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CASE #1078

0173

New York January 11, 1910

I N D E X.

Witnesses	D	C	Re-D	Re-C
Lorenzo Lombardi	1			
(Recalled)	26	27	28	
Antonio Lobati	2	6	8	
Joseph Carpinello	8	11	26	
(Recalled)	28	28		
Thomas A. McKay	29	31		
William Thos. Cavanagh	35	42		

Stewart Liddell,
Official Stenographer.

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New York January 12, 1910

I N D E X.

Witnesses	D	C	Re-D	Re-C
William T. Cavanagh	49		55	57
Joseph Carpinello (Rebuttal)	60	60		
Antonio Lobati (Rebuttal)	66	66		

Stewart Liddell,
Official Stenographer.

CASE #1078

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

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.....
THE PEOPLE OF THE STATE OF NEW YORK:

-against-

WILLIAM T. CAVANAGH

:BEFORE:

: HON. WARREN W. FOSTER,
Judge,

: and a Jury.
:
:.....

New York January 11, 1910.

Indicted for extortion.

Indictment filed November 22, 1909.

A P P E A R A N C E S:

For People: ISIDOR WASSERVOGEL, ESQ., Assistant District
Attorney.

For Defendant: THOMAS J. NOLAN, ESQ.

A Jury is duly empanelled and sworn.

Mr. Wasservogel opens to the Jury on behalf of the
people?

L O R E N Z O L O M B A R D I, called as a witness on
behalf of the People, being first duly sworn, testifies
as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

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Q Where do you live? A 81 Oliver Street.

Q What is your business? A I drive a truck.

Q For whom? A For Jim Ortolano.

Q What is his business? A A truck man; 57 Thompson Street.

Q How long have you been employed by him? A I worked for him about two months.

Q Did you ever see this defendant at the bar? A No sir.

Q Do you remember him? A No sir, never did.

Q You don't remember ever seeing him? A No sir.

MR. WASSERVOGEL: I withdraw this witness.

MR. NOLAN: I ask your Honor to direct that the witnesses not testifying be directed to retire from the room.

THE COURT: Yes.

(Witnesses excluded)

A N T O N I O L O B A T I, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

(Through Interpreter)

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A I am now a prisoner in the Penitentiary.

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Q What was your address previous to that? A 73 James Street.

Q What is your business? A Grocery store.

Q How long have you been in the grocery business at 73 James Street? A I had opened that store four months previous to my incarceration.

Q Do you know this defendant? A Yes, I know him. He came to my store.

Q When did he come to my store? A In the month of July.

Q Do you remember the day, or about what day it was.
A I believe it was the 16th 17th or 18th of July; I am not sure.

Q And did you have any conversation with him when he called there? A Yes, I spoke with him.

Q Please tell the Court and Jury what was said by him and what was said by you? A I couldn't exactly understand what he told me because he spoke to me in American (The Interpreter : Meaning English), but I elicited from him the fact that he was telling me that I had purchased goods which had been stolen.

MR. NOLAN: I move to strike out that latter part of the answer that "I elicited from him" and so forth.

THE COURT: Strike it out.

Q Did you understand what he said to you? A I un-

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derstood but not too well.

Q Well just tell us what you did understand?

MR. NOLAN: Objected to as to what he understood.

THE COURT: Objection sustained.

Q Do you speak any English at all? A I speak, but I speak very little.

Q Do you understand the English language when you hear it? A Yes sir.

Q Now, you may tell us, if you please, what you heard this man (Indicating defendant) say? A He said to me, and I understood him to say, that I had purchased 50 boxes of macaroni which had been stolen.

Q Go on, what else? A And that he was the representative of the firm from whom the macaronies had been stolen. I told him that I had purchased those macaronies at the regular market price of \$1.35 per box. Then he returned later on accompanied by Lombardi, the workman who had sold the macaronies to me.

MR. WASSERVOGEL: Bring in Lombardi.

(The witness Lombardi is now brought into the court room)

Q Do you recognize that young man (Indicating Lombardi)

A Yes, I recognize him.

Q Is that the young man with whom he came back, A Yes sir.

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Q Now did you then have another conversation at which both Lombardi and this defendant were present? A Lombardi then said to me in Italian---

MR. NOLAN: Objected to, and I move to strike it out.

Q Just tell us what the defendant said. A He, the defendant, says to me that I shall pay immediately for the value of the goods, otherwise he would close my store. Then I sent the defendant to 36 Front Street, to Joseph Carpinello. I went down to Carpinello's ahead of the defendant. Then I had a conversation with Carpinello.

Q Go on? A The defendant was not present at Carpinello's.

Q Did you at any time give this defendant any money? A No sir, I did not. I handed the money to Joseph Carpinello.

MR. NOLAN: I move to strike out the latter part of the answer as not responsive.

THE COURT: Yes.

Q Did you ever have any other conversation with this man? A Not in regard to any other transaction outside of this

Q Was there any other transaction? A That's all. He told me that he was a representative of the firm and that he would close my store.

Q Did he ask you for a commission on an amount of money?

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A He never said how much. He always said he wanted the money.

Q Did he say what he would do if he did not get the money? A He would close my store.

CROSS EXAMINATION BY MR. NOLAN:

Q You say you understand the English language when you hear it? A Do you understand what I have just asked you?

A (No answer)

Q (Question now repeated through interpreter) A I understand partly but I cannot answer at all.

Q Well will you just repeat to the Interpreter what I asked in English? A You asked me whether I had any conversation with him.

Q No, I am asking you if you understand the English language? A I understand English but I ~~under~~ don't understand it well enough to be sure of it.

Q You don't understand it well enough to be sure of it, is that so? A Certainly, I am not sure. Part I understand.

Q Well now, which is it, that you are sure you understand or that you do understand or do you only guess what is being said? A I guess, I don't understand well enough. I know a few words of English, three or four of them and I make good use of them.

Q Do you know what the word "represent " ~~mean~~ means? A

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It has the same meaning as in Italian, a man who represents a concern or a firm.

Q What day was this that you say you saw this defendant for the first time? A It is six months ago. It was the 16th, 17th or 18th of July.

Q Can you tell us whether on a Monday, Tuesday, Saturday or what day of the week? A I can't possibly recollect as to the date.

Q And do you remember the time of the day? A It seems to me that I remember in the afternoon.

Q Was that the only occasion on which you saw this defendant? A It was the first time I saw him.

Q Did you see him after that? A Yes, when he came with the truck.

Q That was on the same day, wasn't it? A Yes, because Carpinello understood English well.

Q Did you tell that to the defendant in English? A Yes, in English, but also I ~~was~~ caused it to be said to him through the truckman who understood my Italian.

Q Will you just repeat to this Jury how you said it in English. A (Without Interpreter) "Go 36 Front Street".

Q That was all you said, was it? A "The friend of mine, Joseph Carpinello, if you ~~thought~~ boss macaroni, pay you".

Q Did you ever see this defendant in the company of

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Carpinello? after that? A No.

Q Never saw him again after that one visit to your store on that one afternoon? A I did call again a day or two after that and he demanded money again.

Q What did he say? A That he wanted money. He said "I fix you, I fix you, I close your store".

Q You didn't pay him any money did you? A No sir, never did.

Q You have been convicted of the crime of criminally receiving stolen property, have you not? A Yes, but they erroneously found me guilty.

Q And you are now serving a sentence in the penitentiary as a result of that conviction, is that so? A Naturally I am there. I have appealed the case and I think that the appeal will be sustained.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Is Lombardi the man from whom you bought this macaroni
A Yes sir.

J O S E P H C A R P I N E L L O, called as a witness on behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 81 New Chambers Street.

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Q What is your business? A I work for Baldwin Brothers & Company.

Q What do you do there? A They are liquor distillers.

Q Did you ever see this defendant here? A I saw him about four times.

Q Give us the first time. When was that? A The time when he come down to 36 Front Street, the place I am working for, and he came down after Lobati. Lobati came down first and Cavanagh came after, about five minutes after. He went in the place of business of Lobati. Lobati came down to me. He says "A young man"---

MR. NOLAN: Never mind what he says.

Q Was the defendant there when Lobati said that to you?

A No sir.

Q Just give us what ever talk you had with this defendant and nothing else. What did he say to you?~~and~~

A Just a few minutes after Mr. Cavanagh came in.

Q What did he say? A Cavanagh says "I know this man Lobati, he bought 50 boxes of stolen goods, macaroni." Well I asked Lobati, I says "Is that so"? He said "No sir." Well he says "What do you mean?" "He bought fifty boxes of macaroni, stolen goods, and we got the boys arrested." And so he say what is he going to do about it. He says "I can't got now a reference which as I know he bought these fifty boxes of macaroni, stolen goods." Well, so I asked Lobati

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what he was going to do. He said, what is he going to do? going to settle or what is he going to do? If he goes to court it costs him more. Well, he says "All right if it is to be settled all right, we will settle." So he wants to settle for \$75. Lobati say it was too much and so he come and agreed with \$50. So in a minute he didn't have any money in his pocket, this Lobati, and he said to meet him on the corner at James Street and Park Row. So I went with Lobati and he gave me \$15. in my hand and \$5. telling me to lend it to Lobati, to give to this Mr. Cavanagh \$20. and the balance of the \$60. to pay around Monday. So when Monday ---I hand him the \$20. on the corner of James and Park Row, and the following Monday he has got the \$40.

Q Was that right here in New York County? A New York, yes sir.

Q Was this \$40. your money or Lobati's money? A Lobati's money.

Q Did you have any conversation with him then at the time you handed him the other \$40.? Did you say anything or did he say anything? A Well, what I could do they do.

Q You simply paid it to him in pursuance of the previous conversation? A That's all I know.

Q Did you ever have a conversation with this defendant at which Lombardi was present? A I don't know the boy at all. I only saw him in Court.

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Q You are simply giving us the conversations you had with the man (Indicating defendant)? A That's all what I said. I don't know no more.

CROSS EXAMINATION BY MR. NOLAN:

Q There was never any time that you saw this defendant in the company of Lombardi, the driver here? A (No answer)

Q Did you ever see this defendant and Lombardi together?
A Never, no sir.

Q What do you do at 36 Front Street? A I am a distiller there, Baldwin Brothers & Company.

Q That is 36 Front Street? A Yes sir.

Q Distiller. Is that a warehouse? A Well, that is general distillers, if you know.

Q I ask you if it is a warehouse? A We don't call it a warehouse. It is a wholesale liquor business.

Q Has that ever been used as a storage warehouse? A No sir, never did.

Q Did you know that Lobati had bought any quantity of macaroni? A Did I know?

Q Yes? A I know what they told me themselves.

Q Do you know any reason why Lobati should have gone down to you at 36 Front Street? A Any reason why? Yes, because I know him for two years and a half.

Q You know him for two years? A And a half.

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Q And he is in business at the corner of Oak and James Street, is that right? A Yes sir.

Q And he has been in business there for how long? A I think on the first of July.

Q You heard him say he was there four months before he was arrested? A I don't know. The first of July--- I know he opened around the 10th. On the 10th, I guess. I don't remember exactly the date.

Q Do you know where he lived in July--Lobati? A I don't know where he lives.

Q But you know him about two years? A I know him two years and a half, yes sir.

Q And do you know whether or not he belonged in the neighborhood of James & Oak Streets, during that time? A Do I belong?

Q No, did he belong? A Well, that is his place. He stands around, he works there.

Q How do you know he works there, around James Street? A Who works?

Q Lobati? A He works for a wholesale house there.

Q What is the name of the wholesale house? A I don't know his name.

Q You don't know? A No sir.

Q Where is it located? A It is near New Chambers in Oak Street.

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Q What kind of a wholesale house? A All groceries.

Q How long have you lived at 81 New Chambers Street--
is that where you live? A Yes sir.

Q How long have you lived there? A Well, an average
of two years.

Q 81 New Chambers Street is about half a block from
this wholesale grocery on Oak Street? A Yes sir.

Q Yet you don't know the name of that wholesale grocery?
A I don't know the name, no sir.

Q How did you come to know that Lobati worked there? A
Because I know Lobati.

Q You know Lobati? A Yes sir.

Q How did you come to meet him two and a half years ago?
A He was working in a hotel uptown.

Q What were you doing there? A I was going around
selling too.

Q Selling ~~ka~~ what? A Liquors.

Q And when before this day in July had you previously
seen Lobati? How long before the day he was down to
your place, as you have testified? A Explain me a little.

Q Well, you have testified that Lobati was down at your
place? A Yes sir.

Q Sometime in July? A Yes sir.

Q Will you tell us how long before that day you have
seen him? A Before?

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Q Yes? A Why, every night.

Q Every night? A Well, every night or every week or every time I have a chance, because--

Q Prior to the first of July had often had you seen him? A Well, a week---

Q And did you see him every week for the two years and a half---the past? A Well, I am not tell you, I can't remember.

Q That is your best answer? A That is the best answer, yes sir.

Q Tell us when prior to July 1st, when you say he opened the store, had you seen him? A On July 1st.

Q You said he opened the store July 1st. A He rent the store on July 1st. I think he opened on the 10th, I said.

Q Well now he leased the store from the 1st of July? A Yes sir.

Q When before that time had you seen him? A Well, I don't remember. About two days or so, two or three days.

Q You and he are very goods friends, are you not? A Yes sir.

Q And ~~maxx~~ has he got any other friends around there that you know at Oak Street and James Street? A Yes sir.

Q Do you know whether or not he is acquainted with his landlord, Mr. StAngelo? A That is his own landlord, that is

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all I know.

Q Do you know Mr. St Angelo? A Yes sir.

Q Did you ever see him and Lobati together? A I never did.

Did you ever see Mr. StAngelo in Lobati's place?

A No sir, I never did.

Q But you know Lobati made a lease of the place from the first of July, don't you? A I don't know.

Q Did you testify here that he did? A When did I ever say that?

Q Didn't you say that he leased the place from July 1st and opened it about July 10th? A He rent the place, not to lease it.

Q Well, rented it? A Well it is not a lease.

Q Well he rented it. You know he rented the place?

A Yes sir, that is what he told me.

Q He told you that? A Yes sir.

Q And that is the only way you know all of this that you have told this Jury, that is what he told you?

MR. WASSERVOGEL: I object to that as an improper inference from his testimony.

THE COURT: It is a little involved. You had better reframe the question.

BY THE COURT:

Q Is it true that all you know of this case is what you

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have been told? A The truth, yes sir.

Q Is it true that all you know of this case is what people have told you about it? A Well, I don't know, sir, certainly not.

MR. WASSERVOGEL: He does not understand, your Honor.

MR NOLAN: I withdraw the question.

Q How far is 36 Front Street from the corner of Oak and James Street? A About ten blocks, I think.

Q About half a mile? A Ten blocks. I don't know whether half a mile. About.

Q 36 Front Street is near what street? A Coenties Slip.

Q Near the Battery? A Yes.

Q And Oliver Street is over here near Chatham Square?
A Yes.

Q James Street, rather? A Yes sir.

Q So that Lobati went all the way from Oak and James Streets down to 36 Front Street? A Yes.

Q Leaving his business, to see you? A I suppose so.

Q Can you tell this Jury any reason why he should have gone all the way to 36 Front Street to consult you about a matter that you had no interest in? A Any interest? Why, this man here don't understand English. This Lobati say I understand a little English and he come down to me to find

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out what this Uavanagh was talking about.

Q So that he had to go all the way to 36 Front Street right from a section which was apparently surrounded by Italians at Oak and James Street, and one block away from where his landlord had a bank---Mr. StAngelo has a bank, has he not? A I think yes.

Q He had to go away from there to 36 Front Street to see you because you could talk some English; is that the only reason you know of why he should go down there. A I don't know no reason he came down to see me.

Q You didn't know anything about this transaction of his having bought the fifty boxes of macaroni? A No sir.

Q And the first thing he told you about it was that day? A Yes sir.

Q You had seen him the night before? And the night previous to that? A Yes sir, the night before, yes.

Q You did see him the night before? A Yes. Wait a minute. It is so long ago I ~~was~~ almost forget.

Q Did he tell you anything about the macaroni the night before? A He bought fifty boxes macaroni just the way I explained before and I don't know no more.

Q When for the first time did he tell you about his buying the macaroni? A Just a few minutes. He bought--- he said he bought the fifty boxes of macaroni. He said it

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was stolen goods and about five minutes before Mr Cavanagh came to the place. That is what I said before.

Q I don't want you to tell us what you said before?

A Well, just what I am saying now again.

Q Was that the first time that he had ever told you that he had bought fifty boxes of macaroni that was stolen goods?

A Yes sir.

Q He had never told you that before? A No sir.

Q Did he tell you when he had bought it, how long before that had he bought it? A I think it was a week? A A week before? A Yes sir.

Q He didn't go down to 36 Front Street during that week?

A No sir.

Q Did he consult you about whether or not he should buy it, did he? A No sir.

Q And you never saw the macaroni did you? A Yes sir.

Q You did see it? A I did, yes sir.

Q Where did you see it? A On I think the 11th of July, I don't remember exactly, he had this 50 boxes of macaroni he say he bought it and the boss truckman that delivered in his place---the place was blocked up, just opened the store and he sent it down to my place and in the next morning he took it right back again because he didn't have no place to fill it in that night.

Q When did he tell you he was going to send that down

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there? A He didn't tell me nothing, that he was going to send it down.

Q He never told you nothing? A No sir.

Q Was that the first thing you knew about it, when the man came there with it, is that so? A Yes sir.

Q That is true? A Yes sir.

Q You stated that that place is not a storage warehouse?

A No sir.

Q And what are your particular duties there? A My particular duties?

Q Yes, what do you have to do? A See to everything there.

Q You are a barrel maker there, aren't you, A No sir.

Q You are not a distiller? A I have got another man working down stairs making barrels.

Q And you occasionally use this lower portion of those premises as a storage room, don't you? A No sir, don't use it for no storage room.

Q You stored 50 boxes of macaroni there? A I stored it for one day, for one night at least.

Q And you want the Jury to understand that without having gone down to 36 Front Street to consult you about it and without your having obtained the permission of your employers, Baldwin Brothers Company, that this last witness

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took it upon himself to send a truck load of macaroni down to you to take care of, to store in their premises? A Just give it to me a little plainer than that and I will answer it.

Q I thought you told this Jury that the reason he went down there was because you could speak English? A Yes sir.

Q Do you understand English? A I understand English.

MR. NOLAN: Mr. Stenographer, please repeat my former question.

Q (Question repeated by Stenographer as follows) And you want the Jury to understand that without having gone down to 36 Front Street to consult you about it, and without your having obtained the permission of your employers, Baldwin Brothers Company that this last witness took it upon himself to send a truck load of macaroni down to you to take care of, to store in their premises. A My answer is he sent a truck load of fifty boxes of macaroni. In the night I found it out, which I aint got no place to hold it.

Q What time did the macaroni arrive there? A About five o'clock.

Q On what day of the week? A I think it was on the ninth, I can't---I don't remember.

Q Was that Saturday? A I don't remember exactly. I don't think it was Saturday. I don't remember the date.

Q It was after business hours that Baldwin Brothers Company that it arrived there, wasn't it? A Yes.

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Q Now didn't you tell the Jury that the first time you knew anything about the fifty boxes of macaroni, or the first time he had said anything to you about it, was a week subsequent on the 17th or 18th, when he went down as you have testified four minutes before this defendant? A I said the first time. No. When he bought the fifty boxes of macaroni ---I said it is only a day or so after he opened---he didn't have any place to put it.

Q And he sent it down? A He sent it down for us to hold it one night, so we worked all night to get over here the next morning.

Q What time the next morning was it taken out? A About half past eight or nine o'clock.

Q But you didn't know it was coming until it actually arrived there? A That's all. I didn't know nothing.

Q Did you pay the man who brought it anything? A No sir.

Q You did not? A No sir.

Q Now let us understand this correctly. Was you present at the time the macaroni was brought there, or did you first discover its presence in the place after it had been in there? A I was upstairs and the way---the man called me down stairs. He said "Fifty boxes of macaroni Mr. Lobati sent down here to hold here for a night, he got no place to

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put it. " So as long as I know he is a friend of mine I let him put it in there for a night.

Q Without the permission of Baldwin Brothers Company as you testified that that not being a warehouse you allowed him to use the place for storage purposes, is that right?

Objected to as immaterial.

Objection sustained. ~~Exe~~

Q Had you ever acted as warehouse man on any other occasion? A Well, I am everything there, manager and everything.

Q Had you ever acted in that capacity for Lobati? Had you ever done him a favor before of this character? A Well that is the first thing I ever done for him.

Q That is the first? A That's all.

Q Was it because you knew anything of the transaction that he went to you on the 17th or 18th? A I don't know anything about it, the transaction, whether this goods was stolen or not, I don't know nothing about it. He told me he come down just a few minutes ago. What I said, that's all.

Q And you have testified on your direct examination to everything that this defendant said. You have told this Jury everything that he said while he was there? A Yes sir I did.

Q And you made an appointment to meet him at some subsequent time, did you not? A The appointment was to hand him the money.

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Q You were to meet him at some other time, is that so?

A No sir, only when I hand him the money, that's all.

Q When were you to hand him the money, A I hand him the money on Saturday.

Q Then you did make an agreement with him to meet him on Saturday? A The agreement was there, they made it at the time when they were in my place in 36 Front Street, and they made the agreement that way, agreed with \$60.

Q You testified that your friend Lobati did not understand English and you did the talking for him? A Well, that is what I said. I said that before.

Q Then they did not make any agreement? You made the agreement with this defendant, you talk English? A I make it in English with him.

Q He didn't have any talk with Lobati in Italian did he? A Yes.

Q He talked in Italian with Lobati? A No sir.

Q The defendant? A No sir, he did not.

Q So that anything that was said to Lobati was said through you? A "Through you?" What Lobati said went through me.

Q Anything this defendant said was interpreter by you into Italian, is that right? A Into Italian, yes sir.

Q Did you ever see the witness Lombardi, the driver?

A Lombardi? Yes sir.

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Q Where did you see him? A I see him--- I don't remember exactly the day or night, I am not able to tell you. He came and found out where I was living and he came upstairs and asked for Mr. Carpinello.

Q You saw him, did you? You did see him? A I seen him to my house, I didn't see him no where else.

Q Was there before or after you had seen this defendant?
A After---before, before.

Q Before? A Yes sir.

Q Now when Lobati comes down there, what ~~he~~ did he tell you the purpose of his visit was? A What visit.

Q Why did he go down? Did he tell you that he had got fifty boxes of macaroni that was stolen? Did Lobati tell you that? A Yes sir. He said these are stolen goods but I didn't bought it stolen goods.

Q He said it was stolen goods but he didn't buy it?
A No.

Q Did he tell you what he paid for it? A He paid \$1.35 a box.

Q Now, did he tell you how much balance he owed on it?
A Well he owed he said an average of \$45.

Q How much? A About ~~for~~ \$45.

Q Isn't it a fact that on the only occasion that you saw this defendant that he told you he was sent there to collect the balance of the money due on those goods? A The

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balance of the money yes.

Q That is what he told you, wasn't it? A He told me, yes.

Q That was all he did say to you? A Well, just what I say before.

Q Well you said you will meet him some other time and pay it to him, is that right? A You start from the first and come to the last. I answered you the question and then you come over it again.

Q Will you please answer the questions? You say he told you there was about \$45. due? A \$45. due, that is what they said.

Q And you also said that this defendant when he called upon you said he came to collect the balance of the money due for the macaroni, isn't that so? A Yes sir/ They said always

Q And that was all he did say? A We agreed on \$60. th that's all I know. I don't know about \$45. or \$50. or \$100.

Q But he told you he wanted \$45. for the balance due?

A The balance due that Lobati said there was \$45. due, and \$15. he say was the papers, or something, I don't know; it was a kind of papers he was spedning \$15. for, -Mr. Cavanagh

Q \$15. he said he was to spend for these papers? A Papers.

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Q Can you think of anything else that he said at that time? A Only I know the way they paid. Mr. Lobati paid \$60. to Cavanagh, and that's all I know.

Q And you agreed to get the money and make the payment? A Well, they agreed themselves, and hand me out the money and I give it to Mr. Cavanagh.

Q You weren't in any fear---he made no threat to you, did he? A Who is that?

Q This defendant: A No sir.

Q Nor he made no threat to anybody in your presence? A Not that I know.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Do you know the meaning of the word "threat"? You don't know what that means, do you? A No sir.

Q The question was whether he made any threat against Lobati, whether he threatened him in any way.

MR: WASSERVOGEL: (Addressing interpreter) Explain that to him, please.

Q (Question repeated by Interpreter) A Yes, he did say that if the money wasn't paid he would close his store.

L O R E N Z O L O M B A R D I, recalled on behalf of the people, having been previously duly sworn, testifies as

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follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Did you ever sell Lombati any macaroni? A Yes sir.

Q That is the macaroni which is in question? The
50 boxes? A Yes sir.

MR. NOLAN: That is objected to and I move to strike
out the answer. It does not appear that there is any such
subject in this issue as 50 boxes of macaroni.

THE COURT: Objection sustained. You are
assuming facts and calling for a matter of opinion.

Q Did you ever sell 50 boxes of macaroni to Lobati? A
Yes sir I did.

Q Was that stolen property? A Yes sir.

Q And you pleaded guilty after being arrested for
stealing that? A Yes sir.

CROSS EXAMINATION BY MR. NOLAN:

Q Did you ever go with this defendant to Lobati's
store? A No sir. I never seen the man before.

Q You never saw this defendant at all? A No sir.

Q Were you present at a conversation between the
defendant and Lobati at any time when he demanded money, or
these questions at Lobati's store? A I don't know the man.
I never seen the man before.

Q Did you ever send the defendant to collect the

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money? A No sir.

RE-DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q How long have you been out of prison now? A About three weeks.

Q Are you friendly with this man, this man here (Indicating the defendant)? A No sir, I am not friendly with him, no sir.

Q You never saw him before? A No sir.

Q Positive of that? A Positive, yes sir.

J O S E P H C A R P I N E L L O, recalled on behalf of the people, being previously duly sworn, testifies as follows.

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Did I understand you to say that you knew Lombardi? Did you ever see Lombardi before? A Once.

Q Do you recognize him in Court here? A Yes sir.

Q Is that Lombardi? The one you saw in connection with this matter (Indicating witness Lombardi) A Yes sir.

CROSS EXAMINATION BY MR. NOLAN:

Q Did you ever pay any money to Lombardi? A Never did. I don't know him, only once, that's all.

Q Did you ever see him at 36 Front Street? A No sir.

Q He never was there? A No sir.

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Q He wasn't there in company with this defendant? A
No sir.

Q On the day that Lobati went down there? A No sir.

Q Five minutes before this defendant? A No sir.

T H O M A S A. M c K A Y called as a witness on behalf of
the people, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Where do you live? A 214 West 108th Street.

Q You are a police officer of the City of New York? A
Yes sir.

Q Connected with what Precinct? A Traffic C.

Q Do you know this defendant? A Did you ever see
him before? A Yes sir, I saw him.

Q You made the arrest in this case, didn't you? A
Yes sir.

Q At the time you made the arrest who was present if any
one? A Well, there was three hundred or four hundred people
there at the time I made the arrest. There was the complain-
ant Lobati there and also his friend.

Q Carpinello A Yes sir.

Q Any one else? A That was all I took particular
notice to.

Q Did you have any particular conversation with the
defendant at that time? A Yes sir.

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Q What was said by either of you? A When I went up to place this defendant under arrest those other two gentlemen came to me and told me he had extorted some money from them, and they were in rather an excited condition and I told them to take their time and explain it so I could understand what they meant, and finally I got to understand that he had extorted \$100. or wanted to, I couldn't tell which. I made up my mind that the ~~safest~~ station house was the place to have the thing decided, and Cavanagh made the request that I should not arrest him but he should be arrested by a 6th Precinct officer. I told him that I thought I was just as good an officer as they had in the 6th Precinct and I thought I was as well able to handle the case and I would treat him just as good as any other officer would do, and on our way to the station house I was talking to him and he told me the transaction---at least part of it in his way, and he said that he had "Got the money from the dago, but what the hell about it". Well I asked him how much he had got and he said he got "\$60. off him." He told me that himself going down Bayard Street. That was about all the conversation I had with him concerning the matter.

Q Did you see him after that? A Well not unless in Court.

Q Did you ever have any subsequent conversation of any kind with him? A Not for acts appertaining to the case.

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We talked on the way to court and so forth.

CROSS EXAMINATION BY MR. NOLAN:

Q Who did you say were the two men that were present?

A The complaining witness---Lobati I think is his name.

Q And Carpinello, is that right? A Well I guess those are the two, I won't be sure about it.

you said

Q Well, ~~Joseph~~ Carpinello? A I said "His friend".

Q Carpinello? A I will tell you right away (Witness looking in a small book). Well, Lobati is the complaining witness and the other fellers name, I can show him too if you want.

Q As a matter of fact you took that record that you have just consulted in the station house, is that so? A Why yes, of course. Where would I take it?

Q And as a matter of further fact, the only man present was Lobati in the station house? A I beg your pardon.

Q What is the name of the other man? A The two of them were there.

Q What is his name? A I can't just exactly tell you his name.

Q Do you mean to tell me you violated the rules of your department by failing to note the presence of a material witness?

A I guess I can produce every witness's name in my book at home.

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Q Will you just hand that book to me that you have examined here to see where the names are that you entered?

A Why, certainly (Handing book to defendant's counsel).
It is the third of August. You will see it.

Q Now will you just show us here where you have recorded any other name than that of Lobati? A It is not absolutely necessary for me to record it right there, as that was only the station house record of the prisoner and complainant. The other man is Joseph Carperello---I think his name is. Is that the way you pronounce it.

Q Was he present in the station house at the time? A Yes sir. Those two. They went from Pell Street and Bayard with me to the Station House.

Q Is that the man who was a witness here to-day? A The fellow with the black mustache (Witness Carpinello).

Q Did he act as interpreter in the station house? A Yes sir.

Q You are positive of that? A Yes sir.

Q It was not one of Captain Galvin's officers, was it?
A Yes, also. They had of them there.

Q And you are positive that Carpinello was there? A Why certainly.

Q Will you explain to this Jury any reason why you should have departed from the rules of your department in failing to record him as a witness? A I did not. I have

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got the complainant and the defendant, and there is no rule in the department---

Q And no material witness? A There is no rules in the department that specify that it was necessary for me to have it for this entry that I have shown you. I have got it in my book at home.

Q Then you want the Court and Jury to understand that you keep one book for Court and one for home? A Why yes, if you want to understand it, if that is necessary in the case.

Q And the book at home is the one in which you copy from the one you have now with you, is that so? A No. the book at home is one I carry in my pocket to make the entries in lead pencil and then that book is full, and there is a small book like I can show you here, like this (Indicating a small book)--and when it is full I leave it at home? Those others I make an entry of those cases in ink and in future if I want to refer to them, when my cases are finished, they are all there in ink so that they shall not fade the same as lead pencil does.

Q But you didn't think it important in transcribing your notes from this lead pencil book that you have testified to? A (No answer).

Q You transcribe your lead pencil book into the book that you have in court? A Yes, part of it.

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Q Which is it? A Part of it I transfer into it, yes.

Q Then you don't make a complete record? A I cannot when my case is not complete.

Q You can make a complete record of the facts as they occurred at the time of the arrest? A Yes, certainly.

Q And you have such a record in your lead pencil minutes at home? A Yes sir.

Q Will you tell us why you did not include the name of Carpinello in your written statement in ink in the book that you produce in Court? A Yes sir, I will do that. Usually at the end of every case the witnesses goes---not in the centre of it. That is the way I put them in my book.

Q You mean at the beginning of your statement or at the end of your statement or do you mean while the case is pending? A At the end of every case, if concluded, I put the witnesses names at the time.

Q Will you just tell us how you informed the District Attorney of the names of material witnesses in the case? A Through the book that I have, of course.

Q I thought you left that book home? A Yes, the one in lead pencil, but this has not been the first time---

Q Although the permanent record and the one you take the trouble to write out in ink, you omit to include in that the name of the witnesses who were present at the time of the arrest? A Until my case is finished. Then the witnesses

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go at the end of it.

Q You searched this defendant in the presence of the lieutenant at the station house? A Yes sir.

Q Did you find any \$60. on him? A No sir.

MR. WASSERVOGEL: People rest.

MR. NOLAN: I move to dismiss, your Honor,
on the ground--p

THE COURT: I will deny your motion. I will hear your proof. You may have an exception.

Mr. Nolan now opens to the Jury on behalf of the defendant.

W I L L I A M T H O M A S C A V A N A G H, the defendant
herein, called in his own behalf, being first duly
sworn, testifies as follows:

DIRECT EXAMINATION BY MR. NOLAN:

Q Where do you live? A At present I am living at 163
East 107th Street.

Q What was your business up to the time you were
arrested? A I was a chauffeur.

Q You mean an automobile driver? A Yes sir.

Q In the City of New York? A Yes sir.

Q Now on what day were you arrested? A Well I
was arrested on the 2nd of July, in the morning, between 8

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and half past.

Q Have you been confined in the Tombs ever since that time? A Yes sir, excepting one night at Jefferson Market Court.

Q Did you on the 16th 17th or 18th day of July 1909 go to the place of business of the complaining witness Lobati at James and Oak Streets? A No sir I did not.

Q Did you on that day in the premises ~~at~~ at James and Oak Street demand of him that he pay you money or you would close up his store? A No sir.

Q Did you visit those premises in company with the People's witness Lombardi? A No sir, I did not.

Q Did you at that time know the witness Lombardi? A No sir, I don't know him.

Q And when for the first time did you see Lombardi?
A The first time I saw Lombardi was in Court, at Jefferson market, before Judge House, where I had a hearing, the 2nd of August. I didn't know his name but the Judge called him up and questioned him.

MR. WASSERVOGEL: I do not think that that is material.

THE COURT: Objection sustained.

MR. WASSERVOGEL: I move to strike it out.

Q When for the first time did you see the witness Lobati?
A Is that the complainant?

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Q The complaining witness Lobati? A The first time I ever saw the complaining witness, the man that made the charge against me, was at the time of the arrest.

Q Had you prior to that time ever had a conversation with him in which you demanded money upon the threat that if it was not paid to you you would close up his place? A No sir. No such---

Q When for the first time did you see the witness Carpinello? A I saw him, I disremember the date, but it was in July, at the corner of James Street and Park Row.

Q Will you tell us under what circumstances? Did you know him before that? A No sir, never did.

Q Under what circumstances did you come to see him on that day? A Well, the way I understood it, there was a young fellow, one of the boys that are down town there, he is one of the Italian boys---

MR. WASSERVOGEL: That is objected to.

THE COURT: Proceed with another question, please. Question the witness. The ~~question~~ trouble is the witness is starting in with a narrative. I cannot tell whether it is competent or not. That question gives the witness the opportunity of injecting his opinion. You may question the witness, and the rule of law is that you must proceed by question and answer, with the theory

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that we may know in advance whether the evidence is to be competent.

MR. NOLAN: That is true, but the Jury is entitled to the facts.

THE COURT: Oh yes, but question the witness so that we may know whether you---

MR. NOLAN: Well, your Honor, I will withdraw the question.

Q Did you meet him on that day by appointment? A Yes sir, by appointment.

Q Through whom was the appointment made? A The engagement was made through an Italian---

Objected to.

Q What is his name? A

Objected to.

THE COURT: You may answer the name? A I don't know the Italian boy's name but it was Vinges, we call him Vinges down town.

MR. WASSERVOGEL: I submit, your Honor, that we are bring ing in somebody who is not connected with this case.

THE COURT: It may lead up to some important evidence I must allow it.

Q The appointment you say was made by this Italian?

A Yes sir.

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Q And what did he say to you with reference to seeing this Carpinello.

MR. WASSERVOGEL: I object to that.

THE COURT: That is clearly open to objection. He had an appointment. Now I will allow that much, though strictly speaking it is open to objection, and here you are introducing the conversations of third parties. That is not competent evidence.

MR. NOLAN: As I understand the rule the defendant is the only one who is entitled to avail himself of that rule, giving conversations as to under what circumstances he went to see this man.

THE COURT: Quite the reverse. You cannot introduce self-serving declarations.

MR. NOLAN: I will withdraw it.

Q At the time you met him at Park Row and James Street on that day did you have a conversation with him, with the witness Carpinello? A Well, there was a few words, yes sir.

Q What was said by you to him and what was did he say to you? A Why he said to me, was I the man who was supposed to meet him on the corner of Park Row and collect the balance of the money which he said was due to a driver---I don't know whether it was a driver or a man that sold the stuff, but he said it was due and that I was to get it and pay it to the man

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that sent me there.

Q What did you say in answer to that? A Why, I told him if I could be of any account to him I would take the money and give it to him. I didn't know anything about stolen property or anything of that sort.

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

THE COURT: Motion granted.

Q Were you present at 36 Front Street at any time when the witness Lobati was in company with Carpinello? A No sir, I was not.

Q Did you have a conversation at 36 Front Street with Carpinello? A By appointment made by Carpinello, yes.

Q That was subsequent to meeting him at Park Row and James Street? A Yes, after meeting him at Park Row and James Street.

Q And you went down to 36 Front Street? A Yes sir.

Q What took place there? A He said in James Street he didn't have the money with him, to go down to front Street. Subsequently I went down to Front Street and got the \$20. and it was handed over directly. I came back to Uinges--

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

THE COURT: Yes.

Q What did you do with this money?

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Objected to. Objection overruled.

A The money was handed over to the man that made the appointment for me.

Q And you say you received \$20? A On that instance yes sir.

Q Now did you at any subsequent time receive any money from Carpinello? A Yes sir, later on.

Q Where did you meet him on that occasion? A The same place, sir. He come and looked for me then.

Q How much did he give you at that time? A The same amount.

Q Did you say anything to him at that time to the effect that unless the money was paid you would close Lobati's store, A No sir.

Q Did you at any time in the various conversations you had with Carpinello say anything about closing up the store of Lobati? A No sir, never at any time did I in my conversation with Carpinello---I never mentioned the name nor the name wasn't mentioned of the complainant.

Q Did you know Lobati's name? A No sir, not until it was read off here.

Q Did you have anything to do with the larceny or sale of this stolen property, A No sir.

Q Did you know that the witness ^{Lombardi} ~~Lobati~~ was the person who had stolen this property and sold it to Lobati? A No

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sir, I did not.

Q Had you ever made any appointment with Lobati to go and collect this money? A No sir.

Q Did you ever threaten that you would expose the witness Lombardi and the witness Lobati to the police? A No sir.

Q Unless this money was paid? A No sir.

Q Have you ever been convicted of a crime? A Never. Never was arrested in my life.

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q You say that you are a chauffeur? A A chauffeur, yes sir.

Q And have been for how long? A Well, for about a year.

Q How old are you? A Nineteen years of age.

Q Born in New York, were you? A No sir, Saddle River New Jersey.

Q And how long have you been living in the City? A In the City of New York I have been about---well, about six years in the City and in the state about---well about 9 years.

Q Do you live with your parents? A Yes sir.

Q At what place? A Well previous to the arrest I lived in 15 Oliver Street, New York City.

Q Is that where your parents lived at that time? A At

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the time of my arrest, yes.

Q Where are they now? A 106 East 10th Street .

Q You were never a collection agent for any concern, to collect money for any concern? A Not that I remember, no sir.

Q You were never connected with any firm of M. Rosenfeld, 2041 First Avenue? A No sir, never was in my life connected with them.

Q Now you say that you never saw Lobati before the arrest, before your arrest, is that true? A Before my arrest, yes.

Q You never saw him? A Never saw him, no sir.

Q Never went down to James Street? A Well, naturally.

Q To his place? A Not to his place, no.

Q How far is 15 Oliver Street ^{or} ~~from~~ where you lived from 73 James Street where Lobati lived? A Well, 15 Oliver Street is about two and a half blocks, that is from oak Street.

Q You have passed through there? A You go from Madison to Oak and from Oak to James.

Q You passed there frequently in going to your home? A No sir, never went down in that neighborhood. That is the Italian neighborhood, and the neighborhood where I live is known as the old Irish neighborhood, and I was never there.

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Q You say you have been a chauffeur for a year? A Yes sir.

Q By whom have you been employed during that time?
A William T. Jones.

Q During the entire time? A The entire year, yes.
That is where I learned my trade.

Q That is the only employment you ever had, you say?

MR. NOLAN: I object to that as including in the question testimony that is not on the record.

Q Was that the only employment you have ever had? A No sir. I worked for my father.

Q What was your father's business? A My father is manager of the Chinese Opera House at New York City.

BY THE COURT:

Q What is the Chinese Opera House? A It is in Doyer Street, New York City.

BY MR. WASSERVOGEL:

Q What did you do there? A General helper. I used to keep his books for him, count the stuff and cut the tickets

Q You say you never saw Lobati at all? A No sir, never did.

Q Did you see Carpinello? A Yes sir.

Q How often did you see Carpinello? A Four times.

Q And you say that the first time that you saw Carpinello it was pursuant to an appointment that had been made

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for you? A Yes.

Q And you say that the second time that you saw Carpinello it was because he was looking for you? A No sir, I didn't say that. I said that by his own appointment I met him in a cigar store. He didn't have his money in his pocket at the time of the appointment, he didn't have the money to pay me which was coming to this driver.

Q Well, the first time that you went to this place you expected to be paid a certain amount of money, is that right? A No, the first time I went to his place.

Q Answer the question? A No, I didn't expect it.

Q You expected to receive some money? A No, I didn't expect it.

Q The appointment was made for what purpose? A To come down and see if he had the money.

Q And if he had the money he was to give it to you? A That is the way I understood it.

Q How much were you told to receive, as you say? A He said the balance was \$40. and it was coming to this man that had stole the macaroni.

Q Were you told who had stolen the macaroni? A No sir, I didn't even know it was stolen.

Q Well then you were not acting as the agent of the so called seller of the macaroni, were you? A No sir.

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Q You were not? A No sir.

Q Some one else made the appointment and ask you to collect some money which was due to the owner of this macaroni, is that what you want the Jury to understand? A Yes.

Q And the owner of the macaroni was the person who was not known to you? A That is correct.

Q And you were told you say to collect \$40. altogether
A Yes sir.

Q And ~~ya~~ the first time you called on Carpinello he gave you no money at all? A The first time I ever met Carpinello he gave me \$20.

Q Did you give him a receipt for it? A I did not, no sir.

Q How did you come to call there again? A How did I?

Q Yes? A By his appointment.

Q When did he tell you to ~~recollect~~ call? A He met me one night.

Q How long after the first time that you saw him? A It was on a Saturday, if I remember. It is so long ago I don't remember exactly the minute and the day.

Q The first time you saw him was some time in July was it not? xA In July, yes sir.

Q How near to the first of July was it if you recall?

A Well, it was about the middle. I wouldn't swear.

Q That was the first time you saw him? A That was the

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first time.

Q How many days can you recall that you saw him the second time---the second time you saw Carpinello, how many days was that after the first you saw him? A I should judge about four or five days.

Q Did you see him then at night or in the day time?

A In the morning.

Q Where did you see him? A Previous place, James Street and Park Row.

Q On the street? A In the cigar store, United Cigar Store.

Q You did not understand that Carpinello had bought any of this macaroni, did you? A Well, he---

Q Just answer my question? A He didn't lead me to believe that anybody had bought macaroni.

Q He didn't lead you to believe? A But he said this money was due to a driver, so I didn't understand whether it was him or somebody else that bought the macaroni.

Q Did he tell you who the driver was? A He did not, sir.

BY THE SIXTH JUROR:~

Q Who made the appointment with you? A An Italian well known down town. I know him by sight. The boys call him Vinges.

Q Was that the first time you met him, or did you

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know him from before?

THE COURT: He says he was well known down town
but he does not know any more of his name.

BY THE COURT:

Q Had you ever seen him before this occasion? A Yes,
just in and around through the street there.

THE COURT: Gentlemen, do not talk about this case
nor permit any one to talk to you about it, nor form nor
express any opinion thereon until the case shall be
finally submitted to you.

(Adjourned to Wednesday December 12, 1909
at 10:30 A. M.)

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New York January 12th 1910.

TRIAL RESUMED.

WILLIAM T. CAVANAGH, resumes the stand and further testifies.

CROSS EXAMINATION BY MR. WASSERVOGEL: CONTINUED.

Q Just before Court adjourned yesterday afternoon one of the jurors asked you who had made the appointment with you or for you, and your answer was "An Italian well known down town. I know him by sight. The boys call him Vinges." What is Vinges first name? A That I couldn't tell you. He is just known as Vinges.

THE COURT: Vinges is, I suppose, an abbreviation of Vincenzo.

MR. WASSERVOGEL: Possibly, sir.

Q Where does this Vinges live? A I couldn't tell you that, but he is always in the neighborhood of that district.

Q What district do you refer to? A Oliver Street and James Street, Fourth Ward.

Q Do you know what his employment is? A No sir.

Q Do you know where he is employed? A No sir.

Q How long have you known him? A I have ~~not~~ known him only about six months.

Q How well do you know him? A Just to meet him on

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the street and says "How do you do".

Q Who introduced you to him? A He come and approached me himseif in the cigar store.

Q What is he, one of the gang of boys that hang around down there? A I couldn't tell you sir. I never saw him with a gang.

Q How did you first come to know Vinges in the cigar store? A In the cigar store, while buying something to smoke.

Q What cigar store is that? A United Cigar store at James Street and Park Row.

Q You met him there one day? A Yes sir.

Q Then you say you met him there how often after that, or anywhere else? A I have seen him on the street talking or passing by---a familiar character you would meet and nod to him and probably would not know his name. It is the same case.

Q You never knew what his business was? A No sir.

Q Nor anything about him? A No sir, I never did.

Q You say he is the one that made the appointment with you for Carpinello? A Yes sir.

Q Do you remember the day when he made that appointment, as you say? A I don't remember the day.

Q Do you remember the month? A It was July, yes.

Q What part of July? A Forepart of July.

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Q He told you he wanted you to see Carpinello? A
Yes sir. That there was some money to be collected.

Q Did he mention the man's name? A He said the man
would see me, and if I would be in the cigar store.

Q Didn't you say the first time you met Carpinello
at James Street? A That is the cigar store.

Q In the door or in the cigar store? A In the door.
It is always open. There is a vestibule there.

Q How many times did you meet Carpinello altogether? A
Four times.

Q And the first time you say you saw him was at the
cigar store? A Yes sir.

Q You walked into the cigar store and found him there?
A No sir. I walked in the cigar store and stood around a
second or two and he came up and asked me was my name Cavanagh.
I told him yes and told him I was the man he was supposed to
meet, and he didn't have the money with him and would have
to call down to his house---to his business.

Q You received no introduction to Carpinello at that
time or any other time? A No formal introduction, no
sir.

Q Was Carpinello described to you so you could know the
man with whom you were to deal? A Well, I don't think so.
I was described to him, the way I understood it.

Q You were told to meet a certain party in a cigar store

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at James Street? A I was told that a party was to meet me there.

Q And you were told that that party was to give you something, is that right? A Well, I was told that I was to collect some money that was coming to this Italian.

Q You were told to obtain some money from an Italian that was to meet you at this cigar store? A Well, if you want it that way, yes sir.

Q And were you told how much money you were to receive from him? A The sum of \$40.

Q And at that first meeting you say you received about \$20. from him, is that correct? A No sir, not at the first meeting. At the second meeting, in the store, 36 Front Street.

Q The first time you met Carpinello, Carpinello said what to you? A As I told you before he said "I am the man he was to meet. He didn't have the money in his pocket, that I should meet him in his place of business, 36 Front Street.

Q Did he tell you what this was for? A No sir, he did not. He said it was owed to the man, that's all.

Q Did you know what business Carpinello was in? A No sir, not until I went to his place and he told me he was the cooper there and made up old barrels.

Q Didn't you think this was a rather strange proceed-

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ing?

MR. NOLAN: Objected to.

THE COURT: I will allow it, on cross examination.
Exception.

A At the time I didn't think anything about it, because I was to come and---

Q You didn't think that was strange?

THE COURT: Answer the question.

A Oh, which I thought was nothing strange about the thing at all because I was merely an agent ~~for~~ collecting the money and was to get a percentage from the \$40.

Q You were an agent collecting the money for a person whom you didn't know? A Whom I did know, on appearance.

MR. NOLAN: I object to that. The testimony of the witness is that he did know him.

THE COURT: You may answer the question.

Exception.

A (Witness continuing) Whom I didn't know personally, but in a business way, in meeting him on the street.

Q Well, Vinges is not the man to whom this money was due, is he? A He was the man to whom I was to hand the money to. I don't know who it was due to.

Q You don't know who delivered this macaroni to Lobati, or anybody else, do you? A I do now but not then.

Q You did not at that time? A No.

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Q You knew that Vinges was not in the macaroni business?

A Well, to tell you the truth I didn't know what business he was in.

Q And you didn't care what business he was in? A No sir. It was none of my business.

Q You were to receive a commission, you say, for collecting this money? A A percentage, yes.

Q How much? A 10%.

Q 10% for collection? A Yes sir.

Q And they had to go in this round about way to have you meet Carpinello in a cigar store? A Well, that is the way it was done sir.

Q Now you say you met him on three other occasions after that? A After the cigar store episode, yes sir.

Q Now the second time you met him, when was that? A 36 Front Street.

Q At Carpinello's place of business? A Yes sir.

Q And he gave you \$20. at that time for which you gave him no receipt? A He didn't require one. I asked if he did he want any.

Q You gave him none? A No sir.

Q You met him again subsequently, did you? A He met me at the cigar store again.

Q When was that? A That was probably four or five days later.

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Q Did he give you any money at that time? A No sir. He told me to again call at the cigar store, at the place of business. That was on a Saturday and I went down there Saturday night and got the balance and asked him if he wanted a receipt and he said no, it was not necessary.

Q You didn't tell us that yesterday when you were asked about a receipt, that you asked him whether he wanted a receipt and he said it was not necessary? A Did you ask me yesterday?

Q You didn't tell the Jury that yesterday? A I don't recollect that you asked me that yesterday.

Q The question was asked whether you had given him a receipt and you said you had not? A I don't remember it.

Q And there is no other light that you can throw upon this man Vinges, as to his whereabouts or who he is or anything else about him? A Oh, he could be found, because he is well known downtown.

Q But you have not been able to find him? A I have not looked. It is not my place to find him.

RE-DIRECT EXAMINATION BY MR. NOLAN:

Q Did you have any conversation with the officer after you were placed under arrest?

MR. WASSERVOGEL: Is that proper re-direct examination, your Honor? I object.

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THE COURT: Well that, I thi k, strictly is your case in chief and strictly you have no right now to ask the question. While I am going to enforce this rule, which has been in the past more honored by breach than by observance, I will except that in this case and permit you to ask that question. Now, understand when you are examining a witness you are to exhaust the witness.

MR. NOLAN: I thank your Honor.

A After I was placed under arrest the only words I had with the officer---I told him it looked kind of funny, and I was the one that asked him to take me to the 6th Precinct, and we arrived at the 6th Precinct, the complainant and myself and the officer, and was questioned by Captain Galvin.

MR. WASSERVOGEL: I object to that. That is not responsive.

THE COURT: Go on. I will allow it.

A (Witness continuing) And I told him the case, that I was approached on the street---

BY THE COURT:

Q To whom did you tell this? A To Captain Galvin. I told Captain Galvin that I was approached on the street.

MR. WASSERVOGEL: I object to this.

THE COURT: I do not think you can go into that, what this man said to Captain Galvin could be brought out by the District Attorney but could not be brought

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out by you. If objected to I am bound to sustain the objection.

BY MR. NOLAN:

Q Well, did you say to the officer that you had taken the \$60. from the "God damn Guinea and what the hell of it?" Or something to that effect? A No sir, no such words passed from my lips as that, and when we were leaving the station house the officer told me it was all right, to keep still and it was all right. I told him I had nothing to keep still about, that I knew where I was at.

Q Is that all that was said? A Yes sir, that was after we left the station house for the Court House.

Q At the time you met Carpinello did you know that this money was to be paid on account of any Macaroni?

Objected to. Objection overruled.

A I understood it was to be paid on account of something he bought, but at the time I did not understand it was macaroni.

Q Something that Carpinello had bought? A Yes sir. That is how I understood it.

Q Did you know anything at all about Lobati ~~xxx~~? A Lobati? No sir. I never saw Lobati .

CROSS EXAMINATION BY MR. WASSERVOGEL:

Q Something that Carpinello had bought? A Yes sir,

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Q Didn't you tell us before that you didn't know who had bought these things or how they were obtained? A I said I supposed it.

Q So you didn't know whether it was something Carpinello had bought? A Not as a fact.

Q Then how could you think about it if you didn't know anything about ~~it~~ it? A Well, I was the collector and I suppose I had the right to think.

Q Didn't you ask Carpinello why he did not pay this direct to these people if he owed the money?

MR. NOLAN: Objected to as to why he didn't ask anything.

Q Did you ask? A I did not ask. I just asked for the money, that was all.

Q Were you working at that time? A Yes sir.

Q On the very day this happened? A No, I was working in the evenings.

Q You were still working for this same party? A No, I was working with my father.

Q Oh, working for your father? A Yes sir.

Q You told the Jury yesterday you had been a chauffeur for the last year and prior to that you were in the employ of your father at the Chinese Opera House, is that right?

A Yes sir.

Q And that you had been employed as a chauffeur ever

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since? A Not ever since. You mean ever since I worked for my father?

Q When did you leave the employ of Mr. Jones? A I was in the employ of Jones just eleven months.

Q When did you leave his employ is the question? A It was after April, about April 8th, around that date, I couldn't exactly say.

Q And between April 8th and July 18th you were not employed as a chauffeur, were you? A Well, no sir, I was looking for a position.

BY MR. NOLAN:

Q But you were employed by your father as you had previously been? A Yes sir.

MR. NOLAN: Defendant rests, and I again renew my motion to direct an acquittal.

MR. WASSERVOGEL: I do not see how you can make the motion now. I have some rebuttal to put in.

THE COURT: He can make his motion now because it is within my discretion at any time after you have rested your case to grant it. I won't grant it, however. I will deny it at this time, with an exception.

MR. NOLAN: Exception.

J O S E P H C A R P I N E L L O recalled on behalf of the people in rebuttal, having been previously duly sworn,

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testifies as follows:

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q Did you hear the testimony of this defendant? A I did not hear what he was saying.

Q He says the first time you met was in a cigar store in James Street, is that true? A No sir.

Q Where did he meet you? A Right where I was working .

Q He says that at that time you asked him whether his name was Cavanagh, in the cigar store; is that true? A That is the first time, yes.

Q He says the first time you met ^{him} he was in a cigar store and then you asked him "Is your name Cavanagh"? A No sir. I seen him in the place where I am working. He came first.

Q He also says that he came to collect the balance of the money due to a driver, is that true? A No sir.

Q He says also that he asked you whether you wanted a receipt and you said no receipt was necessary. Is that true? A No sir.

CROSS EXAMINATION BY MR. NOLAN:

Q Were you present at the time the defendant was arrested? A No sir.

Q Were you in the station house when he was taken there? A Well, they tell me and I run.

Q Were you at the station house at the time he was taken

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there? A I went to the station house, yes sir.

Q But were you there when he was taken there by the officer? A No sir.

Q How long after did you go there? A Oh, about a minute or two, I think, five minutes---I don't know exactly.

Q Were you yourself charged in connection with the larceny of this macaroni, were you a defendant? A A Defendant?

Q Were you in Jefferson Market Court yourself? A Yes sir. I was up there.

BY MR. WASSERVOGEL:

Q Counsel asked you whether you yourself were a defendant in connection with a matter pending in Jefferson Market Court. You weren't a defendant there, were you? You weren't under arrest, were you? A No sir.

Q You were there as a witness? A As a witness.

BY MR. NOLAN:

Q You said you went to the station house. Tell the Jury what interest you had in going to the station house? A I didn't ask---

Q Well, why did you go there? Nobody asked you. A Well, because I got a subpoena served.

Q Did you get a subpoena to go to the station house? A Yes sir.

Q To the Station House? A Up to Jefferson Market.

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Q To the station house in Elizabeth Street? A No sir. I went there about five minutes after he was arrested.

Q You went there about five minutes--- A About two or three minutes.

Q Tell the Jury why you went there? A What I went there for? He said he arrested this Cavanagh, which is about the \$60. that I gave him---this Lobati.

Q Did he go after you to bring you to the station house? A Well, we were supposed to come to the Court that morning, to the Jefferson Market, and he went to get a shave.

Q Just a minute. Will you kindly answer the question, listen to the question. You were the man who held yourself out as the Interpreter for Lobati, and that was why he walked half a mile to find you. Did you get a subpoena to go to the Elizabeth Street Station House after this defendant was arrested? A No sir.

Q Tell the Jury why you went there? A We were going to Court , up to Jefferson Market that morning, and I was home to go to court with him, and he was just going to get a shave, and I happened to see this Cavanagh, and that is what Mr. Lobati told me, and when he see Cavanagh he asked me questions. He says--"I don't know what they were saying about this macaroni, about \$60., I don't know anything about it, and that is what I happened to go after to the station house because we were going up to the Jefferson

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Market Court.

Q You were going to Jefferson Market Court before this defendant was arrested? A Yes, we were going that morning yes sir.

Q You were going that morning? A Yes sir. I got a subpoena in the ~~box~~ safe.

Q And you understand now what you have just testified to, do you? A Well, I testified---

Q So that when you and Lobati met the defendant on the street, although on previous occasions you had acted as interpreter for Lobati, you now testify that Lobati asked the defendant questions about \$60., and macaroni, is that true? A I wasn't there at the time they had him arrested, no sir.

Q Didn't you just state that you and Lobati were on your way to Jefferson Market Court, that you met this defendant on the street and that Lobati approached the defendant and asked him question about the macaroni and you say that you didn't know anything about it, so you didn't hear what was said? A I wasn't there when he got arrest, no sir. I didn't say. I say that before.

Q (Question now repeated through Interpreter). I have not mentioned arrested in that question. A No sir, I didn't say anything of that sort. He was already under arrest, but we did not see him in the street.

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Q You now say that you did not say that you met this defendant on the street while you were with Lobati?

A I didn't say anything of the sort. You must have misunderstood me. I said that Lobati went to get a shave while we were walking towards Jefferson Market.

Q Lobati went to get a shave while you were walking towards Jefferson Market? A (In English) We were going to go to Jefferson Market, but I wasn't ready yet. I didn't see when Cavanagh got arrested or anything like that.

Q Well, I asked you that before and you said you were in the station house a minute or two afterwards? A Well, afterwards, about five minutes afterwards. I didn't see him on the arrest---for instance, take him up to the station house.

Q Did you hear the testimony of the officer yesterday that you were present and went to the station house? A No sir.

Qc That is not so? You were not present and did not accompany him to the station house? A I don't know anything about, no sir. I was not present when he was placed under arrest by the officer.

Q And as I now understand your testimony as corrected through the interpreter, you learned from Lobati of the defendant's arrest? A Yes sir.

Q And you also learned from Lobati that Lobati had ap-

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proached the defendant in the street and asked the defendant questions about the macaroni and the \$60? In other words, that is what Lobati told you led up to the defendant's arrest?

A Yes sir. Lobati told me that.

Q Did Lobati tell you whether he had an interpreter with him to ask those questions? A No, he did not.

BY MR. WASSERVOGEL:

Q You were present at the station house, weren't you? A No, but I wasn't inside.

Q But you were at the station house? Did you go to the station house at all? A I went up to the station house but I didn't went---

Q Inside the rail? A No sir.

BY MR. NOLAN:

Q You mean inside the door don't you? A I entered the door but I didn't go to where the desk is of the sergeant.

Q You didn't go to the desk of the sergeant? A No sir.

Q Did you go into the station house while Cavanagh the defendant was there with the officer? A They were already there. They had been there a few minutes when I arrived.

Q Had the defendant been taken back to a cell or taken

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to court? A I didn't see him at all.

Q You didn't see him in the station house when you got there is that it? A Yes, I saw him in front of the Judge there.

Q In front of the Judge where, in the station house or in the Court? A At the desk of the Lieutenant.

A N T O N I O L O B A T I, recalled in rebuttal on behalf of the people, having been previously duly sworn, testifies as follows: (Through official Interpreter)

DIRECT EXAMINATION BY MR. WASSERVOGEL:

Q The defendant says he never saw you before his arrest is that true? A No sir, it is not true. He came twice to my store.

CROSS EXAMINATION BY MR. NOLAN:

Q He came twice to your store? A Yes sir.

Q Now do you remember having testified on the stand yesterday that ~~you only met~~ he only made one visit?

MR. WASSERVOGEL: Objected to. That is not correct.

Here is the record.

Q When did he make the second visit? A On the same day he made the first call.

Q How long after the first visit? A Three or four hours later.

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Q And it was subsequent to the second visit, was it, that you went downtown to Carpinello? A It was after the first call that I went down to see my friend.

Q It was after the first call that you went down to see your friend, and while you were down there did you see this defendant there? A I did not see him down there.

Q Was he present at any time while you were down there at 36 Front Street? A No, I did not.

Q You did not make any agreement with him down in 36 Front Street in the presence of Carpinello to pay him \$60. did you? A No sir.

Q And you did not pay over \$20. or \$15. to Carpinello to hand to this defendant while he was present there? A Yes, I did give money to Carpinello.

Q Did you give it in the presence of this defendant?

A No sir. He wasn't there.
you ever see

Q Did Carpinello give any money to this defendant?

A No, I did not.

P E O P L E R E S T.

C A S E C L O S E D.

MR. NOLAN: I renew my motion and ask your Honor to direct the Jury to acquit this defendant, on the ground that the people have failed to make out their case. It does not appear from the testimony that any fear such as the statutes contemplate was induced by

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anything that was said or done by this defendant.

THE COURT: I think the evidence raises a question of fact for the Jury. They may agree with you there. I cannot. I do not think it is a matter of law. It is a matter ~~of~~ for the Jury to pass on and not the Court.

Exception.

Defendant's Counsel now closes to the Jury on behalf of the defendant.

THE THIRD JUROR: This money that the defendant admits receiving, as I understand he admits receiving from Carpinello, what did he do with that money?

THE COURT: The defendant may answer the question. What did you do with the money you got?

THE DEFENDANT: It was handed over to Vinges less the ten per cent of my commission, with the understanding that he was to do with it where it belonged.

BY THE THIRD JUROR:

Q You collected \$40. and gave him \$36. A (By defendant) Yes.

Q And kept \$4. for your commission? A (By Defendant) Yes sir.

Mr. Wasservogel now closes to the Jury.

The Court now charges the Jury.

The Jury now retires and upon its return renders a verdict of not guilty.

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