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CASE

CASE # 3078

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

THE PEOPLE OF THE STATE OF NEW YORK

-against-

GIOVANNI MAULA.

BEFORE

HON. OTTO A. ROSALSKY, J.,

and a Jury.

NEW YORK, January 3, 1928.

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-against-

GIOVANNI MAULA.

: Before:

: HON OTTO A. ROSALSKY, J.

: and a Jury.
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New York, January 3rd, 1922.

INDICTED FOR MANSLAUGHTER IN THE FIRST DEGREE.
INDICTMENT FILED OCTOBER 7, 1921.

A p p e a r a n c e s :

ASSISTANT DISTRICT ATTORNEY McDONALD, for the People.

WALTER R. DEUEL, ESQ., Attorney for the Defendant.

(A jury was duly impaneled and sworn).

(Mr. McDonald opened the case to the jury for the People).

J O H N J . W A L L A C E , an officer of the 43rd
Precinct, Shield No. 7570, called and sworn as a witness
for the People, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the police force of the City of New
York and you were such on the 28th day of August, 1921? A I was
and am still.

Q To what precinct were you attached on that day? A The
43rd precinct.

Q What post did you have on the 43rd precinct? A On Sec-
ond avenue, 116th street to 132nd street, half a block east and
west.

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Q Did your post cover this Pleasant avenue place? A
No, sir.

Q Well, did you have occasion to see one Alexander Mar-
igi on that day? A Yes, sir.

Q About what time was it you saw him? A At 10:30 p.m.

Q Where was he when you saw him? A Lying in a drug store
2262 Second avenue.

Q 2262 Second avenue is near what street? A 116th street,
the corner, northeast corner of Second avenue and 116th street.

Q Did you notice his physical appearance at the time you
saw him? A Yes.

Q What was his condition? A He was lying on the floor
and he could hardly speak. He could not speak English anyway
so I got an interpreter.

Q Do not give us the conversation you had with him. Just
describe his appearance. A He was lying on the floor. There
was blood coming from the right side of his abdomen (indicating).
I opened his belt at the time and saw the blood there, and asked
him who done it.

Q Never mind what you or he said. In what region was the
wound? A On the right side, right here (indicating).

Q You had a talk with him through an interpreter? A I did.

Q And how was he dressed? A He was fully dressed, clothes,
cap and all on him.

Q What did you do? A I called an ambulance.

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Q You say that was about 10:30 p.m.? A Between 10:30 and 10:35 p.m.

Q What happened then? A He was taken to Harlem Hospital by Dr. Bradstein, after being examined for a stab wound. He was accompanied to the hospital by Detectives Cassidy and Crosby. I did not go to the hospital, but they went.

Q Did you afterwards see the body of this man? A I did.

Q Where? A In the morgue, September 4th, 1921.

Q You identified the body as the body of the man you saw at the drug store? A Yes, sir, I did - the same person.

Q And 2262 Second avenue you say is where? A Northeast corner of 116th street and Second avenue.

Q Did you afterwards find out the name of this man, the deceased? A Yes.

Q Alexander Marigi? A Yes, sir.

Q By the way, was the brother of the deceased at the morgue at the same time you were there? A No.

Q Do you remember what day it was you identified the body of this man? A September 4th, 1921.

Q And that was to Dr. Vance, the Deputy Medical Examiner? A Yes, sir.

Q What did you do with the clothing of the deceased? A I took it to the District Attorney's office and it was tagged.

Q I suppose there were a number of people in the drug store at the time you got there? A Yes, sir.

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Q Did you see Giuseppe Salvagno there? A No, I don't remember their names.

Q Did you take the names of a number of witnesses there?
A No, only one, one James Cassassi, who interpreted for me.

MR. McDONALD: I think that is all.

MR. DEUEL: I have no cross-examination.

JOSEPH SALVAGNO, called and sworn as a witness through the official interpreter, Mr. Villamena, on behalf of the People, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Where do you live? A 340 East 114th street.

Q Did you know Alexander Marigi? A Yes, sir.

Q How long did you know him? A From the time that I came to America.

Q And when was that? A The 10th of last June.

Q Do you know the defendant at the bar? A Yes, sir.

Q How long do you know him? A The same time.

Q Did you meet the defendant in this country? A Yes, here in America.

Q When was that? A When I arrived in America about since last June, they heard that I came from Italy and they came and visited me.

Q What did you work at? A Laborer.

Q Did Marigi work in the same place where you worked?

A No.

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Q Did the defendant work in the same place that you worked?

A No, sir.

Q Between the time that you arrived in this country and August 28th, did you see the deceased very often? A Once in a while, yes, we would meet.

Q How often did you see the defendant between the time that you arrived in this country and the 28th of August? A Pretty near the same as the other one, on Sunday if I would go out, and accidentally meet each other, then we talk and walk, and that is all.

Q Did you see the deceased, Marigi, on the 28th day of August 1931? A Yes, I saw him.

Q Where was he when you saw him? A I was in a saloon at 114th street, and Marigi came there about eight or half past eight in the evening and I saw him there.

Q Did he come in alone? A Yes, sir.

Q Did he go to where you were standing or sitting?

A Yes. He came near me. We were about seven or eight persons there playing, and he came there and joined in the game too.

Q What were you playing? A We were playing cards for a drink. Whoever would win would take a glass of beer or ginger ale or something like that.

Q Was the defendant in that game? A No, sir.

Q What time did you leave this saloon or cafe? A About half past eight or a quarter to nine.

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Q With whom did you leave this cafe? A I left first, this defendant came after me and two, we went together, and following us was coming the deceased, the one that died.

Q And where did you go? A When we got at First avenue, the middle of the avenue, the deceased called both of us/ me and the defendant. After we got near the deceased this defendant remained there talking to him. I do not know what they were saying, and I started to walk away from them.

Q Where did you go? A I started to go in 114th street right alongside of the park, and they were following me, the deceased and defendant, talking among themselves.

Q Where did you go? A When I got at 114th street and pleasant avenue, the deceased called me. The deceased said, "Giuseppi," calling me by my name, "should we go and have a game and play for a bottle of wine or a glass of beer?" I said, "All right." Then I asked the deceased where should we go, and he said, "Let us go in here," and we went in a candy store.

Q Whose candy store was that? A Pasquale Lioe.

Q Had you ever been in there before? A No, sir.

Q Did you know the proprietor, Pasquale Lioe? A Yes.

Q Was it a candy store? A A candy store, yes.

Q And the candy store was on what street? A On Pleasant avenue, between 114th and 115th street.

Q Who went into the candy store? A Why, the defendant

and the deceased.

Q Where did you go in the candy store? A We went in the back of the candy store.

Q Was there a room in the back of the candy store?

A Yes, sir, there were three rooms, one after the other.

Q What room did you sit in? A The rear room.

Q The last room from the candy shop itself? A Yes.

Q Was anybody else in there? A Yes, there were about two or three other people, but I don't know who they are.

Q What did you do when you went into this rear room, you and the defendant and Marigi? A When we got in the back of the candy store, Marigi ordered a bottle of wine, and we drank it.

Q Who did? A The three. Then Marigi says, "I pay for this bottle of wine." I insisted I wanted to pay, and he said to me, "No, I pay this time and if you feel like it, you pay on another bottle." Then we ordered another bottle of wine, making two, and I paid for the second one. And while we were drinking a detective came in and he offered to sell us some ticket. This defendant, when he saw the detective was there, he took out a knife that he had in his pocket and put the knife under the oil cloth on the table.

Q What kind of a knife was it? A A knife about so long (Witness indicating).

Q You mean the blade was so long? A The knife was

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closed and it was about that long (witness indicating 4-1/2 inches on a ruler).

Q You say it was closed then? A Yes, sir, closed.

Q He put this knife under the table cloth, you say? A It was an oil cloth.

Q And this table was the same one that he was sitting at, is that so? A Yes.

Q What happened then? A Then the boss of the house took the knife away from there and put it in the closet.

Q Well, what happened then? A Then we got up and started to go and said, "Good evening," and this defendant and the deceased started to go first and when they got in the candy store therethey started to talk with the boss of the candy store. While they were talking, I started to go, and I got out of the candy store and on the first step of the stoop of the candy store, and I stopped there and lit a cigarette. While I was lighting the cigarette this defendant with the Proprietor of the candy store Passed by me. While I was lighting the cigarette this fellow, the defendant, with the proprietor of the candy store went down the stairs and the deceased went after them. In a moment, I do not know why, they both got clinched together. I saw the deceased got hold of this defendant. I saw this defendant do like this (witness indicating by making a jab), and he went his way and the deceased went his way and I went away.

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and that is all.

Q Where did the defendant go? A He went through 115th street.

Q Did he walk or run? A Run.

Q Where did the deceased go? A He went through 114th street.

Q Did you see the deceased again after that? A No, sir.

Q Well, did you see his dead body? A No, sir.

Q Where was the proprietor of the candy store, Pasquale Lioe? A He was on the stoop of the candy store, on the last step.

Q On the last step of the stoop of the candy store is that right? A Yes.

Q And how far away from the last step of the stoop of the candy store were Marigi and the defendant? A About six or seven paces.

Q You mean six or seven steps or feet? A That is a pace (witness indicating by making a step).

Q Did Pasquale Lioe remain on the stoop? A Yes.

Q As the deceased and the defendant passed you on the stoop of the candy store, did you hear what they were talking about? A No, sir.

Q Had you been drinking? A Yes, sir.

Q Were you intoxicated? A No, sir.

Q Was Marigi intoxicated? A Yes, a little.

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Objected to. Objection overruled. Exception taken.

A (continued) But this defendant was very, very drunk.

Q The defendant was drunk, too, was he?

MR. DEUEL: I move that be stricken out as opinion evidence. How do we know they were drunk.

THE COURT: A witness may testify whether a person is intoxicated or not. Objection overruled. (The Court citing People v. Gaynor, 33 App. Div., and Gelster v. Railroad Company, 152 N.Y.). It was there held that a witness, although not an expert, may testify in such a case as to whether the defendant was drunk or sober.

You may cross examine him on that point, if you desire.

MR. DEUEL: I will take my exception.

BY THE COURT:

Q How many drinks did he have? A Five or six glasses. I did not count the drinks.

Q How many glasses did he have when the detective came into the place? A We got through drinking then.

Q Did the defendant have any drinks after that? A No.

Q And you say that when the detective came in he took a knife and put it underneath the oilcloth on the table, is that right? A Yes, sir.

BY MR. McDONALD:

Q Where did you go after you saw the incident that you have described, the defendant making a lunge at the deceased?

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A I went in the candy store and I remained there.

Q Did you return to the candy store before Pasquale Lioe?

A Pasquale Lioe went in first and I followed him.

Q When the deceased was stabbed, did you see him do anything? A He went away. Both separated. He went away.

BY THE COURT:

Q That is not the question. Did you see him do anything?

A No, sir. I did not see him doing anything because they separated immediately.

Q How far away were you from the deceased and the defendant at the time you say that they were in a clinch? A I was on the first step of the stoop there and they were about five or six feet away from the stairs, on the sidewalk.

Q Where was Pasquale Lioe? A Lioe was on the third step.

Q Nearer to you or to the defendant? A Nearer to me.

BY MR. McDONALD:

Q Where was the defendant when the deceased came out of the candy store? A He remained in front of the counter where Pasquale Lioe was selling candy.

Q You say that the defendant and Pasquale Lioe went out of the candy store together, is that so? A This defendant and the deceased came out of the rear room first. I was following them. When we got right therein the candy store in front of the counter, this defendant remained there and talked

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a little bit with the proprietor of the candy store, and I continued to walk. That is why I went out first.

Q Where did the deceased go? A He was already out.

Q Was the deceased already out at the time you went out of the candy store door onto the stoop? A Yes, he was the first one went out.

Q Did he remain on the stoop there with you? A No, he went out and he stopped there on the sidewalk in front of the stairs.

Q Then you say the defendant and Pasquale came out?

A Yes.

Q Where was the deceased when Pasquale and the defendant came out of the candy store? A He was on the sidewalk in the street there, near the street.

Q What part of the street, in front of the store? A The deceased, when he came out of the store, he went on the sidewalk and then he walked about six or seven feet down and he stopped there.

Q Then did he turn around and face you? A Yes, turned around and he stopped.

Q What happened just then when he turned around and faced you, you being on the stoop? A Nothing.

Q Did he say something to you, just yes or no? A No.

Q Had the deceased turned around and looked towards the candy store, before the defendant and the owner of the candy

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store came out?

MR. DEUEL: I object to that as leading.

MR. McDONALD: I withdraw the question.

THE COURT: It is not only leading but somewhat involved. Try and get him to state the relative positions of the men, including himself, when they left the candy store; what each one did before they engaged in the scuffle or clinch, as he stated.

THE WITNESS: When we left the room, the deceased started to go out first. I and this defendant followed him, and when we got near the counter of the candy store, this defendant remained there a little while to talk with the proprietor of the candy store, and I continued to walk. When I got outside the door on the first step of the stoop there I stopped to light a cigarette. Then this defendant and the proprietor of the candy store came out. The deceased was already on the sidewalk. This defendant and the candy store man continued to walk down the stairs until they got at the third step. Then this defendant continued to go ahead, and the proprietor of the candy store remained on the third step. It seems to me that the deceased was waiting for this defendant. He went near the deceased and then happened what I told you before.

Q What happened then? A As this defendant got near

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where the deceased was standing, I saw both get hold of each other like this (witness indicating by placing his both hands up and outward). Then I saw this defendant do like this (witness indicating by making a jab with his right hand). Then they parted.

Q Did you see what the defendant had in his hand? A No, sir.

BY THE COURT:

Q Did the deceased make any outcry? A No, sir.

Q Did the deceased run or walk? A The deceased went away at a pretty lively step.

Q What did the defendant do? A He ran away.

Q Did you run in the opposite direction to the direction that the deceased went in? A Yes, sir, the deceased went to 114th street and the defendant 115th street.

Q Did you see the defendant again after that? A No, sir.

Q What did Lioe do during this time? A Nothing. When we seen that they went away, I and Lioe we went back in the candy store.

BY MR. McDONALD:

Q You say that you never saw the defendant after that? A No, sir.

MR. McDONALD: I think that is all; your witness.

CROSS EXAMINATION BY MR. DEUEL:

Q Salvagno, what time did you get to that cafe or saloon

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that afternoon? A It is in the candy store --

Q The cafe or saloon - not the candy store. A About one or two o'clock in the afternoon. I live right upstairs where the saloon is.

Q What time did the defendant get there? A About half past eight in the evening.

Q And what time did Marigi, the deceased, get there?
A He arrived about eight o'clock.

Q He arrived before the defendant? A Yes, sir.

Q What time did you and the defendant leave there? A Well, it was about nine o'clock, near nine o'clock.

Q How long would you say that you and the defendant and Marigi were in the saloon together before you left? A Marigi remained about half an hour with me.

Q Was that before the defendant came? A Yes, sir.

Q How long were all three of you in the saloon together?
A About a quarter of an hour or ten minutes.

Q Then you and the defendant left the saloon together, did you not? A Yes, I was ahead and he followed me.

Q You went over toward the park, didn't you? A Yes.

Q A little recreation park over there on First avenue?
A Yes.

Q At the foot of what street was that? A The park began at 114th street and First avenue.

Q And you walked to 114th street and First avenue with

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the defendant? A Yes.

Q And at 114th street and First avenue, the deceased came up to both of you, did he not? A Yes.

Q As a matter of fact, the three of you stayed there for a minute or two talking, is that not true? A No, the defendant stopped there and started to talk and I continued to walk.

Q Did you say Good-bye to the defendant as you continued to walk? A No.

Q How far did you walk before they caught up with you? A I was walking alone until they called me when we got to Pleasant avenue to go in this candy store.

Q How far had you walked before they called you? A From First avenue to Pleasant avenue I walked along.

Q That is away from the park? A In through the park from First to Pleasant avenue.

Q As a matter of fact, didn't Marigi simply come up to you three and you walked along together, and you entered into a conversation, and did you not in the course of that conversation propose yourself, that you all go to this candy store for a little drink? A No, sir, that is not true.

Q Who do you say it was that first proposed your going to the candy store for a drink? A The deceased, the one that died.

Q Did the defendant agree immediately to go to the candy

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store for a drink, or did he not? A I said, "Let us go," and this defendant said, "Let us go" also.

Q Didn't the defendant say that he did not want to go?

A No, sir.

Q Did he not say that he had no money to pay for drinks there and consequently he did not want to go? A No, sir, I did not hear nothing like that.

Q Isn't it a fact that you and Marigi prevailed upon him to go to the candy store? A No, sir. I did not hear nothing like that.

Q Didn't Marigi say that he would pay for the drinks if this defendant had not the money for the drinks? A I did not hear that.

Q Will you say that that did not happen?

Objected to. Objection sustained.

Q You then went to the candy store, all of you? A Yes.

Q Is the entrance to that candy store up or down a few steps, as you go in? A Down three steps.

Q Down three steps as you go in the candy store? A Yes, three steps down.

Q What time was it that you got there? A About nine o'clock, ten minutes after nine, or five minutes after nine.

Q How long did you remain at the candy store before this officer came in to sell tickets? A About half an hour.

Q Who was sitting in that candy store with you besides

the defendant and the deceased? A Nobody else.

Q You say there was nobody else in there? A There was two or three other people, but they were sitting some place else.

Q Well, they were sitting right there in the room with you, were they not? A Yes.

Q But not at your table is that what you mean? A That is what I mean.

Q Did Lize come and stand by your table while you were sitting there drinking? A He did not stand by us. He was waiting on the people there going in and out.

Q Was he not there present when this knife was taken out of the defendant's pocket by himself? A I did not take the knife. What do you say that for?

Q Was he not there present when this knife was taken out of the defendant's pocket by himself? A Nobody took the knife away from his pocket.

Q Perhaps you don't understand the question. Was not Lize present at the table when the defendant took his knife out of his pocket? A Yes, sir.

Q As a matter of fact, did you not also have a knife with you at the time? A I did not have any.

Q Did you not take your knife out of your pocket likewise? A I did not have any.

Q And isn't it a fact that Lize took both of those knives

from you so that the officer would not find them? A No, sir.

Q Isn't it a fact that later on, when it came time for you and the deceased to go -- I mean you and the defendant to leave -- that the defendant said that he did not want to take his knife with him because the officer might find it on him when he got outside?

Objected to. Objection overruled.

A No, sir, I did not hear nothing like that.

Q Isn't it a fact that you said you would take both knives if the defendant was afraid to carry his? A No, sir, that is not true.

Q When you got up to go out, you say Marigi was ahead and went out on the street first? A Yes, on the sidewalk.

Q You also testified that the defendant and Lioe the proprietor talked together in front of the store, but inside the door after Marigi had gone outside and after you were outside, is that not true? A While I was passing before them and I stopped on the first step, they were talking.

Q Did you not, as a matter of fact, when you walked out, step up to Marigi and take Marigi by the arm as they stood there on the sidewalk? A No, sir, that is not true.

Q But you did see the defendant and Lioe come out of the store together, did you not? A Yes. I was standing there on the first step.

Q Did they pass you on the first step? A Yes, sir.

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Q And Lioe, as a matter of fact, was then behind the defendant, was he not, and Marigi in front of the defendant at the time that you say this jab took place on the part of the defendant? A No. Lioe was on the last step of the stoop.

Q But he was between you and the defendant, was he not?

A Yes.

Q And the defendant had his back turned to Lioe, did he not? A Yes, sir.

Q How far was Lioe from the defendant at that moment?

A Six or seven paces.

Q Feet or paces? A Paces.

THE COURT: He gave a description of what a pace was before.

MR. VILLAMENA: Yes, sir, by making one step.

Q Now, as a matter of fact, did you not, standing alongside of Marigi, with your arm linked in his arm, and with this defendant pressed up close to you, and the candy store proprietor Lioe behind him, did you not then give this defendant a knife which you had in your hand and tell him to stab? A No, sir, that is not true.

Q Did you not at that moment hear Lioe, who was directly behind the defendant, say "Give it to him?" A No, sir, I did not hear.

Q Did you not see Lioe hit this defendant on the back of

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the head with his hand? A No, sir.

Q You did not see, did you, that Lioe had a gun that he was pushing into the back of the defendant at that moment?

Objected to as to form. Objection overruled.

A No, sir, I did not see that.

Q Now, instead of running away, you and Lioe went back into the candy store and locked up the place, and turned the lights out, did you not? A He closed the place, yes, but where I went it was light.

Q Away in the rear of the store? A Yes, sir.

Q How long was it after that before the police came?

A About a quarter of an hour.

Q Do you know the names of the police that came? A No.

Q Did you tell them what had happened? A Yes, sir, I told them.

Q Did you give them the name of this defendant? A I knew his first name. I did not know his second name.

Q Did you know where he lived? A No, sir.

Q Did you know the man with whom he boarded? A No, sir.

Q Don't you know the man with whom he boarded bought out your friend Lioe's candy store since this occurrence? A I don't know nothing about that.

Q Did you hear Lioe make a statement to the officer?

A No, sir, I did not hear nothing.

Q Were you taken to the station house that night? A

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No, sir.

Q There was another man back there with you and Lioe after this occurrence and before the police officers came, was there not? A Yes.

Q How many men? A Two more men.

Q They remained there until the police came, did they not? A Yes.

Q Were you ever questioned by the police after this night?
A No, sir.

MR. DEUEL: I have no further questions.

REDIRECT EXAMINATION BY MR. McDONALD:

Q When this deceased and the defendant came together you say that they were about six paces from the stoop? A About six or seven paces.

Q And the stoop that you speak of was the stoop that was in front of the candy store of Pasquale Lioe? A Yes.

Q You say you were on the first step coming out of the candy store? A Yes.

Q And Pasquale Lioe was on the third step as you leave the candy store? A Yes.

Q Did Pasquale Lioe leave the stoop and walk over to where the defendant and the deceased were standing? A No, sir.

Q Did you see Pasquale Lioe with a gun in his hand? A
No, sir.

Q He was standing directly in front of you was he?

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A Yes, sir.

Q Did Pasquale Lioe say anything just before the defendant and the deceased came together? A I heard nothing.

Q Did you hear Pasquale Lioe say anything to the defendant just before the struggle or before the defendant and the deceased came together? A No, sir, I did not hear nothing.

Q Did you see a gun in Lioe's hands at any time that night? A No, sir.

Q Did you see Lioe walk over to where the defendant was with the deceased, and put a gun at the back of the defendant?

A No, sir, I did not see that.

Q As a matter of fact, you say that Lioe did not leave the steps of the stoop? A Yes, I said that.

Q Is that so, did he leave the steps of the stoop? A No, he remained standing still there.

BY MR. DEUEL:

Q But you say on the top step of the stoop, or the last step of the stoop? A Yes.

BY THE COURT:

Q The last step you said?

THE INTERPRETER: He explained that. The stairs that goes in the candy store goes from up to its down, and he was on the first step lighting a cigarette while the proprietor of the candy store was on the last step. That means on the top.

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Q Was it the basement? A Yes, sir, a basement.

Q And how many steps down? A Threesteps.

Q And he was on the top step; is that on the level with the sidewalk? A Yes, sir, he was on a level with the sidewalk.

Q And where were you at that time? A I was on the first step, down.

Q And Lioe was seven paces from the defendant?

A Yes, sir.

Q And how far were you behind Lioe? A Two steps down.

Q How many feet? A Well, the distance of two steps, that is all.

Q Did you see Lioe's hands at the time that this defendant and the deceased were grappling with each other? A No, sir.

Q Did you look at his hands? A No, sir; I did not pay no attention; I was smoking.

Q Did you see the hands of Lioe outstretched? A No.

Q Did you hear Lioe say anything to any person in your presence? A No, sir; I did not hear nothing.

Q How old are you? A 24 years old.

BY MR. DEUEL:

Q As the defendant ran away, did you observe him? A Yes.

Q How fast was he running? A He was not running very fast.

Q Was he running in a straight line? A He was running, not very straight.

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THE COURT: Gentlemen of the jury, do not discuss this case among yourselves nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Be in your seats, gentlemen, at two o'clock.

(Recess to 2:00 p.m.)

TRIAL CONTINUED.

2:00 p. m.

D R. BENJAMIN MORGAN VANCE, of 201 East 30th Street, called and sworn as a witness for the People, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Doctor, you are a physician licensed to practice medicine in the City, State and County of New York? A Yes, sir.

Q And from what medical school are you a graduate?

MR. DEUEL: I will concede his qualifications.

Q You hold what position now? A Assistant medical examiner of New York City.

Q And your duties as assistant medical examiner of New York City are what? A To perform autopsies and examine bodies of persons that met death by violence or natural means.

Q How many autopsies have you performed? A Something over one thousand.

Q Did you perform the autopsy on the body of Alexander Marigi? A Yes, sir.

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Q And this body was identified for you by Officer Wallace?

A Yes, sir.

Q And also by a brother of the deceased, A Yes, sir.

Q His name was Leonardo Marigi? A Yes, sir.

Q And this was the body of a whiteman, was it? A Yes, sir.

Q When did you perform this autopsy? A On September 4th, 1921.

Q Where was the autopsy performed? A At the City Morgue.

Q What did you find? Describe the man in the first place.

A The man was a young man; he looked to be about the age of 21 years -- the age given to me. He was 5 feet 3 inches tall.

Weight by scale 110 pounds. His nutrition was poor. He was anemic, though his muscles were fairly well developed. He had two wounds on the anterior abdominal or belly wall.

Q Describe to the jury just where those wounds were?

A Wound No. 1 was a big long wound, an operative wound situated in the middle line of the belly, running longitudinal (indicating). It was situated one inch to the right of the middle line, its far point being one inch above the navel, and the lower point five inches below the navel.

Q That is what you call an operative wound? A Yes, sir, and held together by sutures. Wound No. 2 was situated on the belly wall, and in relation to the navel 3 inches to the right of the navel and 1-1/2 inches below it. In other words, that wound was situated about here in this region (indicating). That

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wound was a penetrating wound of the belly wall, which penetrated in through the abdominal cavity.

Q Did you form an opinion as to the cause of death in this case? A The cause of death was due to a penetrating wound of the anterior abdominal wall, and of the small intestines, and the complications which resulted from this wound.

BY THE COURT:

Q What wound did you describe as that, wound No. 2, A I described that as wound No. 2.

Q When you speak of the complications resulting from this wound, what do you mean by that term, A There were a series of events which happened after the stab wound, and which finally gave rise to the man's death.

Q What were they? A There were indications in the body that there had been a hemorrhage into the abdominal cavity.

BY MR. McDONALD:

Q You mean a flowing of blood into the abdominal cavity? A That there had been at some time blood into the abdominal cavity. It was not there at the autopsy. There were also indications that the wound was infected, and also a part of the abdominal cavity near the wound was infected, and finally there was an infection of the lung -- bronchial pneumonia.

Q Superinduced by this stab wound, or this wound and the infection of the abdominal wall? A My opinion was that the bronchial pneumonia was secondary to the wound of the abdominal

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wall and the intestines.

Q By secondary, what do you mean? You are talking to laymen now. Do you mean it followed as the result of the stab wound?

MR. DEUEL: Why not let the doctor testify?

Q Yes, suppose you tell us what you mean by secondary?

A I mean in all probability if he had not had a penetrating wound of the abdominal wall the rest of it would not have developed and the bronchial pneumonia.

THE COURT: So Wound No. 2 that you have described was the superinducing cause of death?

THE WITNESS: Yes, sir.

MR. McDONALD: I think that is about all; you may examine.

CROSS EXAMINATION BY MR. DEUEL:

Q What do you think in your opinion caused death? A ^{all} Death was due to the exhaustion brought about by these complications.

Q The complications in turn having been brought about by this stab wound, or this wound No. 2, as you call it? A Yes.

Q And those papers you have referred to are official records of your department? A Yes, sir.

BY THE COURT:

Q You described Wound No. 1 as the result of an operation; is that right? A Yes, sir.

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Q Who performed that operation -- do you know of your own knowledge? A I do not know who performed it.

Q You performed the autopsy; is that right? A Yes, sir.

Q And as a result of the performance of the autopsy did you examine into the wound which was the result of the operation?

A Yes, sir.

Q And in your opinion was the wound which was the result of the operation -- did that in any way superinduce the cause of death? A I do not think that had any great effect in causing death.

Q From the examination of the body, was an operation in your opinion necessary? A Yes, sir.

Q Then your opinion is that the second wound was infected? A Yes, sir.

Q And bronchial pneumonia set in? A Yes, sir.

Q And all these complications produced death? A Yes.

BY MR. DEUEL:

Q These wounds that you call Wound No. 1 and Wound No. 2, - of course, you only do that to characterize them, and not as to the way they were done or the time? A That is right, just to tell which ones they were, to describe them.

Q So that we can better differentiate which is which, you call them wound No. 1 and wound No. 2? A Yes, sir.

Q This wound No. 2, so-called for the purpose of convenience, can you describe that with regard to the width and length

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of it? A It was a wound of irregular triangular shape, with the point of the triangle extending outward and the base of the triangle was downward. The transverse measurement of this wound across the body was two and a half inches, and the up and down measurement was one and one-half inches. The wound that was made in the flesh had a slight amount of pus discharging from it.

Q Did you find out the depth of that wound? A It was impossible to tell how deep that wound went.

Q Inasmuch as it penetrated the abdominal wall? A Yes.

Q Now, the abdominal wall is where with regard to the body?

A The abdominal wall is in this portion of the body (indicating).

Q When you say abdominal wall, what does that mean, do you mean just the hard substance or what? A It means the layer of muscles that protects the belly.

Q Can you approximately give us about how deep that wound was? A Well, at least it was over one inch, and how much further than that I really cannot say.

Q There is no marking after it extended into the belly?

A There is no mark of any fixed point.

MR. McDONALD: All right, I think that is all, Doctor.

PASQUALE LIOE, of 267 Pleasant Avenue, called and

sworn as a witness for the People, testified as follows:
through Official Interpreter Villamena:

DIRECT EXAMINATION BY MR. McDONALD:

Q Where did you live on the 28th of August, 1921? A The

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same place, 267 Pleasant Avenue.

Q Did you have a candy store there at that place? A Yes.

Q Did you know Alexander Marigi? A Marugi, yes, sir.

Q Do you know the defendant at the bar? A Yes, sir.

Q Did you see the defendant before the 28th of August, 1921? A I saw him in the street, but not in my place.

Q Did you know him to speak to before the 28th day of August? A Yes, I have spoken to him several times. A cousin of his is godfather of mine, and that is the reason why we spoke together.

Q Did you see Alexander Marigi on the 28th day of August, 1921? A Yes, he was in my candy store.

Q What time was it that he came to your candy store about? A Must have been after nine o'clock. I do not have any watch with me to look at the exact time.

Q After nine o'clock in the evening? A Yes, sir.

Q Did he come in with anyone? A Marigi and this young man here (indicating the defendant), and that other young man sitting in the courtroom (pointing).

Q Salgagno, you mean? A Yes, sir.

Q Where did they go when they came into your candy store? A They came in the candy store and they went inside in the kitchen and then they asked me for a drink, and I set them a drink.

Q What did they drink? A Sarsaparilla.

Q Did you go out and get some wine for them?

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Objected to as leading and question withdrawn.

Q Was anything said to you by any of these three men while you were in the rear room and while they were in the rear room of your premises? A No, sir, nothing.

Q How long did they remain there? A About 15 or 20 minutes.

Q What were they doing all the time that they were in there? A They were drinking the stuff that I gave them. That means soda, sarsaparilla.

Q Did anything happen while they were there? A No, sir, nothing.

Q Were they talking together? A Yes, they were talking.

Q Were they talking in a loud tone of voice? A No, not a loud tone. I did not hear nothing angry.

Q What happened after they had been in your store about 20 minutes? A They went away.

Q What did you do? A When they started going past from the room through the candy store, the deceased was the first one to go. He said good evening, and I said, "Good evening" to him. Then this young man came after (pointing to defendant), and he said to me "Good evening," and I said "Good evening." The other fellow came after and I said, "Good night" to him. I did not have no chance to say anything else because there were three or four children that were asking for candy and I was waiting on them and when I got through with the children I

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went inside the room because I had two or three more people waiting, to see if they wanted anything.

Q Now, then, did you see Marigi and the defendant and Salvagno again that night? A He came in --

MR. DEUEL: Salvagno was in the room. I would ask that he be asked to step out of the room, because it may be necessary to have to use him again.

(Whereupon Salvagno stepped out of the court room.)

A (Continued) After they went away, I was through serving and waiting on those children and the other people there, so I started to sit down, when I seen this Salvagno come into the store, and I said to him, "What is the matter, you come right back?"

THE COURT: What he said to Salvagno is not competent.

Q Well, you said something to Salvagno; is that so? A Yes.

Q What did you do then after you said something? A I said nothing -- I did nothing.

Q Did you go outside? A No, sir.

Q Didn't you go out to the door? A No, I did not.

Q Who were in the store besides Marigi, the defendant and Salvagno? A One named Pugliesi and another named Eccolano, and two more.

Q Who were they? A I did give you the name of those two the day before yesterday. I don't remember the names now.

Q Did you see Marigi again that night? A No, sir.

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Q Did you go out onto the stoop? A No, sir.

Q Did you see Marigi and the defendant on the street about six or seven paces away from your store?

Objected to as leading and in contradiction of the witnesses. Objection sustained.

Q You say you did not go out onto the stoop? A No.

Q Did you see what happened outside of your store? A No, sir, I did not see nothing.

Q Did anybody come into your place of business while Marigi and the defendant and Salvagno were sitting at the table? A Yes, a policeman.

Q Did the defendant do anything when this policeman came in to your place? A I did not see nothing pass.

Q Did you pick up a knife from a table at which the defendant was seated? A No, sir.

Q Did you see a knife under the oilcloth which was on the table? A No, sir.

Q Were you attending to your business there? A Yes, sir.

Q Were you the only one in the candy store that was waiting on people?

MR. DRUEL: I object to that. There were three questions put in order that were leading, or two, and this is the third one. The other two I allowed to go by, your Honor.

BY THE COURT:

Q Who waited upon the customers? A I was waiting -- and

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my wife also sometimes, but at that time my wife was getting supper ready, cooking, and I was the only one waiting.

BY MR. McDONALD:

Q How many times did Marigi and the defendant and Salvagno come into your store on the night of the 25th of August? A The only time.

Q Were they only in there that once? A Yes, sir.

Q I mean on that night? A Yes, sir.

Q What was the condition of these three men, Marigi, Salvagno and the defendant? A I noticed this defendant was quite intoxicated when they came in. The other witness that was in this court room he was sober, and the deceased was half way intoxicated also.

Q Half way intoxicated, is that what you mean? A Yes, a little intoxicated; yes.

Q Had you ever had any trouble with Marigi? A No, sir.

Q Had you ever had any trouble with the defendant? A With nobody.

Q About how long did they remain in the rear room of your store, A About 15 or 20 minutes.

Q In order to go out to the street from your store entrance, how many doors would they have to pass through? A There is two doors. One in the middle, and the other one that leads into the street. Two doors, one in the middle and another one that leads in the street.

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Q What do you mean, one in the middle? A Well, between the candy store and the room in the back.

Q Do you remember whether this door was open or closed at the time that Marigi and Salvagno and the defendant went out -- that is, the door leading from the store to the street? A It was open.

Q Is there a window in your store? A A window about four feet square.

Q Was there a light burning in your store at the time that these men left? A Yes, sir.

Q What was it, electric or gas light? A Electric.

Q Where is the electric light? A In the store attached to the ceiling.

Q About what part of the store is it in? A In the front.

Q Well, do you mean at the window? A Yes, sir.

Q Is that the only light that you have in the store?
A That is the only one in the store.

Q Was Marigi or the defendant ever in your place of business before? A No, sir. This defendant was about three or four months before this occurrence in my house, but not in the store.

MR. McDONALD: You may examine.

CROSS EXAMINATION BY MR. DEUEL:

Q What part of Italy do you come from? A Province of Potenzi -- Nelfi.

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Q How long have you been in this country? A 1904.

Q Do you know what part of Italy this defendant comes from? A He told me he comes from the same part of Italy that I come from, but I don't know him. I am in American now for 19 years past.

Q Do you know what part of Italy Marigi came from? A The same town.

Q How about Salvagno? A The same town.

Q On the night of this occurrence did you have any talk with the defendant in your place? A No, sir.

Q Did you have any talk with Salvagno? A No, sir.

Q Did you have any talk with Marigi? A No, sir.

Q Did you go out and get any wine for these men? A No.

Q Did you have any wine in your place? A Beer, sarsaparilla and soda, any kind of soft drinks.

Q Did you serve them with wine in your place that night? A No, sir.

Q As a matter of fact, after this occurrence on the sidewalk, and after Salvagno came back into your place, and you looked up for the night, and before the officers came, did you not go out into your back yard and break up some wine bottles and let the wine go down the drain? A No, sir, it is not so.

Q What did this police officer come into your place for while these men were sitting there drinking? A The policeman came in and said to me if I want to buy some tickets for some

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kind of a smoker that he had. I said that I had no money now, "but if you go inside you will find four or five men in there, they will buy tickets from you."

Q Didn't at that time -- either before or after -- this defendant pull out a clasp knife of some description in your presence? A No, sir.

Q And didn't Salvagno likewise produce a clasp knife of some description in your presence? A No, sir; nobody pulled out a knife.

Q Didn't you take care of those knives for a little while? A No, sir.

Q And didn't you after the police officer went out and when these men were ready to go home, have a little discussion with them concerning those knives, in which the defendant said he did not want to take his, because he was afraid that he might be arrested with it on his person? A No, sir, he did not tell me nothing of that kind.

Q And in your presence and in the presence of the defendant, did not Salvagno say that he would take care of both of those knives and walk home with the defendant? A No, sir.

Q Who went out of your place first of these three men? A The one that died.

Q What were you doing when he went out? A I was sitting in the store.

Q What part of the store? A In the back. I was sitting

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in the back where they were drinking when they went away. They said "Good night" to me, and I said "Good night" to them.

Q They left you in the back, did they? A Yes, I was sitting in the back and I followed them.

Q How far did you follow them? A I did not reach outside. When I got near the door I saw there were two or three children there that wanted to buy some candy. I went back and waited on the children and they went away.

Q What were the names of these children? A How do I know their names -- children who live around that neighborhood.

Q How long have you been having that candy store in that neighborhood? A The first day of August.

Q Do you own it now? A No, I sold it.

Q To whom did you sell it? A I sold the candy store to one named Nicola Riccinti.

Q Did you observe which one of these men went out of the candy store itself to the stoop first while you were serving these children? A The first one to go out was the deceased.

Q Who was the next one? A Then they went out. I don't know who went out.

Q Didn't Salvagno go out next? A Salvagno was the last one.

Q Salvagno was the last one to go out? A Yes, sir. Well I mean the last. There was a little distance from one to the other one, just one or two paces.

Q Then the defendant was the next one to go out after Marigi, was he? A Yes, sir.

Q And then Salvagno? A Yes, one after another one.

Q Isn't it true that the defendant here remained behind in the store and talked to you while Marigi first went out and Salvagno followed him? A No, sir, nobody did stop.

Q Didn't you talk to him, to the defendant, while the other two were outside the store, A I did not talk to him because he was drunk. How could I talk to him.

Q Did you observe what happened out on the sidewalk? A No, sir.

Q How long was it after these men had gone out to the sidewalk before Salvagno returned, A About a minute and a half.

Q Where were you when he returned? A I was just coming out from the back of the counter. I got through waiting on the children and I was going in the back of the store, and Salvagno came in.

Q Now, this 4-foot window that you mentioned, that is not in between the counter and sidewalk? A Yes, this window faces the street, but you could not see nothing from inside of the window, because the store is about four feet down from the level of the sidewalk and then is a high fence, four feet high fence, that obstructs any view from inside of the store to outside.

Q You did not go out that night onto the sidewalk with this defendant and press a gun up to his back, and tell him to

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stab this deceased, did you? A I -- no, no, no.

Q You did not see Salvagno having hold of this deceased out on the sidewalk at the time when it is said this defendant made a stab at the deceased? A I did not see it.

Q And at the time when Marigi had gone out on the sidewalk and Salvagno was following him on the sidewalk, you did not stand alongside this defendant and say to him that you wanted him to kill Marigi, did you, and offer him a gun? A No, sir.

Q And that when he refused to take the gun and do that, that you followed him out with the gun pressed up against his back? A No, sir, I know nothing.

MR. DEUEL: I think that is all.

REDIRECT EXAMINATION BY MR. McDONALD:

Q Well, did the police come and visit your premises after Marigi and Salvagno and the defendant left your store? A Yes.

Q About what time was it that the place came? A Half past ten.

Q Who was in your store then? A I, my wife and Salvagno, Cocolano and Pugliesi.

Q By the way, you lived in the rear of your store, did you? A No, sir.

Q Did you live in the rear of the store on that day? A No, I was sleeping upstairs. I had two rooms upstairs.

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

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ALEXANDRO PUGLIESI, of 340 East 113th Street, called and sworn as a witness for the People, testified as follows; through Official Interpreter Villanena:

DIRECT EXAMINATION BY MR. McDONALD:

Q Did you know Alexander Marigi? A Yes, sir.

Q Do you know the defendant at the bar? A Yes, sir.

Q How long did you know Marigi? A I know him from Italy.

Q Did he come from the same town as you did in Italy?

A Yes, sir.

Q How long do you know the defendant? A From the time that he came from Italy.

Q Did you see him on the 26th day of August, 1921, in Pasquale Lioe's place? A Yes, sir, I was there.

Q What part of the premises were you in? A In the rear of the floor there.

Q In the rear of the store you mean? A Yes, sir.

Q Was that room that you were in divided from the store by a partition or something? A Yes, sir.

Q With whom were you in that rear room? A I, Coccolano, and Lioe.

Q What were you doing there? A I was drinking saraparilla.

Q And did Marigi and the defendant and Salvagno come into the store of Lioe? A About nine or half past nine.

Q Where did they go? A They came right in the room there.

Q Were you seated at a table? A Yes, sir.

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Q Where did they go? Did they seat themselves at the same table or at another table? A No, at another table. We were seated like here (indicating), and they were sitting like there (indicating to his right).

Q They were sitting at the other side of the room? A Yes, sir, in the same room.

Q Did those three men then sit down at that table, Marigi, the defendant and Salvagno? A Yes, sir.

Q Did anything happen there while they were sitting at that table? A Nothing.

Q What were you doing? A I was sitting there at the table, drinking what you call here sarsaparilla.

Q You mean with Coccolano? A Yes, sir.

Q Did Lioe leave the table at which you were sitting at any time? A Certainly. He has a candy store. You know children go in and buy candy and he naturally gets up and goes outside and waits on them.

Q Did Lioe wait on Marigi and the defendant and Salvagno? A Yes, sure, he waited on them.

Q What did he serve them, do you know? A How do you expect me to know.

Q Well, do you know? A No, sir.

Q How long did Marigi and the defendant and Salvagno remain there? A About twenty minutes.

Q And did you see what they were doing during that twenty

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minutes that they were in the rear room there? A No, they were there the same as we were there.

Q Did you see what they were doing? A They did not do nothing.

Q Were they talking? A They were talking amongst themselves.

Q Did you hear what they were talking about? A No, sir.

Q Did you see when they got up from the table? A Yes; they said "Good evening" to us.

Q You mean that they said "Good night" to you? A They said "Good evening", not "Good night."

Q What did they do after they said "Good evening" to you? A They got up and they went away.

Q Where did they go? A They went away.

Q You mean outside of the store? A Yes, they went out of the store; yes, sir.

Q The three of them, Marigi, Salvagno and the defendant? A The three.

Q Where was Gioe at the time that these three men went out of the store? A He was after them.

Q Did he leave the rear room? A Yes, sir.

Q And then where did he go? A I do not know because we remained in the room there.

Q Can you see from where you were sitting into the front part of the store? A No, sir.

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Q When you say that Lioe left, do you mean that he left the room where you were sitting? A Yes, I mean that he left the room where we were sitting.

Q Did you see where he went to? A He went from the room where we were sitting.

Q You mean the store? A Yes, he left the room and went in the store. I saw him.

Q How long did you remain there? A About half an hour.

Q Do you mean half an hour after Marigi, the defendant and Salvagno left? A Yes, sir.

Q While Marigi and Salvagno and the defendant were seated at the table in the rear room did you hear any arguments between them? A No, sir.

Q Are you a relative of Salvagno? A No, sir.

Q Could you tell whether any of these men had been drinking? A The defendant was drunk.

Q What about Marigi? A No, Marigi was not drunk.

Q What about Salvagno? A Salvagno was sober.

Q Did anybody come in to your table while Marigi and the defendant and Salvagno were seated at the other table? A Marigi came to me and said to me, "Pugliesi" --

THE COURT: No, we do not want that in.

Q Did anybody else besides Marigi come over and speak to you? A No, nobody.

Q Did you see any children in the store part of the premises?

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A No, sir. I did not see any because where I was sitting I could not see it.

Q Where were you sitting with regard to the table at which Marigi and Salvagno and the defendant were seated? A My back was towards the table where they were sitting. I was sitting over here (indicating), and they were sitting over there.

Q You would have to turn your head in order to see these three men at the table at which they were seated? A Yes, I would have to turn my head this way (indicating).

Q Did you see anybody with a knife? A No, sir.

Q Were you just talking to Cocolano? A Yes, He was sitting at the table.

Q Were you playing cards with him? A Yes, sir, playing cards.

Q You and Cocolano? A Yes, sir.

MR. McDONALD: I think that is all.

CROSS EXAMINATION BY MR. DEUEL:

Q Did you say that you saw a police officer come in while you were sitting in the back part of the room with the other three, Lioe, Cocolano and so forth? A Yes, a policeman came in, and wanted to sell some tickets.

Q Where was Lioe at that time? A He was not near us, so I imagine he was in the store.

Q In front of the store? A He must have been there. He was not near us. I was sitting there, and I could not see what

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was going on in the store.

Q Will you state whether or not Lioe -- after these three men went out, the defendant, the deceased and Salvagno -- and you remained behind in the room where you were and locked the door -- did he go into the front, into the store at that time?

A A few minutes after they went away Salvagno came right back in the back of the store there with Lioe.

MR. DEUEL: I ask that the answer remain on the record, but I should like to have the question put again to the witness, and answered.

Q (Question repeated by the stenographer). A Lioe left the room already, I told you that before. In the rear room only we two remained.

Q Then Salvagno came in and Lioe came in with him sometime after -- I mean into the rear room?

THE COURT: Gentlemen of the jury, I am required to appear at the office of the Commissioner of Jurors at 3:30 o'clock for the purpose of drawing a special panel of jurors in another case. In view of the fact that I must be on hand punctually at 3:30, and the hour now being 3:20, we will adjourn this case until tomorrow morning.

You will not discuss this case among yourselves, nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or innocence of the defendant until the case is finally submitted to you. Be here, gentlemen, at 10:45 tomorrow morning.

(Adjourned to Wednesday, January 4, 1922, at 10:45 a.m.)

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New York, January 4, 1922.

Trial continued.

MR. McDONALD: May I take out of order the operating surgeon; I understand Mr. Deuel has finished with the witness Pugliesi.

THE COURT: Yes.

WALTER M. SILLECK, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a physician, duly licensed to practice medicine in the state and city of New York? A Yes sir.

Q And you are operating surgeon at the Bellevue Hospital? A Yes sir.

Q And you were such on the 29th day of August, 1921? A The Harlem Hospital.

Q Did you perform an operation upon the body of one Maruggi? A Yes sir.

Q Of course, outside of the records that you made at that time or that were made at that time you have no independent recollection of it? A No, I have not.

Q By looking at the record would you be able to refresh your recollection as to what operation you performed? A Yes, I would.

Q Please look at the record (handing paper to witness).

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A Yes, I recognize this record.

Q What was the matter with this man? A A stab wound of the abdomen.

Q By looking at the record you can tell us where it was?

A Yes sir.

Q Do you know now where it was, after looking at the record?

A Yes, it was to the right of the umbilicus.

Q That is the navel? A Yes sir.

Q What operation did you perform? A Laparotomy, - opened the abdomen, looked over the intestines and there were two perforations of the small intestine and two perforations of the large intestine. We followed the usual procedure. The abdomen was filled with blood and apparently intestinal contents, and the wound was drained.

Q This man afterwards died, did he, according to the record here? A Yes sir, he did.

Q He died on the 29th day of August at 1 P.M.? A Well, to the best of my knowledge and belief he did.

Q Did you use reasonable care and skill in performing the operation upon this deceased? A I think so.

Q Well, you know so, don't you? A Yes sir.

Q The purpose of your operation was to try to save him?
A Yes sir.

Objected to. Objection overruled.

BY THE COURT:

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Q Was the operation necessary, Doctor, in your opinion?

A Absolutely.

Q In the performance of this operation as stated in the question of the District Attorney, you resorted to those means which were usual for physicians in the performance of an operation? A Yes; it is the routine for that class of condition.

Q What developed as the result of the operation, do you know? A Well, the man had general peritonitis when we operated upon him and that condition progressed.

Q And in your opinion what produced the general peritonitis? A The state of the intestinal content through the perforations of the gut.

Q That is the two perforations you have described, - the two perforations in the large intestine and two in the small intestine? A Yes sir.

Q You say general peritonitis resulted from those wounds? A Yes sir.

Q And in your judgment an operation became necessary? A Yes sir.

BY MR. McDONALD:

Q Doctor, what college did you graduate from? A The College of Physicians and Surgeons.

Q And when did you graduate? A In 1908.

Q Have you been practising your profession since that time continually? A I have done nothing but surgery since then.

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Q And you have been practising surgery ever since that time? A Yes sir.

Q You are visiting surgeon at Harlem Hospital? A Yes sir.

Q At any other hospital? A Associate professor at Post Graduate.

MR. DEUEL: I will concede his qualifications.

Q When I showed you the record you read from the official record of the operation performed by you at Harlem Hospital?

A Yes sir.

BY THE COURT:

Q You adopted, you say, the customary method in treating the patient? A Yes.

Q Now, did you follow the case beyond the operation?

A Every day, sir.

Q And do you know where the patient died? A Yes sir.

Q Where? A Harlem Hospital.

Q What was the cause of death, in your opinion? A General peritonitis.

Q Due to what? A Due to the escape of the intestinal content following the stab wounds.

Q Those wounds were the actual or proximate cause of death?

A In my opinion, yes sir.

MR. McDONALD: I think that is all; you may examine.

MR. DEUEL: I have no questions to ask.

WILLIAM B. CAPUTO, an officer of the 39th Precinct

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Detective Division, Shield No. 237, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Officer, do you know the defendant here? A I do.

Q When was the first time you saw him? A Well, about 4.30 P.M. September 9, 1921.

Q And where was he when you saw him then? A At the 39th Precinct station house, 104th Street near 3rd Avenue.

Q Does the 39th Precinct station house cover 114th Street and Pleasant Avenue? A It does.

Q You then had knowledge at the time that this defendant saw you at the station house, of the killing or of the death of one Alexandro Maruggi? A Yes sir.

Q Did you have a talk with the defendant? A I did.

Q What date was that? A September 9th.

Q What did the defendant say to you? A The defendant stated to me that on the night in question, on August 28th, --

MR. DEUEL: Before we go into that may I have on the record the circumstances under which this statement was made, -- that is, who was present, and the time, and such circumstances as would tend to show this statement was made in accordance with such laws as make it admissible here before you and the jury?

THE COURT: I think you better establish the circumstances.

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MR. McDONALD: As a matter of fact, isn't that cross-examination?

THE COURT: Otherwise he has a right to claim the witness, to ascertain whether or not the alleged confession was the result of fear instilled by threats. Do you wish to claim the witness, Mr. Deuel?

MR. DEUEL: Why, no; I do not think I shall claim that.

MR. McDONALD: Well, I will bring out all the circumstances.

Q Who was present when this defendant came in? A I was there alone at the time.

Q And where were you? A I was in the 39th Precinct station house.

Q What part of the 39th Precinct station house? A The detectives' office.

Q Were you at the desk there? A Yes sir.

Q Where is this detectives' office? A Adjoining the lieutenant's desk, the front office.

Q Is it on the first floor? A On the first floor, as you enter.

Q To the left as you enter? A To the left as you enter the station house.

Q Did the defendant come into the station house with anybody? A He came in alone.

Q Were you the first one that he spoke to; I mean, is it possible he spoke to the lieutenant there and was directed then

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over to the detectives' room? A The defendant could not speak Italian; he asked for an Italian interpreter.

Q You mean he could not speak English? A He could not speak English, and he asked for an officer that could speak Italian, so I happened to be there and I came out and met him right in front of the lieutenant's desk there. I spoke to him in Italian.

Q Oh, you do speak Italian, do you? A I do.

Q You are an Italian, -- A I am.

Q I mean an Italian-American? A Yes sir.

Q Were you able to understand him? A I was.

Q Was he able to understand you, as far as you know? A He was.

Q What was it that was said in front of the lieutenant's desk? A I asked the defendant what his name was. He told me his name was Giovanni Maula. I said, "Where do you live?" He told me he lived on 1st Avenue. I said, "What is your trouble?" He said, "You are looking for me in regard to a man that I have killed on Pleasant Avenue on the 28th day of August, 1921". "Oh", I said, "yes; I am well acquainted with the case. Come right inside". I brought him inside, into the detectives' office. There we got talking together. I said, "Now, relate your case to me, let me know all about it; why you stabbed that man". The defendant started. I said, "Now, you start from the time that you met him until the time you stabbed him". He said that he was

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in a saloon at 104th Street between 1st and 2nd Avenue, entering there around about half past three or four o'clock. He stayed in there and he was playing cards with several of his friends there, he did not know their names. So finally around about six or half past six or so, the deceased Maruggi came in there, he in company with another man by the name of Salvagno. They were there and were talking. "After having a couple of glasses of soda there and the beer we took a walk". I said, "Where did you walk to?" He said, "We walked around the park". I said, "What park do you mean?" He said, "Around 1st Avenue" meaning 114th Street there, Thomas Jefferson Park. He said, "We walked around there until such time as around about nine, nine or so. Then we went into a candy store at Pleasant Avenue between 114th and 115th Street and in the rear of this candy store there were tables and we sat down there. In company with Joseph Salvagno and the deceased and myself, we had two bottles of wine and sat there talking and we drank the two bottles of wine. Then of course we got into an argument as to who was going to pay". He said, "I paid for one and Salvagno paid for the other, and Maruggi, I suppose, they wanted him to buy a bottle and he would not buy wine, so they had a few words. While they were arguing there", he stated, "a policeman came in selling some tickets, and when the officer entered", he said, "he takes a knife out of his pocket and he placed it on the floor so as the officer would not find him with the knife in his pocket. After the officer went out

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he takes the knife up and lays it on the counter. Well, then the argument started about paying for the bottles of wine. So finally they got up and they were walking out. When he got near the door of the store, leading out", he stated, that the deceased slapped him in the jaw. So he did not like to stand for that and the owner of the place, Patsy, --

Q Pasquale Lioe? A Pasquale Lioe, he stated, told him, "Why don't you go back of him; don't take that", and he walked outside in front of the store just about two steps up in company with Salvagno and the deceased and he stabbed him. I said, "What did you do with the knife?" He said, "I threw the knife away", asking him where, he said, "In the stairs". I said, "Then what did you do?" He said, "Well, I ran away". I said, "Where did you go?" He says, "Over in Jersey". I said, "Well, were you there when officers were there looking for you?" He says, "I don't know whether they were over there or not". I said, "Well, how did you come to find out that the officers wanted you?" He said, "Well, I went around the neighborhood and they told me the detectives were looking for me and that is the reason I come into the station house.

Q Is that all the conversation you had with him? A That is all.

Q By the way, you were not one of the detectives assigned to the case originally, were you? A I was not.

Q But you took this man's statement because you spoke Italian and he spoke Italian? A Yes sir.

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MR. McDONALD: I think that is all; you may examine.

CROSS-EXAMINATION BY MR. DEUEL:

Q Did you reduce the statement to writing? A I did not.

Q Did you make a memorandum of that statement? A I did not make a memorandum, but, --

Q You have answered the question? A No, I did not.

Q Is there a written record of that statement anywhere?

A That I don't know.

Q Did you give that statement to anybody else and ask him to reduce it in writing? A I spoke to the detectives, --

Q Answer my question, please. A I did not.

Q You keep a memorandum book, do you not, as part of your official duties, in which you make entries? A I do.

Q Of such matters as these? A I did.

Q Did you make any entry in that book concerning this matter? A Not as to the statement.

Q Did you make any entry in that book concerning this matter. Please answer my question. A No.

Q You are testifying entirely from memory, are you? A Yes sir.

Q Does it refresh your recollection at all that this defendant told you in that statement that he was in this candy store with these two men and that when he came out of that candy store Lioe, the proprietor of it, tried to force a gun on him to shoot Maruggi and that he refused to take that gun, that the proprietor stepped behind him as he went out on the street and while Salvagno

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had Maruggi by the arm, that between the two, Lioe and Salvagno, he was compelled to stab the deceased? A No sir.

Q He did not say anything like that to you? A No sir.

Q Why was it that Salvagno was arrested after this defendant made a statement to you? A Salvagno was arrested long before this defendant was arrested.

Q Why was it that Salvagno was in the Harlem court under arrest at the same time that this defendant was, - do you know?

A Because Salvagno was there in company with the defendant, and being he was there.

Q When was Salvagno arrested, what day? A Well, I haven't any record of that because it was not my case.

Q You have no record of it? A No sir.

Q You don't know, do you? A No sir; a couple of days after. A day or so after, I believe it was.

MR. DEUEL: I have no further questions.

J O S E P H J. R Y A N, an officer of the 39th Precinct Detective Division, Shield No. 101, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the police department of the city of New York? A I am.

Q And you were such on the 28th day of August, 1921? A I was.

Q To what precinct were you attached at that time? A 39th Precinct Detective Division.

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Q Were you assigned to the case of the investigating of the stabbing of one Maruggi? A I assisted Detective Kochman.

Q Did you have occasion to go to see Maruggi? A I did.

Q When and where? A On the 28th of August I saw him in the emergency ward of the Harlem Hospital and again on the 29th of August at the Harlem Hospital.

Q Did you have a talk with the deceased there? A I did.

THE COURT: Do not state what he said, Officer, - unless you can show a dying declaration.

MR. McDONALD: Yes sir; that was just a preliminary question.

Q Did you speak to Alec Maruggi at the Harlem Hospital?

A Yes sir.

Q Did you take down in substance what he said? A I did.

Q Did you take it down in writing? A I did.

Q Was it in your own writing? A It was.

Q Did Maruggi sign it? A He made a cross and I signed his name above it.

Q And then you put your name down as a witness? A I did.

Q Was Detective Kochman also there at that time? A He was.

Q And a brother of the deceased, Luigi Maruggi? A Yes sir.

Q Do you remember what you asked Maruggi? A I do.

Q What did you ask him? A I asked him his name and his address.

Q And did he answer you? A He did.

Q And did you put it down? A I did.

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Q Have you any independent recollection of what was asked by you, and the answers made by him, outside of the record that you made at that time? A From my recollection, I can.

Q Very well; tell us? A I asked him how he received his injuries.

Q No, -- give us the first part; what you first asked him? A I asked him his name.

Q Just use the exact words that you used to him? A I asked him his name and he gave his name as Maruggi. I asked him where he lived. It was 340 East 120 Street.

Q 438 it says here. A 438 East 120th Street.

Q If you have not any independent recollection of this statement I just as lief you tell me that you have not because we have the original here. A I can give you the substance as far as I can remember.

Q All right; what was the next question you asked him? A I asked him how he received his injuries.

Q No, -- before that? A I think I asked him how old he was.

Q No, -- did you ask him, "Do you now believe you are about to die"? A I asked him, "Do you now believe that you are about to die from the injuries you are now suffering from", and he said yes.

Q Do you remember the next question? A I asked him if he was willing to make a true statement.

Q Before that? A I asked him how he received his injuries.

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Q Did you ask him if he had any hope of recovering?

A I did.

Q Tell us what you asked him? A I asked him if he had any hopes of recovery from the injuries that he was now suffering and he said no. I asked him was he willing to make a true statement as to how he received his injuries and he said he was. I asked him, "Will you tell your story in your way and I will put it down". He said, "Yes; all right". Then he told me that he was with a fellow by the name of John Samano, who lived at, I think, 340 East 114th Street, and another fellow named, -- oh, Joseph Samano, I think that was, -- and another fellow by the name of John, - he did not know his last name, who lived on 114th and 113th Street and 1st Avenue. That they went to a candy store at Pleasant Avenue between 114th and 115th Street and they had a bottle of wine for which he paid a dollar. That he left the candy store with that Samano and they walked out on the sidewalk and this John was on the sidewalk and they got about two feet and this John pulled out a knife and stabbed him in the stomach. He chased him a little ways and then he went to 116th Street and 2nd Avenue. Then he went to the hospital.

Q That is your best recollection^{of}/what was said? A Yes sir.

Q You took down what was said? A Yes sir.

Q And is this the statement that you took down (handing paper to witness)? A Yes sir.

Q That is the mark made by the deceased? A Yes sir.

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Q And you signed the name "Samuel Maruggi"? A Yes sir.

Q Did you afterwards find out what the true first name of this deceased was? A Jacob Kochman handled it after that. I went off on my vacation. I think it was Maula they found out his last name was.

Q I am not talking about him; I am talking about the first true name of the deceased? A No sir.

MR. McDONALD: I offer in evidence the dying declaration.

MR. DEUEL: Your Honor, I object to the introduction of the statement in evidence on the ground that it is not properly ascertained to be a dying declaration within the law.

THE COURT: In what respect?

MR. DEUEL: Well, I withdraw the objection, your Honor, because, frankly, it is merely a technical objection. I have no legal ground at this moment on which to base that objection. One may develop later on, but for the time being I think probably it is competent. On the face of it I think it is competent but of course the circumstances under which the declaration was taken may have been such as to negative the answers to the two questions (reading): "Do you now believe you are about to die? A Yes. Q And have you any hope of recovery from the effects of the injury you received? A No", and I was going to cross-examine on those points to ascertain a little more carefully what these conditions were.

THE COURT: That is your privilege, of course.

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MR. DEUEL: Before I cross-examine the witness I would like to ask my defendant a question or two and I have to use Mr. Villamena to do so.

THE COURT: You may do so.

(Paper marked in evidence People's Exhibit 1.)

CROSS-EXAMINATION BY MR. DEUEL:

Q Officer, do you know how long it was after this stabbing occurred that you saw Maruggi in the hospital? A Why, we saw him the same night.

Q About what time? A I should judge about twelve o'clock; in that vicinity. It was first reported to the 43rd Precinct and it was transmitted to us by telephone and Detective Kochman and myself went.

Q What time did you receive the telephone message? A I can't remember. It was in the vicinity of about eleven o'clock, I presume.

Q And you went to the hospital to see this man? A Yes, he was in the emergency ward at that time.

Q Who was present there when you saw him first? A A doctor and one of the orderlies.

Q Did you have a talk with him? A We talked to him at that time. Detective Kochman spoke to him.

Q I mean with the deceased? A He said a fellow named John, --

Q Just listen to my question and then answer. I want to bring out all the facts. Did you have a talk with the deceased?

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A I did.

Q At the time you first went to the hospital to see him?

A I did.

Q Who was present? A Detective Kochman.

Q Who else? A One of the doctors and an orderly, I believe.

Q Do you know what doctor? A No sir, I do not.

Q Did you do the talking or did Kochman do the talking?

A Well, we both asked him questions at intervals. -

Q And you received answers to those questions? A Yes sir.

Q Did you make any written record of those answers at that time? A No sir.

Q What did you do after you had this talk with him, the first talk? A We left the hospital and he was about to go home. The deceased was about to go home. The doctor said it was a superficial wound and he was to leave the hospital shortly after that.

Q What did you do? A I left.

Q After you left the hospital? A I left, and went to the 39th Precinct.

Q How long was it before you again went to see the deceased? A I first went to the store, 114th and 115th Street.

Q Listen to my question, Officer. I asked you how long it was before you saw the deceased again? A That was the following day.

Q At what time? A I believe it was in the morning around eleven or twelve o'clock.

Q You did not see him between the first time that you men-

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tioned and eleven o'clock the following morning, did you? A No.

Q Who was present when you saw him at that time? A Detective Koshman and the brother of the deceased.

Q Anybody else? A Well, there was doctors and nurses there waiting to bring him to the operating room.

Q Did you have a talk with him at that time? A I did.

Q Did you make any written record of that talk? A I did.

Q Is that the record you have here (People's Exhibit 1)?

A Yes sir.

Q And you say they were about to take him to the operating room? A Yes.

Q Did you see him after he came down from the operating room? A Detective Koshman seen him the next day. I did not see him.

Q What day was that? A I think that was the 30th.

Q Are you sure? A Well, he had said he had seen him the next day.

Q Well, are you sure you saw him on the 30th? A I did not see him on the 30th. I said Detective Koshman saw him.

BY MR. McDONALD:

Q You do not know that, do you? A I know he went up the next day or the day after that.

BY MR. DEUEL:

Q Is this People's Exhibit 1 that I hold in my hand, this paper, the written record that you made of your conversation with

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him between eleven and twelve o'clock on the 29th and before he went to the operating room? A Yes sir.

Q Did you ask him some questions? A I did.

Q And you wrote the answers down? A I did.

Q It is your handwriting here, except the typewritten matter? A Yes sir.

Q Did you have this form in your pocket when you first went to see him the night before? A Yes, we have those forms.

Q Did you have this form in your pocket when you first went to see the deceased in the hospital? A I don't know whether I had it or Koshman had it but I know we had it with us when we went there.

Q The first time? A Not the first time. We did not make any written record the first time. The second time we seen him was when I made a written record.

Q As I asked before, will you please listen to my questions. I want to find out whether you had this particular written form in your pocket on the night you first went to see the deceased, yes or no? A I don't think I did.

Q Then you got this form afterwards and put it in your pocket when you went to see him the second time? A We had it with us. I do not know whether at that time, - that is the night before, or whether we brought it from the station house with us.

Q Did you stand or sit down by the bedside of this man when you saw him the second time? A I was sitting down.

Q Did you write out these answers as you sat there? A Yes

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sir, on a little bit of a medical paper that they had alongside of the bed.

Q Is the story that is contained in this written record of how the stabbing occurred the same as the one he told you the night before? A Yes; he told us the night before the same identical story.

Q You had him repeat it over again the second time? A Yes sir, and then I read the statement to him before I let him sign it.

Q What did he say with respect to the fact as to whether he thought he would recover; give us his entire statement? A I asked him did he think he would recover from the injuries he was suffering and he said no.

Q Is that the only time you referred to that in your talk with him as to whether he would recover or not? A Well, after he had signed that statement and they were wheeling him away I said, "What makes you think you are going to die?" He said, "From my stomach and my legs".

Q That was after, not before? A Yes sir, starting up to the operating room.

Q He knew he was going to the operating room, didn't he? A Yes.

MR. DEUEL: Your Honor, I object to the admission of this on the ground, from the circumstances that he was going to the operating room, he might have had hope of recovery, although he said to the contrary. I object.

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THE COURT: I overrule the objection.

MR. DEUEL: I take an exception, please.

THE COURT: The officer expressly testified that, from the condition of his abdomen and his legs the ^{deceased} ~~defendant~~ feared he was going to die.

Q You said you went off to your vacation after this? A Yes.

Q And you did not do any more work on this case? A Shortly before I left on my vacation, the next day, I think, we went to Newark; on the 30th or 31st we went to Newark looking for the defendant and spent the whole day in Newark going from place to place. We were right behind him each time.

Q You did not find the defendant? A No sir.

Q It is only by hearsay that you know that you were right behind him each time? A Yes.

Q You did not do any more work on the case then? A No.

Q Had this defendant appeared in the 39th Precinct before you came back from your vacation? A I believe he did, while I was on my vacation.

Q Did you do any work on the matter after that? A No sir.

MR. DEUEL: I think that is all.

REDIRECT EXAMINATION BY MR. McDONALD:

Q Did you arrest Salvagno? A Detective Kochman arrested him.

Q Did you arrest Salvagno? A No sir, I did not.

MR. McDONALD: That is all, Officer.

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EMIL J KOCHMAN, an officer of the 39th Precinct Detective Division, Shield No. 772, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q You are a member of the police department of the city of New York and you were such on the 28th day of August, 1921?

A Yes sir.

Q What precinct were you attached to at that time? A 39th Precinct.

Q What precinct are you attached to now? A 39th.

Q Still the 39th Precinct? A Yes sir.

Q Were you attached to the detective division at that time?

A Yes sir.

Q Did you have occasion to see one Alexander Maruggi? A Yes.

Q Did you visit the candy store on Pleasant Avenue between 113th and 114th Street on the night of August 28th, 1921? A Yes.

Q What time was it you got there? A Between eleven and twelve o'clock midnight.

Q Did you see one Salvagno there? A No sir.

Q You say you did see Maruggi in the hospital? A Yes sir.

Q About what time was it that you saw him in the hospital, approximately? A Between half past ten and eleven P.M.

Q On the evening of the 28th day of August? A Yes sir.

Q Did you have a talk with him? A Yes sir.

Q Did you afterwards leave the hospital? A Yes sir.

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Q Was anyone with you at the time you visited Maruggi in the hospital on the 28th? A Detective Ryan.

Q After the 28th of August did you go again to see the deceased? A On the 29th of August.

Q You and who? A Detective Ryan, between 1 and 2 P.M. on the 29th of August.

Q And there, was there a statement taken? A Yes sir.

Q From the deceased? A Yes sir.

Q By Officer Ryan? A Yes sir.

Q It was taken down by Officer Ryan, was it? A Yes sir.

Q Did you know where the defendant lived? A At that time, yes sir.

Q Did you visit his home? A I visited the house and we asked the janitor where he lived and nobody seemed to know him but I afterwards found out that he did live on the first floor rear, south.

Q Did you visit there? A I could not gain admittance. I knocked at the door and nobody at home.

Q When was the first time you saw the defendant? A September 9th at 6 P.M. at the station house.

Q He was already at the station house at the time you saw him? A Yes sir.

Q Did you go over with Officer Ryan to Newark? A Yes sir.

Q That was when? A On the 30th of August, the afternoon and evening of the 30th of August.

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Q Did you find the defendant over there? A We missed him by about five minutes. We did not find him there.

Q Now, did you arrest Salvagno? A Yes sir.

Q When was it that you arrested him? A The 30th of August at 7 P.M.

Q And you brought him to the station house? A He came to the station house. - Salvagno.

Q Had you sent an alarm out for him? A No sir, not for Salvagno but for Maruggi I did.

Q For Maruggi? A For Maula, the defendant.

Q You say Salvagno came to the station house? A Yes sir.

Q What did you do, detain him? A Yes sir, we arrested him and charged him with acting in concert.

Q Acting in concert with Maula in the death of this man?
A Yes sir.

Q You did that for the purpose of holding him? A Yes sir.

MR. DEUEL: Well, I object to that.

MR. McDONALD: That is all; you may examine him.

CROSS-EXAMINATION BY MR. DEUEL:

Q Where did you get Maula's last name? A When I arrested him.

Q Not before? A No sir.

Q Who did you ask for when you went looking for him prior to his arrest? A Mogolona.

Q Where did you get his name? A From the relatives of the dead man.

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Q So you went looking for Mogolona in Newark, did you?

A Yes sir.

Q When did you first see Salvagno? A On the 30th of August at 7 P.M.

Q Salvagno says he was in the back of the candy store when the officers came in between eleven and twelve that night? A I do not know anything about that.

Q When you saw him did you not recognize him as one of the men in the back of the candy store? A The candy store was closed when I got there.

Q You did not go into the rear of the store? A No sir, the place was closed up.

Q And you did not talk to anybody there that night? A No sir.

Q Do you know whether or not any officer did go there investigating this stabbing matter that night? A Yes sir, they were there.

Q Who were they? A Detective Cassidy and two patrolmen whose names I don't know.

Q What precinct? A That I could not tell you.

Q What precinct is this candy store located in? A The 39th.

Q That is your precinct, is it? A Yes sir.

Q What precinct was Officer Cassidy connected with at that time? A 43rd.

Q Did you have a talk with Cassidy about this case? A Over the telephone.

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Q Never personally? A No sir.

Q You were interested in apprehending the defendant and in seeing that justice was meted out to him, were you not? A Yes.

Q And in conjunction with that wasn't it necessary for you to find out all that had been done by any brother officers in this investigation? A I did find out.

Q Over the telephone? A Yes sir.

Q What did you find out from Cassidy? A I found out that the place of the occurrence was in our precinct and that the perpetrator lived at 2197 1st Avenue. He also stated that he had been there but he had not shown up at his place of business.

Q Did you get the name of the perpetrator from Cassidy?

A No sir.

Q Did Cassidy get any names? A That I don't know.

Q Did you ask him if he had a name? A Well, John is all that he knew the perpetrator by.

Q Did Cassidy see the deceased before you did, that night?

A Yes sir.

Q Did you get the address of the perpetrator from the deceased? A The deceased did not know where he lived.

Q Where did Cassidy get the address of the perpetrator, do you know? A No sir.

Q Did you ask him? A No sir.

Q But you received the address from him, did you? A Yes sir.

Q Do you know when Salvagno was discharged in the Harlem court?

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A Yes sir.

Q Will you give me the date? A On September 13th, 1921, by Magistrate Marsh, in the 5th Court.

Q Was this defendant arraigned at or about that time before this magistrate in that court? A Yes sir.

Q They were both up before Magistrate Marsh on that day?

A Yes sir.

Q What was the date of the arrest of Salvagno? A The 29th of August.

Q Have you got it in that book? A Yes sir.

Q Salvagno was arrested on the 29th? A Yes sir, 29th, at 7 P.M.

Q And was he held from that time on? A Yes sir.

Q In the Harlem court? A Yes sir.

Q And who made that arrest? A I did.

Q Under what circumstances? A He came into the station house.

Q What did he say to you when he came in? A He told me that he was there when the man was stabbed, and from the relatives we learned that, --

Q Never mind what you learned from the relatives. Did he say why he gave himself up to you? A He said he was there at the time the thing happened.

Q Did he say that he did the stabbing? A No sir.

Q Did he tell you who did it? A He knew the man as John.

Q Did he tell you who did it, the stabbing? A Yes sir.

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Q Did he give you the name of the man? A A man by the name of John.

Q That is all? A Yes sir.

Q Now, why did you arrest him? A The relatives informed me that Salvagno enticed this man down to the place of the occurrence.

Q So you arrested him on that? A Yes sir.

Q Did you investigate that story? A Yes sir.

Q Did you talk to Detective Caputo concerning this matter after the arrest of this defendant? A After the arrest of the defendant? Which defendant, - this man here?

Q There is only one defendant, - this defendant here? A Yes sir.

Q You did? A Yes sir.

MR. DEUEL: That is all; no further questions.

(Officer Cassidy called in the corridor and does not respond.)

MR. McDONALD:

Well, outside of Detective Cassidy who will testify to the fact that he visited this candy store in the course of his investigation, and that he did see the deceased the night before, the People rest.

MR. DEUEL: Why, I make the technical motion to dismiss, your Honor.

Motion denied. Exception.

Mr. Deuel opens his case to the jury.

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DEFENDANT'S CASE

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G I O V A N N I M A U L A, of 2197 1st Avenue, the defendant,
called as a witness on his own behalf, having been duly
sworn, testifies as follows through Official Interpreter
Villamena:

DIRECT EXAMINATION BY MR. DEUEL:

Q How old are you? A Seventeen, going on eighteen.

Q Where were you born? A Melfi, Province of Potenza.

Q When did you come to this country? A 7th day of October,
1921.

Q You are not married, are you? A No sir. 1920, I mean
to say I came to America.

Q Have you any relatives in this country? A A cousin of mine.

Q Nothing nearer than that? A No one else.

Q Who did you live with at the time of this occurrence?

A Nicola Ricciuti.

Q Where? A 2197 1st Avenue.

Q How long had you been boarding with him? A Six or seven
months.

Q Did you know Maruggi, the dead man? A Yes sir.

Q How long had you known him? A Six or seven months.

Q Had you ever had any trouble with him? A No sir.

Q What did you work at since you came over? A Hod carrier.

Q Did you know Salvagno? A Yes sir.

Q How long have you known him? A I know Salvagno from Italy.

Q What part of Italy? A Melfi, also.

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Q What part of Italy did Maruggi come from, do you know?

A The same town, Melfi.

BY THE COURT:

Q Did you know Maruggi in Italy? A No sir.

Q But Salvagno you did know? A Yes sir.

BY MR. DEUEL:

Q How long have you known Lioe? A From the time I arrived in this country.

Q Have you ever had any trouble with any of these men?

A No sir.

Q Have you ever been in any trouble before, yourself? A No sir.

Q You were never arrested before? A No sir.

Q Or on the other side, in Italy? A No sir.

Q Do you remember the 28th day of August, 1921? A Yes sir.

Q What day of the week was it? A Sunday evening.

Q What did you do that day? A On that afternoon I and several friends of mine we had a game of cards at the house and we played for two bottles of wine and after we drank the wine I and one friend of mine named Cocolano, we went downstairs in the saloon.

Q By "the house", what do you mean? A In the house where I lived.

Q By "the saloon" what do you mean? A After we got through in the house we went to a saloon.

Q Where was the saloon? A In 114th Street.

Q You heard the testimony of Salvagno on the stand, did you

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not? A Yes sir.

Q The saloon that you refer to is the saloon that he referred to? A The same one.

Q About what time did you go there; do you remember?

A About half past four or five o'clock.

Q What did you do when you got there? A When I got in the saloon with Cocolano I saw that Maruggi and Salvagno were sitting at a table playing. I took a chair and sat next to them. We waited there a little while and I said to Salvagno, "Let's go and take a walk".

Q Salvagno was in there, was he? A Yes, he was there. We went all out together, I and Salvagno walking ahead and Maruggi following us. I said, "Where we go, - let's go through the park". We went and started to walk through the park and when we got in the middle of the park there Maruggi that was following us said, "Let's go here and have a bottle of wine". I said, "No, I don't care to go". My friend Salvagno said to me, "Why don't you want to come?" I said to him, "I don't want to go". He said, "Could you not tell me the reason?" I said, "I haven't any money; that is why". Then it was suggested by the two that we go and have a bottle of wine. I again said "No, I don't care to come", and the two got me by the arm and they took me to the candy store on Pleasant Avenue between 114th and 115th Street. When we arrived there we went in the back of the store and sat down at a table. A bottle of wine was ordered and we drank. After they said, "We

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have another bottle of wine". I said, "No, I don't care to drink any more". We ordered a second bottle of wine and started drinking that bottle of wine, and in the meantime some friends were sitting at another table and they invited us to have a drink with them, so we did. When we went back to our table to finish the wine that was left there a policeman came in, into the room and Salvagno said to me, "If you got any knife in your pocket put it under the table because the policeman may search us and we will be arrested." Salvagno took out his knife from his pocket and put it under the table, I did the very same thing. I took out the knife out of my pocket and put it under the table. In the meantime the officer came in and asked if we wanted to buy a ticket. I said, "I have not got any money so I do not care to buy any ticket". None of us did buy any ticket. The owner of the place, Pasquale, came and got the officer by the arm and he said, "That is all right; those boys have no money, come out", and he took the officer out. After that when the officer was gone Pasquale came in, in the room where we were and said, "Where are those knives; give them to me". We give the knives to him and he put the knives in a closet, a dish closet.

Q By Pasquale you mean who? A The owner of the place. When we were about to leave that place Pasquale said, "Won't you take your knife back now?" I said to him, "No, I don't care to take the knife with me. I leave it here. I may call tomorrow for the knife or tonight; I don't care to take it". Salvagno said, "I will take both knives and I will give it to him when we

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are out". Salvagno took my knife and his knife and put them in his pocket. While we were about to leave the store Maruggi and Salvagno went out first and I was about to pass the door when the proprietor of the store, Pasquale, came in and said, "John, come in; I want to talk to you". The other two continued to go and I went after them. Then he said to me, "I tell you what I want you to do for me". I said, "What?" He said, "Here is a gun; I want you to shoot this Maruggi". I said, "Why should I kill a man; the man did not do nothing to me. If you got any grudge against him do it yourself". He said, "No, I want you to shoot him. I want you to throw a couple of shots at him and when you have him down, to throw the gun over the fence because I go over and I get the gun after. It will not be anything done to you". I said, "No, I won't do nothing to the man; the man is a countryman of mine. We came from the same town and I don't think I should do that". After I refused to take the gun from him I started to go out the door. The deceased and Salvagno were already on the top of the stoop there, on the sidewalk. I was going ahead and this proprietor of the candy store was coming after me. He said, "If you don't kill him I will kill you; he is a bad man. It is better to have him out of the way". I said, "I will not do that". In the meantime he pressed the gun right over here (witness indicating at his side). He said, "You kill him or I kill you". I said I would not do that. And when I got near where Salvagno and Maruggi were I saw Salvagno hold Maruggi by his arm and he had in the other

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hand, open. He said to me, "Now, you take that knife and stab him". I said, "No, I won't do it". When I said, "No, I won't do it", he punched me right in back of the head and knocked my cap down.

Q Who punched you? A Pasquale; he knocked my cap down. Then I saw I could not do nothing else, I took the knife away from the hands of Salvagno and I stabbed him and they were telling me, "Give him more; give him more", but I did not do any more and I ran to 115th Street.

BY THE COURT:

Q How many knives did Salvagno have? A Two knives; my knife and his own knife.

Q Did Salvagno strike Maruggi with a knife? A No sir; I did not see it.

Q Well, he gave you the knife? A Yes sir.

Q You say that Salvagno had hold of Maruggi? A Yes sir, by the arm.

Q And did Salvagno have any knife or knives in his hand? A Yes sir.

Q How many knives? A One.

Q What was he doing with that knife? A Salvagno had the knife in his hand and he pointed the knife at my stomach and he said, "You better take that knife; otherwise I will stick it right into you". Then in the back was the gun and I had to do it.

Q Whose knife was it that Salvagno held in his hand? A I don't know which knife it was.

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Q Were there any people near you at the time, other than Salvagno, Lise and Maruggi? A No sir, nobody.

BY MR. DEUEL:

Q Where did you run to? A I went through 115th Street and I went up to my room.

Q How long did you remain in your room? A About five minutes.

Q Then where did you go? A When I got up to the house I told the story to the man that I was boarding with. I told him just what happened and he said to me, "You better go".

MR. McDONALD: I object to what this man said to him.

THE COURT: Objection sustained.

Q What did you do after that? A I took a hat; I had no cap. I lost my cap and I took a hat and I went to Long Island.

Q Where did you go in Long Island? A To the sister of the man that I was boarding with.

Q How long did you stay there? A Five or ten minutes.

Q Then where did you go? A To New York. From there I came back to New York and the boss of the house told me that the detective was looking for me. I said, "Well, I think the best thing I can do is to surrender myself".

Q Then where did you go? A Then I went to Newark.

Q How long did you stay in Newark? A A day and a half.
out of Newark.

Q Then where did you go? A A little town a little further/

Q How long did you stay there? A Three days.

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Q Then where did you go? A When from there some friend of mine took me to some other town.

Q Where to? A I do not know the name.

Q How far from New York was it, do you know? A About two hours' ride.

Q Where did you go from there? A I remained there and I wrote to a cousin of mine telling him to come and see me.

Q Did he come? A Yes sir.

Q Do you know what day that was? A No sir.

Q What did you do after your cousin came to see you?

A My cousin and the boss of the house where I was stopping came over to see me. I told my cousin that I want to surrender myself. My cousin said, "All right, if you want to do so, go ahead and do so". But the boss of the house said, "No, I will send you to some other place". I remained there a day longer and my cousin and the boss of the house left me and they came back to New York. The day after I wrote to my cousin he should come and get me because I want to surrender myself, for the reason I committed that crime and I want to tell all that story to the police. They told me in the meantime that fellow was dead, that the fellow that I stabbed was dead, and I said to my cousin to come on and get me. I did not know the road to go back to New York and my cousin came and I came back to New York.

Q What did you do when you got to New York? A When I arrived in New York I knew my way then in New York, and I know the

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station house was in 104th Street and I went to the station house and I surrendered myself there and there I met Detective Caputo.

Q Were you got to the station house were you alone or were you accompanied by anybody? A I was alone.

Q What did you do when you went inside of the station house?

A When I got in there I asked for an Italian, who was Italian here.

Q Who did you ask for? A Caputo came out and said, "I am Italian, what do you want?"

Q How did you answer that? A I happened to meet Caputo first at the station house and I asked him and he said, "I am Italian".

Q Was the lieutenant at the desk? A Yes sir.

Q What did you and Caputo do? A Caputo asked me, "What do you want?" I said, "I come over here for what happened up at 114th Street." I said, "I did stab the man but there were two other people that were near me that forced me to do that". Caputo said, "Come right inside and tell me the story". He took me in the room and he gave me a chair and I sat down and he sat down also and I told him the very same thing that I say here to-day, word by word. When I got through he said, "Well, all right; come right inside". He took me into another room and there we met this detective that testified last here, the last detective who testified here.

Q Meaning Detective Kochman? A What do I know his name? The last one who was here. When we got in the room there this

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detective said, when Caputo told him who I was, he said, "Ah, this is the fellow". He did like this, spit on his hands and rubbed his hands (indicating) and started. He wants to punch me but Caputo said, "Never mind; don't touch him; what do you want to lick him for, the boy was good enough to tell us all the truth". Well, he said all right.

Q Where did you go from there? A They took me down 67th Street.

Q From there where were you taken to? A Then the following morning this detective that testified last here came down and got me and took me to a place down town where there were all those detectives with masks on. Then they took me from there up to 121st Street Court.

Q Did you see Salvagno at any time after you gave yourself up to Caputo? A I saw him up in the court in 121st Street.

Q Did you have any conversation with him? A Yes sir.

Q Where was the conversation held? A In the prison there, 121st Street, when they took us to the court.

Q What did he say to you? A Salvagno told me that he was taken up to the hospital before the man that was stabbed, and the man that was stabbed charged him that he was the one that gave me the knife, and this Salvagno he did not say that in the court, but he say that the man was going to fight me and started to beat me when I stabbed him, - and I would not say that. So Salvagno said to me, "They will ask you sure about this knife; don't tell

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them. Don't tell
/anybody that I gave you the knife. They will ask you also if you
know me. You say you did not know me, don't you tell them that you
know me from Italy". I said all right.

THE COURT: Gentlemen of the jury, do not discuss this
case among yourselves nor permit any person to talk with you
about it, nor form nor express any opinion as to the guilt
or the innocence of the defendant until the case is finally
submitted to you. Be in your seats at ten after two.

Adjourned to 2.10 P.M.

R e c e s s .

A f t e r n o o n S e s s i o n .

G I O V A N N I M A U L A, the defendant, resumes the stand:

MR. DEUEL: I think that is all; your witness.

CROSS-EXAMINATION BY MR. McDONALD:

Q Are you also known as John; do they call you John? A Yes.

Q How long do you know Salvagno? A I know him from Italy,
three or four years ago.

Q Had you been drinking when you were playing with Cocolano
in your house on the afternoon of the 28th of August? A Yes.

Q Had you been drinking wine? A Yes sir.

Q How many times had you been in Lioe's place, the candy
store, before the 28th of August? A Only that time. I have been
up to his house several times.

Q Did you invite Maruggi to come for a walk? A No sir. It
was Salvagno that said to me, "Let us go and take a walk".

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Q Didn't you ask Salvagno to have a walk with you?

A No sir.

Q Didn't you say in your direct examination that you asked Salvagno to take a walk and that you and Salvagno walked out and Maruggi followed you? A Salvagno said to me, "Let's go and take a walk".

Q Did you say anything to Maruggi? A No sir.

Q Had you talked to Maruggi while you were in the liquor saloon? A No sir.

Q Were you playing cards with Maruggi? A No sir.

Q Was Maruggi playing cards with Salvagno in the saloon there below where you lived? A Yes sir.

Q Was there anybody else playing cards with Maruggi and Salvagno? A There were five or six people playing together.

Q Was Cocolano playing cards with Salvagno and Maruggi?

A No sir.

Q What did you do with Cocolano when Salvagno, as you say, asked you to go out for a walk? A Cocolano remained there in the saloon.

Q Had Maruggi stopped playing before you went outside? A Yes.

Q Had he gotten up from the table at which he was seated?

A Yes.

Q Did Salvagno take you one side and say, "Come on, let's go out and take a walk", or did he just say to the crowd, "Come on for a walk"? A He told me, "Let's go and take a walk".

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BY THE COURT:

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Q Did he address you only or did he address Cocolano and the other people that were in the place? A Well, he addressed me alone. He got hold of me by this arm (witness indicating by pointing at his left arm) and said, "Let's go and take a walk".

Q When did you notice that Maruggi had quit the card game? A Well, when Salvagno stopped playing Maruggi stopped playing also.

Q Did he get up and go out with you? A No. He came out after.

Q Did you start away from the saloon before Maruggi came out of the door? A We went out of the saloon first. Maruggi followed us about ten feet behind us.

Q When did he catch up to where you were? A Yes. When we crossed 1st Avenue at the entrance of the park he joined us.

Q And the three of you then walked through the park, is that right? A Yes.

Q Did Salvagno tell you that Maruggi was behind you? A No.

Q When did you know that Maruggi had left the saloon and was following behind you? A Well, when I came out with Salvagno Maruggi was right after us.

Q Well, he came right out with you then, didn't he? A Yes.

Q Did you and Salvagno walk alone as far as the park entrance? A Yes.

Q That was about what time? A About half past five or six o'clock.

Q Five or six o'clock in the evening? A Yes sir.

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Q How long did you walk around the park? A About half an hour.

Q Then where did you go? A Into the candy store.

Q Was Maruggi with you all this time? A Yes sir.

Q The three of you were walking together? A Yes sir.

Q And Maruggi invited you in to have a drink? A No, the first one was Salvagno.

Q You did go into this candy store? A Yes sir.

Q That was the first time you had been in the candy store?

A Yes sir.

Q How many bottles of wine did you have in there, in the party? A Two bottles.

Q How long did you remain there? A About half an hour.

Q What time was it that you left there? A It must have been about eight or half past eight.

Q You say that you did take the knife out of your pocket?

A Yes, at the suggestion of Salvagno. He told me, "You better take the knife out of your pocket; otherwise we will be arrested tonight".

Q What kind of a knife was it? A A knife that folds down in two.

Q Was it a large knife? A When the knife was open it was about that long (indicating about 8 inches). (Defendant indicates the length on a ruler to be 8 inches.)

Q That is when open? A Yes sir.

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Q How did Salvagno know that you had a knife? A Well, he was up to my house that day there and he saw me when I was cutting bread with that knife and he saw when I folded the knife and put it in my pocket.

Q You used the same knife for cutting bread, is that so?

A Yes.

Q Did you see the policeman come in? A Yes sir.

Q Was he in uniform? A In uniform.
Could

Q Did you see him come in the store door? A No sir.

Q You say that then you put your knife on the floor; is that right? A Under the table; I mean under the oilcloth.

Q And was it there when the policeman came in? A No, when the policeman came he told me to put the knife away.

Q Who did? A Salvagno.

Q Is that the time that you slipped it underneath the oilcloth at the table? A Yes, when he told me the policeman was there, yes.

Q Where was the knife just before you slipped it under the oilcloth of the table? A I had it in my pocket.

Q In which pocket? A In this pocket (witness indicating left back trousers pocket).

Q How long had you been in there before the policeman came?

A About twenty minutes.

Q I mean the policeman that came in to sell tickets? A Yes.

Q Had you had something to drink at that time? A Yes.

Q Had you had your second bottle of wine? A Yes sir.

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Q Had you finished it? A No sir.

Q Who suggested leaving the candy store? A I said, "Let's go away, because the man that I board with he wants me to get home early".

Q Was there any discussion there about their wanting you to buy a bottle of wine? A No sir.

Q Did they ask you to buy a bottle of wine? A No sir, because I told them before that I had no money.

Q Did Salvagno buy a bottle of wine? A Yes.

Q You knew him also as Joe, didn't you? A Guiseppe, I used to call him.

Q Well, the English of it is Joe, isn't it? A I don't know, Guiseppe I called him.

Q Did Maruggi buy a bottle of wine? A Yes, a bottle.

Q Who left first? A First the one that died and Salvagno. Salvagno got hold of him by the arm and they went out.

Q Went out where? A From the door of the candy store.

Q Did you see where they went to? A Outside.

Q Did they go to the sidewalk? A Yes sir.

Q Had they proceeded down towards 113th Street? A No sir, as they got up to the last step they remained right there on the sidewalk.

Q Where were you at the time that they continued on walking? A I was going when the owner of the candy store told me, "Hold on here, I want to tell you something". I said to him, "I want to go

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home; what do you want to tell me?"

Q You stopped there then, did you? A Certainly; he told me that he wanted to talk to me. I do not know what he wanted.

Q And Maruggi and Salvagno continued on outside, did they?

A No sir, they were standing still waiting for me, I suppose.

Q Was there any discussion between Lioe and Maruggi while you three were in the rear room? A No sir.

Q Was there any argument between Lioe and Maruggi? A No sir.

Q When Lioe, as you say, asked you to stop back, what else did he say? A He said, "There is a gun; go outside and kill him; shoot him once or twice".

Q Do you know why Lioe should ask you to shoot Maruggi?

A No sir.

Q Maruggi had paid for his bottle of wine inside, hadn't he?

A Yes sir.

Q There was no argument between Lioe and Maruggi on that score, was there? A No sir.

Q Did Lioe show you the gun? A Yes sir.

Q This was in front of the store, was it? A Inside of the candy store, yes.

Q Lioe was behind the counter? A He was in back of the counter but he came out of the back of the counter when he spoke to me.

BY THE COURT:

Q How old was Maruggi? A Twenty-four years.

Q Was he as tall as you or taller? A A little taller than me.

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BY MR. McDONALD:

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Q Where did Lioe take the gun from that you say he showed you or handed to you? A I saw that he had the gun in this pocket here (witness indicating right back trousers pocket).

Q In the back trousers pocket? A No, in this pocket (witness indicating right front trousers pocket).

Q What part of the gun was shown? A I saw the barrel of the gun.

Q Was it sticking out of his pocket? A I saw when he pulled the gun out of his pocket.

Q He did pull the gun entirely out of his pocket, did he?
A Yes sir.

Q And then did he hand it to you? A Yes sir.

Q And did you take it? A No sir.

Q What did he do then? A Well, when he offered the gun to me first I refused to take it and I started to go and he followed me and he said, "There is a gun; go on, take it; that is a bad boy, a bad fellow; take the gun; take the gun". I said, "No", and when I came up the stoop there he put the gun in back of me here (witness indicating).

Q When you refused to take the gun from Lioe what did you do; walk out? A Yes, I walked out and he followed me.

Q And he had the gun in his hand when he followed you?
A No, he put the gun in his pocket, right here (witness indicating).

Q Now he followed you out of the door of the candy store; didn't he? A Yes sir.

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Q And did he say anything as you went out of the door?

A Yes, he was telling, "Take the gun, take the gun".

Q And it was then in this pocket? A Yes, he had it in his hands at the time.

Q When was it he took it out of his pocket again? A "When I got up on the stoop there and I arrived at the last step then he took it out again.

Q You were walking out then, were you? A Yes, I wanted to go home.

Q Well, you say he had the gun then at your back? A Right here; he even jabbed me with the gun (witness indicating the right side).

Q You say that you saw the gun? A Yes sir.

Q And then you got up to the top step, did you? A Yes sir.

Q Where was Maruggi and Salvagno? A In front of me. Salvagno had hold of Maruggi.

BY THE COURT:

Q You say when he jabbed you with the gun, indicating the manner in which he did it, what did he say to you? A "Here is the gun; go on, shoot him; give it to him".

Q Did he say anything else? A No, he said to me, "Take the gun; take the gun".

Q Did he say anything else to you? A No sir.

Q Did he say to you that if you did not stab him that he would kill you? A Yes.

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Q When did he say that? A Outside, when he put the gun right in my side.

Q And where was Maruggi during that time? A Right in front of me.

Q How far away from you? A About that distance (witness indicating about two feet).

Q And what was Maruggi doing? A Maruggi at that time tried to free himself from Salvagno. He held him by the arm.

Q And did Salvagno hold him after that time? A Yes, yes; Salvagno had the knife in his hand and he said to me, "You better take this knife and give it to him; otherwise I will stick the knife into you".

BY MR. McDONALD:

Q And then did you take the knife from Salvagno? A Yes, I took the knife after Lioe struck me in the head with his fist.

Q Lioe still had the gun in his hand at this time? A Yes.

Q Now don't you know which knife it was that Salvagno handed to you? A No sir.

Q Couldn't you recognize whether it was your own or not? A No sir, I didn't see it.

Q Well, didn't you take it in your hand? A Yes, I had it in my hand but after, I threw it away; I didn't see it.

Q Well, as soon as you got it in your hand did you stab Maruggi? A Yes, I did.

Q And where did you stab him? A About here (witness indicating abdomen). He was facing me.

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Q And all this time Maruggi was struggling to get away, was he? A Yes.

Q What happened after you stabbed Maruggi? A I ran away.

Q Well, what did Maruggi do? A I did not see what he did.

Q What did Salvagno do? A I did not see what he did. He told me after that he went in the store.

Q That was when you were arrested that he told you that, is that what you mean? A Yes, at 121st Street. He told me that he went in the store, that the proprietor of the store turned out the gas and locked the door and he smashed the bottles of wine when the policemen went in the place.

Q Which way did you go? A Through 115th Street.

Q Were you very drunk? A No, not very drunk, but half drunk.

BY THE COURT:

Q Did you know what you were doing? A Certainly.

Q Did you know that you were stabbing this man with a knife? A Why, certainly. They says to me, "If you don't stab him we will kill you". What else could I do?

Q You remember distinctly the conversation had between you and Lioe and between you and Salvagno before you stabbed Maruggi?

A Yes sir.

Q You remember exactly what took place? A Yes sir.

Q Did they tell you in what part of the body to strike? A No.

Q But you yourself selected the region of the abdomen?

A He was standing right in front of me. There was no other place for me to stab him.

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BY MR. McDONALD:

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Q Did you intend to stab him in the stomach? A No sir.

Q You say you then went home? A Yes sir.

Q When was it that you lost your cap? A When Pasquale Lioe punched me in the head.

Q Is that the time that you lost your cap? A Yes sir.

Q When was it you threw away the knife? A About ten or fifteen minutes after I threw away the knife.

Q After the stabbing? A While I was running I threw the knife away.

Q You don't mean ten or fifteen minutes afterwards, do you?
A Well, while I was running from Pleasant Avenue to 1st AVE.

Q Well, didn't you realize then that it was a knife that you had used for cutting bread just that same day? A No, I didn't consider nothing. I did not know at that time that the knife was mine or the other one.

Q Well, was the other knife just like this? A Yes sir.

Q You could not tell them apart probably, could you?
A Both looked alike.

Q Both the same kind of handles and both the same size?
A Yes.

Q Where were you working at this time? A Down South Ferry.

Q When had you worked last? A The last time that I worked was in the month of August; I don't remember the day.

Q How long before the 28th of August, the day you stabbed him? A About twenty days before.

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Q You say that you then went to Long Island after the stabbing? A Yes sir.

Q You changed your clothes, did you? A No sir.

Q You just took another hat? A Yes, I took up the hat that I had in the house.

Q And you went down to Long Island? A Yes sir.

Q And you remained there how long, in Long Island? A Ten or fifteen minutes.

Q Why did you go to Long Island? A It was the boss of the house that directed me to Long Island. He told me to sleep there and when I got there I found that the husband of this woman was in the hospital, sick, and I left and came back.

Q That is, you came back to New York? A Yes sir.

Q And where did you go then? A I went to the house, and the boss of the house told me to go to Newark.

Q The boss of the house told you that the detectives had been there looking for you already? A No, he did not tell me that. He told me that "the detective is looking for you". I said to him, "No, I want to surrender myself".

Q That was when you came back from Long Island, was it? A Yes sir.

Q And when was it you came back from Long Island? A The same evening.

Q About what time was it that you arrived at your home from Long Island? A It must have been about eleven o'clock.

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BY THE COURT:

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Q When did you first learn that the police were looking for you? A The same evening.

Q What time? A When I arrived in New York about eleven o'clock.

BY MR. McDONALD:

Q And you then went to Newark, did you? A Yes sir.

Q And you stayed there about three or four days? A Three days.

Q Why didn't you give yourself up to the police when you found the police were looking for you? A I wanted to surrender myself but the boss of the house told me, "Go away; go away, I will come and see you where you are".

BY THE COURT:

Q What is the name of your boss? A Nicola Ricciuti.

Q And where does he live? A 2197 1st Avenue.

Q Do you know whether he lives there at the present time?

A I do not know.

Q And he told you not to give yourself up to the police?

A Yes sir.

Q And he told you to leave New York State? A Yes, he told me.

BY MR. McDONALD:

Q And did you go to Newark that night? A Yes sir.

Q And you remained there three days? A About a day and a half, I remained in Newark. Three days I remained in a little town a little further from Newark.

Q At whose place did you live in Newark? A People named Maiorini.

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Q Who gave you the name and address of these people? A I knew it because I had been there before.

BY THE COURT:

Q Did you tell the man with whom you boarded that you were going to Maiorini's place? A He told me to go there.

Q He told you to go to Maiorini's place? A Yes, sir.

BY MR. McDONALD:

Q Was it while you were at Maiorini's place in Newark that you heard that the police were over in Newark looking for you? A Maiorini told me also that the policemen were looking for me, and it would be better for me if I would leave there and go in some other place. He took me there himself.

Q To this other place? A No, he sent his younger brother.

Q Then he did not take you there? A No, sir, a younger brother.

Q With whom did you live at this other small town? A I don't know the name. I remained there only three days.

Q Where did you go after you went to this little town just outside of Newark? A Maiorini sent word to the people where I was stopping to take me further in in some other place, and they took me to another place where I remained five days.

Q Do you know the name of that town? A No, sir.

Q At the time that Maiorini told you to leave his home at Newark, did he tell you that the New York police had been over to his house looking for you? A Yes, sir.

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Q Isn't that the reason that you left his house? A Yes.

Q Is that the man you say with whom you lived in Newark?

A Yes, sir (indicating Nicola Ricciotti, who stands at the bar and thereupon leaves the court room).

Q Now, you went to the station house, did you? A Yes.

Q Did you come from this town in New Jersey with your cousin?

A Yes, my cousin escorted me as far as Newark. From Newark I came alone to New York because I know the way to get here.

Q Didn't you tell Officer Caputo that the reason you stabbed the deceased was because he slapped you in the jaw? A No I told him that Lioe struck me in the head with his fist.

Q Didn't you tell Caputo that the reason you stabbed Maruggi was because Maruggi slapped you in the jaw? A No, sir, I did not say that.

BY THE COURT:

Q In what language did you speak to Detective Caputo?

A Italian.

Q And did he reply to you in the Italian language? A Yes.

Q Did you understand him? A Why, certainly, sure. He spoke Italian.

BY MR. McDONALD:

Q Did Salvagno have a knife open when you came out of the store? A Yes, sir.

Q While Maruggi was struggling he was turning around, wasn't he? A No. They were not going around. They were pulling.

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Maruggi was pulling, that he wanted to get away.

Q Trying to pull away, as you say, from Salvagno? A Yes

Q And Salvagno was just holding him with one hand? A

With a hand, this way (witness indicating) Maruggi's arm was under Salvagno's arm).

MR. DEUEL: And may the witness indicate through the interpreter how they were standing.

THE COURT: Yes, he may do that.

THE INTERPRETER: I am supposed to be Salvagno and he is supposed to be Maruggi. Salvagno was holding Maruggi in this manner (indicating).

Q And Salvagno had a knife open when you first saw him?

A Yes, sir.

Q And it was open when you came out of the store door? A Well, when I got in the street I saw that he had the knife open in his hand.

Q And you stood in front of Maruggi, did you? A Yes, face to face.

Q Did you get hold of Maruggi? A No, sir.

Q Did Maruggi make any outcry? A No, sir.

Q He did not say a word? A No, sir.

Q When he heard Salvagno asking you to take the knife from his hand, did Maruggi make any outcry at that time? A No, sir.

Q Did Maruggi make any outcry when he saw you take the knife from Salvagno's hand? A No, he wanted only to free himself from

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Salvagno and wanted to run away.

Q And when you took the knife from him did you immediately stab him? A No, sir. I took the knife in my hand. At that time ^{me} Lice struck/with his fist in my head and then I stabbed him.

Q How did you stab Maruggi? A I did like this (indicating, making a plunge with his right hand).

Q Did you see Lice take the knives from under the oilcloth of the table that you were sitting at? A Yes, sir.

Q He took them away, did he? A Yes, sir, he put them in the dish closet.

Q Did you see where he placed them? A Yes, sir.

Q And as you were going out of the store, he handed you the knives? A Yes, he wanted me to take the knife and I did not want to.

Q Is that at the time that he called you back? A No, not when he called me back. He wanted to give me the knife when Salvagno and Maruggi was there.

Q While they were still at the counter there? A We were inside of the candy store, yes.

Q Where did he take these knives from? A From the place where he put them.

Q Well, did he go into the back as you came out? A We were there all gathered in the room there, getting ready to go out.

Q Did you see him take the knives from the dish closet as you call it? A Yes, sir.

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Q Well, that was in the same room in which you were? A Yes, sir.

Q Do you know why he did not give the knife to you then? A No, sir, I don't know why.

Q He followed you right out of this room and into the store and then put the knives down on the counter; is that right? A Yes, he said, "Take your knife." I said, "I don't want it."

Q So you did not want to take it and you said you would call for it the following day; is that right? A Yes.

Q You didn't take it then, did you? A No, sir.

Q Why were you going to leave it until the following day? A I was afraid that by going outside I may find some policeman who would search me and I would be arrested.

Q Well, it was a knife that you had every day, wasn't it? A Yes, sir.

Q Would you be any safer the following day with the same knife? A Well, it was because a policeman was in the place already that night and for that reason I was afraid to take the knife along with me.

Q Was it such a knife that you were afraid the police might arrest you for it? A I do not know if that knife would be such that I may be arrested or not, but that was my impression.

BY THE COURT:

Q You said you called several times at the home of Lico; is that so? A Yes, sir, in his house.

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Q About how many times, A Maybe 10 or 15 times.

Q Your cousin was Lioe's godfather, is that right? A Yes.

Q And you were therefore on terms of friendship with Lioe? Is that right? A Yes, sir.

Q Did Lioe ever suggest to you to do any harm to Maruggi before that night? A No, sir.

BY MR. McDONALD:

Q Did Lioe as a matter of fact ever suggest to you at any time that you should do any harm to anyone? A No, he never suggested that, but I remember this -- one time when I went up to see him at his house he says to me, "Come downstairs in the cellar, we are going to draw some wine." I went down with him, and while we were drawing wine from the cask, he had one of those night torches, an electric torch, and he says to me, "You see this, that is the way they commit murder in America. They point that torch at you -- so I could see you but you could not see me, and by pointing the torch at you I could fire and shoot you, and you would not know who shot you. That is the way they do it in America."

MR. McDONALD: Well, I think that is about all.

BY MR. DEUEL:

Q Did you tell Officer Caputo in the station house that day that there was any argument between you and Maruggi over the payment for the wine? A No, sir; it was nothing like that.

BY THE COURT:

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Q Did Officer Caputo strike you or use any violence at the time that you explained to him your side of the case? A No, sir, not Caputo. The other detective, the one that testified last here, yes, sir.

Q And before you told your story, before you made the statement to Caputo, did he instill fear in you; did he attempt to strike you or use any violence whatsoever? A No, sir.

Q He spoke in a calm tone of voice to you? A Yes; he only told me, "Go on with your story", and I told my story. And after I got through with the story this other detective that testified last came in and he told the detective I suppose the story I told him.

BY MR. DEUEL:

Q Did you wish to give yourself up to the police when you came back from Long Island, after going over there the night of this occurrence? A Yes, sir.

Q Did you continue to wish to give yourself up while you were over in Newark, New Jersey?

MR. McDONALD: That is objected to.

THE COURT: You may ask him if somebody persuaded him. He said that Nicola Ricciuti persuaded him not to go to the station house, but to go to Newark; is that right?

THE INTERPRETER: That is right.

Q As a matter of fact, when you did give yourself up to the authorities, you acted upon your own volition, and without

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regard to the advice of your friends, is that not so?

Objected to and objection overruled.

A Yes, sir, that is right.

MR. DEUEL: I think that is all; no further questions.

PHILENEA MARUGGI, of 435 East 120th Street,
called and sworn as a witness for the defendant, testifies
through the interpreter as follows:

DIRECT EXAMINATION BY MR. DEUEL:

Q Do you know this defendant here? A After he killed my
son, I know him.

Q Do you know of any trouble between him and your son?

A No, sir.

Q Had this boy been to your house?

THE COURT: You had better proceed in the regular way,

Mr. Deuel.

BY THE COURT:

Q Did this boy ever visit your home? A Once.

Q And when was that? A After he arrived in this country
he came up to the house to visit me with my son -- not this one
that died, but the other son of mine.

BY MR. DEUEL:

Q Then you did see him at your house before your son died?

A No, sir. The only time was then.

MR. DEUEL: All right, I think that is all.

MR. McDONALD: I have no questions.

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THE WITNESS: I want to talk; I must speak. My son has been persecuted for three years.

THE COURT: There is no question pending.

MR. DEUEL: The witness desires to make a statement, and I have no objection to the statement.

THE COURT: No; you will have to try your case in the regular way.

BY MR. DEUEL:

Q Had your son been threatened at any time with bodily harm?

MR. McDONALD: Now, I object to that.

THE COURT: If you show it on the part of Lioe I will allow it.

BY THE COURT:

Q Do you know Lioe? A Sure.

Q Is he related to you? A No, sir.

Q How long have you known Lioe? A I know him from his childhood. I know him from Italy.

Q Did he ever visit your home? A Yes, once in a while.

Q Did you ever visit his home? A Yes, sure.

BY MR. DEUEL:

Q Did Lioe ever threaten your son, that you know of? A No, sir, I could not say that.

MR. DEUEL: I think that is all.

N I C O L A M A R U G G I, of 438 East 120th Street, called and sworn as a witness for the defense, testified as follows:

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through Official Interpreter Villamena:

DIRECT EXAMINATION BY MR. DEUEL:

Q You are a brother of the deceased? A Yes, sir.

Q When were you first notified of the injury to your brother?

A In the evening about ten o'clock.

Q What did you do? A I and my mother, we went down First Avenue looking for my brother. When we got at 116th Street we met there some policeman, and the policeman directed us to this candy store of Pasquale Lioe. When we got there I and my mother and the policeman found the door locked, and all the light out. We knocked at the door and no response came, and we went away.

Q Did you meet Officer Cassidy that night? A Yes, sir.

Q Where? A At 116th Street.

Q Did you go with him anywhere? A Yes, sir.

Q Where did you go? A We went to the candy store.

Q Was that before or after you and your mother went to the candy store with the police officer? A It was at the same time with my mother.

Q Did you go upstairs in Lioe's place? A Yes, sir.

Q At that time did you see somebody up in Lioe's home?

A Yes, sir, about ten or half past ten.

Q Was that before or after you tried to get into the door of the candy store? A After we tried the candy store and seen that the candy store was locked we went up to his house and there we found his boy 15 years old.

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Q Did you learn from him where Lioe was? A Yes, sir. He says, "My father is in the back of the store playing cards and drinking wine."

Q Then did you go into the back of the store? A Yes. After we went down the policeman knocked at the door and says, "If they won't open the door they will burst the door in." Then they opened the door and put the light on.

Q Did you or did you not go into the back or the rear of the candy store with the police officer? A Yes, sir.

Q Who was in the back of the candy store? A Pasquale Lioe, Salvagno, Cocolano, the wife, and Mangini.

Q How long did you remain there? A About 15 minutes.

Q Did you see any wine there? A No, sir.

Q Do you know this defendant here? A No, sir.

Q Your brother knew him, did he not? A Yes, sir.

Q Were you all friends? A Yes, sir.

Q Do you know of any trouble between this defendant and your brother? A No, sir.

MR. DEUEL: Your witness.

CROSS EXAMINATION BY MR. McDONALD:

Q Did you know of any trouble between Lioe and your brother?

A No, sir. My brother never went over to Lioe.

MR. McDONALD: I think that is all.

MR. DEUEL: That is all, and the defense rests.

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WILLIAM B. CAPUTO, recalled to the stand as a witness for the People in rebuttal, testified as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Officer Caputo, did this defendant, when he was talking to you at the time he came into the station house, tell you that the reason he stabbed Maruggi was an argument over some wine?

A Yes, sir, and a slap in the face which he received from Maruggi.

Q Did he say anything about Lioe slapping him in the face?

A He did not.

Q Or slapping him on the head? A No, sir.

Q Did he say anything to you that Lioe pressed a gun up against his back and made him stab Maruggi? A He did not.

Q Did he tell you that Joe Salvagno held Maruggi and made him take the knife out of his, Salvagno's hand, and stab Maruggi?

A He did not.

MR. McDONALD: That is all.

CROSS EXAMINATION BY MR. DEUEL:

Q Isn't it a practice in the Police Department for officers when a defendant makes a statement, to them, or a prisoner makes a statement to them concerning the commission of an offense, to, if possible, have the defendant sign the statement -- reduce it to writing and sign it? A We do that sometimes.

Q Isn't it the practice in important offenses to do that?

A We do, yes, sometimes.

Q Isn't it the practice? A No, it is not.

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Q As a police officer don't you consider it your duty when, in an important offense, a prisoner makes a statement to you, to sign that statement?

Objected to and objection overruled.

A I do not think so, in a case of this kind, where the defendant himself came into the station house and made a voluntary statement to me. I did not think it was necessary for me to take it down in writing.

Q You remember, Caputo, a case three months ago wherein a defendant in an important robbery matter made a statement to you in which he admitted his guilt, and you reduced that to writing and had him sign it.

Objected to; objection sustained; exception taken.

MR. DEUEL: That is all; no further questions.

Now, your honor, may we suspend for five minutes, so that I may ask a question of one of my witnesses outside?

THE COURT: Yes, you may do that. Gentlemen of the jury, do not discuss this case until it is submitted to you. You may retire for five minutes.

(Recess for five minutes.)

N I C O L A R I C C I U T I , of 267 Pleasant Avenue, called and sworn as a witness for the People in rebuttal, testified through Official Interpreter Villamena as follows:

DIRECT EXAMINATION BY MR. McDONALD:

Q Where did you live on the 28th of August, 1921? A 2197

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First Avenue, on the second floor.

Q With whom did you live there? A I and my wife.

Q Did the defendant live there with you? A Yes, sir.

Q At 2197 First Avenue? A Yes, sir.

Q How long did he live there with you? A About five months.

Q Are you any relative of his? A No, sir.

Q Did you see him on the 25th of August, 1921? A No, sir.

Q Did you see him on the evening or night time of the 25th of August, 1921? A No, sir.

Q Do you remember hearing of Maruggi being stabbed? A Yes.

Q When was it that you heard about that? A That night the detective came over to the house; he was looking for Maula.

Q Did you see Maula after the detective had been to your house that night? A No, sir.

BY THE COURT:

Q By Maula you mean this defendant at the bar? A Yes, sir.

BY MR. McDONALD:

Q Didn't you have a talk with Giovanni Maula about eleven o'clock on the night that you were told that Maruggi was stabbed?

A No, sir.

Q Didn't you tell Giovanni Maula, the defendant here, to go to Long Island the night of the 25th of August? A No, sir.

Q Did you have a talk or did you see Giovanni Maula, the defendant, the night that you heard Maruggi was stabbed? A I saw him in the morning, and then I did not see him any more that day.

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Q You mean the morning of the day following the night that the detectives came to your house looking for the defendant? A On the 25th, in the morning, we had dinner, I, the defendant and my wife. He went out and I did not see him no more.

Q This is the first time that you ever saw me, isn't it, in the court room here a few minutes ago? A Yes, sir.

Q And you were served with a subpoena calling for your attendance here tomorrow morning, weren't you? A Yes, sir; they served me with the subpoena outside.

Q That was served by this gentleman here (indicating), about 20 minutes ago? A Well, I did not pay any attention.

Q That was about 20 minutes ago that you got that? A Yes.

MR. McDONALD: I think that is all. You may examine.

CROSS EXAMINATION BY MR. DEUEL:

Q You know Lioe, don't you? A Yes, sir.

Q How long have you known him? A I know Lioe in Italy when I was about seven or eight years old.

Q You have seen him from time to time over in this country, have you not? A Yes, sir.

Q You have seen him since the 25th day of August, have you not? A Yes, sir, I saw him.

Q How many times did you see him? A Pretty near every day. We are neighbors.

Q Did you discuss this case with him? A No, sir.

Q You never said anything to him about the matter? A No.

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Q And he never said anything to you about the matter? A No.

Q You bought this candy store from him, didn't you? A Yes.

Q When? A About four months ago.

Q Since the 25th of August, 1921? A Yes, sir.

Q Didn't you go over to Newark to see this boy, the defendant? A No, sir.

MR. DEUEL: I think that is all.

BY MR. McDONALD:

Q You have been around here most of the week, haven't you?

A Only yesterday and then today.

Q And you came down with a cousin of the defendant's? A No, sir, I came down alone.

Q Well, you know his cousin, don't you? A Yes, I know him.

Q You have been with him the last two days, haven't you?

A Well, I find him here in the court house.

Q When you came down yesterday did you come under subpoena?

A No, sir.

Q When you came down today did you come under subpoena?

A No, sir.

BY MR. DEUEL:

Q You never seen me excepting around the corridor of this building, is that not a fact? A I saw you yesterday in the corridor there passing, that is all.

Q You never have spoken to me, have you? A No, sir.

Q Did you ever talk to Derrico about this case? A I do

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not know who this Derrico is.

Q Do you know the cousin of Maula? A Yes, sir.

Q What is his name? A I know his name is Tony.

Q You don't know his last name? A No, I do not know his last name.

Q When the District Attorney asked you if you did not come down here with a cousin of Maula, who did you think the District Attorney meant? A I meant Tony.

Q Did you go to Newark with Tony? A No, sir, never.

Q Did you ever discuss with Tony the question of Maula, the defendant, going to Newark? A No, sir.

MR. McDONALD: The People rest.

TONY DERRICO, of 2274 First Avenue, called and sworn as a witness for the defense in surrebuttal, testified as follows:

DIRECT EXAMINATION BY MR. DEUEL:

Q Derrico, you will have to speak slowly and loudly, because this last gentleman on the jury must hear what you say?

A I try my best.

Q Do you know this man Nicol Ricciuti? A I know him, yes.

Q Is the man with whom Maula boarded? A Yes, sir.

Q Did you talk with him concerning Maula and this case after the 28th of August? A No, sir.

Q You did not talk with him about the matter? A No, sir.

Q Are you a cousin of this defendant? A Yes, sir.

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Q Did you go to Newark with Nicola to see Maula; that is with Nicola Ricciuti? A Yes, sir, I was once.

Q When was that? A I could not remember.

Q About when? A About six or seven days afterwards. I could not be sure -- something around that.

Q Did you and Nick talk to Maula? A Yes, sir.

Q When you went to Newark? A Yes, sir.

Q About this case? A I do not know what they talk about.

Q You saw them talking? A I seen them talking, but I dont know what they say.

Q You talked to Maula yourself there, did you? A Yes, sir.

Q You brought Maula back from Jersey, did you not? A Yes.

Q When he gave himself up that day? A The next day.

MR. DEUEL: I think that is all.

CROSS EXAMINATION BY MR. McDONALD:

Q Where was it in Newark you saw him? A Yes, sir.

Q What street? A I could not remember so far away; I could not remember exactly the name.

BY THE COURT:

Q How did you come to go there? A I had some address from Nick Ricciuti. I had the address.

BY MR. McDONALD:

Q That was in Newark, wasn't it? A Yes, sir.

Q And the following day you say he came back to New York?

A The next day he came back. I went back again to take him back.

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Q You saw him in Newark, did you? A Yes, sir.

Q You are positive about that? A Yes, sir.

Q And the day after you saw him in Newark, you brought him from Newark to New York? A Yes, sir.

Q Are you sure about that? A Yes, sir, I did.

Q You did not leave him in Newark? A I told him to go to the 104th Street station house and report.

Q Did you bring him from Newark to New York, or did you leave him in Newark? A I take the same train in Newark, but in New York he went all alone.

Q Did you come from Newark to New York with him? A Yes.

Q When was that? A Friday, but I do not remember the date.

Q You are sure that it was the same day that you went over to Newark? A The next day, not the same day.

Q Did you remain in Newark one whole night? A Yes, sir, I did.

Q And you remained at the same place that this defendant was stopping? A No.

Q Did you meet him the next morning? A Yes, sir.

Q You met the defendant the next morning, did you? A Yes.

Q And you came over from Newark to New York? A Yes, sir.

Q And when you got to New York, he went up to the 104th Street station, and where did you go? A To my home.

Q Where did you live? A I was at that time at 116 East

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119th Street.

Q You came all the way up as far as 104th Street with him, did you? A No, I told the boy to go down to 104th Street, and he walked up to the station and told them about this Maula. I told him to tell the truth at the police station.

Q You did not go outside of Newark to another town, did you?

A No.

BY THE COURT:

Q Do you know where Newark is? A Yes, sir.

Q How many times have you been to Newark? A About two or three times, but not in this case.

Q When you went to Newark with Nicola Ricciuti, at what station did you get off, do you remember? A We took a steamboat and change, and took a train.

Q What steamboat, do you mean the Ferry? A Yes, sir, the ferry, and then we take a train.

Q Then did you stop at Newark? A At Newark station.

Q At Market Street, do you remember? A I don't remember.

Q Then when you got to Newark how long did it take you to reach this place? A About twenty minutes.

Q Did you go by car? A Yes, sir, by car.

Q Who came home with your cousin? Who came back to New York with your cousin? A The first time I came back with Ricciuti alone. The next day I told the boy to go to the station house and tell the truth, and I brought him back to New York. In

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New York he took the train to 104th Street station house, and I went to my house.

BY MR. DEUEL:

Q Did you see this boy in any town outside of Newark or not?

A Yes, outside, in some farmhouse.

Q How far was that from Newark? A About twenty minutes from the station.

Q How did you go there? A On a car, the Nutley car.

Q Can you state whether or not you went to Nutley, New Jersey? A Yes, sir.

Q Is it there where you saw this defendant? A There I saw Maula, yes, sir.

Q That was the time that Nick was with you? A Yes, sir, one time, and the first day.

Q Was it from that place that you came back again to New York, and went over to see the boy the following day? A The next day I went there.

Q You went back to the same place again? A The same place where I found the boy.

Q Did you take the same route, the same street car? A Yes.

Q When you came back with the boy, how far did you and the boy proceed together? A To the station at Newark.

Q Then what happened? A Then he take one car and I take another car.

Q At Newark? A Newark to New York.

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Q So that you came separately from Newark to New York?

A Yes, sir.

BY THE COURT:

Q You mean each took a different car? A The same train, but he took a different car from me, but the same train.

Q You were on the same train? A Yes, but in a different car. I did not want Kaula with me. I was afraid some policeman would see me going with the boy and arrest me.

BY MR. DEUEL:

Q Did the boy say to you that he wanted to give himself up to the police? A Yes, sir, he did.

MR. McDONALD: That is objected to.

THE COURT: Well, he has answered.

MR. DEUEL: I have no further questions.

THE COURT: Gentlemen of the jury, do not discuss this case among yourselves nor permit any person to talk with you about it, nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you. Be in your seats tomorrow at half past ten, please.

(Whereupon an adjournment was taken to Thursday,
January 5, 1922, at 10:30 o'clock a. m.)

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New York, January 5, 1922.

Trial continued.

N I C O L A R I C I U T I, recalled to the stand, testifies
as follows, through the official interpreter, Mr. Villamena:

BY MR. McDONALD:

Q Did you go to Newark with Tony Derrico in August or
September, 1921? A No sir.

Q Did you go with Tony Derrico at any time to any place
in New Jersey? A No sir.

BY THE COURT:

Q Have you any friend or relative living in Newark or
near Newark, New Jersey? A In Newark, yes.

Q What is his name? A My sister, Elisa Cecere.

Q Did this defendant stay at the house of your sister?
A No sir.

BY MR. McDONALD:

Q Is this the man you know as Tony (Tony Derrico stands
at the bar)? A Yes.

Q Did you ever go with this man, Tony Derrico to Newark
or any place in New Jersey and see the defendant, Giovanni
Maula? A No sir.

MR. McDONALD: May it appear on the record that the
witness at the bar is Tony Derrico.

(Tony Derrico leaves the court room.)

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MR. McDONALD: I think that is all

BY DEFENDANT'S COUNSEL:

Q You understand, of course, that it is an offense for which you can be punished to harbor a person wanted by the police for the commission of a felony, do you not? A Yes, I know that.

DEFENDANT'S COUNSEL: That is all; no further questions.

THE COURT: I will ask this defendant these questions, from the place where he stands.

THE COURT: Do you know the name of the person with whom you lived at Newark, or near Newark, in the State of New Jersey?

THE DEFENDANT: Mike Maiorini.

THE COURT: And do you know the name of the other person with whom you lived near the city of Newark?

THE DEFENDANT: No sir.

THE COURT: Was it a man or woman?

THE DEFENDANT: A man.

THE COURT: Do you know Mrs. Cecere?

THE DEFENDANT: No sir.

THE COURT: Did you ever see Mrs. Cecere?

THE DEFENDANT: No sir. Cecere lives in Long Island, Maria. It is not Elisa, but Maria Cecere lives in Long Island.

THE COURT: Do you know Maria Cecere?

THE DEFENDANT: Yes sir.

THE COURT: How long have you known her?

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THE DEFENDANT: Three or four months.

THE COURT: Do you know Mike Maiorini?

THE DEFENDANT: Yes sir.

THE COURT: How long have you known Mike Maiorini?

THE DEFENDANT: Two or three months.

THE COURT: Who introduced you to him?

THE DEFENDANT: Riccuiti.

THE COURT: When?

THE DEFENDANT: When we went to Newark together.

THE COURT: Did you know Maiorini before that time?

THE DEFENDANT: No sir.

THE COURT: Where does Maiorini live, do you know?

THE DEFENDANT: I know the house but I don't know the street, the name of the street.

N I C O L A R I C C I U T I, recalled to the stand, testifies as follows, through Mr. Villamena, the official interpreter:
BY THE COURT:

Q Do you know Mike Maiorini? A Yes sir.

Q How long have you known him? A From the time that I came to America.

Q Did you introduce this defendant to Mike Maiorini in New Jersey? A No sir.

Q Where does your sister live, in Long Island or in New Jersey? A One of my sisters lives in Park Avenue, New Jersey; her name is Elisa Cecere.

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Q Did she ever live in Long Island, in the month of August? A She lived first in Long Island and she moved away one year.

Q Did she live in Long Island in August? A No sir. I have another sister in Long Island. Her name is Maria Riccuiti.

P A S Q U A L E L I O E, recalled to the stand in rebuttal, testifies as follows, through the official interpreter, Mr. Villamena:

DIRECT EXAMINATION BY MR. McDONALD:

Q Did you ask this defendant on the night of the 20th of August, 1921 to take a gun that you offered to him and to shoot the deceased Maruggi? A No sir.

Q Did you take a revolver out of your pocket and follow the defendant outside of your store? A No sir.

Q Did you take a revolver out of your pocket and press it up against the side of the defendant? A No sir.

Q Did you at the time it is alleged that you pressed the barrel of the revolver up against the body of this defendant, say at the same time, "Go on, shoot Maruggi"? A No.

Q Did you ask the defendant or tell the defendant while you had a gun pressed at his side, to stab the deceased, Maruggi? A No sir.

Q Did you have a gun in your possession or in your store at any time during the day or night of August 26, 1921? A I never had any gun.

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BY THE COURT:

Q Did you strike the defendant on the head in the presence of Salvagno and at the same time tell him that unless he injured or stabbed Maruggi you would kill him? A No sir.

DEFENDANT'S COUNSEL: I have no recross.

G I U S E P P E S A L V A G N O, recalled in rebuttal, testifies as follows, through the official interpreter, Mr. Villamena:

BY MR. McDONALD:

Q Did you hold Maruggi by the arm on the 28th day of August, 1921, after he came out of the store of Lioe? A No sir.

Q Did you open a knife and hold it in your hand? A No.

Q Did you make the defendant take a knife from you and stab the deceased? A No sir.

Q Did you say to defendant that he would be killed if he did not stab Maruggi? A No sir.

Q Did the defendant Manla take a knife from your hand on the night of the 28th of August, 1921? A No sir.

Q Did you take or receive two knives from Lioe as you were leaving his store on the night of the 28th of August, 1921? A No sir.

MR. McDONALD: I think that is all.

DEFENDANT'S COUNSEL: I have no cross-examination.

MR. McDONALD: The People rest.

DEFENDANT'S COUNSEL: Defendant rests. I move to dismiss

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on the ground that the People have not made out a case
by the evidence presented. Motion denied.

Exception.

Both counsel sum up to the jury.

THE COURT: We will take a ten minute recess, gentlemen. Do not discuss this case among yourselves nor form nor express any opinion as to the guilt or the innocence of the defendant until the case is finally submitted to you.

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THE PEOPLE v. GIOVANNI MAULA

THE COURT'S CHARGE TO THE JURY.

THE COURT (ROSALSKY, J.): Gentlemen of the Jury, as citizens, I am sure that you fully appreciate the necessity of freely and willingly giving up your time and attention to the performance of your public duties, even though it entail no small hardship and business inconvenience.

You have afforded a fine illustration of the sacrifices which citizens are often called upon to make on behalf of the State.

With unwearied attention you have followed the details of this case, with never a suggestion of the irksomeness of the duties which the State is exacting from you. I would therefore convey to you my thanks for the close interest which you have given to the consideration of this case. I also wish to express my thanks to the learned Assistant District Attorney representing the People and to the learned counsel representing the defendant for their gentlemanly and courteous conduct during the trial, each representing his cause with fidelity and learning.

You should consider the statements, comments and arguments made by counsel on either side based upon the evidence, but you should disregard statements, comments and arguments of counsel on either side which are not supported by the evidence, or remarks which were of a personal nature.

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In the introduction of the evidence, the defendant had a right to contest the case of the prosecution step by step, and to dispute every theory and fact advanced against him. All offers of counsel to prove things which were not proved or which were not permitted to be proved by the Court, and all arguments of counsel addressed to the Court upon questions of law and upon motions for the admission or exclusion of evidence should be disregarded by you. The answers of witnesses stricken out or matters in evidence which were stricken out, or matters not in evidence which you were instructed to disregard should be absolutely disregarded by you and given no weight or consideration in the determination of the guilt or the innocence of the defendant. If by any excluded answer of a witness or by any offer of testimony which was excluded, or by any question which was not allowed any suggestions were^{conveyed to you} of things not in evidence, you should refuse to be moved by such suggestions. You are only to consider matters which were legally admitted in evidence.

It is the duty of the Court to present for your guidance the rules of law which shall govern you in determining the guilt or the innocence of the defendant, and likewise it is the duty of the jury to accept the law as declared by the Court. It is essential to the due administration of justice that you shall not question the correctness of any rule of

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law laid down by the Court for your guidance. The jury ¹²⁴
are just as sovereign with respect to all questions of
fact as is the Judge with reference to all questions of
law. It is the duty of the jurors upon their oaths to
apply the law to the facts and to determine whether or
not the evidence establishes beyond a reasonable doubt
the allegations set forth in the indictment.

An indictment is an accusation in writing charging
a person with a crime, and the mere finding thereof by
the Grand Jury is absolutely no evidence of the guilt
of such person. The People are required to establish
the allegations of the indictment beyond a reasonable
doubt before you will be justified in rendering a ver-
dict of guilty. The defendant in a criminal prosecution
is not called upon to establish his innocence. The bur-
den of establishing the guilt of the defendant rests
upon the People throughout the case.

The indictment filed against the defendant, Giovanni
Maula, accuses him of the crime of manslaughter in the
first degree. It is therein alleged that on the 28th day
of August, 1921, in the borough of Manhattan, County of
New York, the defendant wilfully and feloniously made an
assault upon one Alexander Maruggi with a dangerous weapon;
that the defendant wilfully and feloniously did strike
and stab and wound the said Alexander Maruggi, which wound

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resulted in his death; and that the Grand Jury therefore accuse the defendant of the crime of feloniously and willfully killing and slaying the said Alexander Maruggi, in violation of the statute in such cases made and provided.

Homicide is the killing of one human being by the act, procurement or omission of another. Manslaughter in the first degree is defined by the statute as follows:

Such homicide is manslaughter in the first degree, unless it is excusable or justifiable, when committed without a design to effect death, in the heat of passion, but in a cruel and unusual manner or by means of a dangerous weapon.

In manslaughter in the first degree, it is necessary to prove that the killing of a human being was done without a design to effect the death of the person killed, and that it was done in the heat of passion but in a cruel and unusual manner or by means of a dangerous weapon.

No person can be convicted of murder or manslaughter unless the death of the person alleged to have been killed, and the fact of killing by the defendant as alleged are each established as independent facts, - the former by direct proof and the latter beyond a reasonable doubt.

The corpus delicti, that is the body of the crime, is made up of two things; First, that a human being was killed, and that must be established by direct proof;

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Second, the existence of criminal and human agency as the cause of death, and that must be established beyond a reasonable doubt.

The term "direct proof" means direct proof of the fact of killing: That is, the death of a human being--and in this case the death of Alexander Maruggi--was due to violence of a criminal character and was produced by human agency, and that it was not due to accident, mistake, or to a self-inflicted wound. The proof of the identity of the body and that the defendant committed the crime may be established by circumstantial evidence beyond a reasonable doubt.

The foundation of the case of the People rests primarily on the testimony of Salvagno and Detective Caputo. Salvagno testified that he saw Maruggi and the defendant grapple with each other, and that the defendant jabbed the deceased; --- you will remember he illustrated the manner in which the defendant jabbed the deceased. Salvagno said that at the time the defendant committed this act he was several paces away from the defendant and the deceased, and behind Pasquale Lioe. In this respect the testimony of Salvagno is contradicted by Lioe who, as you will remember, stated that he did not see the occurrence but was attending to some children who were purchasing candy in his store.

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Detective Caputo was called by the People as a witness. He stated that he spoke to this defendant in the language which they both understood. It is important for me to refer to Caputo's testimony because if you believe that Caputo is a conscientious public officer and that he has not fabricated the evidence nor colored nor exaggerated the facts, it will tend largely to throw light upon the issue which you are called upon to decide. Officer Caputo testified that he was in front of the lieutenant's desk when the defendant entered the station house. The defendant told him that his name was Giovanni Maula. The officer then said, "What is your trouble", and the defendant replied, "You are looking for me in regard to a man that I have killed on Pleasant Avenue on the 28th of August, 1921", and the officer replied, "Oh, yes, I am well acquainted with the case; come right inside". The defendant entered a room of the detective office and there they proceeded to talk to each other. Caputo said, "Now, relate your case to me; let me know all about it, why you stabbed that man. Now you start from the time that you met him until the time that you stabbed him". Defendant then according to the testimony of Caputo said that he was in a saloon at 104th Street between 1st and 2nd Avenues, entering there around half past three or four o'clock. He stayed in there and was playing cards with several of his friends; he did not know their names;

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so finally around about six or half past six or so the deceased, Maruggi, came in there, accompanied by another man by the name of Salvagno. They were talking there, after having a couple of glasses of soda and beer, and they then took a walk. Detective Caputo further testified as follows: "I said, 'Where did you walk?' I said, 'What park do you mean'. He said, 'Around 1st Avenue', meaning 114th Street, Thomas Jefferson Park. He said 'He walked around there until such time, as around about nine, nine or so, then he went into a candy store at Pleasant Avenue between 114th and 115th Street and in the rear of this candy store there were tables and we sat down therein company with Joseph Salvagno and the deceased and myself; we had two bottles of wine and sat there talking and we drank two bottles of wine. Then of course we got into an argument as to who was going to pay.' He said, 'I pay for one and Salvagno paid for the other and Maruggi, I suppose; they wanted him to buy a bottle and he would not buy wine so they had a few words. While they were arguing there (he stated), a policeman came in selling some tickets and when the officer entered, he said, he takes a knife out of his pocket and he placed it on the floor so as the officer would not find him with the knife in his pocket. After the officer went out he takes the knife and lays it on the counter. Well, then, the argument

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started about paying for the bottles of wine, so finally they got up and they were walking out and when he got near to the door of the store leading out he stated that the deceased slapped him in the jaw so he did not like to stand for that, and the owner of the place, Patsy, I mean Pasquale Lioe, stated, 'why don't you go back at him; do not take that', and he walked outside in front of the store just about two steps up in company with Salvagno, and the deceased, and he stabbed him. I said, 'What did you do with the knife?' He said, 'I threw the knife away'. I asked him where, he said, 'In the stairs'. I said, 'What did you do?' He said, 'Well, I ran away'. I said, 'Where did you go?' He said, 'Over in New Jersey'. I said, 'Well, were you there when the officers were looking there for you?' He said, 'I don't know whether they were over there or not'. I said, 'Well, how did you come to find out that the officers wanted you' and he said, 'Well, I went around the neighborhood and they told me that the detectives were looking for me and that is the reason I came to the station house'."

"Q Is that all the conversation you had with him? A That is all."

I shall later have occasion, when taking up the defense interposed by the defendant, again to refer to the testimony of Detective Caputo. If you believe Caputo's testimony then you have to consider certain questions of law

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with respect to the manner in which you should regard the testimony of the defendant's alleged confession. The defendant insists that he told Detective Caputo that under compulsion, duress and fear of death at the hands of Lioe and Salvagno, he was moved to inflict the injuries upon Maruggi. This testimony is denied by Detective Caputo. It is for you to determine whether or not Caputo has told the whole truth or suppressed some of the facts.

Now, gentlemen, a confession of a defendant, whether in the course of judicial proceedings or to a private person, can be given in evidence against him unless made under the influence of fear produced by threats, or unless made upon a stipulation of the District Attorney that he shall not be prosecuted therefor, but is not sufficient to warrant his conviction without additional proof that the crime charged has been committed. You will remember that the defendant stated that Officer Caputo did not directly or indirectly intimidate him or instill fear in his mind, or that the officer did anything to inspire fear in the mind of this boy at the time the defendant related the story to him. He said that some officer had attempted to assault him, but Detective Caputo prevented him from doing so. This testimony, gentlemen, should be considered by you in determining whether or not, if the defendant made a confession to

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Detective Caputo, it was a voluntary one and under circumstances where he did not make it under the influence of fear produced by threats.

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The law which makes a confession of a defendant competent evidence against him is, as you have already observed from my reading of the statute, subject to several limitations which must be considered by the jury with a view to determining whether or not the confession was the product of fear, duress, threats or menaces by acts or words, and without compulsion, real or apprehended, or made pursuant to a stipulation of the District Attorney that the defendant should not be prosecuted for the crime to which he confessed, Nor is such confession sufficient to warrant a conviction without additional proof that the crime charged has been committed. So that the confession can only be considered by you if you find that it was voluntarily made, without threat or menace by act or word, and without compulsion, real or apprehended and without the promise, express or implied, of the District Attorney that the defendant should not be prosecuted, or that he should be punished less severely. In other words, the confession can only be considered by you if you find that it was not made under the influence of fear produced by threats and that it was not made under a promise of the District

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Attorney that the defendant should not be prosecuted for the crime to which he confessed.

There is no claim, I take it, Mr. Deuel, that there was any promise made by the District Attorney that defendant would not be prosecuted for the statement that he made to Detective Caputo?

MR. DEUEL: There is no such claim, your Honor.

THE COURT: In determining the weight that you should give to the testimony of Detective Caputo it is important for you to take into consideration whether the officer correctly understood what the defendant said to him, whether the defendant expressed himself as he had intended and whether the officer honestly and correctly reported to you what the defendant said to him. As I have said, if the officer fabricated or distorted the statements made to him it will be your duty to disregard the alleged confession.

While it is true that evidence of a verbal confession is to be received with great caution, nevertheless, if after a careful consideration of all the circumstances under which the defendant made certain statements to Detective Caputo you reach the conclusion that Detective Caputo is a conscientious public officer, that he told you the truth, that his testimony carries with it in your judgment weight and conviction, then it will be for you to say whether there shall be any reluctance on your part to accept his testimony.

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If you reach the conclusion that the defendant under the influence of fear produced by threats, made a confession, then you must reject it and give it no consideration whatsoever, but on the other hand if you reach the conclusion that the confession of the defendant was voluntarily made, then it is evidence upon which you have a right to act and it should be considered by you and given such weight as in your independent judgment you may determine.

What is meant by the term that it is not sufficient to warrant his conviction without additional proof that the crime charged has been committed?

Under Section 395 of the Code of Criminal Procedure, before a person who has confessed a crime may be convicted there must be, in the language of the statute, additional proof that the crime charged has been committed. Now, if you should find that Maruggi died as the result of the stab wounds which were not self-inflicted, but were inflicted upon Maruggi by this defendant under circumstances where the act was of a voluntary character, and not induced through the instrumentality of Salvagno and Lioe, then you may convict the defendant of the crime of manslaughter in the first degree, if you believe that all the elements of the crime have been established. The Court of Appeals in a case said: "But proof of the finding of the body or marks

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of violence upon it, supplemented by the defendant's confession of guilt, is sufficient for conviction, as the meaning of the Code is that there must be some other evidence of the corpus delicti."

If you find, therefore, that the defendant made a voluntary confession you will consider the question whether there is additional proof that the crime charged was committed by the defendant. If you find beyond a reasonable doubt that Maruggi came to his death by means of violence of a criminal character, - that is to say not the result of self infliction, but produced by human agency, that is, by this defendant, under circumstances where his act was of a voluntary character and not induced by Lioe and Salvagno or either of them, then you will be warranted in convicting the defendant of the crime of manslaughter in the first degree, providing you find that all the elements of that crime have been established.

The defendant does not deny that he stabbed Maruggi. He testified clearly and in unmistakable terms that he stabbed Maruggi. But he says, "My act was not of a voluntary character. I had reasonable apprehension of instant death or grievous bodily harm in case I refused to stab Maruggi; that Lioe and Salvagno threatened to do me violence; that Salvagno gave me the knife and that Lioe struck me on the

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head and thrust a firearm alongside of my person, stating that unless I assaulted the deceased that I would sustain grievous bodily harm, and acting under compulsion I stabbed the deceased."

The law of this State is as follows: Where a crime is committed or participated in by two or more persons and is committed, aided or participated in by ~~any~~ one of them, only because during the time of its commission he is compelled to do or to aid or to participate in the act by threats of another person engaged in the act or omission, - and reasonable apprehension on his part of instant death or grievous bodily harm in case he refuses the threats, constitute duress, and excuses. You see how merciful the law is. It says that when a person under fear of infliction of grievous bodily harm or instant death, commits even a criminal act he is excusable. Of course he must have reasonable apprehension on his part of instant death or grievous bodily harm in order to properly set up that defense. That is the real important issue here. Lioe denies that he exercised any control over this defendant at the time that he inflicted the injuries upon the deceased from which he died. Lioe denied that he thrust a revolver to the side of the defendant and threatened to inflict injuries or to kill him unless he stabbed the deceased. Lioe denied that he struck the defendant and urged him to inflict injury upon

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the deceased. On the contrary, Lioe says that he did not see the defendant inflict injury upon the deceased. Salvagno, although present, says that he did not see Lioe do any of the things charged against him by this defendant and Salvagno further says, "I did not give this defendant a knife. The first intimation that I had that this defendant was engaged in inflicting injuries upon Maruggi was when I saw them grappling with each other. They were both in a clinch and then I saw this defendant jab Maruggi. I was at that time six or seven paces away."

Now when you take that testimony into consideration with that of Detective Caputo, if you believe Detective Caputo's testimony, then it will be for you to determine whether or not if the defendant stabbed Maruggi he did so because of compulsion and fear of death or the infliction of grievous bodily harm on the part of Salvagno and Lioe. There you must exercise a discriminating judgment. You have observed Lioe on the stand. He said that for nineteen years he has been in this country; that he was engaged in the candy store business, that he had known this defendant; that this defendant had visited him in his home on many occasions; that he was the godfather of a cousin of the defendant, and you remember it was brought out by, I think, the defendant's counsel, that the deceased, so far as his mother knew, had no trouble with Lioe. You have

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observed Salvagno on the stand. Subject his testimony to a careful scrutiny and determine for yourselves whether or not he and Lioe exercised an overmastering power over this defendant and urged him to kill.

The learned counsel for the defendant in the course of his argument stated to you that there is a total absence of motive on the part of the defendant to have tempted him, persuaded and induced him to have assaulted the deceased. On the other hand, the People claim that if you believe the testimony of Detective Caputo then it is clear that the motive of this defendant in inflicting the injury upon Maruggi was due to the fact that Maruggi slapped the defendant on the jaw. Therein the People claim lies the motive, that, feeling aggrieved because of having been assaulted by Maruggi, the defendant was moved to commit the act charged against him.

Motive, gentlemen, is an inducement, or that which leads or tempts the mind to indulge the criminal act. It is resorted to as a means of arriving at an ultimate fact, not for the purpose of explaining the reason of a criminal act which has been clearly proved, but for the important aid it may render in completing the proof of the commission of the act when it might otherwise remain in doubt. With motives in any speculative sense, neither the law nor the

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tribunal which administers it has any concern. It is in cases of proof by circumstantial evidence that the motive often becomes not only material but controlling, and in such cases the fact from which it may be inferred must be proved. It cannot be imagined any more than any other circumstance in the case. The motive attributed to the accused in any case must have some legal or logical relation to the criminal act according to the known rules and principles of human conduct. If it has no such relation, or if it points in one direction as well as in the other, it cannot be considered a legitimate part of the proof. The prosecution is never bound to prove a motive for the commission of a crime, but where there is no dispute about the killing, and the other ingredients of the crime are established, motive is unimportant and a conviction may be proper although no motive for the crime can be shown or discerned. It is one of the facts tending to the identification of the wrong-doer or characterizing the criminal act, but is never as a matter of law essential. It may be impossible to discover a motive hidden in the human breast and yet a crime may be proved beyond a reasonable doubt. The absence of sufficient motive, while always significant, is not conclusive, for the motives which prompt the mind to the commission of crime are frequently obscured, often trivial and never adequate. But it is never

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necessary to look for a motive if the crime is clearly and plainly proved. As bearing upon the question of the defendant's purpose in stabbing the deceased, motive or absence of motive may present considerations of the utmost importance. The purpose of the defendant in committing the act charged against him, if you find that he did commit it, may be inferred from a motive clearly established. And, conversely, the absence of motive, even if not conclusive, may be considered as pertinent to the question of *the* purpose, if any, on the part of the defendant to have stabbed of his own free will the deceased. It is therefore your duty to consider motive as one of the elements in the question whether the defendant was guilty beyond a reasonable doubt; that every reasonable doubt must be resolved in favor of the defendant, and ^{that} the question of motive is for you to consider in reaching the conclusion whether the defendant had any purpose of his own free will to inflict the injury upon the deceased. Whenever a motive can be established it may tend to persuade the jury that there was a purpose on the part of the defendant to commit a crime; that there was some inducement which led and tempted him to indulge in the criminal act, and if there be an absence of motive for the commission of a crime it is likewise the duty of the jury to consider such absence of

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motive with respect to determining whether or not there is a reasonable doubt as to the defendant's guilt.

It is your duty to consider all of the evidence, to determine, if you can, if there was any motive on the part of the defendant which prompted him to the commission of the alleged crime; although, upon a review of the entire case, you are unable to find or discern any motive for the commission of the alleged crime or if there be an absence of motive for its commission on the part of the defendant, - nevertheless, if from all the evidence you are satisfied beyond a reasonable doubt that the defendant committed the crime charged against him in the indictment you may convict him of such charge.

There is testimony in this case to the effect that after the commission of the alleged crime by the defendant he left this jurisdiction. In his own behalf he said that he first went to Long Island and then to Newark, or to a place near Newark in the State of New Jersey and remained there for several days. He says he did not flee because of having committed a violation of the law, but that he was induced to leave this jurisdiction by Nicola Ricciuti until such time that arrangements could be made for his return to the city. Of course, gentlemen, the demeanor, conduct and acts of a person charged with crime, such as flight, a desire to elude discovery, an anxiety to conceal the crime or the

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evidence of it, are always proper subjects of consideration, as indicative of a guilty mind, in determining the question of the guilt or the innocence of the person charged with crime.

While flight may be a circumstance tending to show a consciousness of guilt when unexplained, it is insufficient of itself to prove one's guilt. It is important to ascertain whether or not the defendant's act of fleeing was innocent or indicative of guilt. The person running away, therefore, may show any fact tending to explain his conduct as due to a motive other than a consciousness of guilt. Evidence of flight is competent, because when unexplained, as I have said, it tends to show a consciousness of guilt, although standing alone it raises no legal presumption thereof. When the crime is proved but the identity of the criminal is in doubt, it bears somewhat on the question of identity. Ordinarily it is of slight value and of none whatever unless there are facts which point to the motive which prompted it and hence any explanation by the accused should always be considered in connection therewith. It therefore becomes important for you to determine what was the true motive that induced this boy to leave New York. Was it because he had voluntarily inflicted injury upon the deceased and feared apprehension, or was it because he had inflicted injury upon the deceased under compulsion, became

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frightened and left this jurisdiction? That you must decide. Upon you rests the responsibility of determining the true motive under which defendant left the jurisdiction.

There was also evidence tending to the effect that on the day of the alleged homicide defendant had partaken of a quantity of wine. Some of the witnesses stated he was under the influence of liquor. You will remember that the defendant in his own behalf stated that while he had partaken of several glasses of wine, nevertheless he knew what he was doing and that he remembered distinctly the circumstances under which he stabbed the deceased. No act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition, but whenever the actual existence of any particular purpose, motive or intent is a necessary element to constitute the particular species or degree of crime, the jury may take into consideration the fact that the accused was intoxicated at the time, in determining the purpose, motive or intent with which he committed the act. Under this section it is the duty of the jury to take into consideration the question of the defendant's intoxication in determining the purpose, motive or intent of the accused and whether he acted with any purpose or motive in committing the act charged against him. You will bear in mind that the intoxication need not be to such

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an extent as to necessarily and actually preclude the defendant from forming the purpose or intent, or from being actuated by a motive before you have a right to regard it as having any legal effect upon the character of the defendant's act. The statute permits any, not simply total intoxication, to be considered by the jury on the question of the purpose, motive or intent of the accused, and the decision as to the effect of the defendant's intoxication rests with them; - that is to say, it is for the jury to determine the extent of the defendant's intoxication, and whether it had the effect to prevent the necessary purpose, motive or intent with which he committed the act. The intoxication, therefore, need not be to the extent of depriving the accused of all power of volition or of all ability to form an intent or to determine the purpose or the motive of the act. If the intoxication of the defendant had extended so far in its effects that the necessary purpose or motive of the defendant to stab the deceased was absent, the fact of such intoxication must be considered by you, and it will be your duty to acquit the defendant. A person may be even grossly intoxicated and yet be capable of forming a purpose to commit a criminal act, and if, while so intoxicated, he forms the purpose to commit a criminal act and carries it out with such a purpose, he is guilty of the crime that he commits.

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In the case of People v. Leonard, the Court of Appeals of this State said: "It is a most important and far-reaching statute in its possible effects, and the jury ought to be warned that where the criminal act is fairly and clearly proved, the fact of intoxication as furnishing evidence of the want of criminal intent that such proof might otherwise show, should be considered by it with the greatest care, caution and circumspection, and such fact ought not to be allowed to alter the character or the grade of the criminal act, unless they have a fair and reasonable doubt of the existence of the necessary criminal purpose or intent after a consideration of such evidence of intoxication. The safety of society depends to a large extent upon the due administration of our criminal law, and ^{the} voluntary intoxication of an accused person should be most cautiously considered before arriving at a conclusion that it has in any way altered the character or grade of a criminal act. It ought always to be borne in mind that by the terms of the very statute cited no act committed by a person while in a state of voluntary intoxication shall be deemed less criminal by reason of his having been in such condition. In other words it should still be remembered that voluntary drunkenness is never an excuse for crime.

One of the police officers testified that he spoke to the deceased before he went to the operating table. He gave

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testimony to the effect that the defendant made to him what is termed in the law an ante-mortem statement, or dying declaration. The officer asked the deceased, "What is your name?" The deceased said "Sam Maruggi". "Q Where do you live? A 438 East 120th Street. Q And do you now believe you are about to die? A Yes sir. Q Have you any hope of recovering from the effects of the injury you have sustained? A No. Q Are you willing to make a true statement as to how and in what manner you received the injuries from which you are now suffering? A About 10 P.M. August 28th, 1921, I was with a friend John, who lives at 113th Street and 1st Avenue and another friend named Joe Samaria in a candy store at 114th and 115th Street and Pleasant Avenue and I bought one bottle of wine and Joe bought another bottle which I paid one dollar and when I walked out of the candy store with Joe Samaria the friend John was on the street at the candy store door and as I walked about two steps this John, whose last name I do not remember, had a long knife in his right hand and stabbed me in the stomach, causing me injuries from which I am now suffering. Signed Maruggi". "In the presence of Luigi Maruggi and Detective Sergeants Ryan and Kochman."

Ordinarily, gentlemen, under our system of jurisprudence, hearsay evidence is not admitted because under the Bill of Rights, an accused is entitled to be confronted with

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the witnesses against him, but the courts have held that it is sufficient if the defendant is confronted with a witness who testifies as to the alleged declarations made by the deceased, if they are in the nature of dying declarations.

Dying declarations are received from necessity upon the theory that the belief of impending death is equivalent to an oath. The fear of punishment by law for perjury furnishes no safeguard that the declarant will speak the truth, and hence such evidence has no sanction, excepting a belief of responsibility after death. All men, however, do not entertain that belief. These declarations can only be received when the proof is clear that the declarant had no hope of recovery and was certain of speedy death. This may be proved by the statements of the injured person or by facts from which it may be inferred from the surrounding circumstances, such as the nature of the wounds, his physical condition, preparation for death and the like. The highest court of the state time and again has said that while such evidence should be received with caution, dying declarations are competent in a criminal prosecution for homicide in so far as they state facts, but not opinions, relating to the circumstances of the crime and the perpetrator thereof, provided a sufficient foundation is first laid. This exception to the general rule excluding hearsay evidence

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is founded largely on what is regarded as a public necessity, but the rule yields to the exception in order to protect the innocent and punish the guilty. As the subject of the homicide cannot testify, his sworn statement of what happened to him is considered the best evidence obtainable and hence is admitted as legal evidence in order to prevent injustice after all reasonable precautions have been taken to secure a truthful statement. Still the law does not regard such evidence when admitted as of the same value and weight as the testimony of the witness given in open court under the sanction of an oath, and under the tests and the safeguards which are provided thereby, namely, the cross-examination of the witness, the opportunity of the jury to observe his deportment and demeanor on the stand, and whether the witness observed the events concerning which he testified. Dying declarations are dangerous because made with no fear of prosecution for perjury, without the test of cross-examination which is the best method known to bring out the full and exact truth. The fear of punishment after death is not now regarded as so strong a safeguard against falsity as it was when the rule admitting such declarations was first laid down. Such evidence is a mere statement of what was said by a person not under oath, usually when the body is in pain, the mind

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agitated and the memory shaken by the uncertainty of impending death. A clear, full and exact statement of the facts cannot be expected under such circumstances. Usually the declarations made in response to questions are those calling for an answer "Yes" or "No". Experience shows that dying declarations are not always true, and yet it has happened that a dying declaration accusing a defendant made one day was contradicted by another dying declaration of the same person made on a subsequent day, stating that the defendant did not do it. So dying declarations have been shown to be positively untrue. Men sometimes lie when facing death, as has frequently been known of persons about to be executed. And the motive for self-exoneration which induces them to lay the crime on someone else might move a declarant to say that the accused was the aggressor by committing the first assault. Experience shows that dying persons have made self-serving declarations such as false accusations in order to destroy their enemies and false excuses in order to save their friends.

It will therefore, gentlemen, be your duty carefully to analyze the alleged antemortem statement or dying declaration of the deceased and give it such weight as in your independent judgment you believe it is entitled to.

The facts in this case have been very ably analyzed and discussed by the learned counsel representing the People

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and the defendant, and because of the close attention which you have given to this case I feel that the salient features of the testimony of the witnesses have been deeply riveted in your memory. Under these circumstances I deem it unnecessary to review all of the testimony of the witnesses. While I have referred to some of the evidence you are by no means controlled by my reference to the facts, as you are the final arbiters of the testimony adduced, and it is your duty to consider all of the evidence, and not isolated portions, with a view to arriving at a just result. Upon you rests the responsibility and obligation to determine from all the evidence presented in this case whether the defendant is guilty or not guilty. It is solely your province to determine the weight and the credit to be given to the testimony of all the witnesses called by the People and by the defendant. If you believe that any witness has wilfully perverted the truth in any material particular you are authorized, but not bound to disregard his entire testimony. You may accept all of a witness's testimony as true or reject it all as untrue. You may credit it in part as true and disregard it in parts as untrue. What weight you will attach to the testimony of a witness rests entirely with you. The testimony of each witness must be fairly and impartially considered and tested by a discriminating judgment, with a view to determining

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whether the witness had a motive or interest other than to speak the truth. It is also within your power to attach to the testimony of any witness whatever value you think it is entitled to. You may draw upon your own experience and knowledge of human nature in estimating the value of a witness's testimony. In judging the quality of testimony you may take into consideration the demeanor, manner and bearing of the witness, - his attitude, whether neutral, friendly or hostile toward the prosecution or the defense, and his capacity or opportunity for knowledge or observation of the event or occurrence of which he or she testified.

Whenever you can consistently reconcile testimony of a conflicting character it is your duty to do so, but where you find any conflict of testimony that you cannot reconcile, do not hesitate to cast aside that which you deem exaggerated, colored, partial, biased, incorrect or willfully perverted, and accept that which you believe to be impartial, unbiased, correct and truthful.

The rules of law laid down for your guidance in determining the weight and credit to be given to the testimony of the witnesses equally apply to the testimony given by the defendant.

The defendant is presumed to be innocent until the contrary be proved by your verdict. That presumption rests with him throughout the entire case until the moment when

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you are convinced from the proof submitted to you that the defendant is guilty of the crime charged; then the presumption of innocence is destroyed.

The defendant is entitled to the benefit of every reasonable doubt arising from the evidence in the case. A reasonable doubt is not a mere whim, guess or surmise, nor should it be regarded as a mere subterfuge to which resort may be had in order to avoid the performance of a disagreeable duty. A reasonable doubt is not a mere speculative doubt, because everything relative to human affairs that is based upon evidence may be open to some possible or imaginary doubt. It must be a doubt arising from such fact or facts in the case as lead you as intelligent men acting impartially upon the evidence to the conclusion that you are not wholly satisfied in your own minds that the defendant is guilty of the crime charged against him. It must be a doubt based upon the evidence. It is such a doubt as after a careful consideration of all the evidence leaves your minds in such a state that you cannot say that you are convinced to a moral certainty of the truth of the charge against the defendant.

If you have a reasonable doubt as to the guilt of the defendant it is your duty to give him the benefit of such doubt and to acquit him.

It is the duty of each juror while the jury are

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deliberating upon their verdict to give careful consideration to the views and opinions of his fellow jurors. A juror should not stop his ears and stubbornly stand upon the position he first takes, regardless of what might be said by the other jurors. You should discuss the case together and compare views and reasons. But before you make up your verdict each juror without reference to the other jurors should be satisfied in his own mind of the guilt or the innocence of the defendant. It is the duty of each juror to reason with his fellow jurors with an honest desire to arrive at the truth, and with a view to arriving at a verdict either for the People or for the defendant. It should be the object of all jurors to arrive at a conclusion, and to that end to deliberate together with calmness. It is your duty to agree upon a verdict, if that be possible, without a violation of your conscience and conviction.

Gentlemen, this case is one of importance to the People and to the accused. The aim of the State is never to seek vengeance. Its aim is always to ascertain the truth. If you believe that this defendant violated the laws of this state you must not permit sympathy to enter into your deliberations, nor should you be moved by any feeling of prejudice against him because of the charge that he has taken human life. Neither sympathy nor prejudice must tend

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to keep your minds away from the important issue which you are called upon to decide. Let your judgment be a conscientious one, based upon the evidence. Be only moved by a desire to do justice, - justice to the State and justice to the Defendant. If you believe that the People have established the guilt of the defendant beyond a reasonable doubt then you should convict him of the crime of manslaughter in the first degree. If you entertain a reasonable doubt as to his guilt then it will be your duty to acquit him. Have you any requests?

MR. DEUEL: No requests to charge, your Honor, but I except respectfully to the statement made by your Honor in the charge to the effect that the defendant remained out of the jurisdiction until arrangements had been made for him to come back. I take it that is without foundation in any testimony before the jury.

THE COURT: Well, if that be the case, of course I do not want to misstate the facts. You possibly may have mistaken my point of view. I never intended to take away from the jury any question of fact. All questions of fact are left for the jury's determination. It is for the jury to determine the true circumstances under which the defendant left the jurisdiction. That is the issue. But my recollection was that one of the witnesses so testified. If that is not the case I withdraw the statement and the jury

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will disregard my statement of fact and be governed by their own recollection, and if you have any doubt as to what the testimony is on this or any other point I shall advise the stenographer to read it to you.

MR. DEUEL: I thank your Honor.

THE COURT: But all questions of fact are left for the jury's determination. Gentlemen, you may render one of the following verdicts: Guilty of manslaughter in the first degree, or not guilty. You may retire, gentlemen.

Jury retire at 1 P.M. and return at 1.35 P.M.

THE CLERK OF THE COURT: Gentlemen, have you agreed upon a verdict?

THE FOREMAN: We have, yes sir.

THE CLERK OF THE COURT: How say you, do you find the defendant at the bar guilty or not guilty?

THE FOREMAN: Guilty of manslaughter in the first degree.

THE CLERK OF THE COURT: Hearken to your verdict as it stands recorded. You say you find the defendant guilty and of manslaughter in the first degree, so say you all.