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COURT OF GENERAL SESSIONS OF THE PEACE,
CITY AND COUNTY OF NEW YORK. PART III.

THE PEOPLE
VS
ROSARIO GANGELOSI.

Before:
HON. EDWARD SWAN, J.,
and a Jury.

Tried New York, May 10th, etc., 1912.
Indicted for Criminally carrying weapon.
Indictment filed April 4th, 1912.

A P P E A R A N C E S :

ASSISTANT DISTRICT ATTORNEY ROYAL H. WELLER, for the
People.

F. J. GRECCO, ESQ., for the Defense.

TRANSCRIPT OF STENOGRAPHER'S MINUTES.

Frank B. Beard,
Official Stenographer.

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THE PEOPLE'S TESTIMONY.

... of C A, of 154 Forsythe Street, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. GRECCO: If your Honor please, at this time I ask your Honor to instruct the jury to render a verdict of not guilty on the opening of the District Attorney, because he did not state facts constituting the crime charged or any crime whatever.

THE COURT: Yes. Just repeat what you think he said, because it was not taken down by the stenographer, as it is not usual to take the opening of the District Attorney unless the stenographer is requested to do so.

MR. GRECCO: Well, your Honor, I only make that formal motion to protect my client. But what the District Attorney said is that he had a blackjack in his possession, and threatened his wife.

THE COURT: Well, is not that a crime?

MR. GRECCO: Yes, sir, I suppose it is. Well, then, I will withdraw that motion.

THE COURT: Yes, I would do so. Suppose I present a gun at your head and threaten to shoot you; isn't that a crime?

MR. GRECCO: Yes, sir, of course. I withdraw the

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motion.

DIRECT EXAMINATION BY MR. WELLER:

Q Now, how old are you, little girl? A I'm going to fourteen.

Q Do you go to public school? A Yes, sir; No. 91.

Q What class are you in at the public school?

A 6A.

Q Now, do you live home with your mother? A Yes, sir.

Q Whereabouts? A 154 Forsythe Street.

Q And is this defendant your step-father? A Yes, sir.

Q And he is married to your mother? A Yes, sir.

Q And there are two or three of you children at home, are there not? A Yes, we have four children.

Q And now, you remember the 14th of January of this year, do you not? Do you remember anything that happened on that day? A (No answer)

Q You know the month of January; don't you? A Yes, sir.

Q And do you remember the night you went around to the police station house? A Yes, sir.

Q Now, what happened before that, before you went around there. Your step-father, the defendant was home; was he not? A Yes, sir.

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Q Now, what did he do, if anything? A On January 14th he gave a pinch to my mother. My step-father went to a bride, and so he brought some candies to my mother, and my mother throwed them on the floor. My mother didn't want to took them.

BY THE COURT:

Q You mean he went to a wedding, when you say he went to a bride; do you not? A Yes, sir.

Q And when he came home, he brought home some candy?

A Yes, sir; he brought some candy to my mother and me, and so I took it, but my mother didn't took any.

BY MR. VELLER:

Q Your mother didn't take any? A No, sir; she took them, but throwed them on the floor, and my father took the blackjack and so he wanted to try it, but he didn't try it.

Q Is this the blackjack that he took (indicating)?

A Yes, sir.

MR. VELLER: I offer it in evidence, if your Honor please.

MR. GREGG: I move to strike out the answer, so much of the answer of the witness as calls for a conclusion, that her step-father wanted to do something.

THE COURT: Well, motion granted. But, be all

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appearances you need not make any motions as to this witness' testimony. She is apparently doing all that she can do for your side. Go ahead.

MR. WILSON: I offer this blackjack in evidence.

MR. GRIGG: I object to it.

THE COURT: Objection sustained. I will not admit it at this time.

BY MR. WILSON:

Q Well, what did he do with the blackjack? Where did he have it? A In the closet, hanging up.

Q What did he do with it? A I don't know what he done with that. He wanted to get it but he didn't get it.

Q Whereabouts did he keep it in the closet. A He used to keep it in the closet, on the shelf, where he put clothes.

Q He kept it in a closet in the room where you lived? A Yes, sir.

Q Now, did he get the blackjack from the closet?
A No, he didn't took it; he wanted to take it.

Q What did he do, not what he wanted to do? A The blackjack; oh, he didn't take the blackjack.

Q Well, what did he do when he went to the closet?
A He wanted to take the blackjack.

Q No, you must not say what he wanted to do. What did he get when he went to the closet? A The blackjack.

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MR. GRECCO: One moment. I object to the form of the question.

BY THE COURT:

Q When he went to the closet, did he take anything out of the closet? A No; he took the blackjack.

Q He took the blackjack? A Yes, sir.

BY MR. VILLANON:

Q What did he do with the blackjack? A He wanted to take it to hit my mother.

MR. GRECCO: I object to this, if your Honor please, and move to strike that out, that answer.

THE COURT: Yes. Motion granted. I think we had better have an interpreter.

(Mr. Villanona, the official interpreter, acted from this point on).

BY MR. VILLANON:

Q Now, when he went to the closet what did he get?

A The blackjack.

Q And what did he do with the blackjack? A He wanted to kill my mother with the blackjack.

MR. GRECCO: I object to that and move to strike it out.

THE COURT: Yes, strike it out.

BY MR. VILLANON:

Q And what did he say to your mother when he got the

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blackjack, if anything? A My mother says to him, "Leave me go. Don't do anything to me, because I won't throw the candy on the floor any more. Leave that blackjack alone, or I'll have you arrested".

Q And what did your father do then, or, rather, your step-father, the defendant here (indicating)? A And so he put the blackjack down, and he didn't do anything more.

Q And what did you do then? A Then I was washing the clothes -----

Q (Repeated) A I don't know, I don't remember.

Q Did you go to the police station house? A Oh, yes.

Q When did you go to the police station house? A In the month of March.

Q And what did you do when you went to the police station house?

MR. GRECCO: One moment. I object to that as immaterial, irrelevant and incompetent, and not binding on the defendant.

A I brought the revolver and the blackjack.

MR. GRECCO: I object to that. This was two months after the alleged incident mentioned in the indictment and I object to it, and move to strike it out.

THE COURT: Is that so, Mr. District Attorney, that

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it was two months afterwards?

MR. WILLER: Yes, two months afterwards she took the blackjack and the revolver to the station house.

THE COURT: And what do you propose to prove, Mr. District Attorney? Do you propose to prove that this alleged assault was made upon the wife two months before any report was made of it?

MR. WILLER: Yes, sir. The assault was made in January and then he continually had the blackjack in his possession from the 14th of January until this little girl took it to the station house, some time in the month of March --- on the 16th of March, I think--- I'm not sure of the date.

THE COURT: Well, don't you think that the lady rather slept over the offense that had been committed against her, for two months?

MR. WILLER: But the question here is, did he have in his possession a blackjack. I am not talking about the assault charge. I am talking about the blackjack charge.

THE COURT: Oh, I thought we were trying him for the assault.

MR. WILLER: Oh, no, on the blackjack charge.

THE COURT: Objection overruled.

MR. WILLER: Exception.

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BY MR. WHILLER:

Q Now, when did you go to the police station house? Do you remember when that was? A I don't know what day, but it was in the month of March.

Q And what did you take to the station house on that day or at that time?

MR. GREGGO: I object to that as immaterial, irrelevant and incompetent, and not binding on the defendant, something that happened two months after the alleged charge in January.

THE COURT: Objection overruled. Motion denied. Your motion is overruled. What difference does that make, whether she took the blackjack to the station house one month or two months afterwards, if she was taking it, according to her testimony from the possession of the defendant, or from the constructive possession of the defendant, if he had it in his room? If you have a blackjack in your room, it is a crime. To have it in his house is a crime; is it not?

MR. GREGGO: I except.

A The blackjack and the revolver.

MR. WHILLER: Now I will offer the blackjack in evidence.

THE COURT: Ascertain first whether it is the blackjack that she took to the station house.

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BY MR. WELLER:

Q Is that the blackjack you took to the station house (indicating)? A Yes, sir.

Q And is that the one you say your step-father, the defendant, had in his hand? A Yes, sir.

Q And threatened your mother with? A Yes, sir.

Q Is that the very one? A Yes, sir.

Q Now, where was it all this time, from January to March? A In the closet.

MR. GRECCO: I object to it as immaterial, irrelevant and incompetent.

THE COURT: Objection overruled.

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

MR. GRECCO: Exception.

BY MR. WELLER:

Q And you also took this gun to the station house; did you not? A Yes, sir.

MR. WELLER: Now, I offer this pistol in evidence, if your Honor please.

MR. GRECCO: I object to that, if your Honor please, as immaterial, irrelevant, incompetent, and as having no binding effect on the defendant, and it is unfair, I think, even to refer to it.

MR. WELLER: Oh, she has already testified to it three times, that she took the pistol to the station

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house with the blackjack.

THE COURT: The objection to the admission of the pistol in evidence is sustained, but the blackjack is admitted in evidence as People's Exhibit 1.

MR. GRECCO: And I object to its admission as immaterial, irrelevant and incompetent, not binding on the defendant, because there is no evidence that it was ever in his possession.

THE COURT: Overruled.

MR. GRECCO: Exception.

BY MR. WILKINER:

Q Now, how long had your father had that blackjack in the closet in your room or house there? A I don't know. I go to school, every day, and then I come home, and I go to sleep, and I don't know anything about that.

CROSS EXAMINATION BY MR. GRECCO:

Q Did you go to the wedding that night, little girl?

A No, my father went.

Q Did you mother go to? A No, sir.

Q Only your father? A Yes, sir.

Q And when he came home, your mother was home too, wasn't she? A Yes, sir. So he brings some candy to my mother, and my mother don't want to take it.

Q And what were you doing at the time? A I was

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washing the clothes.

Q Where were you at the time, washing the clothes?

A In the room.

Q In the same room where your father and mother were?

A No, in the next room.

Q What were you washing? A Clothes.

Q And when your father came home, you didn't see your father give your mother the candy; did you? A Sure. He gave me some candy, too, and I eat it up, and my mother throwed hers on the floor.

Q And did you stop washing and come out of the room? You were washing the dishes in another room, is that right?

A No, sir, I wasn't washing dishes. I was washing the clothes.

Q In another room? A Yes, sir.

Q Then, when your father came, did you stop washing the clothes, and come outside to see your father? A No, I was washing, and I don't want to stop.

Q And so, when your father came, you kept on washing the clothes? A Yes, sir.

Q And so you don't know what your father did or what he said to your mother while you were washing the clothes, do you? You only knew what your mother told you; is that right? A No, I don't know anything. I was washing.

Q Well, I knew, but what you told us before, that's what

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your mother told you, isn't it? A Yes.

Q You didn't see that yourself? A No, sir.

MR. WHEAT: Didn't see what? Make it clear to the child what you are asking about.

BY MR. GRECCO:

Q You didn't see your father go to the closet yourself, did you? A Yes, I saw my father go to the closet.

Q Well, did your mother tell you that? A No, my mother didn't tell me anything. I saw myself.

Q Oh, you saw it. A Yes, sir.

Q How far was the ^{other} room from the room where you were washing the clothes? A That's a bedroom.

Q Where were you washing the clothes? In the bedroom?

A No.

Q Where? A In the room.

Q In the kitchen? A No, that's not a kitchen.

Q How many rooms away were you while you were washing the clothes? A There was two rooms; where she used to keep the bed and where I washed.

Q How many rooms did you have there altogether?

A Two rooms.

Q Only two rooms? A Yes, sir.

Q Is there a door between those two rooms? A Yes, sir.

Q Was that door closed, that time, or open? A No, it

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was open.

Q The door is always open? A Yes, sir.

Q Now, just look at this little diagram, little girl, and show us. There are two rooms there, you say.

MR. WELLES: Oh, she can't tell anything about a diagram. How can that little girl be expected to tell anything about a diagram?

THE COURT: Well, let's see if she can.

BY MR. GRECCO:

Q Now, look at that diagram, little girl, and see where it says "washstand".

THE COURT: Well, there is nothing here, as yet, to show that it is an accurate diagram.

MR. WELLES: No, sir, not at all. And I object to it.

BY MR. GRECCO:

Q Well, never mind the diagram, little girl. Where were you washing the clothes? That washstand is right near the window, isn't it? A Yes, sir.

Q Yes, that's where the washstand is. And that's away off in the corner of the room; is that right? A Yes, sir.

Q Now, to go to the other room, you have got to walk all through that other room that you were in? A Yes.

Q And go over to the bedroom where the bed is? A Yes,

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sir.

Q And your father and mother were near the bed in the bedroom? A Yes, sir.

Q And you were out near the corner of one room, where the washstand is, and your mother and father were in another corner of the next room; is that right? A Yes, sir.

Q And are those large or small rooms? A The bedroom was a little bigger, but the other room was big, too.

Q Did you hear what your father and mother said in the next room? A Only a little bit.

Q You didn't hear all they said; did you? A No, I hear only a little bit.

Q Now, tell me just what you heard? A I heard that he took the blackjack. So he wanted to go to the closet.

Q No, don't tell us what he wanted to do. What did you hear your mother say to your father, and your father say to your mother? A So my father told my mother, "Why did you throw this candy on the floor?" So my mother said --- so he went to the closet.

Q No, I don't want that.

MR. WELLES: Oh, give her a chance. Give this little girl a chance to finish her answers. Go on.

A (Continuing) So he wanted to take the blackjack, and he wanted to kill my mother with that blackjack.

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MR. GRECCO: I object to that and move to strike it out, and ask your Honor to direct the jury to disregard it.

THE COURT: Motion granted. And the jury are instructed to disregard that statement of the witness.

BY MR. GRECCO:

Q And after that, did your father say anything more to your mother? A No, sir; because after that my mother said, "Leave me alone, leave me alone. I won't throw anything more on the floor." And then he put the blackjack in the closet.

Q And you were washing the clothes all the time?

A Yes, sir.

Q Now, did you ever see the blackjack in your house before that time? A I don't know. Yes, I saw it only one time in the closet. The jacket was hanging on top of it.

BY MR. WILLIAMS:

Q Whose jacket was it that was on top of the blackjack? A My jacket. And so I wanted to take it, my jacket, and the blackjack fell down, and I didn't know what it was, this thing.

BY MR. GRECCO:

Q Now, while you were washing the clothes, you never

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moved from there, did you? You heard all this talk between your mother and father while you were washing the clothes, didn't you? A No, I moved only a little bit. I thought he was going to kill my mother, and so I went to the door.

MR. GRECCO: I object to that, what she thought.

THE COURT: Objection sustained. Strike that out, what she thought. And the jury will disregard it.

BY MR. GRECCO:

Q Then you did move away from the washtub? A Yes, I moved away a little bit, because I thought he was going to kill my mother with the blackjack.

MR. GRECCO: I object to that, what she thought.

THE COURT: Yes, strike it out, and the jury will disregard it.

BY MR. GRECCO:

Q But you couldn't see your father when he went to the closet to take anything out, could you? A Sure I saw him.

Q But you kept on washing, in the other room, didn't you? A No, I moved only a little bit, so that is why I saw my father.

BY THE COURT:

Q Have you any grievance against your step-father?

A (No answer)

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Q Have you any ill feeling towards your step-father?

A No, sir.

Q What made you take the blackjack around to the police station, two months after your step-father threatened your mother, as you say? Why did you wait two months before you took it around there? A Because my mother was afraid, so she bring it to the police station.

Q Did she wait two months before she said she was afraid? A She was afraid; so she waited two months, you see.

Q Did anything happen immediately before you took the blackjack around to the police station? A No. It was on January 14th.

Q Did anything happen as to the defendant? Did he do anything the day you took the blackjack around to the police station? A No, he didn't do anything.

Q Well, had he made any other threat against your mother? A No. He didn't know anything when we brought these things to the court.

Q He didn't know it? A No, sir.

Q Well, what made you wait so long before taking the blackjack around to the police station? A My mother was working and she couldn't go there, and my mother was afraid to keep these things home and so she took them around to the police station.

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MR. GRECO: I object to that and move to strike that out, as to her mother being afraid.

THE COURT: Motion granted. Now, we will suspend here until 10:30 o'clock on Monday morning.

(The Court admonished the jury in accordance with Section 415 of the Code of Criminal Procedure, and adjourned the further trial of the case to Monday morning, May 18th, 1912, at 10:30 o'clock).

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TRIAL RESUMED.

New York, May 13th, 1912.

GEORGE HARTLE, JR., of the 13th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

MR. GRECCO: Will your Honor allow me to cross examine the little girl further, after we get through with this witness?

THE COURT: Very well.

DIRECT EXAMINATION BY MR. WELLS:

Q You are a lieutenant of police stationed at what precinct? A 13th Precinct.

Q Do you remember this little girl (indicating Rose Rocca) coming into the station at any time? A Yes, sir.

Q Can you give me the date? A I think it was March 25th.

THE COURT: If you have any memorandum made at the time you can look at that to refresh your memory.

BY MR. WELLS:

Q And did you look at the blotter in the station house before you came down here? A No, sir.

Q Did she come ⁱⁿ to the station house on March 25th?

A Yes, sir, to the best of my recollection as to the date.

Q Did she bring anything with her?

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MR. GRECCO: I object to that as immaterial, irrelevant, incompetent, as something that happened months after the alleged assault.

THE COURT: Overruled.

MR. GRECCO: Exception.

A Yes, sir.

Q What was it? A A blackjack.

BY MR. WELLS:

Q I show you People's Exhibit 1 and ask you if that is the blackjack she brought with her into the station house?

MR. GRECCO: I object to that as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. GRECCO: Exception.

A Yes, sir.

Q Did you assign a police officer to the case? A Yes, sir.

Q Who was it? A Detective Harvey.

MR. GRECCO: No questions. Oh, may I ask that Captain one question?

THE COURT: Yes. Come back here, Lieutenant.

(The witness being recalled to the stand).

CROSS EXAMINATION BY MR. GRECCO:

Q Lieutenant, when you saw the little girl with the blackjack in her hand, why didn't you arrest her? A She

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didn't have it in her hand. She had the blackjack concealed, wrapped in a piece of shawl.

Q Wrapped up in a piece of shawl? A Yes, sir.

Q And so, simply because it was exposed, you didn't arrest her? A No, sir, I didn't arrest her.

THE DIRECT EXAMINATION BY MR. WILKINSON:

Q Why, she came into the police station house with it; didn't she? A Yes, sir.

BY THE COURT:

Q How did she bring it in? Please tell us. A Why, she came in with her mother, and her mother had a small child in her arms, and she wanted a warrant for her father's arrest, and she said -----

MR. GRUSCO: Objected to. I object to what she said.

THE COURT: Sustained.

BY THE COURT:

Q No. You can't tell us what she said. Only tell us what happened as to the blackjack. A She had the blackjack wrapped in a piece of shawl, and I couldn't very well understand what she was talking about, and I asked her to come behind the desk, and she handed me this blackjack, wrapped up in this piece of rag or shawl, or whatever it was, and said that her father had struck her mother with it.

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MR. GRECO: I object to that, and move to strike that out, what she said.

THE COURT: Motion granted. Strike it out.

BY MR. WELLER:

Q Were you present when the defendant was brought in?

A No, sir.

JAMES F. HARVEY, of the Detective Bureau, assigned to the 13th Precinct, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WELLER:

Q Were you assigned to this case, officer, on or about the 25th of March? A Yes, I was assigned to the case by Lieutenant Haerle, the previous witness, and I accompanied the girl who testified here -----

Q Rose Phala? A Yes, sir; to the premises 116 Forsythe Street.

Q Did the mother also accompany you? A Yes, sir.

Q You went to 116 Forsythe Street where they lived?

A Yes, sir.

BY MR. GRECO:

Q When was this, officer? A On the night of the complaint, the 25th of March.

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MR. GRECCO: I object to this as immaterial, irrelevant, incompetent, and not binding on the defendant.

THE COURT: Objection overruled.

MR. GRECCO: Exception.

BY MR. WELLER:

Q Go ahead. A And on the way from the station house to 116 Forsythe Street, she told me that her father come in, that night ---

MR. GRECCO: I object to that.

THE COURT: No. On the objection of the defendant, you cannot testify as to any conversation you had with anybody in the defendant's absence.

BY THE COURT:

Q And I presume the defendant was not present; was he? A No, sir.

BY MR. WELLER:

Q Now, did you go to their home with them? A Yes, sir.

Q And what did you find when you got there? A I found the door locked with a padlock on the outside.

Q Locked with a padlock? A Yes, sir.

Q So that they couldn't get inside? A Yes, sir.

MR. GRECCO: I object to that as calling for a conclusion, that they could not get inside.

THE COURT: No, "locked with a padlock", may stand but we will strike out everything after that. "So that

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they couldn't get in" is stricken out.

BY MR. WELLER:

Q Well, did you get in? A No, sir.

BY THE COURT:

Q Did you try to get in? A Yes, sir.

Q Did the woman try to get in? A The young girl did, yes.

Q She didn't get in, did she? A No, sir.

BY MR. WELLER:

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

Q Did you see the defendant later in the station house? A I saw him, four days later, at the Third District court.

Q Did you have any conversation with him? A No, sir.

CROSS EXAMINATION BY MR. GRECCO:

Q So you didn't see the defendant do anything, did you, officer? A No, sir.

MR. GRECCO: That's all.

MR. EDWARDS: That's the People's case.

MR. GRECCO: Oh, I want to recall the little girl.

THE COURT: Yes, the little girl.

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R O S E F A C I A, being recalled by counsel for the defendant, for further cross examination, testified as follows:

CROSS EXAMINATION CONTINUED BY MR. GRECCO:

Q Now, Rose, did you look at that washstand when you went home Friday, to see where it was, what part of the room? A No, I didn't.

THE COURT: We will have to have the interpreter with her. Go right ahead, and we'll do the best we can until he comes.

BY MR. GRECCO:

Q Isn't the door of the bedroom in a corner of the room? A Yes, sir.

Q Is that right? A Yes, sir.

Q And the washstand is in another corner? A Yes, sir.

Q So your father and mother were in the bedroom? A Yes, sir.

Q Where you couldn't see them; is that right? A Yes, sir.

THE COURT: When?

MR. GRECCO: The night she testified that the father gave the mother some candy, and the mother threw it away. That's the night in question, your Honor.

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THE COURT: What is the point? What has the washstand got to do with it?

MR. GRECCO: The little girl testified, on Friday, that she was washing, and that she could see from where she was what was going on in the next room. Now, I want to show the jury, your Honor, that she couldn't see, because the door was in the corner, and she was in another corner, washing, and she would have to walk to the corner of the door leading into the bedroom, in order to see anything.

THE COURT: If the door was open?

MR. GRECCO: Even if the door was open.

MR. WELLES: I object to the question because counsel asked the same question, last Friday, and the child, the girl, said that she didn't stand in one position, that she walked around, that, when she heard the noise, she walked over to the door, and saw what was occurring.

MR. GRECCO: Yes, I remember she said that, but I'm trying to refresh her. There is no dispute about that.

THE COURT: Well, what is the purport of the question? To show that if she stood at the washstand---

THE WITNESS: I was washing and so I couldn't hear anything.

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BY MR. GRECCO:

Q You were washing? A Yes, sir.

Q And when you started to move around from where you were walking, was that after everything was all over, all the talk between your mother and father? A I didn't see anything. I was washing, and I didn't see anything.

Q What do you mean? You didn't see anything. A I was washing the clothes.

Q Oh, did you see the defendant, your father, with the blackjack in his hand? A No.

MR. WHEELER: I object to that as already testified to.

BY THE COURT:

Q Did you see the defendant here, your father, with the blackjack in his hand? A No, sir, I didn't see him. I was washing the clothes, and I didn't see anything.

BY MR. GRECCO:

Q You simply know what your mother told you? A No, sir. My mother knows everything, but I don't know anything. I was washing the clothes.

Q Oh, you thought your father had it in his hand? A I don't know. I didn't see anything. I was washing.

BY THE COURT:

Q Did you hear the defendant threaten to hit your mother with the blackjack? A No.

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Q Didn't you say, the last time, on the last day here, that you did? Didn't you testify on Friday, that you saw him with the blackjack in his hand, and make a motion towards your mother and threaten to strike your mother with the blackjack? A No, sir.

Q And, this morning, you say you didn't see any of that? A Yes, sir.

RE DIRECT EXAMINATION BY MR. WELLER:

Q Now, testified before the Grand Jury, upstairs; didn't you? A Yes, sir.

Q And you remember you went in there, and told the gentlemen that sat around the big table up there in the Grand Jury room what you knew? A Yes, sir.

MR. GRECCO: Objected to as immaterial, irrelevant and incompetent.

THE COURT: Allowed.

MR. GRECCO: Exception.

THE COURT: How did you know she was going to testify to this, this morning? Why did you recall her, this morning? Because you have asked her the very identical questions that you asked her before, on Friday last, and her testimony is diametrically opposed to what it was on Friday. How did you know she was going to change the testimony that she gave on Friday?

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MR. GRECO: I was told, your Honor, that the location of the door of the two bedrooms was towards the corner, and that she couldn't see into the room where her father and mother were, and I was told that since last Friday. I didn't know it before.

THE COURT: Yes; and so, this morning, she didn't see or hear anything. Now, you may ask her what she testified to before the Grand Jury.

BY MR. WELLS:

Q Now, I want you to tell the truth, little girl. Do you know what it is to tell the truth? A Yes, sir.

Q And I want you to tell the truth here. Now, didn't you testify, when you were upstairs before the Grand Jury, and Mr. Fontana was present ----

MR. WELLS: Send for Mr. Fontana.

MR. GRECO: Is your Honor going to allow the District Attorney to impeach his own witnesses?

THE COURT: No. But it appears satisfactorily to the Judge that the witness is an unwilling witness and he may confront her with any testimony she has previously given.

BY MR. WELLS:

Q Was this question put to you and did you make this answer: "Q. How did you get hold of it? A. He took the blackjack. My mother took the blackjack from the closet.

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So then he went out". Do you remember that? A Yes, sir.

Q And do you remember this question and answer ... this answer: "A. Because he wants to kill her, all the family." Do you remember that answer?

MR. GRECCO: Now, if your Honor please, is all this admissible?

THE COURT: No, we will strike out the last answer, or the last part of the answer, and the jury will disregard it.

MR. GRECCO: If your Honor please, I object to all this. The District Attorney has his remedy, if the girl has committed perjury.

THE COURT: And what would be the District Attorney's remedy, counselor?

MR. GRECCO: Why, an indictment for perjury, of course.

THE COURT: And what would be the result of that?

MR. GRECCO: I don't know, sir, and I don't care, so long as my client is freed. That's the only interest I have here.

BY MR. VELLER:

Q Do you remember this question and answer: "Q. Did he ever threaten you with a blackjack? A. My mother.

Q. When you were present, did you see him threaten your mother with a blackjack? A. Only one time, on January

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14th." Now, that is the time we are talking about. Then he threatened your mother with a blackjack, did he?

A No, he didn't threaten my mother with a blackjack, no.

BY THE COURT:

Q The question is, did you testify before the Grand Jury that, on January 14th last, the defendant threatened your mother with a blackjack; did you tell the Grand Jury that? A Yes, sir.

Q Yes, you did? A Yes, sir.

BY MR. WEINER:

Q Then, when you testified here, on Friday last, before this jury here, Mr. Grecco asked you this question --- you remember testifying to this: "Q. And after that did your father say anything more to your mother? A. No, sir; because after that my mother said, 'Leave me alone, leave me alone. I won't throw anything more on the floor,' and then he put the blackjack back in the closet." Now, do you remember testifying to that, on Friday? A (No answer)

Q Was that true, that, after threatening to kill your mother, he took the blackjack, and put it back in the closet?

A Yes, sir.

Q Was that true? A Yes, sir.

Q Then you were asked this question: "Q. Now, did you ever see the blackjack in your house before that time?" And did you answer this: "A. I don't know. Yes, I saw it

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only one other time in the closet. My jacket was hanging on top of it." Did you testify to that, on Friday?

A Yes, sir.

Q Before this jury? A Yes, sir.

Q Now, was that true? A Yes, sir.

Q Then the questions asked you on Friday: "Q. And what did he do with the blackjack? A. He wanted to kill my mother with the blackjack." Is that true?

MR. GRECCO: That was stricken out, if your Honor please, what he wanted to do.

THE COURT: Yes, that was stricken out.

BY MR. VILLER:

Q Now, was this question asked you, and did you give this answer, on Friday: "Q. And what did he say to your mother when he got the blackjack, if anything? A. My mother said to him, 'Leave me alone, don't do anything to me, because I won't throw the candy on the floor anymore. Leave that blackjack alone, or I'll have you arrested.'"

A Yes, sir.

Q And was that true? A Yes, sir.

Q And did he have the blackjack in his hand, then?

A He, sir.

Q Well, whose was the blackjack then when your mother told him to leave it alone or she would have him arrested?

A He, sir; we found it in the closet. He didn't have it in

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his hand.

Q Who found it there in the closet? A My father found it.

Q When did he find it? A When we moved over there.

Q When did he find it? A When we moved to 116 Chrystie Street.

Q Did you see him when he found it? A No, sir, I didn't see anything. I was in school.

Q And how do you know he found it? A I saw this was in the closet.

Q And how long was it hanging in the closet? A I don't know.

Q How long did you live there? A About six months we lived there.

Q And it was hanging in the closet all that time?
A Yes, sir.

Q And this closet is in the room where your father sleeps? A Yes, sir.
BY THE COURT:

Q Does he hang his clothes in that closet? A Yes, sir.

Q Now, little girl, did you speak to anybody or did anybody speak to you about this case, since you left the stand on Friday? A No, nobody spoke to me,

Q Nobody at all? A No, sir.

Q What made you change your testimony between Friday

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and this morning? A I was afraid, Friday, you see, that's why.

Q Well, what were you afraid of, and what caused you to be afraid? Did anybody say anything to you or write any letter to you? A No, sir, nobody told me anything.

Q Nobody wrote a letter to you? A No, sir, they didn't write a letter to me.

Q Well, what was it that occurred that made you afraid? A There was a lot of men here; so I was afraid.

Q A lot of men where? A Here.

Q Where are they? A In this room.

Q In this room? A Yes, sir.

Q What sort of men are they? A (No answer)

THE COURT: Ask her that, Mr. Interpreter, in Italian. (Addressing Mr. Moustaki, the Official Interpreter).

THE INTERPRETER: She makes a statement that perhaps your Honor may not want me to make in the presence of the jury.

THE COURT: Yes, tell me what it is privately.

BY MR. WELLER:

Q Now, that gentleman was up in the Grand Jury room, acting as interpreter; wasn't he (indicating Mr. Fontana)? Wasn't he there when you testified? A Yes, sir.

Q And he interpreted for you; didn't he? A Yes, sir.

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MR. WELLER: And he is the official interpreter of the Grand Jury. May that appear on the record, your Honor?

THE COURT: Yes.

RE CROSS EXAMINATION BY MR. GRECCO:

Q Now, you testified that your shawl was over the blackjack in the closet, or your jacket? A Yes, sir.

Q You testified to that Friday, little girl; did you not? A Yes, sir.

MR. GRECCO: That's all.

MR. WELLER: That is the People's case.

MR. GRECCO: I ask your Honor to instruct the jury to acquit the defendant.

MR. WELLER: If your Honor please, --- one moment --- I offer in evidence the complaint and examination in the Magistrate's Court.

THE COURT: Well, that can't be offered if the defendant objects to it.

MR. WELLER: Do you object to the complaint being offered in evidence? I thought it was always in evidence, your Honor.

THE COURT: No.

MR. GRECCO: Yes, I object to it.

MR. WELLER: Then I will have to call the officer. I thought the complaint was always in evi-

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dence.

THE COURT: No.

MR. GRECCO: I will concede that he signed the formal.

MR. WELLER: It is conceded then, if your Honor please, that he signed this statement in the Magistrate's Court.

MR. GRECCO: It is conceded that he signed a statement that he wasn't guilty; that's all.

MR. WELLER: Well, that doesn't cover the complaint and the statement taken pursuant to law.

MR. GRECCO: And I object to the complaint.

THE COURT: Yes, the complaint has nothing to do with this case, you see.

MR. WELLER: Then I will offer the statement alone in evidence.

THE COURT: Very well.

MR. WELLER: There is no objection to the statement going in; is there?

MR. GRECCO: I will concede the formal. Anything signed by him, by my client, I will concede, anything signed by the defendant.

THE COURT: Very well. You don't object to his formal statement?

MR. GRECCO: No, sir.

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(It is marked People Exhibit 2 in evidence).

MR. GRECCO: I ask your Honor to direct the jury to acquit the defendant, on the ground that the People have failed to prove a crime, the crime alleged in the indictment against this defendant.

THE COURT: Yes. Having possession of a blackjack, possessing a blackjack, is that what you mean?

MR. GRECCO: Well, I mean in general, your Honor, that the People have failed to prove, beyond a reasonable doubt, that the defendant was in possession of a blackjack, as alleged in the indictment.

THE COURT: Motion denied. And you have an exception.

MR. GRECCO: Exception.

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THE DEFENSE.

ROSARIO GANGELOSI, the defendant, of
116 Chrystie Street, being duly sworn and examined
through the Official Interpreter, Mr. Moustaki,
testified as follows:

DIRECT EXAMINATION BY MR. GRECCO:

Q Mr. Gangelosi, you have been convicted before of a
crime? A Yes, sir.

Q And you served a term in Sing Sing? A Yes, sir.

Q How long? A In 1908, no less than two years and
no more than three and a half.

Q Can't you speak English. The jury would prefer to
have you speak English. Can you speak English? A Yes, I
speak English.

Q Then speak in English, without the interpreter.
What were you arrested for? Grand larceny? A Burglary
third degree.

Q And when did you get out? A 1910.

Q So you only served the minimum term; is that
right? A Yes, sir.

Q The Board of Parole pardoned you, up there; is that
right? A Yes, sir.

MR. WELLES: They didn't pardon him. They paroled
him; that's different.

BY MR. GRECCO:

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Q And after you came out of prison you married your wife, the complaining witness? A Yes, sir.

Q And this marriage between you and your wife happened after you came from Sing Sing? A Yes, sir.

Q And she knew you was in prison before; did she?
A Yes.

Q Now, after you came from prison did you work?
A Yes, sir.

Q Where did you work? A Giuseppe Di Angelo.

Q Whereabouts? A 73 Debevoise Street, Brooklyn.

Q What kind of work did you do there? A Laborer.

Q And how long did you work there? A About four months.

Q And who did you work for next? A Biaggio & Patti.

Q And where are they located? A In Brooklyn.

Q Where in Brooklyn? A 495 Lincoln Road.

Q And how long did you work there? A Eight months.

Q What kind of work did you do there? A Helper in a bakery.

Q Did you work for anybody else after that? A I was working at the Empire Company.

Q What kind of work? A Laborer.

Q Laborer? A Yes, sir. And we stopped on account of the dirt was froze, and we can't work; and I was working home with my wife and we was making about nine or ten

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dollars a week.

Q Did you work for anybody else after that? A Yes, sir.

Q For whom? A For Allen, West Broadway.

Q What kind of work did you do there? A Driver.

Q Now, about this blackjack. Do you know anything about this blackjack? A I saw this thing when I was moving in the house, hanging in the closet when I was starting to hang up the clothes. I never seen a blackjack in my life before, and I've been here eleven years and I'm working all the time.

Q Who did the blackjack belong to; do you know? A I can't tell. I never see a blackjack in my life, and I only seen it when I was hanging the clothes in the closet.

Q And when did you see it first? A When I was moving, when I start to hang the clothes, I see the blackjack hanging in the closet.

Q And you left it there? A Yes, sir.

Q Did you ever touch that blackjack? A Never.

Q You know what it is to touch a blackjack; don't you?
A Yes.

Q You know that you will go to jail if you touch a blackjack like that; don't you? A Yes; because I was suffer once, and I know what trouble is.

Q And did you come from a wedding on the night in

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question? A Yes, sir.

Q And did you give your wife some candy? A Yes, sir.

Q And she threw the candy away? A Yes, she threw the candy on the floor.

Q Well, what did you do? A I was mad, but I didn't mean to do nothing. Suppose you give me something and I throw it away on the floor, you get mad; don't you?

MR. VELLER: I object to this argument on the part of the witness.

THE COURT: Yes, strike it out.

BY MR. GRECCO:

Q So you got angry because your wife threw the candy on the floor? A Yes, sir.

Q And did you slap your wife in the face? A No, sir.

Q What did you do? A I was give her hell; that's all.

CROSS EXAMINATION BY MR. VELLER:

Q You were giving her hell; eh? A Yes, sir.

Q What did you say to her? Did you threaten to kill her? A No, sir.

Q When you gave her hell, did you threaten to knock her out with that blackjack (indicating)? A No, I never had that in my hands in my life.

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Q Didn't you get hold of that and threaten to ~~kill~~
her with it, like that (illustrating)? A No, sir, I don't
know what a blackjack is.

BY THE COURT:

Q Didn't you ever see a blackjack? A No, sir, and I've
been eleven years in this country.

BY MR. WELLER:

Q Is that your gun (indicating a pistol)? A No, sir.

Q Where did you keep that gun in the house?

MR. GRECCO: If your Honor please, there is no
evidence about any gun. I object. The gun is on the
District Attorney's table, and I don't know how it is
there.

MR. WELLER: I'll tell you, if you want to know.

MR. GRECCO: No, I don't.

BY THE COURT:

Q Did you ever see that gun before? A No, I didn't.

Q And never saw the blackjack before? A No, sir.

Q And you never saw a blackjack before you saw that
one? A No, sir. God help me, and I may never see my
people again, if I don't tell the truth.

BY MR. WELLER:

Q Well, you lived in that house about six months;
didn't you? A Yes, sir.

Q And the blackjack was hanging up in the closet like

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that (illustrating)? A Yes, sir.

Q Well, you knew it was against the law to keep a blackjack in your house, in your possession, didn't you?

A Now, believe me ----

Q You knew it was against the law to carry a blackjack; didn't you? A Well, I tell you the truth, I don't know the law, what it is, because I don't write or read.

THE COURT: Would you like to speak through an interpreter?

THE DEFENDANT: Yes.

(The question is repeated through the Official Interpreter).

A I didn't know it was against the law, because this article didn't belong to me.

BY MR. WELLER:

Q Did you ever take it out of the closet? A No.

Q When you were giving your wife hell, that night, didn't you take it out of the closet and threaten to kill her? A No, sir.

Q Didn't you throw the baby down on the floor? Wasn't that what started it, when you threw the baby down on the floor?

MR. GRECCO: There is no evidence in the case that he threw the baby down. I object.

THE COURT: Well, he is asking him now.

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A Never.

BY MR. WELLER:

Q Didn't you throw the baby on the floor, and didn't your wife protest, and say "Stop"?

MR. GRECCO: I object to that. There is no evidence that any baby was thrown on the floor; only the candy; and he says he got mad.

A No, I didn't.

BY MR. WELLER:

Q And when the baby was thrown on the floor, wasn't that what caused the candy to roll over on the floor, when you threw the baby on the floor? A No.

Q Now, what name were you convicted under down in Staten Island? A Angelo Frank.

Q Is that your real name? A My name is Angelo Rosario, and that's what people call me, because they don't know how to write Rosario in this country.

Q And how about Angelo Gangelos? Is that your real name? A Yes, that's my real name.

Q And then Angelo Frank is not your realname? A Well, it's my family's name.

Q And how many names do you use? A That's all.

Q How long have you been in this country?

BY THE COURT:

Q What is your real name? A Rosario Gangelos(witness

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spells the name).

BY MR. WELLER:

Q Now, how long have you been in this country?

A About eleven years.

Q Are you a citizen? A No, sir.

MR. WELLER: That's all.

THE COURT: What time did he serve, and where?

MR. WELLER: He served, as appears by the Police Department record, and he testified to it, two years in Sing Sing, beginning November 23rd, 1908, for burglary in the third degree. He was convicted before Judge Stephens, in the County Court of Richmond County, as Angelo Frank.

BY MR. WELLER:

Q Were you ever convicted of anything else than that?

A No, sir. Even that burglary I was convicted, it was because people put up a job on me, and wanted to do me some harm.

Q Now, you are sure you were not convicted of anything else besides that? A Never.

Q Weren't you convicted for not supporting your wife, and sent over to the Island? A No.

Q Now, tell us about that? A I got six months about the same thing that is in this case.

MR. WELLER: You had better answer me through the

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Interpreter. You have been speaking English for some little time now. Answer through the Interpreter.

(The question is repeated through the Interpreter).

A Never.

BY MR. WELTER:

Q Weren't you convicted in the Magistrate's Court for not supporting your wife, and sent to the Island for six months? A When?

Q I'm asking you when? A I didn't go to jail. I know I got the six months, but I never go there, to the Workhouse.

Q You didn't go to the Workhouse because this charge came up, but you were convicted; weren't you? A Because all together, with this thing and the other thing --- that's the reason I didn't go to the workhouse.

Q Yes, that's the reason. Now, after you had this trouble with your wife, that night, when you gave her hell, as you expressed it, did you go out, did you leave your house? A Yes, sir.

Q And when did you return, when did you come back?

A Half past nine, the same night.

Q And do you remember the day that you were arrested? What day was it? A On a Wednesday.

Q How long afterwards? A Three days.

Q After three days? A No, two days after.

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Q And when you went out did you lock the door? Did you put a padlock on the door? A Yes.

Q And was that three days after you had that altercation with your wife? A Yes, sir.

Q And where were you from that time up to the time you were arrested? A I was at home.

Q Were you working? A I couldn't work because the company wasn't ready.

Q How long had you been out of work? A Two months.

Q And when you went to this wedding, where you got the candy, had you been drinking anything, that day?

A No, sir.

Q Do you mean to tell this jury that you went to a wedding and didn't have anything to drink? A I may have one or two glasses of beer.

Q Yes. Did you drink any Chianti, the Italian wine?

A No.

Q What time did you go the wedding, that day?

A Seven o'clock at night.

MR. WELLER: Well, that's all.

BY THE COURT:

Q When did you get out of prison? A In 1910.

Q What month? A In the month of December, 1910.

Q That would be about a year and a quarter ago, or about a year and four months? A Yes.

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Q Now, when did your wife have you arrested for non-support? A The same time as I was arrested for this, the charge of non-support was made.

MR. WHEELER: I think that was about five days after the trouble, if your Honor please.

THE COURT: Well, that is about a year after he got out of prison? That's what I wanted to ascertain.

MR. GRECCO: Yes, about eighteen months.

BY MR. WHEELER:

Q Where was this blackjack hanging, in what closet?

A It was at the corner of the wall. It was dark, a dark corner of the wall.

Q And what did you keep in that corner? A Clothing. I used to hang clothing in that closet.

Q Whose clothing was it in that closet? Your clothing? A Yes, and my daughter's and my wife's.

Q Any of your clothes in there? A No.

Q How long had you lived in that apartment? A Six months.

BY THE EIGHTH JUROR:

Q Was this little girl your girl? A No.

Q She is your step daughter? A Yes, sir.

Q Any other children? A No, not mine. There are four others.

BY MR. WHEELER:

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Q Give the ages of the others? A One, thirteen, the one that was here; one eight; another two and a half, and another eleven months.

BY MR. GRECCO:

Q And you supported the whole family yourself?

A Yes, sir.

MR. WELLER: No, he doesn't support them. That's the trouble. He was arrested for non-support. I object to the question.

THE COURT: I will allow it.

BY THE COURT:

Q Do you support the whole family? A Yes, sir.

BY MR. GRECCO:

Q And did you always support your family? A Yes, sir.

Q The four children and your wife? A yes, every day. I knew before I married my wife that she had four children. If I didn't want to marry her I wouldn't have married her. I just got married when I came out from Sing Sing purposely to keep away from bad company.

THE COURT: Now, would any juror like to ask the witness any questions?

THE FOREMAN: No, sir.

MR. GRECCO: If your Honor please, I have subpoenaed one of his employers, for whom he worked eight

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months, but he isn't in court. If the case goes over until two o'clock, I would like to call him then.

THE THIRD JUROR: Has this revolver been connected in any way with the defendant, your Honor?

THE COURT: No, not at all; and it must be entirely eliminated by the jury, and not considered in this case, any more than a chair, or a table, or any other inoffensive article in this room. It is not in this case at all.

MR. GRECCO: I rest now, your Honor. And I renew my motion made at the end of the People's case, your Honor, and upon the ground that it has been shown now by the defendant's testimony, and by more than a preponderance of evidence, if your Honor please, that the defendant was not the owner of the blackjack, and never had it in his possession. It is only the mere assertion of the little girl to be taken against this defendant's word.

THE COURT: Well, didn't the defendant say that the blackjack --- that he didn't know what it was, and he had never seen one before, but that an article, whatever you call it, referred to here as a blackjack, was in his closet, and was hanging up in his closet.

MR. GRECCO: Yes, sir, in a closet; in which closet,

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however, the whole family participated in putting in their clothes.

THE COURT: Yes. Now, this defendant is being tried for possessing a blackjack, and for no other offense whatever.

MR. GRECCO: That's all, your Honor.

THE COURT: Isn't that the understanding of the District Attorney and the defendant's counsel?

MR. WELLER: Yes, sir.

THE COURT: And the question is, so far as the defendant is concerned in the trial of this case, did he possess a blackjack; did he have it under his control and in his possession, in his room, or in the closet of his room, hanging up on the wall, or in his hand, on the 14th day of January, 1912? Did he have it in his hand, or did he have it hanging up in the closet, under his immediate control and possession? Isn't that it?

MR. WELLER: Yes, sir, that's it.

THE COURT: Now, I think the jury have heard all the testimony in the case. Would you submit on the Judge's charge? And I will not review the evidence. I will merely read to them the statute in the case.

MR. WELLER: Yes, sir, I will submit, your Honor. Do you submit, Mr. Grecco?

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MR. GRECCO: Yes, I'll submit. I take an exception to your Honor's ruling.

THE COURT: To what?

MR. GRECCO: To your ruling. And I further maintain, your Honor, that a blackjack, to come within the statute, must be concealed. It is not the same instrument as a revolver, which, it has been held, need not be concealed, but a blackjack or a slung-shot, or all these other instruments, as I understand the law to be, they must be concealed; and the lieutenant took the stand, and said the reason he didn't arrest the child was that it wasn't concealed.

MR. WELLES: Why, he wouldn't arrest that child -- the idea of it! --- for carrying it to the station house.

MR. GRECCO: And in the case of the People against Gardner, it was held that the blackjack must be concealed. If a man walked on the street with a blackjack in his hand, I don't think the statute would apply.

THE COURT: Well, I construe the law just to the contrary. Section 1897 says that a person who possesses any instrument or weapon of the kind commonly known as a blackjack, slung-shot, billy, sand-club, sand-bag, metal knuckles or bludgeon, is guilty of a felony.

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Now, if the English language means anything, that statute means just what it said, that anyone who possesses any of those articles, even the possession of any one of them in his bedroom, under his dominion and control, of course, is guilty of a felony. And the question is: Did he have the exclusive opportunity to use it, in case he wanted to?

It seems to me that the statute is very explicit on that subject, and, although it may be regarded as very severe, the statute may be regarded as very severe, and it may be that you or I, or any member of the jury, if we were members of the Legislature, would not have voted for the passage of that bill, at the same time, the Legislature, in their wisdom, has said that that is the law, and we must obey it.

MR. GRECCO: But your Honor could use your discretion, and say what the intention of the Legislature was, and determine what it was, when the law was enacted.

THE COURT: No, I am not one of those who construe statutes outside of the four corners of the page upon which they are written. If the English language means anything in the connection in which those words are used, it means just what it says, and I am not going to construe it otherwise; in other words, I am not going

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to nullify the statute by saying it meant something
else than what it says.

MR. GRECCO: And I take an exception and submit
the case on your Honor's charge.

MR. WILLER: And so do I, sir.

THE COURT: Very well.

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