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COURT OF GENERAL SESSIONS OF THE PEACE
City and County of New York, Part VI.

3629

THE PEOPLE OF THE STATE OF NEW YORK:

-against-

LEROY STANLEY

: Before

: HON. JOSEPH F. MULQUHEN,

: Judge

: and a Jury.
: -----

New York, December 12, 1921.

The defendant is indicted for burglary in the third
degree, grand larceny in the first degree and
receiving in the first degree.

Indictment filed November 29, 1920.

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

For the People: ASSISTANT DISTRICT ATTORNEY WALLACE.

For Defendant: FRANKLIN CRIER, ESQ.

A jury is duly impanelled and sworn.

Mr. Wallace opens the case to the jury.

CHARLES E. CULPEPPER, of 342 West 29th Street,
called as a witness on behalf of the People, having been
duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WALLACE:

Q What is your business, Mr. Culpepper? A I am manager
of the Coca Cola Company's New York factory.

Q And is that a corporation? A Yes sir.

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Q Where is the place of business of the corporation in this city? A 330 to 334 West 27th Street.

Q Near what avenue is that? A Between 8th and 9th Avenue, about the middle of the block.

Q What have you there, a warehouse and manufacturing place? A Warehouse and manufacturing place combined with a garage.

Q What was the place of business of this corporation on the 12th of November, 1920? A Yes sir.

Q Did you at that time have a man in your employ named Herman Williams? A Yes.

Q What is Williams' business? A He was night watchman in charge of the garage.

Q Did you have at that time in your employ Henry Stanley, a brother of this defendant? A Yes.

Q What was his business at that time? A He was a truckman and the chauffeur.

Q And was this defendant employed there at that time? A Not at that time, no.

Q Had he been employed there previously? A Yes sir.

Q Had you ever had a man in your employ named Matthew Powers? A A short time, in the summer of 1920.

Q Now, did any of these persons have a key to the premises? A No sir, except Herman Williams.

Q Did either of the Stanley Brothers have a key, if you know, to those premises? A Henry Stanley had a key at different

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periods, a year or two previous to this incident, and it had been taken from him.

Q It was taken from him about what time? A More than a year ago; I could not be exact.

Q Can you tell us whether or not on the 11th and 12th of November, 1920 there were any barrels of sugar in your warehouse on West 27th Street? A Yes sir.

Q How many barrels of sugar were there in there about that time? A A little over 300 barrels.

Q And were those barrels marked in any way? A Yes sir, they were stencilled "American Sugar Refining Company", and the stencil was on the heads of the barrels, the Coca Cola Company, in small black type, printed on the top.

Q In addition to those marks I suppose that Coca Cola mark was on all your barrels? A Yes.

Q And the American Sugar Refining Company also? A Yes.

Q Now in addition to those marks were there any other marks on the barrels? A Pencil marks that I had put on the barrels with the initials "C.C.", on the side of the barrel, and sometimes with "C.E.C."

Q That is, you marked them either "C.C." or "C.E.C." in lead pencil yourself? A Yes.

Q How long have you known the defendant LeRoy Stanley? A My recollection is he worked there about five or six years ago; he used to come there occasionally to see his brother and I

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knew him by sight prior to that. I do not recall how long back that would be, except that his brother worked about ten years.

Q What time did you leave those premises, about, on the 11th or 12th of November? A I put a car in there about twelve o'clock at night.

Q When you left there on the 12th was Herman Williams there? A Yes.

Q Now, did you sometime on the following day have a conversation with a police officer? A Yes sir.

Q About what time did you have that conversation with a police officer? A About eleven o'clock, to the best of my recollection.

Q After that conversation did you go anywhere or do anything? A Yes sir.

Q Where? A I called up a private detective agency and then called up the Detective Bureau.

Q Then subsequently did you go to Madison Avenue? A I went up there but not that day. Later on I did.

Q Did you see any place other than your own place of business shortly after November 12th any of these barrels of sugar you had marked with your initials? A Yes.

Q Where? A In the police station in 20th Street.

Q How long afterward was that? A The 17th or 18th. I will have to look at my record. That was the next day after

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the sugar was brought there. It was brought there on the night of the 13th and it was either the 14th or 15th I was in the station house, and I saw 31 barrels with my initials.

Q And they all contained your initials in lead pencil that you put on there? A Yes, "C.C." or "C.E.C."

Q In addition to that were there stencil marks on them? A The stencil mark, "American Sugar Refining Co. & plus a little straight line with "Coca Cola Company" that had been scratched out, so that it was not very legible. You would have to look closely to tell what it was.

Q If you looked closely could you see what it was that was marked there? A On some, yes.

Q You did not give the defendant or his brother or Powers any permission to take any sugar out of the warehouse? A No.

Q That sugar was there for the purpose of being manufactured? A Yes, solely.

Q And that is the only reason it was there, not to be sold but to be manufactured into your product? A Exactly.

MR. WALLACE: Your witness; you may examine.

CROSS-EXAMINATION BY MR. GRIER:

Q You say you went to the Madison Avenue store later? A Yes sir.

Q Where is that store? A 2083 Madison Avenue.

Q And when you went there was there any of your sugar there? A Not so far as I knew.

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Q It had been taken away from there by the police? A Yes.

Q And it had been taken away in the defendant's truck?

A I was informed so. I did not see that done.

Q Who ran that store, if you know?

THE COURT: He does not know that.

Q Well, you saw the proprietor of the store, did you?

A Yes sir.

BY THE COURT:

Q If you have any personal knowledge of that store we will hear it? A That is the first time I was ever in it and I do not know anything about it.

BY MR. GRIER:

Q Did you talk with the man that you supposed was the proprietor? A I talked with a man there that was supposed to be the proprietor, about the sugar.

Q How many barrels of sugar were taken out of your place, if you know, on the night of this alleged burglary? A Either fifteen or sixteen. I could not be positive about that without having my record here.

Q When you went to the police station on 20th Street you found 31 barrels? A Yes.

Q Do you know where those 31 barrels were taken from when they were taken to the police station? A I was told.

THE COURT: That is not evidence. You have no personal knowledge?

THE WITNESS: No sir.

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THE COURT: Hearsay evidence is no evidence.

MR. GRIER: I think that is all.

HERMAN WILLIAMS, of 119 West 142 Street, called as a witness on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WALLACE:

Q On the 12th of November, 1920 were you employed by the Coca Cola Company? A Yes sir.

Q And what were your duties? A Night watchman.

Q And you were night watchman at the building 330 West 27th Street? A Yes.

Q Were you at that building on the 12th of November, 1920? A Yes sir.

Q Did you leave that building during that morning?
A Yes sir, I left it at three o'clock that morning.

Q Before you left did you look the doors of that building?
A Yes sir.

Q Was there anybody inside of the building when you left?
A No one.

Q Were there a number of barrels of sugar in it? A Yes.

Q And do you know if those barrels of sugar were marked?
A No special marks. I do not know nothing about any special marks.

Q What time did you return to that building? A On Saturday afternoon.

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Q Are you sure when you went away the doors were all locked? A Yes sir.

Q And you locked them yourself? A Yes sir.

Q What day was that, Friday or Saturday? A Friday.

Q And you left at three o'clock the morning of Friday and did not come back again till Saturday afternoon? A No.

Q Where did you go? A I went home. I had a deceased brother-in-law and I telephoned to the boss I could not get back there till that time.

MR. WALLACE: That is all; you may examine.

CROSS-EXAMINATION BY MR. GRIER:

Q What time did you lock up the place? A Three o'clock.

Q It was standing wide open until three o'clock. Anybody could go in or out until three o'clock? A No sir.

Q What time did you lock it? A Three o'clock, when I was going to leave.

Q What time did the employees leave the evening before? A They left any time in the evening.

Q When did the last of them leave that night, if you remember? A Somewhere around about eight or half past eight.

Q The last person that left that building except yourself, left about eight o'clock? A Yes sir.

Q Or half past eight at the latest? A Yes sir.

Q Are you sure of that? A Yes sir.

Q Who was the last person to leave? A I

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the superintendent.

Q Was that Col. Culpepper? A No sir, Mr. Kief.

Q What time did Col Culpepper leave? A I don't remember.

Q He says he left about eleven o'clock; is that a mistake? A Probably I am busy working in there, and probably I can't remember what time he left.

Q So that you don't know what time the people left there that evening? A I know Mr. Kief left there about eight o'clock.

Q You testified a moment ago that the last man left about 8.30? A That is the last man I know left there at that time.

Q So that if Col. Culpepper left at eleven or half past eleven or twelve o'clock you did not see him leave? A Oh yes, every time they leave they always tell me they are leaving, but I can't remember what time Mr. Culpepper left.

Q You did not see the defendant around there that night, did you? A I did not see anybody at all.

Q What time do you usually leave that place? A At four o'clock.

Q This morning you left at three o'clock? A Yes sir.

Q Did you tell anybody that you were going to leave at three o'clock? A I told nobody. I got a telephone call that my brother-in-law died. He has six small kids.

Q You did not tell anybody that you were going to leave at three o'clock? A No sir.

Q Your boss did not know that? A No sir.

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Q You did not tell Stanley you were going to leave?

A I don't know Stanley.

Q When you left did you see anybody around the premises?

A No sir.

Q Did you see any trucks back up to the door? A No sir.

MR. GRIER: I think that is all.

GEORGE T. DAGGETT, an officer of the 23rd Precinct, Shield No. 1564, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WALLACE:

Q Officer, on the 12th day of November, 1921, were you on duty in the vicinity of 330 West 27th Street in the City and County of New York? A Yes sir.

Just tell us in your own way what you saw and what you did that morning? A I was on post on 8th Avenue, from 27th to 34th Street, and I was standing at the corner of 28th Street and 8th Avenue at about 5 A.M. in the morning and I observed an automobile coming up north on 8th Avenue and turned west on 27th Street, and stop on the corner of 27th Street and 8th Avenue for about a minute, on the crosswalk. It then proceeded west on 27th Street, to the middle of the block between 8th and 9th Avenue in front of 330, I think the number is, and he backed into a building there. I walked down 27th Street towards 9th Avenue and when I got down there I h

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door rolling down.

Q You mean the door of the warehouse of the Coca Cola Company? A Yes sir.

Q At 330 to 334 West 27th Street? A Yes sir. I stood across the street in the doorway and waited for about ten minutes and I seen the iron door being rolled up again.

Q Did you see who rolled it up? A Yes, the defendant Powers. Next I seen the automobile coming out with a load of barrels on it. I walked over and stopped him and told him to pull alongside the curb.

Q What kind of an automobile was it? A A moving van.

Q Could you see when the automobile came out that there were barrels on it? A Yes.

Q And did you examine them? A I examined them.

Q And you say there were a number of barrels? A Yes.

Q What kind of barrels? A Sugar barrels. The automobile was fully loaded and had three or four barrels on top.

Q Did you have a conversation with Powers? A I did.

Q Was there another man there? A Yes.

Q Who was it? A LeRoy Stanley, operating it.

Q That is this defendant? A Yes sir.

Q Who was driving the automobile? A This defendant.

Q Tell us what conversation you had with either or both of these men; what they said and what you said? A When came out of the building with the

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out of his seat. I asked him what he had on the automobile.

Q You asked whom? A This defendant, Stanley. He said, "I got a load of sugar on there". I made him turn down his barrel on the tail of his truck, to make sure they were sugar, and I sounded it with my night stick. I asked him where he was going; he said he was going to the Westchester plant, that they need sugar up there the first thing in the morning to get out orders, that they had no sugar. Then the defendant Powers came out from the building and he said, "That is all right, Officer; I work there. I am sending this stuff to the other plant. We need it up there this morning."

Q You were satisfied with that explanation, were you?

A I was.

Q And you let them go? A Yes sir, for I knew Powers had worked there.

Q Did you take the number of the automobile? A I did.

Q Did you make a note of it? A Yes sir.

Q What was the number? A I got it in my book; (after looking) 837,405.

Q Did you thereafter have a conversation with Chilpepper, the manager? A I did.

Q What time? A Around eleven o'clock the same morning.

Q What time did you leave the automobile, or the factory? A Five o'clock in the morning.

Q And you had the conversation at eleven o'clock? A Yes.

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Q In the course of that conversation did you show that number to Culpepper? A I did.

Q DID you thereafter find the truck with that number?

A I did.

Q Whereabouts? A In front of 244 West 18th Street.

Q When did you find it? A Around twelve o'clock; about an hour after that, after the detectives came up. I took them right down.

Q You brought that information to the detective precinct where you worked? A Yes.

MR. WALLACE: I think that is all for this witness.

CROSS-EXAMINATION BY MR. GRIER:

Q You say you made a memorandum of the license number of the car? A Yes sir.

Q And you have it there? A Yes sir.

Q Did you make a memorandum of the rest of the things you saw on that car, printed on it? A Yes, just the number, 244 West 18th Street, Moving Vans.

Q And you went there and found a car afterwards? A Yes.

Q About an hour after you had received notice that there was some sugar stolen? A No.

Q So you did not use the license number at all to find this car, or the man? A I seen that car on my way up to see Mr. Culpepper, in 18th Street.

Q At 244? A Yes sir, right off 8th Avenue.

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Q Was there anything there printed on the moving van?

A There was no name on it.

Q Wasn't LeRoy Stanley's name on that, - moving van?

A No.

Q Expressman? A It was express moving van, but no name.

Q But an address was there? A Yes sir.

Q And as soon as you found out there was sugar stolen from this Coca Cola Company you went right down to LeRoy Stanley's express office and found his car there? A Yes sir.

Q Are you sure he did not say he was going to Connecticut instead of Westchester? A No, Westchester. The two of them told me that.

Q Did you make any memorandum of that? A No sir.

Q You were not particularly concerned about this affair when you saw the truck going out with sugar on it? A Yes sir.

Q That was not extremely curious to you, was it? A Yes sir, at that hour of the morning; it was dark.

Q Still you let them go away? A Yes, on account of knowing that Powers worked there.

Q You say you knew that Powers worked there? A Yes, I seen him in there.

Q How long have you known Powers? A ABOUT six or seven months before that.

Q He worked there at that time? A Before then, not at the time the sugar was taken.

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Q You knew he worked there three or four months before?

A Before that.

Q You did not know he was working there on that day?

A No, I did not know that.

Q And you have been advised since that he was not working there then? A I was.

Q And what did he do when you knew he was working there?

BY THE COURT:

Q You believed Powers' story when he told you that?

A Yes, and I knew he worked there.

Q You knew he had worked there and he told you he was working there this morning? A Yes.

Q And that he was doing the work of the company in transporting the sugar? A Yes.

BY MR. GRIER:

Q Did he say what work he was doing there, whether he was a porter or watchman or clerk? A No.

Q On the strength of his statement you let him take 16 barrels of sugar out? A Yes.

Q At an unusual hour in the morning? A Yes.

Q And you are sure it was not six or seven o'clock?

A Around five o'clock.

Q It was so well fixed in your mind, and it struck you as being such a curious thing that you took exactly the time in the morning? A I did not take a memorandum of that.

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Q Did you make a memorandum of that? A No.

Q Yet you swear now, after more than a year since that time, that it was five o'clock in the morning? A Yes sir.

BY THE COURT:

Q You made statements to the same effect in less than a year's time? A Yes sir.

Q You made a statement at that time that it was five o'clock? A Yes sir.

Q And you are not saying it now for the first time? A No.

MR. GRIER: I respectfully object to that testimony and urge that I am not trying to make any impression but I would like to have the witness testify.

THE COURT: The witness has testified. If you seek to show that he is relying on his recollection now, it may be shown also that he made that statement previously. If he said that it was six or seven o'clock or any other time, you may bring that out.

MR. GRIER: Well, I object to the testimony and ask that it be stricken out.

THE COURT: Motion denied and objection overruled. The jury is entitled to the facts.

MR. GRIER: I take an exception, if your Honor please; that is all.

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ERNEST ROST, of 2083 Madison Avenue, a witness called on behalf of the People, having been duly sworn, testified as follows:

DIRECT EXAMINATION BY MR. WALLACE:

Q You are a grocer, I understand, at 2083 Madison Avenue, and you were in the grocery business in November, 1920? A Yes.

Q Do you know this defendant, LeRoy Stanley? A Yes.

Q How long have you known him? A About a year and a half.

Q How long have you known his brother, Henry Stanley?

A About two years.

Q Do you know a man named Matthew Powers? A Not before this trial.

Q Not before you met him through this case? A No.

Q And you did not know him on the 12th of November, 1920? A That is the first day I met him, Matthew Powers.

Q But you did know the others before that? A Yes sir.

Q On the 12th of November, 1920 did the defendant LeRoy Stanley deliver to your store a number of barrels of sugar?

Objected to as leading. Objection overruled. Exception.

A Yes.

Q What time of the day or night did he deliver them?

A About half past six in the morning of the 12th of November, 1920.

Q Your store is near what street? A 131st Street.

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Q How many barrels did you deliver there that morning?

A Sixteen.

Q Did he on the day previous deliver any barrels of sugar to you? A Yes.

Q How many barrels? A Fifteen.

Q That is thirty-one barrels in all? A Yes sir.

Q Prior to the delivery of these fifteen and sixteen barrels of sugar on the 11th and 12th of November, 1920, did you have a conversation with the defendant's brother, Henry Stanley? A Yes.

Q When did you have that conversation with him? A On Tuesday.

Q That was two or three days before the first fifteen barrels were delivered? A Yes.

Q Was the defendant LeRoy Stanley present at that conversation? A No.

Q Did you talk with anybody else concerning the delivery of those barrels of sugar except Henry Stanley, a brother of this defendant? A No.

Q At the time that LeRoy Stanley delivered the sixteen barrels on the 12th day of November, --

THE COURT: If the brother were concerned in this crime, if there were a conspiracy to commit a crime, any statement that the brother made would be binding and it would be admissible in evidence.

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Q What did the defendant LeRoy Stanley say to you when he delivered the sixteen barrels of sugar on the 12th of November, if anything? A He said he came over early that morning because he had to go to Brooklyn and had a moving job in Brooklyn, and had to be there at eight o'clock, when I asked him why he brought them so early.

Q Did you have anything to say when you saw him there with sixteen barrels of sugar that morning? A Yes; I said, "It is rather early"; I did not expect him. I did not expect the sixteen, only the ones the day before.

Q Tell us the conversation you had with Henry Stanley, a brother of this defendant, on Tuesday about those thirty one barrels of sugar?

Objected to. Objection overruled. Exception.

A Henry Stanley said that the man that owned the sugar was selling out, and this will be the last sugar that he could send me.

Q And you had previously received sugar from LeRoy and Henry Stanley? A From Henry Stanley. LeRoy Stanley was the driver that delivered it.

Q How many times? A About eight or ten times.

Q You say on Tuesday Henry Stanley told you a man was selling out and this was the last sugar he could deliver to you? A Yes sir.

Q What price did you make with him, if any; what were you

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to pay? A The regular market price.

Q How much was that? A I believe it was ten cents.

Q Was that during the time that sugar was scarce? A Yes, during that year in the sugar scarcity.

Q How many barrels on Tuesday did Henry Stanley say he was going to deliver to you? A He said there would be fifteen or sixteen barrels of sugar, he was not quite positive, but all the man had he would send me in a day or two.

Q Did he tell you the name of the man he was going to get it from? A No.

Q All you expected then was fifteen or sixteen barrels?

A Yes.

Q And you received fifteen barrels that day? A Yes.

Q Delivered by this defendant? A Yes sir.

Q Now when you saw him there again on the 12th of November with sixteen barrels, did you say anything to him about his being there again with sixteen more barrels? A I did.

Q What did you say and what did he say? A I told him I did not expect any more, I did not have any room to put it in. He said that this was the final lot and if I could use it that his brother would hold some of it and asked me to keep it for him.

Q Who said that? A LeRoy Stanley, this defendant.

Q And did you then accept the sixteen barrels on the 12th? A Yes.

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Q Where did you put them? A In my store.

Q On the ground floor? A Yes. I have rooms in the back. I put some in the rooms, some in the store and some outside.

Q Where were the other barrels you received the day before? A The same place.

Q Were some down in the cellar? A No sir.

Q Did you pay this man any cash, or by check; did you pay for the sugar at all that you received then? A No.

Q You have not paid for it yet? A No.

Q When were you to pay for it? A I was to pay some the next following Saturday. I told him I could not pay for them. He said it will be all right if I pay Saturday and the following Saturday until it was paid up.

Q Was this a very large amount of sugar for you to buy in your grocery business? A Yes, very large.

Q How did you come to make such a large purchase?
A Sugar was scarce, and any grocery that did not have sugar could not do any business.

Q Did you ever get any bill of sale from this man Henry or his brother LeRoy? A No.

Q How did you make your payments, by cash or check? A Cash.

BY THE COURT:

Q Do you buy all your goods that way? A I did then.

Q From irresponsible people that you do not know anything about? A Oh no.

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Q Did you have a bank account at that time? A No sir.

Q Are you still in business? A Yes sir.

Q Were there any markings on these barrels that you saw when they were brought into your place? A No, not outside the regular marks of the American Sugar Refining Company.

Q Were you indicted for your participation in this crime?
A No sir; I was arrested.

Q And indicted? A I was tried and acquitted.

Q The jury believed your story? A The Grand Jury did not indict me.

Q How long have you been in the grocery business there?
A About thirteen years.

BY MR. WALLACE:

Q Later on the same day, Friday, November 12th, did you receive a visit from some detectives? A On Friday night, the 12th of November.

Q About what time? A About ten o'clock; nine or ten in the evening.

Q Did they come in and talk to you, Detective and Westervelt? A They came in with LeRoy Ste

Q And after a conversation did they tel
sugar? A They did. I was busy at the time
I got through with my customers they tol
there for.

Q And they removed these

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the night, the same night.

BY THE COURT:

Q You can read, can you? A Yes sir.

Q Did you see the Coca Cola Company marks on the barrels?

A No.

Q Did you not see that something had been scraped out on the head of the barrels? A Not that I took notice of.

Q You did not want to take notice of it; you did not see any pencil marks such as "C.C."? A I heard there were pencil marks on.

Q They were there to be seen? A Mr. Culpepper told me those but they were so small they could not be seen.

Q Then you must have looked for them? A Not before that.

Q Did you look for marks of identification on those barrels? A Just American Sugar Refining Company.

CROSS-EXAMINATION BY MR. GRIER:

Q You did not see any place where anything had been cut off of those barrels? A No.

Q How often have you received as many as sixteen barrels of sugar at six o'clock in the morning? A Never before.

Q This is the first time? A Yes sir.

Q The day before you received fifteen barrels? A Yes.

Q What time in the day did you get those? A I think that was about eight o'clock, if I am not mistaken; seven or eight in the morning.

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Q And this defendant delivered those fifteen barrels there? A Yes.

Q In the same truck? A The same truck.

Q And how often had he been there before with sugar?

A About eight or ten times.

Q That is in the last two months? A In the last four months.

Q He came there and you supposed he was simply the truckman or expressman delivering the sugar that you were buying?

A Yes.

Q And that you bought in the same way that you bought this sugar? A Yes.

Q And you say you bought it from his brother Henry Stanley? A Yes.

Q You have known Henry Stanley for two years, haven't you? A Yes, about two years.

Q How often in those two years would you see him?

A Probably six or seven or eight times a week. He lived in the neighborhood, about a block away.

Q So you saw him mostly every day? A Yes sir.

Q You knew where he was working? A No, not from what he said. He said he was working for a concern on Greenwich St.

BY THE COURT:

Q And this sugar was a side issue with him, was it?

A He was selling it for this man that had bought the sugar.

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BY MR. GRIER:

Q And you were buying it from him as an agent, weren't you? A Yes.

Objected to as calling for a conclusion. Sustained.

THE COURT: Strike out the answer.

Q You said a moment ago that Stanley was selling it for this man. You mean by this man the man he was working for?

A That is what he told me.

Q And when he told you that, you believed him, did you?

A Yes.

Q Then you believed you were buying it from him as the agent of somebody.

MR. WALLACE: I object to that.

THE COURT: What has that got to do with the case, what he believed. The question is whether he knew it was stolen or not. If he were on trial himself he could tell that story to the jury.

MR. GRIER: I want to pursue the state of mind of this man.

THE COURT: That is excluded.

Q Now, you did not receive any bill of sale from this colored man that was selling the sugar for the man he worked for? A No.

Q And you received no writing or paper? A No.

Q And you paid the agent in cash? A Yes.

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BY THE COURT:

Q Not for this sugar but for previous transactions?

A Yes.

Q And you intended to pay for this in cash? A Yes.

Q On the Saturday and the following Saturday, you said?

A Yes.

BY MR. GRIER:

Q You gave this defendant cash, didn't you? A Not for this sugar.

Q For anything else? A For the cartage.

Q How much did you give him for the cartage? A Ten dollars I gave him for the cartage.

Q And that was for the last delivery of sugar? A Yes.

Q And how much did you pay him for the delivery of the fifteen barrels on the day before? A The very same.

Q And the other times that he delivered sugar to you, you paid him for cartage? A Well, he only asked me to pay for cartage.

Q I asked you if you paid this defendant? A Every time.

Q Well, you usually pay for the cartage of goods into your place, don't you? A I do occasionally.

Objected to. Objection sustained.

Q Did you see what was written or printed on this man's truck? A No; that I could not say.

Q You did not see that it said expressage and moving?

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A I believe it said express, yes.

Q What did you mean when you said a moment that you did not notice what it said? A I did not take particular notice.

Objected to as immaterial; objection sustained.

Exception.

THE COURT: All that this witness has testified is that this sugar in question which is alleged to have been stolen was delivered to him by this defendant.

MR. GRIER: He said also that he paid this defendant cartage.

THE COURT: All right; that is also in the testimony.

Q Did the defendant come to your place with his truck and the officers and take the sugar away? A Yes.

Q He made two trips for the thirty-one barrels of sugar? A Yes.

Q Up to that time you did not know that there was any question about that sugar, until the defendant came there with the officers?

MR. WALLACE: That is objected to as entirely immaterial.

THE COURT: Objection sustained.

THE COURT: It is immaterial whether he knew it or not, except on the question of his own credibility.

MR. GRIER: It is material for the jury to know whether this witness was the first man that informed him

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that the goods were stolen.

THE COURT: You can bring that out by him.

MR. GRIER: That is all, but I take an exception.

CHARLES C. WESTERVELT, an officer of the Main Office Division, Shield No. 295, a witness called on behalf of the People, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. WALLACE:

Q Officer, you are a detective attached to the Police Department of the City of New York? A Yes.

Q On November 12th or 13th did you arrest the defendants? A Yes.

Q What time did you arrest him? A About 7.30 P.M. on the 12th of November.

Q Did you have any conversation with him? A I did.

Q Whereabouts did you have the conversation? A At 20th Street police station.

Q State what he said to you and what you said to him?

MR. GRIER: I object to that, what the witness said.

THE COURT: Anything that the witness said may be received in evidence.

A I asked him where he delivered the sugar and he said he did not know anything about the sugar. In about half an hour's time he stated he brought the sugar to 2083 Madison Avenue to a grocery store owned by Ernest Rost. He went with

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us to 2083 Madison Avenue. I asked Mr. Rost in the presence of LeRoy Stanley, if this man had delivered any sugar to him, and he said yes, the same morning. LeRoy stated that he had delivered the sugar to him.

Q Did you then take the sugar and bring it back to the station house? A Yes, the 20th Street station, the thirty-one barrels.

Q Did you have any other talk or conversation with the defendant about the sugar? A He stated that a man with a tan raincoat told him to deliver the sugar up there.

Q Did he tell you where this man with the tan raincoat saw him to tell him to deliver the sugar? A He said he went around to his place of business, 244 West 18th Street, and told him to deliver the sugar to 2083 Madison Avenue.

BY THE COURT:

Q Did he give you the name of the man? A He gave me no name.

Q He did not say it was his brother? A No sir.

Q When he said it was a stranger that told him that?
A Yes sir.

Q Then you ordered him to take that sugar back to the station house? A Yes, two loads.

Q And you ordered him to use his truck? A Yes, to take the sugar back. The same morning we called up Mr. Culpepper of the Coca Cola people. Q He came to look at the sugar? A To

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identify it.

Q Were there any initials marked on the barrels?

A Pencil marks and stencil marks on the top of the barrel where you could notice "Coca Cola" written and scratched out.

Q These barrels were returned to the Coca Cola Company?

A Yes.

BY THE COURT:

Q That you could read? A Not plain; faint.

Q It had not been completely obliterated? A No sir; you could read it.

Q And so could Mr. Rost if he looked at it? A Yes.

BY MR. WALLACE:

Q Did you thereafter arrest Matthew Powers? A Yes sir.

Q Was he a white or colored man? A A white man. I arrested him in a furnished room in which he slept with his friend at 310 West 27th Street.

Q Did you have a conversation with Powers about the sugar?

A Yes.

Q What did he say? A

Objected to. Objection sustained.

Q That was after the alleged crime? A Yes.

CROSS-EXAMINATION BY MR. GRIER:

Q Where was the defendant when you placed him under arrest? A At the station house, - Stanley, you mean?

Q He came to the station house? A Yes sir.

Q He was not arrested before he came there? A No sir.

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Q But you asked him what he did about the sugar? A I did.

Q And he did not know anything about the sugar, but in half an hour you persuaded him that he did know about it? A I did not.

Q Well, you said that in half an hour he said that he did know about it? A I did.

Q So there was half an hour between the time that he did not know about it and the time that he did know about it? A Yes.

Q By means of your persuasion? A No sir.

Q Now, Officer, isn't it a fact the defendant came there and told you at once where he took that sugar to? A He did not.

Q He did not tell you where he took it to? A AFTERWARDS.

Q And he took you up to the very place with your brother officer? A Yes.

Q And there you saw Mr. Rost? A Yes sir.

Q The receiver of the sugar? A Yes sir.

Q And you asked him if he had received sugar from this defendant? A If he had delivered it there.

Q And he said he had? A Yes sir.

Q Then I want to know if you or I was mistaken in your direct examination when you said that after Rost said that the defendant had delivered the sugar there, then the defendant says, "Yes, I delivered the sugar"; is that your testimony, Street or did he tell you that in 20th/Station house? A He told us down there.

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Q And he wanted to make sure that you understood it by repeating it to you at Rost's store?

Objected to as calling for the operation of the witness's mind.

THE COURT: Objection sustained.

Q He did tell you again after he got to Rost's store that he delivered the sugar there? A Yes sir.

Q Had he told you that on the way up from 20th Street to the store? A He said on the way up, "I don't know what store it is, but I know the store. There is a drug store on one corner".

Q He took you right to the store? A Yes sir.

MR. GRIER: I think that is all.

REDIRECT EXAMINATION BY MR. WALLACE:

Q Before you saw the defendant did you see his truck that day? A I did.

Q Did you take his truck and bring it around to the station house? A Yes.

Q And thereafter he came around looking for his truck?
A He was away the whole part of the day. He waited about eight hours and then he came around.

Q When was it he came to the station house? A About 7.30 in the evening.

Q When did you take his truck? A In the morning.

Q And you left word at his place of business that the police

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had it, and where it could be found? A Yes, I told his wife that.

BY MR. GRIER:

Q How many hours did you say? A Well, the complaint came in about, --

Q I did not ask you that. From the time you took the truck till he came ar und how many hours was it? A Eight hours.

Q And you went to his place of business and you found his wife in control of the business? A Yes.

Q As she is to-day and has been ever since?

Objected to as immaterial.

Question withdrawn.

MR. GRIER: I think that is all.

CHARLES E. CULPEPPER, recalled:

BY MR. WALLACE:

Q Mr. Culpepper, how many pounds of sugar did these sugar barrels contain, that were taken from your place and returned to you on the 12th of November? A About 350. They range from somewhere around 340 to 365.

Q You have been weighing that sugar for years in your manufacturing business? A Yes.

Q What was the reasonable market price of the sugar at the time you bought it? A I know what that cost us, - 22 1/2¢ a pound. But the market had gone down then to, -- I am afraid

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it would be guesswork without referring to our record, but my recollection would state about 13¢; 12¢ or 13¢.

MR. GRIER: I object to that as not competent proof of value; there was a great fluctuation in sugar then.

THE COURT: The question is as to the market value at that time. I will strike out what he paid for it. He said the market value at that time was around 12¢ or 13¢ and Mr. Rost says about 10¢. I will allow his statement that the market price was around 13¢ in evidence.

Q There were sixteen barrels each containing about 350 pounds? A Yes.

MR. WALLACE: That is all, and the People rest.

MR. GRIER: I move to direct a verdict of acquittal for this defendant. There is no evidence that he has committed any crime. The only evidence is that he was at that place with the truck and that he delivered the sugar to a man who received it and paid him for the delivery of it.

THE COURT: Motion denied.

MR. GRIER: I take an exception, please.

DEFENDANT'S CASE.

LEROY STANLEY, the defendant, of 244 West 18th Street, called as a witness on his own behalf, having been duly sworn, testifies as follows:

DIRECT EXAMINATION BY MR. GRIER:

Q What is your business? A Expressman and trucking and moving.

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Q And where is your place of business? A 229 and 244 West 18th Street.

Q How long have you been in that business? A About five years.

Q And how long in that place of business? A Ever since before I went in business. I have been living there about ten years.

Q You say you had been living there? A Yes sir.

Q And you entered into that business about five years ago? A Yes.

Q And have been living in that place of business ever since? A Yes.

Q Have you an automobile truck? A Yes sir, and a horse and truck. A couple of horses and a truck.

Q How many people do you employ in that business? A I have about twenty regular people that I work.

Q I mean that work for you? A At that time I had three or four fellows working for me.

Q And at that time you had a horse and truck and an automobile truck? A Yes. Automobile truck and two horses and truck.

Q When was the first time you ever saw this man Rost?
A When I got orders to take the stuff up to him.

Q And when was that? A I don't know the date.

Q How long before your arrest had you been taking the sugar up to him? A About a month or about five weeks.

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BY THE COURT:

Q From the Coca Cola Company's place of business? A From my place of business.

Q You did not take the sugar from your place of business, did you? A Yes sir, I took it from my place of business.

Q Did you take this sugar from your place of business? A The last load I did not.

BY MR. GRIER:

Q When was the first time you took any merchandise to this man Rost? A From my place of business?

Q What was it you took there? A Sugar.

Q And how did it come to be at your place of business? A The automobile brought it around there daily, and sometimes he brings two barrels at a time, or four or five and I wait till I get a load and delivered it to this place, Mr. Rost. The man who gave me the job said he was the foreman or the superintendent of the Coca Cola factory, and their trucks in summer time are busy and they could not deliver the stuff uptown, and he brought it to my place and left it on the sidewalk and my man signed for it and told me whatever I charged to collect from the receiver, Mr. Rost.

Q That happened how often? A About fifteen times or twenty times, because they brought two or three barrel lots in an automobile.

Q This man said that he was the superintendent of the

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Coca Cola Company? A Yes.

Q Did you know him by any other name? A No, I did not know him by his personal name.

Q That was your business, to receive express for trucking purposes? A Yes.

Q And that has been your business for five years? A Yes.

Q Did you take fifteen barrels up there on the 12th of November? A Yes sir.

Q And where did you get those fifteen barrels from?

A From my place; they had been there for four or five days. They came in, four or five barrels at a time, to my place.

Q When you took them up there and delivered them did you receive any pay for your work? A Yes, the charges that I charged Mr. Rost paid me.

Q There is no question about that? A No, he paid me.

Q Coming down to the 12th of November, tell us all about that transaction? A The man called me up. He had been giving me the job of taking that sugar. He said he wanted me to be around the Coca Cola factory around half past five or six o'clock that morning, that he wanted me to take a load of sugar to Connecticut and he asked me could I make the trip. I said yes. He said "all right; you be there 5.30 or 6 o'clock at the latest. That morning I got the car from the shop about five o'clock or a quarter after five. I got the car and came, and my wife made a cup of coffee and then I left. I got my

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big coat and eight or nine dollars to have with me in case of trouble. When I came up there he gave me sixteen barrels.

Q Who did? A The man who had been transacting business with me, supposed to be the foreman of the Coca Cola firm, he gave me sixteen barrels, and that was too much for me to deliver to Connecticut. I said I could not take that much, the truck was only one and a half tons. I said I might break down. I said I could take four or five. I said it is too much. He said to deliver it to my place, take it down to my place and he would call me up later in the day, and tell me where to deliver it. When I took it to my place and took off half he called me up. That was at my storehouse in 18th Street.

Q You drove down to 18th Street? A Yes sir.

Q The officer testified that he saw you taking that out of the place; tell us what transpired when the officer came up there? A He asked me what I had on.

Q Had you driven out? A I had driven out by the sidewalk. I was fixing my light. He said where was I taking it and what had I on. I said sugar and I told him 16 barrels and he said, "Are you sure?" I said yes. He said, "Throw down a barrel and let me see what it is" and hit it with his club. He looked at the name and I said "I am taking it to Connecticut; I am supposed to take it to Connecticut but not now."

Q He said, "Are you sure you are going to take it to Connecticut?" I said "I am not sure, unless I take some of the load

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off. I said, "Go inside; there is the foreman". He said, "I don't want to see the foreman". I said, "I am not going to take it to Connecticut; I am going to take it to my place", I told him, "in 18th Street". I said, "The foreman is inside; see him". I got on the truck and he was talking to this man Powers by the lamp post, and I did not hear the conversation. He was not talking to me in the presence of Powers. I did not know Powers. The first time he was talking to Powers he was talking alone. That was the first time I saw Powers; I never had no cause to see Powers. I did not see him before. If I did, I did not know him.

Q Then you took the load around to your place? A Yes, and my wife received a telephone message and told me to take it to Mr. Rost and tell him that he was not to get this load of sugar, but for him to receive it and also to pay my charges, and he paid my charges. At the time I was in the Coca Cola factory there were three or four fellows in there loading me up. I did not load any. I was back to the platform and the sugar was on the platform and someone run the elevator down with the sugar on.

Q Did you see your brother around there? A No, I did not see him at all. This man told me he was the foreman of the Coca Cola Company and I did not know him. I have all kinds of work coming to me.

Q You say your brother worked for the Coca Cola Company?

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A Yes, but he had a lot of men working there at the same time. The men loaded me up. I seen the man who pulled the gate up, because I blew my horn for him. I seen the lights inside. When the man pulled the door up I backed in to get my load.

Q And you delivered it to Rost? A Yes sir.

Q And received your pay for the load? A Yes.

Q And then you came back home? A Yes sir.

Q What did you do after you came home? A I left my automobile in front of the door, went to the stable and got my horse. I had a dump truck, riding ashes to the scows were blocked up.

Q What did you do? -- I went to Long Island with a load of dirt.

Q When the officer was there did he take the name and address of your truck? A No. He took my name; he asked me and I told him. I did not see him taking my name. He asked me what was my name. He seen my name and business place on the truck.

Q Well, you went away; what time did you come back that evening? A Around 6.30, and went to the stable and put my horse up and fed them.

Q When did you find out that your truck had been taken by the police? A When I came home my wife told me about it. It scared me and she told me the trouble. I did not get my supper but I runs around to the station house and sees them.

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She told me to go around there because they wanted to see me. I went around and seen the man that was sitting by the desk. I did not know him.

Q Did you see the officer that testified here? A No; I think he was upstairs.

BY THE COURT:

Q You saw him there that night, did you? A Certainly.

Q Do you not understand English; he asked you if you saw that officer that has testified on the stand? A Yes sir; I saw him upstairs.

BY MR. GRIER:

Q And you had a talk with him about this case? A Yes.

Q What was the talk? A I went upstairs; he asked me what is my name. They asked me what did I want. I said I came to see about my truck that the man was taking sugar uptown with. He said, "What is your name?" I said LeRoy Stanley. He said, "They want to see you upstairs, -- take this man upstairs". I came upstairs and seen these two detectives. They asked me my name. I said LeRoy Stanley. He said, "We have been looking for you". I said, "I have been on Long Island riding dirt". "Where did you take that sugar to; whereabouts in Connecticut?" I said, "I did not take it to Connecticut". I said I was supposed to go there. I said I took it to Madison Avenue. Then they commenced churning me up. They said, "Tell me the number". I said I don't know. I said, "I don't know the number."

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but I know the place, and if you want to go, I will take my truck and go with you and show you".

Q Did you take your truck up there? A Yes sir.

Q The police got in with you and you drove up there?

A Yes.

Q Where did you get your truck? A It was downstairs. They asked me would I go up and I said yes.

Q What did you do when you took the truck and the officer went with you? A We went to Mr. Rost's, to the place where I delivered the sugar and I spoke to him, to Mr. Rost.

Q Did the officers speak to him? A No, they did not but I said to him, "Hello" and he said, "Hello". I said, "How are you". When he got through waiting on the customers he asked the detectives what they want. They said they were waiting for him to get through with the customers. Then they asked him did he receive sugar there from me and he said yes. He answered about the man, - who he bought it from, - and he said he bought it from Henry Stanley, and Mr. Rost told me he never knew my name before that time; he told me he did not know that was my brother. I asked him who was delivering the sugar to him and he said my brother. I never knew before he was selling him the sugar, only through the man who gave me the job.

Q Did Henry Stanley ever engage you to take any sugar from the Coca Cola Company? A No.

BY THE COURT:

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Q It was some unknown man? A Yes sir.

Q A man that talked to you over the phone? A He came to my place of business.

BY MR. GRIER:

Q A white man or a colored man? A A white man, with a raincoat on, a dressed man. He acted as a boss and he said he was the boss of the Coca Cola firm.

Q The officer said that you at first denied knowing anything about the sugar, and after he persuaded you, you told him where you took it to? A No.

Q The officer did not persuade you? A No; my wife told him before I came from Long Island that she knew about the sugar. She came and told me about it when I came home, and I goes around.

MR. GRIER: I think that is all, Mr. Wallace.

CROSS-EXAMINATION BY MR. WALLACE:

Q How long did you work for the Coca Cola Company?

A Inside of a year.

Q When was that; what do you mean by that? A It was not a year.

Q You worked there how long? A It was not so long ago; I guess about ten months.

Q When was that you worked there? A When Wilson got elected, I don't know, that year.

Q The first time or the second time he got elected?

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A The second time.

Q Didn't you work there in 1919? A No sir.

Q Your brother was working there on November 12th, 1920 when this sugar was stolen? A Yes.

Q And you know your brother was working there? A Yes.

Q You knew that? A Yes sir, and I knew others were working there.

Q Just answer my questions. How long had your brother been working there in November, 1912? A I don't know.

Q Was it for years? A For years.

Q For years and years? A Yes sir.

Q For five or six years? A On and off.

Q When did you first meet this man with the raincoat; how long had you known him in November, 1920? A The first time he came down.

Q The first time you saw him, when was that? A About a month before when I got arrested.

Q How many times did you see him in that month? A About ten or twelve times.

Q Did he always have a raincoat? A No. He is the man gave me the job.

Q Sometimes he did not have a raincoat? A The last time he had a raincoat, the last time he came down. I never seen him with a raincoat before.

Q Did you ever speak to your brother about that man with

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the raincoat? A No.

Q You never asked him about the man with the raincoat?

A No.

Q Nor whether he was connected with the Coca Cola Company? A I did not see him often enough.

Q Did you ever ask your brother about the man with the raincoat? A No.

Q Where do you live? A 244 West 18th Street.

Q Where does your brother live? A Madison Avenue; I don't know the number.

Q What business is your brother in? A No business, - preacher, - that is all I know.

BY THE COURT:

Q Was he preaching for the Coca Cola Company? A No sir.

Q What was he doing there? A Working there.

Q As a laborer? A Yes sir.

Q What number on Madison Avenue does he live? A Around 129th Street or 130th Street; I don't know the number.

Q He lived near Rost's grocery store? A Yes.

BY MR. WALLACE:

Q You say you delivered sugar to Mr. Rost how many times?

A Around ten or eleven times.

Q And all in the course of a month or two months or three months? A Inside of a month or five weeks.

Q And all that sugar you delivered to him was sugar you

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got from the man with the raincoat, is that right? A He did not have a raincoat on.

Q The man you call the man with the raincoat? A Yes.

Q All the sugar you ever delivered to Rost you got through that unknown man? A Yes; I don't know his name.

Q You say he used to deliver the sugar to your place of business? A No sir.

Q Who delivered it to your place of business? A The driver of the automobile.

Q What kind of an automobile? A A big red truck.

Q What was the number of it? A I never noticed; it had no name on it.

Q What was the license number? A I never noticed.

Q WHO was the driver? A I don't know the driver's name. Lots of times he came when I was not there.

Q Did you ever see him when he was there, - the driver? A Yes sir.

Q What did he look like? A I don't know how he looked like; just a young fellow driving a truck.

Q Did he have whiskers or a smooth face? A He had a clean face.

Q Did you speak to him? A Certainly.

Q Did he tell you whom he was working for? A The Coca Cola firm.

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Q And you knew that the sugar you got was coming right out of the Coca Cola factory? A From what this man was telling me.

Q And you thought the man that you were getting it from was the superintendent of the Coca Cola Company? A The foreman.

Q And your brother worked there at the time? A Yes sir.

Q And you had worked there? A Yes, years ago.

Q And Powers worked there? A I did not know Powers at all, unless since coming into court.

Q Where did you get the sixteen barrels of sugar that you delivered on November 11th? A I got it at the factory.

Q You delivered him those fifteen barrels on the 11th?
A Sixteen. I got them from the factory.

Q But the day before that you delivered sixteen barrels?
A But that accumulated in my place.

Q The fifteen you delivered on the 11th, you say they had been accumulating in your place of business? A Yes.

Q Where is your place of business? A 229 West 18th St.

Q What kind of a place have you there? A A store.

Q How big? A I guess about 16 feet wide and about 30 feet long.

Q What do you use it for? A Just for moving trunks and different things, and storage.

Q You say this man with the red automobile kept delivering the sugar to you there until you got fifteen barrels? A Yes.

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Q And when you got fifteen barrels you took it to Rost?

A Yes.

Q Who told you to take it to Rost? A The man who gave me the job.

Q What kind of a looking man was he? A Kind of a sandy haired man, a tall man, clean shaven.

Q Did he ever tell you his name? A No sir.

Q What did you call him when you talked to him? A I did not call him anything.

Q Did he wear anything else besides a raincoat? A Yes, brown suit.

Q What did he call you when he talked to you? A He called me Stanley; I was advertised enough for him to know.

Q You say you took those fifteen barrels that had accumulated in your place and delivered them on the 11th? A Yes.

Q Did you have a talk with Rost at the time you delivered the first fifteen barrels on the 11th of November? A No.

Q Did you tell him those were the barrels that your brother had sold him and you were delivering to him? A No sir. I did not know he knew my brother.

Q Did he know you? A No; he did not appear to know me.

Q When you delivered sixteen barrels the next day did you have any talk with Rost? A Yes.

Q What did you tell him? A When I walked in I spoke to him; he said, "You are early this morning". I said, yes, I was

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early because he was not supposed to get the barrels I delivered, but the man told me to deliver them to him this morning.

Q Did you tell Rose who told you to deliver those barrels?

A I did not tell his name. I guess he knew.

Q DID you say it was your brother that got them from some place that was selling out? A No.

Q Did you ever talk this man over with your brother at all? A No.

Q Where is your brother now? A He is in Harlem some place.

Q Did you see him after you were arrested? A No sir, never saw him after I was arrested.

Q You never saw him to this present time? A No.

Q You never saw him or talked to him since you were arrested, to this present time? A Well, since I have been arrested, I seen him since. I talked with him the last time I seen him.

Q When was that? A About three weeks, at church, 125th Street church.

Q What did you say to him about the case? A He asked me when my case was coming up and I told him I did not know when.

Q Did you ever tell him that the grocer said that he was the man that sold him the sugar? A Yes; he told me he was the man that made a bargain for Mr. Rost to buy the sugar, that Rost bought the sugar through him.

Q Your brother told you that, after the thing was all over, that he was the man that sold the sugar? A Yes.

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Q Did he tell you how he came to be selling the sugar?

A Yes; I told him the sugar was claimed to be stolen from the Coca Cola Company and he said he did not know anything about it. I said did he know I was delivering it and he said he did not know that and he told me he sold the sugar.

Q Did he tell you he knew how the sugar was being delivered? A No.

Q Did he tell you how he came to know that Rost was getting any sugar? A No.

Q He told you he sold the sugar? A Afterwards. I did not know my brother ^{was connected} with this until after I was arrested.

Q How did you happen to go into this Coca Cola place at five o'clock in the morning when you got the sixteen barrels of sugar? A It was six o'clock or a quarter to six.

Q How did you get in that morning? A The man pulled the door up.

Q What man? A One of the workmen; three or four fellows were working.

Q Wasn't it Mr. Powers pulled the door open? A I did not see that man that pulled it open. That man that pulled it open was a tall fellow and he had a cap on.

Q He rolled it up? A Yes, with a chain.

Q WASN'T that Powers that did that? A I did not know Powers.

Q Was it Powers that did that? A I did not know Powers.

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Q Do you know whether it was or not? A I do not know.

Q You don't know who opened the door? A No sir.

Q When you got there, the door was closed? A Yes.

Q What did you do? A I blew my horn.

Q And then somebody, you don't know who, opened the door?

A Yes.

Q And you drove in? A Yes, backed in.

Q And they closed the door down after you? A No sir.

Q The police officer says the door closed down after you went in? A After I came out the door closed. The door could not close down if I went in.

Q Did it close after you drove your truck in, yes or no?

A It did not close till after I came out.

Q You were in there and you said four or five men were loading up the truck? A Three or four men.

Q Was Powers there? A I never saw Powers.

Q He was not there loading the truck with you? A I did not see him there.

Q You saw the men who were loading the truck? A Yes.

Q Was one of those men who loaded the truck, Powers?

A No.

Q After you got the sixteen barrels of sugar on, you drove out again? A Yes.

Q And somebody closed the door? A Yes.

Q Do you know who closed the door? A No sir.

Q Then the policeman came over, in uniform? A Yes sir.

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Q The same man who was here? A Yes sir.

Q There is no doubt about that? A No sir.

Q And he had a talk with you? A Yes sir.

Q Did he ask you about the sugar? A He asked me what I had on and I told him.

Q He pounded a barrel of the sugar with a stick?

A Yes sir, he did that.

Q Did you see him have a talk with Powers? A Yes sir.

Q Now that is the time you saw Powers? A When he was talking with him.

Q Where was he then? A Under the lamp post. When the officer talked to me I did not see Powers.

Q Did you see where Powers came from? A No. He told me afterwards where he came from, Powers.

Q Where, did he tell you? A He told me he came out of the stable next door, him and two or three other fellows.

Q Powers told you that in the station house? A Yes sir.

Q Were you looked up in the same cell with Powers while in the station house? A No sir, in a different cell.

Q Where did he talk to you? A When we got arrested, in 20th Street.

Q You were not arrested at the time Powers was? A Yes sir.

Q You were not arrested when Powers was with you? A The same day.

Q Were you arrested at the same time; you told us you

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walked around to the station house? A Yes.

Q But you never got away from the station house, because you went to Madison Avenue? A Powers was there when I walked in. Powers was there when I walked in there.

Q Where was Powers when you walked in? A Sitting in the station house, with the detectives.

Q Then Powers was arrested first, if he was in there when you came in there? A Yes.

MR. WALLACE: I think that is all for this witness.

REDIRECT EXAMINATION BY MR. GRIER:

Q You never knew Powers before that day? A No.

Q You had a talk with him when you were in the station house? A Yes.

Q Were the detectives there? A Yes sir.

Q And he said he did not come out of that Coca Cola place but he came out of the stable? A That is what he told me.

BY THE COURT:

Q You knew he did not come out of the Coca Cola place?

A I did not know where he came from.

BY MR. GRIER:

Q But you did not see him in the Coca Cola place? A No. It was dark in there. There were three or four fellows in there. Only the man that gave me the job, I knew him personally.

Q How many times have you taken your truck and gone to the Coca Cola place and taken sugar? A My first time.

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Q Are you sure about that? A Yes sir.

Q You did not take fifteen barrels out of there the morning before? A No sir.

Q Did your brother have a key to that door? A I don't know about my brother, whether he had a key or not. I did not see him.

Q He was working at the Coca Cola place at that time?

A Yes sir.

Q Well, he did not work for them after that time; he quit work on that day? A He worked that day.

Q Next day did he quit? A He worked that day.

Q Did he quit working there after you were arrested?

A Yes.

Q Did he leave the city after you were arrested? A No, not that I know of; I did not see him after that until after he was arrested, here in New York City.

MR. GREER: I think that is all.

THE COURT: We will take a recess until two o'clock.

Gentlemen of the jury, the Court will excuse you until two o'clock. Meanwhile you must be careful not to discuss this case with any stranger nor talk about it among yourselves. This is not the time for you to talk about it. You must listen to all the evidence on both sides and if the Court submits the case to you then you retire and discuss it but not before that. So please keep an open mind until

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the case is submitted to you, and come back at two o'clock.

R e c e s s .

A f t e r n o o n S e s s i o n .

MR. GRIER: The defendant rests.

MR. WALLACE: The People rest.

MR. GRIER: I renew the motions I made at the close
of the People's case.

Motions denied. Exception.

Mr. Grier and Mr. Wallace both sum up to the jury.

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THE COURT'S CHARGE:

THE COURT: Gentlemen of the Jury, there are three counts in the indictment before us. The first count charges the defendant with the crime of burglary in the third degree, the second count with grand larceny in the first degree, and the third count charges him with criminally receiving stolen property. The evidence in this case does not warrant the submission of that third count to you, because a man cannot be both a thief and a receiver. The case is submitted to you on the basis that he was a burglar and a thief.

The first count charges that on the 12th day of November, 1920 this defendant and others did break into and enter a building in the County of New York, to wit, the premises of the corporation called the Coca Cola Company, with intent to commit a crime therein, to wit, with intent to steal the goods, chattels and personal property of the said corporation contained in the said building. That is a very simple charge. Language could not make it plainer. The Coca Cola Company had a building in New York, a shop; that they had some personal property therein. The evidence in this case says that they had some hundreds of barrels of sugar, and lastly that this defendant with others broke into that building with the intention of stealing that sugar. Under our law those acts

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constitute a crime.

Burglary in the third degree is committed by one who with intent to commit a crime therein breaks and enters a building. The testimony in this case is that the officer saw this automobile van approach that shop of the Coca Cola Company, saw the iron rolling door rolled up, the automobile go into the entrance, and then the door descended and was closed. Now if anyone opened or raised that door for the purpose of letting this defendant or anyone else in to steal, that was the crime of burglary in the third degree.

The word "break" as used in the statute does not mean violently destroying any part of a building, but opening by any means whatever any door leading into a building or room. If you lived in an apartment house and you or any member of your family went out and closed the door leading from the hall to your apartment, anyone who came along and opened that door with a key and entered for the purpose of stealing would be guilty of burglary, just as much as if he took a jimmy and destroyed the door. Anyone that raised a window from a fire escape for the purpose of going into the room to steal would be a burglar. So you understand that breaking means effecting an entrance, making an opening in any way whatever so that someone may steal.

So that if anyone did raise that door which the watchman had securely fastened before he went away, as he told you, at

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three o'clock in the morning, and anyone raised it at five o'clock by any means whatever, whether with a key or otherwise, so that someone might go in, and if they did go in the premises to steal, everyone concerned in the crime, whether he were present or absent, whether he went into the building or not, everyone concerned in the commission of those acts would be a burglar and guilty of burglary in the third degree. Now that is a very simple law.

The other charge is equally simple. It says that at the time and place already referred to, to wit, the 12th day of November, 1920, in the City and County of New York, on 27th Street, this defendant and the others not only committed the crime of burglary but that they did actually steal, that they took and carried away certain property of the Coca Cola Company, set forth in the indictment as 16 barrels of sugar said to be worth twelve hundred and odd dollars, feloniously, and that they were guilty of the crime of grand larceny in the first degree.

Now larceny means stealing. It is a very simple crime. One who with intent to deprive the true owner of his property or of the use and benefit thereof, takes from the possession of the true owner or any other person, personal property steals that property and is guilty of larceny. If, under the circumstances that I gave you as an illustration, someone did

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open the door or raised a window and stepped into your apartment and stole, they would be burglars the minute they put a foot into the apartment, and if they went there and ransacked the apartment, packed up your goods and carried them off they would also be thieves. In other words burglary and larceny are independent crimes. The burglary is committed as soon as the person enters. As soon as that automobile drove into that factory, if you believe that it did drive in, that was a burglary, and then if they went there and took fifteen barrels of sugar, or any amount of sugar, even only an ounce of sugar which was the property of the Coca Cola Company with the intent of depriving the company of it permanently, why that is larceny, and the degree of the larceny depends on the value of the property stolen. If a barrel of sugar was taken and put on that truck, that was enough, even if it was not carried to Harlem; that was a taking from the place where the company left it. Now, if the value of the property stolen was of the value of \$500 or over it is grand larceny in the first degree. If the value of the property was more than \$50 but did not exceed \$500 the crime is grand larceny in the second degree. If the value of the property stolen was \$50 or less the crime is petty larceny. So there are three degrees of larceny, and therefore value is an essential element in determining the degree or grade of the crime. The value must be proved the same as any other element of the crime.

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To prove that, Mr. Rost, the man who received this property, testified that he paid ten cents a pound for it, the market price. He says there were sixteen barrels and that he had agreed to pay Henry Stanley, the brother of this defendant, ten cents a pound for it, the market value at that time. Mr. Culpepper says that the market value was thirteen cents. I struck out his statement that it cost the company twenty-two and a half cents a pound because, as counsel claimed, the price of sugar was fluctuating. In other words, that the quotations for market value of sugar at that time were changing from day to day. All the evidence we have on that point is the statement of the witness Rose that he bought the property from Henry Stanley, the brother of this defendant, and agreed to pay ten cents a pound for it, and Mr. Culpepper, the manager whose business it is to buy sugar and keep himself posted on the quotations, ^{who} said that sugar on this day was worth thirteen cents a pound. Assuming it was worth ten cents a pound, if there were 350 pounds in a barrel, that would make \$35 a barrel, and if there were 16 barrels that I believe would amount to some five hundred and sixty and odd dollars. If there were only 340 pounds to the barrel it would be a dollar a barrel less at ten cents a pound, and if there were 360 pounds to the barrel it would be a dollar more per barrel. So that if there were, as these men have stated, from 340 to 360 pounds of sugar in these barrels worth ten cents a pound,

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it is submitted to you that a little problem in arithmetic will show you that the sugar had a market value of more than \$500. If so, the crime of stealing it would be grand larceny in the first degree.

You must understand that the Court does not say that there was any stealing or any larceny or any burglary, or that in fact anyone did anything wrong. That is not the duty of the Court. The Court's duty is merely to explain the law to you and to explain the charge, and I have explained it. The charges are as plain as day, -- that this man is a burglar and a thief, that he is guilty of burglary in the third degree and grand larceny in the first degree, and that he did the act set forth in this complaint.

You must remember that the indictment is only a complaint. It is a charge. The defendant must not be deemed guilty because he is charged with a crime. On the contrary, the presumption is that he is innocent and that he did nothing. The burden is on the People to bring forth evidence to show you that he is guilty and not innocent. The law says that if they bring here evidence enough to satisfy you as reasonable and honest men of his guilt beyond a reasonable doubt, then it is your duty to find him guilty and otherwise to acquit him. The law is stated in the statute that if the evidence is not sufficient to satisfy the jury of the guilt of the defendant beyond a reasonable doubt he must be acquitted. A reasonable

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doubt does not mean every possible doubt. It does not mean any doubt that a man may conjure up for the purpose of pro-texting a defendant or showing sympathy for a defendant or prejudice against a complainant. It is not a doubt that is based on any whim or caprice, but it is an honest doubt, - the doubt of an honest man on the jury when after weighing all the evidence calmly and quietly he finds himself unable to say that he is fully convinced by the evidence that the crime has been committed by the defendant. All the law asks you to do is to be honest men. The law places a great responsibility on you. The Court merely decides the legal questions that arise. There has been practically nothing for the Court to do here. This is a very simple case from a legal standpoint. The Court has told you the definitions of the crime and has explained the charge to you, and there the Court's duty ends. The Court has no right to find any facts, nor to express any opinion, and the Court has not done so. That is your sole prerogative.

You are the sole, supreme and exclusive judges of the facts. There is only one way of proving facts and that is by the production of witnesses. You have heard the witnesses. You saw the watchman on the stand who said he locked up this building. It is for you to say whether there is anything strange or unusual about a watchman locking up a building at night and going home. You heard Mr. Culpepper testify. You

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heard Mr. Rost testify that he got the 16 barrels of sugar and that this defendant brought them to him. The defendant says the same thing, and he further says that Rost paid him ten dollars for carting the sugar. The witness Rost goes further and says that he had made an arrangement with this defendant's brother to buy the sugar and that this defendant had brought him sugar before, pursuant to the same arrangement. Rost says that he was an honest man and that he thought this man Henry Stanley was buying this from someone who was selling out. Whether you believe that or not, if he is corroborated by the defendant on all that concerns this case, why, that is all the People submit to you as established by him.

You heard the testimony of the officer. The officer says that as the sugar was being taken from the premises he stopped the automobile and talked with the defendant and another man named Powers. THE officer further says that Powers told him it was all right, that he waited there and that he was taking it to another plant in Westchester. The evidence is that he did not go to Westchester, that it went to Rost on Madison Avenue and 131st Street, near where Henry Standley lived. THE defendant's brother has not been called here as a witness to contradict Mr. Rost and ~~that~~ is a circumstance which you may

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consider in arriving at your conclusion. The failure of any person on either side to produce a witness who is solely within their custody, jurisdiction or control is a circumstance which you may consider in determining the credibility of the witnesses that have been called as to whether or not they would have contradicted or corroborated those witnesses.

That is all there is to the case. The law asks you to be neutral men. You have no interest in the case one way or the other. The Court has no interest in your verdict. Your only interest is to do your duty as citizens, and it is the most important duty that you are ever called upon to do in time of peace. In the time of war our citizens have to die to defend law and order and to save the country. In time of peace you have to give up your ordinary occupations for a month to come here and serve as jurors to maintain law and order and to do justice, and the doing of justice consists in rendering honest verdicts. With the law neither you or the Court is responsible for. The Court simply tells you the law as the legislature enacts it. You find the facts from the witnesses. Consider them calmly, coolly and neutrally, without leaning to one side or the other. Are you satisfied that a crime was committed here; are you satisfied that the defendant

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know he was committing a crime? If so, find him guilty. If you believe the evidence, that that door was opened and that this automobile, owned and driven by the defendant, went in there and took out the property, then he is guilty of burglary in the third degree. And if he did take property from that place with the intention of depriving the Coca Cola Company of it permanently and with the intention of giving it to Rost or anyone else, then he is guilty of grand larceny in the first degree as well, provided that you find the property was of the value of more than \$500. If you have a reasonable doubt on any of the elements of the crime you must acquit him. However, if your doubt is merely as to the value of the property he would still be guilty of a crime. If you are firmly convinced beyond a reasonable doubt that he committed the crime of burglary then you will find him guilty of burglary in the third degree. If you are firmly convinced beyond a reasonable doubt that he committed larceny, but you have a reasonable doubt as to the value of the property, -- if you are firmly convinced that the property was of the value of more than \$50 but did not exceed \$500 in value, then the crime of stealing it would be grand larceny in the second degree. If it were only \$50 worth and the sugar was stolen, then it would be petty larceny. So you must decide from this evidence what witnesses the

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told the truth and what witnesses told you stories that are incredible. You are the sole judges of the credibility of the witnesses. You may believe all the statements of a witness or reject all, or you may believe part and reject part. A witness may tell some of the truth and then the rest of his story may be false. That is for you to determine. Reject all that you think is false and weigh all that you think is true, and then if you are firmly convinced beyond a reasonable doubt that a crime was committed, the crime of burglary in the third degree, and that this defendant was concerned in it, it is your duty to say so by a verdict of guilty in the third degree. And if you find that the burglars were also thieves, that they stole the property after they got into the place and carried it off, then all the persons concerned in it are also guilty of larceny, and if the defendant was concerned in it or if his actions were not innocent in your opinion, if you are satisfied of that beyond a reasonable doubt - that he was not the dupe of any thieves, but that he was a willing thief himself, helping along the work of stealing from this company, why then find him guilty of grand larceny in the first degree or grand larceny in the second degree or petty larceny, the degree of the crime depending, as I said before, on what you find to be the value of the property taken.

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You will render, therefore, a verdict, either that this defendant is guilty in your opinion of burglary in the third degree and grand larceny in one of its degrees, either first, second or petty larceny, or not guilty.

Have you any requests or exceptions, Mr. Greer?

MR. GREER: I respectfully except to that part of your Honor's charge in which you said that if that door was opened and property was taken out of it, everyone concerned with those acts is guilty. I except to that part of the charge and say that this defendant or others may have been concerned in those acts and be innocent.

THE COURT: I used "concerned" in a legal sense. It was not my intention to deceive the jury. The word "concerned" legally means cooperating with the burglars or criminals with full knowledge or criminal intent. If anyone made an opening there and this defendant knew that that opening was made and the door was raised for the purpose of getting in there to steal, - that he was cooperating with the burglars, if you like that better, then he was concerned in the crime in the legal sense and he may be punished.

Suppose, for example, three men conspire to rob your flat at night and only one of them goes in after opening the door, they are all guilty of burglary. The evidence here is that this defendant went in after the door had been

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raised. That is what the police officer testified to. If he went in after the opening was made to steal, then he is a burglar. But you must be satisfied of those facts from the evidence beyond a reasonable doubt. I used "concerned" in the legal sense and not in the meaning you attach to it.

MR. GRIER: And if he went in for the purpose of carrying out his duty as an expressman, believing he was honestly doing that, then he is not guilty?

THE COURT: Then he is not guilty.

MR. GRIER: I respectfully except to that part of your Honor's charge ~~the~~ ^{ch} the presumption to be drawn from not calling the defendant's brother.

THE COURT: I stated the law. I said that the failure of either side to produce a witness who was solely within their control was a circumstance that the jury might take into account on the question of whether or not he would contradict or corroborate the witness.

MR. GRIER: It was brought out before the jury that his brother is under indictment and practically a co-defendant.

THE COURT: There has been no evidence of that. He said he saw him three weeks ago in Harlem, that he is a preacher or something, and no longer in business. Powers, the other co-defendant, is in the Tombs.

MR. GRIER: But Henry Stanley was on the calendar this morning.

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MR. GRIER: May I reserve any motions until the day of sentence?

THE COURT: Yes, all your rights are reserved until the day of sentence, when you may make any motions you may desire.

The defendant remanded to December 19th for sentence.

L. LUTZ,
Official Stenographer.

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