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COURT OF GENERAL SESSIONS OF THE PEACE,
City and County of New York, Part II.

THE PEOPLE OF THE STATE OF NEW YORK, :

-against-

LORENZO COLORA.

Before:

HON. JOSEPH F. MULQUEEN, J.,

And a jury.

New York, October 29th, 1913.

Indicted for attempted extortion.

Indictment filed August 28th, 1913.

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

For People: GEORGE Z. MEDALIE, ESQ., Assistant District

For defendant: CHARLES KIEFER, ESQ.

A jury is duly empaneled and sworn.

Mr. Medalie opens to the jury in behalf of the People.

V I T O M I R E N D I, called as a witness in behalf of the
People, being first duly sworn, testifies as follows: (Through
Official Interpreter Vilamena):

DIRECT EXAMINATION BY MR. MEDALIE:

Q What is your address? A 313 and 315 East 112th street.

Q Are you the woner of a drug store at 314 East 112th street?

A Yes, sir.

Q This drug store that you own is in the county of New
York? A Yes, sir.

Q You live with your family at the address you have given?

A Yes, sir.

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Q Do you know this defendant? A Yes, sir.

Q How long have you known him? A I saw him with another boy walk in the street there all the time; one time he came in my drug store to buy some cocaine, and I wouldn't give it to him.

Q When was that? A Before I received those letters.

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

MR. MEDALIE: It is responsive, because I am now coming to this date on which he received the letters.

THE COURT: It is only a question of the order of proof. The District Attorney will not refer to the letters unless he can connect them with this defendant.

MR. MEDALIE: Exactly, your Honor.

MR. KIEFER: I am not going into that at the present time, if your Honor please.

THE COURT: I will overrule the objection and I will deny the motion to strike it out, and you have an exception. I ruled on the reference to the letters.

MR. KIEFER: I simply made a technical objection that it is not responsive, inasmuch as he answered about cocaine.

THE COURT: Strike out the reference to cocaine.

MR. KIEFER: Very well, thank you.

THE COURT: As I understand it now, you make no objection to the last answer?

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MR. KIEFER: I make no objection to that.

Q I show you what purports to be a letter written in Italian, and an envelope attached to that, addressed to Vito Mirendi, 314 East 112th street; I ask you whether you ever saw that letter and the envelope? Please look at it. A Yes, sir, when I received it.

Q The envelope is postmarked July 10th of this year. Did you receive the letter enclosed in that envelope on or about that date? A Yes, sir.

MR. MEDALIE: I ask that the letter be marked Exhibit 1 for identification and the envelope 1-A.

MR. KIEFER: I understand that my objections are noted, and that they will be stricken out unless noted.

THE COURT: I did not know that you made any objection.

MR. KIEFER: Your Honor at first said that, but I will make an objection now to the letters and ask that I can renew the motion to strike out if not connected.

THE COURT: If these letters are not connected with the defendant, the case will be dismissed. I suppose the District Attorney understands that ruling.

MR. MEDALIE: Certainly, your Honor, that is what we claim.

THE COURT: That is the law. I am allowing the District Attorney to refer to these letters and to prove them on his statement that he will connect them with the defendant, and unless he does that, as I understand it, his

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case falls.

MR. MEDALIE: While there is other evidence I am willing to abide by that ruling, in spite of the other evidence.

THE COURT: Of course I do not mean that you must prove that he actually wrote them, but I mean that you must connect him with them in some way by proper evidence.

MR. MEDALIE: I am quite sure that I shall be able to do that.

THE COURT: Otherwise the letters have no bearing in the case.

MR. MEDALIE: Certainly not.

THE COURT: Unless they can be traced to him. Mr. Kiefer objects to the introduction of the letters and I overrule his objection and make that statement and he excepts to the ruling.

MR. KIEFER: I accept the ruling of the Court that the case falls unless they connect the defendant with the letters.

THE COURT: In other words, you approve of the position taken by the Court, and there is no objection.

MR. KIEFER: I do, sir.

(Received in evidence and marked respectively People's Exhibit 1 and 1-A.)

BY MR. MEDALIE:

Q I show you another letter, purporting to be written in

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Italian, with an envelope attached to it, post marked July 18th,
and I ask you whether you received this letter in this envelope
on or about the 18th of July? Please look at them? A Yes, sir.

MR. MEDALIE: I ask that that letter be marked People's
Exhibit 2 for identification, and the envelope People's Exhibit
2-A for identification.

(Marked respectively in evidence People's Exhibit's
2 and 2-A.)

Q I show you another letter purporting to be written in
Italian, and an envelope attached to it, bearing the post
mark, July 21st of this year, and I ask you whether you re-
ceived through the mails this letter in this envelope on or
about that date? A Yes, sir.

MR. MEDALIE: I ask that the letter be marked People's
Exhibit 3 for identification, and the envelope Exhibit 3-A.

(Marked in evidence People's Exhibit 3 and 3-A for
identification respectively.)

Q I show you another letter purporting to be written in
Italian, with an envelope addressed to you, bearing the post
mark July 31st of this year, and I ask you whether you received
this letter in this envelope through the mails on or about
that date? A Yes, sir.

MR. MEDALIE: I ask that the letter be marked People's
Exhibit 4 for identification and the envelope People's
Exhibit 4-A for identification.

(Marked in evidence People's Exhibit 4 and 4-A for

identification, respectively.)

Q I show you another letter purporting to be written in Italian, and an envelope attached to it, addressed to you, containing the post mark August 3rd, 1913, and I ask you whether you received this letter in this envelope through the mails on or about that date? A Yes, sir.

MR. MEDALIE: I ask that that letter be marked People's Exhibit 5 for identification and the envelope People's Exhibit 5-A for identification.

(Marked People's Exhibits 5 and 5-A for identification, respectively.)

Q I show you another letter, purporting to be written in Italian, attached to an envelope addressed to you, containing the post mark of August 6th, 1913, and I ask whether you received this letter in this envelope through the mails on or about that date? A Yes, sir.

MR. MEDALIE: I ask that they be marked for identification People's Exhibit 6 and 6-A for identification.

(Marked for identification People's Exhibit 6 and 6-A respectively.)

MR. MEDALIE: I understand, your Honor, that it is conceded by the defense that the typewritten sheet attached to each of these letters, Exhibits 1 to 6 for identification inclusive, correctly translates the attached letter in Italian. I now ask that these sheets containing the translation be marked for identification

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1-B to 6-B inclusive.

(The translation sheets are marked for identification People's Exhibits 1-B to 6-B respectively.)

Q How long before you received the first letter, People's Exhibit 1 for identification, did you first see this defendant?

A About two months before.

Q Before you received the first letter, Exhibit 1, and after you first saw the defendant, did you see him? A I saw him pass in the front of me with other two persons.

Q But you did not speak to him at that time? A No, sir.

Q When did you first speak to the defendant after the receipt of these letters? A After receiving the letter I never spoke to him.

Q When did the defendant speak to you? A On the morning of the 4th day of August he came to my drug store.

Q At that time you had already received the five letters, People's Exhibits for identification 1 to 5? A Yes, sir.

Q But you had not yet received the last letter? A No, sir.

Q What conversation did he have with you at that time in the drug store? A I received a telephone message before this defendant come at my store ---

THE INTERPRETER: And the witness states what the telephone is.

Q Won't you please state what was said to you over the telephone?

MR. KIEFER: I object to that.

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MR. MEDALIE: My theory in this case is concerted action on the part of the defendant and certain unknown persons.

THE COURT: Well, I know, but you have to connect the defendant with the telephone conversation.

MR. MEDALIE: This telephone message, if it refers to the very acts that were done by the defendant, regardless of who the person was who telephoned, would be the act of a co-conspirator, even though he is unknown to the prosecution.

MR. KIEFER: That would be inadmissible any how, Judge on that ground.

THE COURT: I will sustain the objection at this time.

BY THE COURT:

Q You had a talk over the telephone? A Yes, sir.

BY MR. MEDALIE:

Q Did the defendant then come to see you?

MR. KIEFER: I object to the leading question by the District Attorney.

Objection overruled. Exception.

A Yes, sir.

Q What did the defendant say to you? A This defendant came in my drug store and when he came in me tipped me on the shoulder (the witness indicating by placing his right-hand up to his left shoulder), and he said to me, "I am one of those black hand, I come up here to demand the money from you." I

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said to him, "I haven't got any money, and he said to me, I am satisfied at this time to get only \$25", and then I said to the defendant, "I haven't got any money, but I will call down my wife and see whatever jewelry she has, I will ask her to go and pawn that jewelry, raise up whatever money she could get from it and give it to you." I sent then for my wife and instructed her what to do.

Q Was the defendant present at the time you spoke to your wife? A No, he was not there.

Q Did the defendant go away? A He went away, and in going away says to me, "If the money will be ready for four o'clock, it will be all right).

Q Did he say when he would return? A Yes, sir.

Q What time did he say? A He would be back about four o'clock.

Q What time did the defendant call on you? A The first time he came in my drug store about half past seven in the morning.

Q Is that the day that you have just told us about? A Yes, the day that I said --- I don't remember exactly if it was Monday or Tuesday.

BY THE COURT:

Q What time on that day did he come there?

MR. MEDALIE: He just said half past seven, your

Honor, in the morning.

BY MR. MEDALIE:

Q How soon after the defendant came did you talk to any

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person over the telephone. A About twenty-four hours before.

Q Will you please state what conversation you had over the telephone?

THE COURT: You have not connected that with the defendant, yet, Mr. Medalie.

MR. MEDALIE: What occurred here I claim is the result of something that happened over the telephone.

THE COURT: I know, but you will have to show that.

MR. MEDALIE: I can show it by showing the telephone conversation, that the telephone conversation was to the effect that certain things would happen, and that they did happen.

THE COURT: Did the defendant make any reference to them in any way?

THE WITNESS: No, sir.

MR. MEDALIE: Your Honor, if this telephone conversation refers to anything concerning the obtaining of money, and the defendant spoke to the complaining witness on that morning about the obtaining of money, then I take it that telephone conversation is admissible.

THE COURT: Well, let him tell the Interpreter the conversation and then I will hear it before I decide whether I will let it go to the jury, or not.

(The Interpreter communicates the answer to the Court.)

THE COURT: I will allow the answer.

MR. KIEFER: I want to have it put on the record that the witness in the beginning said to the Interpreter

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that the defendant did not refer to any telephone conversation with him at all; that is, as I have it here.

THE COURT: Yes, he said that. I asked him that question, but having heard the conversation from the Interpreter I rule that it is admissible, in view of the other testimony of this witness.

Q What was said over the telephone the day before? A They called me first on the telephone names, called me "Spy", "Dirty", and all other kind of names that you could imagine. They says to me "If in twenty-four hours you will not send us the money, give the money to the man that will tap you on the shoulder, we will kill you, we will stab you to death."

Q What else was said on the telephone, if anything? A I then asked through the telephone who should I give the money to. He said, "You will give the money to the man we will send to you that will touch you on the shoulder."

Q Was that the entire telephone conversation? A That's all.

Q And on the following day when the defendant called, he did place his hand on your shoulder, as you have testified?

MR. KIEFER: I object to all these leading questions.

Objection overruled. Exception.

A Yes, sir.

MR. KIEFER: At this time I urge an objection to the statement as given by the complaining witness in regard to the telephone message, and ask that it be stricken from the record.

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Motion denied. Exception.

Q After the telephone conversation and before the defendant came to your drug store and placed his hand on your shoulder, did you have a conversation with Acting Captain Jones of the Police department?

THE COURT: Yes or no?

A Yes, sir.

Q Did Captain Jones give you anything? A Yes, sir.

Q What did he give you? A \$11 marked.

Q What were the denominations of the bills that he gave you? A One dollar bills.

Q I show you eleven one dollar bills, and I ask you whether those were the eleven one dollar bills that Captain Jones gave you? A Yes, sir, those are the bills.

Q By what mark are you able to identify those bills? A It is "D" marked on the bills.

Q The letter D marked under the big "1" on each bill? A Yes, sir.

MR. MEDALIE: The exhibits being money, I suppose there is no necessity for marking them for identification?

THE COURT: You had better have them marked.

MR. MEDALIE: I ask that they be marked People's Exhibit 7 to 17 inclusive, for identification.

(Marked for identification People's Exhibits 7 to 17, both inclusive.)

Q In the presence of Captain Jones were the numbers copied

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from these bills, Exhibits 7 to 17 for identification? A Yes, sir, the Captain marked them.

Q I show you a piece of paper containing certain numbers, and I ask you whether those are the numbers written by Captain Jones in your presence, and copied correctly from these bills?

A Yes, the captain marked those numbers down there.

MR. MEDALIE: I ask that be marked Exhibit 18, for identification.

(Marked for identification People's Exhibit 18.)

Q Did you after the visit of the defendant to your place of business at half past seven that morning, speak to any member of the Police Department that day?

THE COURT: Yes, or no?

A Yes, sir.

Q With whom did you speak --- without giving the conversation? A Detective Cassetti, through the telephone.

Q After your conversation over the telephone with Detective Cassetti, did you again see the defendant? A Yes, sir.

Q At what time on that day? A At four o'clock.

Q Where did you see him? A He came in my drug store.

Q What conversation, if any, did you have ith this defendant? A "Are you all ready for the money?", the defendant says to me.

Q Was there any other person in your drug store? A No, sir.

Q Did you see any other members of the Police Department near your drug store at that time? A No, sir.

Q After the defendant asked you about the money what did

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you say to him? A I said, "Come back about five o'clock, because my wife, she is not back yet.

Q Did the defendant return at five o'clock? A Yes, sir.

Q In the meantime did any other persons arrive in or near your premises? A Yes, sir, the detective was in the back of my prescription counter in the drug store, and at the time when this defendant entered, my wife came right after him.

Q Who was the detective who was in the back of your prescription desk? A A young man.

Q Do you know whether or not it was Detective Panavino?

A Yes, Panavino.

Q Did you see any other detectives outside of your drug store in that time? A No sir.

Q What conversation did you have with the defendant at the time that Panavino was back of your prescription desk?

A When this defendant came in he asked me, "Are you ready?" My wife, that was right behind me says, "Yes, we have got some but not all of it, I only could get together these few dollars, and showed him the \$11. The defendant says, "Well, those are not enough, it is very little." I said to him then "Come back in a couple of days."

MR. KIEFER: I object to what the wife said.

THE COURT: Objection overruled.

MR. KIEFER: This is a conversation between the defendant and the wife.

THE COURT: Yes, any conversations in which the

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defendant took part may be introduced.

MR. KIEFER: Exception.

THE COURT: The defendant took part in this conversation --- at least, according to his testimony.

A (Witness continuing) I said then, "Come back in a couple of days and I will have the balance of the money for you." The fellow says, "Well, that is right. He took the money and he says to me, "Don't you think for a moment that that money is coming to me; I have to give that money to a man named Nick Morelli." Then I said to him, "It is none of my business to whom you give this money; I only wish that I don't receive any more letters from the black hands, because I am sick from the time that I received this letter", and he said to me, you will not receive any more letters; you will not receive any more letters from the black hand, provided that you will not say this to any one; otherwise you will suffer for it, that's all."

Q What money did you give him? A \$11.

Q Did you give him the \$11 which you had received from Captain Jones the day before --- People's Exhibit 7 to 17 inclusive.

Q What did the defendant do with that money? A He put that money in his pocket (the witness indicating by inserting his hand in his left trouser's pocket.

Q Who handed the money to the defendant? A My wife.

Q In your presence? A Yes, sir.

Q After the defendant put the money in his pocket, what happened? A The detective come right out and grabbed hold of

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him from the back of his collar and says to him, you are under arrest. Then he says to me, "Ah! Spy!"

Q Who said that? A The defendant said to me, "Ah, you spy, that is what you did to me, huh! You will pay for it."

Q What else happened? A Then my wife went out of the drug store, placed her handkerchief over the mouth --- that was the signal she had with the detective, and Detective Panavino and Cassetti came over and took hold of him.

Q Did the defendant do anything when the officers came?
A He resisted and one of the detectives was obliged to strike him with the blackjack over the head.

MR. MEDALIE: I now offer in evidence People's Exhibit 1 to 17 inclusive, People's Exhibits 1-A to 6-A inclusive, and People's Exhibits 1-B to 6-B inclusive.

MR. KIEFER: I accepted your Honor's ruling, as made before these letters were offered for identification, that if not connected with the defendant they are stricken out and the case falls.

THE COURT: They are received.

(Received in evidence and marked People's Exhibits 1 to 17 inclusive, 1-A to 6-A inclusive and 1-B to 6-B inclusive.)

MR. MEDALIE: With your permission I shall read to the jury Exhibits 1-B to 6-B, being admitted translations of Exhibits 1 to 6 inclusive.

MR. KIEFER: Yes, subject, as I understand it, at

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the close of the People's case, that unless your Honor is satisfied that the defendant is connected with those letters that the letters will be stricken out and the case will fall.

THE COURT: The people claim that he has been connected with them already.

MR. KIEFER: Well, that is a question of law, I take it, for your Honor.

THE COURT: Well, I will rule that there is some evidence connecting him with those letters now; but the jury must pass upon the weight to be given to the evidence. I will receive them in evidence. I don't know yet what the contents of the letters are.

(Mr. Medalie now reads the letters to the jury.)

CROSS EXAMINATION BY MR. KIEFER:

Q You are an admitted American pharmacist, aren't you? A Yes, sir.

Q You talk English, and read English and write English, don't you?

THE COURT: I went fully into that subject, and I asked him to speak Italian in order to expedite matters.

MR. KIEFER: Well, it is very embarrassing.

THE COURT: It is of no importance whether he speaks English or not.

MR. KIEFER: All right.

Q When was the defendant arrested? A The 5th day of August.

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Q Then you received a letter on the 6th day of August, after the defendant was arrested and put in jail? A Yes, the following day.

Q And that is the evidence that you are offering here to connect the defendant with the crime that you charge him with?

MR. MEDALIE: I object to that. He offers nothing.

I do the offering.

THE COURT: Objection sustained. This is not an action between the defendant and the complainant, it is between the People of the state of New York and this defendant, and the complainant is simply a witness for the People.

Q That was dated August 6th, at 9 a. m.? A Yes, sir.

Q And that is the time that you received it? A Yes, sir.

MR. KIEFER: August 6th, 9 a. m., and I ask you gentlemen to look at the writing and see whether that is a boys or a man's handwriting at the same time.

MR. MEDALIE: I don't know and I don't care who wrote those letters. We can assume for the purposes of this case that somebody else wrote those letters.

MR. KIEFER: It is a circumstance in the case, though.

THE COURT: The defendant is not charged with writing the letters.

MR. KIEFER: Then how are they in evidence if he is not charged.

THE COURT: As part of the proof that he attempted to

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extort money from this defendant; that is the charge.

MR. KIEFER: But I have the agreement that unless the defendant was connected with these letters ---

THE COURT: He did not have to write them to be connected with them. If he was concerned with the writing of them and knew of the writing of them and acting in concert with the person who wrote them ---

MR. KIEFER: All right.

Q How long are you in the country? A Twelve years.

Q With what wholesale drug firm do you deal? A American Druggist Syndicate, of which I am a member.

Q Where is their place of business?

MR. MEDALIE: I think this is wholly immaterial. We are nearing the end of the term ---

THE COURT: I will allow it. I cannot tell whether it is immaterial or not.

A Long Island.

Q Where? A Long Island, New York.

Q Well, Long Island is the biggest island in the world, as I understand it. Where is it, I mean, in America? A Long Island City.

Q What number? A I don't remember.

Q Where do you buy your cocaine and uaine and herion at?

A I have got about a gram of cocaine for over six years; I never sold it.

BY THE COURT: Q Where do you buy it, he asked? A I bought

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the cocaine about six years ago from Lehn & Fink.

BY MR. KIEFER:

Q And that is the last you bought? A Yes, sir.

Q What about ucaine? A I don't know that drug.

Q What about herion? A I have got that drug, and it was in the drug store at the time I bought the drug store from one named Magaldi.

BY THE COURT:

Q When did you buy the drug store? A About five years and a half.

BY MR. KIEFER:

Q And you remember distinctly that you have not bought cocaine for six years and herion for five years, and the other drug you don't know? A Yes, sir. Not exactly six years, about that.

Q Have the police accused you of selling herion to boys?

THE COURT: I will sustain an objection to that question. Police accusations amount to nothing. A conviction by a jury or a magistrate you may show, or any criminal or disgraceful act in his career. Accusations amount to nothing, they are only hearsay at best.

MR. KIEFER: He made answer on the direct examination to the District Attorney that he knew this defendant from having come to his place and asked for cocaine.

MR. MEDALIE: And that he refused it.

THE COURT: But what the police say about a man amounts to nothing.

MR. MEDALIE: I don't know that they said it in this case either.

THE COURT: But he is assuming that they did. That is no proof of guilt.

MR. KIEFER: I am not asking for arrests.

THE COURT: You have a right to ask him if he has been convicted of selling cocaine, or if he has sold cocaine, in violation of the law, or if he has done any criminal or vicious or immoral act; all that is admissible on his credibility, but what some one said about him is not admissible.

MR. KIEFER: In view of these statements it would be useless for me to ask him that question.

THE COURT: I am merely telling you the law. You are cross examining. Of course the jury will disregard that question as to the accusation made against him, if any were made I don't know, but it is immaterial whether they were or not, and highly improper to ask such a question.

Q The first time that you saw this defendant in your place of business was two months before you received the first letter, you stated on your direct examination? A Yes, sir.

Q And when was the next time that you saw him then in your store? A About two weeks after I saw him pass in front of the drug store.

Q You said that the first time that he came to your store to

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talk to you was on August 4th, after you had received all the letters, all the black hand letters -- is that right? A When he came and asked me for the money, yes.

Q That was August the 4th? A Yes, sir.

Q And up until that time you had only seen him twice before then? A Yes, sir.

Q Are you positive about that? A Yes, yes.

Q At the time that he came in and asked you for the cocaine what was the conversation? Give the language used, please?

A He came to me and he says, "Will you please sell me about fifty cents or a dollar's worth of cocaine?" I said, "No, sir, I couldn't give it to you, any cocaine, except you bring me a prescription from the doctor", and he begged me to sell the cocaine to him, and I said "No, sir, I couldn't give it to you." He said, "All right, you will feel sorry for it," and he went away.

Q And that was all the conversation you had with him until August the 4th? A Yes, sir.

Q Now, on August the 4th will you kindly state what conversation you had with him? A When he came to me he tipped me on the shoulder and he says to me, ---

Q That was before the telephone conversation, was it?

THE COURT: Please do not interrupt him. You did not ask him anything about before the telephone.

MR. KIEFER: All right.

A (Witness continuing) He tapped me on the shoulder and he

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says to me, "I am the one from the black hand, I come over here to get the money. I says to him, "You know I haven't got any money", and he says to me, "Well, you must pay something. How much could you give us." I said, "I don't know, I haven't got any money." "Will you give me \$25 this time?" I says, "Today I haven't got any money; I will ask my wife to come down here and go out and pawn whatever jewelry she has got, and I will give you whatever she will bring."

Q And that was the whole conversation at that time? A Then he says to me that he would come back at four o'clock.

Q Well, that was the whole conversation then? A Yes, sir.

Q And that was on August the 4th? A The 4th or the 5th.

Q But he was arrested on the 5th? A The same day that he was arrested.

Q And that was the same day that he was arrested? A When he took the money, yes.

Q Well, you had no conversation after he was arrested, did you? A No, sir.

Q And all he said to you was, "I am from the black hand"?
A "I am the one from the black hands".

Q And from the early part of July until August the 4th, you had received five letters, is that right? A Yes, sir.

Q And you had done nothing in the matter? A My wife went with the letter to the police and the police would tell my wife not to be afraid, at any time we would receive any letter to bring it to them.

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Q But you did not take them down to them, did you? A My
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wife, yes, did bring them to them.

Q In the morning of August 5th what did this defendant say to you? A He came about half past seven in the morning and he touched me on the shoulder and says "I am the one from the black hand; the money I want." And I said to him, "I haven't got no money", and he says to me, "You must give me some money", and I asked him, "What would you ask for?" He said "For this time I will be satisfied with \$25", and I says to him "In the house I haven't got any money. My wife has got some jewelry, I will ask her to go and pawn that jewelry, and whatever money she gets she will give it to you."

Q You were not in the house at that time, were you? A When?

Q At the time you were talking about, when this happened?

A He was talking. I was in the drug store.

Q And where were you standing? A In the drug store.

Q Where in the drug store? A In the back of the prescription counter.

Q The defendant came right in and walked back of your prescription counter and tapped you on the shoulder? A When he came in, he says to me, "I want to talk to you", and we started back to the prescription counter.

Q You took him back to the prescription counter.

Q Oh, he went ahead fo you? A Yes, sir.

Q Were you back in the prescription counter when he first talked to you? A I was sitting right in front of the drug store

when he came. There he placed his hands on my shoulder and says to me, "I want to talk to you", and then he went inside and I went with him.

Q And he walked right back in your private office? A Yes.

Q And you were not standing in your store when this defendant came in? A I was sitting.

Q And you told him you had no money in the house and that he was --- he says to me that he wants the money. I told him that I have no money in the house. He says that he must have some money; and I asked him, "What would you want?" He says to me, for this time "I will be satisfied with \$25", and I told him that my wife had some jewelry, that I will ask my wife to go and pawn her jewelry, and whatever money we get we will pay.

Q Then you were to the police station before the morning of August 5th, is that right? A Yes, sir.

Q How often were you? A Twice I went up there and my wife every moment.

Q Your wife was up every moment. Have you received black hand letters since the arrest of this defendant, outside of this one dated August 6th? A Only the one, the sixth one marked in evidence.

Q Was your place ever blown up by a bomb? A They said that they would place bombs there, but never a bomb was exploded there.

Q Was your place downtown blown up?

MR. MEDALIE: What place is that? I don't know any-

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thing about that; that is not in the evidence.

Q Did you have a place of business downtown some years ago?

A Yes, sir.

Q Was that blown up with a bomb? A No, sir.

Q Did you receive threatening letters while you were in that place downtown?

MR. MEDALIE: What happened a few years ago, before this, is of no materiality.

THE COURT: I will allow it on cross examination.

MR. MEDALIE: I made my objection only in the interest of saving time.

A No, sir.

Q Is your little boy in court? A Yes.

Q Did you ever send your little boy to call this defendant here from a barber shop, to come to your place of business?

A No, sir.

Q Isn't it a fact that you know this defendant for about ten years? A No, sir.

Q Do you know his father and mother? A No, sir.

Q Are they from the same town in Italy where you come from? A No, I don't know them.

Q Do you know his uncle? A No, sir.

Q Do you know Mr. Gitto (indicating a man brought to the rail of the court room)? A Yes.

Q You know him? A Yes, I know him.

Q He is from the same town in Italy that you are? A I don't

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know. I met him in America.

Q How long do you know him? A About five years.

Q Do you know that woman (Mrs. Colora)? A Yes, I know her

Q How long do you know her? A About five years.

Q She is the mother of this defendant, isn't she? A After the arrest of this defendant she came in the drug store and told me please to not ruin her son.

Q But you have known her for five years? A I know this woman by sight, but I don't know that she was the mother of this defendant.

Q She is from the same town in Italy that you are, is she?

A I don't know; I never saw her.

Q Why did you say in answer to my first question that you did not know the mother and you did not know the uncle of this boy? A I didn't know them in Italy.

Q Do you know Mr. Mangenera? A Yes, sir.

Q He is the uncle of this boy? A I don't know that he is the uncle of the defendant.

Q How often have you visited Mr. Mangenera's house? A Several times.

Q Did you ever see the defendant there? A No, sir.

Q How often have you visited Paole Gitto's place? A Who is that, Paole Gitto?

Q He is the man that you just identified that you knew five years? A Oh, he came once in a while in the drug store. He came to the drug store once in a while to buy some medicine, and I saw him a few times at Mangenera's house.

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Q Did you ever see the defendant there? A No, sir.

Q And you still persist in saying that these people are not from the same town in Italy that you are from? A I don't know. I never met them in Italy.

Q How did you come to leave Italy? A I tried to improve myself in America.

Q Did you poison your wife and come here with a servant woman? A I? (Witness laughing) It is a question of a crazy man, that.

Q Well, you have no other answer to make, is that it? A What other answer could I make?

Q Did your first wife die in Italy? A Yes, sir.

Q And the woman that you are living with now was your servant in Italy, wasn't she? A No, she is my lawful wife.

Q Well, she was your servant in Italy, wasn't she? A She was not a servant, no, sir.

Q She worked in your house, didn't she? A No, sir.

Q Will you tell me again of any other place where you buy drugs, please? A Lehn & Fink; Mulford.

Q Where is Lehn & Fink --- they are down on John street?
A 27 William street.

Q And what is the other man's name? A Mulford, in Philadelphia; but he has got an agent here in New York, downtown.

Q Where is the address? A I don't know. His agent comes to me once in a while.

Q Which of these letters did you show to this defendant?

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A Let me see it.

THE COURT: Did he say that he showed any of them to the defendant?

MR. KIEFER: I am going to show that he showed those letters all to the defendant.

THE COURT: Well, then, ask him.

BY THE COURT:

Q Did you show any of those letters to the defendant? A No, sir.

BY MR. KIEFER:

Q What letter did you ever show to the defendant? A None.

Q Why did you ask to see these letters before you would tell me which one you showed the defendant? A I didn't understand at the time. I understood that it was the Interpreter that said to me, "Do you know those letters", and I said "Let me see."

Q Why did your wife go every minute or very frequently to the police station?

MR. MEDALIE: I object to that. The wife is the proper person to ask that.

THE COURT: Objection sustained.

Q Is it a fact that you sent your little boy to the barber shop across from your drug store and asked this defendant to come over and you showed him these letters and you told him you were afraid of the black hand and you asked him to act for you because you were afraid?

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MR. MEDALIE: I object to that as already answered.

Objection overruled.

A No, sir.

Q What is the name of the barber shop across from you?

A Padre & Chiaia.

Q Do you know the defendant's brother? A Yes, sir; he was shot by a policeman.

Q Yes, you know all those things to answer, don't you? Did you get the defendant's brother to read these letters for you? A No, sir.

Q Is the defendant's brother crazy from cocaine that you sold him?

Objected to. Objection sustained.

MR. KIEFER: He said he was shot by a policeman.

THE COURT: Well, you can move to strike that out.

Q How many conversations did you have with the brother of this defendant about this case?

THE COURT: When?

A Never.

Q Did you see the defendant's brother in the barber shop across from you on the 5th of August?

THE COURT: At what time?

Q On the 4th of August, at 11 o'clock, did you see this defendant and his brother in the barbershop?

THE COURT: Morning or night?

Q In the morning? A No, sir.

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Q Look at these letters and tell me if you know the handwriting of any of them, tell me if you can read them; I ask you to read that first letter in Italian.

THE COURT: Now, there are three questions there, at least.

MR. KIEFER: All right. I will ask him to read the first letter in Italian.

THE COURT: Read it out loud for the jury, that is the question.

A (Witness reads letter in Italian to the jury).

Q Well, that will do. I am satisfied. If you can read that letter why did you show it to the defendant's brother to read it for you?

THE COURT: He said he never showed it to the defendant's brother to read it for him.

BY THE COURT:

Q Did you ever show that to the defendant's brother to read for you? A No, sir; no, sir.

BY MR. KIEFER:

Q Do you know any of the handwriting in there? A No, sir.

BY THE COURT:

Q Do you recognize the handwriting? A No, sir.

BY MR. KIEFER:

Q How do you know the defendant's brother? A I saw him pass once in company with this defendant after he was shot.

Q Tell us all you know about this shot, since you speak

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Objected to. Objection sustained.

Q Did you ever see him at any of his uncles' houses?

THE COURT: I do not see how that is pertinent.

MR. KIEFER: It is part of my case, if your Honor will give me the benefit of the difficulty of disproving a liar, I will do the best thing I can, but I cannot prove the case all at once.

MR. MEDALIE: Counsel has made so many remarks that counsel should be told not to make these remarks. Many of them do not get even as far as the stenographer.

THE COURT: The jury will disregard those remarks.

MR. KIEFER: In view of what the District Attorney said, the jury have heard it, --- he first denied he knew the uncle or the mother or any of the uncles, and then he comes down and says he knew the uncle five years.

THE COURT: You need not sum up the case now. He said he did not know that that man was the uncle of this defendant.

Q How far do the defendant's people live from you?

MR. MEDALIE: I object to any further inquiry along that line.

THE COURT: Objection sustained. This is all collateral matter. You have asked him sufficient questions now to call any one to contradict him; and I will tell the jury that it is only on a collateral matter; whether

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he knew those other people or not is immaterial in this case, and whether he testified truthfully or falsely on those questions, you have to decide the main issue --- has he testified truthfully as to the actions of this defendant? That is the issue. If you can show any motive that he has to testify falsely against this defendant, you may show it; but all this other matter is entirely immaterial.

MR. KIEFER: Well, I do not see how I can get to it, unless I have the right to ask these questions and see how near they live to each other.

THE COURT: I cannot instruct you how to try your case if you do not know.

Q Well, you never showed ---

THE COURT: You have asked him sufficient questions about those matters, about the relations of this defendant.

Q Well, you never had any conversation with this defendant about those letters whatever? A No, sir.

Q And you were in fear then of the defendant, were you?

THE COURT: When, at what time?

Q At any time?

BY THE COURT:

Q Were you ever in fear of the defendant? A No, sir.

BY MR. KIEFER:

Q Did you tell the District Attorney --- he said in his opening to the jury that you paid this money because these letters

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of this defendant, or the parties who had written them put you in fear; did you ever tell him that they put you in fear?

THE COURT: I will sustain an objection to that question.

MR. KIEFER: All right, that's all.

RE-DIRECT EXAMINATION BY MR. MEDALIE:

Q What town in Italy did you come from?

THE COURT: What is the use of opening all that up again? It does not make any difference where he came from; he is here now and entitled to the protection of our law, and the law is plain. As to the facts, the jury will determine from the evidence.

EMILE PANEVINO (Detective Bureau, 31st Precinct) called as a witness in behalf of the People, having been first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q On the 5th of August of this year did you go to the drug store of the complaining witness at 314 East 112th street?

A Yes, sir.

Q What time of the day? A About 4:20 or 4:25.

Q What part of the drug store did you go to? A In the rear of the partition, right in the back of the partition, in the rear of the store.

BY THE COURT:

Q At 4:20 in the afternoon? A Yes, sir.

BY MR. MEDALIE: A How long were you there before anything

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happened? A Oh, I should judge about five minutes.

Q Then what occurred? Please state that fully to the jury, all the conversation and everything that was said and done?

A When I first went into the rear of the store, I secreted myself in the place. I was given a description of the defendant, that he would wear a checked cap, and about his height, and so forth. Well, when I saw this person come in, I immediately walked out and went ^{as} near the partition on the entrance of the rear of the store as I possibly could without being seen. The complainant and his wife were also near this door, and the defendant approached the complaining witness and asked as to whether he was ready, in the Italian language, and I was near enough, at the most three to four feet.

BY THE COURT:

Q You understand Italian, do you? A Yes, sir.

Q You speak Italian? A Yes, sir. And the complaining witness said, "Yes", with that the wife opened her purse and drew out this money and handed it to the defendant. The wife took the money and handed it to the defendant and he opened the money and remarked that it was not enough; and the complainant said, "Well, it was all that I was able to get on the pledge that my wife took in the pawnshop, but if you will promise that I will not be pestered ~~any~~ more and you will straighten this thing out for me, in a few days I will do something more for you", and he said, "Well, of course, I have got to see --- there is a fellow Morelli in East 107th street, of course I will have to talk to him and fix it up." And so the

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complainant repeated that he would see that he would not be bothered any more, and he said that he would not, to leave it to him, and it would be all right. With that he takes the money and is about to place it in his pocket, when I get him from behind the partition and take hold of him, and was just dragging him in the rear until some other officer came in to assist me. So he turned around to the complainant and he said, "So, this is what you have done, hey?" And in the meantime Officer De Martine came in and he saw that the defendant still had the money in his grasp; and he was afterwards taken to the station house and placed under arrest.

Q I show you People's Exhibits 7 to 17 inclusive, and I ask you whether this is the money which you took from the defendant, marked in this way? A There is a list there.

Q I show you People's Exhibit 18 for identification, containing a list of numbers, and ask you whether you compared this list with the numbers, the serial numbers on those bills?

A In the station house, yes, sir.

Q Do the bills correspond with the list, People's Exhibit 18? A Yes, sir.

Q Did the defendant say anything to you when you placed him under arrest? A Well, at the time, no, but in the house he was willing to make a statement.

Q What statement did he make? A He said that what he had done was done on his own responsibility. That is, nobody else had made him do it or asked him to do it.

Q Did you ask him whether other persons were concerned in

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this crime? A Yes, sir. When he mentioned the name of Morelli in the station house as to the part Morelli played in it. He said, "No, no, I done this, nobody else; I done that on my own responsibility."

CROSS EXAMINATION BY MR. KIEFER:

Q You are sure that he had the money in his hand all the time, are you? A Yes, sir.

Q The complainant says he put it in his pocket; who is correct? A How is that?

Q The complaining witness says he put it in his pocket, who is correct? A When I took him by the neck he had that money in his hand.

Q You were standing behind a glass partition ---

THE COURT: It is immaterial whether he had it in his pocket or in his hand. Let the jury pass on that, whether that is important. You can call the attention of the jury to those discrepancies. He must not be asked to characterize the testimony of other witnesses.

Q You were standing back of a glass partition, were you not? A At the opening of the door, and that partition is of glass, and it is such glass that you can look right through --- it is not stained or ground glass of any kind.

Q Anybody could see you stand there? A If he had turned around at the time he could see me stand there.

Q Where was the complaining witness at the time this defendant entered? A At the edge of the counter is where I saw the

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complaining witness and his wife.

Q And you saw the defendant come in, did you? A Not coming in; I saw him when he got to the rear of the store, towards the partition.

Q And at that time he had not talked to the complaining witness yet, had he? A No, sir.

Q And you saw him, and what did he say? Tell us in Italian what he said? "Si et du pronde?" That signifies in Italian, "Are you ready?"

Q Where was the complainant standing at that time, the complainant and his wife? A Right at the edge of the opening of the counter and the partition; the complaining witness right here --- the partition was right here. I was right in the rear and the defendant was right in front of them.

Q Well, the defendant did not do anything to put the complaining witness in fear, did he?

MR. MEDALIE: Objected to.

THE COURT: I will allow him to ask about anything the defendant did or said there.

Q Was there anything the defendant did to the complainant at that time? A Not at that time, no, sir.

BY THE COURT:

Q Except to ask him, "Are you ready?"? A "Are you ready?"

BY MR. KIEFER:

Q Was that all the conversation? A Except what conversation I related before, a few minutes ago.

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Q Well, what was that? A That the wife came, took out this money from her purse and paid it to her husband, handed this, and her husband handed this money to the man.

Q Who handed there? A She handed the money.

THE COURT: Please do not interrupt him when he is answering. If when he finishes you think the answer is irresponsible or improper you may have your remedy, but we must get through. Proceed, Officer.

A (Witness continuing) The wife done the handing of the money, she had it in her purse. Both she and the husband requested the defendant that they would do better in a few days if he would promise or assure them that they would not be bothered with any more of these letters and be freed from this annoyance, and he looked at the money and saw that it was not enough and he said, "Well, of course, I have got to see Morelli in 107th street, but you promise that you will do better, why, I will assure you everything will be all right and fixed up.

BY MR. KIEFER:

Q Had they promised to do better? A The defendant said that, that if he would do better he would fix it up as long as the complainant was not bothered.

Q How many conversations did you have with the complainant with regard to this case at that time, up till that time?

A That was the first day I saw the complainant.

Q That was the first day you saw --- A The complainant, yes, sir.

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Q Did he tell you anything in regard to this case at all?

A I was informed about the case before I went there.

Q What were you informed about it?

Objected to. Objection overruled.

Q What was said to you about the case and by whom?

A The acting captain of the district asked me to go to the 39th, because I was not known there.

THE COURT: Never mind his reasons. What did the captain say to you?

Q And when was this? A I got a telephone message to go up there. When I got to the 39th Precinct they had already made arrangements.

BY THE COURT:

Q Please tell us what the captain said to you? A I didn't see the captain.

Q Who spoke to you? A Officer Cassetti and DeMartine, they had arranged with me.

Q Never mind what they had arranged. Don't you understand English? What did they say to you? A For me to go into the store and "plant" inside the store until such time as the defendant would put in an appearance.

THE COURT: We will adjourn now until to-morrow morning at half past ten. Meanwhile, be careful not to discuss this case among yourselves, nor with any one else and do not come to any conclusion as to the guilt or innocence of the defendant until you hear all that is to be said on both

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sides, and until the case is given to you by the Court for your decision; that is the time for you to make up your mind and not before that. Now, you may go until to-morrow.

(ADJOURNED to October 30th, 1913, at 10:30 a. m.)

New York, October 30th, 1913.

TRIAL RESUMED.

K A T E R I N A M I R E N D I, (313 and 315 East 112th street) called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q You are the wife of Vito Mirendi? A Yes, sir.

Q Do you recall the day on which this defendant was arrested, the 5th of August of this year? A Yes, sir.

Q Do you recall what occurred between four and five o'clock on that afternoon? A Yes, sir.

Q Did you see the defendant in your husband's drug store at that time? A Yes, sir.

Q Did you see him enter the drug store? A Yes, sir.

Q Where were you at the time? A I came from Third avenue.

Q What, if anything did the defendant say? A "Are you ready?"

Q To whom did he say that? A To my husband.

Q What did your husband say? A Yes, we are ready.

Q What was the rest of the conversation? A When my husband says "We are ready" my husband asked me "Did you get any money?"

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Did you pawn your jewelry?" "Yes", I says to my husband, "That is all the money I got." "How much is that?" "\$11." I went to hand this money to my husband. My husband said "No, give it to him." I gave the money to the defendant." He took the money and he said "That is not enough, that is very little. This money is not for me, I must give this money to Nick Morelli."

My husband says, "Well, that is all you could get until in a few days we may be able to get more, and you shall have it." Then after I gave him the money he says to me, "Now, that you gave me the money let me have back the letters", and I said to him, "No, I have got only one letter here and I will keep this as a souvenir; the other letters I have got upstairs." I told him a lie then, because I had the other letter in the hands of the police at the 104th street station house.

After that the defendant that was hiding in the back of the drug store came out and caught hold of him by the neck. After this I went out the door and I placed the handkerchief over my mouth to call the attention of other detectives, and they come and they took him away to the station house and that's all.

Q From whom did you receive the \$11 that you handed to the defendant? A My husband.

Q When did he give it to you? A In the morning.

Q What did the defendant say when he was placed under arrest? A He was speaking to my husband and says to my husband, "Assassin, you have betrayed me, hey!" That is all. The policeman took him away.

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CROSS EXAMINATION BY MR. KIEFER:

Q The defendant was in the store talking with your husband when you came in, is that right?

THE COURT: At what time do you mean now? At the time of the arrest, or when the money is said to have passed?

MR. KIEFER: Well, that is the only time we have been talking about.

THE COURT: He was in the store at other times.

MR. KIEFER: well, I mean the date of the arrest.

BY THE COURT:

Q This time when he was arrested, were you in the store before he came in, or was he in there when you came in? A I went in the drug store; as soon as I got in the drug store he was right in back of me; he says, "Are you ready?".

BY MR. KIEFER:

Q How many letters has your husband received altogether, black hand letters?

THE COURT: If you know?

BY THE COURT:

Q Do you know, first? A I believe it was five or six.

BY MR. KIEFER:

Q How many has he received since the arrest? A I don't remember if it was one or two.

Q What did the defendant do with the money that you gave him? A He had the money in his hand, and he was in motion to

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put the money in his pocket, but he did not get no time to do that, because the officer caught hold of him before he had time to put the money in his pocket.

Q What number was your husband's store in 40th street?

A We never had any drug store in 40th street.

Q Where was your other drug store? A I don't remember the street or the number, because it is more than five years ago that we lived there.

Q How many years were you at that place that you left five years ago? A About three and a half or four years, I don't remember exactly well, and I don't want to tell any lie.

Q Did your husband receive black hand letters there?

Objected to. Objection sustained.

Q How many times have you seen this defendant here before his arrest? A I saw him only once. He came in the drug store two months previous to that (when) we received the letter asking for some cocaine then of course I would see him very often passing in front of the drug store.

Q Did you live four months in his uncle's house? A I don't know.

Q You know Mr. Mangenera, don't you? A I know him because he came once in my house with some other friends, but I never visited his house.

Q Didn't you and your husband live four months in Mr. Mangenera's house? A No, sir, never.

Q Did you live at 152 East 116th street at any time?

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A No, sir, I did live across the way from the Church of Mount Carmel.

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

Q Were you in this store when your husband sent your little son to call this boy in the store?

MR. MEDALIE: Objected to as assuming a fact.

THE COURT: Objection sustained to the form of the question.

Q Well, the time that you were in the store that this young man came in, you say you were in the store once before -- the time before this young man came in, you say that this young man came in the store once before, the 5th day of August, is that right?

THE COURT: I think that that question had better be reframed. Begin again.

BY THE COURT:

Q How many times did you see him in your husband's store?

A Once.

Q And that was the day he was arrested? A No, sir --- two months before I received the letter.

Q Then you saw him twice? A Yes, with the time that he was arrested, twice.

Q The times he was arrested, and once two months before that? A Yes, sir.

BY MR. KIEFER:

Q Was your little son in the store at the time that you

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first saw him? A No, sir.

Q How many times were you to the police station, or did you see the police captain in this case?

THE COURT: Reframe your question. There are two questions there.

Q How many times were you to the police station? A I don't know how many times, but I went up there very often.

Q How many times did you see the police? A I don't know the number. I would talk all the time with some man that speaks Italian.

FELIX B. DE MARTINI, (Detective Bureau, 29th Precinct), called as a witness in behalf of the People, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q You recall the 5th of August of this year when the defendant was arrested? A I do.

Q Do you recall the preceding Sunday? A Sunday?

Q Well, do you recall a day before that when you marked certain dollar bills? A Yes, sir.

Q What day was that? A I don't remember. It was some day in the week.

Q Two or three days before? A A few days before.

Q Was acting captain Jones, of the Detective Bureau, there?

A Yes, sir.

Q And was the complaining witness, Vito Mirendi, there?

A Yes, sir.

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Q I show you Exhibits 7 to 17 in evidence, and I ask you whether the "D" under the large "1" in the upper left-hand corner of each one of these bills is in your handwriting?

A Yes, sir.

Q Were these bills delivered to the complaining witness, Vito Mirendi? A Yes, sir.

Q Do you know whether or not you copied the serial numbers from these bills? A I know that Captain Jones copied them, and I think I copied them myself.

Q I show you People's Exhibit 18 for identification and I ask you if you know whose handwriting that is? A That is my handwriting.

Q Did you make a copy of the numbers on these bills? A Yes, sir.

Q Do the numbers on People's Exhibit 18 for identification correspond with the serial numbers on the bills 7 to 17 inclusive? A Yes, sir.

MR. MEDALIE: I offer Exhibit 18 for identification in evidence.

(Received in evidence and marked People's Exhibit 18.)

Q Immediately prior to the arrest of the defendant on the 5th of August, where were you? A Why, I was standing about 75 or 80 feet up from the drug store.

Q What caused you to enter the drug store? A A woman came out and a man went in there and was motioning to come in, and I immediately ran over to the door and there I saw Officer

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Panavino struggling with the defendant, and finally the defendant was to the floor, and I joined in and immediately grabbed hold of him and removed those bills from his right-hand while he was on the floor.

Q You removed Exhibits 7 to 17 from him? A Yes, sir.

Q And what, if anything did the defendant say? A Panavino said "All right, we have got him"; I said, "Let go", and no sooner did I get hold of him --- he remained still for a few seconds and all of sudden he drags me from about the middle of the drug store to the outside step, where Panavino immediately joined me in and we subdued him and kept him there till we managed to get a good grip on him and walked him to the station house.

Q At the station house did you and the other officers have a conversation with him? A We did.

Q What was said? A At the station house?

BY THE COURT:

Q What did he say to you? Did he say anything on the way to the station house? A Yes, he said to us "Oh, what a fool I am! Kill me", he says, "Kill me, kill me, I know I am a fool, kill me." I said, "Not at all. You are a foolish boy, that's all you are". So I says, "What did this man ever do to you?" He said "Nothing at all." And finally the conversation was kept on after we got in the station house, and I said "What possessed you to go in there?" Well, he says, "I knew the fellow and he told me he had got letters, and see if I could not fix up a black hand case for him, and that is what I done--

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I was trying to fix up the case for him."

Q Did you ask him about a person by the name of Nick Morelli?

A Oh, we spoke about Morelli. I asked him if he knew Morelli. He said yes. Well, I asked him, "Did Morelli send you here, or did he have any part?" He said, "No, nothing at all." He said, "I have got nobody to blame but myself."

CROSS EXAMINATION BY MR. KIEFER:

Q So he said to you that the complaining witness had asked him to see these letters to look at these letters and see if he could fix up the black hand for him? A Not to fix the letters. He said that the complaining witness had spoken about fixing up a black hand case for him --- to see if he could find the people who had ---

Q That was right after you had arrested him? A That was at the station house.

Q Now, who was motioning to you? A Why, I was, --- first I saw a man.

Q Do you know who that man is? A Why he is a friend of Mr. Mirendi --- of Mr. Mirendi, the complaining witness.

Q And he motioned to you? You never knew him before, did you? A I think he was with us the day I marked those bills.

Q You don't know that? A I am quite sure he was.

Q Is he here in court? A I don't see him here.

Q What was the woman doing? A I couldn't say. I see her standing at the door, but I rushed right down as soon as I seen her motion, I knew something wrong was going on inside, because

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the plan had been made beforehand that somebody would come to the door and give a signal, and I knew that the fellow that was in there was getting the money, so I immediately rushed to the drug store.

Q Did you ever ask the complaining witness about the statement the defendant made to you at that time in the station house? A Why, yes, I spoke to him about that.

Q What did he say? A He said, "It is not true."

Q Did the defendant say anything else about the complaining witness at that time? A Why, yes, he mentioned something about --- he said "Let me tell you something; he said, "You know that fellow sells cocaine." I said, "What are you trying to do now, to tell me that in order to lessen up on you? Is that a stall?" --- using the slang term, --- "That you are trying to put up now?" I said, "I don't think a man of his character would do that thing"; I said, "This is simply a stall that you are trying to cover yourself."

Q Well, he had not asked you for anything up to that time, had he? A No, not that I know of, no.

Q When you say he said "Kill me, you had black-jacked him already? A Officer Panavino had black jacked him in order to keep him from making --- after he had made the second dive he was struck.

Q And so he said "Don't kill me" --- wasn't that the reason?

A No, he didn't say "Don't kill me", no, no. Another thing he said, "Why, if it was one of youse alone I may have got

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away with it.

Q Whom did he say that to? A He told that to me.

Q He told that to you, too? A He did tell that to me.

Q You were not the man that arrested him? A I participated in the arrest, I was there present and assisted Panavino.

Q Do you know whether the complaining witness has received black hand letters since the arrest of this defendant? A I couldn't say positively, I couldn't say whether he has or not, I couldn't say.

Q Did you know anything about this arrest coming off?

A Before the arrest? Yes.

Q You say you marked these bills two days before the arrest?

A I should say about two days, one or two days before.

Q Was it on a Sunday? A I couldn't tell you what day of the week it was. I am not sure. I know I marked them before the arrest.

Q Do you know what time of the day it was? A I know it was around the noon hour, if I am not mistaken, or perhaps a few hours later, but it was, I think in the afternoon.

Q It might be more than two days, though? A Well, I wouldn't say any more than from two to three days, I wouldn't say any more than that.

Q Do you recall a Sunday previous to the 5th day of August?

A Well, I couldn't say exactly. I wouldn't say positively.

Q And what were these bills marked for at that time? A They were marked as the complaining witness stated he had received

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a phone call, and acting on that phone call that a fellow was to come in and use some signal --- I think it was to strike him on the shoulder, or something, and he was to give the money to that fellow, and that he would come around again. So I said, "All right, then I will mark those bills", and I says, "If that man comes try to make an appointment at a later date and inform us so that we can be around when he receives this money.

Q Had you seen the complaining witness previous to that time? A Previous to which time?

Q The time that you marked the bills? A Oh, I think I had. I had seen him at the station house.

Q What was the conversation at that time?

MR. MEDALIE: I object to that. If it is to contradict the complainant, then he should have been confronted with the statement.

THE COURT: Objection overruled. The object in cross examination is to bring out the truth. Any statements made by the complainant as to this case I shall allow in evidence.

Q Do you recall what was said by you and the complaining witness at that time? A Why he had come to the station house with some letters which threatened him, that they wanted money and if money was not paid he would be shot or blown up, and he was always instructed to try and get in touch with these people and see who was the man who would present himself there, and

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he had spoken something about the defendant came there and wanted to buy some drug, if I am not mistaken, but I don't know if it was at that particular time or the time after, but I know that there was a conversation had on that subject.

Q That was before the arrest? A Yes, that was before the arrest.

Q That is all you recall? A That is all I recall now.

RE-DIRECT EXAMINATION BY MR. MEDALIE:

Q You do not recall whether that conversation concerning the drug was had on the day of the arrest or some other day, do you? A No, I do not. I know it was before the arrest.

Q It might have been on the same day? A It may have been on the same day.

RE-CROSS EXAMINATION BY MR. KIEFER:

Q It was before the arrest, you are sure of that?

THE COURT: He said so.

BY THE COURT:

Q Do you want to change that --- was that before the arrest?

A That was before the arrest.

MR. MEDALIE: People rest.

MR. KIEFER: At the opening of the case last night, my understanding was that unless the People connected these letters legally with the defendant the letters would be stricken out and the case was to fall; I now ask in view of that ruling that your Honor dismiss this case

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on that ground.

THE COURT: The motion is denied.

MR. KIEFER: I ask for an exception on the ruling.

THE COURT: It is a question of fact for the jury to determine. There is testimony concerning these letters and concerning this defendant; the jurors will say whether the connection has been established or not.

L O R E N Z O C O L O R A (351 East 118th street), the defendant herein, called as a witness in his own behalf, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. KIEFER:

Q With whom do you live? A My mother.

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

Q What do you work at? A Side gluer at a piano factory.

Q Where? A 139th street, Fifth avenue.

Q For whom? A For my uncle.

Q Do you recall the 5th day of August, the day you were arrested? A Yes, sir.

Q How many times were you in the complaining witnesses drug store previous to that day --- about how many times? A The day of the arrest?

Q Yes.

THE COURT: Before that day?

A Before that day on the 4th, once.

Q How did you come to be in the store on the 4th? A Well, the doctor come over to my house and he said, "Your brother is

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all better now. All he needs is fresh air." So I told the doctor, "I am happy to hear that --- my brother being sick for several months in the hospital, and I begged the doctor on Ward's Island if he could ---

THE COURT: Never mind that. He asked you how did you come to go to that store on the 4th of August.

BY THE COURT:

Q Why did you go there, he means, on the 4th of August?

THE COURT: I suppose that is what you want?

MR. KIEFER: Yes.

A The complainant sent his son over for me to go to his store, that he wanted to tell me something.

BY MR. KIEFER:

Q Who was with you then? A My brother.

Q What took place in the store, what occurred? Say what he said and what you said?

BY THE COURT:

Q Who went over with you? A My brother. I had to take care of him.

Q What did you say and what did they say? A Well, they said that we have --- we he said "Look, look what somebody is sending me", and he showed me a blackmail letter --- he said blackmail, so I looked at it, and it was written in Italian. I knew that my brother could read in Italian and I called him in; I said, "Come here, read this letter." So he read a few lines of it and he stopped. I said "What is the matter?" He said,

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"Nothing, I don't want to read it". So the complainant took the letter in his hand and he explained it to me. He said, "If you don't bring \$2,000 at the Bronx Park," that they would kill him and destroy his property; and in the letter it said, "If you are afraid to bring the money look for somebody you know there"--- in different ways. He said "Look for somebody" --- "Your friend" --- "friend", or something. He said something like that any way. He explained it to me. So he said, "I want to get rid of these people"; he says, "They are bothering me too much. He said "I would like to get rid of them and make my wife go and pawn a few articles she has got and sum up some money so you can bring it over there."

I said "How?" I said, "Don't you know anybody else then?" He said, "No, only you could do me this favor." I said, "You have got friends, you know. He said, "Yes, but you know they are married, and they are just as afraid as I am." So I says, "Don you know I got a sick brother and a mother to take care of? I said, "How can I ever do you that favor?" So again he started saying, "Please do me that favor. I want to get rid of them, with tears in his eyes." It broke my heart, knowing him for ten years, and I said, "I will tell you, I wouldn't do it to-day for you, because I have got to take care of my brother. I will try to do it to-morrow for you."

So that day we left that way. I said, "I will try to do it to-morrow for you", and he said to me, "All right, then please do not disappoint." And that is all the words that was said om

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the 4th of August.

BY MR. KIEFER:

Q What happened the next day, then. The next day, as it was raining the 4th of August, after we got through walking in the park, at the 4th, with my brother, the doctor says that I should take him out for fresh air.

Q Now come down to the 5th. What happened on the 5th of August? A Well, if you don't mind I would like to explain how I come to come in that block again, which I never was in that block.

Q Go ahead. A And the doctor says you should take him out for fresh air, so we took a walk in the park. While we was walking I told my brother if he wanted to get a shave, so he says, "All right". We went in the barber shop across the street from this drug store and he got shaved. While he was getting shaved it started to rain. I asked the boss of the barber shop if he could lend me an umbrella, so he says "I will lend you one, but don't forget to bring it back, he says, because that is the only one I have got. I says, "I will." While we were out of the barber shop, on the stoop of the door, ready to open the umbrella, the son of the complainant tapped me on the shoulder, he says "My father wants you, he wants to tell you something."

As the drug store is across the street I looked right over and I saw the complainant making a sign like this for me to go over (indicating calling with hand). I went over and I

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asked him, "What do you want?" He said, "I have something to tell you", and that is how --- "I have something to tell you." I told you how he showed me the letters.

Now, on the 5th. On the 5th I said, "I will try to do it the next day." That was on the 4th, and on the 5th I tried to do the favor for him. It was about twelve o'clock in the afternoon I asked my brother if he wanted to come out for fresh air and take a walk and "brace yourself up". He says, "No, I don't feel good." So I kept him company, and I cheered him up, because he was down-hearted, and about 4 o'clock it reminded me about the umbrella. I said, "That man wants his umbrella, I will have to bring it back." I took the umbrella and walked, walked on 112th street to the barber shop.

While I was almost going in the barber shop this man called me again. He said, "You are ready to bring the money over?" I laughed at him, I said "Maybe somebody is trying to scare you and tell you something like that." He said "No, no, no, this ain't the only letter I received, --- I received four more and besides telephones." So I told him, "Why don't you notify the police?", in slang, the way --- your Honor will excuse me--- the way it was, he said "I never was a stool pigeon and I never will be." In another different way it means he don't want to notify the law and he said again, "Won't you bring the money over?" "Let me get rid of them."

So I says, "But it is better for you to notify the police,

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mind my words." He said, "No, it will be all the worse for me." So I says, "Well, take it up the way you want." So he says "Come around a little later; my wife will go and hock the articles, and I will give you the money and bring it over to the blackmailers." I said, "All right."

I brought the umbrella back to the barber shop where I was going. After I stayed in there I think about ten minutes talking with the boss and after the conversation I walked outside and he says "All right, come here", and he made the sign. He said, "Come here." He said "All right, I am ready now, I am ready."

So he gave me the money. When he gave me the money I said "Wait a while", I says, "At what time am I supposed to bring this money to these blackmailers at the Bronx Park?"

He said "About" --- he said, "At eight o'clock." Well, I says, "How am I to know these blackmailers?" "Oh," he says, it is simple, the blackmailer is supposed to have a red handkerchief around his neck, and I was supposed to have a red rose on my coat, and I said, "And what must I tell him?" "You must say 'Is this the entrance of Bronx Park', and he would say 'Yes', and he would tip off his hat while saying the word 'Yes.'" And that was the party I was supposed to give the money to.

Well, we go back to where when I was all evening with that conversation, and we finished with the conversation, I was ready to take anything to fold up the money and go exactly where he told me; but I turned around to go out the door,

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and the first detective that was on the chair yesterday, I⁶⁰
don't know his name.

MR. MEDALIE: Panavino.

A (Witness continuing) Panavino. He grabbed me from the two
arms and he caught hold of me like this: He said, "I got you
now." I didn't know who it was, I turned around to look who
it was. So he --- as soon as I turned around to see who it
was, there come in come other detective, but I won't say sure
that it was the second detective that was on this chair, and he
struck me with a --- a blow on the head with a black jack
that knocked me unconscious. I was flattened on the floor, and
they picked me up. As soon as I was on the floor some other
detectives came in --- I think there was about four or five
policemen --- and they picked me up and I says, "Youse cowards!
Why don't youse listen to reason first? That is all you are,
big brutes", I told them. So he says, "Oh, is that what you
call us, cowards and brutes?" He says, "We will fix you", and
again they begin to hit me on the head, while they were taking
me out to the door. So who come in, he hit me on the head, and
who come running down --- Cassetti, Detective Cassetti. He said,
"Leave go of the boy, what do you want to do, kill him?" "Ah,"
he says, "What good is he living, a person like that? What good
is he living?" So they brought me to the station house. The
doctor come and he stitched me up. There were three cuts on
the head and one cut in the eye; and I think with four detectives

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they could have bring me without hitting me. If there was one detective ---

THE COURT: Never mind that. Go on with your own story.

BY MR. KIEFER:

Q Have you ever been convicted or arrested before? A No, sir.

Q You say you know the complaining witness for ten years?

A Yes, sir.

Q Did you write any of those letters, (indicating Exhibits 1. to 6)? A No, sir.

Q Well, look at them. A Well, what good is looking at them, when I cannot write even in Italian. I cannot write in Italian.

Q You say that the complaining witness showed you some letters? A Yes, sir.

Q And you had your brother read it? A Yes, sir.

Q Do you know who wrote these letters? A No, sir.

Q Did you ever call up the drug store on the telephone at any time? A No, sir.

Q Did you ever threaten him in any way? A No, sir.

CROSS EXAMINATION BY MR. MEDALIE:

Q What is the name of the piano factory where you are working? A Shubert's.

Q How long did you work there? A Over a year.

Q Steady? A Oh, steady and not steady. Since the 4th of July we worked three days a week.

Q And it just happened then on the day you were arrested you

1968

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were out of work? A No, my uncle used to tell me when there was work. Supposing there was work, we are supposed to work today, he might say "Come Wednesday", "Come Friday" --- I wouldn't know what days I was supposed to come.

Q Well, on the day of your arrest you were not working?

A No, sir.

Q On the day before your arrest you were not working? A No, sir.

Q Were you working at any time that week? A No, sir.

Q Nor the week before? A Yes, sir.

Q How many times the week before? A Three days.

Q What days were those? A On Monday --- I think on Tuesday -- I mean on Wednesday; on Friday. Friday is pay day.

Q You have given your right name, of course? A Yes, sir.

Q Of course, you could not read? You cannot read Italian?

A No, sir.

Q And the complaining witness, the druggist, knows you pretty well, is that right? A Yes, sir.

Q He knows you cannot read? A I don't know about that. He knows me, but he don't know my business about school.

Q He does not know that about you? A No.

Q Well, during the last ten years that he knows you did you go to school during that time? A Certainly.

Q Very much or very little? A Well, I can't say much and I can't say little.

Q Well, do you suppose he sent for you from the drug store

1969

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just to read those letters? A No, sir. They trapped me.

Q To threaten you? A Yes, sir.

Q To trap you? A To trap you.

Q He wanted to put something over on you? A Well, the way it looked.

Q Your brother read some of the letters? A A few lines.

Q Then there were a number of letters? A A number?

Q There were five letters? A Five letters, well ---

Q From what your brother read you know what the letters contained, is that right? A From what my brother read?

Q Yes, you knew what is in the letters? A Not in the letters; in one letter.

Q And that is the letter that said, "Go up to Bronx Park"?

A Bronx Park.

Q That is the letter which said, "Dear Pharmacist" --

A Excuse me. There is the heart and stabs and everything.

That is the letter, that is the way I go.

Q This is the one, the one with the artistic work on it?

A Yes.

Q That is the letter, you heard your brother read it? A He read a few words of it.

Q Let me see if you remember the words: your memory is pretty good, isn't it? A I do not say it is pretty good.

Q Well, it is a fair memory? A Well, I couldn't say. You can forget a lot.

Q But you remember most of the things that happened? A In

1979

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Italian, explained in High Italian. I can't understand much.

Q Is this High Italian? A It is High Italian.

Q See if you remember. A Well, I will try.

Q He read the first letter, is that right? A Not read it all --- a few lines of it.

Q Of the first letter? A Sure.

Q And it said, "Dear Pharmacist: Do not be alarmed if we ask you for the sum of \$2,000", is that right? A I know the \$2,000 was in it --- I don't know about the "Pharmacist".

Q It is because we need it. We do not want to repeat it a second time, because it will be worse for you." You remember his reading that, don't you? If you don't remember, say so?

A Well, I would like to say the truth. I would not like to remember it or not remember.

Q That is what I like about you. Go on and tell us whether you remember it or not. A Well, I think at \$2,000 he stopped.

Q Let us see if you remember this: Didn't he read about going to Bronx Park? A The letter was not read at all, it was explained to me.

Q Tell us what he explained to you about going to Bronx Park?

A He said, "If you don't bring \$2,000 that they would kill him and destroy his place.

Q Where was the money to be brought, that is what I want to know? A At the Bronx Park.

Q That is what Mr. Mirendi explained to you? A To me?

Q And your brother? A To me he explained it.

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Q But your brother was there? A My brother was there.

Q And your brother had this letter in his hand? A No, the complainant had the letter in his hand.

Q Did he give it to your brother to read? A Yes, sir.

Q And the complaining witness, Mirendi, explained that the money was to be brought to Bronx Park? A My brother had the letter and when he don't want to read it any more I asked what was the matter, and he said "Nothing, I don't want to read it any more." Mr. Mirendi, the complainant took the letter in his hands, he folded it up and put it back in the envelope, and explained it.

Q He explained that the money was to be brought to Bronx Park that same night, is that right? Or some night? A It was to be brought to Bronx Park the way he said it -- you could see whether it was a frame-up.

Q You saw that right away? A No, I didn't. After I got trapped I saw the way it was.

Q What did Mirendi tell you the letter required should be done, about bringing the money to Bronx Park? A To Bronx Park, and that was all.

Q What time? A The next day; he did not say the time.

Q But what I want to know is the second day when he gave you the money, where were you to bring the money? A At Bronx Park he said.

Q You were just about to put the money in your pocket and turn around to walk out, weren't you? A No.

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Q (Continuing) When the police caught you? A No. When he gave me the money ---

Q Now, listen. I am going to remind you, you were kind enough to talk slow, so that I could get this down in writing,-- "I was ready to fold up the money and go. I turned around to the door when Panavino pulled my arms in behind my back?" --- A Excuse me just one question ---

Q Now, my dear friend, you must listen. A No, but after you can make me listen the whole day. You said it was at the time my brother had the letter in his hand, what time was I supposed to bring the money, if he explained it in the letter.

Q I got through with that and we were talking about the next day. A No, that is where you were talking when he took the letter in his hand. He didn't tell me no time then.

Q No, let us talk about the day you were arrested. What did he tell you to do with that money? A To bring it over to Bronx Park.

Q At what time? A Oh, when I got the money, at eight o'clock.

Q That same night? A That same night.

Q The \$11? A He didn't say no eleven dollars. He didn't give me no eleven, he gave me money.

Q It was not a big roll of bills, was it? It was not a very big roll of bills? A Well, that could be \$100 bills inside, for all I know.

Q Well, I know, but you saw on the top a one dollar bill and

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you saw on the bottom a one dollar bill? A How could I see it on the bottom when they were folded.

Q This way. A Yes.

Q Couldn't you tell it was all one dollar bills? A No, on the top you could tell it was one dollar.

Q Didn't you think that that was mighty little to send up to the blackmailers at Bronx Park? A I don't know, because he didn't say he was going to give me the \$2,000 --- simply that his wife was going to pawn and try to sum up as much as he could.

Q You took the money he gave you and you were going to go out and take it to Bronx Park at eight o'clock? A At eight o'clock.

Q And just as you were leaving the store Panavino caught you? A Panavino caught me.

Q You had this money and you were putting it in your pocket and going out? A Folded it and put it in my pocket.

Q In other words your business with Mirendi was finished that day? A That day.

Q At that moment you did not know how much money you were bringing to the blackmailers? A No.

Q And you never asked Mirendi how much money he was giving you? A No.

Q And Mirendi never told you how much money he was giving you, did he? A No.

Q And you didn't remark to him that that was a very small sum to give the blackmailers in Bronx Park? A No, sir.

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Q You felt that Mirendi was trusting you with a lot of money, didn't you? A No. That he was trusting me with a lot of money?

Q Yes. A Well, I suppose so.

Q How much money did you suppose at the time he was giving you to give to the blackmailers in Bronx Park? A I couldn't tell you.

Q Don't you know that those letters that your brother was shown said that the money was to be brought on Sunday night at half past twelve to Bronx Park? A He didn't explain that half past ten at the Bronx Park.

Q Half past twelve? A Half past twelve that Sunday.

Q Not a word about that? A No, sir.

Q On the first day did he tell you whom to see? A No, sir.

Q Did he tell you to look for the blackmailers to find out who they are? A No, sir, he just said, he just says, "I will try to do the favor to-morrow, by bringing the money to the blackmailers.

Q Weren't you afraid? A He gave me courage. He said "They wouldn't bother you, you are small, they wouldn't ---"

Q And the day before when he told you that he nearly broke your heart, is that right, that is what made you do it? A That is what made me do it --- friendship.

Q Did you go into his drug store often? A Certainly, I came into his drug store.

Q You never bought cocaine in his drug store? A I did.

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Q For whom, for you? A For me.

Q You used cocaine? A I used the cocaine, I cannot deny it.

Q When did you stop using it? A Since I was up here.

Q When? A Since my arrest.

Q Oh, only since your arrest you have used cocaine? A No, I stopped it.

Q How long did you use it before? A Well, I couldn't tell you how long, but I used it.

Q How often? A Well, very often.

Q About? Just give us an idea. A How can I give you when I ain't sure.

Q About once a week? A No, I can't say.

Q Once a day? A I couldn't answer that question. Very often, I told you.

Q A couple of times a week? A I couldn't tell you.

Q Once a week? A I couldn't say once a month, or anything. I am just saying very often. It can be four times a week, it can be once a week, and it can be once a month, it can be once a year or twice a year or three hundred and sixty-five times a year.

Q Is it more than once a year?

BY THE COURT:

Q In your case, he means, how often did you use it?

BY MR. MEDALIE:

Q You yourself, how often have you used cocaine? A What do

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you want me to say?

Q The truth? A Very often.

Q How often, once a month? A Once a month?

Q At least once a month? A Why, no.

Q At least once a week? A Certainly, about, yes, sir;
about that.

Q And possibly twice a week? A No.

Q But at least once a week? A About once, yes.

Q What did you pay for cocaine every week? A What do I
pay? A little twenty-five cents worth.

Q And you snuffed it? A Not all, just to keep it.

Q To snuff it up through your nose? A That's right.

Q Where did you learn how to take cocaine? A I learned it,
I saw a boy.

Q In the street? A In the street, and he was doing that, so
I said, "Let me see", and he says, "Take that, it is good for
your cold", so I took it and it made me all excited, I didn't
know where I was, I was drunk like.

Q You did not use that in the piano factory? A No.

Q You did not learn it there, did you? A No.

Q Where did you work at when you learned it? A 116th street
and Third avenue, Second and Third avenues.

Q How about the barber shop on 112th street, right opposite
Mirendi's place? Did you hang out there very much? A Oh, when
I used to get my hair cut.

Q Where did you live? A 351 East 118th street.

1977

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Q Are there any barber shops on 118th street? A That is my barber.

Q How did you happen to go to this barber? A My uncle gets a shave there.

Q Did you meet your friends there? A No friends there.

Q The barber is a friend of your uncle's, is that the idea? A Well, I don't say he is a friend of my uncle, but he is his barber.

Q You get shaved there? A I get shaved there.

Q You do not shave very much, do you? A And hair cut.

Q And meet your friends there? A No friends.

Q Haven't you got any friends at 112th street? A Not on 112th.

Q Thereabouts. A 116th street and Third avenue.

Q That is as near as you come to 112th, to visit friends, is that right? You do not get to 112th street except to go to this barber? A To this barber.

Q That is the only reason for going there? A And for the cocaine.

Q Well, now, the barber is right opposite Mirendi's, your uncle is a friend of the barber? A Well, I ain't saying he is a friend.

Q Knows him pretty well? A Well, a customer there, I suppose he must know him pretty well.

Q Your brother can read Italian? A Can read in Italian as far as I know.

1978

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Q Write Italian? A Yes, sir.

Q Can your uncle read Italian? A Yes, sir.

Q Can your uncle write Italian? A Yes, sir.

Q Can the barber read Italian? A Well, I don't know his business about reading and writing; I know his business about barber, that is all I know.

Q How often did you meet your friends on 116th street with whom you snuffed cocaine? A On Saturday.

Q Is that the only time? A The only time.

Q So every time you met them and snuffed cocaine, is that right? A Well, I suppose so.

Q Do you know Morelli? A I never heard of that name.

Q Never heard of Nick Morelli? A No, sir.

Q Doesn't everybody in Harlem, in Little Italy know Nick Morelli? A Well, maybe they do, but I don't know.

Q You didn't have anything to do with him? A No.

Q And you didn't hear about him from your friends on 116th street with whom you snuffed cocaine? A No, sir, I hang out with American boys.

Q Can you give me a good reason why the complaining witness should invent this story about you? A Yes, sir.

Q Now, give me the reason. A Because I was very sick of this cocaine and I used to buy the cocaine there, and he said "Tell all the boys that I sell the cocaine too." So I says "All right, I will tell them." I used to tell the boys and everything. Well, finally one day a fellow used to work

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1979

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in Shubert's factory in the varnish department, and he used to use it --- finally one day I heard that he was dead, and that this drug store used to sell it to him, this Mirendi. You say "How do you know?" Because he was working with me and I used to find out.

Q He used it in the factory? A In the factory, I couldn't tell you. I never saw him use it in the factory.

Q He is one of your friends on 116th street? A No, sir, he is a friend going to work, and I supposed that was why.

Q Because somebody else died from cocaine he was going to have you sent to prison? A No, because he was afraid of me informing the police that he used to sell cocaine.

Q Well, you did not notify the police? A No.

Q You didn't tell him you were going to notify the police?

A But in his mind ---

Q Will you be kind enough to tell me whether you ever threatened him to tell the police that he was selling cocaine?

A No, sir.

Q So far as you know you have no reason to believe that he was afraid of you, from what you know? A Sir?

Q You never threatened him? A Once I went in there and I says, "How can you get this habit away?" I told him, "I am tired of this habit, you want to do something for me and see how I can get away from this habit." He says, "I can do you nothing." I said, "You ain't a druggist man --- couldn't you notify me some place?" He said, "This ain't my drug store, I

1990
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have got it under a different name, see?"

Q You never told him you were going to go to the police? A No, sir.

Q And you never did go to the police? A No, sir.

Q You never threatened to do him any harm? A No, sir.

Q So he didn't know that you had anything against him, did he? A I suppose he did.

Q Well, did you say anything that led him to believe that you had anything against him? A Why, I told him that I was dying from the stuff --- "You have to tell me how to get rid of this stuff."

Q Well, you are not dying? A Well, now I ain't. I ain't dying, because I got took care of up here.

Q He did not send to your house for you, did he? A No.

Q He just happened to see you in the drug store --- in the barber shop across the street? A Barber shop.

Q He sent his little boy for you, that is the only way he saw you in connection with this case, is that right? A Yes.

Q He did not call at your house himself? A No, sir.

Q He never sent anybody up to your house so far as you know? A No.

Q And if it was not for the accident of your being at that barber shop the day before you were arrested, he might never have seen you? A Maybe. The way that officer said he marked the bills, the dollar bills there, two days before my arrest, don't you see they had it marked out already the way they were

1961
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going to trap me up.

Q Even before they saw you they had you in mind? A Well, the way they make claims there.

Q Before they even knew you would be on 112th street they had it already to put it on you? A Well, the way they marked out I know, by the way they say. I can't say ---

Q How about Panavino, what did he have against you? A The first one?

Q The first one, that is right? A Nothing.

Q You don't know him? A I don't know him at all.

Q How about De Martini, what did he have against you? A Nothing; I don't know him at all.

Q But what Panavino says is false? A He ---

Q You heard Panavino yesterday testify against you? A Well, half is true and half is false.

Q The part where you said that you took the whole responsibility for this is false? A Yes, and when he said that I tapped him on the shoulder, that is all false, and mentioned a name which he was not supposed to mention.

Q Why wasn't he supposed to mention it? A Because the way they figured it out if I don't give away on some body I get found guilty, and if I don't give way on them I get found guilty just the same. Don't you see, the money holds me, the way they figure that the money holds me for conviction and then ---

Q Now, tell me about De Martini, did he have anything against you that you know about? A No, sir.

1982

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Q You never saw him before, did you? A No, sir.

Q Why did he make this up about you? A What?

Q Do you know why he should make this up about you? A No, sir.

Q Just to help Mirendi put you in a trap, so that two days before, at least the day before they saw you at the barber shop they decided to mark bills and put them in your pocket? A Well, this was true through Cassetti.

Q He is the man that put it on you? A Yes, sir.

Q Do you know Cassetti? A I know him.

Q How do you know him? A I know him.

Q How? A Well, people showed me, "There is Detective Cassetti."

Q Everybody in Little Italy and Harlem knows Officer Cassetti? A I don't know if they do or not.

Q Well, you knew him? A I knew him.

Q He was pointed out by friends of yours on 116th street?

A Yes, on 116th street.

Q They were afraid of him? A I suppose so.

Q Some of your friends have been in prison, haven't they?

A No.

Q Sure? A Certainly.

Q Why should they have any grudge against Cassetti? A They didn't have no grudge. They just said "There is Cassetti that frames up everybody."

Q So he framed up you? A Yes, sir, he did.

Q And Acting Captain Jones, did he frame you up too? A

1983
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Captain Jones?

Q Yes, he had the bills marked, you know. A I don't know if he did or not.

Q Nobody pointed him out to you in the street? A No, sir.

Q But they pointed out Cassetti. That is where you believe Cassetti joined in a conspiracy to ruin your wife, is that right? A I suppose so.

Q But you never did Cassetti any harm?

MR. KIEFER: No evidence of a conspiracy by the police to ruin that boy.

MR. MEDALIE: There is by the complainant, the defendant says here. I admit that it is not evidence, but the defendant says so.

MR. KIEFER: You say so.

MR. MEDALIE: No, I don't --- the defendant says so.

Q You never had any business with Cassetti? A Once that I remember.

Q Now, come on. A I was standing in 116th street. He says, "What do you do for a living?" I said, "None of your business," I didn't know who it was. He said, "You are a little snot nose." I said, "Who are you, anyhow?" He says, "Never mind who I am, move." I says, "I can stand over here and don't bother nobody, can't I?" He said, "No, you can't stand here"; so he says, "Move, or I will give you one in the jaw." That is the way he is supposed to be great, but it is all frame up, you know. Do you know what he is? He has a character---

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1985

Q Did he graft from you? A No, he grafted from people.

Q Did your friends tell you that on 116th street? A Well, I find out now.

Q From your friends? A From my friends.

Q Now, listen to me. He made you move off the block, didn't he? A Yes.

Q He made you get off the corner? A Yes.

Q Made you and your friends walk? A Yes.

Q Now you remember that? A Yes, sir.

Q You didn't think of it before, but you know that now --- he chased your friends off the block too, didn't he? A No, he chased me, just me.

Q Picked you out from the whole crowd? A No, there was nobody there at all. I was waiting for one of my friends.

Q And he made you get off the corner? A Made me get off the corner.

Q That corner is sometimes an unsafe place, isn't --- 116th street and Third avenue? A Between Second and Third?

Q Yes, when the gang is there? A I don't think so.

Q There is no gang there? A No, I never bothered --- nobody ever bothers anybody there.

Q Is that the only place where you meet your friends? A That is the only place.

Q No saloon? A Never went to a saloon.

Q No barber shop? A Barber shop? A Well, once in a while I meet somebody, customers, at the barber shop and I talk to them.

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Q Whom you also meet on 116th street? A No, sir.

Q In other words, your friends go to a different barber shop than you do? A I suppose so.

Q And there is no place in doors where you meet them, is that right? A No, sir.

Q Not a single place? A Not a place. In the candy store. Excuse me, there is a candy store on 116th street.

Q 116th? A 116th street and Third avenue.

Q That is where the gang hangs out? A It ain't no gang, everybody is working.

Q Your friends? A Friends, I meet them there when I want to meet them, because I live a different block and I have to go there.

Q Well, you never gave Mirendi the impression that you were connected with blackmailers, did you? A Never.

Q So that he did not pick you out for that reason, did he?

A No.

Q The only reason he picked you out was to do you harm? A To do me harm.

Q Did the druggist tell you about receiving word over the telephone, who the man was that you were to give the money to?

A No, sir.

RE-DIRECT EXAMINATION BY MR. KIEFER:

Q Did he talk to you about a telephone at all, a telephone call at all? A No, he just simply mentioned, "I received a telephone".

1986

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Q Who was the boy that died from cocaine, that you speak of?

A Solly.

Q Where did he live? A 326 East 113th street.

Q Did you know him at all? A I know him from the shop where he was working.

Q Do you know another boy up there by the name of "Crazy"?

A Joe?

Q Yes. A Yes, sir, I knew him.

Q Are they patrons, do you know, of the drug store?

MR. MEDALIE: I object to that. He cannot attack the credibility of the witness collaterally.

THE COURT: Objection overruled.

Q Do you know whether they bought cocaine of this druggist?

A Yes, they buy it there.

BY THE EIGHTH JUROR:

Q Did Mirendi tell you that he pawned some jewelry to raise that money? A No, he just said that "I will send my wife to pawn some jewelry and then sum up the money and bring it over there."

MR. KIEFER: I would like to call the druggist's son, I see he is outside. I do not know his name, I never talked to him.

FRANK MIRENDI, called as a witness, not sworn, testifies as follows:

EXAMINED BY THE COURT:

Q How old are you? A Eight and a half.

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(The Court directs that the witness be not sworn.)

DIRECT EXAMINATION BY MR. KIEFER:

Q What did your mother say to you just now?

Objected to. Objection sustained.

Q Did you ever see this defendant here before? A Only once.

Q Where did you see him that time? A In the drug store.

Q Did you go out on the street and call him in? A No.

Q Are you sure about that? A Yes.

Q What did you do? A Nothing.

Q What time of day was it, do you know? A No.

Q Who else was in the store with you at that time? A Only me and my mother.

Q Your father was not there? A Yes.

Q Your father was there? A Yes.

Q What did your father say to you about this defendant?

A No, sir.

Objected to. Objection overruled.

Q Well, how long did this defendant stay in the store? A I forget.

Q Was it raining that day? A No.

Q It was not raining? A No.

THE COURT: If you change your first question I will allow it.

BY THE COURT:

Q Did your mother say anything to you just now? A No.

BY MR. KIEFER: Q When you came across from your mother just

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now before coming up to the witness stand?

THE COURT: He did not come across with his mother.

BY THE COURT:

Q Did your mother speak to you since you were called to the witness stand? A No.

F E R D I N A N D C O L O R A (351 East 118th street), called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. KIEFER:

Q You are the brother of the defendant? A Yes, sir.

Q Were you with him on the 4th of August, in the afternoon of this year? A Yes, sir.

Q Will you state to the court, at that time were you at 112th street with him? A Yes, sir.

Q What occurred at that time? A Me and my brother, we was home, and by the doctor's orders I had to go out to get some fresh air, so he took me around the park. After a while he asked me if I wanted to get a shave and I said yes. We went over to the barber and I got a shave. After that it started in to rain, we got the lend of an umbrella off the barber, and we went outside and while we were going home the son, that little boy down there, of the druggist, he called my brother and he says, "My father wants to see you." So we turned around and the druggist made a sign to my brother to go over there, so my brother went in there and I stood outside because I was kind

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of sick and I didn't hardly, you know notice the people, and after a while my brother came out and he called me, he says, "Come on in." I went in there and the druggist, he let me see a letter, he said, "Read that letter." I got the letter and I read it, and I couldn't hardly understand everything that was said in there, but it said if he was afraid to bring that money to Bronx Park to send somebody that he knew. So he said to my brother, he says, "You are a good friend of mine", he says, "I know you are the only one that can do this favor for me." So my brother says, "How can I do you that favor, I have got my brother here with me?" So he says, "No, you have got to do me this favor." And he started in to cry, and he said like this: "I will do anything as long as they leave me alone." He says, "You go up to those people and try to find out who are those people." So my brother, after he said, "Maybe somebody is trying to fool you, don't minf about those letters."

So the druggist said, "No, this ain't the first letter that I received; I received about four or five letters." So my brother says like this to him, he said, "If I hear anything I will be too glad to tell you", and that was all and we went out.

Q Had you been ill up to that time? A Yes, sir.

Q Where were you during your illness? A In a hospital.

Q Where is the hospital? A Ward's Island.

Q How long were you there? A About three or four months.

Q What did you do after that, after this letter was read, what

1990

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did you do? A We went home.

Q Were you ever convicted of a crime? A No, sir.

CROSS EXAMINATION BY MR. MEDALIE:

Q You started from your home on 118th street for a walk?

A Yes, sir.

Q You were going to the Park? A To get some fresh air.

Q And then so much time was wasted in the barbershop and in Mirendi's drug store that you went home? A Yes, sir.

Q So you did not go to the park because too much time had been taken up already? A No, we did go to the park.

Q Oh, you were coming from the park? A We were coming. It was in the park that my brother asked me if I wanted to get a shave.

Q Tell me just what Mirendi asked your brother to do?

A Because he knew him, he knew him as a friend.

Q No, I didn't ask you that. What did Mirendi ask your brother to do? A He asked him to do the favor to try to find out those people for him.

Q Your brother was to find out who these people were?

A Yes, sir.

Q What was your brother to do to find out who these people were? A He was supposed to go to this Bronx Park.

Q And what was he to do in Bronx Park? A To talk to those people, to tell them to leave him alone, he is only a poor man, and all that.

Q Your brother didn't know who these people were? A No, sir.

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Q How was he to find out who these people were? A Because they were to make a sign. I don't know what they were going to have, either a handkerchief or a rose and they were to tip their hat; somebody was to tip their hat.

Q And that is how your brother was to find out who they were?

A Yes, sir.

Q Your brother after finding out who they were was to tell Mirendi, is that right? A What they said, yes, sir.

Q To see what he could do to avoid paying them? A Yes, sir.

Q So that he would not have to pay them? A Yes, sir.

Q Your brother was to help Mirendi who the people were?

A Yes, sir.

Q And then get after them? A I don't know about that, the getting after them.

Q But when you were there with your brother, Mirendi asked your brother to go to Bronx Park, meet these people, find out who they were and then go back and tell Mirendi? A Yes. When my brother was going to go to this Bronx Park ---

Q No, no, what did Mirendi ask him and what did Mirendi say to your brother when you were there, not when you were not there? A When I was there, that is the only thing, that is the truth what I tell you.

Q That your brother was to go to Bronx Park and speak to these people, is that right? A Yes, sir.

Q Find out who they were? A Yes, sir.

Q What they wanted, come back, is that right? A Yes, sir.

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Q And tell Mirendi and then Mirendi would try and connect with the police and see what could be done to catch them? A Yes.

Q Is that right? A Yes, sir. My brother told Mr. Mirendi to notify the police and he said that he didn't want to have nothing to do with the police; he said "I never snitched on anybody".

Q But still your brother was to come back and tell Mirendi so Mirendi could go to the police any how? A Yes.

Q Now, that you are sure about? A Yes, sir.

Q You are not mistaken about that? A No, sir.

Q You are certain about that? A Yes, sir.

Q That is all that was said at that time? A That is all that was said, and I don't know nothing about it.

Q And your brother was to go that night to Bronx Park?

A Not that night. My brother says, "I will be too glad to tell you." What happened after that I don't know.

Q Was your brother to come back to Mirendi the next day?

A I guess so.

Q Did Mirendi tell your brother to come back to his shop the next day? A Well, of course, he must have told him that.

Q Well, you heard him? A I don't know it.

Q When you were there what was said about your brother seeing Mirendi again --- nothing? A Well, about what happened the next day I don't know nothing.

Q No, I am not talking anout the next day. After your brother and Mirendi got through talking about your brother going

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to Bronx Park, when was your brother to go back --- the same night? A I don't know.

Q Nothing was said about that? A I don't know, because I didn't want to hear anything else.

Q You can read Italian pretty well? A Yes.

Q And Mirendi showed you the letter? A Yes.

Q What time that night was your brother to go to Bronx Park, eight o'clock, or eleven o'clock or five? A I couldn't tell you, I don't know.

Q You read the letter, didn't you? A Not all of it. Why, he seen that I couldn't hardly read it.

Q Did you read this part of it, "To-morrow night at half past twelve a. m., take the money with you to Bronx Park"? A That ain't the one.

Q What? A That is not the one that I read.

Q I show you People's Exhibit 1, read the beginning of the letter and tell me if you remember reading that letter? A The letter that I read had a hand stamped on the heart.

Q It had a hand and a heart and a lot of pictures? A It was printed on, yes.

Q I show you People's Exhibit 1, has that got a hand and a heart and a few daggers? A Yes.

Q Well, that is the letter you read? A No, the letter I read, I think, was right on top.

Q I show you People's Exhibits 1 to 6; I ask you to look at all of those letters and tell me which of those letters the

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complaining witness Mirendi showed you? A I can't find that letter here.

Q You have examined all of the six letters that I have shown you, including Exhibit 1 that has got the picture of a hand, heart and several daggers? A That is one letter that I read had all them things printed on it.

Q You do not recognize any of these six letters? A No, sir.

Q Even the one I showed you with the picture of the hand and the heart and the daggers --- you do not recognize that one either? A No, sir.

Q The letterhead you say was altogether different? A Yes, sir.

Q You are sure you saw a letter? A I saw it.

Q That you are sure of? A It said something about the Bronx Park in there.

Q That is right, the letter you saw said something about the Bronx. It didn't say anything about going to the Bronx on Sunday night, did it? A I don't remember, because Mr. Mirendi took the letter off me and when he read it he explained it all himself.

Q But that night after your brother got through talking to Mirendi he was to go up to Bronx Park? A I don't know nothing about it.

Q I mean, that was what was said between Mirendi and your brother, isn't that right? A Yes, sir.

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RE-DIRECT EXAMINATION BY MR. KIEFER:

Q Did you hear his question, what he asked you, did you understand his question? A He said about going to the Bronx Park that same night. Now, when I say the truth, I don't know nothing about him, about going to the Park, I didn't talk about going to the Park. The only thing my brother says, "If I find out anything I will be too glad to tell."

RE-CROSS EXAMINATION BY MR. MEDALIE:

Q Let me understand: your brother was going to find out who these people were without saying anything about Bronx Park, is that right? A Yes, because Mr. --- my brother thought that it might have been somebody, somebody else.

Q Oh, your brother was going to find out from certain people who they were? A No, he was going to find out, to see if he could hear something.

Q Where was he going to find that out? A Any place he wanted to go.

Q He did not mention Bronx Park, did he? A He was going to go there.

Q But how was he going to find out --- going to see all different people, is that right? A Yes, sir.

Q He was going to ask in different places? A To see if they knew anything about it.

Q Did he mention anybody? A No, sir.

Q Sure? A Yes, sir.

Q Didn't he say he would find out about Nick Morelli? A No.

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Q Didn't say anything about that? A That name ain't mentioned at all.

Q But he would ask different people, is that right? A No. But he was going to go to the Bronx Park, the way I heard it.

Q Well, but you heard your brother and Mirendi say --- A I heard Mr. Mirendi was to find somebody else, he was afraid to go himself, to get a partner to go with him.

Q But your brother was to find out who these people were? A Yes, sir.

Q And he was going to ask different people if they knew about it? A Yes, sir.

Q You don't know who he was going to ask? A No.

P A O L A G I T T O (2237 Second avenue) called as a witness in behalf of defendant, being duly sworn, testifies as follows: (Through Official Interpreter Vilamena)

DIRECT EXAMINATION BY MR. KIEFER:

Q Are you the uncle of the defendant? A Yes, sir.

Q Does he work for you? A Yes, sir.

Q How long has he worked for you? A More than one year.

Q Where? A 139th street and Fifth avenue, with the Shubert Piano Company.

Q Do you know Mr. Mirendi, the druggist? A Sure, we come from the same town.

Q Did you go to school with him?

Objected to. Objection overruled.

A No, sir.

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Q Have you visited at Mr. Mirendi's house and has he visited at your house? A Always, yes, sir.

(The Court now declares a recess till 2 p. m., first duly admonishing the jury in accordance with law.)

After Recess, Trial Resumed.

S A D I E C O L O R A (351 East 118th street), called as a witness in behalf of defendant, being first duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. KIEFER:

Q You are the mother of the defendant? A Yes, sir.

Q Does he live with you? A Yes, sir.

Q And has he been working right along? A Always.

Q After his arrest on August 5th, did you have a conversation with the complaining witness, Mr. Mirendi? A Yes, sir.

Q What did you say and what did he say?

MR. MEDALIE: That is objected to. The only possible purpose is to impeach the witness Mirendi, who was not asked concerning any conversation.

THE COURT: A conversation about what?

MR. KIEFER: A conversation about the arrest of the defendant and why he had him arrested.

THE COURT: I will allow it and I will allow you to question the witness, if you wish.

A I went to Mr. Mirendi after my son was arrested, and I asked him, "What did you have my son arrested for?" And he says to me

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"For suspicion. I received letters. I know that he didn't write these letters, but I wanted to find out who wrote these letters."

CROSS EXAMINATION BY MR. MEDALIE:

Q Did Mr. Mirendi tell you that he asked your son to go and look for the man who wrote the letter? A No, sir.

Q Do I understand that Mr. Mirendi wanted your son to find out who wrote the letter? A He said that through the medium of my son he wants to know who was the one that wrote this letter.

Q Did he say he asked your son to find out? A No, sir.

RE-DIRECT EXAMINATION BY MR. KIEFER:

Q Are you from the same town in Italy which Mr. Mirendi came from? A Yes, sir.

Q How long have you known Mr. Mirendi? A A long time.

MR. KIEFER: Defendant rests.

V I T O M I R E N D I, the complainant, recalled by the People in rebuttal, having been previously duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. MEDALIE:

Q After the defendant was arrested did his mother call on you? A Yes, sir.

Q How soon after? A Two days after.

Q Please give the entire conversation? A Two weeks after the defendant was arrested, his mother come to me and says to

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2000

me, "What did you have my son arrested for?" I says to her, "Because he took my money"; and she says, "Well, he knows nothing about this, please do not be hard on him, try to pardon him." I says to her, "Well, if your son tells me who are the others I will pardon him, I will be easy with him." And she says to me, "Well, anyway, my son is under age, he only could get three years", and so forth.

Q Did you ever tell his mother that you only had him arrested because of a mere suspicion? A No, sir.

Q Did you ever tell his mother that you did not believe or were not certain he was one of the persons who attempted to extort money from you? A I never thought before he came to me that he was the one implicated in it, but when I see that somebody touched me on my shoulder then I believed that it was him.

Q On the day before his arrest did you send your son to the barber shop to call the defendant? A No, sir.

Q Did you see the defendant at all on the day before his arrest?

MR. KIEFER: This was all answered yesterday. He said, I think, that he came there at 4 o'clock on the afternoon of August 4th.

THE COURT: Objection overruled.

A I don't remember.

Q Well, did you see him on the day before? A I couldn't say. I don't remember.

BY THE COURT:

Q Did you talk to him about this case the day before? A No.

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BY MR. MEDALIE:

Q Did you see his brother on the day before? A No, sir.

Q Did he and his brother come to your drug store together at any time? A No, sir.

Q Did you show his brother any of the letters that you had received? A No, sir.

Q Did you ever ask the defendant to find out for you who were the persons who were attempting to get this money from him? A No, sir.

Q Did you ever ask this defendant or his brother to help you in any way in connection with this case? A No, sir.

Q Did you ever sell cocaine to anybody except upon the prescription of a doctor? A Never.

Q Did the defendant ever come to you and ask you to find some means for curing him from the cocaine habit? A No, sir.

CROSS EXAMINATION BY MR. KIEFER:

Q When did you last fill a doctor's prescription for cocaine?

A Quite a long time ago.

Q How long ago? A About a year.

Q You said last night you hadn't any in your store in six years, since you have been there?

MR. MEDALIE: He didn't say that.

THE COURT: I think you have gone far enough into this cocaine matter. I allowed you to introduce testimony contradicting him, although strictly speaking you were not entitled to that testimony. The only purpose of that

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cocaine testimony is that it is to be considered by the jury on the question of his credibility. We are not trying that issue here.

MR. MEDALIE: People rest in rebuttal.

C A S E C L O S E D.

MR. KIEFER: Now, if your Honor pleases, I move that the letters marked Exhibits 1 to 6 be stricken from the record upon the ground that the same have not been connected with the defendant.

Motion denied. Exception.

MR. KIEFER: I also move further to the same effect, that the Court should decide the question of that as to whether or not they are properly admitted in evidence.

THE COURT: There is some testimony for the jury to consider. The Court is not obliged to pass on the weight of testimony; the jury must find the facts.

MR. KIEFER: That is not my motion, if your Honor pleases.

THE COURT: I am denying your motion, and I am explaining to the jury that it is a question for them to decide, whether the defendant has been connected with the letters or not.

MR. KIEFER: That is the only question in the case, then, I take it.

THE COURT: Oh, no, the question in the case is whether

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the facts viewed in the light of the law and the Court will explain it to the jury, satisfy them beyond a reasonable doubt that the defendant attempted to extort money from this complainant; and if they are not satisfied of that by all the evidence, beyond a reasonable doubt, they must acquit him. If they are satisfied with that it is their duty to say so by a verdict of guilty.

MR. KIEFER: And on your Honor's own statement, if the letters are not in evidence ---

THE COURT: They are in evidence.

MR. KIEFER: I mean to say, if they are in evidence and this defendant is not connected with them, my understanding was that the case was to fall.

THE COURT: The jury must decide whether the letters were ever written, whether they were ever received, or whether this defendant was concerned in the sending of them, that's all.

MR. KIEFER: Yes, sir, that is the case.

THE COURT: Yes.

MR. MEDALIE: Pardon me. I did not intend to participate in this, but Mr. Kiefer seems to be under the impression that that is the sole question in this case.

THE COURT: Well, I have already told him that it is not. The question is whether the evidence satisfies the jury of the truth of the charge in the indictment.

MR. KIEFER: May I have the indictment then.

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THE COURT: The indictment does not say anything about letters.

MR. KIEFER: With your Honor's permission I will start in in a moment, and I shall be brief, I will not take a great deal of time.

THE COURT: You may have all the time you wish.

Counsel now close to the jury.

The Court now charges the jury as follows.

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CHARGE OF THE COURT, MULQUEEN, J.

THE COURT: Gentlemen of the jury, this defendant has been indicted by the grand jury of the crime of an attempt to commit the crime of extortion. The indictment charges that on the 5th of August, in this year, 1913, in the county of New York, the sum of \$25, lawful money of the United States of America, and of the value of \$25 of the property, moneys and personal property of one Vito Mirendi, who had a wife and four children then and there living, and who was then the proprietor of a certain drug shop, he feloniously did attempt feloniously to obtain from the said Vito Mirendi, with his consent, which he, the said Lorenzo Colora then and there feloniously did attempt to induce by a wrongful use of fear on the part of the said Vito Mirendi, by means of then and there orally and in writing threatening the said Vito Mirendi to do an unlawful injury to his person and property and to certain of his relatives and members of his family, that is to say, to kill him, the said Vito Mirendi and his said wife and children, and to injure and destroy his said drug store, unless he, the said Vito Mirendi, would pay to him, the said Lorenzo Colora, the said sum of money, with intent thereby to induce such fear as would on the part of said Vito Mirendi, so that he being put in fear

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thereby would pay to him, the said Lorenzo Colora, the said sum of money, against the form of the statute in such case made a provided and against the peace of the people of the State of New York and their dignity.

The indictment is somewhat lengthy, but the substance of it is very simple; namely, that this defendant feloniously did attempt feloniously to obtain \$25 from Vito Mirendi by the wrongful use of fear, induced by threats made orally and in writing, to do an unlawful injury to Vito Mirendi, that is, to kill Mirendi and his wife and children, and to injure and destroy the drug store, unless he paid the said sum of \$25.

The indictment charges merely an attempt. That is, the People claim that Mirendi was not frightened, and instead of being frightened he refused to pay the money, and that, therefore, the defendant failed to accomplish the crime and was not guilty of extortion, but was guilty of an attempt to commit the crime of extortion.

You understand that this is not an action between Vito Mirendi and Lorenzo Colora. It is entitled the People of the State of New York against Lorenzo Colora, and you know by this time that that term "People of the State of New York" is the legal name of all the people living in this State; the union or society or organiza-

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tion, whatever you wish to call it, comprised of all the people of every race, and every creed and every color and every condition living within the borders of this State. That great society consisting of ten millions or more of people have their own notions of right and wrong, and they pass laws, as they have the right and the power and the duty to do, to protect the lives and fortunes and liberty of all the people living in this State, and whoever violates those laws is guilty of a crime.

The people charge that this defendant did the certain acts set forth in the indictment and that those acts are a violation of one of the statutes made for the protection of all of the people of the State and they say that that would be wrong not to Vito Mirendi but to the people of the State of New York, a violation of the statute, against the peace of the People of the State of New York.

The statute referred to is known as Section 850 of the penal law. Extortion is the obtaining of property from another, with his consent, induced by the wrongful use of fear, or under color of official right. This case is not extortion, but an attempt to commit the crime of extortion, because Mirendi was not frightened.

Section 851 prescribes or sets forth what threats may be the basis of this criminal charge. It says that

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fear, such as will constitute extortion may be induced by an oral or written threat to do an unlawful injury to the person or property of the individual threatened, or to any relative of his or to any member of his family. There are other subdivisions but they do not concern this case. The threat set forth in the indictment is to do an injury to his person and to his family, by killing them and an injury to his property by destroying it, so it is embraced within the first subdivision.

The People allege that the defendant failed to create any fear in Mr. Mirendi's mind, that Mr. Mirendi did not become frightened by the threat and that, therefore, he refused to give up his money through fear; and the defendant, instead of being guilty of extortion, which would have been the charge of Mirendi had been actually frightened and had paid money through fear was guilty only of an attempt to commit the crime.

An attempt to commit a crime is defined in Section 2 of the Penal Law, entitled "Definitions: attempt to commit a crime":

"An act done, with intent to commit a crime and tending but failing to effect its commission, is an attempt to commit that crime."

That is, the People charge that threats were made, that these were acts done with intent to commit a crime,

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that they tended to effect the commission of the crime, that they were adapted to the promotion or creation of fear in the mind of Mirendi, but that they failed to accomplish their object, and therefore, instead of being extortion as I told you before, the crime charged is an attempt to commit the crime of extortion.

That statute is very plain and the indictment is very plain.

You understand that the defendant is presumed to be innocent. Under Section 389 of the Code of Criminal Procedure, the People are obliged to establish his guilt beyond a reasonable doubt; otherwise he is entitled to an acquittal. That section is as follows:

"A defendant in a criminal action is presumed to be innocent until the contrary be proved, and in case of reasonable doubt whether his guilt is satisfactorily shown he is entitled to an acquittal."

That is, our law does not say to a defendant, "Here, you are charged with this crime, you must prove your innocence." The contrary is true. The law says that this defendant is to be regarded as innocent until his guilt is proved; and the burden of proving it is on the People, who have their lawyer here for that purpose. The People elect their own lawyer. He is called the District Attorney, and he or his assistants represent the People in these

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criminal actions and it is their duty to present to you evidence on which they claim the defendant's guilt is based. The defendant has the right to be confronted with the witnesses and has the right to give evidence himself, to be represented by counsel, to cross examine witnesses, to call witnesses and then the whole case is to be submitted to you; and if you are satisfied that the evidence proves his guilt beyond a reasonable doubt then you must find him guilty. If you have a reasonable doubt of his guilt you must acquit him under that section of the law.

The Judge must pass on the legal questions that arise from time to time during the trial and must see that the defendant receives a fair trial, that is, a legal trial; the Judge must also instruct you in the law.

It is your duty to take the law from the Court without question. You must not question any ruling of the court. You must keep the law in mind and use it as a light or a guide to view the evidence, to weigh the evidence, and then your judgment of the facts is supreme. No one has the right to find the facts but you.

Facts are proved by the testimony of witnesses or by exhibits, documents, such as have been introduced in this case. You must take all that evidence and weigh it. If there is a conflict in the testimony you must decide what

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witnesses, if any, told the truth. That is, you pass on the credibility of witnesses. You saw all the witnesses, you noted their manner, their appearance, and you will form your own estimate of their character. There is no rigid rule to guide you. Jurors must use their own good sense and good judgment in weighing the evidence and deciding on the credibility of witnesses. It is proper for you to consider the motive, if any, which the witnesses might have had. You may consider what motive witnesses of the people may have had to testify falsely against this defendant. Has any such motive been shown? That is for you to say? If so, you must consider it. So with the witnesses for the defendant. Has any motive been shown here? Is any reason in the relationship or in any other fact or circumstance which would lead any of these witnesses to testify to what was not true to save the defendant? Has the defendant told the truth here, or has he been swayed by the fear of punishment for crime, and was he thus ready to say what was not true? You will have to consider all these things in determining the credibility of the witnesses.

The complaining witness, Mr. Mirendi, was cross examined at considerable length. He was asked about his treatment of his first wife in Italy, and various other

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things, like selling cocaine. While those questions had no direct bearing on this case, they were intended to affect his credibility. You must pass on his credibility. It is always proper to show that a witness has been convicted of crime, or has committed disgraceful or improper acts. The counsel who ask the questions are bound by the answers of the witnesses. So that, you must remember that the mere asking of a question is no proof that a witness is a person of bad character. On the contrary, you must take his answer as conclusive on that subject --- with the one exception that if you ask a witness if he has not been convicted of crime, then if denies it you can prove that he has been convicted. There has been no such proof here.

It is a violation of the law to sell cocaine, except under the circumstances prescribed by statute, and the complaining witness says that he has never violated the statute, and there is no proof here that he ever did. I allude to this because counsel went to extremes, I think, in asking the witness questions. It is the duty of counsel to protect the interests of his client and to use such skill and industry in having the truth brought out as he can, but, as I told you before, the truth is not established by questions only; you must take the questions and

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the answers. So much for the question of credibility.

The indictment alleges that threats were made orally and in writing. If threats were made orally by this defendant that would be sufficient to sustain this indictment; or, if they were made in writing by this defendant, that would be sufficient. The written threats are alleged to be found in certain letters introduced before the Court, and counsel for the defendant insists that those letters have not been brought home to this defendant. That is a fact for you to find. At the beginning of the case I said that if it was not shown that the defendant had written the letters or been concerned in the writing of them, the case would fall, because it would have been improper to introduce them; but you remember that Mr. Mirendi testified that he had been called to the Telephone and asked why he had not paid the money; and also that he was told that some one would call at his shop in an hour and tap him on the shoulder, and that he should give the money to the person who made that sign. Then he says this defendant called and tapped him on the shoulder. That was why I admitted that telephone conversation, although it was not shown by the People that this defendant was the one who telephoned. Whether he telephoned or not is not material. The rule is that if two or more

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persons are concerned in the commission of a crime, all are equally guilty. One who aids, abets, advises or counsels another in the commission of a crime is guilty, whether he be actually present or absent when the crime itself is committed. Section 2 of the Penal Law defines a principal as follows: "A person concerned in the commission of a crime, whether he directly commits the act constituting the offense, or aids or abets in its commission, and whether present or absent, and a person who directly or indirectly counsels, commands, induces or procures another to commit a crime is a principal."

Whether there was one person or ten persons concerned in this they were all equally guilty and the question for you to say is whether the proof shows you first, whether any crime was committed, whether any attempt was made to create fear in the mind of Mr. Mirendi and get his money by means of threats? Were any threats made to him? Do you believe those letters were ever written to him or received by him or that any threat was made over the telephone by any one? If so, if this defendant was concerned in that, connected with it, aiding the person making the threats or writing the letters, he was equally guilty, as if it were shown that he actually wrote the letters himself or made the threats.

When two or more persons conspire to commit a crime

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they are each equally guilty and each one is responsible for all the acts done by the others to accomplish the crime, to accomplish the common purpose, and whether he be present or absent when the act be done, or not.

You will remember also that Mrs. Mirendi testified, as I recollect, that this defendant after he got the \$11 and before his arrest, said, "Now, give me the letters." If you believe that testimony it is for you to say whether that connects him directly with the sending of these letters or shows knowledge on his part that these letters had been sent, and that he was acting in concert with the persons that sent those letters in an attempt to create fear in the mind of Mr. Mirendi and get his money.

It is for you to find the facts. If you believe, or have a reasonable doubt that he was asked by Mr. Mirendi to help him to stop the sending of letters to him, to placate these people who were demanding money from him --- in other words, to act as his friend, then acquit him; but if all the facts and circumstances in the case cannot be reconciled with any reasonable hypothesis of the defendant's innocence, if everything taken together, all the evidence, all the facts as found by you, satisfy you beyond a reasonable doubt of his guilt, then it is your duty to say so.

A reasonable doubt is a doubt that is based on reason

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and that reason is connected with the evidence or lack of evidence in the case. It is not based on sympathy or prejudice or a desire to avoid doing your duty if it is disagreeable. Those considerations should be absent from the jury box. The law simply asks you to be honest men, to be true to the oaths that you took to decide this case fairly between the people of the State of New York and the defendant. The People of the State of New York are not concerned especially about this complainant or that defendant, but they want all the people to obey the law, and they also do not wish any one convicted on insufficient or improper evidence or by improper means. So that you must weigh all the evidence fairly and weigh the testimony honestly and then each one will know in his heart what effect is produced on his mind by the testimony. And, as I said before, if that effect is a firm conviction to a moral certainty, if you were morally certain that this defendant was concerned in the sending of those letters, that he knew of them, that he was cognizant of them, that he approved of the plan, that he lent his aid to it, that he went to collect the money pursuant to specific information that was given to Mr. Mirendi over the telephone, then he was guilty whether he wrote the letters himself or not; but, as I said, if his connection with it was innocent, if he was brought into the matter at the request

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of the complainant, then it would be a great wrong to convict him.

Something has been said here about circumstantial evidence. There is some direct evidence here; that is, of his coming for the money. A number of witnesses testified about that; the detective who was there, and the wife and Mr. Mirendi himself. As I understand the defendant's testimony he admits that he received the money, but he denies that he got it for any improper purposes and there is no statement of any threat made by him at that time, so that the proof of any participation by him in the making of the threat depends on circumstantial evidence. Sometimes there is a prejudice against circumstantial evidence which is not warranted. Evidence is direct when the very facts in dispute are communicated by those who have the actual knowledge of them by means of their senses. There has been some direct evidence introduced here, given by witnesses who testified that they saw and heard the defendant say and do certain things; and there is documentary evidence supplied by letters as to the making of the threat, and then there is circumstantial evidence on which the People rely to connect this defendant with the making of those threats. Circumstantial evidence has been defined in the Court of Appeals in the case of the People

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against Carlyle Harris as follows:

"All evidence is, in a strict sense, more or less circumstantial, whether consisting in facts which permit the inference of guilt, or whether given by eye-witnesses of the occurrences; for the testimony of eye-witnesses is, of course, based upon circumstances more or less distinctly and directly observed. But, of course, there is a difference between evidence consisting in facts of a peculiar nature, and hence giving rise to presumption, and evidence which is direct, as consisting in the positive testimony of eye-witnesses; and the difference is material according to the degree of exactness and relevancy, the weight of the circumstances and the credibility of witnesses. the mind may be reluctant to conclude upon the issue of guilt in criminal cases upon evidence which is not direct, and yet, when the facts brought out, when taken together, all point in the one direction of guilt, and to the exclusion of any other hypothesis, there is no substantial reason for that reluctance.

"Purely circumstantial evidence may be often more satisfactory and a safer form of evidence, for it must rest upon facts which, to prove the truth of the charge made, must collectively tend to establish the guilt of the accused."

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"A fact has the sense of, and is equivalent to, a truth or that which is real. It is in the ingenious combination of facts that they may be made to deceive or to express what is not the truth. In the evidence of eye-witnesses to prove the facts of an occurrence, we are not guaranteed against mistake and falsehood, or the distortion of truth by exaggeration or prejudice; but when we are dealing with a number of established facts, if, upon arranging, examining and weighing them in our mind, we reach only the conclusion of guilt, the judgment rests upon pillars as substantial and sound as though resting upon the testimony of eye-witnesses.

"The necessity of a resort to circumstantial evidence in criminal cases is apparent in the nature of things, for a criminal act is sought to be performed in secrecy, and an intended evil-doer usually chooses his time and an occasion when most favorable to concealment, and sedulously schemes to render detection impossible. All that we should require of circumstantial evidence is that there shall be positive proof of the facts from which the inference of guilt is to be drawn, and that that inference is the only one which can reasonably be drawn from these facts."

I read this to you because it would not be fair for

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any one to say "No one is produced here who saw him write those letters, and, therefore, I do not believe him guilty." If his connection with those letters has been established beyond a reasonable doubt, if his knowledge of them, of his consent to their sending, of his acting in concert with the people who sent them in the effort or endeavor to create fear in the complainant's mind and get the complainant's money has been established to your satisfaction beyond a reasonable doubt, then he is guilty. If the evidence fails to impress you to that extent, then he is not guilty. Therefore, you will find him guilty of the crime of an attempt to commit the crime of extortion, or not guilty.

MR. KIEFER: I respectfully except to that part of your Honor's charge about the conspiracy to commit crime. I also ask your Honor to charge that before this jury can convict this defendant they will have to find from the evidence that a demand was made upon this complaining witness for \$25, as charged in the indictment.

THE COURT: I so charge. No matter what sum was mentioned in the letters, the indictment mentions the sum of \$25, that he demanded \$25. The complainant said he tried to get the \$25, but that he only gave \$11.

THE COURT: (Continuing) What do you wish me to

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charge on the question of conspiracy? What part do you object to?

MR. KIEFER: I have no further objection, Judge.

THE COURT: Well, I think what I said there is that this defendant is indicted as a principal. That everyone concerned in the commission of the crime, if more than one person be concerned in it, is a principal; and it may be shown on his trial that he acted in concert with others in the commission of the crime, although no mention of the others is made in the indictment. Whether he wrote those letters or not, if you are satisfied from the evidence that he was concerned in the writing of them, was cognizant of the writing of them, approved of them and lent his aid to the accomplishment of the purpose for which the letters were sent, and that that purpose was to instil fear into the mind of Mr. Mirendi, to get money from him, then you may find him guilty.

MR. KIEFER: On the question of materiality I said I would ask your Honor to charge on that one point, and I want to make good. If they find that a witness has lied as to any material point in the testimony, or any material part of the testimony, they may disregard his whole testimony.

THE COURT: Well, the word "lie", you know, is not

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generally used. It is a good, English word, and has a specific meaning. If a witness testified untruthfully on any matter, it might be either intentional or unintentional. A wilful misstatement where a witness knows what is true, yet deliberately states what is false, is a lie. It is the wilful statement of what is known to be false, which is meant by the law, not the unconscious or unintentional statement of what is false. The material allegations are the making of a threat, the nature of the threat, and the intent. Did he or did he not make any threats? And what kind of threats, if any, did he make? And what was the intent in making those threats. It would be perjury for any one to wilfully misstate facts on those points. If Mr. Mirendi never got those letters that he says he did, he is guilty of perjury and the law is that you may reject all his testimony, although you are not obliged to. He may tell the truth on every other point; that is for you to say. You may believe any or all of any witness's testimony, and in selecting the parts which you are to believe you should be guided by reason and judgment and not by prejudice, and you should not act hastily. If a witness says that he knew a man for five years when in fact he has known him for six years, that is the kind of a misstatement that would not constitute perjury, because that question is

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not material to the issue.

MR. KIEFER: In that respect I ask you to charge that that would affect the credibility of the witness.

THE COURT: I decline to so charge. It might be considered by you on his credibility, but it would not be perjury, it would not justify you in rejecting all the testimony of the witness; that would not be right. The jury has great powers, but you are not to exercise those powers like a Czar, you are bound by the law; your power is to be exercised within the law, and the law expects you to exercise reason and discretion. While you have the power to say "I won't consider such a man's testimony", unless you did that for the reasons assigned by law, namely, that the man had committed perjury during the trial, it would not be right for you to do that. It would be a crime on your part. You may believe that a witness made a misstatement on one point wilfully and deliberately, and yet that all his other statements were true, because they were corroborated by witnesses whom you believed. You may also consider on the question of credibility whether any witness deliberately made false statements about matters not material to the issue. Is that what you wish?

MR. KIEFER: That is all, your Honor.

THE COURT: Any requests, Mr. Medalie?

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MR. MEDALIE: No, your Honor.

The jury now retire to deliberate upon a verdict,
and upon their return render a verdict finding the de-
fendant guilty of the crime of attempted extortion.

(Defendant remanded for sentence.)

Stewart Liddell,
Official Stenographer.

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