

START

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CASE

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COURT OF GENERAL SESSIONS OF THE PEACE
IN AND FOR THE COUNTY OF NEW YORK

PART I.

-----X
THE PEOPLE OF THE STATE OF NEW YORK :

- against -

ROSARIO LITTLER and SIMEONE PALAZ- :
ZOLA, indicted with Antonio Rubiano :
and Pasquale Dekosa. :
-----X

1529
S e c t o r 1
Hon. JOSEPH T. BRIDGEMAN, J.
Clerk of Court.

New York, Thursday, May 4th, 1911.

THE DEFENDANTS ARE INDICTED FOR MURDER IN THE THIRD DEGREE.

INDICTMENT FILED APRIL 25th, 1911.

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

HAROLD C. BRIDGE, Esq., Assistant District Attorney,
For the People.

CHARLES BRANDEN STEIN, by James B. Brande, Esq.,
For the Defendants.

-----X
(A Jury is duly impaneled and sworn.)

(By order of the Court, all witnesses are ex-
cluded from the Court room.)

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THE PEOPLE'S CASE

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GIUSEPPE SANTILLO, called as a witness
on behalf of The People, being first duly sworn and
examined through the Official Interpreter, Mr. Villi-
mens, testified as follows:

DIRECT EXAMINATION BY MR. DETMERS.

Q What is your name? A Giuseppe Santillo.

Q Where was your place of business on the 18th and
19th of April, 1911? A 322 East One Hundred and Seventh
Street.

Q Were in the City and County of New York? A Yes,
sir.

Q What business did you do there? A Feather
business.

Q How many doors were there to your shop there?
A Two doors.

Q How many windows? A Four.

Q When you left your shop on the night of the 18th
of April, what time did you leave? A Seven o'clock.

Q Did you lock up the place yourself? A Yes, sir.

Q When you left, were the windows open, or closed?
A Closed.

Q Were the doors open, or closed, when you left?
A Closed.

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Q. Were they locked, or unlocked? A. The door that leads to the street I locked it by placing the two iron bolts in back of it. The door that leads in the hallway I locked it with a padlock.

Q. You left by the door that leads into the hallway; is that so? A. Yes, sir.

Q. What time did you return to your shop the next morning? A. About seven o'clock.

Q. Was the street door in the same condition when you got back in the morning as it had been the night before, or not?

MR. BLANDE: Objected to, on the ground it is too remote, from seven o'clock the night before until seven o'clock the next morning.

THE COURT: Objection overruled.

MR. PRATT: Exception.

THE COURT: If you object to the form of the question, I will have him change it.

MR. PRATT: Yes, sir.

A. The door that leads in the hallway was in the same condition I left it in the evening. The door that leads to the street I found five marks on.

MR. PRATT: I move the answer be stricken out.

THE COURT: Motion denied.

Q. Upon what part of the door were the marks?

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MR. BRADLEY: Objected to, on the ground it is incompetent, irrelevant and immaterial, and not binding on the defendants.

THE COURT: The question is allowed. If it is not brought home to the defendants, of course it will not affect them; but the whole case cannot be viewed at once. This is only a step in the proceeding.

MR. BRADLEY: But there is no foundation laid for it.

THE COURT: The Court allows the question.

MR. BRADLEY: Exception.

A Three of those marks were below the lock, and two were above.

Q Were those marks there the night before when you left? A No, sir.

MR. BRADLEY: You may examine.

CROSS EXAMINATION BY MR. BRADLEY.

Q Did you examine the door the night before?

A Yes, certainly, I saw it.

Q Do you examine the door every night? A Yes, sir.

Q And you examined it and looked to see if there was any marks on the door? A If there is any mark, I will see them.

Q I say but you examined the door for that purpose,

to find out if it has been marked?

THE COURT: The question has been answered. It does not make any difference what the purpose was for which he examined it. I have excluded the last question. He has answered that question.

Q You look the door from the inside of the store, do you not? A The door that leads to the street, yes, sir, from inside the store.

Q And you leave your premises to go home from a door leading into the hallway, and from the hallway to the street?

THE COURT: He has testified to that, Mr. Brande.

A Yes, sir.

MR. BRANDE: Not yet.

THE COURT: Yes, he has.

MR. BRANDE: Well, I want to make it plain.

THE COURT: It is plain enough.

Q So, by doing so, you do not go to the front door and look for marks, do you? You go right home?

MR. BRANDE: I object to the form of the question.

THE COURT: Objection overruled.

A The door that leads in the street is open all day, to let the employees in and out, and I see when I close it if there is any mark there or not.

Q Well, do you close the door from the inside of

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of the store ?

THE COURT: Well, he could see the door from the inside.

BY THE COURT.

Q What kind of door is it ? A (In English) The door opens inside to the store.

Q What kind of a door is it ? A One door.

Q And it opens into the store ? A Yes, sir.

Q And at night you close it and put a bar over it ?

A Yes, sir.

BY MR. BRADNE.

Q You opened the store at seven o'clock that morning ? A Yes, sir.

Q And when you opened the front door, who was in the store with you ?

THE COURT: If any one.

Q If any one ? A I was alone.

Q And at that time you had noticed nothing, had you ?

A Yes, sir, I noticed it was marked there.

Q Well, did you go to the police station ? A I saw that I did not have nothing to lose in the store. I took care of my business, preparing the work for the girls that were coming.

Q In other words, no property was taken ?

THE COURT: He has not said any property was

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taken.

MR. BRANDE: He said "In my store there was no property to loot." I want to know what he means by that. The crime charged is burglary.

THE COURT: He has testified there was nothing in the store.

MR. BRANDE: But I want to get the evidence in.

THE COURT: But it is in once.

Q The door was not broken? A No, sir, the door was not broken.

Q In other words, the door was in the same condition that you left it the night before, except, as you say, some marks were there? A Yes, sir.

THE COURT: That is perfectly plain from his testimony.

MR. BRANDE: That is all.

MR. DETMERS: That is all.

ANTHONY CAPOONE, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DETMERS.

Q What is your name? A Anthony Capone.

Q You are a police officer of the City of New York?

A Yes, sir.

Q Attached where? A Detective Bureau, Manhattan.

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Q Officer, in answering my questions, answer "yes", or "no", whenever possible. Simply state what you saw, and not what you heard, or what you think, and do not state any reasons. On the night of the 13th of April, where were you, about midnight? A 329 East One Hundred and Seventh Street, in the hall.

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

Q Which side of the street is that? A It is on the north side.

Q Were you alone, or in company with another officer? A Detective Magillio.

Q Was there with you? A Yes, sir.

Q Did you see those two defendants now at the bar on that night? A I did.

Q What time of night was it you first saw them? A About twelve-forty A. M.

Q Were they together? A The two with two others.

Q What direction did they come from? A They come from First Avenue, going towards Second.

Q And walking on what side of the street? A South side.

Q The opposite side from where you were? A Yes, sir.

Q What did you see them do, if anything? A As they were walking along, they were looking back towards

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First Avenue. When they reached in front of 322 this Palazzola was left with another young fellow named DeRosa on the sidewalk, looking up and down, and this Lieterri with Rubiano went at this store door.

Q The store at number 322 ? A 322.

Q When they went in towards the store door, what, if anything, did you see Lieterri do ? A Well, his back was towards us. I could see that he was moving his arms.

Q Moving his elbows ? A Moving his elbows.

Q And there was another man near him ? A Near him.

Q Not this other defendant here now ? A No, sir.

Q Palazzola was on the sidewalk ? A Palazzola was on the sidewalk.

Q What was Palazzola doing, if anything ? A Looking up and down the street.

Q How long did you watch ? A We watched about four or five minutes.

Q Did anything happen then ? A While we were watching them, an iron dropped.

Q Where ? A On the street, in front of the door; whatever it was, we didn't know, but the other two ran right out where Palazzola and DeRosa were standing.

Q What did they do when they ran out ? A They looked up and down the street. Then DeRosa, Lieterri and

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Rubiano went at the door again.

Q Leaving Palazzola outside ? A Looking up and down the street. We ran across. As we ran across, Littieri started to run, and I heard an iron, like throwing away, and Digilio ran after him.

Q Digilio ran after Littieri ? A Yes, sir.

Q You heard something fall ? A Yes, sir.

Q You grabbed the other three ? A Yes, sir.

Q Including Palazzola ? A I had Palazzola and the other two.

Q Rubiano and Demkosa ? A Yes, sir.

Q Did you at that time notice the door ? A Yes, sir.

Q At 302 ? A Yes, sir, we struck another, and we tried that iron - that iron instrument, and it just fitted the holes in the door, three on top -

Q This iron you received from Officer Digilio ?

A Yes, sir. There was three holes over the lock, and two underneath the lock, and this iron fitted right in those holes.

Q I ask that the iron be marked for identification.

(Article marked "People's Exhibit No. 1, for Idem.", or similar.)

Q For the examine.

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CROSS EXAMINATION BY MR. BRANDE.

Q. You testified this morning in the other two defendants' case, didn't you? A. I did.

Q. And they were acquitted, weren't they?

MR. DEMING: Objected to as immaterial and irrelevant. That has nothing to do with this case.

MR. BRANDE: The District Attorney has opened this case against these defendants, and has characterized the other two defendants as not yet on trial. They have been on trial, and were acquitted.

THE COURT: "Not now on trial". He did not say "Not yet on trial". They are not now on trial, and the Court directed the acquittal there because of the misconduct of a witness, and not on the merits. That hasn't anything to do with the guilt or innocence of these men.

MR. BRANDE: As for the original indictment and complaint; they are in evidence; so I can read it to the jury.

THE COURT: Well, you may read it.

MR. BRANDE: So that disposes of that.

Q. This morning you didn't testify in the other cases that you had fitted the jimmy, as you call it, into the door, and found the marks right then and there, did you?
A. I did.

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Q You did ? A Yes, sir.

Q Sure of that ? A Yes, sir.

Q Did you say you did it the following morning ?

A No more than I placed them under arrest.

Q Right then and there ? A Yes, sir.

Q And while you were fitting the jimmy into the door who was holding the four defendants ? A Detective Digilio.

Q He was holding the four defendants ? A Right alongside of us.

Q And you said that this morning, under oath ?

A I did. I answered what they asked me.

Q I don't say that you did not answer what they asked you. I want to know whether you said this morning, under oath -

THE COURT: He has answered.

THE ATTORNEY: I object to arguments. Let us have questions.

Q That number is this ? A 322 East One Hundred and Seventh Street.

Q 322 East One Hundred and Seventh Street ? A Yes, sir.

Q It is not on First Avenue ? A No, sir.

Q Is there a cafe next door ? A That I don't know.

Q You don't know ? A No, sir.

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Q What store is next door to this store ? A It is a feather store.

Q Not the feather store. Next to the feather store ?
A There was no cafe there.

Q I say, what kind of a store is that ? A I don't know.

Q On either side, you don't know what kind of store is there ? A No, sir.

Q You don't know ? A No, sir.

Q You saw four men coming up towards First Avenue ?
A From First Avenue towards Second.

Q Towards Second ? A Yes, sir.

Q That was going west on One Hundred and Seventh Street ? A Yes, sir.

Q Were they on the north, or south, side ? A South side.

Q And you were on the north side ? A Yes, sir.

Q When did you first see them ? A About twenty-five foot from the corner of First Avenue, going towards Second Avenue.

Q That is to say, twenty-five foot west of First Avenue ? A Yes, sir.

Q And you were on the other side ? A On the other side.

Q You knew these men before this time ? A I know them two.

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Q You knew them too, certainly.

THE COURT: Now, don't make any comments on the testimony.

Q When you saw the four men, you ran right over, did you not? A Not until I saw their actions.

Q You saw their actions? A Yes, sir.

Q In other words, it looked suspicious to you?

A Well, they acted suspicious, and then I saw them at the door, and I thought they had broken into the place.

Q You thought? A Well, they were trying to.

Q You rushed over? A Rushed over, yes, sir.

Q Isn't it true you ran over there, and because you knew the men you started to beat them? A No, sir.

Q And one of the men, after you finished beating him, said "I will go down to the Commissioner in the morning"? A No, sir.

Q And after he said he was going down to the Commissioner, one of you officers said "Well, if that is the case, come along"? A No, sir.

Q You say you heard a piece of iron drop?

A Yes, sir.

Q Was that before you started to go across the street? A Before, yes.

Q You don't know which of the men dropped it?

A No, I do not.

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Q Any lights around there ? A Well, not near there, but there is lights in the street.

Q Was the place there light enough for you to see everything that went on ? A Well, we could see them moving.

Q Well, if you can see a movement you can see an individual, can't you ? A Well, I could see their shoulders moving; that is all I could see; I couldn't see their faces.

Q In other words, the only light that was there was that to enable you to sufficiently see their shoulders move ?

A I saw them move.

Q And that is all ? A Yes, sir.

Q As to anything else, you could not see ? A Well, I was watching the ones that were near the door.

Q If you were watching them, I am asking you whether the light was clear enough for you to see them ? A I could see them, yes.

Q Well, why didn't you say that before ?

MR. BRYING: I object to comments.

MR. FRANDE: I am not commenting.

Q You say, then, you don't know who threw away that piece of iron ? A He threw it away.

Q Who ? A Littieri.

Q Didn't you just a moment ago say you did not know

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who threw it away? A That was before. They had dropped the iron while they were trying to jimmy the door. Afterwards he ran away, and threw the iron.

Q Didn't you say you heard the iron drop before you went across the street? "Yes", or "no"? A Yes, sir.

Q Then you don't know who threw it away, do you? A They didn't throw it away that time.

BY THE COURT.

Q How many times did you hear it? A Twice.
BY THE COURT.

Q As soon as you heard the iron drop, you ran across the street? A Yes, sir, not the first time. They dropped the iron, and there was two men in the doorway, and two were out on the sidewalk, looking up and down. When they dropped the iron, the other two came out on the sidewalk, the other two looked up and down the street for a second, and the three of them went back to the door, and when we ran over Litteri ran away and threw that jimmy.

Q And you two men were there, watching this transaction all the time? A Yes, sir.

Q I suppose you were waiting for light? A Well, we were watching some other place.

Q You were watching some other place?

THE COURT: You may answer.

Q What place were you watching? A We were

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watching the place that was blown up with a bomb, and we received another letter, that they were going to blow them up again - a grocery store.

Q So you were not watching the defendants ?

A No, sir, we were watching the grocery store.

Q And you didn't see what the defendants were doing ?

A Yes, sir, when we saw them we were watching them too.

Q Then you were watching both places at the same time ?

A Yes, sir.

Q In other words, you were out to get somebody that night ?

MR. WILSON: Objected to.

A If we could get anybody, we would get them.

Q What Precinct are you attached to ? A Police Headquarters, Detective Bureau, Italian Branch.

Q Where is that ? A 240 Centre Street.

Q Not the Harlem Branch ? A No, sir.

Q What Precinct was this in ? A This was in the One Hundred and Fourth Street Station House, Thirty-ninth Precinct.

Q Did you report it to the Precinct ? A No, sir.

Q Did you show the jimmy to the defendants ? A Well, he had it himself.

Q He had it himself ? A Certainly, he saw it, when we took him to Headquarters, and brought him before the desk, and charged him with it, and put it on the desk.

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Q That is the first time he saw it? A He saw it that night, coming down on the train, and when we were taking him to the train.

Q When you picked up this Jimmy, who did you speak to about it? A I didn't pick it up. Detective Digilio picked it up. Detective Digilio ran after him when he threw it and ran away.

Q Did you see him throw it? A I heard it fall.

Q Did you see him throw it? A No, sir.

Q Now, we got that plain. You didn't see Littieri throw it? A No, sir.

Q That is what I wanted to know.

THE COURT: Don't make any comments about what you wanted to know.

THE PRISONER: Say it please your Honor -

THE COURT: It pleases his Honor to have this case tried. Don't make any comments. You may ask any question that is proper. Make no comments on the answers. When you sum up you may make comments.

Q Did the defendant say anything to you - Littieri?

A No, sir.

Q Did the other defendant say anything to you at all? A No, sir.

Q So far as Palazzola is concerned, he did nothing at all except that you saw him on the sidewalk? A That

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is all. He said only one word. He said "Don't say nothing in Italian".

Q Did you say that this morning? A Yes, sir.

Q You said that this morning, too? A I don't know if I said it then. Whatever they asked me, I answered. You asked me that.

Q Now, then, it is plain you don't know who threw this jimmy away; that is right? A Detective Digilio will swear who threw it away.

Q I am asking you. When he takes the stand, he will testify. A I say I did not see who threw it away.

MR. BRANDE: Now, that is plain.

THE COURT: Any further questions?

MR. BRANDE: That is all.

MR. DETMERS: That is all.

JAMES DIGILIO, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. DETMERS.

Q What is your name? A James Digilio.

Q You are a member of the Municipal Police Force of the City of New York? A I am.

Q Attached where? A Detective Bureau.

Q Officer, in giving your evidence, please state just

what you saw and did and what you heard, not what you inferred or reasoned out in any way. Were you with Officer Capone on the night of the 18th of April, when you arrested these two defendants and two others? A Yes, sir.

Q Tell the Jury, very briefly, what you saw these two defendants and the others do in the presence of these two defendants? A These two defendants and two others came walking up One Hundred and Seventh Street, going west, and when they reached premises 322 West One Hundred and Seventh Street this defendant, Litteri, the first prisoner there, and DeRosia, went to the doorway, and Calanzola and DeRosa stood on the sidewalk. They had

Their backs turned towards us - this man had his back, and the other man was sideways, and while they were there a couple of seconds we heard an iron drop. They both walked out, and met the other two on the sidewalk, stood there a short while, and went right back to the door, with DeRosa. At that we crossed over the street, and when we were crossing this man turns around and starts to run.

Q Do you mean Litteri? A Litteri, and I ran after him. While he was running away, he threw this tool in the gutter (referring to "People's Exhibit No. 1, for Iden.")

Q Did you see him throw it? A I saw him throw it.

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Q You picked it up after you caught him? A Yes, sir.

Q Is this the tool? A Yes, sir.

MR. DEMING: I offer it in evidence.

THE COURT: Received.

(Received in evidence and marked "People's Exhibit No. 1", of this date.)

Q When you came back, Sapone had the other three in custody? A Yes, sir.

MR. DEMING: You may examine.

CROSS EXAMINATION BY MR. BRADY:

Q How long had you been watching these men? A We watched them while they passed us and got up to the door.

Q How long was that? A Not very long. About five minutes, I guess.

Q And what were they doing during the five minutes?

A Two of them stood on the sidewalk, and the other two went on the door.

Q Who went to the door? A Littereri and Rubiano.

Q That is, the other defendants, who ~~WERE~~^{was} tried this morning? A Yes, sir.

Q And Palazzola did nothing at all? A He was on the sidewalk.

Q He was on the sidewalk, breathing the fresh air?

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A He came up together with them.

Q You say while you were on the other side you heard something drop ? A Yes, sir.

Q When you heard that something drop, did you go right across the street ? A No, sir.

Q What did you do ? A I stood in the hallway.

Q And while you were in the hallway, did you see any of the defendants do anything ? A They came out and spoke together. Then three went back to the door. That is the time we went over.

Q You heard something drop ? A Yes, sir.

Q And you watched ? A Yes, sir.

Q Three came out and spoke together ? A Two came out from the doorway.

Q Walked out, and talked back ? A Then they walked back, and this man here picked the tool up; whatever it was dropped, he picked it up.

Q Did you see him pick it up ? A Yes, he stooped. I didn't see what he picked up.

Q But you are willing to say he picked the tool up ?

A He stooped down, but I didn't see him pick it up.

Q You didn't see him pick anything up, but still you say you seen him pick the tool up ? A I seen him bending down.

Q You don't know but what he picked a match up ?

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A No, but he stooped down.

Q How far were you from them? A We were in 329, and that place is 322, across the street.

Q About fifty feet away? A About seventy-five feet.

Q And you waited all that time before you went over to the defendants? A There wasn't much time passed.

Q What? A We didn't wait a terrible long time.

Q You say they went to the door - A When they went to the door the second time, that is the time we crossed over.

Q You didn't cross over the first time they went in? A No, sir, not the first time.

Q When is the first time you ~~went~~ called the attention of the defendants that there was something the matter with that door? A The defendants?

Q Yes. A Right there and then, when I brought Littieri back.

Q And what did Littieri say? A He didn't say nothing.

Q Didn't he say, "Nothing of that kind took place here"? A No, sir, he did not say anything.

Q Didn't Capone and you beat him? A No, sir.

Q No, sir. Didn't one of them say he was going

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to report the matter to the authorities ? A No, sir.

Q And that is why they were placed under arrest ?

A No, sir.

Q What kind of a store is next door to the feather place ? A I don't know; I didn't take notice to that.

Q Watching there all night these defendants, and didn't know what was next door ? A I didn't know what was next door, no.

Q Do you know now ? A I do not.

Q You went back the next morning, didn't you ?

A I didn't notice what was next door.

Q You went back the next morning ? A Yes, sir.

Q And you don't know what is next door ? A Not next door to the feather place, I didn't notice that.

Q On either side ? A I didn't notice.

Q When you brought these defendants to headquarters, what was the charge you placed upon the blotter ? Suspicious persons ? A No, sir; attempted burglary.

Q Attempted burglary ? A Yes, sir.

Q Sure about that ? A Yes, sir.

Q Didn't charge them with carrying jimmies ?

A Carrying burglar's instruments.

Q Did you put that on the blotter ? A No, we charged them with attempted burglary, and they had that in their possession.

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Q Didn't charge them with carrying a jimmy, did you ?

A No, sir, we charged them with attempted burglary.

MR. BRANDT: That is all.

MR. BELMONT: I ask your Honor, at this time, to submit this case to the Jury as an attempt to commit the crime, rather than as a completed crime, as there is no evidence to show a completed entry, and that is The People's case.

THE COURT: The defendant's rest. Supply it before you get through.

MR. BELMONT: That is done, your Honor?

THE COURT: I say, sometimes the defendant supplies the evidence.

MR. BRANDT: Do the People rest?

THE COURT: The People rest.

MR. BRANDT: I move to direct a verdict of acquittal, on the ground the People have not submitted evidence sufficient to warrant a verdict of guilty.

THE COURT: Motion denied.

MR. BRANDT: Exception.

THE COURT: If the People do not prove the crime itself was committed, it may be submitted to the Jury as an attempt to commit that crime.

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MR. BRANDE: Well, we are surprised. We came here to meet a charge of burglary.

THE COURT: I will take away all counts except -

MR. BRANDE: There is only one count - burglary in the third degree.

THE COURT: There has been evidence given here which, if believed by the Jury, would justify a verdict of an attempt to commit the crime charged, and, therefore, it is proper to submit the case to them on that charge.

MR. BRANDE: I now ask that the defendant Palazzola be discharged, because there is no evidence against him.

THE COURT: Motion denied.

MR. BRANDE: Exception. I move to dismiss the indictment, on the ground that there are four defendants charged with acting together, and two have been acquitted, and, therefore, the others cannot be convicted.

THE COURT: Motion denied.

MR. BRANDE: Exception.

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THE DEFENDANTS' CASE

ROSARIO LITTIERI, one of the Defendants herein, called as a witness on behalf of the Defense, being first duly sworn and examined through the Official Interpreter, Mr. Villamena, testified as follows:

DIRECT EXAMINATION BY MR. TRAVER.

Q What is your name? A Rosario Littieri.

Q Where do you live? A 302 and 304 East One Hundred and Eighth Street.

Q And is that around the corner from One Hundred and Seventh Street, where you were arrested? A Yes, sir.

Q What time were you arrested? A About midnight.

Q Just tell the Judge and Jury, in your own way, as to how you came to be arrested, what you were doing there?

A I was coming out from a coffee house when I saw one of the other men vomiting.

Q Where is the coffee house? A 2064 First Avenue.

Q Is that near One Hundred and Seventh Street, or One Hundred and Eighth Street? A Yes, sir, near One Hundred and Seventh Street.

Q And you saw who vomiting? A Another man. I don't know his name.

Q Was it one of the four boys that was arrested with

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you on that night ? A Yes, sir.

BY THE COURT.

Q DeRosa, wasn't it ? A Yes, sir.

BY MR. BRANDE.

Q Continue the story, up to the time you were arrested; what were you doing ? A When we were standing there, the policemen come there and started to search us. After they searched us, they did not find nothing on us. They said "All right, go on". When we started to go, they come back and caught hold of us, and, instead of taking us to the One Hundred and Fourth Street Station House, they took us by mistake down to Police Headquarters; and the woman that owns the coffee house saw them when we were arrested, and she could tell the truth. The coffee house is 2064 First Avenue, and it wasn't but a few minutes that we left the coffee house that we were arrested.

Q Did you have that piece of iron, characterized as a jimmy, on the desk there, did you have that that night ?

A No, sir.

Q What do you work at ? A Laborer.

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

Q How long are you in the country ? A One year.

Q Are you married ? A No, sir.

Q Who do you live with ? A With my cousin.

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Q With your cousin ? A Yes.

MR. BRANDE: That is all.

CROSS EXAMINATION BY MR. DEMING.

Q How long have you known Palazzola ? A I didn't know him before that evening. I met him in the coffee house that evening.

Q How long have you known Rubiano ? A We met in the coffee house; I don't know.

BY THE COURT.

Q How long have you known him ? A I do not know him.

BY MR. DEMING.

Q How long have you known DeRosa ? A I don't know DeRosa. I come from one part of the country. They come from another part of the country.

BY THE COURT.

Q You have been here a year, you say ? A Yes, sir.

Q And you never met them during that year ? A No, sir, never met him.

BY MR. DEMING.

Q Where did the officer pick that up ("People's Exhibit No. 1 for Iden.") ? A Down town, and he says to me, "I will put that in your eye".

Q "I will put that in your heart" ? A "Eye".

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Q Where did he pick it up ? In Police Headquarters ?

A At Police Headquarters.

Q Where did he take it from ? A I do not know where he took it from, but I saw him take it from his pocket. I said, "What are you going to do with that thing?", and he said to me "Shut up".

Q You have never seen an instrument like this before ?

A No, sir.

Q Now, you say you were standing on the corner with these three men, no one of whom you have known before ?

MR. BRANDE: I object to the form of the question, because he ~~is~~ is testifying. Ask him what he was doing.

THE COURT: Objection overruled.

MR. BRANDE: Exception.

A One of those men was vomiting, and I just stopped to see what was the matter with him, and the policemen came and searched us.

Q You say the policemen searched you while you were there, all three of you - all four of you ? A Yes, sir.

Q You say they did not find anything on any one of you ? A No, sir; they found a ring in Rubino's possession.

BY THE COURT.

Q A ring ? A Yes, sir.

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MR. BRANDE: I object to this as not binding on the defendants here.

BY MR. DEMING.

Q Is that the ring found on Rubino (exhibiting ring to witness)? A Yes, sir.

MR. BRANDE: Objected to.

THE COURT: This man has sworn the detectives searched them and found nothing.

MR. BRANDE: But he is independent of the others.

THE COURT: He said they found nothing on any of the others. Now, he ~~ix~~ has a right to cross examine him on that, and if that statement is false it affects his credibility.

Q That is the ring they found on Rubiano? A Yes, sir.

Q Why did you tell your lawyer that they did not find anything on any of you, when they found that on Rubiano? A Yes, only that ring.

THE COURT: What about the revolver?

Q Didn't they find this loaded revolver on Rubiano, too? A O, sir, I couldn't swear to that.

Q Well, you couldn't swear they did not, either, could you? A I could swear that they searched him in front of me, and they did not get any pistol from him. The ring, yes.

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Q Why did you run away when the police came over ?

A No, sir, I didn't run away.

Q Didn't run away at all ? A No.

Q What did the policemen say when they first came over to you ? A They didn't say nothing. When they caught hold of me, they make motions like they wanted to strike me. Then they let me go, and then they arrested me again.

Q When did they begin beating you ? A As they come to us. First they scratched us, and then next they started to punch us, and I says to him "Tomorrow I will notify the Police Commissioner". When I said that, they come to us, and they caught hold of us again.

Q How is it you knew about going to the Police Commissioner against policemen who arrested you ? How did you come to know so much about the possibilities of that ?

MR. BRANDE: Isn't that argumentative, your Honor ?

THE COURT: I will sustain the objection. Don't answer that question.

Q Did you ever complain to the Police Commissioner before ?

MR. BRANDE: Objected to.

THE COURT: Objection overruled.

MR. BRANDE: Exception.

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A No, sir, I heard that.

Q Who said that? A I heard that from some person there. They were talking about the policemen beating the people, to go down to the Commissioner. I said I was going down to the Commissioner, but I had no intention of going down.

Q After you said that, then they arrested you?

A Yes, sir.

Q Now, see if I have got it right. First they came up and searched you; then they punched you; then they went away, and you said you would go to the Commissioner; and then they came back and arrested you; is that right? A Yes.

BY THE COURT: That is all.

BY THE COURT.

Q How did they beat you? What did they beat you with? Clubs? A With clenched fists.

Q Where did he punch you? A Over here (witness points to both sides, both ribs.)

ANTHONY SAPORE, being recalled, testified as follows:

BY MR. LARDE.

Q Officer Capone, was one of the boys, Seneca, vomiting there that night? A No, sir.

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Q. Didn't you see him? A. I didn't see him.

Q. Did you notice his clothes the next morning?

A. I noticed a spot on his coat, here (indicating).

Q. A spot, or did you say soil, this morning?

A. Just one spot on his coat.

Q. Well, we will have to refer to the testimony of this morning? A. That is all, I said this morning.

Q. Don't you remember you were asked the question, "Wasn't the coat soiled?", and you said "Yes; I noticed that in the morning"? A. And there was one spot on this coat.

THE EXAMINER: That is all.

ROSARIO J. J. J. J., one of the Defendants herein, being recalled, testified as follows:

BY MR. DENTING.

Q. You came to this country a year ago? A. Yes, sir.

Q. Where were you working at the time you were arrested? A. With Papino Lagarada.

Q. What did he do? A. Had carrier.

Q. How long had you been working with him? A. From the time I came in this country.

Q. Working there yet? A. Yes, sir.

Q. Is he here in Court? A. No, sir.

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MR. DEMING: That is all.

MR. BRANDE: Well, I am afraid now I will have to take the stand and explain why he is not in Court, unless His Honor will accept my explanation as to why he is not here. That is all.

THE COURT: Any further witnesses?

MR. BRANDE: No more witnesses.

THE PROSECUTOR: THE PEOPLE

THE COURT: ORDERED.

MR. BRANDE: I move my Motion to direct the Jury to acquit, upon the ground the People have failed to make out a case such as is charged in the indictment.

THE COURT: Motion granted.

MR. BRANDE: I move now that the Court direct the Jury to acquit the defendant Palazzola upon the ground there is no evidence to sustain any crime against the defendant Palazzola.

THE COURT: Motion denied.

MR. BRANDE: Exception. We are willing to submit the case, your Honor; it is rather late.

THE COURT: Why not take ten minutes each?

MR. DEMING: That will be more than enough for

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me, your Honor.

MR. PRANDE: All right.

(Mr. Brande then summed up the case to the jury on behalf of the Defendants.)

(Mr. Deming then summed up the case to the jury on behalf of The People.)

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