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COURT OF GENERAL SESSIONS OF THE PEACE.
CITY AND COUNTY OF NEW YORK. PART V.
THE PEOPLE OF THE STATE OF NEW YORK

vs.

JACOB SENDER, impleaded with SAMUEL MILLER.

Before:

HON. THOMAS C. T. CRAIN, J and a jury

June 16, 1920

APPEARANCES.

FOR THE PEOPLE: ASSISTANT DISTRICT ATTORNEY SAMUEL MARKEWICH.

FOR THE DEFENDANT: MR. CLARKE L. JORDAN.

Peter P. McLoughlin, Official Stenographer.

Mr. Markewich opened the case on behalf of the people as follows:

The defendant is charged with the crime of burglary in the third degree, grand larceny in the first degree and criminal receiving stolen property in the first degree. At the conclusion of the case, if we are able to establish the case beyond a reasonable doubt, after you have received the instructions of the Court upon the law you will be asked to find the defendant guilty of burglary, larceny, criminally receiving stolen goods, burglary and larceny both or criminally receiving stolen goods in the first degree.

Now the facts are briefly these. If I should misstate any of the facts, of course, it won't be intentionally. You will judge on this case and decide it only on the testimony of the witnesses, but as I recall the facts they are as follows:

Dattelbaum Brothers, a co-partnership consisting of two brothers, Charles and Henry Dattelbaum have been engaged in the fur business in this city for number of years. They occupied two lofts in the building, 130 W. 29th street. The eighth or ninth loft of that building. They were protected by the Holmes Protection and there was one window of one of those lofts that was unprotected. They left the place securely locked on

the night of the 15th of April, this year. When they left the place they had approximately something over one hundred thousand dollars worth of merchandise. On the morning of the 16th of April, when they arrived at the place they found that they missed a considerable quantity of furs and they began to figure up and they found that they had lost over one hundred thousand dollars worth or approximately one hundred thousand dollars worth of furs. It looked as if the window which was not protected by the Holmes had been tampered with. They began to make inquiries and tried to find a clue to the burglary, found a piece of fur skin in the yard between 29th and 28th streets. On the next morning a man by the name of Samuels, who was engaged in the passemaaterie business of 127 West 28th street, immediately in the back of the premises that were occupied by Dattelbaum Brothers had arrived at his place of business and found that his place was open, found that books that were contained in the safe were underneath the safe, and found a piece of fur that did not belong in his place of business as he had no furs there, and found some paper, wrapping paper, a roll of it, and twine that did not belong in his place of business. He began to make inquiries and then ascertained that Dattelbaum Brothers had been robbed.

MR. JORDAN: I don't desire to interrupt but I ask

that the crime stated by the District Attorney-- what some one else discovered on the morning in question be disregarded by the jury, and that they be instructed that that is no part of the opening in the case against Jacob Sender.

MR. MARKEWICH: That is quite correct, if your Honor please, I am just stating the circumstances that led to the burglary.

THE COURT: You were told so.

MR. MARKEWICH: Now, when he ascertained that Dattelbaum Brothers had been robbed a further inquiry was made, and as good fortune would have it a boy by the name of Benjamin Honig, employed, I think, as a delivery boy, for the Henshaw Floral works who had at that time occupied the lower part of 127 West 28th street, arrived at the place at about 7.30. One of his superiors was in the place, and he saw men bringing down bundles from the upper floor -- it is only a two story building -- he did not ask these men what they were doing there but he watched these proceedings. He will tell you that he believed that the people were just sending out merchandise. About 7.30 he saw an automobile truck come in front of these premises and saw this defendant at the wheel of the truck. The machine stopped and these men began to take bundles out of the hallway and throw them

on the truck, and they were shouting to one another "Hurry up, hurry up". And as the last bundle was placed on the truck, one of the man that threw the bundles on the truck shouted to this defendant, "Beat it". He went out of the door at a fast rate of speed. He took the name that was on the truck on a piece of paper, and he couldn't write as well as mother man, his superior in the place, and he asked his superior to take the name down, and he took the name down and placed it on his desk. His superior then went to Jersey, They got in touch with him on the telephone and they found the piece of paper on his desk and they began to look for Sender. A little while later Jordan brought Sender around to the Police Department and turned him over to officer Casasa. Now, Casasa had a conversation with the defendant, and he will tell you that the defendant told him that he was in front of these premises, that he did take a number of packages that morning and that he delivered them to a place at the corner of Columbia and Delancey street over on the east side and there dropped them on the sidewalk. He does not know when they went; he does not know who received them.

We claim that the circumstances surrounding this case, the receipt of the merchandise, the explanation that the defendant gave to the police officer -- all

these things will tend to establish criminal knowledge in connection with the crime charged against the defendants. If we establish these facts, we will ask at your hands a verdict of guilty of the crime.

CHARLES DATTELBAUM, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 657 West 161st street.-

DIRECT EXAMINATION BY MR. MARKEWICH:

Q That is your business?

A Manufacturing furrier.

Q A member of the firm of Dattelbaum Brothers?

A Yes, sir.

Q Who are the members of that firm?

A Charles Dattelbaum, that is my name, and my brother, Henry Dattelbaum.

Q A co-partnership?

A Yes, sir.

Q In business how long?

A 18 years.

Q How long have you been at 130 West 29th street in this county?

A Three years last February.

Q On the evening of the 16th of April, 1920, did you have a stock of furs in your place of business?

A Yes, sir.

Q What furs did you have there?

A Skins and manufactured furs consisting of coats, scarfs, muffs and a lot of skins.

Q Approximately what was the reasonable market value of the merchandise that you had in stock at that time?

A About \$200,000.

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Q How many lofts did you occupy in that building?

A Two.

Q What were they?

A The 8th and the 9th.

Q Large lofts?

A 40 by 90, something like 40 by 90.

Q What was the height of the building?

A 12 stories.

Q And elevator building?

A Yes, sir.

Q How many elevators did you have?

A One passenger and one freight.

Q Were you protected by the so-called Holmes Protective Agency?

A Part of the loft, but not the entire loft.

Q Wired?

A Some of the windows were wired.

Q What windows were not wired?

A The fourth window on the fire escape was not wired, running back with the rest of the windows which were not wired.

Q You mean the front, that part facing 29th street?

A No, sire, the rear.

Q What time in the night did you leave your place of business?

A About 6.10, between 6 and 6.10.

Q Were you the last person to leave the loft?

A My brother and I.

Q You locked the premises?

A Yes, sir.

Q Did you, before leaving the place, examine the windows to see if they were fully locked?

A We had to have Holmes give us the signal that everything is all right -- you can't leave before that.

Q You got the signal?

A You got to ring their bell,

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and if they give you an answer that everything is O.K. you leave; otherwise you cannot leave the place.

Q You got such a signal?

A Yes, sir.

Q After you got such a signal you left?

A Yes, sir.

Q Now what time did you arrive at the premises the next morning?

A About 8.30.

Q When you arrived there what did you find?

A I found that the place was all upset, and looked empty to me; it looked practically empty and the appearance, wherever I turned, I saw empty racks.

Q Did you look around to see what property, if any, was missing?

A Yes, sir, I saw -- I looked around and I saw a great deal of property missing, and the first thing I did was to telephone to the Police Department.

Q Now, tell the gentlemen of the jury what property you found missing?

A You want me to describe the property?

Q Yes, what was it?

A It consisted a 1,051 mink skins; that as as near as I can give; I got a list but I didn't bring it along, Mr. Markewich. Some 1050 were mink skins, 100 baum marten skins.

Q By the way you are familiar with the reasonable Market value of such property?

A Yes, sir.

Q What was the reasonable market value of that property?

A 1051 mink skins at \$20 a peice, that is what we paid for them in St. Louis; 100 baum bar ten skins at \$45 a piece. one hundred and some odd -- I cannot give you the

exact number -- of atone marten skins of the value of \$40 a piece. Over' one hundred Hudson Bays from the value of eighty to one. hundred dollars a piece; about 300 skunk skins of the value of \$9 a piece. Two raw silver fox skins of the value of \$100 a piece. 32 Hudson seal coats averaging about \$350 a piece. 2 seal dyed otter coats of the value of about \$400 a piece, one mole rat skin coat about \$800 for the one, a beaver coat of the value of about \$600, a Russian Fitch skins about \$200 -- of the vaoue of about \$9 a piece. I Can't remember any more of that, but I have got the list and so have the police.

Q Approximately what was the value?

A Approximately the value as between \$10,000 and \$100,000.

Q By the way did you carry any burglary insurance?

A About \$5,000.

Q What did you do when you discovered the loss of that property?

A I had telephoned to the police department of the 30th street station and Police Headquarters.

Q And the police officer arrived?

A Yes, sir.

Q Now, did you see Mr. Samuels that morning?

A He came up to see me, yes, sir.

MR. MARKEWICH: I refer to Abraham Samuels.

Q What did he do in your place?

A Why he told me--

Q Never mine what he told you. Did he have any property with him?

A Yes, sir.

Q What did he have?

A A fur scarf.

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Q Was that one of the scarfs--

A One of the scarfs belinging to me.

Q That you found missing?

A Yes, sir.

BY THE COURT:

Q Whom do you say that is?

A Mr. Samuels.

BY MR. MARKEWICH:

Q What did you next do?

A Why I took --

Q Did you go up to Mr. Samuels' place?

A Yes, sir.

Q What did you find in Mr. Samuels' place?

A Paper and twines belonging to us.

Q Where is Mr. Samuels' place?

A I is in the rear of our place on 28th street while we are on 29th street.

Q 127 West 28th street?

A Yes, sir, it is in a building about one or two stories.

Q What part of that did Mr. Samuels occupy?

A The upper part.

Q The top floor?

A Yes, sir.

Q The second floor?

A Yes, sir.

Q You say you found your twine and wrapping paper?

A Yes, sir.

Q Did you look in the yard between 28th and 29th streets?

A I did not do that, but the detectives did.

Q Now, what next did you do?

A Well, detectives were assigned to the case, and we hired private detectives besides to try to discover it.

Q You have not discovered any of the property?

A No,

sir sir, we have not discovered any of the property.

CROSS EXAMINATION BY MR. JORDAN:

Q About the paper and twine that you found in Samuels place, how do you identify that as yours?

A Well, it is that paper, we were missing the paper and the twine from our wrapping room, and it was found in Samuels place, and he says, "Is that your paper", and I said, "Yes, that is the paper and twine missing from my shipping room."

Q It was the sane kind of paper you have, no identifying mark?

A But Mr. Samuels said he had no such paper.

Q From the information you had gotten convinced you it was yours?

A Yes, sir.

BY MR. MARKWICH:

Q Did you when you entered the premises and ascertained the loss of considerable property examine the premises the doors and windows?

A I did in my own place.

Q In your own premises?

A Yes, sir, I examined the place, and in connection with some detectives we found one of those windows was forced open.

Q When you say forced open what do you mean, just tell us?

A Well, I mean--

Q Describe the condition of the windows?

A The condition of the windows were such that in closing the window --it isn't the kind of window that are here-- the kind of windows that open outside, both ways, out and in, and the hooks that keeps the window closed was dented as though it

was forced open, and it having been pointed out to me, the marks on the fire escape and on the windowsilla --

MR. JORDAN: I move to strike that out.

THE COURT: The jury will disregard it.

Q You found the window open?

A That is a thing I couldn't say whether the window was open or not; I was too excited at that moment to notice that.

Q You say the hook was bent?

A Yes, sir.

Q Did you find any other marks on that window?

A No.

Q You say you found marks where?

A On the windowsill.

Q On the windowsill?

A Yes, sir.

BY MR. JORDAN:

Q Now, just one more question, Mr. Dattelbaum, was the place open or closed, when you got there?

A The place was open when I got there because one of the boys opened the place usually about a quarter of eight.

Q You don't know whether when the first of your employees got there -- do you know whether it was open or closed?

A I didn't get that, sir.

Q Do you know whether the place was opened or closed when your first employee went there?

THE COURT: We will take it for granted that he does not know as he was not there at the time. We will take a recess now, gentlemen of the jury. You are admonished not to converse among yourselves on any subject connected with the trial and not to form or express

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any opinion thereon until the same is submitted to you.

(The Court took a recess until 2 p.m.)

AFTER RECESS 2 p.m.

A BRAHAM I. SAMUELS, a witness called on behalf of the people, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

(The witness state she lives at 936 Most avenue, Bronx.)

Q Are you engaged in the passemneterie business at 127 West 28th street?

A Yes, sir.

Q How long are you engaged in business at that place?

A I have been there about three years.

Q Passemneterie or embroidery?

A Yes, sir. passemneterie and ornaments.

Q Now, what is the height of the building?

A It is a two story building, two stories.

Q What floor did you occupy?

A The upper floor.

Q On the morning of the 16th of April, 1920, did you go to your place of business?

A Yes, sir.

Q What time?

A About 11.30.

Q What did you find in your place of business?

A I went over to the safe and I looked --

MR. JORAN: I object to that on the ground that it is not connected with the defendant, and it is incompetent, immaterial and irrelevant.

THE COURT: I will receive it subject to connection

THE WITNESS: I went over to the safe -- opened the outer door which we always left open, and looked for the ledger and other books which were in the safe, and I could not find them. I then asked Mr. Samuels--

THE COURT: Strike that out.

THE WITNESS: (Continuing) I noticed that the inner lock on the safe, which was locked, when I left the premises was broken open, and searching for the books I found them underneath the safe, and I then knew that somebody --

Q Never mind that. At Any rate you looked about the premises?

A Yes, sir.

Q As far as you knew there wasn't any stuff missing in your place?

A No, sir; no stuff missing.

Q You only had embroidery there?

A Well, we had some silk on spools that was not worth very much.

Q Did you find this in your place of business?

A Yes, sir

MR. MARKEWICH: I offer it in evidence.

(Referring to a fur scarf.)

(Admitted and marked People's Exhibit 1.)

Q Where did you find it?

A On the floor.

Q Did you find a roll of this paper (referring to paper produced in the court room)

A I did.

Q Where did you find that?

A I found that in the back of the loft.

Q Did you also find this rope or twine?

A Yes, sir.

MR. MARKEWICH: I offer that for identification.

(The rope referred to is marked People's Exhibit 2 for identification.)

Q Now did this paper, the twine and this scarf belong at your premises?

A No, sir.

Q Now what did you do when you found this in your possession?

A I went downstairs to the florist.

Q You talked to some one there?

A Yes, sir, I spoke to some one there.

Q To whom, do you recall to whom?

A I think it was the assistant manager there, and I told him that --

Q You spoke to him?

A Yes, sir.

Q After you spoke to him what did you do. Did you have this with you? (Referring to the scarf as People's Exhibit 1)

A I did not have that, no, sir.

MR. JORDAN: I object to that question.

THE COURT: I will allow him to answer.

Q What did you do after you had spoken to him and he had spoken to you. Did you go anywhere?

A Yes, sir.

Q Where?

A To pattelbaums.

Q Did you see Mr. Dattelbaum?

A Yes, sir.

Q Was he the one who was on the witness stand before?

A Yes, sir.

Q You had spoken to him?

A Yes, sir. I did.

Q Did you show him this scarf?

A He came over to my

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place and I showed him the scarf.

Q When you spoke to him he came over to your place?

A Yes, sir, when he came over to my place I showed him the scarf I found.

Q What time did he come to your place?

A About 12.30 around that time.

Q You saw this scarf-- did you show him the scarf?

A Yes, sir.

Q In your place?

A Yes, sir.

Q And the paper and the twine?

A Yes, sir.

CROSS EXAMINATION BY MR. JORDAN:

Q What is the number of your place?

A 127 West 28th street.

Q Where is that with reference to Mr. Dattelbaum's place?

A It is in the rear of Dattelbaum's place.

Q How many men have you in your employ?

A One.

Q Now what time did you leave your place of business on the 15th of April?

A About 5 o'clock.

Q When you came in the morning of the 16th of April to your place of business, did you observe the condition of the looks and doors?

A Yes, sir.

Q The outer door the one that leads to the loft, what lock did you have on that door?

A A Yale lock.

Q The day before?

A Yes, sir.

Q What was the condition of the lock when you left the place?

MR. JORDAN: I object to that as immaterial.

THE COURT: Objection overruled. I will receive it, subject to connection.

MR. JORDAN: I also object to it as not binding upon the defendant.

Exception.

Q What was the condition of the lock when you left the place on the 15th of April?

A Good condition.

Q What was the condition of it on the 16th of April?

Same objection.

Objection overruled. Exception.

A A little bit chopped off where you insert the key.

CHARLES DATTELBAUM, the complaining witness resumes the stand.

BY MR. MARKEWICH:

Q I show on this scarf, marked people's Exhibit 1 for identification, and I ask you whether you recognize this?

A Yes, sir.

Q Is that part of the property that you had missed?

A Yes, sir.

Q When you came back that morning?

A Yes, sir.

Q Where did you find that?

A In Mr. Samuels' place on 28th street.

MR. MARKEWICH: I offer it in evidence.

(Received and marked people's Exhibit 1.)

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Q Did you find a roll of paper in Mr. Samuels' place? of which this is a part and this piece of rope?

A Yes, sir.

Q Or twine?

A Yes, sir.

Q How much, a roll of it?

A A small roll of twine.

(The paper referred to and the twine marked People's Exhibit 2.)

Q Did you recognize them?

A Yes, sir.

Q Can you state whether it came from your premises?

A Yes, sir, It came from our premises, the paper we used for wrapping and sending out packages.

MR. JORDAN: I object to that.

Objection overruled. Exception.

(Marked People's Exhibit 2 in evidence.)

Q I show you this scarf of unfinished skin and ask you whether you recognize this?

A Yes, sir.

Q Where was this found?

A Out into the yard, in the rear yard.

Objected to; objection sustained.

Q Were you present when it was found?

A No, sir.

Q Is this your scarf?

A Yes, sir.

Q Your skin?

A Yes, sir.

MR. MARKEWICH: I offer it for identification. (The scarf referred to is marked People's Exhibit 3 for identification.)

Q What identification is there on this paper and twine that causes you to testify that it came from your place?

A Because it is the same paper and the same shade of paper we have been using for years, and the fact that they took one roll of paper and cord from out of the factory I found it there.

Q But you know there is a lot of paper of the same kind and quality?

A I have no doubt about that.

Q Used by a great many people?

A Yes, sir, no doubt about that.

Q There is no mark of any kind or character by which you can identify it?

A No, sir; we use the very same paper.

Q Or any kind or a description that enables you to identify it as yours?

A No, sir.

Q Now on the twine?

A No, sir.

THE COURT: I think I will receive it merely as being something similar to property used by the complaining witness as he found in this other man's place.

Q Were there any marks of identification on People's Exhibit 3?

A Yes, sir.

Q Now tell us.

A At the head there, the perforation.

Q No handwriting or any thing around it?

A No, sir, you cannot write on skin by hand; there is a stamp that perforates.

Q You don't mean you cannot write on skins?

A Well, never do.

Q You don't mean that you can't?

A Well, it has never been done.

Q Don't tell us that. Now, Mr. Dattelbaum, what are the perforations?

A The perforations at the head there are sometimes very-- after the skins are being dressed the perforations comes off, but from the cuts at the head there is positive identification.

Q The perforations that you made are not always made alike?

A Yes, sir, but not always so distinct after the skins are dressed, and therefore these express cuts are put in and they are always very distinct.

Q There two cuts?

A Yes, sir.

Q What are the dimensions of those cuts, how long are they?

A They are one-eighth or a quarter of an inch, something like that.

Q Wouldn't it make any difference whether the perforations were a quarter of an inch or a half an inch or an eighth of an inch in your identifying your own work?

A Yes, sir, it would.

Q Now what are they?

A About a quarter of an inch.

Q Aren't they over a quarter of an inch?

A Well, they might be; I never measured them.

Q So then you don't know whether you put them in or not?

A Yes, sir, I know I put them in.

Q Now, Mr. Dattelbaum you cannot recognize them unless you know what they are, can you?

A Of course, I wouldn't

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recognize them--

Q Haven't you seen other skins with perforations?

A Yes, sir, but not the same perforations.

Q Now what is the difference between the perforations that you put on yours, and the perforations you had seen on others?

A There are thousands of different makes of skins and how do you suppose skins can be recognized?

BY THE COURT:

Q Have you a distinct mark?

A Yes, sir.

BY MR. JORDAN:

Q This particular man who makes the perforations?

A Yes, sir.

Q Working for your firm alone?

A Working for our firm alone.

Q Now but you cannot tell us how wide apart these perforations were?

A I can bring you the stamp down here, if you ant it. I have not measured that stamp.

Q I am asking you now for the purpose of seeing whether you are able to recognize the perforations so that the jury who have got to determine this case may know -- can you tell us how wide those perforations are about?

A I cannot unless I have the stamp-- bring the stamp down and show you the stamp.

Q Then you cannot tell us?

A I did tell it at that time, compared and saw it was ours.

Q Did you make the comparison with the stamp at that

time?

A Yes, sir.

Q Now where is the stamp on Exhibit 1?

A If you rip that head open you will find the stamp.

Q Did you rip it open?

A No, sir, I recognized it with one of our scarfs. We made hundreds of them, thousands of them.

Q Well, was there any mark on that to tell you?

A Yes, sir, looking on the scarf I know it is one of our skins, our pattern and our work; we made thousands of these scarfs, you know, similar fur.

Q Did you ever sell any of them?

A A great many of them.

Q How many did you sell?

A Hundreds and hundreds of them, I could not tell you exactly.

Q Looks just like that?

A Yes, sir, from the same stock, it looked like this.

Q So nearly alike you could hardly tell them apart?

A So near alike -- well some are of finer quality and some inferior grades, a little shorter or a little longer.

Q How many did you sell prior to this time that looked like this?

A Just exactly like this a number of them.

Q If there had been the same mark on them you couldn't very well tell whether this was one that was in there on the night of the 15th or one that you had before that time sold, could you?

A I didn't get that.

BY THE COURT:

Q How can you tell that this was not one that you had sold before the 15th of April?

A I couldn't tell that, your Honor.

Q You couldn't tell that?

A No, sir.

Q It might have been one that you sold?

A Yes, sir, how could I find it if it was sold?

Q What you say is that you recognize it as being something that at one time you had owned?

A On the night before it was in our place.

BY MR. JORDAN:

Q You think it was in your place because it looks like one that you had?

A Yes, sir.

Q Isn't that what you mean to say to this jury-- you might have sold it or some might have been taken out a month or sometime before and left it at another store or might have stolen it and taken it from some other place?

A Yes, but that isn't the idea I don't see how that comes in.

Q You don't believe it is so, but you cannot be positive that it is not so, can you?

A I cannot.

THE COURT: That is a matter of argument.

BY MR. MARKEWICH:

Q You did not sell any to Mr. Samuels?

A No, sir.

Q You didn't throw any out in the yard?

A No, sir, it cost ninety dollar a apiece; I don't throw them away.

Q You don't know who did throw it away, do you?

(No answer)

BENJAMIN HONIG, a witness called on behalf of the people, being fully sworn, testified as follows:

(The witness states he live at 272 S. First Street, Brooklyn.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q How old are you?

A Twenty years.

Q What is your occupation?

A Errand boy in a florist.

Q How long ere you working in that place?

A Four and a half years.

Q What is the name?

A The Hens haw Floral Company.

Q Were you working for anybody before that time?

A Yes, sir.

Q By the way during the time that you worked for the Henshaw Floral Company did you go across to France?

A Yes, sir.

Q As what?

A As a private in the United States Army.

Q During the recent war?

A Yes, sir.

Q How long were you over there?

A I was over there sixteen months.

Q When did you come back?

A I came beak August 29th, 1919.

Q Now where was the place of business of the Henshaw Floral Works?

A 1327 West 28th Street.

Q On the morning of the 16th of April, 1920, did you go to Henshaw's place to work?

A Yes, sir.

Q What time did you arrive there?

A I arrived there 25 minutes past seven.

Q At the usual time, for you to arrive at the place?

A Yes, sir.

Q Do you know, by the way, when Mr. Samuels' place usually opens?

A Yes, sir.

Q What time?

A Eight o'clock.

Q When you came to the place of business -- by the way

you occupy the lower part of the building?

A Yes, sir.

Q Did you occupy the lower part or the building?

A Yes, sir.

Q Now when you came to the place of business did you notice any men around there?

A No, sir, I didn't notice nothing just then. At half past seven I noticed a truck -- came in front of the building.

Q About five minutes after you arrived?

A Yes, sir, about five minutes after I arrived.

Q A truck came to the front of the building?

A Yes, sir, in front of 127.

Q Was there anything about the truck that attracted your attention?

A Yes, sir, the gas was on and the door --

Q The gas in the engine?

A Yes, sir, the engine, was going.

Q The engine was running or going?

A Yes, sir.

Q The car was at a standstill?

A Yes, sir, starting in front of 127 West 28th street.

Q Did you see who was at the wheel?

A Yes, sir.

Q Who?

A Jacob Sender.

Q That is the defendant at the bar?

A Yes, sir.

Q Did you see any other men around there?

A Yes, sir, one out in the gutter and one on the sidewalk.

Q Did you see where those men came from?

A No, sir.

Q Did you see what the men did?

A Yes, sir.

Q What did they do?

A As soon as the door swung open from Samuels' place packages started to come out but at first.

Q What was the size of the packages?

A Around five feet by three.

Q Did you notice how they were wrapped?

A Yes, sir.

Q What paper?

A Brown paper and that colored cord there (indicating.)

Q I show you this paper, like this?

A Yes, sir (referring to People's Exhibit No. 2.)

Q And cord like this?

A Yes, sir.

Q How many packages did you see taken out of there?

A Between ten and fifteen. I just didn't take exact count, sir, but between ten and fifteen packages.

Q What was done with the packages?

A As they were thrown out into Sender's truck.

Q By these men?

A Yes, sir, by them two men.

Q Where was Sender all the time?

A He was at the wheel.

Q Now after that what did these men do?

A After the truck was loaded the fellow out in the gutter wanted to know --he says, "Beat it" and walked away.

Q To who?

A Sender. Then the two went -- each walked in different directions, one man walked to 6th avenue and the other man to 7th avenue.

Q And Sender started the truck?

A Yes, sir.

Q Did he start off slowly?

A Started off slowly and as soon as he got in the middle of the block he just went on right ahead.

Q Now did you notice the name that was on the wagon?

A Yes, sir.

Q What name was it written on the wagon?

A J. Sender's, I just don't remember the address but I put it on a piece of paper, I wrote it out; it was in yellow letters.

Q Who wrote it down?

A Mr. Joe Hyman of the Henshaw Floral Company.

Q He was your superior in the company?

A Yes, sir.

Q He wrote the name down in your presence?

A Yes, sir, in my presence and in the presence of another man also.

Q Do you know who the did with that piece of paper?

A Well he gave it to me and I just happened to put it on the table and when I put it on the table when it occurred and he didn't see me until around 12 o'clock.

Q Who came in to see you?

A Officer Chiquette. and Mr. Samuels.

Q You give them the slip of paper?

A Yes, sir, that was what the manager --

Q To the manager?

A Yes, sir.

Q After that did you see Sender again?

A The only time I seen him was in the lineup.

Q There?

A In the Police Department down in 30th street.

Q Where?

A Down at the Jefferson Market Court.

Q Are you sure now that this is the defendant?

A Yes, sir.

Q Did you say that Hyman also wrote down the name?

A No, sir, I asked him to do it; I told him it doesn't look quite

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clear.

Q You asked him to do it?

A Yes, sir.

Q The name and the address?

A Yes, sir.

CROSS EXAMINATION BY MR. JORDAN:

Q I understood you to say that you didn't see the address very well, didn't you say that a minute ago?

A I don't remember the address I said.

Q But you say that you put it down?

A Yes, sir.

Q How long after the truck went away did you put it down?

A I put it down while the trunk was there.

Q Who put it down when the truck was there?

A Mr. Joe Hyman of the Henshaw Floral Company.

Q Now where was the truck or where were you when you put it down?

A I was right at the table where Mr. Hyman was writing it down.

Q That was inside?

A Yes, sir, that was inside.

Q While the truck was still out there?

A Yes, sir.

Q You told him to put down the address?

A Yes, sir, I told him to put down the address and the name.

Q Quite sure of that?

A Yes, sir.

Q How long was the truck there?

A Between twelve and thirteen minutes.

Q It took some time for them to put these goods on?

A Well it wasn't many packages; they hurried off; about ten or fifteen packaged; it didn't take long to do it.

Q Did they bring them down from the shop there or were they on the sidewalk?

A They were in Mr. Samuels' and going downstairs -- one flight of stairs and they took them out.

Q What was the first thing you saw in reference to the truck? What did you first see?

A The door flung open at half past seven and then packages were coming out and knowing Mr. Samuels didn't have such stuff --

Q Now I didn't ask you about anything you knew about Mr. Samuels. I am talking now about the truck and the packages. When the door opened and the packages were being brought out was the truck standing in front of the place?

A Yes, sir, in front of 127.

Q Now how long had it been standing there when those packages began to come out?

A Twelve or thirteen minutes.

Q It had been standing there for twelve or thirteen minutes?

A While the packages were coming out of the door.

Q Let us see if we can understand each other. When that door was flung open, as you say, the packages began to come out?

A Yes, sir.

Q The truck was standing out there, was it?

A I just happened to see it come right along.

Q It just stopped there?

A Yes, sir.

Q It didn't stay there twelve or thirteen minutes?

A No, sir.

q What I mean is from the time it got there was there twelve or thirteen minutes before it went away again?

A Yes, sir.

Q Now did this defendant or the man at the wheel load any

packages in?

A No, sir; he was at the wheel.

Q He stood right still at the wheel?

A Yes, sir, at the wheel.

Q Did you see him when he drove up?

A Yes, sir.

Q Where were you when he drove up?

A Right in front of the door taking my coat off.

Q Well what was the direction it was coming from?

A Looking out for a moment I saw the truck pull up and I just stood there.

Q What I want to know is did he get there and stop before the door opened or did he get there just after the door opened?

A He got there before the door opened and the door flung open and I noticed something was on.

Q Won't you leave that out.

A Because the door opened then.

Q You saw the door open?

A Yes, sir.

Q Now just tell how it was opened. You say flung open, how was it opened?

A Well you open it up on the side.

Q Well was it opened up from the inside any different from any door that you open from the inside?

A Well the lock was on the inside.

Q I understand. Was it opened any different from what it ordinarily would be opened?

A No --

Q What did you mean by saying the door was flung open?

A Well it was opened up then.

Q You do not mean to convey to the jury that it was flung open in some peculiar manner outside of the ordinary way?

A It

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was opened up in a hurry to get out quick.

Q How do you know?

A I was standing there.

Q You say opened up in a hurry?

A Yes, sir.

Q How do you know?

A I was standing there; I was in front of my door there.

Q Now was it opened any different from what it usually is?

A When I seen Samuels' man coming there he never opened the door that way.

Q It was different?

A Yes, sir.

Q You said a moment ago

Q Do you swear there were ten men in that lineup, young men?

a Well, I don't remember if there were, it is so long.

Q Don't you remember that?

A NO, sir, not so long.

Q It isn't as long ago as the time you saw all this you are telling about?

a It wasn't so long ago as that.

Q It wasn't so long ago but what you can remember it, was it?

A What is that? Repeat that again.

Q It wasn't so long ago that you were down looking at that lineup and you can't remember?

A It was about a month ago.

Q I know but you were telling us of five or six weeks ago, wasn't it, the other things you have been telling us is longer ago?

A Yes, sir.

Q Now your memory is not good any longer in regard to this line up as it is with regard to the other?

A I didn't take the count of the men that was there.

Q You were not interested in that, is that it?

A Yes, sir.

Q You went in there for the purpose of seeing if you could pick out the man you saw on that car?

A Yes, sir.

Q Well you were interested in a sense, weren't you?

a Yes, sir.

Q The officers who were them brought in some men and put them in a line, didn't they?

A Yes, sir.

Q And you were brought in and asked to look them over carefully, weren't you?

A Yes, sir.

Q Did you do it?

A Well, I went in there.

Q Now you will answer the question please. Did you do it?

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A I said no before I did not.

Q Did you look them over carefully?

A Yes, sir.

Q Looked them over carefully?

A Yes, sir.

Q Were you asked by the Captain in charge if the man was in that line that you saw in that car -- weren't you?

A Yes, sir.

Q And you looked and turned to the Captain and said no, didn't you?

A Yes, sir.

Q He isn't there?

A No answer.

Q Now didn't the Captain say to you, "Look again"?

A Yes, sir.

Q Didn't he have all the men take their hats off?

A Yes, sir.

Q And didn't he have them turn their faces in different directions?

A Yes, sir.

Q Didn't he say, "Can't you see him here", did he say that?

A Yes, sir.

Q And didn't you say, "No, he is not here"?

A Yes, sir.

Q "He is not here"?

A Yes, sir.

Q And didn't he say to you, "Now look again. I don't want to go into the front room. See if you can recognize him. "Did he say anything of that kind?

A Yes, sir.

Q Say some thing of that kind?

A Yes, sir.

Q Didn't you look again and say, "He is not here"?

A Yes, sir.

Q I will ask you the questions all right. Then we all went downstairs where the defendant was taken and something was done, some questions were put to him by a sergeant or some other officer there?

A Yes sir.

Q You were down there, weren't you?

A Yes, sir.

Q You came in with an officer and did you say then that you could recognize him?

A Yes, sir.

Q Did I ask you why you didn't do it before?

A Yes, sir.

Q Did you tell me you were afraid?

A Yes, sir.

Q Now who were you afraid of?

A Afraid of fellows hanging out on the East Side.

Q Afraid of fallows hanging out on the East Side?

A Afraid he would say to the fellows that was in it with him--

Q What were you afraid of?

A I was afraid of the fellows, the gang.

Q What fellows?

A The gang that was after me.

Q What gang?

A I don't know what gang.

Q Of course you have been in the army; is there any person in the world you are afraid of?

A Well I aint no gangster or fighter.

Q Don't get away from that. Can you tell this jury of any person that you were afraid of that day when you came back and said that you did recognize him but were afraid?

A I was afraid to tell because if I would go and tell right there the only thing was I didn't wish to right there as the men on the East Side would be after me.

Q You were over in France?

A Yes, sir.

Q Were you in the actual, fighting in France you mean?

A Yes, sir.

Q And you tell this Court and jury you were afraid?

A Yes, sir.

Q Did you ever see the defendant before that day?

A What defendant?

Q This defendant right here. Did you ever see him before that day you saw him?

A No, sir.

Q With the truck?

A No, sir.

Q Did you ever see him with any person before that time?

A No, sir.

Q Did you know the persons who were loading the things into the truck?

A No, sir.

Q Did you ever see them together before?

A No, sir.

Q Did you ever know that anyone of them belonged to the same gang that this man did?

A No, sir.

Q Answer my question. You didn't know a thing about any gang that he belonged to, did you?

A No, sir.

Q You didn't know whether he belonged to any gang, did you?

A No, sir.

Q Now how long was it after you told the officers that you could not identify this man, that he was not the man you saw on the truck -- how long was it before you came down stairs and said that you did identify him?

A I went into the Captain first and the Captain brought me down.

Q Won't you answer the question?

A No answer.

BY THE COURT:

Q How much time passed between the time when you could not

identify him and the time when you did identify him?

A Well about 15 minutes, sir.

BY MR. JORDAN:

Q Was it as long as that?

A Yes sir, I was upstairs with the Captain, sir, speaking.

Q I didn't ask you that. I asked you if it was as long as that -- can't you answer that question was it as long as fifteen minutes?

A Yes, sir.

Q She was the first one that spoke to you after you went out of the room where the lineup had occurred?

A After I got out of the office the Captain came in to me.

Q Won't you answer the question. Who was the first parson that spoke to you after you went out or that room?

A The Captain.

Q You mean that?

A The Captain.

Q Do you mean that, sir?

A Yes, sir.

Q That nobody spoke to you before the Captain did?

A No, sir.

Q Where did he speak to you?

A Right outside.

Q Didn't you go into the hall after the rest of us went downstairs?

A Yes, sir, I was sitting upstairs and nobody didn't speak to me.

Q Didn't you go out of that hallway before the rest of us went downstairs?

A No, sir, I was in the office, I could not get out.

Q Now it was right up in the commissioner's office there, didn't you go out?

A Officer Doyle gave orders not to speak to nobody.

Q Didn't you go out of that office before the defendant and the rest of us went out?

A Yes, sir.

Q Where did you go?

A I was sitting on a chair in the office, the next room from the Captain.

Q In the outer office?

A Yes, sir.

Q Do you mean to say, sir, you were there when the defendant and Mr. Cassasa and several of us went downstairs?

A He was right by me, yes, sir.

Q You were sitting there?

A Yes, sir, on a chair.

Q How who was the first one that said a word to you, no matter what it was, that spoke to you after you went out from the room where the lineup was?

A Officer Doyle.

Q The first one?

A Yes, sir.

Q Weren't you told before you went in there that they wanted you to identify the man who was on the truck, to see if you could pick him out?

A Yes, sir.

Q Didn't they tell you that you were not in any danger?

A No, sir, they hadn't said a word against me.

Q Nobody said a word?

A No, sir.

Q Now then the fact of it is that just as soon as the Captain told you that you were not in any danger, told you you would be protected you were willing to tell the truth, is that it?

A Yes, sir.

Q You mean you had lied before, did you?

A I lied but I did not recognize him.

Q You knew you were lying when you repeated that several

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times?

A Yes, sir.

Q And you intended to lie to the officers and everybody connected with it?

A Yes, sir.

Q Now had you talk edit over with anybody about identifying the defendant?

A No, sir.

Q Before you got up there?

A No, sir.

Q You did not?

A No, sir.

Q How did you come to go there?

A Well the officers came after me to the place where I was working at.

Q Had you told him before that you saw the man at the wheel that you could recognize?

A I told Detective Drury and Detective Doyle.

Q When did you tell them that?

A When I was at the garage with them, April 17th or 18th.

Q That was some time before you saw the defendant?

A Yes, sir.

Q You told them you could identify him?

A Yes, sir.

Q Now did anything occur between the time that you told those detectives that you could identify the man that you saw to scare you -- anything between the time that you told them and the time that you went down to the line-up, anything occur to scare you?

A I told them I was scared to tell who it was; I told him I would point him out on the slich. And Drury said, "Don't be afraid and I say I won't take no chances, I told him I would point him cut on the slich."

Q Did they tell you you should point him out in the lineup?

A Yes.

Q So when you went in there you intended to lie about it?

A Yes, sir, I went in there and I wouldn't say anything there.

Q You went in there with the intention of lying about it?

A Yes, sir.

Q Who did you tell that to?

A I didn't tell that to anybody.

Q Didn't tell that you were lying about it?

A No, sir.

Q Did you tell them that you would tell the truth?

A I told them I would tell the truth.

Q Now when did you tell them you would tell the truth?

A When I got in there Officer Doyle says to me, "Make sure you are getting the right man" and I said yes and when I got inside I got red in the face and I could not hardly see at first.

Q Is that right?

A Yes, sir.

Q You, a soldier, got red in the face and scared?

A Yes, sir.

Q Just because you were scared to tell whether you had seen the man on the truck?

A Yes, sir.

Q You got red in the face and scared?

A Yes, sir, I had my eyes on the defendant all the time I was in the Captain's room.

Q Did you?

A Yes, sir.

Q Still with your eyes on him all the time you deliberately lied to these men because you were afraid of something, you don't know what it was?

A Yes, sir.

Q How much money have you been paid in this thing?

A I haven't been paid a cent.

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Q Not a cent?

A No, sir; I have been lending it from friends, I haven't been paid from --

Q You have not been paid or promised anything?

A No, sir.

Q You are quite sure about that?

A Yes, sir, sure of that.

Q Now when you said that you could not pick out the man didn't I say right there, in your presence, "There isn't any question about it. This is the man that was on the truck." Didn't I say that right there?

A Give that again, sir.

Q Repeated -- "This is the man that was on the truck" didn't I say that?

A Yes, sir.

Q Still you were afraid to identify him?

A Yes, sir.

Q Did you go around with the detectives, Doyle, Drury and Chiquette?

A With Officers Drury and Officer Chiquette I went around.

Q You were brought in to the defendant's home?

A Yes, sir.

Q You were brought to a garage where the defendant had been?

A I went up to the garages.

Q Where the defendant was supposed to have a car?

A Yes, sir, supposed to have a car; he said that he didn't have any in there.

Q Now had you met some people who were friends of the defendant?

Objected to. Objection sustained.

EDWARD F. DOYLE, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a Police Officer attached to the

23rd Precinct.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q How long have you been connected with the Police Department of this City?

A Nine years.

Q Connected with the Central Branch known as the Loft Squad?

A No, sir, the Detectives' Bureau of the 23rd Precinct.

Q On the 16th, of April, 1920, did you go to Dattlebaum's place of business?

A I did, sir.

Q 130 West 29th street?

A 130 west 29th.

Q Did you have a talk with Mr. Dattlebaum?

A I did, sir.

Q Charles?

A Yes, sir.

Q After a talk with him did you examine the premises?

A I did, sir.

Q Did you examine the windows?

A I did, sir.

Q What did you find as far as the windows were concerned?

A On the second window from the fire escape --

Q What floor?

A The ninth floor. The second window from the fire escape, the fourth window in the rear of the building, I noticed that the window was slightly marked, that is it had marks of identification of some kind of an instrument apparently a jimmy -- I called Mr. Dattelbaum's attention to it after the time.

THE COURT: Don't you think we can shorten the trial somewhat. I imagine there is no contest in this case as to the burglary.

MR. JORDAN: None. We take it for granted.

THE COURT: You simply claim that the defendant had no

knowledge of it or part in it?

MR. JORDAN: No knowledge or part in it. We make no contention that there was not a burglary, a dastardly thing and outrageous. We take it for granted that the property was taken.

THE COURT: I do not think you need spend time, Mr. District Attorney, on proving the burglary.

MR. MARKEWICH: All right, your Honor. It will be conceded that there was a burglary and that property was taken in excess of \$500 in value. I went to ask a few questions of the Officer further.

BY MR. MARKEWICH:

Q Did you find these instruments?

A Yes, sir.

Q On what part of the premises?

A I did in the lower hall which looked out to a back fire escape, that is the lower hallway on the main floor which leads cut to the back yard.

Q That are these instruments known as?

A Jimmies, burglars' instruments used for prying open windows and doors.

Q Did you find --

MR. JORDAN: I have conceded the burglary and therefore I shall not object to this characterization.

Q Where did you find this, People's Exhibit 3?

A In the yard of 127 West 29th street.

MR. MARKEWICH: I offer it in evidence.

(Marked People's Exhibit 3.)

(At this point the Court admonished the jury calling

their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow morning June 17th, 1920.

New York, June 17, 1920.

TRIAL RESUMED.

EDWARD F. DOYLE; a witness for the People, resumes the stand.

DIRECT EXAMINATION (Continued) BY MR. MARKEWICH:

Q You left off yesterday by telling us that you found that fur skin in the yard?

A Yes, sir.

Q And did you also find some rope?

A I did, sir.

Q Now pick out the rope that you found around there?

A Witness indicating.)

Q Where did you find it?

A What was on the 9th floor of Dattelbaum Brothers, on the floor, that is right in back of the window.

Q You found the rope just in this way?

A Yes, sir, I did.

Q This noose?

A Yes, sir.

Q This form?

A Yes, sir.

Q Now then what did you do after you found the rope and that piece of skin, what was the next thing you did?

A Well we took the names of all the employees in the employ of Dattelbaum Brothers for the purpose of making an investigation and I canvassed 29th street there in the vicinity for anybody who might have seen somebody who was around the place at the. time we cel-

culated the crime was committed and Detective Chiquette took 28th street and I took 29th street.

THE COURT: What is the purpose of this?

MR. MARKEWICH: I am leading up to the time they found this boy on 38th street.

THE WITNESS: I didn't see the boy, it was Chiquette who discovered that witness.

Q Now do you remember the time when Sender was surrendered?

A I do, sir.

Q When was that?

A About 3 P. M. on the 23rd of April. He came to the 23rd Precinct Station House in a taxi cab with his counsel.

Q Mr. Jordan?

A Yes, sir. He was brought up to the Captain's office, which is one flight above our office, to the 23rd Precinct Detective Bureau, for the purpose of a lineup for identification and the lineup was held --

Q Now tell us whether there was any talk had with the defendant Sender between Officer Cacassa and the defendant?

A The witness Honig failed to identify Sander and we took Sender down to the 23rd Precinct Detective bureau office again for the purpose of finger printing him and Cacassa says to him, he says, "You know you were in on that job."

Q To whom?

A To the defendant Sender. The defendant Sender said, "well," he says, "I was hired to move some stuff" he said, "I was doing a moving job down in Delancey street and on

my way up on Second avenue, in the neighborhood of 9th street, three fellows hailed me and asked me did I want to take a job and I says that is what I am in business for" so they gave me an address and I went over there.

Q He didn't give you the address at that time?

A He later point out the address to us which is 127 West 28th street.

Q Who pointed out the address?

A Sender.

Q He went with you?

A Yes, sir; as he was going in the taxi cab to the second court we brought him past 127 West 28th street and he pointed it out and he said, "That is the building" to Cassasa in the presence of his counsel.

Q Anything else that you recall?

A He said there were three or four man and that when they got to 127 they had the bundles and were putting them on my truck. I said, "You kept the engine of that car running, what did you do that for". I had been informed by Honig that he had and so I asked him about it and so he said, "Well," he says, "that engine is very hard to start and I kept running it all the while I was there. That is all."

Q Did he tell you what he did with the stuff?

A Yes, sir, he said he took it to Delancey and Columbia street and dropped it on the sidewalk there. I asked him if he delivered it to any address and he said no that they just told me to drop it on the sidewalk which I did and they gave me \$10 for the job.

Q That was in front of what place he dropped it?

A No, sir, he just said Columbia and Delancey street.

Q Did he tell you whether there were any men around

there?

A Yes, sir, there was two men there who received the bundles, they told him to drop it on the sidewalk.

Q Did he tell you whether he had given any receipt for that stuff or had received any receipt when he delivered it?

A No, sir, he did not, Mr. Markewich, say that.

MR. JORDAN: No cross examination.

GRANT D. CASSASSA, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he is a Police Officer assigned to the 23rd Precinct.)

DIRECT EXAMINATION BY MR. MARKEWICH.

Q How long have you been connected with the Department, Officer?

A 34 years and 6 months.

Q Attached to any particular squad or branch?

A The 23rd Precinct Detective Division.

Q Do you recall the day when the defendant was surrendered to you by Mr. Jordan his counsel?

A I do.

Q Did you have any conversation with the defendant?

A I did.

Q Tell us what the conversation was?

A I brought the defendant down to the finger print room which is on the second floor of 138 West 30th street, the 23rd Precinct, and had him finger printed and I asked him were you in on this job and he said, "I moved the stuff."

Q What job are you talking about. Tell us as nearly as you can what you said to him and what he said to you?

A I said to the defendant, "You were in on this job" and he said, "I moved the

stuff", and I said, "how did you come to move it" and he said "I was up town." I said, "What time did you move it", and he said, "around six or something in the morning" and he had a job for a man, I believe named Phillips, down in Delancey street. He went down there and found the man didn't want him and he came back to 9th street and Second avenue and met three men and they asked him if he wanted to make \$10. What for? They said to move some stuff and he said where is the place and they told me 127 West 28th street." He says I went over there and I waited there and then some men came out, five or six men, and put something on the wagon and I drove, one of them got on the wagon with me and drove over to Delancey and Columbia Street and there rut the stuff right on the sidewalk. And that was all. Then I went up town and got another job and rode around with a policeman, on a strike job, and then took a job to move up to Rock Hill, and on the way up to Rock Hill I broke down. I says why hadn't you been home since you were up there on this job? Then we went upstairs and I arraigned the business downstairs again at the desk and with his counsel we rode in a taxi cab through 28th street and I made him show me the exact spot in which he had taken the stuff. He says that the men were in the hallway and it was in boxes -- this was all in the hallway -- and they all rushed out each man carrying one or two bundles and they threw it on the wagon and one man on the wagon told him to go ahead. That is the substance of it.

BY MR. JORDAN:

Q Now Mr. Cassassa the defendant and myself came up to meet you by appointment at the police station?

A Yes, sir.

Q And you were told that the defendant understood that you were looking for him?

A Yes, sir.

Q And was coming in to surrender himself?

A Yes, sir.

Q Is that right?

A That was your words to me.

Q We made an appointment for the time and place to have the man come there?

A Yes, sir.

Q Now you took up the investigation after the lineup as it is called?

A Yes, sir.

Q To see if the witness who claimed that he saw a wagon and a man whom he could identify on the scene on the day of the crime -- you wanted him to be lined up with other men for the purpose of seeing if this young man could pick him out?

A Yes, sir.

Q He went in willingly and was lined up there?

A Yes, sir.

Q With other men?

A Yes, sir.

Q And the young man, the witness failed to identify him utterly -- he said he wasn't in that line, didn't he?

A He said he could not recognize him.

Q Didn't he say, "He aint here"?

A He could not recognize him.

Q But didn't he say just as I say, Mr. Cassassa, "No he aint here"?

A I don't remember that he said that, we asked him if he could recognize anyone and he said he could not.

Q As the man that he saw?

A Yes, sir.

Q Now then you and I had a conversation with regard to your taking him to the bureau of finger printing?

A Yes, sir.

Q Didn't you?

A Yes, sir.

Q I told you you didn't have any right to do it at all?

A Yes, sir.

Q You said it was for the purpose of determining whether he had a record or not?

A Yes, sir.

Q I finally said well I shall not object to your taking him there?

A Yes, sir.

Q You took him?

A Yes, sir.

Q He made no protest himself?

A No, sir, he did not.

Q Now after the young man had said he could not identify him bender said that he did drive the truck, didn't he?

A Yes, sir, later.

Q And I said, "There is no question" when he failed to identify him, I said, "There is no question about that"?

A Later.

Q Down in whose office was that?

A Captain McQueeney.

Q I said there was no question about it and Sender said he did drive the truck?

A Yes, sir.

Q And got some goods?

A Yes, sir.

Q Did he tell you he was an expressman?

A Yes, sir, he did.

Q You found out that that was true, didn't you?

A I did not investigate it.

Q There is not any question but that he has been a truckman for some time?

A I don't think there is.

Q He told you that he had a job that day with a furniture

man that he was working for some time?

A Up town.

Q No down town. That he had been working there a couple of weeks?

A Yes, sir.

Q With a furniture man?

A He went down that morning, he had one job down in Delancey street somewhere and the man's name was Phillips.

Q What is that?

A His name was Phillips.

Q That was later?

A Now the other job was up town.

Q Mr. Phillips was the man who moved to Rock Hill. Now do you remember his saying that he was working for a furniture man?

A During the strike, there was a strike.

Q And that on this morning he was due there at 8 o'clock?

A Yes, sir.

Q And that he was there regularly at eight o'clock for the furniture man?

A Yes, sir.

Q Now on this morning in causation did he not tell you that as he was going to work somebody hailed him and asked him if he wanted a job?

A No, sir.

Q He told you that somebody hailed him?

A He said somebody hailed him.

Q He told you that he did this job and went down to the furniture place and got there about nine o'clock, didn't he?

A No, sir, he said he went up town.

Q I understand that but I am talking now about what he said to you at the time I was present. Did you have another conver-

sation with him?

A I had an original conversation with him downstairs-- and the first conversation and the only conversation which I afterwards repeated to you.

Q Didn't you tell me or didn't I say to you that our agreement was "I want to be present during your investigation"?

A There was --

Q Well now wasn't it the agreement that if I would permit you to take the defendant to the place for finger printing that there was to be no conversation except in that regard?

MR. MARKEWICH: Objected to.

THE COURT: Objection sustained.

MR. JORDAN: Your Honor I don't know that your Honor entirely understands. There is a question here of the good faith between the parties and I apprehend that it will bear somewhat upon the credence to be given to the witness.

THE COURT: I will allow it.

A No, sir, to an extent and I will qualify that answer.

Q Qualify it as you want to.

A He said --

Q I am talking about your conversation with me.

A Your conversation with me. You said that, "All right, I will let him go down" and while he was downstairs I did speak to him. That is all that was said about it.

Q Wasn't there something said about my being present during any conversation?

A Yes, sir.

Q And that there was to be no conversation except when I was

present?

A Yes, sir, you did state that before but I had this conversation when you were not present.

Q Now I want to ask you, sir, if it wasn't said in my presence, when you and the defendant were in conversation -- that he did this job and he didn't get to the furniture place until nine o'clock, yes or no, now?

A He went to the furniture place at nine o'clock, to a furniture place up town.

THE COURT: Strike out the last part.

Q Mr. Cassassa, we may be working at cross purposes as we don't seem to understand each other. Was the name Well Brothers that he worked for?

A He never mentioned.

Q He didn't mention it?

A No, sir.

Q You don't remember that he once mentioned the name of the man that employed him?

A Yes, sir, he mentioned the name of Phillips.

Q Phillips was the man who was to move to Rock Hill?

A He had moved.

Q He was not the furniture man?

A He was not the man --

Q You didn't understand that he was the man that he worked for right along and had been working for for a week or ten days, did you?

A He didn't say it that way; he didn't say anything in regard to that, that was the only conversation I had as I have stated it.

Q Now let us see: did you make any investigation to see whether he had been working for a furniture man?

A I did not.

Q Hadn't made any investigation up to the present?

A No, sir,

it is not my case.

Q Did he tell you that he had been during that strike running a truck for a furniture concern for two weeks, ten days or two weeks and that a policeman had been riding on the wagon with him?

A Yes, sir.

Q Did you investigate to see whether that was true?

A No, sir, I did not.

Q Do you know whether your associates in this case did make that investigation?

A That I could not tell you.

BY MR. MARKEWICH:

Q Didn't he tell you a policeman was riding with him when he did this job?

A No, sir.

Q How long after the 16th of April 1920 was the defendant surrendered?

A The 23rd of April.

OSCAR WEISS, a witness called on behalf of the People, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Where do you live?

A 3671 Broadway.

Q What is your occupation?

A Garage owner.

Q You own a garage in East 108th street?

A Yes, sir.

Q What number?

A 426 and 28 East.

Q Do you know the defendant Sender?

A Yes, sir, I do.

Q How long have you known him?

A Well I just know him a couple of months since the 5th of March.

Q Since the 5th of March 1920 did he have his car in your garage?

A Yes, sir.

Q What cars did he have?

A He had a Krebs truck and an Oneida.

Q Oneida?

A Yes, sir.

Q Were they boxcars?

A They were half of the bodies --

Q Did he have his name on it?

A On the Krebs.

Q And not on the Outside?

A No, sir.

Q Now on the morning of the 15th of April, 1920 was the defendant around to your premises?

A Yes, sir.

Q Were the cars removed by the defendant from your garage?

A Yes, sir.

Q Did the defendant return them to your garage on the night of the 15th?

A No, sir, he did not.

Q What hour in the morning did he reach your garage?

A Well he left there about between seven and eight o'clock.

BY THE COURT:

Q Alone or in company with anybody?

A Well I couldn't tell you, sir.

Q With which one of the two cars did he leave the garage?

A With the Krebs.

BY MR. MARKEWICH:

Q Were both cars removed?

A Yes, sir, both cars were removed, one was on the outside of the garage in 107th street; both cars were removed, one left outside of the garage and the other was taken away.

Q Were both cars taken from the garage at the same time?

A About the same time.

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Q Did you see the defendant drive off in one of those cars?

A I did not.

Q On the morning of April 15th?

A No, sir, I did not.

MR. JORDAN: I move that the answer be stricken out.

THE COURT: Strike it out.

BY THE COURT:

Q Did you see the defendant arraigned and now being tried in the garage on the morning of the 15th of April?

A No, sir, I did not, no, sir.

Q Now just yes or no, did you?

A I did not.

Q Did you see him around your garage?

A I did.

Q On the morning of April 15th?

A I did, yes, sir.

Q How close to your garage did you see him?

A In fact I was talking with him over some automobile tires.

Q Where did you have your talk with him on that morning?

A In the 107th street side of the garage.

Q In other words he was at the side of your garage on that morning and you talked with him by the side of your garage on that morning?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q And at that time was there anyone with him excepting yourself?

A No, sir.

Q At what hour did you have that talk?

A About a quarter after eight.

Q When you had finished talking with him what did you do?

A Well, I went in the office

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Q And that office was about how far from the spot where you had talked with him?

A On the 108th street side of the garage.

Q About a block away?

A Yes, sir.

Q Your garage runs through from 107th to 108th street?

A Yes, sir.

Q Did you notice when you left him in which direction he went?

A He went towards First avenue as he left.

Q You saw him leave the garage?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q You saw him walk in a westerly direction along 107th street?

A Yes, sir.

Q Towards First avenue?

A Yes, sir.

Q Was that the last time that you saw him that day?

A Yes, sir.

Q Did you on that day, after you had your talk with the defendant, see inside of your garage either one of his two cars?

A I did.

Q In what part of the garage were the cars after you had finished talking with him?

A The Krebs truck was inside in the back of the garage on the 107th street side.

Q Where was the other one?

A The other truck didn't come back.

Q The other truck was not at that time inside of your garage?

A No, sir.

Q Is that so?

A No, sir.

BY MR. MARKEWICH:

Q When had you last seen before that the other truck belonging to the defendant, the Oneida truck?

A I seen it right along till it was taken out of the garage; I held the truck for storage.

Q When was that taken out?

A That was taken out about two weeks afterwards.

BY THE COURT:

Q So that on this day, April 15th in the morning on the 107th street side of your garage you had a talk with the man who is now being tried?

A Yes, sir.

Q You say he left the garage and walked in a westerly direction towards First Avenue?

A Yes, sir.

Q You yourself went through the garage towards its 108th street side?

A Yes, sir.

Q And you saw, after your talk with the defendant inside of the garage, and on the 107th street side, one of the defendant's cars?

A Yes, sir; that was outside of the garage when he --

Q Outside of the garage?

A Yes, sir.

Q But on the 107th street side?

A Yes, sir.

Q Which car was that?

A The Oneida.

Q The other car was gone?

A It was -- it must have been in front of his house or his office.

THE COURT: Strike that out.

BY MR. MARKEWICH:

Q Was that car, the Krebs, with his name on it, in your garage that morning?

A It was.

Q You did not see the defendant take it out?

A No, sir.

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Q But you saw the defendant in your garage?

A Yes, sir.

Q And had a talk with him?

A Yes, sir.

Q Now was the car removed from your garage that day?

A Yes, sir.

Q Never mind by whom?

A Yes, sir.

Q And from that day until this day have you seen the car?

A No, sir, I seen it once.

Q Where?

A In front of his house.

Q Where?

A 121st street, the Second avenue corner.

Q When was that?

A That was the day after his arrest.

Q About the 24th of April?

A Yes, sir, about the 24th of April in the morning.

Q These cars were never brought back to your garage?

A No, sir.

Q And you haven't seen him any more from the 15th of April?

A No, sir.

Q Or the 16th of April?

A No, sir.

Q Did you on the 16th of April, 1920 receive a telephone communication from the defendant?

A Yes, sir.

Q Do you know his voice?

A I do.

Q Did you hear it over the telephone?

A I did.

Q Did you recognize his voice?

A Yes, sir.

Q Was that the voice of the defendant?

A Yes, sir.

Q That did he say to you on the morning of the 16th?

A He told me that he broke down with his truck on a plank road and for

me to come after him and pull him in.

Q Did he tell you where?

A No, sir, he didn't tell me the location, a Jersey plank road.

Q You couldn't send a truck out?

A No, sir, I did not because I had no truck for that purpose.

Q What is that?

A I didn't have a truck for that purpose.

Q Did you refer him to anybody?

A I referred him to a party who stored with me and who does jobs of that kind of pulling trucks in and about half an hour after that I asked him whether this party called him up and he said no that nobody called on him.

THE COURT: Strike that out.

CROSS EXAMINATION BY MR. JORDAN:

Q What day was this you had the conversation with him?

A The 16th.

Q What was it?

A The 16th.

Q What time?

A About half past four in the afternoon.

Q I thought you said in the morning?

A No, sir.

Q Now is that all the conversation you had with the defendant Sender in regard to this matter?

A Yes, sir.

Q Now let us see he ceased to store cars in your garage on the 15th, is that right?

A The 15th, no, sir.

Q What is that?

A No, sir.

Q Did he have cars there after that?

A He did.

Q How long?

A About two weeks longer.

Q Two weeks longer?

A Yes, sir.

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Q Now it was the 16th, that is the day after he took this one car away that you got a telephone message that he had broken down and wanted you to come and tow him in?

A Yes, sir.

Q That was in the afternoon?

A Yes, sir, that was in the afternoon.

Q That was the car that had the name on it?

A Yes, sir.

Q What name was on the car?

A J. Sender.

Q Did it say anything about being a truckman, give an address or anything?

A Yes, sir, he had an address on it.

HARRY WELCHER, a witness called on behalf of the People, being duly sworn, testified as follows:

(The witness states he lives at 544 Ninth Avenue, Astoria.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Mr. Welcher, what is your business?

A Automobile repairing.

Q Connected with the Fletcher Machinery Company of 19 East 107th street?

A Yes, sir.

Q That is right close to Weiss's garage where Sender stores his truck?

A Yes, sir.

Q On the 15th of April 1920 did you see Sender is your place of business?

A Yes, sir.

Q This a defendant?

A Yes, sir.

Q What was he doing there?

A Pardon me?

Q What was he doing there?

A He brought a truck there for repair.

Q A truck?

A An Oneida truck.

Q That truck didn't have the name of Sender on it or any

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otter name?

A No, sir.

Q What repairs were to be made upon it?

MR. JORDAN: I object to that as immaterial and irrelevant.

THE COURT: I do not think it is material.

MR. MARKEWICH: Except this, I want to show, if your Honor please, that he was trying to have the car fixed up, the car with no name on it but it could not be done.

THE COURT: I do not think I will receive it.

Q Did you see the Krebs truck in your place?

A Yes, sir.

Q On the 15th?

A Yes, sir.

Q Did the defendant bring that truck to you on that day?

A He was there around about four o'clock in that afternoon.

Q The 15th?

A Yes, sir.

Q Was there a name on the Krebs truck?

A Yes, sir.

Q What name.

A Sender.

Q J. Sender?

A Yes, sir.

Q Did the defendant have any talk with you?

A Yes, sir, he did.

Q That did he say to you?

A Well, he asked me if that Oneida truck was fit for a long run and I told him no. He let me listen to the Krebs truck and I told him the Krebs truck is all right.

Q Did you examine the motor on the Krebs truck?

A I listened to the motor.

Q Was it the kind of a motor that you could start very

easily?

A The Krebs truck was in pretty fair condition.

Q Did the defendant tell you where he was going with the truck?

A Yes, sir, he told me he had a trip to Atlantic City.

Q When?

A The same night. He said he had to go to Atlantic City.

Q He said he had to go to Atlantic City the same night?

A Yes, sir.

BY THE COURT:

Q This was when?

A On the 15th.

Q About what hour?

A About, it was a little later, I should judge around half past five or six o'clock.

Q In the afternoon?

A Yes, sir.

Q As I understand you he asked you whether that truck was good for a long trip, whether it would stand a trip to Atlantic City?

A Yes, sir.

Q And asked you to examine the motor and you did and you told him it was?

A Yes, sir.

Q You have not seen the defendant after that?

A No, sir, never did, not after that.

CROSS EXAMINATION BY MR. JORDAN:

Q Now let us see; you are positive about that date, are you?

A Yes sir, pardon me, I am positive about it.

Q Did you make any charge on that day against him?

A Yes, sir, I did.

Q What was the charge for?

A The charge was for repairing the Oneida truck.

Q When did you repair the Oneida truck?

A That same day on the 15th.

Q Was it taken out on the 15th?

A It was left in charge of a chauffeur.

Q I say was it taken out from your place of business on the 15th?

A Yes, sir.

Q Who took it out?

A A chauffeur.

Q Do you know what time he took it out?

A The same night.

Q Do you know about what time it was?

A After Mr. Sender left, about seven o'clock.

Q Now did Mr. Lender tell you that he had some moving to do to Rock Hill?

A No, sir.

Q He didn't tell you about that?

Q No, sir.

Q Did you examine the engine to see if it was easy to start?

A Well I listened to the engine and the engine was running.

Q It was running?

A Yes, sir.

Q Did you ever try to start the engine of the truck?

A Which truck are you talking about?

Q The one that had the name on?

A The one that had the name on; I never did try to start it.

Q You don't know that some trucks start easier than others?

A I do.

MR. MARKEWICH: The People rest.

MR. JORDAN: The People having rested I ask your Honor to direct a verdict of not guilty in this case.

THE COURT: It is a case for the jury. It is a case in which a defense should be put in.

MR. JORDAN: It seems to me that under the law your Honor has the duty to perform now instead of the jury and that your Honor can pass that responsibility on.

THE COURT: No. I am discharging my duty.

MR. JORDAN: I know your Honor is.

THE COURT: By denying your motion.

MR. JORDAN: Well your Honor has not heard the reasons. I do think that, your Honor ought to hear them and I think your Honor ought to grant this motion instead of denying it. I think, if your Honor please, that where the People present evidence of this character if a verdict should be rendered, your Honor, in all confidence, would be obliged to set it aside.

THE COURT: That is where I do not agree with you.

MR. JORDAN: I think your Honor will when we have finished. Now it is established that the defendant is a truckman. There is not one single thing that has been said by any witness which throws a suspicion even upon his conduct as a truckman.

THE COURT: Mr. Jordan you don't want me to make any comment on the evidence. I don't want to make any comment on the evidence at this time.

MR. JORDAN: I don't day that, your Honor should.

THE COURT: I want to hear you.

MR. JORDAN: I want your Honor to hear the application and while perhaps it may not be proper for your Honor to express any views with regard to it yet if after the argument of counsel your Honor should feel that it is your duty to deny the motion all right. But I desire to place my grounds upon the record.

THE COURT: We are agreed as to the principle to be applied. In other words the principle is one that is thoroughly understood and known. The only question is whether the evidence presents such a condition as ought to leave me, under Section 410 of the Code of Criminal Procedure, to advise the jury to acquit or whether the case is one that calls for an explanation on the part of the defendant.

MR. JORDAN: Now I submit that any explanation is unnecessary. Here is a case where we are found in possession Of property. How is found in possession? The defendant admits that the first time that anyone speaks to him that he was hired as a truckman and carried goods from a certain point. That thing has been explained. He has done everything that any man could do and he has made an explanation in regard to it. For instance if I were found with something in my possession that has been stolen must it be said that

the only place to make the explanation is after an indictment and before a petit jury. It seems to me that that cannot be the rule. If your Honor thinks so then any honest man in this country who might be possessed of property that is stolen property would be called upon for such an explanation. Here we have goods in our possession under circumstances which are explained by the business in which we are engaged. For instance, if a man is a hotel keeper and a man brings a bag into the hotel and it is taken by a porter to be carried up to a room in the regular course of business cannot the hotel proprietor explain to those who come and make inquiry and avoid the trial of an indictment. In other words must a man who innocently comes into possession of stolen property explain it when he has an opportunity or must he, in order to be vindicated, explain it to a jury of twelve men after indictment?

THE COURT: Now the answer to that is no.

MR. JORDAN: Well now I say that if that is true then there is no difference here in any of the essential elements. The young man says that there was a door thrown open and that the machine was kept running. Those are the two circumstances here.

THE COURT: And one other.

MR. JORDAN: I would like to have it, your Honor.

THE COURT: The placing of the packages on the sidewalk at no ascertainable address.

MR. JORDAN: Now if your Honor please the detectives have testified that he told them the place where he took them and that the party --

THE COURT: No there are four corners there.

MR. JORDAN: Perhaps I was so familiar with this one matter that I neglected to inquire particularly into that.

THE COURT: He didn't tell them exactly where he put them.

MR. JORDAN: But he offered to show them.

THE COURT: I think on the evidence as it stands I must let it go to the jury. I must hear the evidence for the defense and you may then renew your motion.

MR. JORDAN: Exception.

JACOB SENDER, the defendant being duly sworn in his own behalf, testified as follows:

(The witness states he lives at 317 East 121st street.)

DIRECT EXAMINATION BY MR. JORDAN:

Q Now, Mr. Sender, how old are you?

A Forty years.

Q Your business?

A Trucking.

Q Where is your place of business?

A 317 East 121st street.

Q In the City of New York?

A Yes, sir.

Q How often have you been engaged in the trucking business?

A I am trucking 15 or 16 years, not in business, I was working for losses and in business for myself five years.

Q Now how many trucks do you have?

A I have one truck.

Q What is that?

A Four horses and two wagons and since ten months ago I sold the horses and wagons and I bought that Krebs truck, a second-handed truck and I paid \$400 and I got to pay that much, \$130 in notes.

Q Now on the morning of the 16th day of April, isn't that it, what were you intending to do?

A I was intending to move, a man has to go to Jersey, 128th street, take a load out between park and Madison avenue out to Jersey.

Q For whom?

A For people I couldn't tell you, the chauffeur took the load out. You know I never write down the address, I never write down the address. There comes a party to me and I write the address for the house and send the chauffeur and he knows the names where he goes.

Q Have you been doing any work for a furniture concern?

A Yes, sir, I have been doing work for a furniture concern Weil Brothers with my truck. I came every day at half past eight, a strike on, with a cop was along with me, for two weeks every day a different cop.

Q Now what did you do on the morning of April 16th?

A I went down town to move Mr. Phillips to Rock Hill. I had two jobs, first I got one job 64th street to Atlantic City and I couldn't do it, I was figuring it was a cheap job and I have more money to go to Rock Hill.

BY THE COURT:

Q What time did you leave your house?

A I left the garage

about six o'clock and I case up to my house and I got the burlap out, and the rigging for pianos to hoist up and I put everything on the machine and I went down town.

Q On the morning of the 16th of April about what time did you leave your own house for the first time on that day?

A That day it was about between five and six o'clock.

Q Where did you live on that day?

A 317 East 121st street, that is where I live.

Q That is between what avenues?

A First and Second avenues.

Q Did you leave your house alone or did somebody go out of the house with you?

A Nobody went along with me.

Q When you left your house between five and six o'clock on the morning of that day where did you go?

A I went right to the garage and I came into the garage --

Q Where is the garage?

A 108th street.

Q Between what avenues?

A Near First and the river.

Q About what time did you get to the garage?

A Must be about half past five.

Q What did you do after you got there?

A When I came in there I could not get the car it was a couple of cars in the front. I was supposed to go out -- I left word in the garage in the night time I had to go out in the morning and I can't leave no word in the garage and the car was blocked up in the back and the man in the night time he was the man that stored the car and he won't recognize the car and I can't start the car on

to go out. I will have to push the other cars out. I started to go out and I couldn't start it and there came in another fellow that wanted to go out at half past five to go in the market and he was coming out and he shoved the cars out altogether and started the truck then out, shoved them out to the street, and after this fellow went out first I went after him and one fellow went in the market with his car and I shoved out two cars in the street, one in the side and one in the street.

Q Now after that was done what did you do next?

A I went in the car to my house and took the ropes out and the piano hoisting.

Q In other words you got into your car and you want with it in front of your house?

A Yes, sir.

Q Number 317 East 121st street?

A Yes, sir.

Q Why did you go from the garage to your house?

A I got the block and fall to hoist pianos, it cost \$110 of material which is in the car. And when I got something in the daytime to work in the morning or the night time I leave it in my office and somebody take twenty-five or thirty dollars of property and when I come in the coming to take the car out --

Q You went to your house for the purpose of getting something?

A Yes, sir.

Q A hoisting device?

A Yes, sir.

Q What was that something that you got?

A A block and a fall, the hoisting thing.

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Q Whereabouts in Your house?

A In the basement.

Q Was that?

A In the basement.

Q What did you do with it?

A Put it on the truck.

Q After you put it on the truck what did you do?

A I went down town.

Q Along what avenue?

A I went up Second avenue.

Q You went along 121st street?

A Yes, sir.

Q Until you got to Second avenue?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q Did you turn down Second avenue?

A I don't turn. I went right down to Mr. Phillips.

Q Now wait a moment. Go ahead. You went down Second avenue. Went down town on your car?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q What do you tell me, straight down town?

A Yes, sir, straight down town, Second avenue down town.

Q When you left your house?

A I left my house.

Q When you left your house and got on your car was there anybody else on the car except you?

A No, sir, nobody except me.

Q Was there anything else in the car except the tackle or whatever you use for hoisting pianos?

A There was a lot of rags and burlap because I cover up the furniture.

Q To put on the furniture?

A Yes, sir.

Q When you turned down Second avenue on your car whereabouts did you intend to go?

A I did intend to go to Broome Street

to move a man from Broome near Christie. And I intended to move him to Rock Hill.

Q You were going to the house of a man who lived on Broome street near Christie street?

A Yes, sir.

Q To move him from that house to some place in Rock Hill?

A Yes, sir.

Q Whereabouts is Rock Hill?

A It is seven miles this side of Monticello.

Q To what house were you going on Brooms street, whose house?

A It is right across, I couldn't tell you what number, I can't really tell what number, I took him in the winter already, I took out in the winter too goods. I went out in the middle of winter, that must be live or four months ago, I took a load out to another house.

Q What is the name of. the man?

A The man is Mr. Phillips.

Q What is his first name?

A I don't know his first name, I know his name is Phillips.

Q On what floor does he live?

A The second floor.

Q About how long have you known him?

A About I know him, he had a saloon and I came in all the time there.

Q About how long had you known him?

A I know him about a year or two years.

Q Whereabouts was the saloon?

A He has a saloon.

Q Where was his saloon?

A Broome near Foray the.

Q Did you stop anywhere after you had turned your machine

into Second avenue at 121st street until you got to the house of Mr. Phillips?

A No, sir, stopped no place in 121st street.

Q Where did you stop?

A Well I went to the job where it is at.

Q You were coming along on your truck down Second avenue?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q You had a job to do?

A Yes, sir.

Q Which side were you driving down on?

A The right hand side.

Q Did you have anybody with you while you were going down the avenue?

A No, sir.

Q To go to Phillips's house. Did you meet anybody. You say somebody spoke to you?

A Yes, sir.

Q What did they say?

A They asked me--

Q What is the first thing you heard that person say?

A That man wants to give me a job. He said want to do a job-- I got a job he said.

Q Listen to me. You say one man said do you want a job?

A Yes, sir.

Q Now wait a moment.

A Yes, sir.

Q You said a man came up to you?

A When I was on the way the man was standing and he came up; he came up there and he said --

q Now I want to find out where he came from. Somebody spoke to you?

A Yes, sir.

Q What did he say?

A They said -- I was going with the car and a fellow stopped me and he said you want to do a job.

Q How did he stop you?

A He put up his hands like this and I stopped and he said, "You want to do a job" and I said, "what job is it" and he says, "I got some stuff to take away from 28th street and it wants to go over to Delancey street." I said I don't got time, I got to go down town, I have to go down to do this work and he said, "It wouldn't take long, about two or three hours" and I said all right and he said it was in 28th street and I said near where and he said near 6th and 7th avenue.

Q There was this man when he stopped you?

A He was at 9th street and second avenue.

Q On the sidewalk?

A Yes, sir.

Q Or in the street?

A On the sidewalk, and he put up his hands.

Q Was he alone or with anybody?

A Alone and there came another man, when he spoke to me another man came along.

Q Tell us how they looked, what kind of a looking man?

A One fellow was a short fellow's young fellow, and one fellow was a skinny fellow, a short fellow, and one fellow was a little my shape, a little fat, 200 pounds he weighed.

Q How were they dressed?

A One fellow was with a light suit and one a black suit.

Q What kind of a light suit?

A A light suit; I don't

remember that, just a light suit, one big fellow, a tall fellow.

Q Which one of the men was it that spoke to you?

A That big fat fellow.

Q The larger of the two?

A No, sir, the larger of the two, the skinny fellow, I know the tall fellow was a little fat and he came over to me and he was talking to me and both were coming back with the other fellow.

Q Now tell me again which one of the two it was that held up his hand and spoke to you?

A That was the first time, yes, sir.

Q Which one of the two was it that spoke to you at 9th street and second avenue, raised his hand and spoke to you and caused you to stop your car?

A That big fellow, he weighs about 200 or 190, a big fellow.

BY MR. JORDAN:

Q Now what else did they say after that?

A He said -- I went over there, sitting with me on the seat, I went over through 9th street and as I pulled over to 10th street and right into 10th street.

BY THE COURT:

Q I wish you would think very carefully and tell us all that was said to you by either of these two men before you agreed to do what they asked you. Now tell us. You understand that.

A Yes, sir.

Q Tell us carefully what they said, either of these men said before you told either of them that you would do what they asked you to. A He asked me, stopped me with the hand, I was going

with the truck, I stopped off and he said you want to do a job and I said yes and he told me he had a couple of bundles to take over from 28th street and I said how much will you pay me and he said it is worth ten or twelve dollars and I said all right and he said I will give you ten. And this fellow spoke to me, another fellow, he came along and I said how much do you pay and he said ten. Both men with me on the seat and I said where is it and they said 28th street near 6th or 7th avenue. I pulled into 9th street and turned into 10th street and go down to 7th avenue and 28th street, one side place and you can't come in on the other side and I came on 7th avenue and went 7th avenue and up 28th street and I came over and he says here is the bundles. I came in the place and put one bundle in the machine and after that the other fellows put the other bundles in the machine and as soon as they brought it down, two fellows went over with me and two fellows went away and two fellows were standing in front of the house and I put down the two bundles and the two fellows went up with me.

Q You went away?

A I came over in Delancey street near Columbia and. I said where as I going to put them and they said on the sidewalk right here by this shop and I go and put them on the Sidewalk and he gives me a ten dollar bill so they were walking along to First avenue again and I went to the garage where I have another job supposed to go to Jersey, 128th street to take a load to Jersey and I stopped in the garage and I said to the

man, Mr. Weiss, is my car in the garage and he told me we couldn't stop there in 108th street and I pulled into 107th street and went in for my car and I said is my car here and my machine went out at eight o'clock in the morning, eight o'clock.

BY THE COURT:

Q About what time of day was it when, as you say, the packages were taken out of your car and put on the sidewalk at Columbia and Delancey street?

A About half past seven or quarter of eight.

Q Why didn't you then go with your car to the house of Mr. Phillips at Broome street near Christie?

A I went to the house again in the night time, four o'clock or half past four but I had another job for Mr. Weil Brothers and another job was supposed to go to Atlantic City and I gave it away to 116th moving man near Third avenue and he gave me \$10 commission.

Q Why did you not go from Delancey and Columbia street in that car that you were in to Mr. Phillips' house at Broome street near Christie?

A I went to pull right over back into First avenue for Mr. Phillips and I was figuring that I could do his job after doing the strike job and I will get there at four o'clock. I was waiting until half past four, that was the time, over there and that was a long moving job, some barrels to take out and in about a half an hour some barrels were taken out and I go over in the night time and come up the same morning there, it wasn't necessary to come around there then.

BY THE COURT:

Q Now listen to me. You left your house in the morning intending to go Phillips' home on Broome street near Christie street?

A Yes, sir, near Forsythe.

Q In order to take something that he wanted you to take to Rock Hill?

A Yes, sir.

Q If this man had not come to you and spoken to you on Second avenue and 9th street you would have kept right on to Phillips' house on Broome street, isn't that so?

A I was--

Q You were going there?

A I was like --

Q Now after you had been discharged by these people and had left the premises on Delancey street near Columbia street why didn't you go in your car right away to Phillips' house on Broome street?

A It was too late to go to his house and I think I will be over about six o'clock and I said when I would not be over at six o'clock I will be there in the night time. He gave me notice a month before and I took four months ago a load there and he said any time you have a chance take out this load, next month, he was going to move there the furniture altogether, I moved there the furniture and I was looking up somebody else to cove with the furniture and he only took out some barrels of stuff. I was supposed to work for them and it may be \$140 a week and I said I will go home then to take a job at Weil Brothers and maybe he won't need me for the whole day, riding around the city, about 13 o'clock, between 12 and 1 o'clock.

and taking a load, and about one o'clock I took a load out to East New York and I came back and I stopped in Allen street near Rivington street and I said to the officer on the seat with me, "I have in Broome street I got a job for Rock Hill maybe I go tonight or tomorrow and the cop says, "Wait for me here" and I thought I might as well wait here about fifteen minutes and the cop was sitting on the seat and I went over there and I said to Phillips, "You couldn't move out tomorrow" and he says "all right, come in the morning" and I said I got a job and I couldn't come in the morning.

Q What time of day was it you saw Phillips?

A It was about four o'clock.

Q You saw Phillips on April 16th?

A Yes, sir.

Q At four o'clock in the afternoon?

A Yes, sir.

Q Whereabouts?

A It was in Broome street corner of Forsythe street.

Q In his house?

A No, sir, not in his house; I seen him on the corner.

BY MR. JORDAN:

Q Now you had a talk with Phillips?

A Yes, sir.

Q Where did you go?

A I went over to the 42nd street ferry.

Q Where?

A The 42nd street ferry.

Q And where from there?

A I want right up going to Hackensack.

Q Go to Hackensack?

A Yes, sir.

Q Did anything happen on the road?

A When I got up on top of the hill I broke down the machine and I telephoned to Weiss that my car broke, there was no garage out there and can't you send me out a car to pull me home or pull me up some place and he says no car here. He says, "I can't help you." All right I left the receiver go and after I was standing there a couple of hours a fellow came to pull me up and as soon as he pulled me up for \$2.

Q You went on?

A Yes, sir, I went on and before I got to Rook Hill I broke down again that was near Phillips' house and I took the load of stuff off and a fellow took me with his team of horses to his place.

Q Over to Phillips' place?

A Yes, sir.

Q What is Phillips' place there?

A He bought a hotel.

BY THE COURT:

Q How much was he to pay you?

A \$80.

Q How much?

A \$80.

Q For what you did that day?

A Yes, sir.

Q For taking out his stuff?

A Yes, sir.

Q How far is Rook Hill, do you know?

A About ninety miles.

BY MR. JORDAN:

Q Do you know about what time you got to Mr. Phillips' place?

A It was between four and half past four o'clock.

Q Half past four?

A Yes, sir.

Q You mean when you left here?

A No, sir, it was six

or seven o'clock at night.

Q What happened to your truck?

A My truck was broken down.

Q How long was your truck over there at or near Rock Hill?

A The next Sunday.

BY THE COURT:

Q When was this next Sunday?

a a week.

Q What day of the week was April 16th?

A April 16th it was on a Friday -- between six and seven o'clock.

Q The truck was there until the next Sunday?

A Yes, sir.

Q Six o'clock the day after?

A The day after.

Q Did you take the truck from there?

A A week from Saturday is she next --

Q Did you get it fixed so that you could drive it back then?

A Yes, sir.

Q Who fixed it?

A I bought some parts and fixed it with a fellow there.

Q With another fellow out there?

A Yes, sir.

BY MR. JORDAN:

Q Is Rock Hill a small or large place?

A It is not a big place, it is only a little place.

Q No garages there?

A No, sir, no garages there.

Q Now, Mr. Sander, at the time that you took this load for these parties, did you know that a burglary had been committed?

A No, sir; I never knew it.

Q Did you have any knowledge or suspicion that these goods were stolen that you were taking?

A No, sir, I aint got no

suspicion, a lot of people when they pass sometimes and see a man, these people stop me off to take a load. I went out four weeks ago and I passed Broadway --

Q If you had known that there had just been a burglary there and that these were stolen goods would you have taken them?

A When stolen goods I would never do it.

Q You don't know who stole the goods or anything about them, do you?

A No, sir.

Q Have you any idea who committed the burglary?

A I could not tell you that.

BY THE COURT:

Q These two men who got on the car with you at 9th street and Second avenue and went on the car with you to this place on 28th street --

A Yes, sir.

Q When you drove away from that place in the car were either of these men on the car?

A Two men was in the same car.

Q Did they remain in the car with you?

A They jumped in the back.

Q They jumped in behind?

A Yes, sir.

Q How long did they stay on the car?

A On the car till at Delancey street when I delivered the stuff.

Q Are they the two men that you left the stuff with on Delancey street?

A Them two men that I left went along with me to Delancey street and the other two men I didn't see them any more, I only seen them in 28th street with the bundles. The two

men that hired me they went along with me to Delancey street.

Q The two men whom you saw at 9th street and Second avenue?

A Yes, sir.

Q Got on the truck with you and went with you on the truck to this place on 28th street and then there were two other men there who put the stuff on the truck and then the two men who had gone with you to the 28th street placed jumped on the back and the other two men who had put on the stuff walked away and the two men who had spoken to you stayed on the truck until you got to Delancey and Columbia street?

A Yes, sir.

Q And took the stuff off?

A Yes, sir, and took the stuff off.

BY MR. JORDAN:

Q Where do you live?

A 317 East 121st street.

Q How long have you lived there?

A Living there for six or seven years; lived in the block eight years.

Q Are you a married man?

A Yes, sir.

Q Live with your wife?

A Yes, sir.

Q How many children have you?

A Five.

Q How old is the oldest?

A The oldest is 15 years.

Q How old is the youngest?

A The youngest is three years.

Q You know nothing about the condition on this crime?

A No answer.

Q Did you look to see if you could find the parties that hired you?

A When I was seeing the parties I will show the

cop. Where is the parties?

Q Did you see either of them?

A I couldn't see them. I was pinched four or five weeks and I couldn't see them and there was nobody came over here to me only my wife.

Q If you were to see those parties would you recognize them?

A Yes, sir.

Q You didn't know them, did you?

A No, sir, never knew them; only recognized those two parties as the ones that hired me, and the other two fellows I would not recognize them, they only put it down on the truck.

Q The two that hired you you would know them if you saw them?

A Yes, sir.

Q You told the officers that if you could find those parties you would have them arrested?

A Yes, sir.

Q Didn't you?

A Yes, sir.

Q And you would have done so?

A Yes, sir.

Q You haven't seen them since the time of your arrest?

A No, sir, I couldn't see them since that time.

CROSS EXAMINATION BY MR. MARKEWICH:

Q Sender, how many automobiles have you?

A I only got now one.

Q Which one is that, the Krebs?

A Yes, sir.

Q What happened to your other one?

A The other one is the Oneida and I bought it off a man --

Q Before you were arrested?

A Yes, sir, before I was

arrested, ten days before I was arrested when I was working for Well Brothers.

Q What happened to it?

A That is what I wanted to explain. I was working --

Q What happened to the machine?

A Where is the machine? Now the company took it away. I could not pay my note.

Q You haven't bought another machine since?

A No, sir.

Q Who was the man who bailed you out when you were arrested?

A Mr. Copper.

Q What was your bail?

A \$10,000 and after \$20,000.

Q Somebody put it up?

A Yes, sir.

Q Who put it up?

A I put up my machine.

Q What is your machine worth?

A It is worth \$2,000.

Q What was the mortgage on it?

A The mortgage I had \$390.

Q \$390?

A Yes, sir.

Q And that was taken as security for \$20,000 bail?

A Yes, sir.

Q Do you know a man named Miller?

A Miller?

Q Do you know a man named Miller in the fur business?

A Well I don't know Miller in the fur business.

Q Do you know Miller who lives in the Bronx?

A No, sir.

BY THE COURT:

Q Do you know a man by the name of Miller who has his home in the Bronx?

A I don't know Miller who had his home in the Bronx.

Q Do you know anybody as far as you can now remember by the name of Miller?

A I can remember Miller. He is a moving man.

BY MR. MARKEWICH:

Q Do you know Solomon Miller?

A No answer.

Q Do you know Miller who put up cash security for you?

A Mr. Phillips, I asked him.

Q You asked him?

A Yes, sir. I was here ten days and my wife was over here to visit me and I told to my wife, "Try to get me some bailor." I was here ten days then and I said to my wife. "Try to get me some bailor" and Mr. Phillips knows me I came around all the time to his place and my wife has a pair of diamond screws and she got \$250.

Q I am asking you, Sender, whether you know Miller who put up cash security for you?

A I don't know, somebody put up \$5,000.

Q Cash?

A Yes, sir. Mr. Phillips was trying to get me out and my wife sees him and the next day --

Q Do you know this man Miller?

A I don't know a man named Miller, I know Phillips and he was going to try to take me out.

BY THE COURT:

Q Do you know a man who put up cash security for you?

A No, sir.

BY MR. MARKEWICH:

Q Now how long do you know Phillips?

A Phillips I know over a year.

Q What business had you been doing with Phillips?

A I don't do no business, I was coming in the saloon a couple of times and in the winter, five or six months ago he says, "You want to do a

job for me" and I says what is it and he says take a load to go to Rock Hill. He bought a farm there.

Q Do you know his nephew, Phillips' nephew?

A I don't know the nephew.

Q Do you know Katzenberg, his nephew?

A I don't know Katzenberg.

Q Do you know a nephew of his who is in the dress business?

A No, sir, never had no business with him, I only came into Phillips in the saloon.

BY THE COURT:

Q What is Phillips' first name?

A I never all the time that I came into his place I always called him Mr. Phillips.

MR. JORDAN: I will explain that to your Honor if you think it is proper.

(Counsel confers with the Court.)

Q I want to ask you who retained the lawyer for you?

A Who hired the lawyer?

MR. JORDAN: I object to that. It seems to me to be going to the trial. I have never had any questioners about my practice in this Court.

MR. MARKEWICH: No reflection upon you.

MR. JORDAN: I know you wouldn't reflect upon me.

THE COURT I sustain the objection.

Q Now you never had any business with Phillips?

A No, sir, I never did.

Q Phillips you say asked you to do a moving job for him to

Bock Hill?

A I did one moving job and this was the second.

Q He bought a farm out there?

A Not a farm but a hotel.

Q Where is the hotel, in Rock Hill?

A It, is eight miles this side of Monticello, Sullivan county.

Q You were up at Rockhill before?

A Yes, sir, in the same place.

Q In the month of April weren't you?

A I don't know what month, in the middle of winter, I was up there about twelve days.

Q You are quite intimate with Phillips, aren't you?

A Yes, sir.

Q Friendly with his family?

A I know Mr. Phillips and his wife I know because I came in all the time into the saloon.

Q Now Phillips asked you to do a job for him and you said you would do it?

A Yes, sir.

Q He promised to give you how much?

A \$80.

Q To go up to Sullivan County?

A Yes, sir.

Q And back?

A Yes, sir.

Q With an automobile truck?

A Yes, sir.

Q Now what car did you take up there?

A The Kleiser.

Q Is that your car?

A Yes, sir.

Q When was that?

A The first trip. I will tell you I cannot remember what month it is, I know in the winter but I never write it down.

Q The first trip was the Kleiser truck?

A Yes, sir; I didn't write it down.

Q And the second trip what did you go up in?

A The Kleiser.

Q What happened to the Krebs truck?

A That is the krebs truck, called a Kleiser.

Q And the other truck the Oneida, was the other truck here?

A The Oneida I had on the Roberts Express Company.

Q That was not in working order?

A No, sir, she was not in good order; I couldn't go out no place with her.

Q Now when did Phillips tell you the first time that he had a moving job for you?

A The first time?

Q The first time that he asked you to do a job, that is at the time when you got mixed up in this thing?

A No answer.

BY THE COURT:

Q When did he ask you to do it?

A He told me when I went the first time he says I got two loads more to take out there and he says any time when the snow will come off, after Easter, any time you have a chance, I have to go out the first of May, the first of May he says, and the 5th of May or any time you will have a chance you take it out, we have some pickles and all kinds of stuff in the basement. Take a load out first and in two days I will telephone for you and I said all right and Friday I came down to his cafe and said, "You give me a chance to take a load out" and he says I ain't got a large load I got to buy some more stuff. You may take it in a few days then" he says "about a week or two weeks come down" and I came down in the middle of the week and I was able to try to load this truck -- I came Friday and I sail, "All right Mr. Phillips you will be able to

move Friday and ha says yes move my things Friday.

Q You were doing some strike work?

A Yes, sir.

Q For what firm?

A Weil Brothers.

Q What is the business?

A Furniture.

Q Quite a trike on in the furniture business?

A Yes, sir.

Q The strike still going on?

A Yes, sir.

Q Has been going on for some time?

A Since Easter.

Q Since when?

A Easter.

Q Where was their place of business on April 15th, Weil's?

A Third avenue near 123rd or 122nd street.

Q BY MR. MARKEWICH:

Q You were quite busy doing strike work for Well Brothers?

A They were paying me \$140 a week.

BY THE COURT:

Q After the merchandise had been taken off your truck and put on Delancey street near Columbia where did you go on your truck?

A On my truck? I went on straight up to the garage in 108th street.

Q You went back to the garage?

A Yes, sir.

Q At 108th street?

A Yes, sir.

Q What time did you reach the garage?

A About half past eight.

Q In the morning?

A Yes, sir, half past eight or nine o'clock.

Q About how long did you stay at that time in the garage?

A I didn't go in the garage, standing outside, with the car.

Q About how long did you stay outside with the car?

A Maybe ten or maybe fifteen minutes, I am not sure.

Q At the garage who if anyone did you see and speak to at that time?

A I spoke to Mr. Weiss and a fellow there --I spoke to this fellow.

Q And there did you go?

A I went over to my house.

Q On foot or in your car, walking or in your car?

A No, sir, I went right in the car, I went away from that fellow.

Q Listen to me. You got into your car and went over in it?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q Where?

A I went right to First avenue and I went up in my house and I stayed --

Q Now that is 121st street?

A Yes, sir.

Q When you got to your house what did you do?

A I said to my wife, "You got some breakfast for me" and she said, "you told me you were going away, I haven't got any breakfast and I said, "when the truck will come send him right over to 128th street on the corner -- the truckman in the other car.

Q After you talked with your wife where did you go?

A To Weill Brothers to start work.

Q You went on your truck to Weil Brothers?

A Yes, sir.

Q What time did you get to Weil Brothers?

A It must have been after 9.

Q When You reached Weil Brothers what did you do at Weil Brothers, what did you do?

A I backed in the truck and I took the rage off, and the burlaps off, and there was burlaps that I took off in the machine and he came out and he says -- I am not sure if he wouldn't give me a load for 23rd or 24th street.

Q Listen to me. When you got to Weil Brothers you took something out of your truck that was on it?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q What was that?

A Burlap.

Q Where did you put it?

A On the sidewalk.

Q After you put the burlap on the sidewalk what did you do?

A A cop storing by me and the boss? there, or the foreman came out.

Q The foreman of Weil Brothers?

A Yes, sir.

Q And a policeman?

A Yes, sir.

Q They were by the machine?

A Yes, sir.

Q Did either of them get on the machine?

A The cop went on the machine.

Q Was there any merchandise put on the machine, any furniture?

A They put on the machine, sure, they just put

on for 23rd or 24th street, and at the same time when I came into 24th street they got a storage house.

Q You mean 134th street?

A Yes, sir; when I came there they put it on in 124th street--

Q When you left your house having had a talk with your wife you went to the front of Weil's place of business?

A Yes, sir.

Q Is that true?

A Yes, sir.

Q Where was that?

A 123rd street.

Q 123rd street?

A Yes, sir.

Q Near Third avenue?

A Yes, sir.

Q Now do you know whether a load was put on your truck there, yes or no, or you don't remember that?

A I remember I put on a load.

Q You put on a load?

A Yes, sir.

Q You are not sure whether you put it on at their place of business in 124th street or at the place in 121st street?

A No, sir, I delivered it --

Q After you had that load of furniture on where did you go?

A I went over with the cart to 112th street, I am not sure, I could not remember -- there was a couple of stops nearer.

Q You went to a particular place?

A Yes, sir, two or three, I am not sure, how many places, but I cannot remember.

Q After that, then where did you go?

A After that we

came back to the same place.

Q To Weil's, in front of 23rd street?

A Yes, sir.

Q 123rd street and 3rd avenue?

A Yes, sir, we came back there.

Q Now, when you got back there did the policeman get off your truck?

A Yes, sir.

Q He had been on it all that time?

A Yes, sir.

Q What time did you get back to Weil's about?

A It must be about 12 o'clock.

Q About noon, what did you do then?

A Went for dinner.

Q Where did you get dinner?

A At Third avenue.

Q Between what streets?

A Near 124th and 125th streets.

Q Where did you leave your truck?

A Right in front of the place.

Q Weil's?

A Yes, sir, and the cop was watching it.

Q What time did you get back to your truck?

A In about half an hour.

Q What did you do then?

A Put on a load.

Q Of furniture?

A Yes, sir.

Q About how many deliveries did you make?

A Well, after that we put on a big load to East New York.

Q You went on that truck with furniture in it to East New York?

A Yes, sir; a full load of furniture.

Q About when did you get there?

A I got there about, I guess about two o'clock or after two.

Q About how long did it take you to unload it?

A Only put it on the sidewalk, the rest of the fellows was taking it off.

Q About what time did you leave East New York?

A It must be about three o'clock.

Q Where did you go then?

A Right down Broadway over the Delancey street bridge, I came over in Allen street near Rivington street and the officer was there and taking his watch out and he says it was about four o'clock, don't try to go back, I don't want to work over time and I said, well, I got to be five o'clock, I got a job from Rock Hill, and I will jump over there, and I will be back in half an hour, and I will let you know.

BY MR. MARKEWICH:

Q When were you paid the ten dollars for carrying the stuff from 28th street from 28th street to Delancey street and Columbia?

A I got paid when I took the stuff off.

Q Tell me again when you were paid, when did you get the money?

A When I took the stuff off.

Q You put it on the sidewalk?

A Yes, sir, I put it on the sidewalk.

Q You did not get any money until that time?

A No, sir.

Anybody who hires me for a moving job -- there is some people that come to my house and hire me.

Q You didn't get any money until you took the stuff off?

A No, sir, I did not get any money until I took the stuff

off.

Q When was it you did the job for Weil Brothers,
was it on the 16th of April?

A Yes, sir.

Q Friday?

A Yes, sir.

Q The same day that you had taken these packages away from the 8th street place?

A Yes, sir, the same day.

Q Sure about that?

A Yes, sir.

Q Now in what truck did you do these jobs for Weil Brothers?

A The Kleiser.

Q Where was the Oneida truck?

A It went to Jersey.

Q It went to Jersey?

A Yes, sir.

Q Now, for whom did you do the job on the Onieda truck?

A What?

Q (Repeated)

A 128th street.

Q What concern?

A A moving job.

Q For what concern, for whom?

A For the moving party.

Q For whom?

(No answer.)

BY THE COURT:

Q What was the name?

A The name, I wouldn't tell you the name.

Q The number in 128th street?

A 128th street.

Q The number on the street?

A Yes, sir, I don't know the number, I know the house near Madison or Park avenue

Q Give me the number of the street please.

A I know the house that is all. It is on the right hand side, top floor I moved the party up there, and I moved them out,
I moved

them over to 18th street the last time.

Q What is the height of the house, how many stories?

A A three story house.

Q A three store house?

A Yes, sir.

Q You don't know the name of the family?

A No, sir.

BY MR. MARKEWICH:

Q Was it Jewish, Italian or Irish?

A No, sir, it was German.

Q A German family?

A Yes, sir.

Q You don't know the name?

A No, sir, I wouldn't tell you if it was German.

Q You did a moving job for them before?

A Yes, sir.

Q When were you told about that job in 128th street?

A The job was supposed to be Thursday.

Q You were supposed to do that job on Thursday?

A Yes, sir, he came up in the morning Thursday to my house and I was not home and he told my wife to send me up.

Q Now he did not see you at all?

A No, sir; after he seen me about 12 o'clock.

BY THE COURT:

Q This job we are talking about now was one that was done by some person who worked for you?

A Yes, sir.

Q Is that so?

A Yes, sir.

Q What is the name of that person?

A The chauffeur.

Q What is his name?

A I don't know his name. I was calling him Harry, the second name I could not tell you what

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it was.

Q You had a boy by the name of Harry?

A Yes, sir.

Q He worked for you?

A Yes, sir.

Q It was Harry --

A A young fellow;

Q He went to this place on 128th street near Park or Madison avenue?

A Yes, sir.

Q And took the property?

A Yes, sir.

BY MR. MARKEWICH:

Q Now, when did you tell this Harry to go to 128th street?

A I came Thursday at 12 o'clock with my machine and I was working I came over there and my wife said "Do you know you moved a party to 118th street--

Q To 128th street?

A Yes, sir, and my wife says she is going to move again.

Q When did you tell Harry to do that?

A He knew the time he was supposed to be --

Q When did you see Harry after that?

A I seen Harry about 9 o'clock.

Q 9 o'clock when?

A Friday.

Q Morning?

A Yes, sir.

Q Where?

A In 128th street.

Q 128th street?

A Yes, sir.

Q So that you went to this garage in 108th street and you went up with your truck to 128th street to see if Harry was there?

A Yes, sir.

Q You found Harry there?

A Yes, sir.

Q Harry was removing the furniture there?

A Yes, sir,

with another man.

Q Harry was there himself?

A Yes, sir, with two men.

Q And you went to Weil?

A Yes, sir.

Q You were not in Jersey all that day?

A Yes, sir, was in the night time to Rock Hill I went.

Q What time did you start to Rock Hill?

A It was about maybe it was half past four, I don't know the right time.

Q When did you see Harry after that?

A Harry I didn't see him.

Q You didn't see him at all?

A No, sir, when I came back after I seen him.

Q Where was that job supposed to be, that furniture supposed to be moved?

A What furniture?

Q To Jersey from 128th street?

A Just this side of Newark.

Q Was there any particular hurry about that job?

A The party was supposed yo move out on Thursday; I couldn't move out I had lot of work on for that day, and I went up there Thursday afternoon and I said, "When you want to move --

Q When did you see Harry he did that moving job?

A After he old the moving job I seen him a week later.

Q Is Harry here?

(No answer.)

Q Is Harry here?

No, sir.

Q What is his second name?

A I don't know what his name is, his second name.

Q You don't know his second name?

A No, sir.

Q Do you know Tony Degrazio, who worked in the garage where you stored your car?

A Tony? I don't know Tony, I know a lot of fellows in the garage there.

Q You don't know an Italian fellow named Tony who worked there?

A I know a couple of fellows working there.

Q Did you have a talk with Tony on the Thursday before you moved this stuff from 28th street?

A No, sir, he don't was working that day; I didn't see him that day; he doesn't work in the night time.

Q Did you tell Tony on Thursday, "Tony I have got a chauffeur I don't care for, a chauffeur I don't like, if I could get you for just a couple of hours to drive me down to 28th street, and then down to 12th street I will give you one hundred dollars?"

A I never spoke to him.

Q You never spoke to him?

A No, sir; I never seen him since I left the garage there.

Q Did you see him before you left the garag?

A No, sir, not the same day.

Q Do you know what I mean?

A Yes, sir; I seen him in the garage; he is working there; I never spoke to him.

Q Did you ever talk to Tony about doing a good job?

A No, sir; I never talked with him; he was working.

Q Did you about two weeks before that time ask Tony to keep your car out in front so that you could have access to it, and you could get it quickly any time you wanted it?

A The car is all the time in the front, sometimes I got to go out at 4 o'clock and 5 o'clock in the morning for a job and sometimes I come in at 12 o'clock. If I go out in the country I don't know what time I come home.

Q Do you remember going once with Tony to deliver a barrel of whiskey at some place downtown, about two weeks before?

A Whiskey? I didn't go with Tony; I went with him to help me load up some barrels; I don't know what it was.

Q Where was that?

A 6th avenue.

Q You do know Tony?

A Yes, sir; but he as working in the garage.

Q Do you remember having asked Tony at that time if he would not make a job with you on a chance to make a little money?

A No, sir; never asked him that.

Q You never asked him that?

A No, sir, he told me himself --

Q What is that?

A He told me--

Q What did he tell you?

A He says when you have a job", he says, "come over there and I will see your license turns around"

Q What kind of a job are you talking about?

A I don't know what he meant.

Q You don't know what he meant?

A No, sir.

Q What did you think he meant by turning your license plate round?

A I don't know. He told me he had a job--

Q What job was that?

A A fellow who was pinched two

weeks ago in the garage and he said the fellow was foolish, he didn't turn around the license, and the fellow was got locked up there.

Q Quite confident that you didn't talk about these things?

A No, sir.

Objected to. Objection sustained.

Q Who told you about the fellow who was a rested?

A He told me the fellow was arrested.

Q As a matter of fact you know what byrglary is, don't you?

(No answer.)

Q You know what burglary is?

A Yes, sir.

Q What breaking into a loft is, don't you know what that means, don't you?

A Yes, sir.

Q When you were told by the men that you had met to come down at about 7.15 or 7.30 to a place on West 28th street and receive packages and drop them off on the sidewalk you were not suspicious at all?

A No, sir.

Q I didn't occur to you that there was something wrong about it?

A No, sir, never thought it was wrong.

Q You kept the engine going while you were in front of these premises on West 8th street?

A I come down from the street and I seen the packages, and I was figuring it will take me about --

Q Where did you see the packages?

A In the hall, they carried them down.

Q How many were there?

A Ten packages.

Q Very heavy packages, weren't they?

A Well, there was about a hundred pounds may be a hundred and twenty.

Q A hundred or a hundred and twenty pounds?

A Yes, sir.

Q Were they more than that?

A I did not weigh them.

Q It took you how long before the packages got on the truck?

A About fifteen minutes.

Q Fifteen minutes and you kept the engine going all the time?

A I didn't Keep the engine going, but when I went con from the street and there were four men to carry them down-- I carried one bundle down, and the other fallows came down after that, and I was on the seat.

Q You kept your engine going, the gas on the car?

A Yes, sir, because when you start it takes you some time--it is hard start when you crank it up. I have to crank it up.

Q Is that what you did ordinarily when you stopped your car that you don't shut off the gas?

A When I stand for twenty minutes I never shut Off the gas. It took me about ten or fifteen cents of gas. When at a station or some place I deliver the trunk at the New York Central it takes me ten or fifteen minutes to find the receipt and I leave the engine going, there it no use to start the car.

Q Did you notice these men being very fast in cutting the packages on the wagon or truck?

A How could I see whether they were fast or not fast.

Q You didn't notice that at all?

A No, sir, when I was going--

Q Nobody said when the last package was on to you, "Now beat it"?

A No, sir, nobody told me that.

Q As a matter of fact nobody came back with you on that truck?

A Two fellows went along with me.

Q Sure of that?

A Yes, sir, two fellows went along with me.

BY THE COURT:

Q Are you sure when you drove over to those premises and when you got to that door there were two persons on your truck?

A Yes, sir.

Q Besides yourself?

A Yes, sir, two fellows with me on the truck.

Q And sure when you went away from the place those same two men were also on the truck with you, is that so?

A When I went away from the same place I drove towards the east and I looked around in the back and seen two fellows in the back of the wagon, not in the front with me but in the back.

Q You did not notice them in there until you had already started?

A When I started, yes, sir.

Q You had already started your truck and when you looked around in the back you saw two men on it, is that so?

A Yes, sir.

Q Did you know that they were going to get on the truck with you?

A Yes, sir; they told me they were going along with me.

Q They told they were going?

A Yes, sir.

BY MR. MARKEWICH:

Q Now, Sandler, when you got off the truck at West 28th street, you went in the hallway?

A Yes, sir.

Q Is that a wide hallway?

A No, sir, not very wide.

Q See a package there, one bundle there?

A It was on the second floor, they carried it down.

Q See what kind of a place it was?

A I didn't look at the place; I didn't look at the place.

Q Did you help bring some packages down?

A Yes, sir.

Q Was it a heavy bundle?

A I don't weigh them.

Q You have been handling merchandise of all kinds?

A A bout 150 or 100 pounds; I could carry three or four hundred pounds.

Q You have been handing all kinds of merchandise doing moving jobs?

A Yes, sir.

Q Can you tell by the handling of a package about what is contained in the package?

A It must be about over one hundred pounds.

Q About what was in the package?

A No, sir.

Q Were you able to tell?

A No, sir, for I never opened a package.

Q Never able to tell by feeling the package?

A No,.

Q Did they tell you what was in the package?

A I never ask no people, I take a lot of stuff out and when I was taking out some stuff at Third avenue and 120th street

Q Did you know from whom the packages were coming?

A No, sir; two men standing in the hall and the fellows said go up there and take the packages.

Q Was there anything written on the packages?

A It was nothing written.

Q Any address?

A I didn't look at the address.

Q Didn't it seem strange to you that the packages had no address on, nothing marked on them, just wrapped up in plain blank paper?

A Papers.

Q Didn't it look strange to you that there was something wrong?

A No, sir, it didn't look strange to me; I never look at the stuff sometimes when people hire me.

Q Were you interested in finding out whose place it was?

A I never asked them.

Q You were a moving man how long?

A For myself?

Q How long in the moving business for yourself or with somebody else?

A The moving business about sixteen years for myself.

Q And with somebody else?

A Yes, sir.

Q Altogether you are about fifteen years in the moving business?

A Yes, sir.

Q You say it never occurred to you at that time to ask

what it is?

A No, sir.

Q To find out who runs the place?

A No, sir.

Q Or whose packages they were?

A No, sir, never asked nobody.

Q Didn't it look strange to you that men should come up to you in the middle of the street, hail you right at the corner of Ninth street and Second avenue to come to West 28th street to do a job?

A That is nothing strange; that is not new to me.

Q You have been around the city a great deal?

A Yes.

Q Seen a lot of stepping stones?

A Yes, sir.

Q Just around 8th street and 6th avenue?

A Yes, sir.

Q And round 7th avenue?

A Yes, sir, a lot of trucks.

Q Nov, didn't it look strange to you that people should come to Second avenue and take you to a job around there?

A No, sir.

Q You took these things to Columbia and Delancey street?

A Yes, sir.

Q You have been around that neighborhood quite often?

A Yes, sir.

Q That is not very far from the place where Phillips had his saloon on Broome street?

A Not is not far from Forsyth street.

Q It is just about eight or ten blocks?

A Yes, sir. about eight or ten blocks.

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Q You dropped those packages you say on that corner?

A Yes, sir.

Q Now which corner was it?

(No answer.)

Q The northeast corner, the northwest, the southeast or the southwest corner?

A Forming from Delancey street on this side.

Q The East side of Delancey street?

A The downtown side.

Q Was it on the downtown side?

(No answer.)

THE COURT: The down side of Delancey street at Columbia is the bridge, isn't it?

THE WITNESS: The other side, the bridge is this side.

BY MR. MARKEWICH:

Q The downtown side?

A Yes, sir.

Q What place of business is on the corner?

A A tenement house.

Q Any store on the corner?

A Well, I seen two stores there.

Q What stores?

A I didn't look at what store.

Q What store?

A I didn't see what store it is; two stores there.

Q You didn't see what store it is?

A Two stores there.

Q You didn't see what store it is?

A Two stores there.

Q What kind of a store was it, a grocery store or a delicatessen store?

A I couldn't look in the store.

Q Or a drug store that was there?

A One store on the corner and the next is a store, and I didn't look in the store what is in it.

Q Was there any woolen or clothing stores there?

A No.

Q Or dress houses over there?

A No, sir, no store a all.

Q When you dropped the packages off and these two men you say took them?

A Yes, sir.

Q That went along with you on the truck?

A Yes, sir.

Q You didn't see them taken into any place.

A No, sir.

Q Now wasn't there any suspicion in your mind?

A There is no suspicion when I move somebody I never ask nobody what is it; I never ask them; never take notice of it.

Q Now why didn't you go directly, as the Judge asked you, to Phillips. You were starting downtown to go to Phillips job, weren't you?

A I started to go to Phillips

Q Why didn't you finish the job?

A I thought it was too late any how.

Q What is that?

A I was figuring it was too late anyhow.

Q Why, a little difference of an hour?

A Two hours.

Q What time was it when you were hailed on Second avenue?

A When the fellow got me to hire the stuff it was ten minutes after seven.

Q You say you went up to 28th street then about a quarter after seven or twenty minutes after seven or half past seven?

A Half past seven; I couldn't see the clock.

Q You were down at Delancey street what time?

A I was there about 8 o'clock.

Q About 8 o'clock?

A Yes, sir.

Q Then from Delancey street you went up to Harlem?

A Yes, sir.

Q You were there at half past eight?

A Yes, sir.

Q Well, now, the Judge asked you why didn't you continue with your job and go to Phillips, there was only a difference of about an hour or less from the time that you met them on Second avenue and Ninth street when you were going down to Phillips and the time when were you left at Delancey and Columbia street?

A I thought I would go back and I will do the job first for Weil Brothers.

Q What was the change of mind, why change your mind all of a sudden?

A Sometimes I changed my mind, sometimes I take a job and after I see I can take another, and I put it on later, no matter how many jobs I take not to disappoint people in order to move them, and I think you will say anyhow when I come up to his house that I was losing out about \$22.50 on this job.

Q You knew the job to go to Rock Hill was not a job for a few hours, it was a job at least eight hours?

A Yes.

Q Eight or ten?

A Yes, sir.

Q All day, didn't you?

A Yes, sir, going up there and coming back, yes sir, it was more than that.

Q Two days?

A Yes, sir.

Q You knew that?

A Yes, sir.

Q So that you were prepared when you started to go downtown for that?

A Yes, sir.

Q Weren't you?

A Yes, sir.

Q All of a sudden you changed your mind?

A Yes, sir. I didn't change my mind but I thought I will go there in the night time.

Q You would rather make a trip to the mountains in the night time?

A Yes, sir.

Q Isn't it customary for moving men to make long trips in the day time, to start out in the day time?

A No, sir.

Q And reach there before sunset?

A No, sir, night time is the time for a long trip, I ride up in the night time and I have the whole night on it and in the morning I come up there.

Q Now the Weil job, by the way, was a job in which you received \$150 a week?

A \$140.

Q You were supposed to pick up odd jobs for them, weren't you, you weren't supposed to do all the morning for them, were you, that is you were subject to call?

A Any time they called.

Q You were supposed to come up there and do a job for them?

A For whom?

Q Weil Brothers?

A No, sir.

Q Well, what were you supposed to do, did you stay there

did you stay there all the time?

A When they hired me it was an agreement from 8 o'clock to 5 o'clock.

Q 8 o'clock to 5?

A After 5 o'clock I went for my own.

Q Would you go to Weil Brothers every day in the week except Sunday?

A Yes, sir.

Q You were to be there at 8 in the morning?

A 8 or half past 8, I came around half past 8 or sometimes 9.

Q When you undertook this work for Phillips, you expected to go to Weil's on that day, did you?

A I was expecting to go with the other car, the big car.

Q You expected that your man Harry would take out the other car?

A Yes, sir.

Q And go to Weil Brothers?

A Yes, sir.

BY THE COURT:

Q Did you see Harry that morning?

A Yes, sir. I seen him, yes, sir.

Q Whereabouts?

A In 28th street, I took a job down for \$40, and I told my wife --

Q On the 16th of April, before you left the garage in the morning to go on Second avenue had you seen and talked with your boy Harry?

A No, sir, I didn't see him.

Q Did you give Harr at any time on April 15th, that is the day before, any orders or directions as to what he should do on the 16th?

A No, sir.

Q So that when you started for downtown to go to Phillips place you had not told Harry anything about going to Weil's?

A Thursday night I gave Harry a direction that I have a job at Atlantic City for \$125, if I remember. \$125 or \$115, and I came home and I said to my wife, "I got a job to go to Atlantic City, and I have a job for Phillips and here is a job for \$40 to go to Jersey, and I got to be at Weil Brothers again. I can't do all the jobs, "and my wife says its no use to go to Atlantic City, it will take you too long give it to somebody else, and I went over to a moving man in 116th street and I said are you busy tomorrow, and he said no, and I said I got a job from Atlantic City from 64th street and he said how much and I said \$125, and he took it and I was making ten dollars commission, and he said all right, and I went over there that very next day, and the man told me that he raised it to \$150.

BY THE COURT:

Q You were expected to be at Weil's as I understand it about half past eight o'clock?

A Yes, sir.

Q Listen to me. On the morning of Friday?

A Yes, sir.

Q You were expected to be there?

A Yes, sir.

Q So instead of starting for Weil's you started for downtown to go to Mr. Phillips house on Broome street near Chrystie. You now say that you had intending sending to

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Weil's your other car with Harry on it, but you also tell me that you didn't send Harry on the morning of Friday before you left the garage, and you also tell me that you had not given Harry any directions on April 15th to go to Weil's on April 16th, is that so?

A My wife gave me a moving direction to go to 128th street --

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of criminal procedure and took a recess until two o'clock.)

AFTER RECESS. 2 p.m.

JACOB SENDER, the defendant resumes the stand.

CROSS EXAMINATION CONTINUED BY MR. MARKEWICH:

Q Did you on the morning of the 16th of April, on that Friday, about four o'clock go to to the home of DeGrazzio?

A Tony? No, sir, I did not see him.

Q Did you go to his house?

A No, sir.

Q Do you know where he lives?

A I don't know where he lives; I know 105th street.

Q Didn't you go to his house that morning at about 4 o'clock?

A No, sir.

Q And ask him to go along with you?

A No, sir.

Q You are sure of that?

A Yes, sir.

Q You told us before that the Oneida car went out on the 16th in charge of your chauffeur Harry?

A Yes, sir.

Q To a job in Jersey?

A Yes, sir.

Q To a moving job from New York to Jersey?

A Yes, sir.

Q Didn't you know as a matter of fact that the Oneida car never left the garage that entire day?

A Friday?

Q Yes.

A Never left the garage Friday?

Q Yes, on that day?

A He took the car out at a quarter after eight or twenty after eight, and took a load to 128th street and went away to Jersey, and I got the people to prove that; these two helpers that was on the back.

Q Have you got Harry?

A No, sir.

Q Have you got Harry?

A I thought nobody is going to ask me if the other truck was working; I told my wife to get the chauffeur and some helpers and one fellow lives in 81st street, and one fellow lives around the corner on Second avenue.

Q Do you know where Harry is?

A He lives uptown someplace.

Q Do you know his second name?

A I don't know his name.

Q Do you know his address?

A I have the address where he lives uptown.

Q What kind of a looking man is he?

A He is a young fellow.

Q Well, don't you know as a matter of fact that Harry left your employ on Saturday morning?

A Saturday morning he left me.

Q Saturday the 17th of April?

A Yes, sir, on account of the Oneida truck broke down, this machine cost me three hundred dollars to fix up.

Q Where did it break down?

A It wasn't in good condition and I wanted to get it fixed up, and they wanted three hundred dollars to fix it up, and I have only one car and I said I don't need any chauffeur and he went away. He was Monday night around by re and I told him not to come any more.

Q You weren't home Monday?

A My wife told me.

Q You don't know what took place?

A My wife told me.

Q Now Weil Brothers asked you to go to 282 Buffalo avenue with a load of furniture on Thursday the 15th of April?

A Weil Brothers told me-- they didn't ask me to go to Buffalo; told me to take a load to Brooklyn, a full load.

Q Did you go to 282 buffalo avenue, Brooklyn?

A Friday?

Q Was it Thursday?

A No, sir, Friday.

Q What time?

A I left the place about one o'clock.

Q In the afternoon?

A Yes, sir.

Q Was that the load?

A No, sir, that was the second load.

Q That was the second load?

A Yes, sir.

Q Are you sure of that?

A Not to Brooklyn.

Q What is that?

A Not to Brooklyn, the second.

Q Don't you know as a matter of fact that you only had one trip for Weil Brothers that day?

A I had in the morning some deliveries uptown.

Q Don't you know as a matter of fact that you did just one job for Weil Brothers on that day?

A One job?

Q Yes.

A I was working since the morning until the afternoon when I got through.

Q What is that?

A I was working, and when I started I was working until the afternoon when I got through, and done

in the morning a few deliveries.

Q Do you remember having been asked by Weil Brothers to stop off at the Eureka Bedding Co.?

A The what?

Q And bring back four springs?

A Yes, sir, I stopped off.

Q Supposed to bring springs?

A Yes, sir.

Q Did you bring the springs back to Weil Brothers?

A No, sir, I started to load up that load for Rock Hill.

Q Now, did you report to Weil Brothers, did you telephone to Weil Brothers?

A No, sir.

Q When you went to Rock Hill what time did you start out?

THE COURT: I think we have been over all that now.

MR. MARKEWICH: I don't think I questioned him about it.

THE COURT: I think we have been over that.

BY MR. MARKEWICH:

Q What time was it you telephoned to Oscar Weiss about your automobile having broken down, the garage man?

A I don't know, the minute, about 6 or half past 5, I did not look at the clock; it was in the night time.

Q Who Was it did repair your automobile?

A There was a lot of fellows on the road where a fellow needs a repair and he got tools he repairs it.

Q Do you know him?

A Going on the road, when you break down sometimes you get oft of gasoline.

Q Your automobile broke down the second time as you got to Rock Hill?

A Yes, sir.

Q Now what was the matter with your automobile at Rock Hill?

A The gas tank was stuck in the mud, I got in the mud there.

THE COURT: I don't think we will go into that.

Q How long were you at Rock Hill?

A I was there for a week, till Monday, and I went down to Middletown.

Q Where did you spend that week?

A I went down to Middletown, I went over to get some parts for it to fix up the truck, Middletown, New York.

Q Where did you stop during that week?

A In Middletown.

Q Where did you stop, did you stop at Rock Hill or Middletown?

A In Middletown.

Q Did you communicate with your wife during that time?

A No, sir, I telephoned over to somebody else.

Q To whom did you telephone?

A The next door, not Monday, a few days later.

Q What is that?

A A few days later, I guess Thursday or Wednesday I telephoned over to my wife.

Q Did you talk to your wife?

A Yes, sir.

Q Did you speak with your wife?

A Yes, sir.

Q At the place where you telephoned you spoke with her?

A Yes, sir.

Q What place did you telephone to?

A In the candy store.

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Q Well, what is the number on the street 121st street in the same block.

Q 124th street?

A 121st street.

Q 121st street?

A Yes, sir.

Q How far from your house was that?

A Two houses or three.

Q Do you know the telephone number now?

A I have it on a paper I ain't got it; they took it way from me when I got locked up; it was on a paper; they write it out.

Q What did your wife tell you?

A My wife told me they were looking for me.

MR. JORDAN: I object to that as immaterial.

THE WITNESS: They told me they were locking for me.

Q Did you know what she meant when she said or told you they were looking for you?

A I asked her and she said they were looking Friday afternoon, they came up somebody and asked for the license and she said the license is laying there, they had the license and she said I will be home this week.

Q You come back on what day?

A On Friday.

Q Where was the first place that you went to when you got back to New York?

A The first place I went, I went up to Mr. Jordan.

Q Anybody go along with you?

A No, sir, nobody went along with me.

Q Did you know Mr. Jordan before?

A I know him by his

name.

Q What is that?

A I heard Mr. Jordan's name.

Q Was Mr. Phillips up in Rock Hill at the time you went up there?

A No, sir.

Q Who was up there with you?

A That boss that had sold him the farm.

Q What is his name?

A I don't know his name.

Q Who else was up there besides?

A His wife was there and another couple of men, a few, about a half a dozen.

Q Anbody up there that you knew?

A With me?

Q Anbody up in Rock Hill that you knew?

A I don't know anybody, I know the fallow that was there, the people where they pulled me up there the last time when I was stuck, I was stuck there, ten miles before, and that man knows me that I was there, that man that pulls me out over to that place; that man seen me; I was there on Monday, I was there Sunday and I was speaking with him, and I went to get some tobacco, that man has got a cigar store, and I went over to get some tobacco from that man, and he seen me the last time, and he says "The last time you were stuck and now you are stuck again.

Q You were out on bail how long on this charge?

A I was out a couple of days or two weeks.

Q Did you during those two weeks go to Delancey and Columbia streets, did you go around there?

A I didn't come around there.

Q Did you go to Second avenue and Ninth street, did you go around there?

A I was passing there with the machine every day when I was riding.

Q You said before you didn't know Solomon Miller. Was killer a partner of yours?

A Solomon Miller, he was a partner of mine?

Q Were you in partnership with a man by the name of Miller?

A The Miller I know was a moving man.

Q Were you a partner with a man named Miller?

A Yes.

Q Miller?

A Yes, sir; I was a partner with him.

Q What?

A Yes, sir.

Q Have business with him now?

A Moving business.

Q Still in the moving business?

A Yes, sir.

Q Is that the man who at up the cash security for you?

A What is that?

Q Repeated?

A I don't know if he put it up the cash money, I don't know.

Q What is. that?

A Not him put it up.

Q What is that?

A Not him put it up.

Q Did Muller put it up?

A I told Mr. Phillips to try and take me out on bail.

Q Do you know the Miller who put up the cash security for you?

A That is another Miller.

Q What is his business?

A I don't know what business he is in when I came in sometimes I found him in the saloon by Mr. Phillips, I don't know his name, when I came around

there to Philips, Phillips introduced me to him.

Q What saloon do you refer to, Phillips saloon?

A Yes, sir.

Q Did you meet Phillips in a case on Forsythe street very often?

A I never went in the cafe, when he had a saloon I came in the saloon to him.

Q Do you know the Odessa cafe at 118 Forsythe street near srocme?

A Yes, sir, I know it.

Q You know that place?

A Yes, sir.

Q On the first floor there over Barron's, the syrup man's place?

A Yes, sir.

Q Do you know the place -- isn't that a place where Phillips frequents?

A He is not around any more there.

MR. JORDAN: You don't mean Phillips?

MR. MARKEWICH: I mean Phillips.

Q Did you meet Phillips around there?

A I did not meet him, I met him only in the saloon when he had the saloon and after when I got out on bail, I saw Mr. Phillips, "You are ready to move the furniture", and he says, "I moved away."

Q Did you have an appointment with Phillips at 118 Forsy the street before you did the moving job for him?

A No, sir; never had an appointment with him, before I went up with him to his house.

Q He lives right near the saloon?

A He lives in the middle of the block.

Q You had a telephone in your own name, didn't you?

A Yes, sir.

Q You used that telephone for business purposes, didn't you, you know it was not disconnected, was it?

A Sometimes it is discontinued.

Q You knew it wasn't discontinued, didn't you?

A Sometimes it is discontinued.

Q Was it discontinued when you left town. Your telephone bill was paid?

A Sometimes I don't pay the telephone.

Q Will you listen to me. Was your telephone bill paid when you left town?

A No, sir, it was not paid.

Q Was it discontinued?

A I telephone a couple of times and they don't answer.

Q Who telephoned?

A I telephoned over a couple of times.

Q From where?

A When I go way on a job sometimes I telephone over to my wife and she didn't answer sometimes.

Q When did you telephone to wife that there was no answer?

A Thursday.

Q On Thursday you telephoned to your wife?

A Yes, sir.

Q The Thursday before you came to New York?

A Yes, sir.

Q Did you telephone to your wife then?

A No, sir, not this Thursday on the 15th Thursday.

Q The 15th?

A Yes sir.

Q Before you left?

A Yes, sir.

Q There was no answer?

A No, answer.

Q Well you received other telephone calls, did you

on that before?

A I couldn't tell you. for I don't was home.

Q When was the last time you paid the telephone bill?

A Sometimes I paid it.

Q When was the last time you paid it?

A I do not remember; sometimes I paid it on the 25th, and sometimes there comes in a second bill and now the telephone is out.

Q Was your bill paid for the month of April?

A I guess it was paid some time.

Q Was it paid for the month of March, 1920?

A Yes, sir, it was paid.

Q Now what I wanted to get at was this, in plain English: Why didn't you telephone to your own home, why did you telephone next door to the candy store when you wanted to communicate with your wife?

A I just telephoned to the candy store to call my wife.

BY THE COURT:

Q Why, when you were away did you not ringup your own phone. Why didn't you ring up your own house, why did you ring up the candy store?

A I rang up on Thursday, the wife, telephoned the wife, and she said the telephone did not ring. When I got home, I said, "What is the matter with the telephone", and she said it is out of order, and she was going to telephone Friday to have the telephone people fix it up, and that is why I rang up in the next morning, I was ringing up a couple of times there.

Q When was it fixed up?

A I told my wife and my brother to telephone to the people to come up and fix up the telephone on Thursday.

Q On Thursday?

A Yes, sir, I think sometimes it takes a week, and sometimes two weeks.

Q What is that?

A Sometimes I think it takes a week and sometimes two weeks, and I telephoned over to Mrs Blank--

Q Did you try to ring up your home from Middletown?

A No, sir, I din. not ring it.

Q You did not?

A No, sir.

Q Now, what place in Middletown, did you stop?

A I was stopping in a hotel.

Q What is the name of the hotel?

A I don't know the name of it; I know the place.

Q What street was the hotel on?

A What street?

Q Was it on Main street?

A It isn't Main street, it is the little block or so.

Q What is that?

A I don't know what street it was.

Q What was the name of the hotel?

A Right by the station there.

Q What was the name of the hotel?

A I don't know; I did not ask them.

Q How many days did you stop there?

A Monday the whole day.

Q You don't know the name of the hotel?

A No, sir, Monday the whole day I was there.

Q You don't know the name of the hotel?

A I left there -- I left about 9 o'clock.

Q Will you answer the question. Do you understand English?

A Yes, sir.

Q I am asking you whether you know the name of the hotel?

A No, I don't know the name of the hotel, a saloon downstairs, and I went in there and sat in it, in the hotel.

Q Sat where, in the saloon?

A Yes, sir.

Q Did you register in that hotel?

A No, sir.

Q What was the size of the hotel?

A It was one story high.

Q You don't know the street?

A Yes, sir, right by the station.

Q Was there anybody alone with you in that hotel?

A No, sir, nobody along with me.

Q Did you sleep in that hotel?

A No, sir.

Q Just sat in the hotel?

A Yes, sir, just sat in the hotel.

Q What did you go to Middletown for?

A I went over to get some parts.

Q What time did you get there?

A Half past 12.

Q You got your parts there?

A Yes, sir.

Q What time did you get the parts?

A It was perhaps about 4 o'clock in the afternoon.

Q In what store do you remember?

A I do not remember.

Q What parts did you get?

A I brought some things

there, I don't know how they call them, little things I bought, I don't know how they call them.

Q What time did you leave Middletown?

A I left Middletown, perhaps seven o'clock in the night time.

Q You went back to Rock Hill?

A No, sir, I did not. go back.

Q Where did you go?

A To Newark.

Q From Middletown?

A Yes, sir.

Q What did you go to Newark for?

A To see a party there, and I couldn't see him.

Q Did you say you allowed your machine to remain up there in Rock Hill?

A Yes, sir.

Q In the middle of the road?

A No, sir, not in the middle of the road.

Q The side of the road?

A Yes, sir, after I pulled it in there, I did, yes, sir.

Q Weren't you interested in going back to New York as soon as you could to attend to business?

A I couldn't go away until I got fixed up.

Q You had the parts you got in Middletown?

A I could not fix it up Myself.

Q You couldn't get mechanics in Middletown?

A I don't know mechanics there.

Q Middletown is quite a town?

A Yes, sir, quite a town.

Q Did you make inquiries in the place where you bought

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there parts?

A No, sir. I went in a store there and in this store they, sold parts.

Q Form Middletown you went to Newark to try and at a mechanic?

A Yes, sir.

Q Do you know his name?

A No, sir, I didn't know his name; I did not take his name.

Q And you don't know where you got him?

A No, sir.

Q You don't know the place or the store where you got the man from?

A I know the garage there.

Q What is that?

A I know the garage.

Q Was it in a garage that you got him?

A Yes, sir.

Q Where is the garage?

A That is near Broad street when you are coming on this garage.

Q What street?

A Not in Broad street, when you are going through Broad street you go to the left hand side.

Q Broad street is a very long street, isn't it?

A You are going up through Broad street.

Q What street was it?

A Well, I don't know the name of the street? Well, I don't know the name.

RE DIRECT EXAMINATION BY MR. JORDAN:

Q Mr. Sender, you were asked about how long you were out on bail. You were present in court here when a motion was made to increase your bail, were you not?

A Yes, sir.

Q You were in here when a motion was made to increase your bail, were you. Don't you understand me?

A I understand that.

Q Well, I will try to make it clear.

THE COURT: I imagine that is conceded. MR. MARKEWICH: Well, it is conceded the bail was

ten thousand dollars. He was bailed out, and then it was increased to twenty thousand dollars, and he was bailed out, and then later it was increased to thirty thousand dollars on motion of the District Attorney and then on motion of counsel it was reduced to twenty thousand dollars, and he was bailed out.

MR. JORDAN: That is not right, that is not the fact. The fact is that it was made twenty thousand dollars, and then reduced to ten thousand dollars by consent, and then it was increased to twenty thousand dollars the same day.

MR. MARKEWICH: It was thirty thousand dollars, and reduced to twenty, and then an application was made to increase it to thirty, and your Honor increased it to twenty five thousand.

MR. JORDAN: And we have been in since that time.

THE COURT: It was originally fixed at thirty thousand dollars on May 5th of this year. On May 11th it appears to have been reduced to twenty thousand dollars, and on May 27th it appears to have been fixed at twenty five thousand dollars.

BY MR. JORDAN:

Q Now Mr. Sender, when the bail was increased to twenty five thousand dollars you were not able to get that bail?

A No, sir, I couldn't get that bail; I hadn't any money.

Q You have been loacked up since that time?

A Yes, sir.

Q Have not been able to make any investigation or help yourself in regard to looking for these parties?

A No; I have no money to pay for the bail any more.

Q Now on the day when you were taken to court first you rode down in a taxi cab with the detectives any myself and others to the place -- did you hear a conversation with officer Casasa in regard to what would be done in case you would locate the parties that got these furs and get the furs back, did you hear that conversation?

A When I get the furs back?

Q If you got the furs back?

A Yes, sir.

Q What is that?

A He told me if you get the furs back, he will give me fifty thousand dollars.

Q Wasn't it ten they said?

A Fifty thousand dollars, and I told him like this?

A I said, I don't want your money, I got a wife and kids, I don't want the money, I like better to that in the house with my wife and children?

Q Did you tell him you would try and find the parties?

A Yes, sir; I would try and find the parties.

Q Have you, since you were out, whenever you were out of jail, did you look around to see if you could find the parties?

A Yes sir, I looked around to see if I could find the parties.

MR. JORDAN: There is practically one issue in this case, and I can shorten this case very materially

if we know just exactly what will be controverted in this case. If there is any question as to the defendant taking a load of goods from New York to Rock Hill for a Mr. Phillips I will be obliged to call several witnesses on that subject. I want to know if the District Attorney controverts that fact.

THE COURT: Do you want to put in evidence on that point?

MR. JORDAN: Yes, your Honor. Will you put in evidence to controvert that?

MR. MARKEWICH: There is nothing to controvert unless it is the fact-- unless you try to establish it.

THE COURT: The people, in other words are not in a position to concede it. They don't want to concede hat this defendant in point of fact did that. They have no testimony which contradicts the defendant on that point but they are not in a position to concede it.

THE. JORDAN: I see. I didn't know but that we could shorten the trial very materially; that is all. Will your Honor give re five minutes to decide what I will do.

THE COURT: Yes.

PHILIP K AND ONICK, a witness called on behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. JORDAN:

Q Where do you live?

A Rook Hill, Sullivan County.

Q Mr. Kandonick, you formerly lived in New York?

A Yes.

Q How long have you lived in New York?

A Ten years.

Q Were you in business here?

A Yes, sir.

Q Where was your place of business?

A 309 Broome street.

Q How long were you in business there?

A Ten years.

Q Where did you live?

A 313 Broome street.

Q Did you know during the time that you lived here, did you know this defendant, Jacob Sender?

A Yes, sir.

Q How long have you known him?

A I have known him about six or seven years since he used to come in my place.

Q What business were you in?

A Restaurant and cafe.

Q There in Broome street?

A Yes, sir.

Q Did he frequently come to your place?

A Yes, sir.

Q Had business dealings with him for sometime, had you?

A Yes, sir.

Q Now what is our business now?

A Hotel.

Q What hotel?

A Rock Hill, Sullivan County, a summer and winter resort place.

Q You run a resort up there?

A Yes, sir.

Q A summer and winter resort hotel?

A Yes, sir.

Q That is known, as Philips?

A Phillips is the name of the hotel.

Q You have your sign with the name Phillips on it?

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A Yes, sir.

Q Phillips Hotel?

A Yes, sir; it used to be Phillips Cafe, Broome street.

THE COURT: It will be conceded for the purposes of this trial that the person alluded to in the testimony of the defendant as Phillips, is the witness who is now on the stand.

BY MR. JORDAN:

Q Now, Mr. witness, did you engage this defendant to do anything in regard to moving you from New York to Rock Hill?

A Yes, sir.

Q Did he take any goods from this city to Rock Hill?

A Took my hotel furniture.

Q When did he take the first?

A 313 Broome street.

Q When did he take the first goods?

A The first goods he took on the 14th of January.

The 14th of January?

A The first one.

Q That was in the winter?

A Yes, sir.

Q Now, when did take the last load?

A The last load he took the 18th of April.

Q The 16th day of April, this year?

A Yes, sir.

Q Do you remember his coming to your place to get the loads?

A Yes, sir.

Q Were you there when the load was put on?

A Yes, sir.

Q Do you know about what time it was done?

A Well, I hired him, supposed to be at my place between 8 and 9 in the

morning; I was waiting for him, he had another job in the morning and he does not show up, and he showed up at my place about 4 o'clock in the afternoon, I was prepared to load up the truck in the morning and I started to ask him the question, "What is the matter you don't come in the morning", and he answered me that he was working for a concern for furniture, and it was a strike there, and he was working the whole day in the furniture store, but he finished with the work between three and four o'clock, and after four o'clock he came over and does the work of my place.

Q Nor, what was put on that truck?

A It was dishes and silverware and linen, furniture, barrels of pickels. and tomatoes, which we needed at the hotel.

Q Which you wanted to move up there?

A Yes, sir.

Q It wasn't any load of furs or anything of that kind, was it?

(No answer.)

Q You didn't see anything of that kind?

A No, sir, not in that line of business.

Q Who, if any one, went with the defendant to Rock Hill?

A I beg pardon.

Q Who went to Rock Hill?

A I sent my employee, one fellow with him.

Q Did the man that you sent with him come back?

A The next day.

Q He came by train?

A Yes, sir.

Q You know that your goods got up there?

A Yes, sir.

Q And they are there now?

A Yes, sir.

Q You are now conducting the hotel?

A Yes, sir.

Q You have been well acquainted with Sender and Sender with you?

A Well, he used to come into my place quietly, he used to come into the place every day.

CROSS EXAMINATION BY MR. MARKEWICH:

Q How long did he come into your place?

A Six or seven years.

Q Six or seven years?

A Yes, sir.

Q He says he only knows you about a year or so?

I suppose he is mistaken about that?

A Well, six or seven years I should judge.

MR. JORDAN: I object to that.

THE WITNESS: I didn't understand that question.

THE COURT: Objection sustained.

Q When did you ask him to take the furniture up to Rock Hill?

A When we made the first job the 14th of January, I told him on April, I anted to make a second moving, the first of May-- I expect to close the place on account of prohibition. I closed my business the first of April and go out of business and make an arrangement between April and May, any day that would be convenient to him. A few days before I gave him the order, Mr. Sander when you make me the job, he told me I will try to make you the job

this week some day, and I said, "very well make me Friday morning," and Friday morning I was prepared between 8 and 9 to make the job and I was waiting and he didn't show up. About four o'clock he came again with the trunk, and I asked him why he disappointed me, and he told me that he had been in the morning between 8 and 9 o'clock, and he said, "Well, Mr. Phillips I was working with a concern for the furniture strike, I was carrying furniture with a policeman all day, and I finished my job, and I make the job for you and he will be up four or five o'clock, he will be up with the truck

Q Now, were you up at Rock Hill during the time the defendant Sender was up there?

A No, sir.

Q When was it that your man came back from Rock Hill?

A The next day.

Q Your man told you that Sender's truck had broken down?

A Yes, sir.

Q Did Mrs. Sender come into you place and inquire about her husband?

A What is that?

Q Did Mrs. Sender come into your place and inquire about her husband?

A Yes, sir.

Q When was that?

A That was five or six days later.

Q Five or six days later?

A Yes, sir.

Q She came in and asked why the husband was not back?

A No, sir, she didn't ask me that; she asked me whether Mr. Sender it back?

Q She asked why Sender wasn't back?

A No, sir, she did not ask me.

Q What did she come in there for?

a I saw her about six days or seven days later, and she came over and told me, "Mr. Phillips, somebody looking for my husband", and I said, "Why", and she said, "Some party has been over and I don't know what to do", and she she said, "My husband is --can't you help me out-- the police look for my husband", and I said, "What have I got to do with it", that is what I answered.

Q You said, "What can I do?"

A Yes, sir.

Q You did do something?

A After that.

Q You helped him out when he came back?

A She asked me, she asked to get a lawyer, she wanted to get a lawyer, and she go to the counsel, Mr. Jordan.

Q It was you sent to Mr. Jordan?

A Yes, sir.

Q You send Mrs. Sender to Mr. Jordan?

A Yes, sir.

Q By the way, you got bail for him, too, didn't you?

A No, Sir, I didn't get anything.

Q What is that?

A I don't know nothing about it.

Q Mrs. Sender asked you get bail for him?

A She asked me if I get a bailer, and I am not in this line of business, and this man and Mr. Miller is in the line of business, and he will do it for you.

Q Who put up the case security, do you know?

A I do not know.

Q Do you know Mr. Miller?

A Yes, sir, I know him personally.

Q What is Mr. Miller's first name?

A I could not tell you, Samuel if I am not mistaken.

Q Sam Miller?

A Yes, sir.

Q What business is he in?

A I could not tell you.

Q What is that?

A I don't know.

Q How long do you know him?

A Well, I know him a couple of years.

Q What is that?

A A year or a year and a half maybe.

BY THE COURT:

Q Where did he live?

A I beg pardon.

Q Where does he live?

A I don't know, your Honor.

Q Where is his place of business?

A I don't know.

Q Where can he be found?

A I can't say, I saw him at the Russian Tea House, in a restaurant.

Q Thereabouts is that?

A On Forsythe street.

Q What number?

A 118.

Q 118 Forsythe street?

A Yes, sir.

BY MR. MARKEWICH:

Q Right over Barron's syrup place, called the Odessa Tea House?

A Yes, sir.

Q You come around there very often?

A Not very often.

Q Well, when you are in the city you are around over there?

A Not very often.

Q Where was it you became acquainted with Miller?

A Before I was in the business he used to come in there.

once in a while for eating.

Q Did you see Render up in the Russian Tea House?

A Well, I never been there, maybe I was with him, seen him there three or four times; it was in my neighborhood I was at 309 Broome street, and he was at 118 Foray the street.

Q Do you know he lives in Harlem, and has lived there how long?

A I don't know; I could not tell you.

Q He has a garage up in Harlem, don't you know that?

A I didn't know that.

Q You didn't know that?

A No, sir.

Q He was around your place with the truck?

A He was pretty near every day, sometimes every day, week days for eating We had a restaurant where people eat.

Q During the month of April how a many times was he in your place?

A A couple of times, I can't remember how many times he was there.

Q He was there almost every day, wasn't he?

A Yes, sir, when I knew him sometimes five times a week or four times a week or three times a week, sometimes every day if it was bad weather he used to stay a couple of hours.

Q Now when Sender's bail, was increased, or was twenty thousand dollars he was bailed out. Do you remember that?

A What is that?

Q Where did he get the bail-- did you get it for him?

A I helped him, his wife asked me and I told her maybe Mr. killer will help you out, and since then I didn't see Miller

or nobody for I was up in Rock Hill; I am there since the first of May.

Q Did his wife come to see you a few days after he was arrested, after Sender was arrested, and have a talk with you about her husband?

Objected to. Objection sustained.

Q Let me ask you this, Mr. Phillips: When your man came back from Rock Hill, and told you that the car had broken down and that Sender remained up there, did you get in touch with Mrs. Sender and tell her?

A No, sir.

Q That her husband is up in Rock Hill?

A No, sir.

Q You didn't send anybody up there?

A No, sir; my man told me that the truck got stuck in a hole and they carried the things up to my place the goods were brought in good condition, and the goods was in my possession and he locked the burn and brought me the keys and everything is in good condition.

Q Did you go up to Rock Hill?

A The first of May.

Q When did you see Sender the first time after they took your goods to go up to Rock Hill?

A I didn't see him.

Q You didn't see him at all?

A No, sir.

Q You saw him after he was bailed out, didn't you?

A No, sir, I didn't see him again, I am in Rock Hill.

Q Do you remember when he came down here and surrendered on the 3rd of April?

A I didn't see him the 23rd, no sir,

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Q You hadn't seen him?

A Ho, sir.

Q Have you seen him at any time before you went up to Rock Hill?

A No, sir.

Q You have not?

A No, sir.

Q Well, he was your friend, a customer of yours, you were interested in getting him bail, didn't you make it your business to see him?

Objected to. Objection sustained.

Q You didn't see him at any rate until you moved up to Rock Hill?

A I did not see him since one day when he left with my job to go there.

Q You got a subpoena to come here?

A No, sir.

Q You came down here voluntarily for him?

A No, sir. I come down by call on the telephone.

Q You were called by his lawyer, Mr. Jordan?

A Yes, sir.

Q Have you any other business outside of the hotel business?

A No, sir.

Q Have you any relatives in the fur business?

A What is that? I couldn't hear you.

Q Have you any relatives in the fur business?

A No, sir.

Q Do you know a man named Katzenberg?

A Yes, sir.

Q Who is he?

A A nephew of mine.

Q What business is he in?

A He used to be in the restaurant business. I had a place and I used to run a cafe, and he and his mother used to run the restaurant.

now he is in the-- since I gave up he has merchandise , goods, buying in auction.

Q Where is his place of business?

A I don't think he has got a business, he buys at auction and sells at auction.

Q He is a nephew of yours, isn't he?

A Yes, sir.

Q Have you another nephew of yours?

A He used to be a chauffeur.

Q An automobile chauffeur?

A Yes, sir.

Q What is his name?

A Barnet Chellis.

Q Where does he live?

A He is a chauffeur.

Q Where does he live?

A I don't know, I couldn't tell.

Q He is your sister's son?

A Katzenberg is my sister's son.

Q Where does Katzenberg live?

A He used to live at 305 Broome street.

Q Is he married?

A No, sir, he supports his mother and children.

Q What is his first name?

A Jake.

Q Where does Barnet live?

A I don't know.

Q Where does your sister live?

A I am not supposed to know where my relations live I got to take care of my own business; I wouldn't take care of somebody else's business; before he was living at 120 Forsythe street or 124, I couldn't tell you.

Q With his mother?

A With his wife.

Q He is married?

A Yes, sir, he has a wife and four children.

Q What is his business, do you know?

A Chauffeur.

Q Still a chauffeur?

A Yes, sir.

Q Do you know whether he is a friend of Sender?

A I don't know that; I could not sell you.

Q Katzenberg, Barnet and Sender were in your place of business very frequently, weren't they?

A I couldn't tell you.

Q They would meet in your place very often?

A Katzenberg?

Q Katzenberg?

A Katzenberg used to keep a restaurant in my place, as I told you before.

Q In your place?

A Yes, sir; I was taking care of the cafe, and Katzenberg and his mother had the restaurant.

Q You have another nephew that has got a store here in New York, haven't you?

A No more.

Q Haven't you any other nephew, are those the only two nephews you have?

A That is all; I got in the old country more.

Q But I mean in New York City?

A That is all, I have two.

Q Two?

A Yes, sir.

Q Just those two?

A Yes, sir.

Q Do you know whether Katzenberg had a store up here

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along on 30th street on the west side?

(No answer.)

Q Yon don't know anything about it?

A No, sir.

BY THE COURT:

Q What is the answer to the question?

A No, sir, your Honor.

BY MR. MARKEWICH:

Q Were you told by any one that it was your nephew who had received these furs?

MR. JORDAN: I object to that as improper and it is an imputation.

THE COURT: Objection sustained.

Q Did you contribute anything by way of going towards bailing this defendant, did you help bail him out, did you pay anything to the bondsman or to the surety company?

A No, sir.

Q Did you talk to Sam Miller before the defendant was bailed out?

A No, sir.

Q Did you tell Sam Miller that the defendant was a good risk and he should bail him out?

A No, sir.

Q You haven't helped him out at all?

A No, sir; I told his wife if you want to find out go up and see Sam Miller if he will help you.

Q You did send his iffearound to see Sam Miller in the Russian Cafe at 118 Forsythe street?

A Yes, sir.

Q And then you knew that this defendant was bailed out?

A Yes, sir.

Q Twenty thousand dollars bail?

A I didn't know how much the bail was; I never saw him since he was bailed out.

Q The wife told you?

A I seen the wife for the first time today now.

Q You have seen the wife?

A The wife I say I didn't see.

Q Didn't the wife tell you what the bail was?

A Yes, sir, she told me.

Q Then she told you what the bail was you sent her over to Miller?

A Yes, sir.

Q Have you a nephew of yours in Philadelphia?

A No.

Q What is the name of the man from whom you bought this place up in Rock Hill?

A Kranke.

Q Is he here as a witness?

A No, sir.

Q Did you ask him to come down with you?

A I don't ask him.

Q Did anybody ask you to bring Kranke down here?

A No.

Q Kranke occupied the place, didn't he before you moved in there in May?

A Kranke was there thirty two years.

Q But is he there now?

a Yes, sir, he is there now, an old man, a very old man.

Q Is he right near your hotel?

A Yes, sir.

Q Was Kranke there at the time, if you know, when the goods were brought up there by the defendant?

A My employee was there, he brought over the goods with can expressman in my barn, and they all was there.

Q Do you know this chauffeur Harry, the man who was working for the defendant is a chauffeur?

A Harry? No, sir.

Q What time of the day was it, that the defendant came around to your place of business to move the furniture?

A About four o'clock.

Q What is that?

A After four o'clock.

Q About four o'clock in the afternoon?

A Yes sir.

Q Which truck did he bring around there?

A A big truck.

Q What color was it?

A I don't remember, the color.

Q What was on the truck?

A What name was on it?

A I don't see any name there.

Q What is that?

A I didn't take notice to the name.

Q Did you see any name on it?

A Well, may be it was something there he don't show it to me.

Q Sender used to come there to work, used to come to your place very frequently?

A. No, sir, he used to come and eat. there, not for work.

Q How long did it take him to put the kitchen utensils and the furniture on the truck?

A It takes about on hour.

Q You helped him?

A Yes, sir.

Q You say you didn't take notice to what name was on the truck?

A No, sir, absolutely not.

Q Do you know how many trucks the defendant had?

A I

could not tell you.

BY MR. JORDAN:

Q He had 1st and down near your place, where he got business?

A I bag pardon.

Q Sender had a stand near your place?

A No, sir.

Q Didn't he?

A No, sir.

Q Did he have a stand in Ludlow street -- how far is Ludlow street from your place?

A Ludlow and then Eldridge and Allen and Orchard -- four blocks away.

JACOB MARKS, a witness called on behalf of the defendant being duly sworn, testified as follows:

(The witness states he lives at 2102 Prospect avenue, Bronx.)

DIRECT EXAMINATION BY MR. JORDAN:

Q Where do you live?

A 2102 Prospect avenue, Bronx.

Q What is your business?

A Garage owner.

Q Do you know the defendant Jacob Sender?

A Yes, sir.

Q About how long have you known him?

A About 6 or 7 years, something like that.

Q Have you had any business dealings with him?

A Yes, sir, he is one of my tenants for the whole time since I know him.

Q Ever since you have known him?

A In Harlem, 121st street.

Q In the same piece?

A Yes, sir.

Q You are his landlord?

A Yes, sir.

Q Do you know other people who know him?

A No answer.

Q You know other people there, neighbors of his who live in the same house?

A All the people in the neighborhood has known him about seven years, they all know him.

Q Do you know what his reputation is in that community for truth and veracity and honesty?

A Yes, sir, as far as I know his reputation, I never heard anybody speak anything wrong about him; never heard a word to say against him wrong and I am sure all the tenants in the house, everyone of them, about thirty, never heard anything of that kind.

Q You have heard that his reputation was good?

A Never heard anything bad.

Q But do you say it is good?

A Yes, sir, it is good; I never heard anything against him.

CROSS EXAMINATION BY MR. MARKEWICH:

Q You never heard anything against him?

A No, sir.

Q He is your tenant?

A Yes, sir.

Q Pays you rent I suppose?

A Yes, sir.

Q You never had any trouble with him along those lines?

A No, sir.

Q Did you know that he was arrested once for grand larceny, charged with the crime of grand larceny with having gotten away with a truck load of goods?

MR. JORDAN: I object to that and particularly to the last imputation contained in the question "got away with a truck load of goods."

Q Do you know that that was the charge against Him?

THE COURT: I think, Mr. Jordan, that passing for the moment the question as to the form in which the question is put that the People have a right to interrogate this witness as to whether he heard anything derogatory to the reputation of the defendant.

MR. JORDAN: Yes.

THE COURT: I don't think they have a right to ask as to any specific acts of alleged wrongdoing. I think they must confine them selves to alleged statements bearing upon the reputation of the defendant. I sustain the objection.

MR. JORDAN: I assume it refers to something prior to the time contained in the indictment.

MR. MARKEWICH: Yes, sir.

BY MR. MARKEWICH:

Q I will ask you this question. Do you know that on the 3rd day of November, 1910, the defendant was --

MR JORDAN: I object to that, your Honor.

THE COURT: I think you have gone farenough to show that that is objectionable. My understanding of the rule is that the People have a right to interrogate a witness as to alleged wrongful acts on the part of the defendant. You may interrogate him respecting alleged derogatory state-

ments to the reputation of the is defendant; in other words you have the right to question this witness as to whether he ever heard anyone say that the defendant was of bad repute.

MR. MARKEWICH: That is what I am trying to bring out.

THE COURT: I think that the question is aimed not at the reputation of the defendant but that it is designed to bring to the attention of the witness certain alleged wrongdoing on the part of the defendant.

MR. MARKEWICH: I had understood, if your Honor please, that where a man's character or reputation is brought into issue that the People have a right then to show that the man has been accused of a crime as bearing on his reputation, as to whether he had heard anything derogatory to the defendant's character or reputation.

THE COURT: There has been a case in the Court of Appeals decided some ten years ago, I cannot recall the name of the case, something like the people against Hinckley or a name very similar to that, where a man was charged with the crime of murder -- the case as I recall it was one that arose in one of the Counties on Long Island -- and the Court of Appeals, if I remember the decision correctly, drew a distinction between the examination of a character witness respecting the evil repute of a defendant and the examination of a character witness for the purpose of eliciting whether or not he was informed as to certain alleged wrongdoing by

the defendant. The latter line of questioning was not allowed and the former was permitted, That is my recollection of it.

Question excluded.

THE COURT: The case I refer to was decided in 1907 or 1908.

MR. MARKEWICH: I am pretty certain, your Honor, that there was a case decided more recently than that, within the past two years. I cannot give the title of it, in which they laid down the proposition that you can bring out against any defendant anything derogatory to a defendant's reputation.

THE COURT: You can when cross examining the defendant as a witness but where character evidence is introduced it can only be rebutted by testimony that goes to the point of the defendant's refutation.

MR. MARKEWICH: What constitutes reputation except what people have heard of a man what his reputation is in the community. There is a vast distinction between character and reputation as your Honor knows. But if a witness comes forward and says that he knows a man to be of good reputation, that he never heard anything against him, I think it is perfectly proper to as certain from the witness if he had heard that the man had been ever charged with larceny or burglary. That is the only way it can be brought out. We cannot bring it out until the defendant's

reputation is in issue.

THE COURT: I will examine the authorities in a moment.

BY MR. MARKEWICH:

Q And while we are waiting let me ask you what is your business?

A I as a garage owner in Prospect Avenue.

Q Where?

A Near 180th street, number 2102.

Q Has the defendant ever had his car in your place?

A No, sir.

Q How often had you seen him?

A He is living with me, a tenant.

THE COURT: I will allow you to ask the witness the question as suggested.

Q Did you hear that on or about the 3rd of November, 1919--

MR. JORDAN: I object to that so far. That is making a specific charge.

Q Did you ever hear from anyone that this defendant had committed larceny and stolen a truck load of foods?

A No, sir.

MP. JORDAN: I object to that.

THE COURT: I think the question is objectionable.

MR. JORDAN: He has answered that he never heard it.

Q Did you ever hear that this defendant had committed burglary?

A No, sir.

MR. JORDAN: I object to that question and to the imputation contained in it. It is detrimental to the defendant and prejudicial to his interests, particularly the latter

part of it.

THE COURT: I will allow the question. Exception.

A I don't understand that question.

Q Did you ever talk to anybody about this defendant?

A Did I talk? It was only one -- Mrs. Sender.

Q She is the only one you talked to about him?

A Yes, sir, she explained to me in reference to this case otherwise I never heard before that he should be in anything wrong -- in reference to this case she explained to me that he was mixed up in it here.

Q How often do you come around to that house?

A I lived six years all together in the one house where I am living today.

Q How long did you live all together in that house?

A About six or seven years.

Q Where do you live now?

A Up in the Bronx.

Q How long are you away from that house?

A About a year.

Q When did you move up there?

A Over a year, about a year, something like that.

Q About a year?

A Yes, sir.

Q You don't know anything about the defendant after you moved away from there?

A Well I come down there to get the rent.

Q Just to collect the rent?

A Yes, sir.

Q You have you come in contact with him since you moved to the Bronx?

A Since the last time --

Q Have you had occasion to discuss with the tenants his

refutation, have you talked to any of the tenants?

A No, sir, I never heard from anybody and the defendant was living in the one house there and nobody said anything against him and I never heard it.

(At this point the Court admonished the jury calling their attention to Section 415 of the Code of Criminal Procedure and adjourned the further trial of the case until tomorrow, Friday morning, June 18th. 1920.

New York, June 18, 1920.

TRIAL RESUMED

MR. JORDAN: My witnesses were here last night, character witnesses, and they have not arrived and I will not ask the Court to wait and there for I rest.

CHARLES MOSKOWITZ, a witness called on behalf of the People in rebuttal, being duly sworn, testified as follows: (The witness states he lives at 153 West 118th street and is attached to the District Attorney's office.)

BY MR. MARKEWICH:

Q You are a process server attached to this office for how many years?

A Three years.

Q Did you receive a subpoena in the case of the People of the State of New York against Jacob Sender the defendant to be served on Tony DeGrazzio?

A I did.

MR. JORDAN: I object to that question.

THE COURT: I will allow it.

Q Did you serve the subpoena on him?

A I did.

Q Where did you serve the subpoena?

A Right in the hall.

Q What day?

A On Wednesday.

Q When was that subpoena returnable?

A The following day Thursday.

Q Yesterday?

A Yes, sir.

Q Was Tony DeGrazzio here in court yesterday?

A I did not see him.

MR. JORDAN: I ask that the testimony be stricken out.

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

GEORGE F. CHIQUETTE, a witness called on behalf of the People in rebuttal, being duly sworn, testified as follows:
(The witness states he is a police officer attached to the Safe and Loft Squad Police Headquarters.)

DIRECT EXAMINATION BY MR. MARKEWICH:

Q Officer how long are you connected with the Police Department of this City?

A Ten years.

Q Assigned by the Police Department to this case?

A I have been.

Q Of the People against Jacob Sender?

A I have.

Q Do you know Tony DeGrazzio?

A I do.

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Q Do you know where he live?

A I do.

MR. JORDAN: I object to that question as incompetent immaterial and irrelevant.

THE COURT: I will allow it. It may transpire that he was subpoenaed to appear today. I am allowing it for that purpose; if not I will strike it out.

BY MR. MARKEWICH:

Q Were you up at his home?

A I was.

Q At Tony DeGrazic's home?

A Yes, sir, I was.

Q When?

A This morning.

Q Did you find Tony DeGrazzio there?

A I did not.

Q Did you find what apartment he lived in?

A I did.

Q That apartment?

A 404.

Q Apartment 404?

A Yes, sir.

Q Do you know his mother?

A I seen his mother this morning.

Q Did you make any inquiries for him?

A I did.

Q From whom?

A From his mother.

MR. JORDAN: I object to that.

THE COURT I will allow it.

THE WITNESS: From his mother and sister-in-law.

Q What were you told by them?

MR. JORDAN: Objected to.

THE COURT: I will allow it to show what efforts were made to subpoena this man.

MR. JORDAN: But not what somebody told him.

THE COURT: I will allow a statement to appear on the record as to what the officer was told not as showing the truth of the statement made but as bearing upon the effort made to secure the attendance of the witness.

MR. JORDAN: But suppose something should be said by the witness your Honor detrimental to the defendant?

THE COURT: I will allow merely a statement as to the whereabouts of DeCrazzio.

BY MR. MARKEWICH:

Q Were you told by anybody at that house where the man that you were looking for was to be found. Yes or no?

A No, sir.

Q Were you told by anybody at that house whether the man that you were looking for was inside, in the house at the time that you were there?

A No, sir.

Q Were you informed that he was not there at the time that you called?

A I was.

Q Did you have with you at the time that you called a subpoena calling for the attendance of the man in question in this court on this trial today?

A I did not.

THE COURT: That will be all, Officer.

BY MR. MARKEWICH:

Q Were you told where he was during the night?

MR. JORDAN: I object to that, if your Honor please.

THE COURT: Objection overruled. They have a right to show that he went out of the jurisdiction.

THE WITNESS: I was told that he was home during the night.

Q During the entire night?

A Yes, sir.

MR. JORDAN: I ask that everything in regard to Tony DeGrazzio be stricken from the record including the imputations contained in the question just propounded by the District Attorney in regard to Tony DeGrazzio

THE COURT: I think I will allow it to appear on the record that the People sent someone there for the purpose of procuring the attendance of DeGrazzio as a witness on this trial, and that the officer, who was the last witness that the People called went to what as supposed to be the hone of DeGrazzio and DeGrazzio was not there. Beyond that I will strike it out.

MR. JORDAN: But your Honor I desire to ask your Honor to say to the jury in view of the effort to get Tony DeGrazzio and because of his non-appearance that there should be no inferences drawn by the jury that there is anything substantial in the question asked of the defendant upon his cross examination in regard to a collateral matter so that the jury would have a right to assume that the District Attorney intended, if he had Tony DeGrazzio here that Tony DeGrazzio would contradict the defendant -- I ask your Honor to say that the People are bound by the answers of the defendant and that they are to draw no inferences from the imputa-

tion contained in the question put to the defendant.

THE COURT: Well I think that you are not entirely correct in asserting that it was in every respect a collateral matter. I think, for example, that the item of testimony going to the point or rather as suggested by the question as to whether the defendant was with Tony DeGrazzio early on the morning of the day of the alleged larceny --that is to say -- as early as four o'clock on the morning of that day and that that conversation might have been regarded as some circumstantial evidence bearing upon the question of the defendant's guilt. Now, in other words, I think that it would have been a matter as to which the People would have been allowed to have interrogated DeGrazzio if he appeared. I don't think the People would have been foreclosed by the rule as to collateral matter, the contradiction of a collateral matter. But as the proof now stands there is no evidence at all that any such talk did take place or that such an appointment was made. If that is what you want the jury told then there is no evidence at all.

GEORGE F. CHIQUETTE, a witness for the People, recalled.

BY MR. MARKEWICH:

Q Did you have a talk with the defendant at the time of his surrender?

A I did.

Q Now, pursuant to that talk did you go to the corner of Delancey and Columbia street?

A Yes, sir, I did.

Q In this County?

A Yes, sir.

Q What corner did you go to?

A On the southwest corner, Hoe & Company.

Q Did you see the building that was there?

A I did.

Q What building was on it?

A R. Hoe & Company.

Q What kind of an establishment?

A Machine makers.

Q Any store on that corner?

A No store.

Q On the adjoining corner?

A No, sir, none whatsoever.

Q What is on the adjoining corner?

A There is a flat with the entrance on Columbia street.

Q Now you are talking of the east and west corners of Delancey and Columbia street on the south Side, the down town side of Delancey street?

A I am.

BY MR. JORDAN:

Q What are the other corners?

A R. Hoe & Company on the southwest corner and on the southeast corner the flat entrance is on the front of Columbia street, -- on the side of Delancey street there is a wall, both sides.

Q You have given now three corners, what was on the other corner?

A Well R. Hoe & Company and then there is the entrance on Columbia street.

Q As I understand it the bridge structure rises to a certain

height and it divides into two separate roadways at Delancey street, one roadway being to the south of the bridge and the other roadway to the north of the bridge, is that correct?

A Yes, sir.

Q You confined your investigation to the buildings that were on the south of the bridge, in other words the southwest and southeast corners in front of the bridge?

A Yes, sir.

BY MR. MARKEWICH:

Q Are there any business places in any of those blocks at all?

MR. JORDAN: I object to that as being immaterial.

THE COURT: I will allow him to answer yes or no.

A R. Hoe & Company is the only business place that I know of.

Q Did you look to find out whether there were any other business places on this corner?

A I did.

Q You say that R. Hoe is the only business place you know of?

A Yes, sir. the only one.

Q On the four corners?

A Yes, sir, the two corners.

Q There are four corners?

A I know that I only investigated two, the southeast and the southwest.

Q Now can't you tell us about the others whether you investigated them or not?

Objected to.

THE COURT: Objection sustained.

THE COURT: This defendant has testified to going along Delancey street and stopping at a certain place. As

a matter of fact Delancey street east of the point where the Williamsburg Bridge begins might be regarded as two independent streets, one the roadway to the south of the bridge and the other the roadway to the north of the bridge. Is there an arch under the bridge there?

THE WITNESS: Yes, sir, there is an arch.

Q So that vehicles could pass through?

A Yes, sir, underneath.

Q What is the width, or that bridge structure?

A Well about the width of this street right here.

Q About the width of this room?

A Yes, sir.

MR. JORDAN: Your Honor my point is this that the witness having said that he guessed there were stores there -- he didn't know anything about those stores, he guessed there were stores there.

THE COURT: I will strike out his evidence if he has purported to give any as to what was on the uptown side of Delancey street because I regard that as entirely immaterial.

MR. JORDAN: I don't mean that he has testified. As I recall his testimony he said that he guessed there were stores there where he took the goods but he was not positive about it.

THE COURT: You are referring to the testimony of the defendant.

MR. JORDAN: Now there is nothing to contradict that testimony by this witness saying that there is nothing there.

THE COURT: No, but it is competent for the People to introduce proof as to the nature of the place at which this defendant allowed merchandise that was on his truck to be taken off and receiving it for that purpose.

MR. JORDAN: And for that purpose solely?

THE COURT: Yes.

MR. JORDAN: I have no objection.

THE COURT: That is all, Officer.

BENJAMIN HONIG, a witness for the People recalled in rebuttal.

BY MR. MARKEWICH:

Q Did you see the defendant at the time when he arrived in front of 127 West 28th street?

A Yes, sir.

Q With his automobile truck?

A Yes, sir.

Q Was anybody along with him on that truck?

A No, sir.

Q Anybody get off the truck?

A No, sir.

Q With from the rear or front?

A No, sir.

THE COURT: I think that is only what he testified to before.

BY MR. JORDAN:

Q Now let us see you got to your place between seven and eight o'clock?

A Six and seven.

THE COURT: I think, Mr. Markewich, in order to shorten

the matter this testimony is only repetition or what he said before.

MR. MARKEWICH: I was not clear.

THE COURT: I will strike this testimony out given when he came back.

MR. MARKEWICH: I wasn't certain whether he testified to that or not and it was for that reason that I recalled him. I don't think he testified, your Honor, that there was nobody on the truck when it came there.

THE COURT: My recollection is that he did. But now go ahead.

BY MR. JORDAN:

Q Between six and seven?

A Yes, sir.

Q What were you doing?

A 127 West 28th street.

Q What were you doing there at the time that you first saw him with the track?

A I was just beginning to work.

Q Beginning to work?

A At the place where I am working at.

Q What were you doing at that time?

A Taking my coat off.

Q I side or outside?

A At the door.

Q Standing in the door taking your cost off?

A Yes, sir.

Q Taking your cost off?

A Yes, sir.

q What did you do With your coat when you got it off?

A Threw it on the table.

Q How far was the table from the door?

A Right next to the door.

Q What did you do next after you threw your coat on the table?

A I stood there.

Q You stood?

A Began working.

Q Didn't do anything else?

A Didn't do anything else.

Q How long did you refrain from doing any work during that time, about how long did you do no work?

A Fifteen minutes.

Q Fifteen minutes?

A Yes, sir.

Q All you did was take your coat off?

A And stood at the door as soon as that truck was at the door.

Q Now was the truck there at the door before the door opened?

A What door was that?

Q The hallway door?

A The hallway door?

Q How long was the truck there before that door opened?

A As soon as the truck arrived it was opened.

Q You stood there for fifteen minutes?

A Yes, sir, and watched until the truck went away.

Q How many men did you see there all together?

A I seen Sender on the truck and two men getting packages, one upstairs, I couldn't get a glimpse at him, throwing them down.

Q How do you know one was upstairs if you didn't get a glimpse of him?

A Well I notices one throwing it down when I walked by the door and looked at the face of the other fellow who was standing on the sidewalk.

Q You didn't see but two men besides Sender?

A Downstairs.

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Q Did you see the other man at any time?

A Yes, sir, up at the stairs throwing them down.

Q Did you see him?

A I didn't see his face.

Q You saw somebody throwing something down?

A Yes, sir.

Q Did you watch them when he came out?

A No, sir.

Q Why not, why didn't you watch that fellow throwing them down?

A I don't belong in that plane up there.

Q Well I know but you were there interested in it, weren't you?

Objected to. Objection sustained.

FRANK D. CASSASA, a witness for the. People recalled in rebuttal.

BY MR. MARKEWICH:

Q Officer at the time you had a conversation with the defendant as you testified to did you ask him whether anybody was along with him on the truck?

Objected to. Objection sustained.

The People rest.

(Testimony closed.)