it was St. Pelegrino we was
enjoying ourselves drinking beer and dancing.

Q. How many people were there during the day and
night?

A. Pasquale Deliso, Bartholomew Cidello, Donato
Manuci, that is the owner of the house. There was a
lot of Mondanardoes that I don't know.

Q. Was Pasquale Deliso there?

A. Yes.

Q. What was he doing?

A. We was enjoying ourselves.

Q. What do you mean by that?

A. On account it was a holiday; it was the name of the Saint. We was playing accordeon and they was dancing and playing.

Q. Do you know what time Pasquale Deliso came there to Manuci's?

A. About one o'clock.

10 *Q.* In the day time or night?

A. At day time.

Q. How long did he stay there at Manuci's after that?

A. When I went home, why, he came home; it was late at night.

Q. Were you in company with—

Objected to as leading.

20 *Q.* Were you in company with Pasquale Deliso all the time from one o'clock in the day until about twelve o'clock at night when you went home?

The Court: I think it is objectionable. You may frame it differently.

Q. Were you at Donato Manuci's house at the time that Pasquale left?

A. We went away together.

Q. Were there any others that went with you and Pasquale at the same time?

30 *A.* It was me, Pasquale, Bartholomew Ciadello and Donato Manuci.

Q. Where did you four, yourself and the three other persons whom you named, go from the Manuci's house that night?

A. Why, Donato Manuci accompanied us as far as the shanties. When we got to the shanties, why, him and Donato Manuci and Bartholomew Ciadella they came back.

Q. Came back or went back where?

A. They came back.

Q. Back where, where did they go?

A. Came back and went back to their house.

Q. How far is Donato Manuci's house from the shanties?

A. Thirteen or fourteen minutes.

Q. After Donato Manuci and Ciadella left you and Pasquale Deliso, what next occurred as far as you know? Where did you and Deliso go?

A. He says, give two steps about from here to there I saw Domeinio Russo, and I says, "Hey, good night." 10
We seen two or three persons a little ways from us passing, and one's name was Joseph Baretti, Angelo Cierrelli and Angelo Antonio Sacco.

Q. Go on; what next?

A. They was passing with some sticks in their hands. Angelo Cierrelli had a stick; Guiseppi Baretti had a revolver and a small stick; Angelo Sacco had something in his hand that looked like a revolver.

Q. What next?

A. He says, when they run from here to the wall 20
and there is a window, then ran towards there and they began to hit by the window.

Q. Who did?

A. Angelo Cierrelli, and the other shots, and they shot in the window.

A. And those inside began to hollo. While holloing a little boy came running out, and they shot after him.

Q. Who did?

A. I don't know, because there was three of them. 30

Q. Which three do you mean?

A. Angelo Cierrelli, Guiseppi Baretti, Angelo Antonio Sacco.

Q. Well, what next?

A. I seen so much confusion and the shooting and I says to Pasquale—

Mr. Berdine: Never mind.

The Court: It is hardly necessary to go into that.

Mr. Strong: I don't care about the conversation.

Q. Where did these three men, Antonio Sacco and Cierrelli and Baretti go after they were at the window, next after that?

A. They went to look for the door of the shanty.

Q. What did they do there?

A. He says, I heard them holloing and fussing there
10 and I saw the boy running out, so I says to my friend, "Let's get out; we are liable to get shot; we are liable to get caught with a bullet."

Q. Did these three men, Cierelli and Sacco and Baretti go in the shanty?

Objected to as leading; question admitted.

A. I think they went in because the people inside was holloaing.

Q. Were there any shots fired at that time?

A. Another shot or two.
20

Q. Where were these three men, Sacco and Ciarrelli and Baretti when these last shots were fired?

A. Who was in the shanty and who was out; because it was dark I couldn't tell if the three of them was inside or if they was outside.

Q. Could you see any light in the shanty?

A. No, sir. First there was a light when they began to hit in the window.

Q. Then what happened about the light?

A. Then the light was out.
30

Q. Where were you and Pasquale Deliso and Domenico Russo at the time that these three men were at the shanty?

A. We was about from here to the jury from the shanty, a little bit further back.

Mr. Marsh: These witnesses say from the window.

A. From the window. He said the door is right around from the window.

Q. Where did you go after that?

A. Each one of us went to bed; and I said good night, good night, I says, they are liable to strike us with one of the bullets.

Q. Where were you when you said good night to the others?

A. A little ways away from the board—he means the store; he calls it board.

Q. Did you see where Pasquale went when you left him? 10

A. I don't know.

Q. Did you see where Domeinio Russo went?

A. No. He says, there is three streets there and each one took to his shanty.

Q. Did you see where the other three men, Ciarrelli, Sacco and Baretti, went?

A. He says we heard them running, but it was dark and they went behind the bakery.

Q. Did Pasquale go up to the shanty while you were there? 20

A. He wants to know do you mean when he heard the men walking?

Q. Did he go in the shanty at any time while you were there?

Objected to; question permitted.

Q. You have stated that you and Pasquale and Domeinio Russo went up near the shanty where these other three men, Ciarrelli, and Sacco, went in; now I ask you, did Pasquale go into the shanty at that time at all? 30

A. No, sir. We was about seven or eight steps away.

Q. From the shanty?

A. Yes.

Q. All the time?

A. He says that thing happened just in a minute, and he says they commenced to bat the windows down and it was all over.

Q. Now did Pasquale the defendant have a revol-

ver at any time that night, as far as you know?

A. He says he was the whole day with me.

Q. Did he have a revolver?

A. No, sir.

Q. Or pistol of any kind?

A. Nothing.

Q. Did he have a club?

A. No, sir.

10 Q. Did Pasquale Deliso take any part in the fight or trouble that took place in the shanty of Tenace?

A. No.

Adjourned till 2 P. M.

Afternoon session, 2 P. M.

Giovanni Romanulo, resumed.

Cross Examination, by Mr. Berdine.

Q. What province are you from in Italy?

A. Alena.

20

Q. The same as this man, the defendant?

A. Yes.

Q. How long have you known this man?

A. He says, I was brought up, though, in Naples.

Q. How long have you known this man?

A. Since he has come back from Italy.

Q. How long was that?

A. About four or five months.

Q. Did you see him before two o'clock or twelve o'clock on the 25th of August?

30

A. No; he says, I came down at one o'clock.

Q. Did you examine him to see if he had any gun or pistol on his person?

A. He said he was all day with me; he was all the time with me, and if anybody carries a revolver or gun or weapon it kind of shows.

Q. He didn't show it?

A. No; it didn't show.

Q. Where were you standing that night in front of the shanties?

A. Before we reach to a large tree there.

Q. With respect to the buildings on the DeVita place, where were you?

A. A little bit ways.

Q. From what?

A. From the shanty.

Q. How near the bakery?

A. About from here to the wall (indicating).

Mr. Strong: That means the furthest wall.

10

A. From here to that wall. (Indicating back wall of court room.)

Q. Which side of the shanties, on which side of the bakery were you?

A. He says, right in front of the board—that means the store.

Q. Right in front of the board?

A. Right in front.

Q. Did you leave that place at all until you started to go home?

20

A. He says, when he left that he says good night, it was behind the shanties, this side (indicating left.)

Q. Do you know what caused the row in the shanties?

A. No.

Q. Did you hear of the difficulty by which Raphael Deliso was stabbed or cut on that day?

Objected to; question admitted.

A. No.

30

Q. Were you armed at all that night?

A. No, sir.

Q. Did you ever own or have a pistol?

Objected to; question permitted.

A. There is four or five years and I never had a concealed weapon on me.

Q. Do you know whether the defendant had a gun or pistol?

Strong.

A. He says, from what little I know him he always was a good man.

Q. What about a gun or pistol?

A. No.

Q. Why didn't you go in and stop the trouble or protect these people who were assassinated?

A. He says, suppose they had shot me; that they all was there in a bunch together. He says I have a family and children.

10 Q. Why didn't you go for the officer or something?

A. He says, it was very late and if I had went after an officer maybe somebody had shot me.

Domeinio Russo, recalled.

Further Cross Examination, by the Prosecutor.

Q. Have you ever seen that man (indicating Can-sarano.)

20 A. No.

Q. On this night in question, the 25th of August, were you in this man's shanty—I have forgotten his name?

A. No, sir.

Q. Were you in there with Deliso, the defendant, that night?

A. No, sir.

Q. Were you in there alone or with Deliso with a gun or any fire arm of any sort that night

30 A. No, sir.

Pasquale Deliso, sworn and examined through inter-preter.

Direct Examination, by Mr. Strong.

Q. You speak English?

A. No, sir.

Q. What nationality are you?

A. Italian.

Q. How long have you been in this country?

A. Four or five months.

Q. From what part of Italy did you come?

A. Pietro Sernay.

Q. Are you a married man?

A. Yes, sir; I have four children.

Q. In this country or in Italy?

A. In Italy.

Q. On August 25th, which was St. Pelegrino's day, this year, whereabouts were you living? **10**

A. Up in the shanty.

Q. In DeVita's shanty?

A. Yes, sir.

Q. Where were you employed?

A. On the dock, on the boats.

Q. What work were you doing?

A. When I first worked for twenty days upstairs on the docks and then went down stairs.

Q. What does he mean by down stairs?

A. They call them trimmers. **20**

Q. Who was the boss or timekeeper under whom you worked?

A. He says, it was a fat man, red in the face.

Q. Do you see him here to-day?

A. No, sir.

Q. Don't you know his name?

A. No.

Q. Did you see him here yesterday?

A. Yes, sir.

Q. What number were you known by in your work? **30**

A. I think it is 429. I don't know the number—489 or 487.

Q. Is that what he says. Were you working there on the day before St. Pelegrino's day?

A. Yes, sir.

Q. On St. Pelegrino's day where were you?

A. He says, I ate at Calandero Zora's in the day; after dinner I went towards the shanty .

Q. Were you at Donato Manuci's house that day?

A. Yes, sir.

Q. What time were you there?

A. He says it was about one or half past one.

Q. What did you do there?

A. I was enjoying myself.

Q. In what way were you enjoying yourself?

A. We was dancing.

Q. Any other amusement?

A. We was playing and doing all kinds of games.

Q. Well, what kind of games?

10 *A.* We was playing cards.

Q. How long did you remain there at Donato Manuci's house after you went there at one o'clock?

A. I stood there till night.

Q. How late at night?

A. About twelve or half past twelve.

Q. Who were there with you during that time?

A. Bartholomew Ciadella, Danato Manuci, Donato Manuci's wife, Giovanni Romanula. There was a couple of other Mondanardos there, that they even had

20 dinner there, but I don't know them.

Q. When you left Donato Manuci's house at night did you go alone?

A. No.

Q. Who went with you?

A. Me, Donato Manuci, Giovanni Romanula and Bartholomew Ciadella.

Q. The last man that you mentioned, was he a witness here this morning?

A. Yes, sir.

30 *Q.* Where did you go? Where did you and the other three men go when you left Donato Manuci's house that night?

A. Went up to the shanty.

Q. Did Ciadello and Manuci go all the way with you?

A. Yes, sir.

Q. Where did they go?

A. Up in the shanties.

Q. Well, go on, and tell us where you went?

A. We went to the shanties.

Q. What part of the shanties? Which shanty?

A. Manuci and Ciadella came as far as the shanties and they came back.

Q. Then where did you and the other man Romanula go?

A. We went into the shanties.

Q. Where were you going?

A. We was going, we was going, we was going, that is the way he brings out that question.

Q. Which shanty did you live in at that time? **10**

A. He says there was one line of the shanties and there was the other one; the second line of shanties. He says I don't know, maybe about from here to that wall away.

Q. Was the shanty which you lived in in the last row of shanties?

Objected to; question allowed.

A. No; in the second line.

Q. In the second line of shanties? **20**

A. Yes; he says that I remember that there was some Sicilian people lived right next to my shanty.

Q. In going to your shanty did you pass in front of DeVita's store or not?

A. Yes, I had to pass in front of DeVita's store. They call it board; it is store.

Q. When Ciadello and Manuci left you and the other man, whereabouts was it? Was it before you got to DeVita's store or not?

A. Just a little down from the shanty, a few steps. **30**

Q. When they left you, go on and tell where you and Romanula went?

A. He says we was going about our business and we see Domeinio Russo.

Q. Then what?

A. Me, Domeinio Russo and Giovanni we went towards in front of the store.

Q. Go on?

A. Then they came and passed Angelo, Antonio Sacco, Joseph Baretta and Angelo Ciarrelli.

Q. Which way was Sacco, Baretti and Ciarrelli coming from?

A. From behind the bakery.

Q. Where did they go?

A. They went by the shanty.

Q. Which shanty?

A. I don't know whose shanty it was.

Q. Whereabouts was the shanty?

A. It is right opposite a shanty from Zebelucha, they
10 call a man.

Q. Where did you and Romanula and Russo go?

A. One of these three went to a window and began to hit it with a stick.

Q. Which three?

A. Angelo Ciarrelli had the stick in his hand.

Q. Where were you and Domeinio Russo and Giovanni Romanula when you saw these other three men breaking the window with the stick?

A. He says that we seen that they was breaking the
20 window and we went nearer to them.

Q. How near to these three men were you?

A. He says we went about from here to that man over there.

Q. Well, who does he mean?

A. By the coats there. (Indicating jurors' coats hanging back of jury box.)

Q. Well, what did you see Sacco and Baretti and Ciarrelli do?

A. They shot two shots in the window, but I don't
30 know who shot them.

Q. Did you see any pistols in their hands?

A. When they passed us, yes.

Q. Who had pistols?

Q. Angelo Antonio, and Guiseppi Baretti.

Q. Antonio Sacco, I suppose he means?

A. That is what he means.

Q. Did Ciarrelli have anything in his hands?

A. Had a stick.

Q. Did either of the other men have sticks?

A. Yes; one had one and the other had one.

Q. Now go on and tell what you saw after the two shots were fired in the window?

A. Then they turned around on this side and went near the door.

Q. Well, go on; what next?

A. Then they made them open the door. The door was opened. Then they went inside.

Q. Well go on; what more.

A. Then the boy ran out. The boy ran out, but I don't know who it was or who it wasn't. 10

Q. Which way did the boy go?

A. He says he passed behind the house of Carmello Zucardo.

Q. Were any more shots fired?

A. Three shots they fired after the boy.

Q. Who fired those shots?

A. I couldn't see them.

Q. From what place were they fired?

A. From the shanty.

Q. Was there a light in the shanty? 20

A. No.

Q. After the boy ran out and shots were fired, go on and tell what more?

A. Then they shot two more shots in the shanty and they was holloing.

Q. Well, go on; what next?

A. He says, we went a little ways and then Giovanni Romanola says, "Come on, we will go home, because they are liable to shoot us."

Q. Where were you then? 30

A. We was a little bit ways from the shanty.

Q. And where did you go then when John Romanola said that?

A. Then we went towards the store.

Q. DeVita's store?

A. Yes; behind the bakery.

Q. Did you go into the shanty where the shooting was?

A. No, sir.

Q. Did you have any revolver that night?

A. No; I never carried any revolver or even in Italy since I was born.

Q. Did you have any that night with you at all?

A. No; never had any revolver; didn't have any and I never carried one.

Q. Did you have any club or stick in your hand that night?

A. No. Then I didn't have no stick in my hand.

10 *Q.* Did you shoot this man Luigi Tenace, the man who died?

A. He says, if I shoot Luigi Tenace I hope everybody in this court room may shoot me.

Q. Well, do you say that you did or did not shoot him?

A. No, sir.

Q. Did you hit him with the stick?

A. No, sir; I didn't hit nobody. I didn't go near his place. He says, If they caught the other three and **20** brought them here before the jury, then things would be different.

Q. The three men that went in the shanty, I mean Ciarrelli, Sacco and Baretti, what became of them that night?

A. They run away.

Q. Which way did they run?

A. Says towards the cars; around the shanty but going towards the cars. He says they was running that way from the store, out to the main street.

30 *Q.* Which way from the store does he mean. I can't understand.

A. Behind the store.

Q. Was that in the same direction they came from when he first saw them?

A. He says this is the road and they came from the bakery.

Q. Was that the way they went afterwards?

A. He says the three of them began to talk.

Q. Oh, I mean the direction they went. Did they go back the same way they came?

A. I don' know. They went the same way, but they ran out to the main street; they call it the wide street.

Q. Where did you go then?

A. I remained there and while I was there the police came.

Q. Do you know the man's name?

A. No; I know him by sight.

(Officer McDonnell stands up.)

Q. Is that the man? **10**

A. Yes, sir.

Q. Was anybody with him?

A. Him and another.

Q. Do you know who the other was?

A. No; because they was about from here to those two young fellows way in back there (indicating men in court room.)

Q. Did you see the boy that ran out of the shanties first? Did you see him afterwards with McDonnell?

A. No; not that night. **20**

Q. Did you run after the boy that night again? Did you run after the boy?

A. No.

Q. Now when you saw McDonnell, the policeman, what happened then?

A. He says, I ran away with the rest of them.

Q. With the rest of them?

A. Angelo Ciarrelli, Angelo Antonio and Guiseppi Baretti.

Q. Did the policeman fire his revolver? **30**

A. He shot two or three shots.

Q. Where did you go then when you ran away?

A. In the car. He says they went in the cars and I was under a timber. He says it is a limber about that high.

Q. What do you call it?

A. He called it a limber.

The Court: I don't quite understand it. First I got it timber and then lumber and then limber.

By the Court.

Q. The part of a tree or bush?

A. It is dirt.

Mr. Berdine: A knoll or hill.

Mr. Strong: Well, I don't know about it; let him explain.

The Interpreter: Behind a little hill, that is what he means.

10 *By Mr. Strong.*

Q. Why did you run then?

A. I saw the policeman coming and I heard the three shots and I got afraid.

Q. How long did you stay there under the limbo, whatever you call it?

A. About fifteen minutes or less.

Q. Then where did you go?

A. Then I went to bed.

20 *Q.* Where?

A. At my shanty. It was after I left where I was hiding by this dirt was about an hour before I went to bed.

Q. Did you spend the rest of the night at your shanty after that?

A. Yes.

Q. Where did you go next morning?

A. I went to work.

Q. Did you work all day Monday?

30 *A.* All day.

Q. At what?

A. At coal.

Q. Was that what you call trimming?

A. Yes, trimming coal.

Q. Where did you spend Monday night?

A. Up at the shanties.

Q. Whose shanties?

A. He says everybody is up in shanty. That man there he was up in shanty.

Q. Did you sleep that night, Monday night, in your own shanty?

Objected to; question allowed.

(Question withdrawn.)

Q. Where did you spend Monday night?

A. I stayed near the house of Rocco Simuno.

Q. Is that one of the shanties of the DeVita's?

A. Yes

Q. On Monday, while you were working did you see **10** anything of McDonnell, or the boy Domeinio Tenace?

A. He says I see them pass. I seen them, McDonnell, the boy and the Judge. The boy was last. He had his arm by his side.

Q. The boy, McDonnell and the Judge. Who do you mean by the Judge?

A. He says the postmaster, I don't know what he is.

Q. Well, where were you when they passed you as you say?

A. I was on the boat. **20**

Q. Working?

A. Yes, working.

Q. How near were they to you?

A. I see them on the second dock. He says that was the first dock and then they passed the second dock—

Mr. Strong: Don't go so fast. What does he say now? **30**

A. They was about from here to the door away from him.

Q. Did they see you?

A. They ought have seen me.

Q. Did the boy or McDonnell or the other man speak to you that day?

A. No.

Q. What were they doing there?

A. They was walking around. I don't know what they was doing.

Q. Did you see Angelo Sacco, Angelo Ciarrelli or Guiseppi Baretti on Monday at work?

A. No.

Q. Were they there when McDonnell and the boy and the other man came on the dock?

A. He says, I don't know whether they was there or not; they was working at the second dock.

Q. Do you know whether they were working at all on that day?

10 *A.* I don't know.

Q. Did you work on Tuesday?

A. Yes.

Q. All day?

A. No.

Q. How much of the day did you work on Tuesday?

A. Until twelve o'clock.

Q. Then what happened?

A. Then I went to the shanties.

Q. Why didn't you work in the afternoon?

20 *A.* He says I didn't feel good, I was sick, felt sick in the stomach.

Q. How much sick were you?

A. He says I had diarrhea very bad.

Q. Where did you go after twelve o'clock Tuesday?

A. About two o'clock I went to New York.

Q. Did you take the train to New York?

A. Yes. He says I went for them right this way from the shanties where the trains pass with coal.

Q. Why did you go to New York?

30 *A.* He says, a little bit that I was afraid on account of this fight and a little bit that I was sick on account I had diarrhea.

Q. When were you arrested in New York?

A. The day of the 29th on Thursday.

Q. That was Thursday, you said?

A. I think it was on Thursday.

Q. Did you make any effort to hide yourself away in New York?

(Objected to; question withdrawn.)

Q. When you were arrested where were you taken in New York?

A. He says, that is the man that arrested me (indicating detective) and he says some other policeman from here.

Q. Where did they take you?

A. They brought me some place, I don't know where it is, but they was policemen there.

Q. What did they do there?

A. He says, that gentleman asked me who I was and who I wasn't; he asked me who I was and I said I am Pasquale Deliso. **10**

Q. Go on.

A. So he looked at my hands.

Q. Go on and tell just how it happened.

A. He says, after he looked at my hands he took me under the arm and took me to the police and they brought me to the lock up.

Q. Go on and tell what happened.

A. He says, after bringing me to the police— **20**

The Court: Tell him he must speak slowly.

A. He asked me where did I come from, how long I had been in this country, and so they telephoned here—I don't know where they telephoned, if they telephoned to Port Reading or if they telephoned here, because I did not understand for they was speaking English.

Q. Did you tell where you come from?

A. Yes. **30**

Q. What did you tell them?

A. Says I come from Port Reading.

Q. Go on and tell what further happened.

A. So they took me down stairs.

Q. Who was down stairs?

A. He says, there was one man that locked me up in the cell, he says, with another man.

Q. What happened there?

A. He says, that was at night and they didn't take me out no more.

Q. Not until next day?

A. He says, the next day that policeman there came.

Q. Who is he indicating now?

The Interpreter: He means this fellow here.
(Indicating Mr. Archipello.)

Q. Well, go on.

A. He says, he come and took me out of the cell; then he brought me upstairs again. Then they locked
10 me up again. Then about fifteen or twenty minutes after he came after me and he took me out of the cell. He says, the boy came and some other man there (indicating). He says, the boy and that man. He says, some other man down there (indicating) and he was there, and the other gentleman standing there, and Officer McDonnell. He says, the turnkey was there too.

Q. Well, what happened then?

A. They took me out and the boy says, "This is the
20 man that killed my father."

Q. What else?

A. He says, then they brought me upstairs in the room and they took my picture.

Q. Did the detective do anything to you? The Italian in Uew York?

A. He says, that gentleman there punched me in the stomach. He says the boy, that other man was there and this other gentleman hit me too.

Q. Hit you? Any one else?

A. They brought me upstairs where the police was
30 and they handcuffed me and they brought me to another jail.

Q. The boy said that you were the man that had killed his father. Did anybody else say anything?

A. He says, that man there, he says, after hearing the boy, he says, about three or four minutes after, then he spoke.

Q. What did he say?

A. He says about six or seven minutes after he said the same as the boy.

Q. Did the boy say anything to him before that?

A. No.

Q. What were the exact words that the other man used?

Objected to.

Guiseppi Tenace asked to arise.

Q. What words did that man use?

A. He says, "This is the man that made me kiss his hand." **10**

Q. Who said that?

A. He said, "This is the man that made me kiss his hand."

Cross Examination, by Mr. Berdine.

Q. Did they find any money upon you?

A. No.

Q. Did you have any?

A. No; I didn't have no money.

Q. How much did you have when you left Port **20**
Reading?

A. Two dollars.

Q. How much was the carfare?

A. Forty cents.

Q. Buy a ticket one way?

A. Yes.

Q. Did you see a doctor?

A. No, sir.

Q. Did you see either of these officers on Monday **30**
afternoon?

A. No, sir.

Q. When did you first see either one of them, these officers, New York officers?

A. I never saw them.

Q. Either of these gentlemen here?

A. He says, the Monday that I went—I didn't go to New York on Monday.

Q. Well, I said when did he first see either one of them?

A. He says, when they arrested me then I seen them.

Q. When was that?

A. On Thursday.

Q. Which one did he see then?

A. At night, that gentleman there on the end.

Q. This one?

A. Yes, sir.

Q. Mr. Archipello?

A. Yes, sir.

10 *Q.* Did you tell him then that you had come from Port Reading on Monday to see a doctor?

A. What Monday?

Q. Did you tell this officer—

A. He wants to know what Monday.

The Court: You better fix it as August, Monday, the 26th.

20 *Q.* Did you tell this officer, Mr. Archipello, the day he arrested you, that you had come from Port Reading to New York on Monday, meaning Monday, August 26th?

A. He is mistaken.

Q. Did you tell Mr. Bottie that you came to New York on Monday, August 26th?

A. He wasn't there. He says some other American was there. He says he ran after him, Manuci.

Q. This was the time you were under arrest at police headquarters?

30 *A.* He says, he arrested me on the street, and I told him when he had me under the arm that I came to get a visit.

Q. When you were at police headquarters in New York City under arrest in the presence of these officers, Mr. Archipello or Mr. Bottie, or either of them, did you tell either of them that you came to New York from Port Reading on Monday, August 26th?

Mr. Strong: Mr. Interpreter, I think perhaps you had better give his answers.

The Interpreter: I am trying to explain it to him, while he was under arrest. He don't seem to understand.

Mr. Strong: Won't you ask him the distinct question whether he told him that he came from Port Reading on Monday.

The Court: He always thinks that the Monday relates to the time when he said that.

Q. Do you remember being at police headquarters on Thursday afternoon or night after you had been arrested?

A. Yes, I remember that.

Q. In the presence of either of these officers, do you remember that? **10**

A. He says, that he told him when he had me under arrest.

Mr. Strong: That means Archipello?

The Interpreter: Archipello.

The Court: Now what did he tell him.

Q. That you came from Port Reading to New York on Monday meaning August 26th? **20**

A. That ain't true.

Q. Did he at any time tell either of them?

A. He says, I said it on Tuesday at two or half past two.

Q. That he said it on Tuesday or he came on Tuesday?

A. Yes, on Tuesday.

Mr. Strong: That is, he said he came on Tuesday. **30**

A. He said he went on Tuesday at two or half past two.

Mr. Strong: No; what did he tell them?

A. Yes, I told him while he had me under arrest.

Mr. Marsh: Didn't he say he came to New York on Tuesday at two or three o'clock?

A. He said he told Mr. Archipello he had come on Tuesday about two or three o'clock.

Q. Do you know this officer, Peltier?

A. He says, when he had me under arrest, when he brought me there he was upstairs.

Q. Do you remember when Mr. Peltier escorted you from New York to New Brunswick?

A. Yes.

Q. Was this officer with him (indicating Archipello.)

A. Yes.

10 *Q.* Did you tell either of those officers then that you come from Port Reading on Wednesday, meaning Wednesday, August 28th.

A. He says, they is things that they are saying themselves, because I didn't understand. He says they brought me in and gave me a drink and they wanted me to drink whiskey and I took a glass of soda and that gentleman paid for it.

Mr. Strong: Who paid for it?

(Witness indicates.)

20 Mr. Strong: This gentleman with the pencil?
Witness: Yes.

Q. These gentleman speak your language, do they not?

A. Yes, but I don't know what he was saying in English.

Q. Do you remember the day the boy Tenace identified you in New York?

A. He says, I don't remember the day.

Q. Do you remember the circumstance?

30 *A.* Yes, I remember that he came.

Q. Do you remember that day of being with either one of these officers?

A. I don't remember. He says they came two or three times at the police headquarters.

Q. While you were being escorted to court on the day which you were identified did you tell either of these officers that you did not know anything about the trouble at Port Reading?

A. I didn't say anything. They can say what they like.

Q. How long did you know Tenace, the dead man?

A. He says, I know him only I seen him one time.

Q. Do you know this man Cansarano?

A. No; I don't know him.

Q. Did you see him that night of August 25th?

A. No; I didn't see him.

Q. Were you in his shanty or near it the night of August 25th, the night of this trouble?

A. He says, what was I going to do in his shanty?

Q. I asked him whether he was in there or near it? 10

Mr. Strong: What do you mean by that? I think you had better put your question distinctly if you want to show in it or near it.

Q. Well, I will say in it then.

A. No, sir.

Q. Nor near it that night?

A. I wasn't there at all.

Q. Do you know Raphael Deliso?

A. Yes. 20

Q. When did you learn that he had been hurt or cut?

A. In the morning.

Q. What morning?

Q. Monday morning.

Q. What time Monday morning?

A. When I got up, six or seven o'clock—six or half past six.

Q. Do you know where they took him?

Objected to as irrelevant. 30

A. They brought him to the hospital.

The Court: I cannot see the relevancy of this at this time.

Mr. Berdine: It has been brought out that Raphael was in the hospital.

The Court: That don't open the door for cross-examination of this witness.

Q. Do you know when Tenace was taken to the hospital?

A. No.

Q. Did you get any word about Tenace's condition from the hospital at any time?

A. He says, who would tell me; what did I know about it?

Q. I asked did he get any word?

A. He says, who could tell me?

10

The Court: Tell him to answer the question.

A. No.

Q. The night when you were in front of the store at DeVita's settlement with Sacco and the others, do you recall that?

Mr. Strong: I think that is—

The Court: That is rather unfair, Mr. Prosecutor. He doesn't say he was there with Sacco and the others; he was there with two other men.

20

Mr. Prosecutor: I only want to get the situation.

The Court: That Sacco and Cierrelli and Barretti went by.

Q. Do you remember the night when Sacco and Barretti and Carrelli went by in front of DeVita's store?

A. Yes.

Q. What was the first that you saw about the row?

A. He wants to know what row, in what shanty?

30

Q. The row that you speak of in your testimony.

A. Angelo Cierrelli.

Q. What was the first thing that you saw?

A. Angelo Cierrelli hit by the window.

Q. Why didn't you go up and stop it?

A. He says, I didn't want to go and get hit myself.

Q. Why didn't you stop the row when it took place inside the shanty afterwards?

A. He says why? Did I have to go there?

Q. Do you recall running after the boy just after the row, the boy Domeinio Tenace?

A. He says, who me?

Q. Yes?

A. He says, I didn't run after no boy.

Q. Did you have a club or stick of any sort in your hand at any time?

A. No.

Q. How long after the row did you see Officer McDonnell?

A. He says a quarter of an hour, a half hour, an hour; I didn't have no watch. **10**

Q. Where were you then between the row and the time that you saw McDonnell?

A. He says by the shanty in that street there.

Q. Around there all that time?

A. He says, I stood there with the rest.

Q. Who were the rest?

A. Me, Angelo Cierrelli, Guiseppi Baretti and Angelo Antonio.

Q. What were they doing there?

A. He says they run away; when the police came **20** they ran away.

Q. What were they doing before they ran away from the police officer?

A. He says they was there minding their own business.

Q. How near were you to them?

A. He says, about from here to there.

Q. Did you have anything to say to them?

A. No; he says when I got near I seen that they run away, and then I run too. **30**

Q. Run along with them?

A. I ran after them.

Q. How close to them?

A. About from here to Mr. Marsh there.

Q. Did you see them get in the cars or under the cars?

A. Yes; they jumped in the cars.

Q. How far were you from them then?

A. About from here to the wall.

Q. How long did they stay in the cars?

A. He says, what do I know?

Q. When did you leave the place?

A. He says maybe in fifteen minutes or in a half hour.

Q. After this who was the first person you saw?

Mr. Strong: After what? I think we are entitled to have that a little more clearly, after what?

The Court: I suppose you mean after he saw the men hiding in the car or escaping?

10

Mr. Berdine: Yes.

The Court: Who was the first person that you saw, put it that way.

Mr. Berdine: Change it.

A. Didn't see nobody.

Q. Who was the first person he saw afterwards?

The Interpreter: That is the question he answered.

The Court: I suppose he did not see anybody that night.

20

Q. Did any one shoot after you or shoot at you?

A. He says some man there shot, the police.

Q. Officer McDonnell. Why didn't you stop when Officer McDonnell shot?

A. He says he was shooting, I wasn't going to stop. He says he didn't know whether it was a policeman or not, and of course the next morning they said it.

Q. Was he in uniform?

A. He says he didn't even see him and don't know whether he was in citizens clothes or whether he was in uniform.

30

Q. Didn't you see that he had policeman's uniform on with the brass buttons?

A. He says, how could I see him.

Q. Did you know that he was a policeman?

A. He said, they told me in the morning. How did I know?

Q. When did you know the dead man Tenace was shot?

A. I knew it when they arrested me, that the boy came.

Q. When was that?

A. He says I don't remember when it was the first time. I remember that when the boy came and said it was me.

Q. When is the first time that you told any one that you saw either of the three men there shoot a pistol?

A. Who could I said it to?

Q. Suppose he answers the question. 10

The Court: Suppose you ask him if he ever told anybody it was one of the three men that shot the pistol and then you can get it out of him systematically.

A. Who could I tell it? He said I told it here now. I told it to my lawyer.

The Court: Ask him if he ever told it before he told it now. 20

A. I told it with my lawyer.

Q. Any one else?

A. No.

By the Court.

Q. You say that you were behind this earth or limb, as you call it, for about an hour?

Mr. Strong: I do not think he makes it that length of time, if your Honor please.

Mr. Berdine: He said a half hour or an hour, I don't know which. 30

The Court: Perhaps I am wrong.

Q. You recollect the time that you were behind the earth or limb, as you call it?

A. The night of the—

Q. Now did you at any time that night see Luigi Tenace and his boy and Joseph Tenace leave their shanty?

A. No; I didn't see anything.

Q. But did you see either of them go to Bartoni's?

A. He says, the boy ran away when he run down the street.

Q. And you saw no one else but the boy go away from the shanty?

A. He says, yes, I seen the boy running.

Q. Well, did he see anybody else leave the shanty

A. No; he says I didn't even know who lived in the shanty.

10

Redirect Examination, by Mr. Strong.

Q. This place where you were under the limbo, or whatever you call it, or under the hill, whatever place it is,, how far away was that from the shanty where you saw the men Sacco and Cierrelli and Baratti?

A. He says, he can't tell the distance from here.

Q. Is it a long distance or near?

A. He says it was a long distance, far away.

Q. From where you were under that place, could you see whether anybody came out of the shanty or not?

20

A. No; he couldn't see nobody. He says it was too far.

By Mr. Berdine.

Q. Did you start to run away before the officer fired?

A. He says, them three ran first and I ran and afterwards the police officer shot the revolver.

Patrick Coughlan, called and does not answer.

30

The Court reserved the right to defendant to call this witness before the close of the case if the witness appears.

Defendant rests.

State's Testimony in Rebuttal.

Antonio Matteo Sanzone, sworn.

Direct Examination, by the Prosecutor.

Q. (Cansarano asked to arise.) Do you know his name?

A. Yes.

Q. Give me his name?

A. Domesinio Cansarano.

The Court: You are limited to strict rebuttal. **10**

Q. On the 25th of August, at night, were you in his shanty?

Objected to as not rebuttal of anything; question allowed

A. Yes.

Q. Did you see Russo that night in Cansarano's shanty with a gun or club in his hand?

Objected to as contradiction upon an immaterial issue, and not as rebuttal. Question allowed. **20**

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

Mr. Strong: The question is further objected to as leading.

The Court: Well, I think that objection was well taken. You will have to go step by step. Ascertain whether he was there. **30**

Q. Did you see Russo that night in Cansarano's shanty?

Objected to as leading, and on grounds heretofore stated. Question admitted.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

A. Yes, I was there with him.

Q. What had he with him?

Objected to on grounds heretofore stated.

(Objections overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

10 *Q.* What did Russo have with him that night at Can-sarano's shanty?

Mr. Strong: If anything.

A. He wants to know who is Russo?

Russo stands up.

A. He says, he came in with a double barreled gun.

The Court: Ought you not to ask at what hour it was?

20

Mr. Strong: I have no questions. I understood the witness was turned over to me for cross-examination and I said I had no cross-examination.

Q. What hour was it at night, do you recall?

Objected to on grounds heretofore stated. Objection overruled.

(Whereupon the defendant, by his counsel prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

30

F. J. SWAYZE, J. [L.S.]

A. He says, it was after twelve o'clock, half-past twelve or more.

Q. Was he alone?

Objected to; question overruled.

Domeinio Cansarano, recalled.

Direct Exemination, by the Prosecutor.

Q. Stand up, Russo. (Russo stands up). Do you recall that man?

A. Yes.

Q. Russo?

A. Yes.

Q. Did you see him about on the night of the 25th of August? 10

A. Yes.

Q. Where?

A. In my shanty.

Q. What did he have with him?

Mr. Strong: If anything. It doesn't appear he had anything.

The Court: Oh, yes; go step by step.

Q. Add if anything. Did he have anything with him? 20

A. He said he had a double barreled gun and he put it inside of my door.

Mr. Strong: I wish this to be under the same objection.

The Court: Certainly. I overrule the objection and you have your exception.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.] 30

Q. Was anyone with him?

The Court: I have already overruled it. I do not see at present how it can be important.

Mr. Berdine: I do not want to discuss it before the jury. (Addresses court at sidebar.)

(Question repeated.)

Mr. Strong: That is objected to as not proper rebuttal and as immaterial unless it is intended to

reinforce the original case of the State. If it is intended for that purpose it is improper.

Objection overruled.

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

A. Yes.

10 Q. Who?

Objected to for reasons heretofore stated.

(Objection overruled.)

(Whereupon the defendant, by his counsel, prays a bill of exceptions, which is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

A. This one here (indicating defendant).

Cross Examination, by Mr. Strong.

20 Q. Have you been talking with anybody since you were on the stand here last?

A. No, sir.

Q. Not anybody?

A. No, sir.

Q. Have you had any conversation with this gentleman standing up, Archipello?

A. No, sir; he says, I only seen him here.

Q. But you have not talked with him here?

A. No.

30 Q. Didn't you talk with him here in the room?

A. He asked me if I knew—

Q. You did talk with him, did you, or not?

A. He ask me if I know somebody and I told him yes, that I did.

Q. That is all the talk you had?

A. Yes.

Q. Did you have any talk with that other gentleman sitting alongside of Mr. Stricker (indicating Detective Bottie).

A. No.

Q. None at all?

A. No; with him I never spoke.

John Archipello, recalled.

Direct Examination, by *Mr. Berdine*.

Q. You have testified that you are one of the officers that arrested Deliso?

A. I have.

10

Q. While under arrest did he tell you that he had come from Port Reading on Monday, the 25th day of August?

Objected to as not rebuttal. Question overruled.

Michael McDonnell, recalled.

20

Direct Examination, by *Mr. Berdine*.

Q. I call your attention to the night of August 25th, when you were about the stores of the DeVita Company and when this man states that he went across fields away from you; did this man have a stick in his hand or not?

Objected to as not rebuttal; question overruled.

Q. Do you recall how many men were there then when you went after him?

30

Objected to; question overruled.

State Rests.

Patrick Coughlan, sworn on behalf of Defendant.

Direct Examination, by *Mr. Strong*.

Q. Where do you live, Mr. Coughlan?

A. Port Reading.

Q. You are employed how?

A. Boss stevedore.

Q. By what company?

A. Philadelphia & Reading.

Q. What are your duties?

A. To look after that the vessels are all properly put in shape for sea.

Q. Partly did you keep the time of men working under you?

10 *A.* Yes, sir.

Q. Do you know this man sitting here? Deliso?

A. Yes, sir; I do know him. He worked for me.

Q. He worked under you in your gang?

A. Yes, sir.

Q. How is he known to you, by name or number?

A. By number.

Q. What number?

A. 489.

20 *Q.* Are you able to tell whether or not he was working on Monday, August 26th?

A. Yes, sir.

Q. What do you say about that?

A. He worked on Monday, August 26th.

Q. Under you, in your presence?

A. Yes, sir; he couldn't go to work unless I called him in the morning.

Q. What work was he doing?

A. Sent him to a boat to trim, what they call trimming—stowing away coal.

30 *Q.* What do you say about Tuesday, August 27th?

A. He worked on that day, too, that morning—that day in full.

Q. That day in full?

A. Yes, sir.

Q. These other men, Cierrelli—do you know a man named Cierrelli?

A. Not by name. Numbers is what we carry.

Q. No. 442, can you tell us anything about him?

A. 442. (Examines book). No, sir; not from name.

Q. Or No. 294?

A. No, sir.

Q. Or No. 354?

The Court: Are you sure that is the number?

Mr. Strong: That is the number I have.

The Court: Very well; my number is 353 for Baretta.

Q. Well, have you either 353 or 354?

A. No, sir.

10

Q. Were those in your gang?

A. No, sir; this is the only man.

Q. That was in your gang?

A. Yes, sir.

Q. Now you said about his working on Tuesday. Did I catch it or not that you said he worked all day or a half day?

A. All day.

Q. How do you know that?

Objected to; question permitted.

20

A. He has to look for me when he comes in in the evening and puts his tools away. He has tools to work with.

Q. Did he report to you on Tuesday evening?

A. Yes, sir.

Q. Do you recall that or what is it makes—

Objected to as cross-examining his own witness. Question allowed.

30

Q. State whether you have a recollection of that or upon what your statement is based?

A. When the time is turned in and he come out Wednesday morning and went to work at eight o'clock—how long he worked I don't know, but one of his gang came in and told me that he went home sick.

Q. One of his gang reported that on Wednesday?

A. On Wednesday morning. That is, one of the men. There are four men supposed to a gang and on Wednesday morning that he went home sick, but

he didn't report to me; he left his work and went away home sick.

Both Sides Rest.

Adjourned till October 31, 1907, 10 A. M.

New Brunswick, N. J., October 31, 1907.

Trial of the cause resumed at 10 A. M.

10

Counsel argued the case to the jury, and the Court charged the jury as follows:

The State vs. Pasquale Deliso. Mid. Oyer & Terminer.
October 31, 1907.

Court's Charge to Jury.

Gentlemen of the Jury:

The law presumes every man to be innocent until he is proven guilty, and upon the trial of an indictment the State must prove the defendant's guilt beyond a reasonable doubt.

20

If, therefore, upon considering the whole evidence you entertain a reasonable doubt whether the defendant is guilty of any crime, you should acquit him.

If you are satisfied that he is guilty of some crime, but entertain a reasonable doubt as to the degree of his offense, you should give him the benefit of the doubt by finding him guilty of the lesser offense.

It is difficult to define a reasonable doubt in language that is any clearer than the words themselves, but the expression itself indicates that it means something more than any mere doubt, for the doubt must be a reasonable one. It is only a reasonable doubt of which the defendant must be given the benefit.

30

Under the indictment the prisoner may be found guilty of murder in the first degree, murder in the second degree or manslaughter. In the present case there is nothing which would reduce the offence to manslaughter, and the prisoner, if guilty, is guilty of murder.

To prove him guilty of murder, the State must establish that Luigi Tenace is dead, that he died as the result of the pistol wound in his head, that the wound was inflicted by the prisoner with intent at least to do Tenace serious bodily injury; and in addition to those facts, in order to prove him guilty of murder in the first degree, the State must prove that he intended to take life and that he acted with deliberation and premeditation, although the time for deliberation and premeditation may have been very short and need not have lasted even as long as a minute if the design to kill was fully formed and purposely executed. If there was an intent to take life, but not such deliberation and premeditation as I have mentioned, or if there was no intent to take life but an intent to do serious bodily harm only, the crime is murder in the second degree only. 10

It is not disputed that Tenace is dead. It is suggested that his death was not due to the pistol wound, but may have been caused by the failure of the surgeons to treat him properly, and especially by their failure to probe for and remove the bullet, or perhaps by the failure of the deceased man to take proper nourishment. The testimony, however, is uncontradicted that the wound, like all gunshot wounds in the head, was dangerous, and that death was caused by hemorrhage or inflammation in the brain caused by the action of the bullet upon the blood vessel. The person who inflicted that wound is guilty, notwithstanding the conduct of the surgeons or of Tenace himself, for if the wound had not been, as our books say, the man had not died. 20 30

You will probably have little trouble in deciding whether the assailant intended to take life. Where a deadly weapon is used like a pistol, when the weapon is fired at close range and the wound inflicted in a mortal part, it is difficult to resist the inference that the one who fired the shot intended to kill.

Nor are you likely to have much trouble in deciding that there was premeditation and deliberation. The attack was made at or after midnight, when, so far as

appears, all the Tenaces were in bed; and it was made apparently without provocation. The testimony of the boy Domeinio and the brother Joseph is uncontradicted that there was a threat to kill, that Luigi was dragged from under the cot and pleaded for mercy and kissed the hand of his assailant and was shot. If you believe that, the guilty person was guilty of murder in the first degree.

- The point most strongly urged on behalf of the
- 10** prisoner is that he is not the person who fired the shot. Whether he was or not depends on the credence and trust you place in the testimony of the two eye witnesses, the boy and his uncle. Their identification is positive. On the other hand, the testimony of Manuci, Russo and the prisoner is equally positive that it was not the prisoner. If, therefore, you believe the Tenaces, the prisoner is guilty. If you believe the others, he is innocent. In determining a question like that, you will, of course, consider all the circumstances of
- 20** the case.—the probability of accuracy in observing the facts and in reporting them here, the interests of the witnesses in the result, the motives which may induce them to misstate, and the light thrown on the question by all the surrounding circumstances. Upon the main facts, except that of the identity of the person who fired the shot, they agree very well—as well probably as different observers are likely to agree. There is substantial agreement that the affair took place about twelve or one o'clock, that it began at the window, that
- 30** shots were fired, that afterwards the men who were concerned in the attack went in the door of the shanty, that more shots were fired, that there were six men beside the three Tenaces—the boy said six or seven; the others say six. McDonnell,—the police officer,—and the defendant agree that four men went away from the building, one of whom was the defendant, and hid, and there is no dispute about the fact that the defendant was near the shanty at the time of the shooting. Notwithstanding the positive identification of the boy and his uncle, it is said that they had never seen

the prisoner before, and they may therefore have confused him with Angelo Cierrelli. You have heard the description of Angelo Cierrelli as a dark man, with dark eyes and a dark moustache, resembling the prisoner. There is also some testimony that he had a full or fat face, and was what one of the witnesses called in Italian "robusto" a word which he explained as you heard. Some of the witnesses say that Angelo was shorter than the prisoner and some say that he was of a heavier or stouter build. It is suggested also that the light in the shanty was out, but as I recall the testimony there is uncontradicted testimony that it was not out at the time the occurrence began. It also appears that the boy and his uncle subsequently identified the prisoner when he was taken into custody. The defense alleges that the identification cannot be trusted because on the next day after the affair the boy said he did not know who had shot his father and identified Angelo Cierrelli as the man. The boy denies these statements, and you must determine whether he actually made them or not, but if he made them you will have further to consider whether the statements that he did not know the man, if he made such a statement, may not have meant that he did not know his name; and if he identified Angelo Cierrelli as the man, you will have to consider whether it may not have been due to the resemblance to the prisoner and the fact that the boy was not at the time as close to the man he is said to have identified as he was to the prisoner when he identified him in New York. It is also said that the boy identified the assailant of his father as a man who had played Batumora with Masena shortly before, and that he stated circumstances which indicated that the man he meant was Angelo Ciarrelli. You will observe, of course that there is evidence that a considerable number of persons—one witness I think said fifty—were watching the game; and Masena says that he cannot say whether the prisoner was in the crowd or not. Masena's testimony also is based on his recollection some time afterward of the position occupied by Angelo at the time of the game.

It is said also that the boy and his uncle are unworthy of belief because they are interested in securing the punishment of the assailant of Luigi Tenace, and that the unlikelihood of the boy's testimony is shown because the revolver could not have been shot as close to Luigi's head as he says without producing a different result from that which actually happened.

You are to judge of the value of this testimony in view of all the circumstances of the case. Upon a
10 question of identification the circumstances may be as convincing or even more convincing, than the statements of the witnesses themselves. What are these circumstances? The defendant urges that no motive has been shown for him to attack Tenace. It is always helpful to the case of the State if it is able to show a motive on the part of the prisoner for the commission of the crime, but it is not essential, or it may happen that men act from hidden motives or motives that are undiscoverable. You must determine what weight to
20 give to that circumstance.

The prisoner admits that he was there, not far from the man who fired the shot, and while his mere presence would not make him guilty of any crime unless he actually participated in it, of which there is no claim in this case, it is a circumstance which may help you to determine what credence is to be given to the testimony of the Tenaces. Russo and Romanulo suggested that they go home for fear of being shot, but the defendant did not go; he remained on the scene until Mc-
30 Donnell, the police officer, came from the main road, some twelve hundred feet away; he says that he ran from the officer and hid behind some earth and remained there fifteen minutes and went to bed an hour afterwards. The defense urges that the boy should at that time have identified the prisoner, but you will observe that the officer did not seem to require identification but himself assumed, not unnaturally, I think, that the men who seemed to him to be attempting to escape were the guilty parties.

The next day the defendant worked at the coal docks,

and it is said that if he was guilty he would not have stayed at his work. The weight to be given to this argument depends on the circumstances of the case. At that time Luigi Tenace, although he had been shot, was still alive; he was in some way got from his shanty to Bartoni's place and thence was taken on Monday night to the hospital in Elizabeth. On Tuesday, at noon, the defendant left his work, according to his testimony, because he had diarrhea, and went to New York at two o'clock in the afternoon, with two dollars in his pocket, buying a ticket one way only. He says he went in part because he was sick and in part because he was afraid. He did not consult a doctor for his diarrhea, and I recall no testimony that he sought other treatment or had any reason to expect better treatment in New York than in Port Reading. He did not return to Port Reading, but stayed in New York Wednesday, and was arrested there on Thursday. These are the circumstances to be considered by you in determining the questions which I have put to you. And in considering the prisoner's testimony, you will, of course, remember that he is vitally interested in the result of the case. He is on trial for his life.

There is another circumstance. The effort of the defense has been to show that the guilty man is Angelo Ciarrelli or Sacco or Baretta. It is, therefore, of great consequence to know what became of them. Angelo did not leave Sunday night, but was seen at Russo's store about nine o'clock Monday morning, where he asked for a cigar. Sacco was seen by De Vita on Tuesday, and De Vita says he has not seen them since. I recall no other testimony as to what became of them. The three men were employed at the coal docks, but the man who took their time is not produced.

I ought to call your attention to another matter. The defendant and his companion in the celebration at Manucy's house say that the prisoner was there from early in the day until about midnight, and that he had no weapon. There is evidence, upon the other hand, that he was seen at Cansarano's house some time in the

evening, and McDonnell said that Pasquale came out of another shanty near the bonfire with a stick in his hand.

Mr. Strong: May I interrupt you?

The Court: Certainly.

Mr. Strong: There is no evidence, as I understand it, that he was the person who was in the neighborhood of Casarano's shanty early in the evening. Casarano did not identify him. He said he heard somebody; he
10 did not say it was the defendant.

The Prosecutor: He identified him afterwards.

Mr. Strong: No one has said he saw him in the shanty.

The Court: Let me read what I said: "There is evidence, upon the other hand, that he was seen at Casarano's house some time in the evening." If by "evening" I am understood to mean early evening I think I am wrong. Some time during the night, I ought to have said.

20 Mr. Strong: I thought you meant that in opposition to the statement of the witness that he was at that time in that place. That I apprehend was wrong.

The Court: Well, I hope that I am right about that. I understood the testimony on the part of the defense to be that the defendant was at Manuci's house from about twelve or one or half-past one—the witnesses fixed a different hour in the day time—until about twelve o'clock at night. I understood the testimony on the part of Casarano to be that some time during the
30 night the defendant was at his house. Now if I am wrong on that I will have it looked up.

Mr. Strong: During the night, not during what we would call evening.

The Court: I perhaps misused the word "evening." I did not mean to convey the meaning that it was the early evening, because I think there is nothing to show that.

I have attempted to review the circumstances in the case which may throw light upon the question whether

the identification by the boy, and his uncle is trustworthy. If it is not, it is your duty to acquit the prisoner. If it is, you cannot consistently with your oaths fail to convict.

Let the officers be sworn.

(The Foreman speaks to Court at side-bar.)

The Court: Gentlemen, your foreman has suggested that perhaps I ought to say a word with reference to the difficulty that arises in a case where so much evidence has to be taken through the interpreter. Of **10** course, there may be shades of meaning in Italian that are not exactly represented in the English, but I think that we may fairly, even in a case of this kind, take the interpretation as given by the official interpreter. Fortunately, other men have been present who understood the language and have sometimes suggested corrections. I have tried to see that the report was accurate, and I know of no reason to doubt it, excepting in some instances where there was some suggestion of difficulty, and those instances you must judge as best you can. **20** That, I think, Mr. Foreman, answers your question.

The jury retired, and at 2.20 P. M. returned to the Court and rendered a verdict of guilty of murder in the first degree.

DEFENDANT'S EXCEPTION.

Mr. Strong: The defendant desires to take a general exception to the charge.

The Court: Take your exception.

(Which exception is hereby allowed and sealed accordingly.)

F. J. SWAYZE, J. [L.S.]

10

DEFENDANT'S REQUESTS TO CHARGE.

1. In criminal cases the burden is on the State to prove guilt of defendant beyond a reasonable doubt, and that burden never shifts, but remains always upon the State throughout the case.

2. Mere presence at the scene of a crime does not make a person a participant in the crime. In order to make him a party to the crime there must be actual participation—an aiding and abetting therein.

20

I hereby certify that the above is the entire record of the proceedings had upon the trial of the said cause.

F. J. SWAYZE, J. [L.S.]

30

Middlesex Oyer and Terminer.

PASQUALE DELISO.
v.
THE STATE OF NEW JERSEY

} On Conviction
for murder in
the first degree.

I hereby certify that application has been made to me
by counsel on behalf of the said Pasquale Deliso to
order a writ of error to be issued out of the Supreme
Court to review the conviction of murder in the first
degree and judgment of death thereupon pronounced
against the said Pasquale Deliso in the Court of Oyer
and Terminer of the County of Middlesex, and that I
have refused to order or allow such writ of error.

Dated November 13th, 1907.

W. J. MAGIE, C.

10
20

30

New Jersey Court of Errors and Appeals.

<p style="text-align: center;">THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> vs. PASQUALE DELISO, <i>Plaintiff in Error.</i></p>	}	<p style="text-align: center;">On Error to Middlesex Oyer and Terminer.</p>
--	---	---

10

ASSIGNMENTS OF ERROR AND SPECIFICATION OF CAUSES FOR REVERSAL.

20 And now on this thirteenth day of November in the year nineteen hundred and seven, before the said Court of Errors and Appeals in the last resort in all causes in the State of New Jersey, at Trenton, comes the said Pasquale Deliso, plaintiff in error by Alfred S. March, his attorney and says that in the record and proceedings and also in the giving of judgement upon the said indictment against him in the Court of Oyer and Terminer of the County of Middlesex, and in the bills of exception taken upon the trial of said indictment, there is

30 the said plaintiff in error having caused the entire record of the proceedings at the said trial to be certified and returned with his said writ of error hereby pursuant to the statute in such case made and provided, specifies the same matters as causes upon which he relies for reversal of said judgment, that is to say:

1. Because the said indictment is insufficient.
2. Because the indictment charges the murder of one Louis Teneregge and thereof the said plaintiff in error hath been convicted, whereas the evidence is directed entirely to the killing of Luigi Tenace

3. Because the said Court of Oyer and Terminer upon said trial sustained the challenge on the part of the state to one Frederick C. Ayres as a juror.

4. Because the said Court upon said trial sustained the peremptory challenge on the part of the State to Peter F. Moore and excused and discharged the said Peter F. Moore as a juror, although such challenge was not interposed until after the oath had been begun to be administered to the said juror.

5. Because the said Court upon the said trial against the objections and exceptions taken on the part of said defendant, permitted testimony to be given that the said defendant upon the night of the shooting of said Tenace had committed an assault and battery upon one Cansarano. 10

6. Because the said Court upon the said trial against the objection and exception of said defendant, permitted testimony to be given that said defendant upon the occasion of said last mentioned assault and battery upon said Cansarano said, "if they (meaning said Cansarano and another) are Mondanardos they must die," and also said (referring to the same persons) "You are from Mondanardo and you have got to die." 20

7. Because the said Court upon said trial refused the motion made on behalf of said defendant to strike out the testimony of said Cansarano as to the said assault and occurrence at his shanty.

8. Because the said Court upon the said trial permitted one Richard A. Peltier to testify that the said Cansarano had pointed out the defendant while in the county jail and said, "That is the man." 30

9. Because the said Court declined to strike out the testimony of said Peltier as to the supposed identification of defendant by said Cansarano at the county jail.

10. Because the said Court at said trial, having erroneously admitted the evidence of said assault and battery upon said Cansarano and of the accompanying threat by said defendant as aforesaid against objection on the part of said defendant, did not clearly and ex-

plicitly direct the jury to disregard said evidence, or so deal with the matter as to remove from the mind of the jury the impression of said illegal evidence.

11. Because the said Court refused to permit the counsel for said defendant to prove that a simple and not dangerous operation would have relieved the deceased man Tenace entirely from the dangerous consequences of the shooting, and enabled him to recover.

10 12. Because the Court refused to permit the witness, Dr. J. Warren Rice, to answer the following question put to him on the part of the defendant, "If the bullet under such circumstances had been promptly extracted what would have been the probable result?"

13. Because the Court refused to permit the said Dr. J. Warren Rice to answer the question put to him on the part of said defendant, "Might that bullet have been extracted?"

14. Because the Court refused to permit the said defendant to prove by one Stella Russo that one Angelo Cierrilli was accused of the murder of said Tenace and for that reason ran away.

15. Because the said Court refused to permit the said defendant to prove by one Delesandro in contradiction of one Angelo Bartoni, a witness on the part of the State, that said Bartoni had said, "I was a few minutes behind. If I had caught Angelo Cierrilli I would have pierced his heart with a stiletto and cut him in pieces."

30 16. Because the said Court refused to permit the said defendant to prove by one Luigi Manuci that said Angelo Bartoni had said to Domenico Tenace (who claimed to identify the defendant as the man who had shot said Luigi Tenace), "The first man that is caught he has got to get the full dose of it. You will have to say that he is the one that shot your father. We will get the right man then just as soon as the first man is caught," and that said Domenico Tenace acquiesced and said nothing to the contrary of said proposition.

17. Because the said Court against the objection of

said defendant permitted one Sanzone, a witness on the part of the State, to testify that he saw one Russo, a witness on the part of the defendant, on the night of the shooting of said Tenace in Cansarano's shanty.

18. Because the said Court against the objection of said defendant, permitted said Sanzone further to testify that said Russo had with him on said occasion at the shanty of Carsarano, a double-barreled gun.

19. Because the said Court permitted the said Cansarano on being recalled on the part of the State on rebuttal, to testify that on the night of the shooting of said Tenace he saw said Russo, a witness for the defendant, at the shanty of said Cansarano. 10

20. Because the said Court permitted said Cansarano, on being so recalled, further to testify that on said occasion at his shanty said Russo had a double-barrelled gun.

21. Because the said Court permitted said Cansarano on being so recalled further to testify that the defendant was with said Russo on said occasion at the shanty of said Cansarano. 20

22. Because the said Court charged the jury, "the person who inflicted that wound is guilty notwithstanding the conduct of the surgeons or of Tenace himself, for if the wound had not been, as our books say, the man had not died."

23. Because the said Court, after saying "the testimony of the boy Domenico and the brother Joseph is uncontradicted that there was a threat to kill, that Luigi was dragged from under the cot and pleaded for mercy and kissed the hand of his assailant and was shot,"—charged the jury, "If you believe that the guilty person was guilty of murder in the first degree." 30

24. Because the said Court after referring to the insistence on the part of the defendant that the boy Domenico Tenace should have identified the defendant at the time that he and McDonald saw the defendant near the shanty, on the night of the shooting and shortly after it occurred, charged the jury, "but you will ob-

serve that the officer did not seem to require identification, but himself assumed, not unnaturally I think, that the men who seemed to him to be attempting to escape were the guilty parties," there being no evidence to show that the officer assumed or believed at that time that said persons were the guilty parties.

25. Because the said Court charged the jury that if the identification of the defendant by the boy and his uncle is trustworthy you cannot consistently with your
10 oaths fail to convict.

26. Because the sentence and judgment does not determine the manner in which the defendant shall suffer death.

27. Because the verdict does not determine whether the jury found that the defendant had committed the crime whereof he was convicted, before or after the first day of March in the year nineteen hundred and seven.

28. Because there is no way by which it may law-
20 fully be determined whether the death penalty should be inflicted by hanging or by electricity.

29. Because the statute purporting to provide for the infliction of the death penalty by means of electricity is unconstitutional and void.

30. Because judgment was given for the State of New Jersey and against said defendant, whereas judgment should have been given in favor of said defendant and against the State of New Jersey.

30 Wherefore, because of the said errors and causes of reversal and of other errors appearing in the said record and proceedings, the said plaintiff in error prays that the judgment of said Court of Oyer and Teminer of the County of Middlesex may be reversed, annulled and for nothing holden, and that he may be restored to all things that he hath lost on occasion of said judgment.

ALFRED S. MARCH,

Attorney for Plaintiff in Error.

ALAN H. STRONG,

Of Counsel.

New Jersey Court of Errors and Appeals.

<p>THE STATE OF NEW JERSEY, <i>Defendant in Error,</i> vs. PASQUALE DELISO, <i>Plaintiff in Error.</i></p>	}	<p>On Error to Middlesex Oyer and Terminer.</p>
--	---	---

The said plaintiff in error by way of amendment and addition to his assignment of errors and specification of causes heretofore filed and served, further assigns and specifies the following errors and causes for reversal, that is to say:

31. Because the said Court upon the said trial permitted said Cansarano to testify on the part of the State and against the objection of said defendant that on the night of the shooting of said Tenace certain persons broke in the door and entered the shanty in which the said Cansarano had then been sleeping, saying "Light the electric or we will kill you all;" and that the defendant was then near the door and thereupon entered the said shanty.

32. Because the said Court having erroneously admitted the said evidence stated in the last paragraph hereof did not strike out the same or clearly and explicitly direct the jury to disregard said evidence, nor otherwise deal with the matter so as to remove from the minds of the jury the impression produced thereby.

33. Because the Court charged the jury "in the present case there is nothing which would reduce the offence to manslaughter and the prisoner, if guilty, is guilty of murder.

ALFRED S. MARCH,
 Attorney for Plaintiff in Error.

ALAN H. STRONG,
Of Counsel.



