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**CASE**

CASE # 1167

COURT OF GENERAL SESSIONS OF THE PEACE,

City and County of New York, Part V.

----- x  
THE PEOPLE OF THE STATE OF  
NEW YORK

against

GASPARE AMICO.  
----- x

:  
: Before:  
:

HON. THOMAS C. O'SULLIVAN, J.,

and a Jury.

New York, May 18, 1910.

Indicted for assault in the first and second degrees.

Indictment filed May 12th, 1910.

APPEARANCES:

For the People, ASSISTANT DISTRICT ATTORNEY BUCKNER.

For the Defendant, JOHN PALMIERI, ESQ.

A jury was duly impaneled and sworn.

James E. Lynch,

Official Stenographer.

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TONY MERLINO, called and duly sworn as a witness  
on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. BUCKNER:

THE WITNESS: I live at 530 East 39th street.

BY MR. BUCKNER:

Q Do you talk English? A Yes, sir.

Q Do you know this man sitting here (indicating the defendant)? A No, I don't know him.

Q Did you ever see him before this minute? A No, sir.

Q Before this minute? A Oh, before this minute, yes.

Q When did you first see him? A I only saw him in the court room and station house.

Q You saw him at the station house? A Yes.

Q Well, didn't you see him before he went to the station house? A No, sir.

Q When was this, last month? A Yes, sir.

Q You saw him on April 25th? A I seen him in the station house April 25th.

Q Are you the man it is alleged the defendant assaulted?

A Yes, sir.

Q Well, he assaulted you before you got to the station house, didn't he? A No, I don't know. I got struck in the back, but I don't know who done it.

Q Well, just tell us what the affair was, how it came about, and talk loud? A Well, this fight was in the morning

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at 9 o'clock, that there was a water trough next door to us where the water is supposed to go down, and the shoemaker put some plaster of paris in to let the rain water go down the sewer, and my father went over there and he says, The water is backing into my store, "Why don't you let that water go past there and take some of that plaster of paris out of there?" But he wouldn't do it.

Q Now, talk loud and talk slowly. We do not hear what you say? A And my father went over and asked him the reason he didn't want to make this water go down. He says the store was all dampness, and he came alongside the old man and he kicked the old man right in the eye.

Q Who did that? A The fellow that used to own the shoemaker's before.

Q Do you know his name? A No; it is a hard name to think; I don't know his name.

Q You do not know his name? A No.

Q Where did you live? A I live at 530.

Q It was not this defendant? A No.

Q That is not the man that struck your father? A No, sir.

Q Where do you live? A 530 West 39th, down in the basement.

Q Where was this leak? A This leak, it was not a

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leak at all, it was just rain.

Q Well, where was the rain? A He put a board there and put some plaster of paris in to make the water go next door down in the sewer, and the janitor, or the landlady, came down and she said "I will only get hell by the Board of Health if they come over here and see this water here." Then he made a hole and then blocked it up again.

Q Who did? A This shoemaker.

Q Do you know his name? A No, I don't know his name. That's the fellow started first. Then I got home about 3 o'clock and I seen my father sitting on a chair with his eye black, and I says "What's the matter, papa?" He says "That shoemaker come alongside of me, I wanted to tell him to let the water go down, and he kicks me right in the eye." I walks over to him to find out what was the information for kicking the old man in the eye.

Q That was over to the shoemaker? A Yes.

Q Where did the shoemaker live? A Right alongside of us.

Q How long did he live there? A About six months.

Q Do you mean to say you don't know his name? A No, I don't know his name. I never bothered with him.

Q Well, you went over there? A Yes, and the shoemaker, I asked him what was the information that he hit the old man in the eye, but I couldn't get no answer.

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Q Yes? A Well, at about 5:30 I happened to see three coming up out of the cellar. I seen one fellow flash something at me, and I says to myself "Murder", and I started to holler and I runs around around a truck but I couldn't get away, there was no way to get away. There was one fellow on the other side and one fellow on this side, and I got struck. In fact I couldn't happen to see the fellow that did it. He disappeared quick, and I don't know what way he went or what way he didn't go.

Q How long was it after you talked to the shoemaker before you were assaulted? You say about three o'clock you happened to be there? A Yes, sir.

Q How long was that after you went over to talk to the shoemaker about hitting your father? A About two hours.

Q Had you ever seen any of these three men before?

A No, sir.

Q Do you know whether they lived there or not? A I don't know. I only know the shoemaker lived there. That's the only man I ever knew lived there.

Q Did you and the shoemaker ever get into any fight except by words? A Just by words.

Q Nothing else? A No.

Q Where was the cellar you saw these three men coming up from? A About three stairs down. This cellar is right alongside of us.

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Q They came rushing out? A They came rushing out and I couldn't happen to look at their faces at all, because I dodged quick behind the truck. I got struck in the back and the man disappeared and I don't know which man struck me.

Q You mean to say you did not look at the faces of any of them? A No, I couldn't because I fell right down to the ground.

BY THE COURT:

Q Now, do not talk so rapidly, talk slowly? A Yes, sir.

BY MR. BUCKNER:

Q You did not see yourself who it was struck you? A No, sir.

Q Now, how were you hurt, how were you struck? A Well, I was struck right in the back, about an inch away from the collar bone.

Q What with? A Some kind of knife. I couldn't make out.

MR. PALMIERI: Well, if he did not see it, I object to it.

Q Well, do not tell what it was, you did not see it?

A No.

Q What kind of wound was made on you, if anything?

A A little wound, not so much, I was in the New York Hospital three days.

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Q Three days in the hospital? A Yes, I was just there and the doctor examined me just one time. On account that I had a little fever after that, that's all, and I stayed home the night I got stabbed. He told me it was not necessary to stay in the hospital. He told me to lay home. I got a little pain in the night, and I said "Papa, you might as well call an ambulance."

Q You were not really cut much, but you had fever?

A Yes.

Q How large a cut was it? A Not much. I had this coat, a heavy coat on, and it did not go in so much.

Q Well, did it go through the coat, vest and shirt?

A Yes.

Q Well, how long a cut on your back? A Not so long.

Q How many stitches taken in it? A No stitches at all.

Q Did it bleed? A Not so much.

Q Well, but it did bleed? A It did bleed.

BY THE COURT:

Q Is there a mark there to-day? A No, sir.

Q You better get down and see?

MR. PALMIERI: Will you describe it for the record, Mr Buckner?

MR. BUCKNER: It is a small scar, I suppose half an inch long, between the shoulder blades and below the base

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of the neck.

MR. PALMIERI: What kind of scar would you say, how wide is that scar?

MR. BUCKNER: Well, the scar appears to be about one-eighth of an inch wide.

MR. PALMIERI: Yes. And at that time he was going under a truck.

MR. BUCKNER: Well, do not try your case until I get through.

BY MR. BUCKNER:

Q Well, is the scar which you have just exhibited to the jury the scar or wound which was inflicted on you at the time you have been testifying about, is that the wound, that little scar between your shoulder blades? A Yes, that's the one.

Q What did you have on? A A heavy coat.

Q What else? A A vest.

Q What else? A A shirt.

Q What else? A And an undershirt, that's all.

Q Have you talked to this defendant at all since his arrest? A No, not at all.

Q Have you seen him in the Tombs? A No, I didn't go around to see him.

Q Have you talked to anybody else about the case? A No, not at all.

Q Where was this? A Right at about the middle of

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the street.

Q In what street? A 39th street, right in front of my door.

Q Here in New York County? A Yes, sir.

MR. BUCKNER: Cross-examine.

MR. PALMIERI: May I reserve cross-examination of this witness until the other witnesses are examined? So far it does not appear that my client has done anything.

MR. BUCKNER: Well, do you reserve your cross-examination or not?

MR. PALMIERI: Yes, I do reserve it.

J O H N C R O N I N, called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. BUCKNER:

Q Mr Cronin, where do you live? A 532 West 39th street.

Q Mr Cornin, what is your business? A Laborer.

Q Where were you living on the 25th of April, 1910?

A Sir?

Q Where were you living on the 25th of April, 1910, last month? A 532 West 39th street.

Q Do you know the young man that just left the stand, that is, Tony Merlino? A Why, just his father keeps a candy store there and the children going down, that's how I got to

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know him.

Q What kind of store? A Candy store.

Q So you knew who he was, did you? A Well, that's all I know about him.

Q Well, did you see any trouble there the 25th of last month? A I was sitting on the stoop.

Q Now, talk up loud so they can hear? A I was sitting on the stoop of 532.

Q Yes? A And I seen that boy run and some man ran after him. He dropped forward on his face. I goes over and picks him up, and I pulled a little thing out of his back.

Q What was it you pulled out of his back? A Well, a piece of an iron affair, about that length (indicating).

Q A piece of what? A A piece of iron, steel.

BY THE COURT:

Q Mr Witness, sit back in your chair and do not get uneasy about it. Now, there is no reason why you should be nervous. Take your time and tell the story just as if you were telling it at home or any other place, but tell it truthfully?

A Yes, sir.

BY MR. BUCKNER:

Q What sort of piece of iron was it? A Well, a sharp piece of iron, short, about six inches or maybe eight inches long, with a point on it.

Q A point, sharp or blunt? A Sharp.

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Q Can you describe it any more fully as to what it was off of? A It was drawn out to a fine point.

Q Any handle to it? A No, sir.

Q Any edge, was there any edge on it? A Well, there was edges on both sides.

Q Now, it is a piece of iron about how long? A About six or eight inches long, to the best of my opinion.

Q Any handle? A No, sir.

Q Well, back near the back side were there sharp edges or not? A Well, I couldn't exactly say whether they were sharp or not.

Q Did you see the man that was running after Tony Merlino? A I seen some man.

Q Do you know who it was? A Well, there was a truck between him and I at the time being.

Q There was a truck? A A truck loaded with dirt passing between us, and that truck passed by.

BY THE COURT:

Q Look here, you are getting to a very important part of your testimony, and I warn you that you are under oath. Do you understand what I mean by that? A Yes, sir.

Q Only the other day in one of our courts in the city, in the United States Court, a witness sitting in the chair under oath said several times "I don't remember", and the Judge punished him for perjury thereafter, held him for perjury. Now, you

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are not to say "I know" if you do not know, but if you do know, you are to say that you do know. Do you understand me? A Yes, sir.

BY MR. BUCKNER:

Q Now, just take as long a time as you want, and answer questions slowly. Do not say anything you do not know, but what you do know tell us, please. That is what the Court wants. Now, where were you sitting or standing? A I was sitting on my stoop.

Q How far away was that from the place where you saw this boy struck? A Well, he was struck in the middle of the street and I was sitting on the stoop.

Q In the middle of the street, and you were sitting on the stoop, the front stoop? A Yes, sir.

Q Have you any idea how many feet it was? A Well, I should think about maybe 60 or 70 feet.

Q You saw that the boy was running? A Yes, sir.

Q And where did he run from, did you see? A He ran from the sidewalk from, I guess, about 530. He ran out in the street and down towards Eleventh avenue.

Q Where were the two of them when you saw this thing thrown at his back? I believe you said you did see it, didn't you? A Yes, sir.

Q Where were they then? A They were out on the street.

Q Where were they with reference to where you were sit-

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ting? A Right opposite.

Q Right opposite you? A Running right by me.

Q Did you look at the man that threw this iron? A Yes, sir.

Q And did you see him again later? A Yes, sir, I seen him in the station house.

Q Who is that man? A He is right there sitting (indicating the defendant).

Q This man right here? A Yes.

Q You are the John Cronin that appeared at the station house, are you? A Yes, sir.

Q Now, what was the boy doing at the time that the defendant threw this piece of iron? A He was running.

Q And what happened immediately after the iron was thrown? A I seen him fall on his face.

Q What became of this defendant? A He ran up, he made up towards Tenth avenue.

Q And what did you do? A I went over and I picked up the boy.

Q How long was it after that was it that you saw this defendant in the station house? A Well, about 20 minutes or half an hour.

The Court admonished the jury in accordance with section 415 of the Code of Criminal Procedure and took a recess until 2:05 P. M.

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## AFTER RECESS. TRIAL RESUMED.

JOHN CRONIN, a witness for the People, resumes the witness stand:

DIRECT-EXAMINATION CONTINUED BY MR. BUCKNER:

Q Now, how long after this defendant ran away, was it before you saw him again? A I didn't see him no more until I seen him in the station house.

Q And that was about how long afterwards, Mr Cronin?

A It is my opinion half an hour, and there were two more with him.

Q Two more with him? A Yes.

Q And did you see him at the station house? A Yes, sir.

Q This man? A Yes.

Q And you saw the people that were there with him, did you? A Yes.

CROSS-EXAMINATION BY MR. PALMIERI:

Q Mr Cronin, as a matter of fact, three brothers were arrested, weren't they? A I don't know whether they are brothers or not.

MR. PALMIERI (calling): The brother of this defendant.

Q Was that man arrested, do you remember (indicating)?

A Yes, I think so.

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Q Was a man that looks like that man also arrested?

A Yes, sir.

Q And the defendant looks very much like the other two, doesn't he? A Yes. As for me, I can't tell the difference between them.

Q But now, as a matter of fact, Mr Cronin, you were acquainted with this complaining witness for some time, weren't you? When I mean the complaining witness, I mean this young man that testified before you did? A No, sir.

MR. BUCKNER (calling): Tony Merlino.

Q Weren't you acquainted with him (indicating)? A (No answer.)

BY THE COURT:

Q There is no reason why you should be nervous about this?

A I can't help that, your Honor, I am subject to that.

Q Take your time and answer questions truthfully, remembering that you are under oath, and that's all you have to do?

A All right, your Honor.

BY MR. PALMIERI:

Q And of course you are not frightened, are you? A No, I ain't frightened at nobody.

Q That's very nice, and when Tony Merlino said "Well, that's the man," he was the first man to identify this defendant? He was there at the station house the following day, is that right? A I don't know anything about that.

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Q Well, now, let me see. You did not identify this man, the defendant, until the following day? A No.

Q That's what I mean. After this occurrence you were not brought to the station house immediately to identify that man at all? A No, sir.

Q Who brought you to the station house, would you mind telling me? A I went with the boy.

Q That is, with Tony? A Yes.

Q Tony took you over there as his witness? A On the wagon.

Q Yes, that's all right, and when Tony took you up there, Tony of course said or pointed out the man who did the stabbing? A Yes, sir.

Q And then you followed and you says "That's the man" too? There is no harm in that, you believed in the judgment of Tony, didn't you? A (No answer.)

Q Now, as a matter of fact, do not shake your head that way, say yes or no? A What?

Q You believed, I mean, that what Tony said was true, you believed whatever Tony said was true? A Exactly. He said that was him, yes.

Q And of course you agreed with Tony in the station house? A (No answer.)

Q Now, as a matter of fact, this fight first originated between this defendant's brother, the shoemaker, and and Tony's

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father? A I know nothing about that.

Q Well, you knew this, that there was one man caught in the basement during this row, do you remember, by an officer?

A Yes, I heard that, but I did not see it.

Q And that was a brother of this defendant? A I did not see that.

Q But you heard since it was not this man that hit in the basement during this row?

MR. BUCKNER: I object to what he may have heard.

THE COURT: Objection sustained.

MR. PALMIERI: You are entitled to have your objection sustained.

Q Well, now, I want to ask you--

MR. PALMIERI: Is this man's brother here? Come over here. May I have the prisoner stand up, your Honor?

THE COURT: Yes.

(The defendant arises and stands alongside of another person in the court room.

Q Now, standing side by side, you have never seen these people before, have you? A Never in my life.

Q Before that occurrence? A Never.

Q Would you be able to pick out the man that actually had the fight? A Only what Tony told me when I picked him out. He says "I know the fellow."

Q And when Tony identified him, you did? A Yes.

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Q That's all.

REDIRECT-EXAMINATION BY MR. BUCKNER:

Q Well, now, did not Tony at the station house say that he did not know which man it was that hit him? A I didn't hear what he said at the station house.

Q You signed an affidavit, didn't you? A Yes.

Q In the Police Court? A Yes.

Q And you said in that affidavit that you had heard the affidavit of Tony read, didn't you? A Sir.

Q Did not somebody read the affidavit of Tony to you?

A No, sir.

Q Nobody read the affidavit of Tony to you? A No, sir.

Q And you don't know whether Tony in that affidavit said that he didn't know who it was? A No, I don't know the first thing about it.

Q Well, now, didn't Tony say there, Mr Cronin, that as soon as he was hit in the back he didn't know which man did it?

A I don't know what he said.

Q Didn't he tell you that? A No, sir.

Q What did he tell you? A He never told me a thing, only when I picked him up, that's all, and brought him over and put him sitting on my stoop.

Q Well, you picked him up and brought him over to your

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steep? A Yes.

Q And he didn't tell you anything then? A No, sir, not a word.

Q Did you ask him who the man was that hit him? A No, I never did.

Q Did he tell you who it was that hit him? A No, sir.

Q Did you ask him who the man was that ran away? A No, sir, I did not.

Q Well, now, at the station house you say there were three men arrested? A Yes, sir.

Q Tony did not pick out anybody at all? A He picked out one man, I think that's the man he picked out. I am not sure.

Q Well, didn't you pick out one of them? A Yes, sir.

Q Which man did you pick out? A That's the man he pointed out to me, there.

Q Is this the man you picked out? A He pointed him out.

Q After he pointed him out? A Yes.

Q Didn't you pick him out at all? A After Tony telling me.

Q Well, is this the man you saw throw the iron? A Not positively sure, sir.

Q Well, before lunch you said it was the man, didn't

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you? A Yes. I said there was a truck between him and I.

Q There was a truck? A Yes.

Q I understand, but before lunch to-day, didn't you say this was the man? A That's the man that was there.

Q Well, now do you say that now? A Yes, sir, I say it still.

Q You say it to-day that this is the man sitting here?

A Yes, I am saying it now too.

Q You are saying that now? A Yes, sir.

BY THE COURT:

Q Did you see the man who threw the iron? A That man there, sir (indicating the defendant).

Q Did you see the man who threw the iron? A That's the man there.

Q Will you answer my question? A Yes, sir.

Q Yes, you saw the man who threw the iron? A I seen the man.

Q Under oath, can you say who it was? A That man there (indicating the defendant).

RECROSS-EXAMINATION BY MR. PALMIERI:

Q You had never seen him before that night, Mr Cronin?

A No, sir.

Q Never seen him since? A No, sir.

Q And it was about 5 o'clock at night, was it? A Five

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o'clock or a little after five.

Q And this happened near a truck? A Yes, sir.

Q How far away from the truck were you? A On the opposite side from me, the truck.

Q Well, now, Mr Cronin, weren't there three men fighting, three or four? A Yes, sir.

Q Then, there was not only one man fighting, but there was three or four? A Well, all that I see, three arrested, that's all I see.

Q Pardon me, what? A There was three arrested, that's all I see.

Q Now, when you saw these three men arrested, you didn't go right up to a policeman? A I did not speak to him at all.

Q You simply went home after these three men were arrested? A I did not. I went to the station house with Tony.

Q After, you mean the following day? A I went to the station house that evening with Tony.

Q Oh, that night? A Yes, sir.

Q I thought you said the following day? I may be mistaken. How long after this occurrence did you go to the station house? A About half an hour.

Q Were the three men there? A Yes, sir.

Q Were those the three men that were fighting, the three men that you saw in the station, were they the three men that were fighting around this truck? A Why, yes, I think so.

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Q Well, you were there, Mr Cronin. I suppose you saw three men fighting around this truck? A Yes, I seen three.

Q You are pretty sure about that? A Yes.

Q Well, were those the men who were fighting around that truck? A Them is the men who was in the station house.

Q Yes, they were, eh? A Yes.

Q Could you tell me what part each of these men took in the fight? A I could not.

Q Or what each of those three men had in their hands?

A I could not.

Q Well, now, you state to the Court that this defendant was one of the men who was fighting, ro do you say that he was one of the men who actually did the stabbing? A Yes.

Q Now, which is it, was it one of the men whowas fighting? A Yes.

Q That is, one of the men who was in the fight? A Yes, sir.

Q Well, then, do you know which of the three men actually threw the piece of iron? A To the best of opinion, that man there (indicating the defendant).

Q To the best of your opinion? Well, you see, Mr Cronin, you are not brought here as an expert, because your eyes saw this occurrence? A Well, I have only one eye.

Q You say to the best of your opinion? A I have only the one eye.

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Q Is that all? A Yes.

Q Well, I am glad you told me that. How about the other eye? A The other eye is blind.

Q You don't tell me? A Yes.

Q Well, then, I will now ask you any further questions. I didn't know that.

MR. BUCKNER: That's all.

BY THE COURT:

Q Just a moment. Come back here. I want you to answer my questions as well as you know how? A Yes, sir.

Q Whom have you been talking with about this case since it happened? A Nobody but my wife.

Q Did you talk to the District Attorney about it? A No, sir.

Q I mean to anybody here in the office of the District Attorney? A No, your Honor, I did not, never to nobody.

Q Nobody ever asked you whether you knew who it was, since that? A No, your Honor.

Q Never did? A No, sir.

Q What about the one eye which you have, is it a good eye? A I got--

Q (Interposing:) I know, but one eye you say is bad? A Yes, sir.

Q What about the other? A The other one is good.

Q Is it a good eye? A Yes, sir.

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Q How did you happen to come down here to-day to testify?

A I was subpoenaed, your Honor.

Q And since you came down you talked to nobody at all?

A I was sitting in court upstairs, and then I was brought down here. I talked to nobody but my wife.

Q When they took you where? A I was up in Part I first and then I was taken down here.

Q Did you talk with anybody up there? A My wife was up there, that's all. She was sitting ahead of me.

Q But in this building did you talk with anybody besides your wife? A Only the complainant.

Q What did you say to him? A I didn't say nothing to him. We were just talking sociable, your Honor.

Q What did he say to you? A Just talking affairs, whether the case would come up to-day, and the like of that, and get through with it. I didn't want to be coming down here. I told him that I was losing three dollars a day, your Honor.

Q Oh, you are losing three dollars a day? A Yes, sir.

Q Now, under oath, have you any doubt at all who it was that threw the iron at the complainant here in this case?

A On my solemn oath, your Honor.

Q You have no doubt? A I have no doubt.

Q Who it was? A No, your Honor.

Q Well, who do you say, without a doubt, under your oath, it was that you saw throwing that iron? A To the

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best of my opinion, it was that man (indicating the defendant).

Q Now, that is what I want you to leave out. You say to the best of your opinion, I do not want your opinion. I want you to say whether you have the least shadow of a doubt who it was? A Well, the two brothers, your Honor, they look so much alike I can't tell the difference between them, but it must be either one or the other of them. All I done was to pick up the boy when he was lying on the street, I picked him up.

Q What boy did you pick up? A The complainant.

Q And now you say under oath that because these brothers look alike, you cannot say which it was that threw the iron?

A No, your Honor, I can't. On oath, I can't, your Honor, I have them mixed up.

Q That will do.

BY MR. BUCKNER:

Q Well, Mr Cronin, at the station house, you said it was this man, didn't you? A I told you already, told you Tony pointed him out to me.

Q You mean to say Tony pointed this man out to you?

A Yes.

Q Why, don't you know Tony swore he didn't know, and he got his information from you? A Tony told me--Tony told me so. I don't know the difference between any of them. I never seen them before.

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Q Well, Was this man there anyhow, whether he threw the iron or not? A He was there, and the other fellow.

Q I do not mean at the station house. Was this man there by the truck at the time the iron was thrown? A Yes, sir.

Q How many other people were there besides this man? A There was a crowd of men.

Q Is this man one of the men that were there? A He was one of the men that ran away.

Q Well, how do you know that? A Because I seen him run.

Q You saw this man run? A Yes, the whole crowd of them ran.

Q Now, listen, you saw this man run? A Yes, I seen him.

Q This man right here? A Yes, the whole bunch ran up towards Tenth avenue.

Q You are willing to swear that you saw this man run? A He ran, yes.

Q On your oath? A On my oath.

Q You got a look at him? A I got a look at him, yes.

Q Where did the man run that threw the iron? A They all ran up towards Tenth avenue, and they were knocked down there.

Q You saw the man throw the iron, did you? A I saw

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the iron thrown.

Q And you saw the man run that threw the iron? A The man ran that threw the iron.

Q If you say you saw this man in the crowd and saw him run, don't you know whether this man is the one who threw the iron or not?

MR. PALMIERI: Objected to as arguing with the witness.

THE COURT: Yes, that objection is sustained.

Q Did you see this man, on your oath, in the crowd?

A He was in the crowd, with the bunch.

Q Now, that is on your oath? A On my oath, he was in the crowd with the bunch.

Q Did you see some man throw an iron? A Yes, sir.

BY THE COURT:

Q Do you know who it was? A I can't positively swear whether it was them two or not, it was either one or the other.

BY MR. BUCKNER:

Q Did you see the man that threw the iron run? A Both of them ran. Three of them ran. They were held up in the middle of the block and knocked down and kicked. I did not follow them up. I was not able to run because I had a sore leg. It took me all my time to walk over and pick up Tony.

Q At the time the iron was thrown where was this man?

A He was in among the crowd.

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Q Where were they? You say Tony was running? A Tony was running, yes.

Q What was this man doing when Tony was running? A The rest of them was running after him.

Q That is all.

THE COURT: (Addressing the witness:) Do not leave the court room.

EDWARD McDONALD, being called and duly sworn as a witness on behalf of the People, testified as follows:

THE WITNESS: I live at 349 West 28th street.

DIRECT-EXAMINATION BY MR. BUCKNER:

Q Officer, did you make the arrest in this case?

A Yes, sir.

Q When? A On April 25th about 5:30 in the afternoon.

Q Where did you arrest the defendant? A I arrested him in the basement of 528 West 39th street, in a coal cellar.

Q In a coal cellar? A Yes, sir.

Q This man here (indicating the defendant)? A That man there.

Q Where did you find him in the coal cellar, just explain? A Why, in the very extreme back. When I was running up I saw the complainant wounded, lying on the sidewalk, and he appealed to me for assistance.

Q Do not tell us what he said atll, but where did you go?

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A I told some citizen to take him to the station house as quick as possible, and I ran up to catch the man who did it. Some of the children told me that he ran into--

MR. PALMIERI: Objected to.

THE COURT: Yes. Objection sustained.

A (Continuing:) I was informed--

Q (Interrupting:) Just listen. Do not tell us what you were informed, but did you get some information? A Yes, sir.

Q Now, did you get some information? A Yes, sir.

Q From whom, do not tell us what it was? A A whole lot of children.

Q Then, where did you go after you got the information?

A I ran into the basement of 528.

Q How far away was 528 from where this boy was lying?

A About 50 feet.

Q How many houses away? A Two. The second house, he was on the stoop.

Q When you got into the basement of this house, where did you go? A I went away back to the extreme back, and it was dark, and I could see nor hear nothing, and I cracked a match and when I went back as far as I could go the defendant there walked out from behind a little partition to me when the light shone on him.

Q Was any one else in that coal cellar? A No, sir.

Q And you arrested the defendant then? A Arrested

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him.

Q Have any talk with him? A I asked him "Where is that knife you stabbed the boy with?" says I.

BY MR. PALMIERI:

Q the  
In/English language? A In the English language.

BY MR. BUCKNER:

Q Did he talk English? A No, he made kind of a sign motion like that (indicating) with his two hands. I took him out to the light, and I searched him externally for a weapon, as I thought he had it. He had none.

Q Did you ever find the weapon in the case? A Yes--  
at least--

Q Will you produce it?

MR. PALMIERI: Well, I object. Does the officer know. One moment. I object to the officer producing anything in the presence of this jury.

THE COURT: Well, you may examine him with regard to that.

MR. PALMIERI: Yes, I would like permission to.

MR. BUCKNER: I wish to reframe my question. I will strike out the weapon in the case.

THE COURT: Yes.

BY MR. BUCKNER:

Q Have you a piece of iron in your possession? A Yes,  
sir.

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Q Will you produce it for identification? A Yes, sir  
(indicating).

MR. BUCKNER: I ask to have this marked for identification.

THE COURT: Yes.

(Marked People's Exhibit 1 for Identification.)

Q Where did you get that piece of iron? Without stating anything that was told to you, tell me where you got this piece of iron? A I got it in the station house.

Q Did you make some other arrests at that time? A No, I did not.

Q When was the defendant arraigned in the station house, that is, in the Police Court, rather? A On the following day, it was on April 26th.

Q When did you take him to the regular Police Court?  
A On the morning of April 26th.

Q And was the defendant Cronin there? A He was.

Q I mean the witness Cronin? A The witness Cronin was there.

Q And the complaining witness, was he there? A Yes, sir.

Q Did you have any talk with Cronin at that time?  
A Well, I think he told me that that was the man--

MR. PALMIERI: I object to what Cronin told this officer in our absence.

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THE COURT: Yes, objection sustained. Strike it out.

Q Well, did you ever have any conversation with this defendant either through an interpreter or otherwise? A No, sir.

CROSS-EXAMINATION BY MR. PALMIERI:

Q Now, Officer, isn't it a fact that other officers in that neighborhood arrested two brothers of this defendant at the same time? A No, no. After. I was the first got there and arrested him before word went to the station house for the reserves to come.

Q Well, all right. Well, who arrested his brothers, I want to know? A Two other officers in the station.

Q On whose complaint? A Well--

MR. BUCKNER: Objected to as immaterial.

MR. PALMIERI: It has been testified here by the witness Cronin that three of these brothers were at the truck. I want to know on whose complaint--

MR. BUCKNER: Objection withdrawn.

A I presume on complaint of people in the crowd, that they were people that was implicated.

BY THE COURT:

Q You do not know? A I don't know.

THE COURT: That is the answer. Strike out the rest.

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BY MR. PALMIERI:

Q Well, who arrested these two men? A Two officers in the station house.

Q Where were they found, do you know? A 37th street station.

Q Did you know where they were secreted?

BY MR. BUCKNER:

Q (Interposing:) Of your own knowledge? A His two brothers?

BY THE COURT:

Q Do you know? A No, I don't know.

BY MR. PALMIERI:

Q Well, that is all. Well, who brought that piece of iron to the station house? A One of my comrades.

Q One of your comrades? A Yes, sir.

J O H N C R O N I N, a witness recalled on behalf of the People, testified as follows:

BY MR. BUCKNER:

Q Mr Cronin, will you examine People's Exhibit 1 for Identification)? A Yes, sir.

Q Did you ever see that before? A Yes, sir.

MR. PALMIERI: I object to this witness examining that weapon or piece of iron or whatever your Honor may call it. It does not appear that this witness examined

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this weapon on that night. It does not appear that he ever had it.

THE COURT: Well, he has not been examined with regard to it yet. Proceed.

Q Did you ever see that before to-day? A Yes, sir.

Q When was the first time you ever saw it? A When I pulled it out of the boy's back.

Q Is that the weapon you pulled out of the boy's back-- whom do you mean by the boy? A The complainant.

Q That is, Tony Merlino, here in court? A Yes, sir.

MR. BUCKNER: I offer this in evidence.

MR. PALMIERI: I would like to see that, please. I object to the introduction of this weapon in evidence, in so far as my client is concerned in this case, it has not been connected with my client at all in any way.

Objection overruled. Exception.

(It is marked People's Exhibit 1 in evidence.)

JENNIE CRONIN, called and duly sworn as a witness on behalf of the People, testified as follows:

DIRECT-EXAMINATION BY MR. BUCKNER:

THE WITNESS: I live at 532 West 39th street.

Q Now, Mrs Cronin, take all the time you want? A Yes, sir.

Q We are in no hurry. Answer the question slowly, and

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be sure you understand the question. Talk as loud as you can.

Are you the wife of the man who left the stand? A Yes, sir.

Q On the 25th of last April, you were living where?

A 532 West 39th street.

Q Do you know this boy Tony Merlino? A I just know him in his father's store, that's all.

Q Where was his father's store? A Right in the basement, next to me, as I come down from my house.

Q Did you see him the day he was hurt, last month? A I just seen the crowd running. He fell in the street. That's all I seen.

Q How is that? A I was going for milk, for my tea, to the store. I thought it was playing he was, and he fell in the street.

Q Will you talk louder? A I was going for milk to the store. I seen the boy running, and he fell. I thought it was fooling they were, because there is a lot of boys always in the habit of fooling around there. He fell on the side of the street, the left hand side, and I seen the crowd running, and I didn't pay no attention to it, because such things happens every day around that neighborhood, and after while they were running all towards Tenth avenue and Eleventh avenue. They were running all directions, and they took back a man, as I thought they were killing this man, they were beating the man so bad, that I ~~xxxx~~ stood to look to see if they were really

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killing the man, and with that I seen my husband taking hold of this boy and another little young man, which I could name him if I took the time to look at him, was carrying this young man into his father's, down the stoop.

Q Just before you saw your husband pick him up, did you see him fall? A Yes, with the milk in my hand, but I did not see any one--

Q You did not see what, what were you going to say?

A I said I didn't see any one near him--he was running like, and then fell.

Q You did not see any one near him? A No, sir.

Q You thought he tripped? A I thought he dropped.

Q Did you see any one else around there at all? A None that I took notice of, only a crowd of people.

Q You did not see any one that you could ever remember?

Have you seen any one since that you remembered as being there?

A No, I ain't in the habit of being out much. I only after coming from the hospital.

Q All right, that's all.

MR. PALMIERI: No cross-examination.

MR. BUCKNER: The People rest.

MR. PALMIERI: Your Honor, I move for a direction in this case. It does not appear that this defendant has been at all identified with the commission of this offence by any witness. It does not appear, may it please your Honor, by evi-

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dence beyond a reasonable doubt that this defendant should be put upon his defence at all.

MR. BUCKNER: Did your Honor hear the first portion of the officer's testimony as to where he found the defendant, in the back corner of the coal cellar?

THE COURT: Yes. Motion denied.

MR. PALMIERI: Exception.

THE DEFENCE.

G A S P A R E A M I C O, the defendant, being called and duly sworn as a witness on behalf of the defence, testified through official Interpreter Deville as follows:

THE WITNESS: I live at 425 West 46th street.

DIRECT-EXAMINATION BY MR. PALMIERI:

Q Now, have you ever been arrested or convicted of any crime in your lifetime? A No.

Q Did you ever have any row with this complainant's father, or with this complainant at all, at any time? A No, sir, no one.

Q How many years have you been in this country? A Four years.

Q Do you speak English? A No.

Q Well, we will try you in English if we can. (In English:) Were you ever possessed of this piece of iron at any time, did you ever see this piece of iron (indicating People's

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Exhibit 1)? A (No answer.)

Q (Question repeated through the interpreter.) A No, never.

Q Did you stab this complainant, this young man that went upon the stand, with this piece of iron at any time?

A No.

Q Now, will you explain to his Honor and the jury how you happened to be there upon that day in question? A I just came back from Brooklyn, after working there for a while, and I reached my brother's place.

Q Your brother was where? A At 137th street, I don't know exactly the number.

Q Did he have a shoe shop there? A Yes.

Q And now, before you got there, had you known of any trouble between your brother and this witness, this complaining witness' father? A No, I did not.

Q When you got there, just tell the jury what you saw? A I saw my brother with his face scratched or wounded, and I asked him what was the matter, and he said he had had a quarrel with some one.

MR. BUCKNER: I object to any further conversation between him and his brother.

THE COURT: Yes.

MR. PALMIERI: All right.

Q Well, how many people were there at that time? A The

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while street was filled up with people.

Q Were you attacked, were you struck by anybody while your brother was there? A While was talking to my brother some one from the crowd came up to me and struck me with a stick.

Q Now, had you done anything to that man at all? A Nothing.

Q Was this an iron stick or wooden stick? A From the condition of my arm it must have been iron. It was very heavy.

Q Will you show the condition of your arm to the jury and to Mr Buckner? A (The witness indicates.)

Q Now, stand up and show it to the jury? A (The witness indicates.)

THE SECOND JUROR: When did that happen?

MR. BUCKNER: The juror wants to know when it happened.

MR. PABMIERI: What is the date of this occurrence?

MR. BUCKNER: April 25th.

Q Did you receive that injury on the 25th day of April of this year? A Yes, sir.

Q Now, previous to that time did you have that injury upon your arm? A No, sir.

Q What is the name of that brother of yours who is the shoemaker? A Luigi.

Q What is the name of this other brother who is in

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court? A Giuseppe.

Q Giuseppe what? A Apico.

Q Do you know when you were struck on the arm, did you know what you were being struck for? A I presume it was because they knew I was a brother of my brother.

Q But you yourself of your own knowledge, you did not know why you were being attacked? A No, I don't know it now, even.

Q Well, was the other brother there, Giuseppe, was he there? A Yes, he was there.

Q Was he struck on the bridge of the nose, in your presence? A I saw the wound, but I did not see anything at the time.

Q I see, you were busy yourself?

MR. PALMIERI: You may cross-examine.

CROSS-EXAMINATION BY MR. BUCKNER:

Q (In English:) You talk a little English, don't you?

A No, just a little business in the barber's.

Q You are a barber? A Yes.

Q You have been in the United States four years?

A Four years, yes.

Q And in your business as a barber, you talk a little English? A Yes, just for business, you know.

Q That business as a barber? A Yes.

Q You understand a few words, a few English words, don't

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you? A I don't know.

Q What? You understand a few words in English? A Yes.

Q You shave some English people? A Yes, sir.

Q And you cut the hair of some English people? A Yes, sir.

Q Your customers are not all Italians, are they?  
A Italians.

Q They are what? Your customers, are they Italians or Englishmen? A English and Italian too.

Q English and Italian too? A Sure.

Q And you have picked up a few words like that "English and Italian too". Now, did you have this iron in your possession, did you ever have this iron? A No.

Q Did you ever have this (indicating People's Exhibit 1)?  
A No.

Q Did you ever see it before? A No, sir.

Q Did you ever see it before? A No, sir.

Q When is the first time you saw it? A I don't know anything.

Q What? A No, sir.

Q What? A I don't know, I no understand you.

Q Oh, you don't understand? Well, did you see this in the police court? A In the police?

Q Yes, did you see the police have this? A I seen the police.

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Q You say "I seen the police"? Did you see the police have this? A (No answer.)

Q Did you see the police have this iron? A Yes.

Q You understand that, don't you? A I no understand.

Q I beg pardon? Do you understand? A I don't know.

Q Now, listen?

MR. PALMIERI: Now, your Honor, I wish to have recorded on the record at this time that defendant's counsel objects in an important case of this kind to have the witness--

THE COURT: Interposing. Well, the District Attorney has a perfect right to find out whether a man who has been working in this country four years, and during that time serving people who talk English, and talking with them, does not know enough to answer ordinary questions in English. He has a perfect right to do that, and I am going to allow him to go a reasonable distance to determine whether or not he can do it.

MR. BUCKNER: That is all. I just crave the Court's indulgence for a moment.

THE COURT: Exactly, sir.

BY MR. BUCKNER:

Q You saw the police, didn't you, when they arrested you? A Yes.

Q Where were you when you were arrested; where were you when you were arrested? A In a cellar.

Q A little louder? A Because people gave me the stick. I got nothing.

Q You say because a lot of people hit you on the arm, you went in the cellar? A Sure.

Q You understand me now, don't you, about the cellar? A Yes.

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Q And you were away back in the corner of the cellar? A What?

Q You were in the corner of the cellar? A No.

Q Where were you in the cellar? A Two houses up.

Q And the police came in there? A Yes, sir.

Q Was anybody with you? A A lot of people over there in the street.

Q How? A People in the street.

Q I know, people in the street, but was anybody in the cellar except you? A No. Come a policeman there.

Q Yes, come a policeman? A Yes.

Q What did the policeman say? A He come and arrested me, to go out.

Q Well, what did he say? A I don't know.

Q What did he say? Didn't he say "Where is the knife?"  
A I ain't got nothing.

Q He did not say "Where is the knife?" A Yes, and I no got nothing.

Q How? A I no got nothing.

MR. PALMIERE: Now, evidently, your Honor, this witness does not understand the learned prosecutor's question.

THE COURT: He understands them much better than the Court thought he did when he began. If he does not understand enough to answer questions, we will use the interpreter.

MR. BUCKNER: The Court knows that I want no advantage over the witness.

Q Now, the police says "Where is the knife?" didn't he?

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A I no said knothing to policeman.

Q I no. What did the police say to you, what did the police say to you? A He come and arrest, and I go to the station house, that's all.

Q Did not the police say "Where is the knife?" A No, sir.

Q Didn't he? A No.

Q Did not the police say "Where is the iron?" A No.

Q Didn't he? A No, sir.

Q Did the police say "Come with me?" A Yes, sir.

Q And is that all the police said "Come with me?", is that all he said? A Yes.

Q What? A I don't know.

Q What did the police say to you? A I am going.

MR. PALMIERI: May I have the statement on the record that the stenographer at this moment did not understand the explanation or answer of this defendant?

Q Did the police say "Where is the knife?" A That's all.

Q What? A No, sir.

Q Did the police say "Where is the iron?", did he?

A No.

Q What did you say to the police? A Well, he say, "Come away, come with me". I got with him too.

Q He said what? You went with the police, did you, to the station house? A Yes.

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Q Was any Italian at the station house? A I don't know.

Q What? A (No answer.)

Q Did you sign this paper? (Indicating) A Yes.

Q Did they have any Italian there to talk to you? A Yes

Q There was an Italian there, was there an Italian at the police? A No, American.

Q Did you talk in Italian? A Me talk Italian.

Q You talked Italian? A Yes.

Q And was an Italian there to talk to you? A Yes.

Q When you answered these questions, did you talk Italian or American? A Italian.

Q And was a man there in the station house? A Who?

Q Was a man there that talked Italian to you? A Yes.

MR. PALMIERI: Now, I want to have that paper which the District Attorney showed this witness marked, either in evidence or for identification.

MR. BUCKNER: We will mark it in evidence.

MR. PALMIERI: With my consent, and I would like to have it read to the jury.

(Marked People's Exhibit 2 in evidence)

MR. BUCKNER: Certainly. (Reads to the jury)

Q Did you have a lawyer in the Police Court? A Yes.

Q Who? A A German fellow.

Q What is his name? A I don't know that name.

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Q Why, you understand quite a little English, don't you?

A No, I got an Italian interpreter.

Q You got an Italian interpreter? A Yes.

Q You have the word "interpreter", don't you? A In 53rd Street or 54th.

Q Now, they had an Italian interpreter in the Police Court, didn't they? A Yes.

Q Did you tell the interpreter in the Police Court that you had nothing to do with this case? A I don't know.

Q Did you tell the interpreter? A Yes.

Q You told the interpreter that you did not throw this iron, didn't you? A I no got it.

Q What? A I no got it.

MR. PALMIERI: May I ask that at this time that this witness may continue his examination in the Italian language, so that we may understand his answers fully?

THE COURT: Are you finished, Mr. Buckner?

MR. BUCKNER: I think so.

THE COURT: Now, any examination you wish to make upon redirect, you may, Mr. Palmieri, and you may use the interpreter if you want him.

MR. PALMIERI: Mr. Interpreter, I want to use you.

REDIRECT EXAMINATION BY MR. PALMIERI:

(Through the Official Interpreter)

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Q Please state to this jury the reason why you were found in this basement by the officer when you arrested?

A Because the crowd were hollering "Kill" or something of that sort and I was afraid I was going to be killed and I ran in there to conceal myself.

Q Did you run in there immediately after you were struck on the arm?

Objected to. Objection sustained. Exception.

Q When did you run in there? A Immediately after I was struck. There are witnesses in the court room.

Q What has become of that shoemaker brother of yours, do you know? A I didn't see him after that, after I received the blow, I ran down the cellar and I was arrested, that's all I know.

Q And you have been in jail ever since, have you not?

MR. BUCKNER: Objected to as immaterial and reprehensible.

THE COURT: Objection sustained.

Q Have you been in jail since the 25th day of April, of this year?

MR. BUCKNER: Now, counsel is repeating the question in the face of the Court's ruling.

THE COURT: Yes.

MR. PALMIERI: What is the ruling of the Court?

THE COURT: The objection is sustained.



MR. PALMIERI: Exception.

RECROSS EXAMINATION BY MR. BUCKNER:

Q I have one or two questions to put in Italian through the interpreter. Did you see the man that you say struck you on the arm? A No, sir.

Q What were you doing when you were struck? A I was walking home, towards home with my brother. While I was turned sideways somebody struck me on the arm.

Q Did you turn around to see you had struck you? A Yes, but there was quite a crowd behind me and I couldn't see which one struck me.

Q Did you see anybody running away? A No, there was quite a crowd and they all stood there.

Q Did you see any stick in anybody's hand? A I didn't see it. I know I received the blow, but I didn't see anything.

Q Isn't it a fact that you threw this iron at Tony and then ran in the basement where the officer found you? A No, sir

Q This basement is very near the place, isn't it? A I ran two houses further down.

Q Why didn't you make a complaint in the Police Court against the man that you say struck you? A Because I didn't know anything about who it was, I had no time to think.

Q You had not time to think? That's all.

MR. PALMIERI: And he said "I didn't know who it was"

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THE INTERPRETER: "I didn't know who it was and I had no time to think."

G I U S E P P E A M I C O , called and duly sworn as a witness on behalf of the defence testified as follows:

THE WITNESS: I live at 425 West 46th Street.

BY THE COURT:

Q Do you speak English? A A little bit.

THE COURT: We will do without the interpreter as long as we can.

Q How long are you in this country? A Seven years.

DIRECT EXAMINATION BY MR. PALMIERI:

Q Mr. Amico. Sit back. Are you lame in one leg?

THE COURT: That will do. That is not pertinent to this case at all.

MR. PALMIERI: Well, it may be, your Honor. This is a very important case to me. I want to know the physical condition of the witness.

THE COURT: Let us proceed with the evidence. It has nothing to do with this man's physical condition whatever. Proceed.

Q Are you lame in one leg?

THE COURT: Objection sustained.

MR. PALMIERI: Exception.

Q Now, are you the brother of this defendant? A What?

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Q Are you the brother of this defendant? A My brother?  
I didn't talk much in this country, because my business is shoe-  
maker.

Q Do you understand the question? Are you the brother  
of this defendant? A Well, I can't talk much English.

BY THE COURT:

Q Are you the brother of that man? A Yes, this is my  
brother.

BY MR. PALMIERI:

Q Were you with your brother on that--when I say your  
brother I mean this defendant, were you there that night about  
5 o'clock? A Me first come to my brother's shoemaker. This  
brother no come, because me first to come to the shoemaker to  
my brother.

Q You do not mean "Come" you go to the shoemaker shop?

A Me go to the shoemaker shop first, because--

Q Just speak loud enough for the last gentleman to hear.

MR. BUCKNER: I object to anything that took place unless  
in the presence either of the complaining witness or the  
defendant. I think we ought to confine the issues, and it  
can only be done by questioning the witness.

THE COURT: Yes.

Q State to the jury how you happened to be in the shoe-  
maker shop that day. Just state that to the jury. Do you  
understand my question? A I don't understand your question.

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MR. PALMIERI: At this time I ask the Court that I may be permitted to use the Official Interpreter for the purpose of eliciting intelligent testimony in this important case.

THE COURT: Well, you may have him.

BY THE COURT:

Q Just a moment. What is your business? A Shoemaker.

Q Where is your shop? A 425 West 46th.

Q How long have you been there? A Four months.

Q Where were you before that time? A Before that time, me come from Philadelphia.

Q How long a time were you in Philadelphia? A Three years.

Q Where were you occupied in Philadelphia? A Lombard Street.

Q Are you a married man? A Yes, sir.

Q Any children? A No, sir.

Q Have you any men working for you? A Me? Me work in my place.

Q Do you mean, have you men to work for you or do you work alone? A Who?

Q Are you the boss of your own shop? A Me? Sure, me got shop, me place myself.

Q You have a place for yourself? A Yes.

Q Men working for you? A No, sir, just me.

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Q Yourself alone? A Yes.

THE COURT: I guess we can do without the interpreter in this case. Any man that can carry on that sort of conversation ought to be able to talk intelligently to the jury, but I submit that there is a great deal, of course, in the character of questions that you ask him. You may ask him a question which he cannot understand, but if you will try and ask him in a way that you believe will be easy for him to understand, we will not need the interpreter.

MR. PALMIERI: I except to the Court at this time refusing the right of every person in this court to have an interpreter when he speaks English in a way that is unintelligible.

THE COURT: The Court is always inclined, where it believes that there is a case demanding an interpreter, to have one act, but where the Court has examined and believes that the witness has a fair knowledge of English, the Court will not until it is convinced that an interpreter is necessary, use him. If an interpreter should be necessary you may use him, but until the Court believes that is necessary, you may not.

MR. PALMIERI: I except. Now, repeat my last question.

(Last question repeated by the stenographer.)

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BY MR. PALMIERI:

Q State to the jury how you happened to be in the shoe-maker shop that day, how your presence happened to be there?

THE COURT: In the first place, was he in the shoe-maker shop?

A Me?

Q Yes, that day? A This was the first place.

Q This was the first place? A (No answer.)

BY THE COURT:

Q Were you in the shoemaker shop the day of the fight?

A Me worked all time in a factory.

Q Were you in the factory the day of this fight? A I no understand.

MR. PALMIERI: I ask your Honor to provide this witness with an Official Interpreter.

THE COURT: You will sit down and do not interrupt the Court while it is questioning the witness.

BY THE COURT:

Q You remember the day of the fight, do you remember that?

A The factory?

Q The fight, the quarrel, the day that your brother was arrested, do you remember that? A Why, sure, I remember, arrested my brother.

THE COURT: You may have your interpreter. I do not understand him.

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MR. PALMIERI: Will you repeat my last question?

(Mr. Palmieri's last question repeated by the stenographer.)

MR. BUCKNER: Objected to.

Objection sustained. Exception.

THE COURT: The object is sustained to that question, "State how he happened to be in the shoemaker shop."

MR. PALMIERI: Exception.

THE COURT: Well now, let us get down to this case.

BY MR. PALMIERI: (Through Official Interpreter Deville.)

Q Did you see this occurrence?

MR. BUCKNER: I object as too indefinite. The witness may start on any occurrence.

THE COURT: Yes, objection sustained.

MR. PALMIERI: Exception.

THE COURT: You had better define what occurrence you are asking him about.

Q Were you struck upon the nose the day that your brother--

Objected to as immaterial. Objection sustained.

MR. PALMIERI: I think I should have the privilege of at least putting a question before the Court rules.

THE COURT: You have no right to ask a question which is apparently irregular.

CROSS EXAMINATION BY MR. BUCKNER:

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Q Did you ever see this before? (Indicating People's Exhibit 1), yes or no? A No, sir.

MR. PALMIERI: I take exception to the ruling of the Judge.

Q Do you know Tony Merlino, this boy (indicating) do you know him? A (In English) Sure.

BY THE COURT:

Q Now, if you are going to use an interpreter you will answer in Italian? A All right.

Q Now, answer that in Italian. He asks you the question in English and we use an interpreter and you answer in English; now, do not do that.

BY MR. BUCKNER:

Q (Through the interpreter) Did you see Tony, the day he was hurt? A Yes, I saw him

Q Did you see anybody hurt him? A I could not say. I saw quite a crowd around. I could not say whether I saw anything or not. I was excited.

Q You could not say whether you saw anything or not? Is that right? A I saw when my brother was hit.

Q All right. You say your brother was hit on the arm, did you? A Yes, sir.

Q Did you see the man that hit him? A Yes.

Q Have you seen him since? A I never saw him after that time, because I was placed under arrest.

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Q How long were you kept under arrest? A 11 days.

Q Have you looked for him since? A After I came out I did not look for him, no.

Q Did you see your brother run into the basement, yes or no? A No.

Q That is all?

BY THE COURT:

Q You did not see your brother run away?

MR. BUCKNER: He says no.

Q Do you know anything at all about a fight between the complaining witness in this case and anybody else? A I couldn't tell you about that.

BY MR. BUCKNER:

Q Well, what did you see your brother do the minute after he was hit on the arm? A I did not see what my brother did. There was some sixty or more people that intervened between us immediately.

Q Did you see Tony running with men following him?

A No, I did not.

Q Did you see Tony at the time that your brother was hit?

A No.

BY MR. PALMIERI:

Q Who struck you. You have got a mark on the nose, haven't you?

Objected to as immaterial.



Q At the time of this occurrence while you were near your brother on the 25th day of April, and about 5 o'clock that day, did anybody strike you while your brother, the defendant--

MR. BUCKNER: Objected to as leading and as immaterial.

THE COURT: Objection sustained.

MR. PALMIERI: I claim the privilege of at least being permitted to put a question before your Honor rules.

THE COURT: You have stated your question, I understand. It is objected to and the objection is sustained.

MR. PALMIERI: I ask of this Honorable Court if I may be permitted to put another question?

THE COURT: Repeat your question.

Q I ask you, Mr. Witness, whether on the 25th day of April, while you were there about 5 o'clock in the afternoon, when your brother the defendant, whether at the same time when the defendant was struck with a stick upon his arm, whether you yourself were injured, and if so, by whom?

Objected to as immaterial. Objection sustained.

Exception.

Q Will you now arise and show to this jury any marks upon your body or face that you received during this occurrence on the 25th day of March, or April, 1910, at about 5 o'clock that day, while your brother was hit with a stick?

MR. HUCKNER: Objected to as already ruled on.

Objection sustained. Exception.

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THE COURT: You know, Judge Palmieri, how to ask proper questions, and you are as certain as I am that these are absolutely improper.

MR. PALMIERI: I must say your Honor, that I have been a judge and I have been practicing a good many years, and I cannot agree with your Honor.

THE COURT: In the first place, you have one question in which there are three.

MR. PALMIERI: Well, if that is the objection, I will divide them.

THE COURT: And in the second place, you are asking questions which are not properly put. They have no foundation whatever, and you are asking them in a leading way that you know is absolutely improper.

MR. PALMIERI: Well, if that is the ground of objection, I will ask it in this way--

Q While you were there, did you receive--

MR. BUCKNER) (Interrupting) Well--

THE COURT: Let him finish the question.

MR. BUCKNER: Since the Judge wishes to know the ground of the objection, it is not that it is leading, but that it is immaterial to the issues in this case.

THE COURT: Yes, that is one reason.

MR. BUCKNER: This man says that the complaining witness was not near him, so far as he knows, at that time.



That may be another fight I don't know anything about.

THE COURT: Exactly. The objection is sustained.

BY MR. PALMIERI:

Q Well, now, we will see. Where were you when your brother was hit on the arm?

THE COURT: That is quite a proper question.

A Right there.

Q Right there, near him? A Yes, sir, we were together.

Q Did you see your brother, the defendant at the bar, when he was struck on the arm? A Yes, sir.

Q Now, did you yourself, receive any injury while your brother was struck on the arm, the defendant?

MR. BUCKNER: Objected to as immaterial.

THE COURT: Objection sustained.

MR. PALMIERI: That is all.

Q Or, where is the shoemaker, where is the brother that had the shoemaker shop?

MR. BUCKNER: Objected to as immaterial.

THE COURT: Objection sustained.

MR. PALMIERI: Well, whenever, your Honor, there is an absence of a witness, we want to show the reason why that person is not here.

THE COURT: Have you served him?

MR. PALMIERI: Through these men I tried to get him but I couldn't get him.

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THE COURT: Have you served him?

MR. PALMIERI: I do not serve sunpoenas in my office. I try cases.

THE COURT: Do you know whether he was served?

MR. PALMIERI: I caused this man to make a search and he told me--

THE COURT: I do not care to know that.

Q Did you at my request make a search for your brother who had the shoeshop near the place of this occurrence and was there on that day?

MR. BUCKNER: Objected to as immaterial.

THE COURT: I will allow that question.

A Yes.

Q Have you found him? A No, sir.

Q Have you been able to find your brother since the 25th day of April of this year? A No, sir.

Q That is all.

BY MR. BUCKNER:

Q Was your brother arrested with you, your shoemaker brother? A Yes.

Q How long was he in jail with you, if you know? A My brother and I remained 11 days together in jail.

Q Was your brother turned out of jail at the same time you were? A Yes.

Q And your other brother was left in jail, is that right?

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A Yes.

Q And you mean to say that after you and your brother were turned out of jail, that your brother has gone away?

A Yes, he went away and I have been looking for him, and I am not able to tell where he has gone.

Q When did you last see him? A Two days after he came out of jail.

Q And you have not seen him since? A No.

Q Is he a man of family? A No, sir.

Q Have you any idea where he is? A No, sir, only from what he told me.

Q Did you ever talk to your brother about this case?

A I was not able to talk to him, because I was not able to see him.

Q Well, but after you came out of jail, did you ask your brother if he hit Tony?

MR. PALMIERI: This will be hearsay evidence, your Honor, I object to it.

MR. BUCKNER: It is cross examination.

Objection overruled. Exception.

A He told me that he threw something at him, but I don't know what it was.

Q When did your brother tell you that? A While we were in jail together.

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BY MR. PALMIERI:

Q While what? A while we were locked up together.

BY MR. BUCKNER:

Q Did your brother say anything about this brother being innocent?(indicating the defendant)

MR. PALMIERI: I object to that is incompetent, immaterial and irrelevant.

Objection overruled. Exception.

A Certainly he said so, and I knew him to be innocent because he had just arrived there from Brooklyn that very moment.

Q Your brother told you that, or you were saying that, which? A I knew that of my own knowledge.

Q Did anybody tell you it would be a good thing for your brother to be absent from this trial? A No, sir.

Q That is all.

M.R PALMIERI: That is all. The defendant rests.

MR. BUCKNER: The People rest.

THE COURT: Just a moment. I want the complaining witness back here.

TONY MORLINO, witness recalled, testified as follows:  
BY THE COURT:

Q You speak English? A Yes, sir.

Q How long have you been in this country? A I was born here.

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Q Now, tell me, the day you were struck with this iron?

A Yes, sir.

Q With whom did you have any trouble at all? A Just with the shoemaker.

Q Do you recollect having had any trouble at all with the brother here? A Not at all.

Q What is that? A Not at all, Judge your Honor.

Q Do you remember when you say that you were running or going about this way, who was chasing you? A There was--

Q Was this boy here chasing you? A I couldn't tell you, Judge, your Honor, because I made my "get-away".

Q But did you see him around there at all? A I didn't see nobody. I just seen myself get struck and I thought I got hit with a hammer and I went down.

MR. BUCKNER: Does the Court recall that he said that three men ran out of the basement?

THE COURT: Yes, but he does not remember that this was one of them. He may go away. Now, I want the other witness, Cronin.

J O H N C R O N I N , witness for the people, recalled, testified as follows:

BY THE COURT:

Q Will you tell me <sup>why</sup> that you said at one time here today

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under oath, that you had no doubt this was the man who struck the other with that iron? A yes, sir.

Q Will you tell me why you said that? A Why, the man I seen running, your Honor.

Q I ask you who was the man you saw running, I ask you if you said you had no doubt this was the man that hit the other man with the iron? A I did not say that, your Honor. I said to the best of my opinion, your Honor.

Q You also said you had no doubt it was he? A Your Honor, I did not.

Q Sure as you sit there, you did. It is in the testimony? A I don't recollect it, your Honor, then. I said--

Q Why did you tremble and get nervous? A I am subject to that.

Q Is it just that you are going to twist your information in just one way or another? A No, I will tell your Honor the truth and the candid truth.

Q Is it hard for you to tell the truth? A No, your Honor, it is as easy for me to tell the truth, and easier than to tell a lie.

Q Of course it is? A Yes, your honor, it is.

Q Except when you are under oath? A On oath, or without oath, it is the same to me, your Honor. This case has nothing to do with me at all. I am not implicated with it. I am sorry I got mixed up at all in it, your Honor. I lost a

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lot of money.

Q You came being very much more near having reason to be sorry, because if I have, after examining you, any notion that you committed perjury, I am going to commit you for it?

A No, I am not going to do that, your Honor.

THE COURT: The stenographer will repeat this witness's testimony on that point.

(The stenographer repeats the testimony.)

Q Why did you say it was this man first, if the two brothers looked so much alike? A Well, that is the man I seen running first, your Honor. I have them mixed up, the two of them. They will mix up anybody, your Honor. I can't tell the difference between them. If they go out now and come in again I can hardly tell them, your Honor.

Q Well, Cronin, you are not much of a witness? A Well, your Honor, I am doing the best I can.

Q And whether because you don't want to be, the Court is not quite certain. I have my doubts about you? A Well, your Honor, honest to God.

MR. BUCKNER: I have another question or two when the Court is through.

THE COURT: Go on.

BY MR. BUCKNER:

Q Did you see the man that threw the iron run? A The man that threw the iron ran.

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Q Did you see him run? A He ran, sir.

Q Did you see him run? A yes, they ran up the avenue.

BY THE COURT:

Q why do you not answer the question?

BY MR. BUCKNER:

Q Did you see the man that threw the iron run? A Yes, sir.

Q Did he after a stiff leg? A I could not say.

Q Couldn't you tell when a man is running whether he has a stiff leg or not? A Well, I couldn't tell you. I didn't exactly examine him very closely. I didn't examine him and I couldn't tell you whether he had a stiff leg or not.

BY THE COURT:

Q Cronin, what do you work at? A I ma a mason's laborer.

Q Do you drink? A Well, to tell you the truth, your Honor, I do.

Q You do? A Yes, your Honor.

Q Your sight is bad? A Yes, your Honor, it is.

Q Does it improve it to drink? A It does not, your Honor.

Q Some people see more things, you know, after a little drink, than they did before? A Well, I never went to that excess, your Honor, to leave myself in that condition, that I

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was not able to go to my work and attend to it. I take a pint of beer.

Q So that you do not know how many men you saw running and how many you saw throwing the iron? A I tell you, there was a whole bunch running.

Q A whole bunch throwing irons, too? A The street was full, your Honor, you could hardly get past.

Q What time of day was it? A About five or after five.

Q Had you had your little beverage by that time? A No, your Honor, I hadn't. Well, I had a pint of beer for my supper.

Q Well, you may go home, Cronin?

THE COURT: Gentlemen, the Court directs an acquittal here.

(The jury accordingly found the defendant not guilty)

MR. PALMIERI: I move for the defendant's discharge, your honor.

THE COURT: Yes.

MR. PALMIERI: I wish to thank your Honor for the patience your Honor has shown in sifting the truth. Very often you will see Judges do not take the patience your Honor has taken in sifting the truth.

THE COURT: Well, I do not always insist, only upon occasions when I think it is the proper thing to do.