

START

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CASE

411

I N D E X

Witness	Direct	Cross	Re-Dr.	Re-Cross.
Joseph Mancini	2	6	14	--
Do Do (Recalled)	58	-	--	--
Timothy F. Donovan	15	-	--	--
Patrick Kelly	17	20	22	22
Giuseppe Niclosi	24	32	--	--
Josephina Niclosi	49	52	57	--

AGE 1411

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

1531

-----X
THE PEOPLE OF THE STATE OF NEW YORK : B e f o r e
- against - : HON. JAMES T. MALONE, J.
GIUSEPPE NICLOSI : And a Jury.
-----X

New York, Monday, August 14th, 1911.

THE DEFENDANT IS INDICTED FOR ASSAULT IN THE FIRST AND SECOND
DEGREES.

INDICTMENT FILED JULY 17th, 1911.

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

CHARLES F. BOSTWICK, Esq., Assistant Dist. Attorney,
For The People.

C. W. KIRFER, Esq.,
For the Defendant.

(A Jury is duly impaneled and sworn.)

Amos G. Russell,
Official Stenographer.

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THE PEOPLE'S CASE

JOSEPH MANCINI, called as a witness on behalf of The People, being first duly sworn and examined through the Official Interpreter, Mare Mustaki, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK.

Q What is your name? A Joe Mancini.

Q Where do you live? A 406 East Twenty-fourth Street, City and County of New York.

Q Do you speak English? A I do not.

Q You now live at 406 East Twenty-fourth Street?

A Yes, sir.

Q How long have you lived there? A From the time I left the hospital.

Q Did you ever live at 411 East Twenty-ninth Street?

A Yes.

Q And are these the two addresses you gave the Interpreter? A Yes.

Q So that before you went to the Hospital, you lived at 411 East Twenty-ninth Street, and now you live at 406 East Twenty-fourth Street? A Yes.

Q Are you related in any way to the defendant, Giuseppe Niclosi? A I married his daughter.

Q Do you remember the morning of June 12th last?

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A Yes, sir.

Q Where were you about eleven-forty-five in the morning of that day? A I was in my own house.

Q Was your father-in-law there? A Yes, sir.

Q Did you have any conversation with your father-in-law at that time? A Yes.

Q State what it was, what you said, and what he said?

A He knocked at my door and came in, and said "Are you going to settle that account?" I said "Yes; sit down; we will settle it." He said to me I owed him four dollars, and I said "yes". "Give me that paper", the defendant said to me, "and then we will make up the account." I answered "You get the paper yourself." Then he made out he was going to get something behind me, and then he seized hold of me, and he extracted a knife from the inside right hand coat pocket, and he stabbed me seven times. The first stab wound was on my neck (indicating throat).

BY THE COURT.

Q What pocket was it? A The right inside coat pocket (witness indicating right hand inside coat pocket). The second stab wound was on the inside of my arm, right arm. The third one was here (witness indicating left breast, right hand left breast.) The other one, the fourth one, was under the left part of my privates. The fifth one was to the left of my ribs. Another one here (witness indicating on the

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left side of forehead). That is all.

BY MR. BOSTWICK.

Q Kindly show to the Jury such of the wounds as are still visible? A (Witness takes off coat and exhibits cuts on left breast, one in the middle of the right arm, one on the left forehead, one above the privates, right under the navel.) The one on the left breast, that is where the knife was left in there, and I had to extract it out myself.

Q After you pulled the knife out, what did you do with it? A I had fallen by that time to the ground, and the complainant was running towards me again, but when he saw me getting up he ran, and I ran after him. The defendant ran, and I ran after him, and the policeman was at the corner there, and placed him under arrest.

Q What did you do with the knife after you pulled it out? A I gave it to the policeman.

Q (Handing instrument to witness) I show you an instrument, and ask you if that is the knife with which you were stabbed, and which you pulled from the wound?

A This is the knife.

MR. BOSTWICK: I offer the knife in evidence.

MR. KIEFER: No objection.

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

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Q Is 411 East Twenty-ninth Street, the place where this alteration took place - A Yes, sir.

Q In New York County? A Yes, sir.

Q What happened to you after that? A I fell exhausted to the ground, and the defendant says to me, "You beast, are you alive yet?" Then I was brought to the hospital.

Q Do you know to what hospital you were taken?

A Twenty-sixth Street Hospital.

Q Is it Bellevue Hospital? A Yes.

Q For how long a period of time were you in Bellevue Hospital? A One month.

Q Do you know by what doctor you were treated while there? A I do not know the name of the doctor.

Q Would you know the name if you heard it? A Yes.

Q Was it Doctor Donovan? A Yes, that is the name.

Q Would you know him if you saw him? A Yes.

Q Is Doctor Donovan in Court?

MR. KIEFER: We admit all that.

Q Is that the Doctor (indicating)? A Yes, sir.

Q How old are you? A Twenty-five years.

Q And where were you born? A Italy.

MR. BOSTWICK: Your witness.

CROSS EXAMINATION BY MR. KIEFER.

Q Why did the old man call you a beast ?

MR. BOSTWICK: I object to that question.

THE COURT: Objection sustained.

Q The last time you saw the old man, what did he say to you ? A He says we want to make up accounts for that four dollars.

Q What time was it he called you a beast ? A When the policeman had him in charge, and I was on the ground.

Q Did he call you a beast because you wanted to pick on his daughter ?

MR. BOSTWICK: I object to that question.

THE COURT: Objection sustained.

Q What was this account about ? A It was a case of a bill for meals. When I was married, I lived with him.

Q It was a bill for meals ? A Board, yes.

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

Q How long were you married ? A Seven months.

Q Where were you employed at the time you were married ?

MR. BOSTWICK: Seven months from what time, may I suggest to Counsel ?

MR. KIEFER: I don't see that it is very material. He was married seven months up to the time of the arrest, I suppose.

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MR. BOSTWICK: I suggest that go on the record.

Q State how long you are married up until the present day? A I don't remember what date I got married, but up to date it is seven months.

Q You don't remember the day you were married? A No.

Q Were you working previous to your marriage, or up to the day you were married? A Yes.

Q Where were you working? A At One Hundred and Fourteenth Street.

Q For whom? A A marble place.

Q What is the name? A Lucase.

Q How do you spell it? A Lucase - L-u-c-a-s-e.

Q What is his first name? A I only know him by the name of Lucase. I don't know his first name.

Q What is the number of the street? A I do not remember the number, but it is between First and Second Avenues.

Q How long did you work there? A Four months.

Q What pay did you receive? A Seven dollars a week.

Q What is your business? A Generally, I am a marble worker, but when I cannot find any job at that, I do any kind of general work.

Q What did you do up there? A I was a driver on a wagon, and sometimes when I had no driving to do I would work in the marble factory.

Q What did you do in the marble factory? A I was

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sweeping and carrying goods.

Q You are a marble cutter by trade, are you not ?

A No.

Q What do you do as a marble worker ? A I always,
from the time I came in America, I always was a marble helper.

Q And what is the ^{pay} ~~subject~~ of a marble helper ?

A I generally get a dollar and a half, because I haven't a
Union card, and that is the reason I cannot get more.

Q Who is your boss at One Hundred and Fourteenth
Street ? A Lucase.

Q How many people are working there ? A Three
persons.

Q Where did you work after that ? A One Hundred and
Tenth Street; I do not remember the number, but in the same
line of business, marble business.

Q Who did you work for ? A Sulge.

Q What is his first name ? A I do not know his first
name.

Q How long did you work there ? A I worked on and
off three days or one week at a time.

Q How many years ago was that ? A About a year ago.

Q That was before you were married ? A Yes.

Q How much did you owe your father-in-law for your board
and all other expenses that he paid for you ?

MR. BOSTWICK: Objected to, unless it specifies at

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some particular time.

MR. KIEFER: At the time of this alleged assault;
at the time this fight took place.

MR. BOSTWICK: I withdraw the objection.

A He said I owed him four dollars, and I denied it.

Q What did you say that you owed him at that time?

A I told him I owed him nothing.

Q And for that reason he called you a beast? A The
defendant was an accomplice with his daughter, and she would
go with her father, and come in my house at two in the morn-
ing.

MR. KIEFER: I ask that that be stricken from the
record.

MR. BOSTWICK: I join in the request that the
answer be stricken from the record, and I ask also the
question be stricken from the record.

THE COURT: The question is not evidence.

Q Up to that time, you had not done a thing to this
old gentleman here? A No.

Q And you mean to tell the gentlemen of the jury that he
just came up and gave you the stab wounds that you have tes-
tified to for no reason in the world?

MR. BOSTWICK: Objected to.

THE COURT: Objection overruled.

A Yes, sir.

Q Your wife was working during all the time you were

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married to her, was she not? A No.

Q How long did she work, to your knowledge, do you know? A About a month and a half.

Q When was that? A I do not remember. When I moved from One Hundred and Fourteenth Street,

Q You were home all the time? A No.

Q But you know that she worked a month and a half?

A Yes, sir.

Q How much rent did you pay? A Four dollars.

Q And did you pay that? A When? When I was living with my father-in-law, do you mean?

Q Any time, did you pay any rent? A When I was living with my father-in-law, he would pay the expenses, and I would pay him, but when I lived with myself I paid four dollars a month.

Q Who did you pay it to? A I was giving it to another fellow who was living with me.

Q Will you kindly describe to the Jury how long it took before you had fallen to the sidewalk, or to the floor?

(Question withdrawn.)

Q How long an interval passed between the first and the last stabbing of the father-in-law, of this old defendant here? A About twenty minutes.

Q What did you do during all that twenty minutes? A I ran as far as the corner of Twenty-ninth Street, and then I

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couldn't run any further, because my insides were hanging out.

Q You misunderstood the question. Is that your knife there (indicating "People's Exhibit No. 1", of this date.) ? A Yes. No; the defendant had it.

Q You say it is not your knife now ? A No, it is not.

Q Did you ask your wife to go with other men at any time ? A No.

Q How much money was she earning during the time she was employed ? A Sometimes she used to bring me three dollars, sometimes she used to bring me two dollars.

Q You don't know how much she earned during the week, do you ? A She never would give me the slightest satisfaction.

Q How much, during all this time, had you received from the defendant here, the father-in-law ? How much money, during the seven months that you were married, or during the time you were married, up to the arrest of the father-in-law, did you receive from him from time to time ? A Nothing except when I had work, and I had to go to work, I would ask my father-in-law for twenty-five cents to go to work.

Q And how often did you ask him for that ? A All the time I was living with them, and all the time I would go to work.

Q Did your father-in-law keep peace in the family by buying you cigarettes ?

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MR. BOSTWICK: Objected to.

MR. KIEFER: This is cross examination.

THE COURT: Do you think it is important, Counsel ?

MR. KIEFER: I do.

THE COURT: Well, you may have it.

A No.

Q Did he ever buy you cigarettes ? A No.

Q Did he give you money to buy cigarettes ? A Yes,
when I was working, and I would come back from work, I would
ask him for money for cigarettes.

Q Where would you get the cigarettes when you were not
working ? A I had them on trust.

Q When he would not give you this money, did you ever
threaten him ? A No.

Q What did you say to him, if anything ? A The
defendant would say "I haven't got any", and I wouldn't answer
him.

Q What is the defendant's business ? A A shoemaker.

Q Where did you buy that knife ? A It is not mine;
I didn't have it.

Q That is not a shoemaker's knife, is it ? A I
don't know.

Q You knew enough to identify it ?

MR. BOSTWICK: I move that that be stricken out.

THE COURT: You object to the question ?

MR. BOSTWICK: There is no question. It is a comment of Counsel.

MR. KIEFER: I withdraw it.

Q How did you come to get stabbed in your right arm?

A I was seated at the chair, and I had my arm this way (witness indicating against his right temple), and when he came towards me I put my arm up, and I got it in the arm.

Q If I recall your testimony rightly, he first struck you in the neck? A Yes.

Q And then, after he struck you in the neck, you put your hand up this way (illustrating)? A I was first seated in that position.

Q And how do you mean the Jury shall understand you sufficiently, if you were sitting this way, and he struck you in the neck, and then in the arm? A When I say seated, he came from behind, and seized hold of me here (indicating), and pulled my throat backward, and he pierced me here first, where I got two stitches, and when I put my arm up to defend myself, I got the second one on the arm.

Q Did you stab this defendant in the arm there (indicating)? A No, because he didn't have that suit on when he stabbed me.

Q What kind of suit did he have on? A He had his working suit, and it was a dark suit.

Q He came from his little shop? He had no coat on?

A Yes, he had a coat on.

Q Was your wife at home that morning? A No.

Q Where was she, if you know? A She went to work.

Q Where did she go for her breakfast, if you know, each morning? A I do not know.

Q Did she go to her father's? A I do not know.

BY THE SECOND JUROR.

Q Were you living with your wife during all of this period, during all these seven months? A Yes.

BY MR. KIEFER.

Q What was the first words the defendant said to you when he came to your house that morning, if you know?

A He came in and said to me - I said to him first "Sit down"; and he said "Yes, I will sit down; I want to settle that account with you"; and, instead of sitting down, he was walking up and down the room.

Q What did he say to you about his daughter, if anything? A No, he didn't say anything about his daughter.

Q Did he ask you where she was? A No.

Q Is your wife pregnant now? A That I do not know.

MR. KIEFER: I guess that is all.

RE-DIRECT EXAMINATION BY MR. BOSTWICK.

Q When your father-in-law said "Is that beast alive yet", is that the time he called you a beast? A When I

was on the ground.

Q And is that the time you referred to in answer to the lawyer's question ? A Yes.

MR. BOSTWICK: That is all.

THE COURT: Mr. Bostwick, I do not know whether this witness is living with his wife now, or since he left the hospital. I do not know that any question has developed that. I should be glad to know it, if some one of you gentlemen will put the question.

BY MR. BOSTWICK.

Q Since you left the hospital, have you been living with your wife, or no ? A No.

MR. BOSTWICK: That is all.

BY THE FOREMAN OF THE JURY.

Q At the time you were on the floor, where was that, in your house, or on the street ? A I fell in both places; in my room, and also on the street.

TIMOTHY F. DONOVAN, called as a witness on behalf of The People, being first duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. BOSTWICK.

Q What is your name ? A Timothy F. Donovan.

Q Where do you reside ? A Bellevue Hospital.

Q Doctor, you are connected with Bellevue Hospital in

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an official capacity? A Yes, sir.

Q And as such you were so connected on June 12th, 1911?

A Yes, sir.

Q Do you remember a patient who was received at that hospital by the name of Joe Mancini? A Yes, sir.

Q Is that the same person who is now standing up in Court? A Yes, sir.

Q Will you state from what wounds or injuries he was suffering when you first saw him, on the 12th of June, 1911?

A When I first saw him, on the 12th of June, 1911, the patient was suffering from the following wounds: He had an incised wound of the scalp, two incised wounds of the left chest, and a penetrating wound of the abdomen. This abdominal wound was about four inches in length, a little to the left of the median line, and a little below the navel, and through it about a foot and a half of small intestines had prolapsed, and in one coil of this small intestine there were two perforations.

Q When you say an incised wound, Doctor, do you mean a wound that might be produced by an instrument such as the instrument I now hold in my hand, "Exhibit One"? A Yes, sir.

Q About how much of the intestine was protruding from the wound near the navel? A Oh, about a foot and a half.

Q And was that punctured? A In two places.

Q And, of course, the peritoneum had been punctured?

A Yes, sir, it had to be.

Q Which of these wounds was the most serious?

A The abdominal wound.

Q How long did you treat him in the hospital?

A Until the 6th of July.

Q Was the wound of the abdomen one from which a person might have died?

A Yes, sir.

MR. BOSTWICK: That is all.

MR. KIEFER: No questions.

PATRICK KELLY, called as a witness on behalf of The People, being first duly sworn, testified as follows
DIRECT EXAMINATION BY MR. BOSTWICK.

Q What is your name? A Patrick Kelly.

Q You are connected with the Municipal Police Force of the City of New York?

A Yes, sir.

Q Attached to what Precinct? A Twenty-fifth Precinct.

Q And were so engaged on the 12th day of June, 1911?

A Yes, sir.

Q Were you on post about eleven-forty-five that morning?

A Yes, sir.

Q And where? A On the south-west corner of Twenty-ninth Street and First Avenue.

Q Do you now know the defendant, Giuseppe Nicolosi?

A Yes, sir.

Q State when and where and under what circumstances you first saw him on that day? A I was standing on the Twenty-ninth Street corner and First Avenue, and I was looking towards the East River, down Twenty-ninth Street, and I saw the defendant, Niclosi, coming down the stoop, running. He ran up the street, and I thought he needed police protection. I walked over to him, in a kind of leisurely way, and when he saw me he turned and ran up First Avenue.

Q You saw him coming down a stoop? A Yes, sir.

Q Can you tell what stoop it was? A The stoop of 411 East Twenty-ninth Street.

Q State what happened after that? A I looked down the street about half a minute afterwards, and I saw Mancini coming down the stoop, and he was covered with blood, with a knife in his hand, and he pointed toward Niclosi. I immediately went after Niclosi, and caught him at Thirtieth Street and First Avenue, and brought him back to where Mancini was.

I asked Mancini what the trouble was, and he told me Niclosi had stabbed him.

Q Was that in the presence of Niclosi? A Yes, sir. I asked him was that the knife; I asked him was this the man that stabbed him, and he said "yes", and I notified the station house and got an ambulance and took Mancini to the hospital, and placed Niclosi under arrest.

MR. BOSTWICK: That is all.

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BY THE COURT.

Q Was this in the English language you spoke to these different people? A Yes, sir.

Q Did they make replies to you in English? A Well, they -

Q Did they, or not? A Mancini spoke English to me.

Q He said what you have told the jury in the English language? A Yes, sir.

Q Did you speak to the defendant? A Yes, sir.

Q In English? A Yes, sir.

Q Did he reply? A Yes, sir.

Q What did he say to you, in English? A I asked -

THE COURT: I don't want to take your function away. Develop this.

BY MR. BOSTWICK.

Q (Handing exhibit to witness) I now show you Exhibit One, and ask you whether that is the knife concerning which you have testified? A Yes, that is it.

Q And did you receive that knife from Joseph Mancini? A Yes, sir.

Q And did you bring it to Court with you this morning? A Yes, sir.

MR. BOSTWICK: That is all.

THE COURT: Take up, Counsel, this talk with these two men, because, there has been some evidence here which,

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if I am not satisfied was understood by the defendant, I will entertain a motion to strike out. Develop that situation. There is some evidence already in the case as to that.

CROSS EXAMINATION BY MR. KIEFER.

Q What conversation did you have with the defendant ?

A While I was waiting for the patrol wagon and the ambulance to come along, I had the knife in my hand, and I asked Niclosi why he stabbed Mancini, and he says "Me no understand." I asked him again, and pointed this way with the knife (illustrating), why he stabbed him. He told me that he was no good. He says, "He tried to kill me; I kill him."

Q Was anything said about Mancini's wife at that time ? A No, sir.

Q Did you ask Mancini - Let me understand just a moment. You took the defendant here and placed him under arrest ? A Yes, sir.

Q And he didn't go home to change his clothes or anything, did he ? A No, sir.

Q What further conversation did you have with Mancini ? A None.

Q None ? A No, sir.

Q Didn't you ask Mancini any questions why he was

stabbed? A Mancini fell to the sidewalk, and he was attended to by quite a lot of people around there. I didn't have any conversation with him whatever after that.

Q He had the knife in his hand when you first saw him?

A Yes, sir.

Q And you took the knife from him? A Yes, sir.

Q Is that all the conversation you had with either Mancini or the defendant here? A That is all, sir.

Q You say Mancini talked to you in English? A Yes, sir.

Q What was said by you and by him? A Well, Mancini never said anything to me, only pointed towards Niclosi there, and when I asked Mancini was Niclosi the man that stabbed him, he said "Yes".

Q There was a question - You said you thought this defendant needed police protection. What did you mean by that? A Well, I thought he was in trouble, and naturally enough I walked towards him, to show myself.

Q And Mancini came running out after him? A Yes, sir.

THE COURT: Counsel, the prosecuting witness said that he fell to the ground. Will you develop whether the witness was there when he fell to the ground, and what happened then?

Q Were you there when he fell to the ground? A Yes, sir.

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Q And what happened then? A He was attended to by several people that were there, giving him water, and trying to stop the flow of blood.

THE COURT: The prosecuting witness said that the defendant said something to him at that time, in the presence of this witness. Will you develop what he heard, if he heard anything?

Q Did you hear the defendant say anything to Mancini during that time when he fell on the ground? A No, sir.

Q He didn't say a word to him? A I didn't hear any conversation between them.

THE COURT: The prosecuting witness says the defendant said at that time "You beast, are you alive yet?".

Q Did you hear those words? A No, sir.

RE-DIRECT EXAMINATION BY MR. BOSTWICK.

Q From the position, relatively, that you occupied at all times, might it not have been possible for the defendant, Niclosi, to have said "Is that beast alive yet?", without your hearing it? A It might have been, yes, sir.

MR. BOSTWICK: That is all.

RE-CROSS EXAMINATION BY MR. KIEFER.

Q He might have said it in Italian, and you not understand it? A I didn't understand their language, no, sir.

BY MR. BOSTWICK.

Q One question more. If the defendant had made that remark to the complainant in Italian, you would not have understood it? A No, sir.

Q And you are not prepared to testify that he did not so state that, either in English or Italian? A No, sir.

THE COURT: Gentlemen, in view of this last answer, I shall strike out all of the testimony this witness has given as to what was said by the prosecuting witness and the defendant, the conversation they had.

MR. BOSTWICK: Does your Honor strike out as well that which was brought out by the defendant's counsel himself?

THE COURT: Yes, because of the uncertainty as to what was said.

MR. KIEFER: The defendant has no objection to anything being stricken from the record.

THE COURT: If Counsel for the defendant desires it, I will let it stand.

MR. KIEFER: No, I have no objection to what was brought out by the Officer going out.

THE PEOPLE REST.

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THE DEFENDANT'S CASE

GIUSEPPE NICLOSI, the Defendant herein,
called as a witness in his own behalf, being first duly
sworn and examined through the Official Interpreter,
Marc Mustaki, testified as follows:

DIRECT EXAMINATION BY MR. KIEFER.

Q What is your name ? A Giuseppe Niclosi.

Q Where do you live ? A 395 First Avenue.

BY THE COURT.

Q How long have you lived there ? A About five months.

BY MR. KIEFER.

Q How old are you, and what is your business ?

A Sixty years old and one month.

THE COURT: Ask the witness if he understood Mr.
Kiefer's question in English ?

THE WITNESS: No.

MR. KIEFER: He doesn't understand sufficiently
well to converse with him intelligently.

THE COURT: But he has some knowledge of the Eng-
lish language ?

MR. KIEFER: Some knowledge, yes.

Q What is your business ? A Shoemaker.

Q How long have you been in this country ? A In
America, thirty-five years.

Q Have you ever been arrested for or convicted of crime? A I never was even called as a witness.

Q And during the thirty-five years that you have been in America, you have been working at your trade as shoemaker?

A Yes, sir.

Q Do you recall June 12th of this year? A Yes.

Q Will you tell the gentlemen of the Jury, in your own way, just what took place between you and your son-in-law on that morning? A I used to love this complainant like one of my own children, and I loved my daughter also, and whenever he wanted to go to work he would come to me and say "Papa, give me twenty-five cents", and I would give him the twenty-five cents to go to work.

MR. BOSTWICK: I move to strike out the answer, as non responsive.

THE COURT: I will let that stand, but tell the witness to thoroughly get the question, and try to reply to the question.

THE WITNESS: I went over in that room to see how my daughter was, because she had not turned up for breakfast.

MR. BOSTWICK: I move that the answer be stricken from the record.

THE COURT: Let it stand. Proceed.

THE WITNESS: I shook the knob of the door, and

shook it, and I called "Josephine" - that is my daughter - and I got no answer. I shook the door a second time, and I got no answer. Then I opened the door, I went in and sat down, and I found the complainant was asleep. I said, "How is that? You are sleeping. You are not going to work?" I said, "Why don't you try to work?" I said to him, "Why, you haven't got even a chair in the room, and you see your wife is pregnant, and she can't go any more to work. Why don't you go to work? You can't sent her to work while she is in this condition." Then he got mad, and he went inside and took a knife, and he came out, and he says to me, "I am going to kill you", and as he has threatened me before he is going to kill me (witness points to right sleeve of coat), he stabbed me there; then I seized hold of his hair, took the knife away from him, and stabbed him.

Q Will you just describe what was in this room, what furniture, what it consisted of?

THE COURT: Hasn't he told you there wasn't anything there, not even a chair?

Q Is this the knife he stabbed you with (exhibiting "People's Exhibit Number One")? A It must be this one.

Q Does this knife belong to you, or did it ever belong to you? A No, I don't use that knife as a shoemaker.

Q During the seven months up until your arrest, that is,

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from the time your daughter was married up until your arrest, did Mancini support your daughter? A No.

Q Who was supporting him, if you know? A She was working herself.

Q You say you went to him that morning and asked him why he did not support your daughter, support his wife?

A I went to see whether she was sick.

Q When you found him sleeping, you said "You are not working"?

MR. BOSTWICK: I object to the form of the question. He is suggesting what was said. I have no objection if he asks what was said.

THE COURT: Yes, that seems to be a sound objection.

MR. KIEFER: Very well.

Q Will you kindly state what was the conversation after you got in the room that morning, on June 12th?

MR. BOSTWICK: Objected to, on the ground the witness has already exhaustively stated the entire conversation, in response to the same.

THE COURT: Do you not so understand? If not, I will let you go further into it.

MR. KIEFER: I understand the conversation, but I want to take it up on a different line.

THE COURT: He says, as I recall it, and as my notes show, that he found the ~~man~~ prosecuting wit-

ness sleeping, that he went there for his daughter, to inquire why she had not been to his house, and that he then said "Why don't you work?", or something to that effect, and called his attention to the condition that his daughter was in, as to pregnancy. Now, if there is anything further, Counsel, that he has not said, you may draw it out.

MR. KIEFER: No.

Q Had you ever complained to your son-in-law previous to this time about his not working and not supporting his wife? A The previous Sunday I made some remarks to him, when he wanted some money from me, and I told him "Why don't you work?".

Q That is, meaning the son-in-law? A Yes, sir.

Q And did he ever strike you, or assault you, when you did not give him money? A Two or three times he caught hold of me and assaulted me.

Q Did your son-in-law ask - Did your daughter ever have any conversation with you in regard - in the presence of your son-in-law, did the daughter ever have any conversation with you? A Yes, sir.

Q How long before the assault did the last conversation take place between you and your daughter and son-in-law?

A On a Sunday.

Q And was anything said at that time?

MR. BOSTWICK: I think it should be stated by whom it was said.

THE COURT: Yes.

Q Was anything said at that time by your daughter in regard to what her husband wished her to do?

MR. BOSTWICK: I object to what the daughter of the defendant said to the complaining witness.

MR. KIEFER: No; said to the defendant.

MR. BOSTWICK: Well then I particularly object to what the daughter said to the defendant.

THE COURT: What is your theory, Counsel?

MR. KIEFER: As the motive that led up to this assault. I am getting at the motive.

THE COURT: Do you think that would justify an assault?

MR. KIEFER: I think it would justify the position - would go to show what position the son-in-law - what was his position in regard to his father-in-law, and the fight resultant from that.

THE COURT: If it bears upon the question of self-defense, that these wounds were inflicted by the defendant while protecting himself, or in his own defense, I will allow you great latitude.

MR. BOSTWICK: If your Honor please, if Counsel for the defendant will really state to this Court that

the nature of the conversation when disclosed will bear upon the question of self-defense, I will make no objection; if the claim is insanity, I will make no objection; but because of what I believe in the purpose to be, I feel obliged to object at this point.

THE COURT: You have not pleaded insanity? You don't claim insanity?

MR. KIEFER: No. Self-defense.

THE COURT: Because of the manner of treatment of the prosecuting witness these wounds were inflicted, you make no such claim as that?

MR. KIEFER: No. We make the claim of self-defense.

THE COURT: That is your defense, as I understand it.

MR. KIEFER: Yes, and leading up to why the complaining witness first assaulted this defendant here, is the point I am trying to get at now. I want to show what conversations were had, and what led up to this assault on this particular morning, why the father went there, to find out where the daughter was.

THE COURT: He said he went there because she had not been to his house, he thought she might be ill, and he did not find her there, but found the prosecuting witness, who was asleep, and that he took the matter up, and he has told then what happened. Now, if he has not told everything that happened at that time, you may

frame a question that will develop that.

MR. KIEFER: Does your Honor mean on the day in question, or on the previous Sunday?

THE COURT: On this day in question.

MR. KIEFER: I think that has all been brought out, what occurred on the day in question, but it seems to me I ought to be allowed to go previous, to the depth of the motive, and the reason for the assault and self-defense.

THE COURT: The defendant says that he stabbed him in his own defense; that the prosecuting witness said he was going to kill him, and that he had got a knife; that he took the knife from him, and stabbed him. Is that not your recollection of his testimony?

MR. KIEFER: That is my recollection, yes, sir.
I will rest.

THE COURT: Continue. I want to give you the widest scope, Counsel.

Q How often had he threatened your life? A Every week. Every week he wanted money.

Q And did you ever -

THE COURT: Perhaps you will develop that - what that means. He said every week he threatened his life.

Q Just tell why that occurred? A Because he wanted money, and he wouldn't work.

Q Now, did he request your daughter -

THE COURT: What did he say.

Q What did he say, and what did you say? A He used to say to me, "By Christ, I am going to cut you in little bits, and I am going to kill you right in bed where you are. Give me some money."

Q What did he do to the daughter at any time in your presence?

MR. BOSTWICK: Objected to.

THE COURT: Objection sustained. Don't you think that is certainly objectionable?

MR. KIEFER: I think it is. I am trying to get at a point which I can very well bring out, but Mr. Bostwick won't allow me.

Q Did he ask your daughter to go with any men, so far as you know?

MR. BOSTWICK: Objected to.

THE COURT: In view of your statement to the Court, I do not think it can be in any way competent evidence.

MR. KIEFER: All right. I will produce the daughter. That is all.

CROSS EXAMINATION BY MR. BOSTWICK.

Q What time of day was it when you went to Mancini's house? A About half past nine.

Q And what time did you leave there ? A About a quarter to ten, or ten o'clock.

Q What time was it you stabbed him ? A It might have been a quarter past nine, or half past nine.

Q Couldn't it have been about eleven-forty-five, or a quarter of twelve ? A It could not be that time. I went to see my daughter, and I know it could not have been that time.

Q Did you feel friendly on that day, on June 12th, toward Mancini ? A I was always friendly. I always wished him good luck. I always was good to him. We always ate together.

Q And you were good friends on the morning of June 12th ? A Yes.

Q Do you know what day June 12th was, what day of the week ? A It was on a Monday.

Q Now, the day before, he threatened to kill you, hadn't he ? A Yes, he wanted money.

Q And every week before he had threatened to kill you and take your life, hadn't he ? A Always, all the time.

Q Do you stay on friendly terms with people who say they want to cut you up in little bits ? A Because he married my daughter, and I had to be friendly with him.

Q And you had in your heart a friendly feeling toward him on June 12th, 1911 ? A Always I had that feeling, as

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if he was my own son.

Q Did you have that feeling at the moment he told you he would cut you up in little bits? A Yes, all the time.

Q Where did you stab him first? A I went to go across his throat (witness pointing with knife across the throat, from left to right), but not with the intention of killing.

Q If the knife had cut his head off, you didn't intend to kill him, did you? A No, sir.

Q Did you just want to cut his throat? A No. If I wanted to kill him, I would have given him just one stab, and I would have killed him.

Q Didn't you give him a stab in the abdomen, about near the navel? A Yes, sir.

Q Didn't you stab him in the head? A Yes, sir.

Q And didn't you stab him under the arm? A Yes.

Q And didn't you stab him in the privates? A Yes.

Q And didn't you try to kill him? A No, sir; the knife only went a little bit, like that (witness indicating with small finger half an inch).

Q It was a knife as big as that, wasn't it (indicating "People's Exhibit No. 1")? A Yes, perhaps it was.

Q And you were in the heat of passion, were you not?
A Yes, because he wanted to kill me.

Q As a matter of fact, did you know what you were

doing ? A I had lost my mind.

Q Weren't you excited from the time you tried the door and got no response ? A No.

Q Did he owe you any money on that day ? A Yes, but I didn't go there for the money. I didn't want the money.

Q How much did he owe you ? A Enough money; about one hundred and fifty dollars.

Q Did he owe you four dollars ?

MR. KIEFER: Objected to as already answered.

THE COURT: Objection sustained.

Q Did you have any account on paper with him ? A No.

Q Did you ever ask for any account on paper ? A He was like a son to me. I didn't want no paper from him.

Q Did you ever ask him to make an account on paper ?

A No.

Q Did you ask him for any money on the 12th of June ?

A No.

Q What did he say to you when he started to assault you ? A "I must kill you, you old man; by Christ, I will kill you."

Q What conversation had you with him about anything before he said he wanted to kill you ? A The conversation which I had with him and the attempt to stab me was this: I told him "Why don't you go to work, and stop my daughter going to work in the delicate condition which she

is", and that brought it out.

Q You felt that he ought not to let your daughter go to work, did you not? A She couldn't go to work, and she came lately from work in a bad condition, and that is the reason I told him that she could not work any more.

Q She was at work on Monday, June 12th, was she not?

A Yes, sir.

Q How did you get the knife away from him? A I took hold - seized hold of his hair, and pulled his head backward, and knocked him down, and while he was down I seized the knife.

Q Was that before you tried to draw the knife across his throat? A Yes, before, when he was coming towards me with the knife.

Q Was he down when you tried to draw this knife across his throat? A Yes, sir.

Q Was he down on the ground when you stabbed him in the abdomen? A No, he stood up, and he wanted to seize hold of me, and then I stabbed him.

Q What stab did you give him when he was down?

A Only one, on the throat (witness pointing across throat).

Q And that was the first one, was it? A Yes.

Q So he was down on the ground when you gave him his first stab? A Yes, sir.

Q And you had taken the knife away from him by then.

time ? A Yes, certainly.

Q How many times in all did you stab him ? A I can't tell you. I was blind. I was excited, and I was nearly blind.

Q Where did you go then ? A I got up first, and he followed me.

Q Did you see Officer Kelly ? A Yes.

Q Did you say anything to Officer Kelly ? A Not one word.

Q Never spoke a word to him ? A Not a word.

Q Did he take you to where Mancini was on the ground ?
A Yes, sir, we were together.

Q Did he ask Mancini whether you were the person who had stabbed him, Mancini ? A Yes, sir.

Q And what did Mancini say ? A He said "Yes".

MR. BOSTWICK: Now I move that the testimony of the Officer be rehabilitated, on the ground there could have been no misunderstanding by the witness as to that testimony.

THE COURT: Have you any objection ?

MR. KIEFFER: No.

THE COURT: Then it will be rehabilitated, if you join in the request. Otherwise, it will be denied, in the interest of the defendant. Proceed.

Q Did you expect to find Mancini alive when you went

back to where his body was with the Officer? A Yes, I wouldn't kill him.

Q Why did you say then "Is that beast still alive?" ?

A I didn't say that.

Q Did you ever call him a beast ? A No, sir.

Q Do you think he is a beast ? A No, sir.

Q You are very fond of him ? A Yes, sir.

Q Are you still fond of him ? A Yes, sir.

Q Do you think he had treated your daughter aright ?

A No, because he always wanted her to go and have sexual intercourse with men, and ^{always} wanted her to be with different men.

Q How long had you known that to be a fact ? A My daughter told me that a week before this thing happened.

Q And had that worried on your mind at all ?

A Naturally, but with all that I tried to explain the seriousness of the thing to my son-in-law, in a quiet and nice way.

Q You had been told this how long before Monday, June 12th ? A A week before.

Q Had you had more than one conversation with your daughter about this matter ?

THE OFFICIAL INTERPRETER: Which matter ? This matter ?

MR. BOSTWICK: About the request of the son-in-law.

A Yes., sir.

Q Had you talked it over with anybody ? A No, sir.

Q You had kept that to yourself, had you? A Yes,

Q And as you kept thinking of it, did it make you feel friendly toward your son-in-law? A I always had good intentions towards my son-in-law.

Q Did you continue to have those good intentions after you heard that he had asked her to go upon the streets?

MR. KIEFER: Objected to as already answered very clearly. He stated that he went to his son-in-law and told him, in a quiet and peaceable way, how serious it was.

THE COURT: Objection overruled.

MR. KIEFER: Exception.

A Yes; all through the week, up until Sunday, I was good friends with him.

Q Did you see your daughter on Sunday, the 11th of June? A They were all together, eating with us.

Q On Sunday? A Yes, sir.

Q Did you see her on Saturday, the 10th? A All the week around, they ate in my house.

Q Every day? A That week, yes, every day.

Q Then she did not work during the week prior to the 10th of June? A Yes, she did work, but ~~that~~ she would come to my house to eat at night.

Q And she was there every night? A Yes.

Q And she was there Sunday? A And in the morning

also. Yes.

Q And she was well on Sunday, wasn't she? A Yes, sir, she was.

Q Did you have any talk with her on Sunday about the conversation she had with her husband? A On Sunday, he wanted some money, and he swore he would kill me, and he wanted to go to the theatre, and I said "After all I have done for you, is that the way you talk to and treat me?".

Q Now, did you have any talk with your daughter on Sunday? A Yes, we were eating together and conversing.

Q And did you have any conversation with your daughter when he was not present, meaning Mancini? A Yes, sir.

THE COURT: Mr. Bostwick, has this witness said his daughter breakfasted at his house on the morning of the 12th of June?

MR. BOSTWICK: He has not. I was leading up to that.

MR. KIEFER: She had no breakfast there the morning of the 12th of June.

THE COURT: He said she breakfasted in the house, and also took supper there, and I did not know whether the witness had said on that morning she had, or not, there.

MR. KIEFER: Not that morning. That is the reason he went over to the house.

Q On Sunday ? A Yes.

Q And how did she express it, that her husband wanted her to have sexual intercourse with men ? A My daughter says to me, "He wants me to have two men, and he wants me to get money, and give it to him."

Q And was that on Sunday ? A Before Sunday.

Q And was it referred to on Sunday ? A On Sunday, she did not say that.

Q And it was only spoken to you once ? A Yes, only once.

Q And when was that ? A A week before.

Q And she did not refer to that again in any conversation during the week preceding the assault ? A Once.

Q When was that ? A A week before.

Q Now, after the first time that she spoke of this, did she again speak of it any time down to the date of the assault ? A No, only once.

Q Has she any children ? A How could she have that ? She is only married seven months, and she is all swollen up.

Q And did she say to you that she was pregnant at that time ? A Certainly.

Q And had been for how many months, do you suppose ?

A Six months.

Q What did you say to your son-in-law about this conversation which you had had with your daughter ? A I

didn't mention anything to him about it, except in a kind of inuendo. I said to him "Why don't you go to work, instead of making your wife work?"

Q Did you believe what she had told you? A Would that give anyone pleasure to hear anything like that?

Q Did you believe what she told you? A Certainly, because it was true.

Q And did that make you feel friendly toward your son-in-law? A Always.

Q You loved him just the same after that, did you?

A Yes, because I warned him to have a little bit more respect for my daughter.

Q But you never said anything to him excepting by inuendo, is that right? A Certainly, he understood it.

Q Have you any other children? A Plenty; a big family.

Q Were any of them home on the morning of June 12th?

A No, because the whole family is in Italy.

Q Have you any family here? A Yes, one more, but she is married.

Q Do you have anybody work for you? A Nobody.

Q Who lives with you in this country? A Nobody. I am alone.

THE COURT: Is his wife living, Counsel?

MR. KIEFER: I don't know.

THE COURT: Will you develop that ?

Q Is your wife living ? A Yes.

BY THE SECOND JUROR.

Q How was your son-in-law dressed on the morning of this trouble, when you found him asleep ? Was he fully dressed ? A I cannot remember how he was dressed.

Q Don't remember whether he had his coat on, or his trousers ? A He was fully dressed.

Q Where did he draw the knife from ? A It must have been from under the bed.

Q I understood there was only a chair in the room ? A There was one, and that one did not belong to him.

Q Was there also a bed ? A Yes, sir, my daughter bought the bed.

Q And the son-in-law was sleeping where ? A In the bed.

Q Fully clothed ? A He must have been dressed, because that is the way he got up.

Q You didn't see him draw the knife from any particular place ? A I saw him going towards the mattress and the bed, and I didn't know what he was looking for, but when he came out he had the knife in his hand.

BY MR. BOSTWICK.

Q How long have you been in this country ? Thirty-five years ? A Yes, sir, thirty-five years I am in America.

Q And did you leave your wife in Italy when you came here ? A She remained here over six years.

Q How long ago was it that your wife returned to Italy ? A Twelve years ago we went back together.

Q And she stayed there, and you came back to America ? A I have been twice across to Italy besides that, and I came back here again.

THE COURT: Will you get an answer to the question ?

Q (The question is repeated by the Interpreter) ?

A Yes, sir.

THE COURT: Gentlemen, do you discuss the case or form or express any opinion on it, but keep your minds open and free until it is submitted to you. I will ask you to be in your places at nine o'clock tomorrow morning, sharp.

(The Court accordingly took a recess until tomorrow, Tuesday, August 15th, 1911, at 9 o'clock A. M.)

New York, Tuesday, August 15th, 1911, 9 A.M.

Present:

HON. JAMES T. MALONE, J.,

And a Jury.

Appearances:

Same as before.

TRIAL CONTINUED

GIUSEPPE NICLOSI, resumes the Stand.

CROSS EXAMINATION (Continued) BY MR. BOSTWICK.

Q When you arrived at your daughter's home and went in the room, where was your son-in-law? A He was on his bed, asleep.

Q You tried the door, and found it locked, did you not? A Yes, sir, it was locked from the inside.

Q And how long was it before you gained entrance?

A Immediately after I tried the door.

Q Did you not testify yesterday that you tried the knob several times, and that you waited, and that you were alarmed because the door was locked? A Yes, I said that.

Q Now, how long a time was it between the time you first turned the knob and the time you finally went into the room? A About one minute.

Q And when you got into the room, he was asleep on

the bed? A No, he got out of bed and was coming towards me.

Q Did you not just testify, a moment ago, that when you went into the room the first time, that he was asleep on the bed? A Because the door was closed; the door of the complainant was closed, and that made me think he was asleep in there.

Q Well, we will start over again. When you first got into your son-in-law's room, where was he? A I didn't see him getting out of bed, but when he came out of his bed he told me that he was asleep.

Q Did he open the door for you? A Yes.

Q And after you went inside, what did he do? A He sat down, and I sat down too.

Q Where did he sit? A On a chair.

Q And on what did you sit? A On another chair.

Q How many chairs were there in the room? A Two, but they were not his chairs.

Q And you sat on one chair, and he sat on the other?
A Yes.

Q These are not rocking chairs, are they? A Yes, rocking chairs.

Q Both rocking chairs? A Steady chairs.

Q Then they are not rocking chairs? A No.

Q Was the bed made up? A I didn't see the bed.

Q What kind of a bed was it ? A My daughter bought that second-hand bed for four dollars. Iron bed.

Q And did it have a mattress ? A Yes.

Q Were there any sheets on the bed ? A Yes, sir.

MR. KIEFER: If the Court please, I have to take exception to Mr. Mustaki. The old gentleman is hard of hearing, and this is a new proceeding to him.

THE COURT: The Interpreter must put the question propounded by Counsel. The Interpreter will direct the witness that he must give attention to the question he gives him, and reply to that, and nothing else. Let that be thoroughly understood once for all. Let him also know that we do not wish an answer to some question which has not been put to him. Just take the question, and answer that.

(Last question and answer are read by the Stenographer.)

THE WITNESS: I didn't see the bed; therefore, I couldn't tell you.

Q Didn't you see the bed at all ? A I did not.

Q Didn't you see the bed at any time ? A Yes, whenever I used to call there I used to see the bed.

Q On that day, did you see the bed at all ? A I did not.

Q Are you positive about that ?

MR. KIEFER: He has answered that. I don't think this is necessary. I object.

THE COURT: Objection overruled.

A Yes, I am positive, because the door was closed.

MR. BOSTWICK: That is all.

THE SECOND JUROR: Is that the coat -

THE COURT: If any juror desires to have a question put to the witness, he will rise in his place and make that fact known to the Court, and I shall ask either one of these gentlemen who are learned in the science of the law to put the question in such a way as it will not be objectionable. Jurors should not ask questions until both sides have exhausted a witness, and then, if there be some subject which has not been cleared up, if a juror will rise and ask the Court to have the subject taken up, I shall be glad to ask either one of these gentlemen to do it. Now, what is the question?

THE SECOND JUROR: The question, your Honor, was whether he wore the same coat on that day.

THE COURT: Will you ask that question?

MR. KIEFER: Yes, sir.

BY MR. KIEFER.

Q Is this the coat you wore on the 12th day of June, the morning of the assault? A Yes, sir.

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THE SECOND JUROR: Is there an inside pocket on the right side?

Q Has it an inside pocket on the right side? A Yes.

(Witness showing the inside right hand pocket of his coat).

THE SECOND JUROR: In what hand did the son-in-law have this knife?

Q In what hand did your son-in-law have the knife when he attacked you? A Right hand.

THE SECOND JUROR: Is the witness right-handed?

Q Are you right hand, or left hand, or are you ambidexterous? A Right handed.

THE SECOND JUROR: He can use his left hand?

Q Can you use your left hand? A Yes, I can.

JOSEPHINA NICLOSI, called as a witness on behalf of the Defendant, being first duly sworn and examined through the Official Interpreter, Marc Mustaki, testified as follows:

DIRECT EXAMINATION BY MR. KIEFFER.

Q What is your name? A Josephina Niclosi.

Q Where do you live? A 333 East Nineteenth Street.

Q Are you related to Joseph Mancini, the complaining witness? - you are, are you not? A Yes, sir.

Q How long did you and Joseph Mancini live together?

A Six months.

Q How long have you been married altogether at the present time ? A Seven months.

Q During the time Mancini and you lived together, did he support you ? A No, not a day.

Q Were you working during all that time, the most of that time ? A Yes, sir.

Q Did your husband work ? A He never worked, not a day.

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

Q Whose knife is that, if you know ? A It was our knife. My husband had it.

Q Were you present at any time when your husband and your father had any quarrel ? A Yes, sir.

Q Can you state what was said at that time by your husband and by your father ? A Several times, my husband threatened my father, to kill him, if he, my father, would not give him any money.

Q And did your father give him any money ? A Yes, several times.

Q Did your husband ask you to go with other men ?

A My husband wishes me to go and lead a bad life with men, and as a trial he told me he will have two boarders, and I can try first with the two boarders.

Q Are you pregnant now ? A Seven months.

Q Who are you living with now ? A I was with my

sister, but as she has just as much child as I have got, I had to get out. Now that my father is locked up, I am practically in the street.

Q Where were you in the habit of eating your meals in the morning and evening? A With my father.

Q Why didn't you go, on the morning of June 12th, with your father to breakfast? A Because, when we were there, on Sunday, there was such an upset there, and such a fight, that my father said "Now, please, if I am going to be the cause of all this fight, you better not come here any more, and stay with your husband."

Q So you did not go to your father's house that morning for breakfast? A No, I didn't go that morning.

Q Did your husband beat you that morning? A Yes, in the morning.

Q And then you went to work? A Yes.

Q How much do you earn a week? How much did you earn a week? A I used to earn about ten dollars or ten and a half, the first week I went to work, but in the condition I am now I could not make more than seven or eight dollars.

Q Did you have your husband in the Domestic Relations Court for support? A Yes, sir.

MR. KIEFER: That is all.

CROSS EXAMINATION BY MR. BOSTWICK.

Q How many knives like this did you have ? A That is the only one, and my husband used to repeat to me often that "this knife is now for your father. I must kill your father with this knife."

Q Had this knife ever been used in the house ?

A No; because he said he will keep it specially to attack my father.

Q Where was the knife kept ? A Under the mattress.

Q Were there any sheets on the bed ? A Yes, everything complete, mattress, sheets and all.

Q Do you know when your husband bought this knife, if he bought it ? A I do not know.

Q Did you ever see this knife under the mattress ?

A I did not see it, but the time that I did see it was when he pulled it out of the mattress, and said "See this knife ? This is the knife I am going to do your father up with".

Q How long before June 12th was that ? A Two or three weeks before.

Q Did you tell your father about this knife being under the mattress, waiting for him ? A I did not tell him.

Q Why not ? A I was going to tell him about it, but I had no occasion to tell him, because I didn't think he will do a thing like that.

Q On June 11th, Sunday, your father told you you better not go to the house the next day, did he? A Yes, sir.

Q Did you have any conversation with your father in reference to the request made by your husband that you have two boarders? A Naturally, being of an innocent mind, it was my duty to tell my father.

Q And when did you tell him? A If I exactly remember, it was about a week before.

Q And what did you tell him? A I was crying, and my father asked me why I was crying, and I said because, in the condition I am, I cannot go any more to work. He said "Don't work; then let him work"; and then I had to tell him what propositions he made to me.

Q What did your father say? A My father then burst out in tears, and said, "What? Insult on top of injury?"

Q Was your father concerned about it at all?

A About a week after.

Q How did he show it? A My father went there and asked him, in a reasonable way, as a father would talk to a son, telling him he should go to work.

Q Were you present? A Sometimes I was not present, but that morning that he told him I was present.

Q What morning was that? A On a Sunday.

Q Was that the Sunday before the assault? A Yes.

Q Was it at your house, or at your father's house?

A In my father's house, because we go there always on a Sunday, and we were eating there.

Q Then, the day before the assault, the requests made by your husband were discussed by your father? A Yes.

Q And you were present? A Yes.

Q Did you take any part in the conversation between your husband and your father? A Yes, I was crying, and I was corroborating my father, and I was crying.

Q And what did your father say to your husband the day before the assault? A While we were eating there, my father was talking of different subjects, and he said "Now, I am glad to have you here; you better have a rest now, my daughter, and your husband will surely go to work now, and have everything going on straight." Then my father said to him, "Now, it is time for you to go to work", and then he noticed that the complainant, the son-in-law, was kind of cold, and had a long face, and would not answer, and he stopped there, and then he didn't continue any more. Then my husband jumped up, and he said "Now, I will make this proposition: that your daughter is young enough and strong enough and in good health to go out and meet some men and make a living that way", and at those words my father burst in tears.

Q Was this proposition made to your father? A Yes, sir.

Q And this was on the day before the assault? A Yes.

Q And what did you say at that very moment ? A I said to father not to worry, that I am not made that way, I am not the kind of woman that will undertake such a life, and not to cry, and not to worry, because this man is a regular beast. Then my father said to me "Don't cry, and don't have any more words with this man, but just try and get away from him, and I will see what I can do for you, if you cannot live with him any more." That is all.

Q Who was present at that time besides your father and your husband ? A Nobody else.

Q How long is it since you have lived with your husband ? A Since this happened, I have not been with my husband.

Q Are you very fond of him ? A Always; and it is my duty to love my husband; but the propositions he made to me, I could like him for that.

Q Do you feel friendly toward him now ? A No. He does not speak to me, and I will not speak to him.

Q You are friendly with your father ? A My father, he is my own father, and whatever has happened, and what trouble he is in now is through me. In thirty-five years -

MR. BOSTWICK: I object to any statement being made which is not called for by the question.

THE COURT: The answer seems to be complete.

Q How many times have you seen this knife before to-

day ("People's Exhibit No. 1") ? A About three times.

Q About three times ? A Yes, sir.

Q Has it anything printed on it ? A There is something stamped on it, but I do not know what it is.

Q Is the end of the handle smooth, or is it carved, or how is the end of the handle ?

MR. KIEFER: It seems to me this witness, not being an expert, testifying that she saw it in the hands of her husband, this is unfair on the part of the District Attorney. She is not an expert on knives.

THE COURT: Objection overruled.

A I cannot remember those things.

Q Where was it the first time you saw this knife ?

A In Twenty-ninth Street, where we reside.

Q Who had it ?

MR. KIEFER: If the Court pleases, this witness is a foreigner, and she is in a delicate condition, and she has stated to the District Attorney previously, on cross examination, this morning, that she saw the knife in the hands of her husband, and it seems to me he is harassing this witness.

THE COURT: Objection overruled.

A I saw it at the time my husband drew it out of the mattress and showed it to me.

Q That was the first time you saw it ? A Yes, sir.

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Q When did you see it the second time ? A The second time also while he took it out of the mattress, when we had a quarrel, and he showed it to me, and said he would go at my father.

Q And the third time ? A In the Court, in Fifty-seventh Street.

MR. BOSTWICK: That is all.

RE-DIRECT EXAMINATION BY MR. KIEFER.

Q Who bought the furniture for the rooms in which you lived ?

MR. BOSTWICK: I object.

THE COURT: Do you think that is relevant, Counsel, or material ?

MR. KIEFER: I don't think it is material.

THE COURT: I will take your judgment on it.

MR. KIEFER: All right.

Q How old are you ? A Twenty years old.

Q At the time your father said to you that you should not come around to the house any more, was that in a moment of anger ?

MR. BOSTWICK: Objected to.

THE COURT: Objection overruled.

A It was not in a temper he said that, but he didn't want to hear the words that my husband used about me.

MR. KIEFER: That is all.

DEFENDANT RESTS.

REBUTTAL TESTIMONY

J O S E P H M A N C I N I, being recalled on behalf of
The People, in Rebuttal, testified, through the Official
Interpreter, Marc Mustaki, as follows:

DIRECT EXAMINATION BY MR. BOSTWICK.

Q (Handing exhibit to witness) I show you "People's
Exhibit No. One", and ask you if you bought, purchased or
owned that knife? A No.

Q I ask you whether you put that under the mattress of
your bed at any time? A No; and even I can produce wit-
nesses, parties who were residing with me, didn't see any knife
under my mattress.

Q I ask you whether you ever told your wife that you
had purchased that knife, and kept it under your mattress,
for the purpose of killing your father-in-law? A No, sir.

MR. BOSTWICK: That is all.

TESTIMONY CLOSED.

(Mr. Kiefer summed up on behalf of the Defendant.)

(Mr. Bostwick summed up on behalf of The People.)

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THE COURT'S CHARGE

MALONE, J.:

Gentlemen of the Jury, a person who, with an intent to kill a human being, or to commit a felony upon the person or property of the one assaulted, assaults another with a loaded fire arm, or any other deadly weapon, or uses any other means or force likely to produce death, is guilty of assault in the first degree.

A person who, under circumstances not amounting to that crime, wilfully and wrongfully wounds or inflicts grievous bodily harm upon another, either with or without a weapon, or wilfully and wrongfully assaults another by the use of a weapon or other instrument or thing likely to produce grievous bodily harm, is guilty of assault in the second degree.

It is charged here in this indictment that this defendant is guilty of one or the other of these offenses, the definition of which I have given to you.

He pleads not guilty to the charge, and is put upon trial before the Court and the Jury to determine the merits of the case.

The form of your verdict will be, therefore, either not guilty, or guilty of assault in the first degree.

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or guilty of assault in the second degree.

You must have observed that in assault in its first degree there is comprehended the specific intention on the part of the assailant to kill. That is an essential ingredient of assault in the first degree, but, if not proven beyond a reasonable doubt, and the jury believe that assault has been proven beyond a reasonable doubt, it becomes the duty of the jury to give the defendant the benefit of that situation, by dropping the degree, because the essentials must be established, and established up to what is said to be proof beyond reasonable doubt.

You will, therefore, determine, first, whether the defendant is guilty of assault at all in law as I defined the law to you, and if you conclude that he is not, or entertain a reasonable doubt that he is, you will give him the benefit of that judgment by a verdict of not guilty.

If you conclude that he is guilty of assault as defined to you, but you are not satisfied that the assailant intended to kill him, you will drop the degree from assault in the first to assault in the second degree.

If both of those essentials, violent and felonious assault, are established, and also the specific inten-

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tion to kill, then you will find the defendant guilty of assault in the first degree.

All people, under the law, are entitled to protection, and in the eye of the law to assault the vilest or most abject of the race is just as much of a crime as to assault the greatest benefactor of the human race.

This is, as has been stated in argument of counsel, a government of laws, to be administered for the protection of all men. No other rule, gentlemen, is safe, and no other rule is just. The exercise of any other rule would pervert our laws, because it would make the person who has received injuries or supposed injuries from a person the judge, the jury and the executioner himself, and give him the power to commit an assault because he thinks the person ought to be assaulted.

There have been outlined and suggested by counsel two defenses here: first, that the defendant was not legally responsible; I say, not charged, but outlined somewhat in the proof; and, secondly, that his acts were done in his own necessary self-defense.

The right of self-defense which is engrafted in every human breast is recognized fully by our laws, and entitles the person who is in danger of assault to pre-

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test himself. If assault be committed under such circumstances, it is justifiable, because the law provides that a person may use force or violence towards another when it is necessary for him to do so in order to protect himself or his property from unlawful interference, provided the force or violence used is not more than is sufficient to prevent such an offense. Both of these defenses are outlined somewhat in the evidence here.

The State charges that this defendant, on the 12th day of June, committed a violent assault upon the body of Mancini by means of a dangerous knife, and charge therein that he intended to kill him.

Witnesses have been called to sustain the indictment and the State's theory. Witnesses have been called by the defendant to sustain the defendant's defense. You will harken to all of the evidence, and justly determine.

To all concerned, the case is one of great importance. To the prisoner at the bar, it is of vital importance, for his liberty may hang upon the issue. To the public it is of infinitely great importance, because the good order of the community depends upon the prompt and faithful administration of the criminal law, and the punishment of crime when crime has been estab-

lished.

It is of no less importance to you gentlemen, who are acting in the discharge of a duty which you have solemnly taken upon yourselves to perform faithfully and according to the evidence, and for the manner in which you perform that duty you will be held hereafter to a just accountability to your country and to your God himself.

It must not mean anything to you who the parties here are or their position. Whether the prisoner is humble or affluent is beside the question. All persons are to be treated alike here, and the public look to this Court for a faithful and just administration of the law, and for an honest, upright, pure discharge of the duties which devolve upon those who take up the work of administering justice.

In all cases you are bound to take the evidence as true that is given by the witnesses, whether it is direct evidence, or circumstantial evidence, if there is nothing in the case to shake their credibility, or to authorize you to doubt the statements made by them, especially if you find the statements concur and support each other, and where there is no contradiction between them.

You cannot, in other words, gentlemen, arbitrarily disregard testimony. In a case particularly of

great gravity, as this is, you should carefully scrutinize all of the evidence.

You should say whether there is any reason to believe that the witnesses whom you have heard have testified falsely, or whether they are mistaken, and when facts have been established beyond all question and up to your moral satisfaction, you are to say then what inference you ought to draw from them.

I said to you that one of the defenses outlined and suggested in the evidence was that this defendant was either not in the possession of his faculties, so as to make him responsible, or that his acts were in his own defense.

You may, therefore, if you conclude that he committed this assault, but do not credit the defense of self-defense, take up the other question, whether the prisoner knew the nature of the act or acts that he was doing, and whether he knew that he was doing acts that were wrong.

In order to constitute a crime, a person must have intelligence and capacity enough to have what is said to be a criminal intent and purpose to commit the crime, and if the person's reason and mental powers are so deficient that he has no will, no conscious or controlling mental power, or if, through the over-whelming

violence of mental disease, his intellectual power is for the time obliterated, he is not a responsible moral agent, and is not punishable for any crime.

A man is not to be excused from responsibility if he does have capacity and reason which will be sufficient to enable him to distinguish between what is right and what is wrong as to the particular acts which he is doing, that is, knowledge or consciousness that he is doing what is wrong, doing something which will subject him to punishment.

In order to be held responsible, he must have sufficient power to realize the relation in which he stands to others, and which others stand to him, that the act he is doing is contrary to the plain dictates of justice and right, injurious to others, and a violation of the dictates of duty.

On the contrary, although he may be laboring under partial insanity, if he still understands the nature and character of his acts, and the consequence of his acts, if he has a knowledge that what he is doing is wrong and criminal, a knowledge sufficient to apply that power to his own case, and to know that if he does those acts he is doing what is wrong and will receive punishment for it, such partial insanity would not be sufficient to exempt a person from responsibility for criminal acts.

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So then, gentlemen, if you find it necessary to take up this side of the defense, you will respond in your verdict to the question, was the assault the act of a voluntary agent, or was it an involuntary act of the body without the concurrence of a mind which directed it? Judge this for yourselves from all the evidence you have heard upon this subject.

In all cases it is the rule of law, and a very salutary one in my judgment, one which has come to us from time immemorial, that no person's liberty shall be taken from him unless his guilt be established beyond a reasonable doubt; but by that I mean reasonable doubt; I do not wish you to conclude that I mean a bare possibility of innocence.

Even where a witness comes before you and swears that he saw a crime committed, there is a possibility that he swears to that which is not true.

I mean to say that if there be a conviction upon your minds, from all the evidence that you have heard, that the prisoner is guilty, if in your hearts you feel that there is no reasonable question upon that point, you must then find him guilty.

Throughout this trial, it has been my intention to secure the prisoner a fair trial. On every question of doubt as to the admissibility of evidence, the

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Court has been governed by views which have been favorable to the prisoner. So with you gentlemen, where a circumstance is of doubtful character, or where it is doubtful in its bearing, you are to give the prisoner the benefit of that doubt; but where facts are established which lead your minds necessarily to the conclusion that he is guilty, though there may be a bare possibility of his innocence, still you must find him guilty.

In all these cases, gentlemen, there are appeals to the sympathies of the human heart which, if they are not made by counsel, arise out of the nature of the case itself. You must, however, bear in mind that mercy is not your attribute. We are here to pass upon the law and the facts. We are here in the administration of justice to both parties. We have nothing to do with sympathy in the case if there be sympathy in the case. If mercy is to be extended, it will be legally extended by some other tribunal than the Jury.

I have no doubt, gentlemen, in taking up your responsible duty, you will guard your heads and your hearts against any such influences or suggestions. You are to mete out justice within your province and function with firm, impartial hands. You will mete it out under the obligation which you have taken upon

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yourself to discharge your full duty here, without sympathy, without fear, without favor to either side. If you do that, your consciences will be easy, whatever may be the result of your verdict. Then your verdict will be a legal verdict; it will be a verdict in pursuance of the laws under which you live and carry on your affairs; and you will retire from the consideration of your work with the consciousness that you have impartially and faithfully administered the law according to the best lights which surround you.

I shall not say anything about the evidence here, because, as learned counsel has stated, all the facts are for you. They have been discussed circumstantially and in detail by the learned counsel who have charge of the different sides of the case.

You will take this case and apply the law to the evidence as you find the evidence to be. You will reach a verdict which will be a declaration of the truth with reference to the charge. Do perfect justice to the defendant and to The People of the State of New York.

Is there anything you would like to have me charge the jury?

MR. KIEFER: Just one thing, and that is, if the jury believe the complaining witness threatened to

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kill the defendant, and the defendant, at the moment of this assault, believed that he was about to be killed by the complaining witness, their verdict should be that of acquittal of the defendant.

THE COURT: You may take that into consideration, gentlemen. If you believe that the defendant struck the blows in protection of himself, that he was influenced by threats which had been made before, he would not be responsible, because he would be permitted by the law to use just enough force to protect himself; he must not use more force, because, if he does that, the jury will pass upon that question, and if the jury conclude that he has used more force than the situation required, he would be responsible for the application of excessive force. Does that cover the point?

MR. KIEFER: Yes, sir.

(The Jury then retired, at 10:54 A. M.)

(The Jury returned to the Court room at 11:28 A. M., finding the defendant guilty of assault in the second degree.)

CASE 1411

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

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

- against - :

GIUSEPPE NICLOSI :

B e f o r e

HON. JAMES T. MALONE,

J u d g e

-----X
New York, Friday, August 18th, 1911.

THE DEFENDANT IS INDICTED FOR ASSAULT IN THE FIRST AND SECOND
DEGREES.

INDICTMENT FILED JULY 17th, 1911.

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

ROBERT C. McCORMICK, Esq., and

CHARLES F. BOSTWICK, Esq., Assistant District Attys.,

For The People.

C. W. KIEFER, Esq.,

For the Defendant.

THE DEFENDANT IS ARRAIGNED FOR SENTENCE BEFORE

HON. JAMES T. MALONE, J.

THE CLERK OF THE COURT: Giuseppe Niclosi, what

have you now to say why judgment of the Court should not

be pronounced against you according to law?

THE DEFENDANT: (Through the Official Interpreter, Marc Mustaki) I throw myself on the mercy of the Court. I am an innocent man.

MR. KIEFER: I would like to call to your Honor's attention one fact in this case which goes to show the intent of the defendant. During the course of the trial, on cross examination by the District Attorney, this defendant said "He came towards me with a knife. I knocked him down, and after that I was dazed; I was blind; I didn't know what I was doing when this thing occurred." It seems to me there was a great deal of provocation, and he did it under the heat of blood and passion at the moment, not realizing what he was doing.

THE COURT: Niclosi, after trial, the jury has convicted you of assault in the second degree. The judgment of the law is that you be imprisoned in State prison for not less than two years and six months nor more than four years.

Amos G. Russell,

Official Stenographer.

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