

**START**

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I H D N X

	Direct	Green	Re-Direct	Re-Cross
Giuseppe Ballio	2	2		
Antonio Capeno	14	23		
John Ballio	20			

CASE # 1368



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 -

ANTONIO RUBIANO and PASQUALE De  
ROSA, indicted with Rosario Littieri  
and Giuseppe Palazzola.

B e f o r e

HON. JOSEPH F. MULQUEEN, J.

And a Jury.

-----X  
New York, Thursday, May 4th, 1911.

THE DEFENDANTS ARE INDICTED FOR BURGLARY IN THE THIRD DEGREE.

INDICTMENT FILED APRIL 25th, 1911.

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

HAROLD S. DEMING, Esq., Assistant District Attorney,  
For The People.

JACOB LEVY, Esq.,

For defendant Antonio Rubiano.

M. JESSE HENRY, Esq.,

For defendant Pasquale De Rosa.

-----  
(A Jury is duly impaneled and sworn.)  
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Amos G. Russell,  
Official Stenographer.

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THE PEOPLE'S CASE

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GIUSEPPE BALLITO, called as a witness  
on behalf of The People, being first duly sworn and  
examined through the Official Interpreter, Diadoto  
Villamena, testified as follows:

DIRECT EXAMINATION BY MR. DEMING.

Q What is your name ? A Giuseppe Ballito.

Q Where do you live ? A 313 East One Hundred and  
Seventh Street.

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

Q Did you have that place of business on the 18th  
and 19th of April of this year ? A Yes, sir.

Q What is your business ? A Feathers business.

Q Have you a shop on the ground floor of that address ?  
A Yes, I have got a shop on the ground floor.

Q On the night to which I referred, did you have any  
feathers and stock in your shop ? A No.

Q You had no feathers and no stock at all in your  
shop that night ? A No, sir, only the register.

MR. HENRY: Objected to.

Q Only what ? A The register. I mean the  
books of account.

Q You had the books ? A Yes, sir.

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Q But you had no property there ?

MR. HENRY: I hate to be breaking in -

THE COURT: Please make your objections.

MR. HENRY: I object, on the ground the witness has answered twice.

THE COURT: Objection overruled.

MR. HENRY: Exception.

A I had no property there. I take this stock with me along in the evening, when I go home.

Q How many doors are there to that shop ? A Two.

Q And on that night did you look those doors, or not ?

A Yes, sir.

Q How many windows ? A (In English) About four or five. Sure four.

Q Were they shut, or open, on that night ?

A Closed.

Q What time did you look up that night ?

A (In English) Seven o'clock at night.

Q About seven at night ? A Yes, sir.

Q What time did you return the next morning ?

A Seven o'clock in the morning.

Q When you returned the next morning, did you notice the street door ? A There was five marks on the door.

Q What kind of marks ? In the wood ? A Some

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marks on the door, made by an iron, looks like somebody tried to force open the door.

MR. HENRY: I move to strike that out.

THE COURT: Strike it out.

Q Were the marks in the wood? A Yes, sir.

Q And on what part of the door, near the lock, or not near the lock? A There was just below the lock, and two above the lock.

Q Were those marks there the night before?

A No, sir.

MR. DEMING: You may examine.

CROSS EXAMINATION BY MR. HENRY.

Q Mr. Ballito, how long have you been in business?

A Two years; more than two years.

Q Are you married, or single? A Married.

THE COURT: How is that pertinent?

MR. HENRY: I want to show the connection. I believe one of the defendants visited the home of this Mr. Ballito.

THE COURT: That wouldn't give him a right to commit burglary in the store, would it? Try to confine your examination to the pertinent questions.

Q You know DeRosa? A Yes, sir.

Q How long have you known him? A He is a

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countryman of mine; no friend.

Q You know the defendant DeRosa from the old country ?

A Yes, sir.

Q And you know him since he came to live in the City of New York, the defendant DeRosa ? A Yes, sir.

Q And your place of business is number 322 East One Hundred and Seventh Street ? A Yes, sir.

Q And you know the defendant and his sister live at number 329 East One Hundred and Seventh Street ?

A Yes, sir.

Q Isn't it also a fact that his sister, a very short period of time ago, was in your employ as an operator or worker upon feathers ? A Yes, sir.

MR. DEMING: Objected to as immaterial.

MR. HENRY: Question withdrawn.

Q Now, it has been your custom for how long past, Mr. Ballito, to take the feathers that you work on during the day home to your house ?

MR. DEMING: Objected to as immaterial.

MR. HENRY: Question withdrawn.

Q How long past has it been your custom, Mr. Ballito, to take your stock, or, in other words, the stock you have been working on in your premises 322 East One Hundred and Seventh Street, home to your house ?

MR. DEMING: Same objection, as immaterial,

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incompetent and irrelevant.

MR. HENRY: Question withdrawn.

Q On the night in question, namely, April 18th or 19th, 1911, did you take your stock home ?

MR. DEMING: Objected to as already answered.

MR. HENRY: Will you concede that it has been ?

MR. DEMING: I object to it as not cross examination.

MR. HENRY: This is cross examination.

MR. DEMING: I realize that.

MR. HENRY: Question withdrawn.

Q Mr. Ballito, how long have you occupied the premises or the store 322 East One Hundred and Seventh Street ?

A Since last January.

Q 1911, or 1910 ? A 1910.

Q That is a year ago last January. And you are a busy man. When you come down to your work every day, you go right in from the street to the store, and you commence to operate and work with your help; is that correct ?

A Yes, sir.

Q This is a store, isn't it, that you work in ?

A Yes, sir.

Q And a plate glass window front ? A Yes, sir.

Q And, if you know, can you tell us how long ago that front has been painted, or repaired ? A (No answer).

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Q Well, has it been painted or repaired since the time you have been in the premises ? A I couldn't state it. Since I have got the store, the store wasn't painted, the front of it.

Q Have you on any other occasion, outside of April 18th or 19th, can you tell this Court and Jury, did you ever have occasion to examine the store front, or the windows, or the doors, of your store ? A Why, certainly, sure, I examined all the time, because I leave my books in there.

Q Because you leave your books in the store, you tell this Jury that you examined the store front and the door; is that right ?

THE COURT: How could he help seeing the door ? Any man with intelligence, going up to his door and opening it, can see whether there are marks on it or not.

MR. HENRY: I asked him a specific question.

THE COURT: Why he does it is of no consequence.

Q Previous to April 18th, can you tell us when you examined the door of the store front of 322 East One Hundred and Seventh Street ? A I do not know, but I know this: that in the evening when I left the door there was no mark on the door. The next morning, when I went

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there, there was a mark on the door.

Q What time did you close up your shop ? A Seven o'clock in the evening.

Q And did you lock your door by a key, or a spring lock ? A In the evening, when I leave the store, I bolt the front door, by putting an iron bar in back of the door, and I go ~~thru~~ through the door that leads in the hall, and that door I lock.

BY THE COURT.

Q Which door were the marks on ? The one you locked, or the front door ? A The front door, the door that leads in the street.

Q The bolted door ? A Yes, sir.

Q Was there a lock on that door, too ? A No, sir, it has two bolts. There is a lock, but I don't use it.

BY MR. HENRY.

Q The door, as I understand, that leads to the street -

THE COURT: It is perfectly plain. He says the street door he bolts from the inside, and the other door he locks.

Q And you go out of another door ?

THE COURT: Yes. Please go on, Mr. Henry.

Q After you left the premises, you went out in the

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street, is that right, and then went home ? A Yes, sir.

Q You didn't go back to examine the front door, did you ? A In the day time, when I go there and open the door, I see there is no mark on the door. The door is open all day, to let the working people in and out of the store, and I could easily see there was no mark there.

MR. HENRY: We know what you could easily see, and what you could not easily see.

THE COURT: Ask questions.

MR. HENRY: I move that be stricken out as not responsive.

Q After you locked the door from the inside with this bar - that is the door that leads to the street; is that correct ? A Yes, sir.

Q And after you bolted this door, then you go to another door ? A Yes, sir.

Q And from that other door you go into the street, is that right ? A Yes, sir.

Q Now, on what door were these marks ?

THE COURT: Oh, he has answered that a dozen times. On the street door.

MR. DEMING: Objected to as already answered.

THE COURT: What is the use of going over that ?

Q You know this defendant, don't you, DeRosa ?

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A Yes, sir.

Q You know other people that know him ? A Well, yes, my countrymen knows him.

Q Do you know other people that know him ? A I couldn't tell you if other people knows him, because it is none of my business. I know him. That is all.

Q And do you know his sister ? A Yes, sir.

THE COURT: Now, what has that got to do with the case ?

MR. HENRY: I want to make him a witness for character, if your Honor please.

MR. DENING: If he is going to make him his own witness, I desire the right of cross examination.

MR. HENRY: You can have it.

Q What is his reputation ?

THE COURT: Ask him if he knows his reputation, first.

Q Do you know his reputation for honesty ? If you do, is it good, or bad ?

THE COURT: Never mind now. You have asked a question. Do you know his reputation for honesty ? "Yes", or "no" ? A Yes, sir.

THE COURT: Is it good, or bad ?

THE WITNESS: For me, it is good.

MR. HENRY: That is all.

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BY MR. LEVY.

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

Q Do you know his parents ?

THE COURT: What has that to do with it ?

MR. LEVY: I want to show the same line.

THE COURT: Ask him if he knows other people that know him.

Q Do you know whether the defendant Rubino is in the same line of business with yourself ? A I do not know. I mind my own business. I mind nobody else's business.

Q How long have you known Rubino ? A Two or three years past.

Q How is his reputation ?

MR. DEERING: Objected to on the ground no foundation has been laid.

THE COURT: Let him answer.

BY THE COURT.

Q What is his reputation for honesty ? Good, or bad, if you know ? A For me, it is good.

Q That means, as far as you know ? A Yes.

BY MR. LEVY.

Q This front door that you speak of that was marked, you say that was bolted ?

THE COURT: Oh, yes, he said it was bolted from

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the inside.

MR. LEVY: I want to find out how it was bolted, your Honor.

THE COURT: I will exclude that question, on the ground it is immaterial.

MR. LEVY: Exception.

THE COURT: Go on now. He said the door was bolted.

Q Is it not a fact, when you left that store on the evening of the 15th, that you put an iron bar of your own contrivance on that door?

THE COURT: He has already answered that. He said so. The question is excluded as repetition.

Q Is it not a fact that door that you speak of was not bolted at that time?

THE COURT: Excluded, as repetition.

Q Will you state what you meant by the term "bolted", with reference to the door in question?

THE COURT: Immaterial. Excluded.

MR. LEVY: Exception.

THE COURT: Counsel is airing his legal knowledge.

Q Who called your attention, on the following morning, to the marks on the door?

THE COURT: Question excluded. It does not appear that anybody called his attention to it.

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Q Did anybody call your attention to the marks on that door the next morning? A Yes, sir, but I saw him before.

Q Who? A Detective Sapone and Detective Digilio.

Q Now, were there other marks on that door besides the marks to which your attention was directed?

THE COURT: Excluded, as immaterial/.

MR. HEVY: Exception.

Q Were there other marks on that door?

THE COURT: Excluded, as immaterial.

Q Will the Court and Jury know many marks were on that door?

THE COURT: Excluded, as immaterial.

MR. HEVY: Exception. That is all.

BY MR. HENRY.

Q Mr. Ballito, your store door was not broken open, was it? A No, sir.

THE COURT: There has been no statement made that it was.

MR. HENRY: The indictment charges it.

THE COURT: I know that, but the indictment is no evidence. I thought you were a lawyer, and knew the law.

MR. HENRY: I will move to dismiss, on the close of the prosecution's case on this very point.

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Q Did you lose any property that night ? A No, sir.

MR. HENRY: That is all.

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

DIRECT EXAMINATION BY MR. HENRY.

Q What is your name ? A Anthony Capone.

Q You are a member of the police force of the City of New York ? A Yes, sir.

Q Attached where ? A To the Detective Bureau.

Q Officer, on the night of the 18th to the 19th of April, 1913, were you, at about midnight ? A In front of a hallway, in 329 East One Hundred and Seventh Street.

Q You were detailed there to investigate something ? A Covering a house -

BY THE COURT.

Q Were you in a hallway, or in front of a hallway ?

A Right in front.

Q You were in the street ? A No, in the doorway of the hall.

Q Of what ? A A tenement house, 329 East One Hundred and Seventh Street.

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BY MR. DEMING.

Q You were detailed there to investigate another matter entirely ?

MR. LEW : Objected to.

THE COURT : Objection sustained.

Q You were there ? A Yes, sir.

Q With Officer Digilio ? A With Officer Digilio.

Q Now, did you see these two defendants on that night ? A Saw them two -

BY THE COURT.

Q Did you see "Yes", or "no" ? A I did.

BY MR. DEMING.

Q Were they alone, or were others with them ?

A Two others with them.

Q When did you first see these two defendants ?

A Just about twenty-five feet off the corner of First Avenue, coming towards Second Avenue.

Q Walking along the street ? A Yes, sir.

Q All four together ? A All four together.

BY THE COURT.

Q Which side of the street ? A On the south side.

BY MR. DEMING.

Q That was across the street from you ? A Yes, sir.

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Q And that was about what time of night, or morning ?

A About twelve-forty, or twelve-forty-five.

Q What did you see these two defendants do ?

A They were walking with these other two, looking back.

When they reached in front of number 322 -

MR. HENRY: One moment. I object to the testimony in this case by the witness being given from a written instrument, and except he can claim it is to refresh his memory.

THE WITNESS: That is the names of the prisoners and so forth.

THE COURT: Now, Officer, you are used to obeying orders.

THE WITNESS: Yes, sir.

THE COURT: Now, whether you are, or not, you are going to obey mine. Put that paper away, and say nothing more about it.

Q You saw what ? A I saw them go into 322 East One Hundred and Seventh Street.

Q The feather store of the witness Ballito ?

A Yes, sir.

Q What did they do when they reached in front of that store ? A This Rubino and Littieri went into the doorway at 322.

Q What did DeRosa and Palazzola do ? A DeRosa

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and Palazzola were standing in front of the door, out on the sidewalk, looking up and down.

Q Now, I want to get this straight before the Jury. Rubino and another man not on trial went into the doorway?

A Yes, sir.

Q And Palazzola and DeRose stood outside? A On the sidewalk.

Q What did Rubino and the other boy that went into the doorway do? A Littieri was with his back to us, feeling around with the door, motioned with his arms, moving himself, pressed on the door, and Rubino -

MR. DEMING: Objection to.  
BY THE COURT.

Q Did you see what they did? A I didn't see what they were doing exactly.

Q Then why did you attempt to say what they did?

A I saw them moving their arms at the door. I didn't see what they were doing.

BY MR. DEMING.

Q Describe just what you saw, just what you could see? A Rubino was standing alongside of Littieri.

BY THE COURT.

Q Who is Rubino? A This one on the end, and Littieri was near to the wall, moving his arms.

Q You saw his arms move? A Yes, sir, from the

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back.

BY MR. DEMING.

Q You ~~knuck~~ two were behind him? A Yes, sir.

Q You could just see his elbows move? A Yes, sir.

MR. HENRY: Objected to.

Q How close was Rubino to Littieri at the time Littieri's arms were moving? A They were both together.

Q Both facing the door? A Littieri was facing the door. Rubino was looking -

THE COURT: Don't say "was looking".

THE WITNESS: His face was faced to us.

Q While Rubino and Littieri were in close to the door, what was this defendant DeRosa doing, and what was the other fellow doing?

OF THE COURT.

Q What did you see the other man do? A DeRosa was standing on the sidewalk with Palomzola.

Q How far away from the doorway? A About five or six feet, five feet.

BY MR. DEMING.

Q What were they doing? A They were looking up and down the street. Then all of a sudden some men dropped, and the two of them, Littieri and Rubino, walked right up to where the other two were standing. Then DeRosa, Littieri and Rubino walked back.

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BY THE COURT.

Q Back to where ? A To the door, in front, at the door again, and they wasn't there more than about five or six seconds, and we ran right across the way.

BY MR. DENING.

Q And one of them stayed behind, on the sidewalk ?

A Palazzola stayed behind, and Lattieri started to run away, and he threw a piece of iron there in the street.

Q Is that the piece of iron that he threw away (handing same to witness) ? A Yes, sir.

Q How far was it from the door before he threw it ? A Oh, about twenty-five or thirty feet.

Q Did you see him throw it ? A Well, I heard he threw it. I didn't see him throw it, on account of me covering the other three.

Q You were holding the other three ? A Yes, sir.

Q And Officer Digilio chased after Lattieri ?

A After Lattieri, yes, sir.

MR. DENING: I ask this iron be marked for identification.

MR. HENRY: I object to it, on the ground it has not been shown by the Prosecution that this instrument was ever in the possession of any of the defendants.

MR. DENING: I asked that it be marked for iden-

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tification.

THE COURT: Mark it for identification. Your objection is premature.

(Article marked "People's Exhibit No. 1, for identification", of this date.)

Q In the meantime, you held the other three?

A I did.

Q Did any of them say anything to you while you held them?

THE COURT: That question is objectionable.

Q Did Rubino say anything to you while you had him in custody before Litterio was brought back?

MR. HOLLER: Objected to as leading.

THE COURT: That is a leading question.

Q Did you have any conversation -  
BY THE COURT.

Q State what, if anything, either of those defendants said to you at that time; either of those defendants, understand? A DeRosa said he did not know the others; that they told him to come along, and he did not know what they were going to do.

Q What did the other man, Rubino, say? A Rubino didn't say nothing to us.

BY MR. HOLLER.

Q And what did Palazzola say, if anything?

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MR. HENRY: I object to what Palazzola said as not binding on these defendants.

THE COURT: Objection sustained.

Q Did you search Rubino? A I did.

Q Did you find anything on him? A I did.

Q What? A Found a revolver and a knuckle, brass knuckle.

Q Are they in Court? A They are right there.

Q Is that the revolver? A Yes, sir.

Q Was it loaded, or unloaded, at the time?

A Fully loaded.

MR. HENRY: I offer it in evidence.

MR. HENRY: Objected to, on the ground previously stated, that it is not binding on the defendants.

THE COURT: I don't see how it is pertinent to this case.

MR. HENRY: Is it not the custom of burglars to be fully armed?

THE COURT: I don't know any authority on that point.

MR. HENRY: I offer the revolver taken from Rubino at the time of his arrest.

THE COURT: It is excluded. That would be evidence of another crime. He is not charged here with burglary in the first degree. The question of

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his being armed is not material.

Q He had a fully loaded revolver, did he not ?

THE COURT: That is excluded.

MR. HENRY: I move that all the testimony as far as the instrument is concerned -

THE COURT: The testimony as to the revolver and the alleged brass knuckles is stricken from the record.

MR. HENRY: And I also move, as far as the jimmy - Did you offer that in evidence ?

MR. DUNN: Not yet.

Q Did you have any other conversation with either of the two defendants now at the bar ? A No.

Q Officer Digilio then brought Littieri back ?

A Yes, sir.

MR. HENRY: Objected to as leading.

THE COURT: Objection overruled.

MR. HENRY: Objection withdrawn.

BY THE COURT.

Q When did you next see Littieri ? A Just as Detective Digilio brought him back.

BY MR. DUNN.

Q Did Digilio say anything to any of these defendants ?

MR. HENRY: Objected to.

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THE COURT: To any of these defendants in your presence, I will allow.

Q In your presence? A No, sir.

Q Or they to him? A No, sir.

MR. DEMING: You may examine.

CROSS EXAMINATION BY MR. HENRY.

Q Now, Mr. Sapone, you are attached to the Detective Bureau, uptown branch? A Detective Bureau, Manhattan.

Q And on the night in question, about eleven-thirty or twelve o'clock, you saw this defendant and the other defendant and two others? A I did.

Q And by reason of their suspicious conduct you placed them under arrest, after the statement that you made to the Court now, as to their acting suspiciously in front of premises 322 East One Hundred and Seventh Street?

THE COURT: He did not make any such statement to the Court.

Q Isn't it a fact that at no time, Officer, you saw that gun in the hand of either of these two defendants?

A I couldn't say.

Q At no time you saw -

THE COURT: He did not say that he did.

Q At no time did you see any instrument being used

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up against the premises of the door ?

THE COURT: He didn't say that he did.

Q Now, the only thing, as I understand you, is that you saw either one of these defendants move their arms ? A Moving their arms.

Q Which one of the defendants did that ? A Littieri.

Q You didn't see either of these two defendants moving their arm ? A He was standing right near.

THE COURT: "Yes", or "no".

Q "Yes", or "no" ? A No.

THE COURT: Don't bother about the law in the trial of a case. Simply answer the question, then you will be doing your duty.

Q Officer, when did you go back to the premises after the 18th of April ? A After the 18th -

THE COURT: It does not appear that he ever went back.

MR. HENRY: Yes, sir, by the testimony of the complainant.

THE COURT: Ask him if he <sup>ever</sup> went back.

Q Did you go back on the 19th of April ? A I did.

Q And did you see Mr. Ballito, the complaining witness ? A I did.

Q Did you have any conversation with him ? Did

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he have a conversation with you ? A Just as I got there -

THE COURT: "Yes", or "no".

THE WITNESS: I did.

Q What time of the day was it ? Morning, or evening ? A It was in the morning.

Q About ten or eleven o'clock ? A No, it was around -

Q Give me the time ? A What is that ?

Q What time was it ? A Around eight, or a quarter after eight.

Q Was DiZellio there with you ? A He was.

Q And who opened the conversation, you, or DiZellio, if you know ? A Well, both of us was there.

Q You both spoke at the same time ? A Both was there.

Q Then you told of the arrest ? A No, he told us someone was fooling with his door; that marks were on his door. I said, "We arrested the four that was trying to get into your place."

Q Then he took you outside of the door, and showed you the marks on the door ? A He showed the marks. I had seen them the same night we arrested the defendants.

Q You went into his place of business ? A Yes, sir.

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he have a conversation with you ? A Just as I got there -

THE COURT: "Yes", or "no".

THE WITNESS: I did.

Q What time of the day was it ? Morning, or evening ? A It was in the morning.

Q About ten or eleven o'clock ? A No, it was around -

Q Give me the time ? A What is that ?

Q What time was it ? A Around eight, or a quarter after eight.

Q Was Maglio there with you ? A He was.

Q And who opened the conversation, you, or Maglio, do you know ? A Well, both of us was there.

Q You both were at the same time ? A Both was there.

Q Then you told of the arrest ? A No, he told us someone was fooling with his door; shot marks were on his door. I said, "We arrested the four that was trying to get into your place."

Q Then he took you outside of the door, and showed you the marks on the door ? A He showed the marks. I had seen them the same night we arrested the defendants.

Q You went into his place of business ? A Yes, sir.

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Q You had this conversation, as you stated ?  
A Yes, sir.

Q Immediately he told you he had seen marks outside the door ? A He showed them to us.

Q And he took you and Digilio outside the door, and showed you the marks ? A It was right where we were shopping.

Q You were standing in front of the door ? A Inside, near the door.

Q Now you went to the compartment inside -

MR. DEMING: What difference does it make ?

MR. DEMING: I want to show -

THE COURT: I know what you want to show, but the trouble is there is a lot of ~~people's~~ public business to be done. If this was the only case on the calendar -

MR. DEMING: I will be very short.

Q Isn't it a fact Ballito told you about the marks on the door ? A He did.

Q Isn't it a fact you told him about the marks on the door ? A He told me.

Q And if Ballito says you told him, he is wrong, is that right ?

THE COURT: Objection sustained.

MR. DEMING: Objected to on the ground there is

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no such evidence.

Q You saw the marks on the door ? A I did.

Q How many marks are on the door ? A Five marks.

Q And that was the only marks on that door ? A That was the only marks, and this here iron (referring to "People's Exhibit No. 1 for Identification") fitted right in those five marks.

Q You have seen any instruments of that kind, haven't you ? A I have.

Q And you made an examination of this door ? You never saw that door before that day. You don't know the condition of the door ? A No, I didn't.

Q Isn't it a fact, when you saw DeRosa, he was about crossing from one side of the street to the other, towards his house, where he lived, directly across the street, opposite the house in question ? A No, sir.

BY THE COURT.

Q Do you know where he lives ? A No.

THE COURT: He doesn't know where he lives.

BY MR. HENRY.

Q Isn't it a fact, immediately after you placed DeRosa under arrest he was taken sick in the street, and he was covered with soil from his stomach ? A No, sir.

Q You didn't see the soil out of his stomach ?

A No, sir.

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Q And he didn't tell you he was sick ? A No, sir.

Q Didn't you see it the following day, in the Police Court, when his coat was all full of soil ? A I seen a stain on his coat.

Q Isn't it a fact DeRosa had absolutely nothing to do with this, and at the time you picked him up you wanted him to appear in the Court, and he said he had nothing to say about it ? A He didn't say that. He said, "He told me to come along, and I didn't know what to do, and I went along".

Q And he was not sick on the corner when you arrested him, just recovering ? A No, sir.

MR. CLARK: 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. DELING.

Q What is your name ? A James Digilio.

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

Q Attached where ? A Detective Bureau.

Q Officer, you were in company with Officer Capone on

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the night of the 18th of April? A Yes, sir.

Q When you both arrested these two defendants?

A Yes, sir.

Q And also Castler and Palazzola? A Yes, sir.

Q Will you state very briefly to the Jury just what you saw these two defendants do on that night, and just what you saw the other two boys do, in the presence of these two defendants? A We were standing in the lobby of 329 East One Hundred and Seventh Street, watching the premises 330, which had been blown up by dynamite -

THE COURT: Careful that out. Now I can understand why the police are cracked. I see because they are so afraid to take care of these people's business. Now, I am going to instruct the Jury, on account of the proper statement of the witness, to render a verdict of not guilty. Now, instruct your witnesses in future. That statement was made deliberately by this official to prejudice the Jury against these defendants. That is what it was made for.

MR. DENTON: Your Honor, I don't believe he has made it to prejudice them.

THE COURT: You are too simple a Christian to be alive if you don't think that this police officer interjected the fact that a house had been blown up

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by dynamite to prejudice this jury against these boys -

MR. BELING: It had nothing to do with these boys.

THE COURT: Now, officer, you are excused. It doesn't make any difference why he was there. I told you that when you examined the other witness. The jury is directed to acquit these defendants, on the ground of improper conduct on the part of the witness making a statement clearly and positively intended to deprive them in their legal rights; and if he could only find his own business, and do his own work, and I shall be very glad, that we would be all right.

THE CLERK OF THE COURT: Declaration of the Jury, have you a verdict, your honor?

THE FOREMAN OF THE JURY: We have.

THE CLERK OF THE COURT: How say you? Do you find the defendants guilty, or not guilty?

THE FOREMAN OF THE JURY: Not guilty.

THE COURT: Are there any other charges against these boys? It appears from the testimony that one of these defendants was armed with a loaded revolver and a pair of knuckles. The Court will order him held on that charge, if he has not already been held.

THE CLERK OF THE COURT: He is held on that.

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THE COURT: Is there any other charge against  
the other defendant ? 31

MR. DEWING: No other charges, your Honor.

THE COURT: He is discharged.

MR. LEVY: There is a charge pending against  
Rubino.

THE CLERK OF THE COURT: Rubino is committed.

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