

Q "ould you recall it if I attempted to refresh your recollection?

THE COURT: It was not the car in question, so we are not concerned about it.

MR. McGRATH: It is a matter of showing why the man was there.

THE COURT: You have heard my ruling; I will exclude that. There is a way of proving that.

MR. McGRATH: I take an exception, please.

Q Just at what time did you say that? A Just as he was brought in.

Q When he said he sold a Cadillac car to Vogelsang? A I think that was said some time later.

Q But it was said over there? A Yes sir.

Q Now, coming to the place at 146th Street; how many people went up there to these garages? A At the time I went up?

Q Yes. A Shields, the defendant, Begley and myself.

Q And you went up there looking for No. 39 and 40? A Yes.

Q Did you go directly to No. 39 and 40? A We went to 39 and 40 first on the west side of Lenox Avenue.

Q Did you try those two? A Yes sir, and the keys would not fit.

Q Then you went over to the east side? A No, Begley then went back to the station house and received information as to exactly where the cars where, at least where the garages were.

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Q Didn't he know before he started? A They said tin garages at 146th Street and Lenox Avenue. Well, there is a chain of garages on both sides of the street.

Q What were the numbers given? A 39 and 40.

Q Who gave that information? A Schmitt, I believe.

Q And those were the only two that you tried, outside of the two on the other side of the street? A 39 and 40 on the other side.

Q Did the defendant say he owned either of those garages?

A He did not.

Q Did he tell you who owned them? A Yes, he said a friend of his.

Q You did not speak to the watchman or agent there at all, did you? A No; it was late.

Q Did you go back there at any time to speak to him?

A No, I did not.

Q What is the name of the man that Miller said owned the garages?

Objected to as immaterial. Objection sustained.

Q You did not go to any other garage, did you? A Why yes, we went up to a garage at 158th Street, in old Audubon Park.

Q You found that garage all right? A We found the garage.

Objected to. Objection sustained.

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A N D R E W S C H M I T T , recalled as a witness on behalf of the People, testified as follows:

BY MR. PECORA:

Q Schmitt, will you tell us precisely where the two garages were that you described yesterday in your testimony? as being in the vicinity of 146th street and Lenox Avenue? A Why, they were, I think on 146th street and Lenox avenue, between Lenox avenue --

Q On what side of Lenox avenue? A Between Lenox avenue, and the River there.

Q That is east of Lenox avenue on 146th street? A Yes.

Q Did they bear any numbers? A Yes, sir.

Q What were they? A I would not say for sure. I think they were 39 and 40.

Q Were those the two garages in which you worked for the defendant at various times during September and October last?

A Yes, sir.

MR. PECORA: I think that is all.

BY MR. McGRATH:

Q Did you ever see anybody else with keys to those garages?

A Yes, sir.

Q Who? A Bennie Miller.

Q Did you ever have a key? A Their keys, yes.

Q You mean Bennie Miller's keys? A Meyer Miller's keys.

Q You had his key? A Yes, sir.

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Q Did you ever work on any Cadillac car?

Objected to as immaterial. Objection sustained.

Exception taken.

Q Did you ever work on any Chevrolet?

Objected to. Objection sustained. Exception.

THE COURT: He said he worked on all sorts of cars there - is that your testimony?

THE WITNESS: I said I worked on Fords only.

Q Did you say that you knew Walter Kabel in this case?

A I said I met him on the day of the arrest in Vogelsang's office.

BY THE COURT:

Q Do you know Walter Kabel? A I know him from getting arrested out there with me. That is the first time I met him.

Q In Brooklyn, that was the day, and the first time you met him? A Yes.

BY MR. McGRATH: That is all.

MR. PECORA: That is all. The People rest.

MR. McGRATH: Now, if your Honor please, I ask the Court to advise the jury to acquit upon the first count of the indictment for the following reasons. It appears here that, --

THE COURT: Mr. Pecora, I think the larceny charge should be taken from the consideration of the jury.

MR. PECORA: I think so. I think there is no di-

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rect evidence of the larceny.

THE COURT: I will submit it on the question of criminally receiving stolen property.

MR. McGRATH: Now may I address myself to the criminally receiving count, and ask your Honor to advise the jury to acquit. It appears here by the testimony of the accomplice ---

THE COURT: Well, I do not rule that he is an accomplice. I will submit that as a question of fact for the jury.

MR. McGRATH: The law says, anyone who might be indicted for the same offense, and he has been indicted for the same offense, and he has pleaded guilty to the same offense, Schmitt. Now I ask your Honor to advise the jury to acquit on the ground there is no corroboration of that charge, such as the law requires.

THE COURT: Motion denied.

MR. McGRATH: Exception.

(Mr. McGrath opened the case to the jury on behalf of the defendant)

I S I D O R E K R A M E R of 433 East 51st Street, a witness
called and sworn on behalf of the defendant, testified as
follows:

DIRECT EXAMINATION BY MR. McGRATH:

Q Mr. Kramer, what business are you engaged in? A I am a
tailor.

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Q And the defendant at the bar was married to your daughter? A Yes, sir.

Q Do you recall the 20th day of October 1921? A Yes, sir.

Q That was the day before your son-in-law's arrest? A Yes, sir.

Q Now what time did you see Meyer Miller on that evening of October 20th? A Thursday night.

Q At what time, Mr. Kramer? A I seen him by the supper by me, and I see him all evening till ten o'clock or half past ten.

Q And who did he leave your house with? A With his wife, with my daughter.

Q And he then went home? A Yes, sir.

MR. PECORA: Well, he does not know where he went.

Q Where did he say he was going?

Objected to. Objection sustained.

Q Now, did you telephone to your daughter at my request this morning? A Yes.

Q And is she here yet? A No, sir. She comes every minute.

MR. McGRATH: That is all. You may cross examine.

MR. PECORA: Well, I have no cross examination.

MEYER MILLER, the defendant, of 112 Haven Avenue, called and sworn as a witness in his own behalf, testified as follows:

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DIRECT EXAMINATION BY MR. McGRATH:

Q How old are you, Miller? A Twenty-four.

Q Just speak up so that this last juror can hear you?
What has been your business for the past three or four years?

A For the past three years I have been dealing in used cars.

Q And prior to that time what did you do? A Why, I
was in the navy for about a year.

Q During the World War? A Yes, sir.

Q And prior to that time what did you do? A I was working in a butcher shop in Ledgewood, New Jersey.

Q Have you had a place of business in the City of New York as a used car dealer? A Yes, sir.

Q Where? A 2124 Broadway, at 74th street.

Q You had a place at 74th street and Broadway? A Yes.

Q Under what name did you do business there? A Ansonia Auto Sales Company.

Q What rent did you pay there?

Objected to as immaterial. Objection sustained.

MR. MC GRATH: I would like to show the amount of business he done.

THE COURT: I have sustained the objection to the question. The question is, did he have a stolen car in his possession with guilty knowledge that it was stolen when he received it.

MR. McGRATH: Exception.

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Q How large a store did you have there?

Objected to as immaterial. Objection sustained.
Exception.

Q Are you acquainted with most of the used car dealers in New York?

Objected to. Objection overruled.

A Yes, sir.

Q In the course of your business do you have occasion to go from one used car place to the other? A I do.

Q And do you know the defendant Vogelsang? A Yes, sir, I do.

Q How long have you known him? A For about a year.

Q During that time have you done business with him? A Yes, sir.

Q What business have you done with him? A Well, I sold him several cars.

BY THE COURT:

Q As many as twenty-five or thirty? A No, sir.

BY MR. McGRATH:

Q How many cars in all would you say that you have sold him. Can you recall offhand, one or two that you can recall?

MR. PECORA: Let him answer the question.

BY THE COURT:

Q Prior to the 31st of October how many did you sell?

A I don't understand that, your Honor.

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Q Before you were arrested, how many cars had you sold Vogelsang in your whole life? A About twenty cars.

BY MR. McGRATH:

Q Did you, on or about the 30th day of October, sell him a Cadillac car? A I did.

Q And what was the number of that Cadillac car? A 57, EE, 565 was the motor number.

Q And on the 31st day of October, 1931, was that car in Vogelsang's place? A Yes, sir.

Q And on what date did you sell that to Vogelsang?

A Why, about a week before that.

Q How much money did he give you? A He paid me a deposit of \$330.

Q Did he thereafter give you any more money? A No, sir.

Q Did you take a mortgage, or was a mortgage to be taken on it? A Yes.

Q Who took the mortgage on it? A Louis Halley.

Q Was that mortgage to be insured? A I had already had the car insured.

Q And what was necessary to be done?

MR. PECORA: I object to that.

THE COURT: Objection sustained. I will exclude that line of testimony. I have allowed you to go sufficiently far. We do not care what he did with the Cadillac car. We are simply dealing with the Ford car mentioned

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in the indictment.

MR. McGRATH: May I address your Honor, so as to make my motions?

THE COURT: Yes.

MR. McGRATH: I think it is important as to whether this man was over on that day, doing business over in Brooklyn, and if he was over on a legitimate mission, why then the fact he was there in company of the others has no bearing whatsoever on the case.

THE COURT:

* But you have gone fully into that

MR. McGRATH: I except to your Honor's refusal.

THE COURT: You may put your last question.

Q Well, why were you over there on that day? A To transfer the insurance and receive payment on the Cadillac touring car that I sold Vogelsang.

Q Did you tell him over there that day that you had -- that is, did you tell Officers Begley and Shields that you had?

A Shields was not there at the time of the arrest.

Q Answer the question. Did you tell Officers Begley and Shields that that was your purpose in being over there with regard to that Cadillac car that you had sold? A I told it to Officers Begley and Horan.

Q Did you deny knowing Vogelsang? A No, sir, I did not.

Q Did you deny knowing Schmitt? A I did not.

Q Did you know Schmitt? A I did.

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Q How long had you known Schmitt? A Probably a year or a little longer.

Q And how did you come to know him? A Why, he was around to my showroom on Broadway several times looking to buy a car.

Q Did you ever sell him a car around there? A No, sir.

Q But he was around to your showroom at various times?

A Yes.

Q Did you see him in the course of your business from time to time? A Yes, sir.

Q Did he ever work for you? A No, sir.

Q Was he a friend of your Brother's?

Objected to. Objection sustained.

MR. McGRATH: I except, your Honor, because according to his testimony there were two that were there on that morning.

Q Did you ever see him in the company of your brother?

Objected to as immaterial. Objection sustained.

Exception.

Q Do you know what their relations were from your own knowledge. Are you able to state how close their friendship was?

Objected to as immaterial. Objection sustained.

Exception.

Q Were you ever in business with your brother, Bennie

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Miller? A No, sir.

Q Now, Schmitt says that at various times he cashed checks for you. Did he ever cash checks for you? A Not that I know of.

MR. PECORA: I think counsel is mistaken. He said this witness cashed checks for Schmitt.

THE COURT: That was my understanding. Next question.

Q Now did Schmitt on the 21st day of October, at your request, do any work for you on any call? A No, sir.

Q Did you make any arrangement to meet Schmitt on the 21st day of October? A I did not.

Q Did you see Schmitt before you saw him at Vogelsang's on that day? A No, sir.

Q Did you see your brother, Bennie Miller, on that day, October 21st? A No, sir.

Q On the 21st day of October, did you say to Officer Begley at any time that you did not know Vogelsang and Schmitt? A No, sir.

Q Now, after your arrest, did you have any conversation with Schmitt? A The following day I did.

Q Where? A I believe it was in the Harlem prison.

Q What did he say to you? Tell the truth, just what he said to you? A Why, he asked me how things looked to me, and I told him that I did not worry about anything as I didn't know anything about the matter.

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Q What did he say about himself? A He received a visit from his father-in-law, Saturday night.

Q What did he say about himself? Did he say he had received a visit? A Yes, sir.

Q Go ahead. A And he told me that his father-in-law was taking care of the case for him.

Q Did he say anything further at that time? A No, sir, he did not.

Q Now, you had in your possession some keys, did you not? A I did.

Q I show you these keys which are marked People's Exhibit 5 in evidence, and ask you to look at them and tell me what those keys are? You had in your possession two keys to the garage in 146th street? A Yes, sir, I did.

THE COURT: There were two portable garages, and one key for each garage I understood.

Q Tell the jury where you got those keys to the garages? A A friend of mine, an automobile broker named Harry Rosen, -- the last place I knew him to live at was 118 West 72nd street. He had sold several cars at my store, bringing customers around, selling cars and receiving his commission. And after I closed my business up on Broadway I had bought this Cadillac touring car, also a Chevrolet sedan, and I had no place to store them at the time when I met this Rosen, and I asked him if he had any place where I could store a couple of cars

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for a few days. He said, "Yes, I have two garages uptown, if you want to drive them up there." I told him I would be willing to do that. He gave me the keys to the garages and I stored the cars in there for about a week. During that week I sold the Cadillac touring car to Walter Vogelsang and the Chevrolet sedan I sold to Charles Arnold, of the New Amsterdam Garage, and I had no further use for the garages and could not locate Rosen ever since that time, and that is how the keys were found in my possession.

Q Has Walter Vogelsang begun any action against you on account of any cars?

Objected to. Objection sustained.

BY THE COURT:

Q What did you mean when you closed your business? I understood you to say you are now in business on Broadway at 74th street? A I moved from there.

Q I did not hear you say about your moving. I thought you said your present address was Broadway and 74th street. A I said I was there.

Q How long is it since you were there? A I moved there in August.

Q You moved there, or moved from there? A I moved from there in August.

BY MR. McGRATH:

Q Where did you move to? A HyGrade Auto Exchange, 51st

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street and Seventh avenue.

Q You make that your headquarters, buying and selling cars? A Yes.

BY THE COURT:

Q Do you own the Hygrade Auto Exchange? A No, in this place I have floor space and desk room.

BY MR. MCGRATH:

Q Do you use that as your headquarters? A Yes, sir.

Q Will you tell the jury just how the second hand business is conducted in automobiles?

Objected to. Objection sustained.

MR. MCGRATH: That is very important.

THE COURT: You have your exception.

Q Do you recall Schmitt's answer to the detectives over at the Arlington Sales Company? Do you recall the statements made by Schmitt over at the Arlington Sales Room, to the detectives? A You mean at the time of the arrest?

Q Yes. What did he say as to working for you? A Why, he did not mention the fact at that time at all.

Q He never mentioned what fact, that he worked for you, until after, in the station house, after he got to 126th street? A I do not believe he mentioned that fact to me until after about three days.

Q Not until after he said he had seen his father-in-law? A Yes, sir.

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Q That is the first time you heard that he said he worked for you? A Yes, sir.

Q Did you tell the detectives that you had had another garage, a portable garage? A Yes, sir, I did.

Q And where was it? A At 158th street, west of Broadway.

Q Did you tell him you had it up to about a day of your arrest? A About a week before the arrest.

Q You had had that up to a week before? A Yes.

Q Did you tell them to go up there? A Yes, sir.

Q You told them where it was? A Yes, sir.

Q And they investigated it? A Yes, sir.

MR. PECORA: I object to what the officers did, unless this witness knows personally.

THE COURT: The officers said they went up there, but it has no bearing.

MR. McGRATH: I assume Mr. Pecora will dilate on the demeanor of the defendant at the time.

THE COURT: The demeanor of the defendant is a proper consideration, but this has nothing to do with that.

Q Did you have a key in your pocket to that? A No, sir.

Q You heard Officer Begley testify that at the station house you denied that you had any garages. Did you deny that you had any? (Question withdrawn)

Q Was the question asked you, whether you owned any?

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A Yes, sir.

Q And you answered what? A No, sir.

Q When they asked you what the keys were for, what did you tell them? A I told them that some of them were for my house, from the Cadillac car and from a garage.

Q And they then asked you where the garage was? A No, sir, they did not.

Q Then what happened? A They took me in the Ford sedan. Officers Begley, and Shields and Horan and myself got into the Ford sedan, and we rode to 146th street and Lenox avenue. They did not ask me anything, but they went west of Lenox avenue to a yard of portable garages, and they had already had my keys and they went over to 39 and 40, and tried the locks there and they did not open. From there we went east of Lenox avenue to 39 and 40, and the keys had opened up those garages.

Q Do you know whether anyone else had any keys other than yourself for those garages?

Objected to. Objection sustained.

Q Did you ever see any keys similar to it? A Well, I could not say.

Q How many days before October 21st were you last in that garage at 146th street?

MR. PECORA: You mean east of Lenox avenue?

MR. McGRATH: Yes.

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A About six or eight days before.

Q Did you at any time exercise the exclusive control of that garage?

Objected to as calling for a conclusion. Objection sustained.

THE COURT P He said he got this man Rosen's permission to use them when he gave up the business.

BY THE COURT:

Q How long before you gave up the business did you get permission to store your Cadillac? A After that I gave up the business.

Q How long after you gave up the business? A Around September 1st, or so.

Q Sobetween September 1st and October 20th, you had permission to use those garages? A Yes, sir.

BY MR. McGRATH:

Q And you were not in there on the 20th or 21st day of October at all? A No, sir.

Q Where did you spend the evening of October 20th? A I was at my father-in-law's house for supper.

Q How long did you remain there? A From about between six and six-thirty to about a little after ten.

Q And at ten o'clock where did you go? A I went home.

Q Where were you living then? A At 112 Haven Avenue.

Q What time did you arrive home? A A few minutes after

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eleven.

Q What did you do then? A Well, I put my car in the garage first at 176th street and Broadway and walked back. It was about eleven-thirty before I got to the house then, and I went to bed.

Q Did you receive any telephone communications of any kind on that night of October 20th? A We were not allowed to receive calls after ten o'clock.

Q Yes or no. A No, sir.

Q Did you remain in that house all that evening? A Yes.

Q Up till what time? A Until about nine-thirty the following morning.

Q On that morning did you receive any calls? A No, sir.

Q What did you do after that? A I went to the Arrowhead Garage to get my car out.

Q What time did you go there? A About quarter of ten.

Q And do they make any record of when a car goes in or when a car goes out? A No, sir.

Q What did you do then? A Drove back to the house to find out if there was any phone messages for me. There were not any there and I drove down to 51st street and 7th avenue, and I had two tires changed on my Cadillac car, and I remained there until about one o'clock.

Q Then what did you do? A From there I drove out to Brooklyn, to 8 Arlington avenue.

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Q And when you got there, what happened? A I stopped in front of a place. I started to walk into Vogelsang's office when I saw some people in there and I did not want to interrupt and I kind of waited outside when Officer Begley came out and called me in.

Q Did you then go in? A Yes, sir.

Q What questions were asked you, and what was the entire conversation you had there? A They asked me what I was doing out here. I said I had sold Vogelsang a car and I came out to transfer the insurance on the car.

Q Did you at any time state that you did not know Schmitt or Vogelsang over there? A No, sir, I did not.

Q Did you on the 20th or 21st of October, sell a Ford sedan to Vogelsang? A No, sir.

Q Did you direct Schmitt at any time to do any work on a Ford sedan for you? A No, sir.

Q Have you ever been convicted of any crime? A No, sir.

Q You have a wife, and you have a baby how old?

MR. PECORE: Objected to as immaterial.

THE COURT: That does not make any difference, how old it is, but he may answer that.

MR. McGRATH: A man who has a family has greater responsibilities generally.

A Six weeks old.

THE COURT: That does not prove that such a person

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may not commit a crime. That has no bearing on the case whatever. It is merely done sometimes to influence soft-hearted jurors.

MR. McGRATH: But that is not my intention, your Honor, to influence the jury in any way.

THE COURT: Well, the jury will disregard it altogether. I withdraw that. I can see no other motive for bringing it out.

MR. McGRATH: To which I except. That is all.

CROSS EXAMINATION BY MR. PECORA:

Q You have been in the second-hand automobile business for three years? A Yes, sir.

Q Is that the only time you ever engaged in that business? A Yes, sir.

Q Had you done any business for yourself during that time? A Yes.

Q Did anybody finance your business? A Yes.

Q Who? A Charles Arnold and Louis Halley.

Q Who are they? A Automobile financiers.

Q Where is their place of business? A Charles Arnold was at 5 Columbus Circle at the time I was in business.

Q How did you come to go into that business originally?

Objected to. Objection overruled.

THE COURT: He may inquire on cross examination into all of his conduct.

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Q You were a butcher and you served a year in the navy. How did you come to go into the second-hand automobile business? then? A I had nothing else to do.

Q You did not understand that business, did you, at that time? A Yes, I did.

Q Did you learn it in the butcher shop where you worked? A No, sir.

Q Where did you learn it? A In the navy.

Q You learned how to buy second hand cars in the navy? A No, sir.

Q But that was the business you went into? A I learned about the mechanical part.

Q That was the business you went into? A Yes, sir.

Q You did not go into the mechanical part, but you went into the buying and selling part of it? A Yes.

Q How much capital did you have when you embarked in that business? A About \$3500.

Q Do you keep a bank book now? A Yes.

Q Did you keep a bank book during the three years that you were in the secondhand automobile business? A Yes, sir.

Q In what name? A Under my own name.

Q When did you first meet Walter Vogelsang? A About a year ago.

Q Do you know a brother-in-law of his? A Yes, sir.

Q What is his name? A Lavenowsky.

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Q Weren't Vogelsang and Lavenowsky in business together when you first met them? A Yes.

Q What was their business? A Dealers in second hand cars.

Q And you did business with his brother-in-law, Lavenowsky? A Yes.

Q Before you did business with Vogelsang? A Yes.

Q You sold him used cars? A Yes, sir.

Q Principally Fords? A Yes, sir.

Q Almost entirely Ford cars? A No, sir.

Q How many Fords and how many cars of other makes? A Why, I have sold him several other makes.

Q How many Fords and how many cars of other makes? A I could not recall.

Q Very many? A Quite a number.

Q Well, how many? A I have not any idea.

Q How many cars of all kinds have you sold to Vogelsang and his brother-in-law, Lavenowsky in the last year? A I have not any idea.

Q A hundred cars? A No, sir.

Q Or was it more than a hundred cars? A No, sir.

Q Was it less than a hundred cars? A Yes, sir.

Q How many all told? A About forty.

Q That means sixty you have sold him? A I have sold him about forty that I know of.

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Q Do you keep books? A Yes, sir.

Q Wouldn't your books show how many cars you sold him?

A Yes, sir.

Q Where are the books now? A I got them home.

Q Will you produce them here this afternoon? A Yes, sir.

Q Who keeps those books? A I have been keeping them myself.

Q What has been the range of business in dollars and cents that you have done in the buying and selling of used automobiles in the past year? A About thirty-five or forty thousand dollars.

Q Only a turnover of thirty-five or forty thousand dollars?

A Yes, sir.

Q How many cars all told have you sold to all parties in the last year?

MR. McGRATH: Your Honor, this cross examination is going beyond the limit. You kept me from going into that line. You prevented me from telling how much rent he even paid.

THE COURT: This is cross examination.

MR. McGRATH: I take an exception.

A About fifty or sixty cars.

Q Then Vogelsang and his brother-in-law had been your principal customers? Not necessarily, no, sir.

Q Well, you say you sold them forty, and all told you sold to all parties fifty or sixty, isn't that correct? A

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Yes, sir.

Q Vogelsang and his brother-in-law, had they been your principal customers in the last year? A Not necessarily.

Q Is it or is it not a fact? A It is not a fact.

Q Then you sold more than sixty cars in the past year, haven't you? A I couldnot just say offhanded the exact amount.

Q Whom do you employ in your business to help you, or how many have you employed inthe past year? A The only one I had in my employment was a colored porter at the store.

Q He just did manual work? A Yes, sir.

Q Did you attend to all the details of the business?
A No, sir, I had another employe, Mr. Kane his name is.

Q What workdid he do for you? A Automobile salesman.

Q Where is he? A I don't know where he is now.

Q When is the last time you saw him? A At my place?

Q When? A The latterpart of August.

Q And since then you have not had anybody working for you helping you to sell cars? A No, sir.

Q Did Vogelsang pay you in cash or by check for the cars he bought from you during thepast year? A Cash and checks.

Q In how many transactions did he pay you by check? A I could not say.

Q Now tell us all you recall about it. A Probably a

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dozen times or more.

Q Are you sure of that? A I am not positive of it.

Q Would you swear it was as many as a dozen times? A
No, sir.

Q Would you swear it was more than twice? A I would
not swear to any of it because I can't remember.

Q How many cars had you sold Vogelsang during the past
year that were not Ford cars, - either Vogelsang or his part-
ner? A About six or eight.

Q All the rest were Ford cars? A Yes, sir.

Q Principally sedan models? A No, sir.

Q Did you give Vogelsang your bill of sale whenever you
sold him a car? A I did.

Q Signed by you? A Yes, sir.

Q In every case signed by you? A Every time that I sold
him a car.

Q But in every case you sold him a car you gave him a bill
of sale, did you? A Yes, sir.

Q Did you ever give him a bill of sale signed by someone
other than yourself? A No, sir, I did not.

Q Are you sure of that? A Positive.

Q Is Lavenowsky still in business with Vogelsang, do
you know? Not to my knowledge.

Q Since September last with whom have you dealt; with
Vogelsang, or with him and his partner?

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MR. McGRATH: I object to assuming that they were partners.

MR. PECORA: He has admitted they were partners.

THE COURT: Well, he thought they were partners.

A I have not dealt with any of them since September that I know of.

BY THE COURT:

Q You sold him a car in October? A That Cadillac sedan.

BY MR. PECORA:

Q To whom was that? A I sold that to Vogelsang.

Q Lavenowsky was not concerned in that at all? A No.

Q That is the only one you sold since September? A That is the only one I sold since Vogelsang has been away from his partner.

MR. McGRATH: I object, and my objections are not just for the purpose of stopping him, but your Honor forbid me from bringing out more than the one transaction with Vogelsang, and you stopped me.

THE COURT: That was on direct examination, and this is cross examination. All you had a right to ask him to explain was this transaction about this Ford car and upon cross examination he can bring out that which he is inquiring into now.

MR. McGRATH: I object on the ground that I was prevented from bringing out anything on the relation between Vogelsang

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and himself, and the District Attorney is allowed larger latitude than I.

THE COURT: The jury will disregard such statements. They are childish.

MR. McGRATH: I object to that statement. I make that with all due deference to the Court, and I am conscious of what I am doing, and know what I am doing, for I am well grounded in the law, and the characterization is unfair to my client.

THE COURT: It is not unfair to you or to your client to say that the District Attorney is given more latitude than you. I have tried to explain that to you. You will receive every latitude that the Court can give you in its discretion, and no more. Now please proceed.

Q How many cars have you sold to Vogelsang or the Arlington Auto Sales and Repair Company since the first of September last? A One.

Q That is this Cadillac that you speak of? A Yes.

Q Are you sure you sold him none other? A Not that I remember.

Q Is it possible your memory is faulty in that respect? A I could not recall just every little detail.

Q Not every little detail, but an important detail of your business of selling used cars. Do you remember how many you have sold/since September last? A Since he is over

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at the Arlington, I have sold him one car that I know of.

Q And possibly others that you know of? A I would not say.

Q You mean you are not sure? A I am not positive, no, sir.

Q How could you be positive; what would help you to be positive on that? A If I gave him a bill of sale for the car I would be positive of it.

Q Well, wouldn't your own records help you to be positive? A Yes, sir.

Q Who made the entries in those records of yours? A I did myself.

Q Now, how did you first meet Vogelsang? A Why, I had a car, I believe it was last January, that I advertised in the paper. Several people answered the ad., and also Vogelsang answered it, and he bought the car from me.

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Q Then thereafter you sold him about forty cars that you know of? A Yes, sir.

Q Have you a record of the persons from whom you bought those forty cars? A Yes, sir.

Q In your books? A No, bills of sale.

Q And have you all the bills of sale yourself? A Yes.

Q Will you produce them this afternoon when I continue your cross examination. A Yes, sir.

Q And what bills of sale did you give Vogelsang on those occasions, your own bills of sale? A My own.

Q Signed by you? A Yes, sir.

Q I show you these 12 documents, bills of sale to the Arlington Automobile Sales & Repair Company. Look them over and tell us if you ever saw them before? A No, sir.

Q Are you sure of that? A Yes, sir.

MR. PECORA: I ask that they be marked for identification.

(Papers marked People's Exhibits 6-A to 6-L for identification.)

Q Do you mean to say you never gave Vogelsang or anybody in his employ any one of these bills of sale that you have just looked at since the first of September last, in connection with the sale of a Ford car? A No, sir.

Q That you are sure of? A Yes, sir.

Q You went out of business at 74th Street last August, you say? A Yes, sir.

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Q Where did you locate after that? A At 51st Street and Seventh Avenue.

Q Who runs that place? A The Highgrade Auto Exchange.

Q What interest have you in it? A I just have floor space and desk room there.

Q You have desk room there and floor space in the garage?
A In the store.

Q There is a garage connected with that? A No, sir.

Q Isn't there a garage operated by the Highgrade people?
A Not the same firm.

Q Well, an associated firm? A Not that I know of.

BY THE COURT:

Q Well, in the same building are there any cars stored?
A No, sir, only in the showroom.

Q There is a salesroom there? A Yes, sir.

Q And where is that place? A 51st Street and Seventh Avenue.

Q What is the difference between a garage and a showroom?

A In a showroom you put your cars on display more.

Q And what is a garage? A A garage is for storage.

Q So there is no garage where you are now? A No, sir.

BY MR. PECORA:

Q Do they deal in secondhand cars? A Yes, sir.

Q Have you any interest in that business? A In that business?

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Q Yes. A Not in any others, no, sir.

Q They rent you floor space and desk room there, to conduct a business in competition with theirs, is that right? A I don't understand that.

Q Don't you understand what I ask you? A No.

Q What word in my question don't you understand? A About conducting business.

Q Do you understand the question now? A Yes, sir.

Q (Question read by the stenographer).

MR. McGRATH: I object to that as calling for a conclusion of their mind.

THE COURT: We just want the operation of this witness' mind. Objection overruled.

MR. McGRATH: I take an exception.

A Not in competition to them, no, sir.

Q Are you associated with them in business of buying and selling used cars? A I am an individual there.

Q Doing business on your own account? A Yes, sir.

Q The same kind of business that they are doing for themselves? A Yes, sir.

Q And you are competing with them? A Yes, sir.

Q And they allow you to compete with them in their own place of business? A Well --

Q Answer yes or no.

MR. McGRATH: I object to that. I wanted to go into

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that in my examination, and I asked that the witness be allowed to explain as to how the business is conducted, when the District Attorney objected, and your Honor sustained the objection to that of course.

THE COURT: I want to caution you, counselor, not to make any insinuation. That is a highly improper statement to make.

MR. McGRATH: I meant no offense, your Honor. May the stenographer read the objection and your Honor will see what I said, and if your Honor understood it in any other way I apologize.

THE COURT: Well, that closes the incident. But just let him answer the question and if the answer is not responsive you have your remedy.

Q And they allow you to compete with them in their own place of business? A I do not compete in business with them there. If I have not got the car that somebody comes in to buy, if I have not got it I try to sell theirs, and I get my commission that way, and that is how it is worked.

Q And if you have a car you sell them your car, not theirs? A Yes, sir.

Q And to that extent you are competing with them? A Yes.

Q Where do you buy your cars from that you sell to others? A From different parties in New York City.

Q How do you get track of them? A There is different

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people come around to the place almost every day in the week to try to sell cars.

Q Is that what you did when you were in business on 74th Street; you waited for people to come in and offer you cars?

A I went out and answered advertisements also.

Q And you answered advertisements? A Yes, sir.

Q And you dealt for the most part with strangers in buying cars from them. A Well, strangers, and people I know also.

Q What proportion of the cars that you bought in the last year did you buy from strangers, and what proportion from the people that you had previously known? A I cannot just recall that.

Q You cannot give us any idea about that? A I bought some from strangers and some from people that I knew.

Q And what proportion from strangers and what proportion from people you knew? A As a rule I bought them from strangers.

Q What steps, if any, would you take when you bought from strangers to make sure they had good title to the car that you buy? A I would ask for the title of the car first, and then follow it up.

Q What would you do by way of following that up? A Look the man up in his business, if he has any, or wherever he works, and if I find it satisfactory, I will buy the car from him.

Q How would the fact that the man was at a certain place,

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or did business at a certain place, inform you that that man had good title to the car that you were buying? A He would show me the title to the car.

Q What would he show you? A The bill of sale for the car.

Q And that is all he would show you? A The bill of sale and owner's card.

Q You know that those owner's cards are very easy to obtain?

MR. McGRATH: I object to that as unfair.

THE COURT: I will allow the question.

MR. McGRATH: I take an exception.

A No, sir, I do not.

Q Haven't you dealt with the Secretary of State's office in the obtaining of owner's cards yourself? A Only for my own personal business.

Q You have had extensive dealings with that office, of your own business?

Objected to. Objection overruled.

A No, sir.

Q You bought sixty cars at least in the past year that you have resold? A Yes.

Q Didn't you take out owner's cards on each of those cars? A No, sir.

Q What did you do to prove that you were the owner of the cars? A I had title to the cars.

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Q Didn't you take out the owner's card? A No, sir.

Q In any instance? A In a few instances, but not in all of them.

Q How many? A Maybe half a dozen or so.

Q Why did you in the half dozen instances and not in the rest? A Because it wasn't necessary.

Q Why did you do it in half a dozen instances? A People that I sold the cars to demanded owner's cards.

Q Vogelsang never demanded an owner's card? A Once in a while.

Q Only once in a while? A Not all the time.

Q Sometimes he would buy them without demanding owner's cards and other times he insisted on the owner's card, is that right? A Yes, sir.

Q And was it in the half dozen cases where you personally took out an owner's card that Vogelsang insisted on the owner's card? A No, sir.

Q Then it was with other dealings with other persons?
A Yes, sir.

Q Not with Vogelsang? A Yes, sir.

Q Schmitt never did any work for you, of course? A No.

Q He never had any business dealings with you at all?

A No, sir.

Q Bennie Miller is your brother, isn't he? A Yes, sir.

Q Is he younger or older than you? A Older.

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Q How much elder? A About 28 or 29.

Q That is four or five years older than you? A Yes.

Q What is his business? A Wholesale novelties.

Q What do you mean by that?

MR. McGRATH: I do not think that it is material and I move to strike out the answer. It is not properness examination as to what his brother's business is.

Objection overruled and exception taken.

BY THE COURT:

Q Schmitt worked for your brother, is that what you said?

A Schmitt said he worked for me.

Q Didn't you say he worked for your brother? A I did not say that.

Q He was a good friend of your brothers? A Yes, sir.

Q And you did not say he worked for your brother? A No.

MR. McGRATH: I think I asked it, and it was overruled.

BY MR. PECORA:

Q When did you last see your brother Bennie? A About a month ago.

Q Give us the occasion. A I met him at Rector's restaurant.

Q How long before your arrest did you last see him?

Objected to. Objection overruled. Exception.

A About three weeks.

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Q Oh, three weeks before your arrest? A Yes, sir.

Q You have not seen him since then? A No, sir.

Q Have you tried to find him? A No, sir.

Q Now, Schmitt you claim is a friend of your brother Bennie? A Yes, sir.

Q You know Bennie is indicted with you in this case? A I did not know up until this time.

Q You did not know it until this time? A No, sir.

Q When did you first learn of that? A Yesterday morning, at the opening of the trial.

Q That was the first time in your life that you knew that your brother Bennie was indicted jointly with you in this case?

A Yes, sir.

Q You knew Schmitt was indicted with you? A Yes, sir.

Q And you knew Vogelsang was indicted with you? A Yes.

Q And you knew Kabel was indicted with you? A Yes.

Q But not your brother Bennie? A No, sir; his name was never mentioned.

Q And you have made no effort to find him? A No, sir.

Q Where did he live? A At 355 West 5th Street.

Q How frequently did you see him before he disappeared?

A I saw him very seldom, because he travels.

Q How frequently? A Oh, maybe every month, or every six weeks or so.

Q Is he married or single? A Single.

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MR. McGRATH: I object; I think there has been enough latitude allowed about Bennie Miller.

THE COURT: He is a codefendant. In view of his testimony, I think the questions are proper. Objection overruled.

MR. McGRATH: I take an exception.

Q You are on friendly terms with your brother Bennie? A I am.

Q Isn't there any reason why you haven't tried to see him since three weeks before October 21st, last? A No, sir.

Q It just so happened? A Yes, sir.

Q With what member of his family did he live? A He did not live with any member of the family.

Q Then he lived alone? A Yes, sir.

Q And do you know that he is not at the place that you have given?

MR. McGRATH: I object to that unless he states the time.

Objection overruled. Exception taken.

Q Do you know that, yes or no? A No, sir, I do not.

Q As a matter of fact, you do not know where he is, and you do not care, do you? A That is right.

Q Were you surprised when Schmitt came into Vogelsang's place on the afternoon of your arrest? A Well, I do not know whether I was or not.

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Q Just think and tell us. A I was in a way, yes, sir.

Q You were, in a way? A Yes, sir.

Q In what way were you surprised? A That he was around that neighborhood.

Q Why did that surprise you? A Because I knew he lived uptown in New York.

Q Did you know what business he was in? A I knew he was an automobile mechanic to my knowledge.

Q How did you know that? A From seeing him around.

Q Where did you see him around? A At my place of business.

Q Did he ever do work as an automobile mechanic at your place of business? A No, sir.

Q Other people came to your place of business that were not automobile mechanics? A Yes, sir.

Q How did you know that Andrew Schmitt was an automobile mechanic? A He himself had told me so.

Q Did he just offhanded discuss his private affairs with you? A No, sir.

Q If you knew he was an automobile mechanic, why were you a little bit surprised that he should stroll into Vogelsang's place of business over in Arlington Avenue on the day you were arrested? A I don't know. It was about the second time I was out there myself.

Q You knew Vogelsang had to do with automobiles? A I did.

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Q You say you had dealings with a man named Rosen at one time? A Yes, sir.

Q What is his full name, A Harry Rosen.

Q What kind of dealings did you have with Harry Rosen?

A Well, he used to bring out people to the store that were in the market for a car, and if I had anything that they would like, if he made a sale he would collect his commission on it.

Q Did Harry Rosen have an established office or place of business? A Not that I know of.

Q And how long have you known him, A About six months or so.

Q How did you first meet him? A Through my place of business.

Q How, A He brought a party in there to buy an automobile.

Q Was that the first time you had ever seen Rosen? A Yes. That was the first time. He introduced himself.

Q You do not know how he knew that you were buying and selling secondhand automobiles? A He could see for himself. There was a place of business, a showroom there.

Q How much money did you pay him, A If it was a good sale he usually got five per cent on the sale of the car.

Q In cash? A Yes, sir.

Q Always in cash? A Yes, sir.

Q You always paid him in cash? A Yes, sir.

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Q Always in cash? A Yes, sir.

Q You cannot produce any writing from him of any kind, can you? A No, sir.

Q You cannot produce any checks with his name? A No.

Q You cannot produce any letters from him? A I never received any letters from him.

Q You cannot produce any copies of letters that you sent him? A I never sent him any letters.

Q How did you know where he lived? A He himself had told me so.

Q What did he tell you about that? A He told me that any time I wanted him, or if at any time he heard anything about a car or anything, he would let me know. That is how he came to tell me where he lived.

Q Do you know his telephone number, A I did know it, but I do not remember it now.

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

Q You say your contact with him was only when he came in with a customer to buy or to sell you a car? A That was the first time I met him when he came in there with a customer.

Q Did you have any other kinds of business with him other than that? A Not up until after I closed the place on 74th Street and Broadway.

Q Then you met him sometime last June; is that correct? You said about six months ago? A Yes, sir.

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Q And then coming down to August he brought people around to you who wanted to buy cars or sell you cars? A He brought people around to buy cars.

Q To buy cars, not to sell you cars, A No, sir.

Q Then in August his business dealings with you changed somewhat? A Not necessarily.

Q What took place then, A Then he used to come down to 51st Street and Seventh Avenue.

Q And do some kind of business, bring people around who wanted to buy cars? A Not necessarily. If he was in the neighborhood he would drop in and say hello.

Q I am asking you about business he did with you, A That was his line of business.

Q Just in introducing purchasers of used cars, A Yes. And if he knew of anyone that had a good car to sell, if he thought it was a good bargain, he would collect his commission on that.

Q But in two instances he sold you cars? A No, sir, he never sold me any cars.

Q I thought you said you got a Cadillac and a Chevrolet from Rosen? A No, sir. I bought the Cadillac touring car from the Capitol Auto Exchange, and the Chevrolet Sedan I bought in the Amsterdam Garage at 129th Street.

Q Didn't you mention Rosen's name in connection with those two cars? A About the storage of the cars.

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Q Rosen had nothing to do with either of those transactions, A No, sir.

Q When did you buy those two cars? A I couldnot exactly recall the date. I had the Cadillac in my possession for about maybe six weeks or so.

Q When did you buy it? A I could not recall the time.

Q Tell me apprximately. A Probably from now on it would be about five months, maybe.

Q Last July? A July or August, I am not sure of it.

Q When did you buy the Chevrolet? How long before or after you bought this Cadillac? A I did not buy the Chevrolet until some time in September.

Q Where did you keep that Cadillac from the time you first bought it? A I kept it at my showroom.

Q Where was that? A At 2124 Broadway.

Q Well, that was at 74th Street? A Yes, sir.

Q You say you closed that up in August last? A When I closed the store up I had the Cadillac.

Q But when you closedup where did you take that Cadillac to, and store it? A To 146th Street and Lenox Avenue.

Q And that was in August? A No, sir, the latter part of September.

Q But you said you kept the Cadillac in the 74th Street place? A Yes, sir.

Q Then you closed up in August? A Yes, sir.

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Q Where did you store it after that? A At the Highgrade Auto Exchange.

Q At 51st Street and Seventh Avenue? A Yes, sir.

Q I thought you said they did not have a garage connected with that place? A They have a showroom there.

Q You put it in the showroom? A Yes, sir.

Q Your own personal car? A Yes, sir.

Q And then in September you bought a Chevrolet from somebody? A Yes, sir.

Q Rosen having nothing to do with it? A No, sir.

Q Where did you store the Chevrolet? A At 146th Street and Lenox Avenue.

Q When did you commence to store it there? A In the latter part of September.

Q Had you bought it before you got these keys from Rosen? A A few days before.

Q Where did you keep it in the few days interval? A At 158th Street, west of Broadway.

Q What was that? A A private garage.

Q Was it your garage? A Yes, sir.

Q Whereabouts did you have the private garage? A That was the only garage I had of my own.

Q At 158th Street and Broadway? A Yes, sir.

Q And 74th Street and Broadway? A That was a showroom there.

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Q Didn't you also use it to store cars? A Not for storage purposes, just to put them on sale.

Q Well, they were stored there while they were being stored for sale? A Yes, sir.

Q Now, you say you met Rosen and got from him the two keys that were found on your person at the time of your arrest on October 21st? A Yes, sir.

Q And you used the two garages on 146th Street that those keys opened, to store the Cadillac and the Chevrolet; is that right? A Yes, sir.

Q Did you pay Rosen anything for that? A No, sir, I did not.

Q When did you last see Rosen? A Well, I have not seen him. I met him twice after I got the keys from him. That was within the same week, and I have not seen him since.

Q When did you last see him? A I cannot exactly remember the date.

Q Tell us approximately. A The beginning of October.

Q Where? A On 51st Street and Seventh Avenue.

Q Did you do any business with him then? A No, sir.

Q You still had his keys? A Yes, sir.

Q When did you get the keys from him? A Around the first or a little after the first of October.

Q You said you saw him for the last time around the first of October? A I said I saw him the beginning of October.

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Q Well, that is around the first. When did you get the keys from him? A I got them a few days after I bought the Chevrolet sedan.

Q And when was that? A The latter part of September.

Q And how long did you have his keys before you saw him for the last time? A About a week or ten days.

Q What talk did you have with him when you asked him to give you the keys? A I told him I had purchased a Chevrolet sedan, and I also had a Cadillac touring car on hand; I had my own Cadillac sedan and that it was too expensive to keep them all in a public garage, and I asked him if he knew any place where I could get dead storage or a private garage for them, and he told me he had a couple of places uptown that he was not using at the present time, that I could use if I liked.

Q And you were seeking advice from Rosen whom you only met in June or July, as to where you could store your car, although you had been in the automobile business for three years; is that right? A Yes.

Q Now, on the night of your arrest the officers took you to those two garages, didn't they? A Yes, sir.

Q You had the keys at that time? A I did.

Q Had you told them anything at all about those two garages? A No, sir.

Q Did you have any reason for not telling them anything about those two garages? A They were never mentioned.

Q You did tell them about your 158th Street portable garage?
A Not until after we went up there.

Q I say you did tell them about your 158th Street portable garage?
A After we went up to Lenox Avenue I did.

Q Now, do you know why the officers went over to Lenox Avenue garages with you?
A No, sir.

Q You recognized the garages when you got over there?
A I did.

Q You did not think the officers went over to open the two garages that you had borrowed the use of from Rosen, did you?

A I did not have any idea where he was going or what he was doing.

Q But when you got to the place where you knew they were going, having arrived there, you did not think that they were there to open the garages, or to search the garages that you had borrowed the use of from Rosen, did you?
A No, sir.

Q What did you think they went there for with you?
A I don't know.

Q What do you think they were looking for when they went to the garages west of Lenox Avenue?
A I do not know what they were looking for.

Q You did not have the remotest idea.
A No, sir.

Q You did not tell them at the time that you had keys which opened the garages on 146th Street, east of Lenox Avenue, did you?
A I do not remember whether I did or not.

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Q You let them try the keys on garages west of Lenox Avenue, didn't you? A I did.

Q You did not tell them even that your keys would open the two garages on 146th Street east of Lenox Avenue instead of west of Lenox Avenue, did you? A They did not ask me anything about it.

Q And you did not volunteer, did you? A I don't remember.

Q Did you say anything to them about the garages east of Lenox Avenue after they succeeded in opening them with your keys on the night of your arrest? A I did after they questioned me, yes, sir.

Q You waited until they questioned you; is that right?
A No, sir, I did not.

Q Did you volunteer information? A Well, they asked me whose garages they were, and I explained to them.

Q What did you explain to them? A I told them that they did not belong to me, that they belonged to a friend of mine named Rosen, and I had borrowed the use of them.

Q And you gave them Rosen's address? A Yes, sir.

Q Have you tried to find Rosen? A I did.

Q What efforts have you made? A I went around there myself several times.

Q Where? A To 118th West 72nd Street.

Q And you found out what? A That he was not living there.

Q Did you find out that he ever lived there? A No, sir.

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They just told me he was not living there at the time.

Q Didn't they tell you he never lived there? A They never told me any such thing.

Q Did you find out where he had moved to? A No, sir.

Q Have you made any other effort to find him? A I have.

Q What? A I went around to different places, different restaurants on Broadway.

Q What restaurants? A He used to eat his lunch in the St. Regis, 50th Street and Broadway. I used to meet him there quite often. I went in there looking for him several times, and I could not find him.

Q Anything else? A That is about all the looking I did for him.

Q Do you know any friends of his? A No, sir.

Q He never came around to get his keys from the day after he loaned you those two garages? A I did see him a couple of times after that, but he did not mention the keys to me.

Q Did he ever come around for his keys? A He came around but not for the keys.

Q Now, your records show all the cars you have sold to Vogelsang or to his partner in the past year, don't they? A I believe they do.

Q Do you have any doubt about it? A I don't know.

Q You don't know? A No, sir.

Q In other words, you don't know whether your records

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are complete or not?

MR. McGRATH: He did not say that.

THE COURT: I will allow the question.

A To my knowledge, they are, yes, sir.

BY THE COURT:

Q Then they ought to contain every transaction you had with Vogelsang, if they are complete records, isn't that so?

A Yes, sir.

Q Why did you say that you do not know whether they do or not? A I did not quite understand the first question.

Q You say you did keep records; is that so? A Yes, sir.

Q You were your own bookkeeper, A Yes, sir.

Q How many books did you keep? A Two books.

Q What were they called? A Cars bought and sold. I had them marked "Cars bought and sold."

Q You mean you had one book for cars bought and the other book for cars that were sold? A Yes, sir.

Q What kind of books were they? What did they look like? A A regular ledger.

Q You mean a large, thick book? A Yes, sir.

Q And where were they kept? A I had them up at the store at 2124 Broadway.

Q But you have been doing a lot of business since you left that place? A Yes, sir.

Q Where did you keep them after that? A At the High-

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grade Auto Exchange.

Q I thought you said they were home? A They are home at the present time, yes, sir.

Q Why do you keep your books home? A Because I have not been doing any business lately.

BY MR. PECORA:

Q When did you stop doing business? A I did not stop, only things are very slow at the time.

Q When was the last transaction you had at that time? A A couple of weeks ago.

Q And from the Highgrade place or from your home? A From the Highgrade.

Q Then why aren't your books there if that is the place where you last did business? A I took everything out from there on account of this matter coming up at the present time.

Q How did the presence of the books at the Highgrade place in any way affect this matter here?

Objected to; objection overruled; exception taken.

THE COURT: The jury may not believe that he kept any books. Jurors are not obliged to believe any statements made by anyone.

Q How did the presence of the books at the Highgrade place in any way affect this matter here, this trial? A I wanted to have everything prepared in case called upon.

Q But you haven't got the books here? A Not here, no, sir.

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Q Was Schmitt talking with you in the Harlem prison following your arrest, and he said something to you about his father-in-law taking care of him? A Yes, sir.

Q What did you say to him? A I told him I was not worried about it because I did not know anything about the matter.

Q Is that all? A That is all I can remember.

Q Did he give you any other particulars of how his father-in-law was taking care of him? A He just told me he went up to the police station to get some information about the case, and so on.

Q I ask you did he tell you how his father-in-law was taking care of him? A No, sir, he did not.

Q You were not interested in whether or not his father-in-law took care of him or you? A No, sir.

Q You had nothing to do with Schmitt? A No, sir.

THE COURT: We will take a recess now until two o'clock. Meanwhile, gentlemen of the jury, you must keep in mind the admonition which the court has given you not to talk about this case with anyone whatever. You must not form nor express any opinion on any question of fact. Your duty now is to listen, and at the proper time you will decide it, and that is at the end of the case when the court submits it to you, and not before. Now, please come back at two o'clock.

(Recess to 2:00 p. m.)

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TRIAL RESUMED.

2:00 p. m.

MEYER MILLER resumed the stand.

CROSS EXAMINATION BY MR. PECORA CONTINUED:

Q Have you with you the books in which you say you made the entries of the purchases and sales of used cars that you have been connected with in the past year?

MR. McGRATH: I object to that because it is patent the man has been in prison during the noon hour.

THE COURT: He may answer yes or no. Someone else may have brought them.

A No, sir.

Q You say they are at your home? A Yes, sir.

THE COURT: He may explain why he has not got them. This defendant has been under arrest.

Q Where is your home? A At the present time?

Q Yes. A 135 Lefferts Avenue, Brooklyn.

Q Whom do you live with there? A My wife.

Q Did you make any effort to get them? A No, sir. I have not seen anybody.

Q Do you know whether your counsel made any effort to get them? A I don't know.

Q Did you suggest to your counsel any means by which the books could be brought over from your home? A No, sir.

Q Do you know a man named Joseph Rosenthal? A Yes, sir.

Q Who is he? A He is a notary public and commissioner of

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deeds.

Q Where was his office? A On Second Street, East/^{of}Second Avenue.

Q What is his regular business, A That is his line of business, as far as I know.

Q What, just notary public? A Yes, sir.

Q You went before that Rosenthal and acknowledged the execution of a bill of sale whenever you sold a car, didn't you?

A Not all the time, no, sir.

Q Well, very frequently? A Yes, sir.

Q And his office was where? A At Second Street, east of Second Avenue.

Q And your place of business was on 74th Street and Broadway until after August? A Yes, sir.

Q And since then at 51st Street and Seventh Avenue? A Yes.

Q Now, I refer to People's Exhibit 6-A to 6-L, inclusive, for identification, being the twelve bills of sale that I showed you this morning. Isn't it a fact that Joseph Rosenthal is the notary public who signed the certificate of acknowledgment of those bills of sale?

MR. McGRATH: I object to that, asking him by indirection to get the papers in evidence.

MR. PECORA: No, I am just asking for the names on them.

A There were some with Rosenthal's acknowledgment and there

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are others with other acknowledgments besides his.

Q Well, Rosenthal signed most of them? A No, sir.

Q Who is the local auto service station? A John Lavenowsky.

Q That was the firm name under which Lavenowsky and Walter Vogelsang did business together, isn't it? A Yes, sir.

Q And Vogelsang has only done business under the name of the Arlington Auto Sales & Garage Company since last September? A Yes, sir.

Q You sold many cars to the Local Auto Service Station in the past few months, didn't you? A Yes, sir.

Q Your own name, A Yes, sir.

Q And also in the name of the Ansonia Auto Sales Company? A Yes, sir.

Q How many did you sell in any one month this year, to that concern? A I don't know all told.

Q Well, tell us about the largest number you sold in any one month? A I haven't any idea.

Q As many as 15 in a month? A I don't think so.

Q Twenty? A No, sir, less than that.

Q Isn't it a fact that between June 8th and July 8th of this year you sold Vogelsang and his brother-in-law 14 or 15 cars? A I am not positive of the amount.

Q Will you look at the se documents which I am handing you now, and tell us if you ever saw them before.

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THE COURT: You better have them marked for identification first.

(Papers marked for identification People's Exhibit 7-B to 7-O.)

A Yes, sir.

Q Are they bills of sale you signed? A Yes, sir.

Q And turned over to Vogelsang and Levnowsky's concern?

A Yes, sir.

Q Fourteen of them between June 8th and July 18th, is that right? A Yes, sir.

Q Don't they all relate to Ford cars? A Yes, sir.

Q And nothing else? A No, sir.

Q And you received payment for each of those cars in cash, didn't you? A Mostly all of them.

Q Can you tell us now where you got any of the cars from that are specified in these fourteen bills of sale that have been marked for identification? A I have got the bills of sale at home as to from where I bought them. I bought them from different dealers and private people.

Q You cannot tell us any more definitely than that, can you, at the present time? A I got them at different places. I bought some from private people and some from automobile dealers.

Q Can you tell us a single one from whom you purchased any of the cars set forth in these 14 bills of sale? A Some of them from Sharlun brothers, Ford agents on Second Avenue.

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Some of them, not all.

Q Does this refresh your recollection with regard to whether or not in the course of your dealings with Vogelsang during the past year you have, with only one or two exceptions, sold him nothing but Ford cars? A There is more than one or two exceptions.

Q How many? A I might have sold him about six or eight different cars besides Fords.

Q Does the fact that you sold fourteen cars between June 5th and July 18th, refresh your recollection as to the total number that you sold to Vogelsang or his brother-in-law? A No.

Q You say it does not? A No, sir.

Q Do you still say that you have not sold him as many as a hundred cars in the past year? A No, sir. I have not sold him that many.

Q What is the largest number you now say you sold him? A I don't know.

Q You said that your brother Bennie Miller lived at 355 West 51st Street? A Yes, sir.

Q And you gave that address to the officers at the time of your arrest as being one of the two addresses of Rosen? A I did.

Q Did Rosen live with your brother? A No, sir.

Q Why did you give your brother's address as one of the two addresses of Rosen that you gave to the police? A Because

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he lived there at one time.

Q He lived at the same house with your brother? A Yes.

Q Did you ever visit him there? A No, sir, I did not.

Q Did you ever visit Rosen at any place where you had heard he lived? A No, sir.

Q The last time you saw Rosen was about two weeks before your arrest, and that would be around the first of October?

A Well, about maybe the first to the sixth. I did not say any definite date.

Q And you had had the keys of his garage and the use of those two garages for how long before that? A Two or three weeks.

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

REDIRECT EXAMINATION BY MR. McGRATH:

Q It has been testified by Schmitt here that you bailed him out. Did you bail Schmitt out? A I do not know anything about it.

Q You never bailed him out at any time? A I don't know anything about it.

BY MR. PECORA:

Q When your counsel just asked you if you bailed him out, did you understand him to mean whether you personally became Schmitt's surety? A Yes, sir.

Q You did not do that, did you? A No, sir.

Q You were co-indicted with Smith? A Yes, sir.

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BY MR. McGRATH:

Q Did you ask anybody else to bail him out, or cause him to be bailed out or pay anything on account of any bail bond in his behalf? A No, sir.

BY MR. PEGORA:

Q Who bailed you out? A The Fidelity & Casualty Surety Company.

Q And who bailed Schmitt out? A I don't know.

Q Don't you know who bailed Schmitt out when he was arraigned before the Magistrate, before going before the grand jury?

A No, sir, I do not.

Q What particular person connected with the company that bailed you out did you consult with about your bail? A William Berkowitz.

Q Don't you know that William Berkowitz is the man that attended to the bail for Andrew Schmitt in the Magistrate's Court? A No, sir, I don't know.

Q Do you deny that he is?

Objected to. Objection sustained.

BY MR. McGRATH:

Q When you first took the stand you said you lived at 112 Haven Avenue and later on what did you mean? A I lived there at the time of the arrest.

Q And you live now in Lefferts Street, Brooklyn? A Yes.

MR. McGRATH: I think that is all.

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MRS. KITTY MILLER, of 112 Haven Avenue,
called and sworn as a witness for the defendant, testified
as follows:

DIRECT EXAMINATION BY MR. McGRATH:

Q Where are you living now? A 112 Haven Avenue.

Q Mrs. Miller, do you recall October 20th and October 21st
of this year? A I do.

Q Were you with your husband on the evening of October
20th? A Yes, sir.

Q Where did you go? A To my mother's home.

Q What time did you go? A About six or six-thirty.

Q Whom did you meet there? A My mother and father.

Q Who else was there? A My sister and brother-in-law
and niece.

Q Did you see your husband that evening? A Yes, sir.

Q What time did he come in? A He came down with me.

Q And how long did you and your husband remain there?

A To ten o'clock.

Q And where is your father's house? A On East 51st
Street.

Q Where did you go from there? A Home.

Q How did you go home? A In my husband's car.

Q What time did you arrive home about? A About eleven
o'clock.

Q And what did you do then? A I went to bed and my

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husband put the car in the garage and came home again.

Q How long was he gone? A About twenty minutes.

Q And where is the garage, near the home in Haven Avenue?

A About seven blocks away.

Q After he came home that evening, what happened then?

A Nothing, we went to bed.

Q What time did your husband leave the house the next morning? A About ten o'clock.

Q And did he return again? A Yes, sir.

Q What time did he return? A About 11:30.

Q During that entire morning did you receive any telephone message from your husband or for him, or did he receive any? A No.

Q There were no telephones whatever? A No, sir.

Q You had a baby born about five weeks ago?

MR. PECORA: I object to the injection of the baby into this case. It has nothing to do with the case.

THE COURT: I will allow the answer. I said what I thought about such evidence this morning.

A Yes, sir.

MR. McGRATH: That is all; You may examine.

CROSS EXAMINATION BY MR. PECORA:

Q You still live at 112 Haven Avenue with the defendant?

A Yes, sir.

Q That is an apartment house? A Yes, sir.

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Q And you remember distinctly where you were and your movements and the defendant's movements on the night of October 20th last, don't you? A Yes, sir.

Q Do you know where you were on the evening of December 10th last? That is ten days ago. A No, I do not.

MR. PECORA: I think that is about all.

MEYER MILLER recalled, testified as follows:

DIRECT EXAMINATION BY MR. McGRATH:

Q You told me that there were certain papers at your home and also at Mr. Yashover's office, did you not? A Yes, sir.

Q Did you cause to be produced here certain bills of sale made to you? A Yes, sir.

MR. McGRATH: Now, I merely offer these to the District Attorney for examination.

MR. PECORA: I am through with that witness, and I want it noted on the record that I asked for the complete papers that I asked about. Unless you know, Mr. McGrath, that that is what I asked for, I do not want them. I asked for certain definite papers.

Q Are these all the papers? A Not all, no, sir.

Q These comprise a number of bills of sale, do they not? A Yes, sir.

Q Showing where you bought various cars? A Yes, sir.

Q I show you this bill of sale on which appears the name of Harry Rosen. Is that the name of the Rosen you spoke of,

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or someone else? A I believe this is the same Rosen.

MR. PECORA: way that be marked for identification, as long as it has been shown to the witness.

THE COURT: It must be marked under the rule.
(Marked for identification People's Exhibit 8.)

BY MR. PECORA:

Q You said this morning when I cross examined you that you had nothing in your possession in writing from Harry Rosen, didn't you? A Yes, sir.

Q Now, you say that this paper, Defendant's Exhibit 8 for identification, is signed by the Harry Rosen that loaned you the use of the two garages on 146th Street; is that right?

A Yes, sir.

Q And that paper is a bill of sale of a Ford automobile to you? A Yes, sir.

Q Made on the fifth of May last? A Yes, sir.

Q And Harry Rosen's address on this paper was given as 131 West 112th Street? A Yes, sir.

Q Not 72nd Street? A No, sir.

Q And not 51st Street, either? A No, sir.

Q The two addresses you gave the police; is that right? A Yes, sir.

BY MR. McGRATH:

Q That just refreshed your recollection, did it not? A Yes, sir.

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MR. McGRATH: That is all.

WILLIAM A. SMITH, of 264 East 199th Street,
called and sworn as a witness for the defendant, testified
as follows:

DIRECT EXAMINATION BY MR. McGRATH:

Q At my direction did you make a search for Harry Rosen?

A I did.

Q Just what search did you make? A I tried the address
at 158 West 72nd Street, also an address at 8 West 118th Street.
Those were the addresses you gave me.

Q Did you go to any other places? A I tried a garage
in West 118th Street, across the way from No. 8.

Q Did you try any dealers along Broadway? A Yes, I tried
a garage up there.

Q And you found at West 72nd Street that he was not there?
A No such person lived there.

Q And you also went to 8 West 118th Street? A Yes, sir,
and no such person lived there.

Q Did you inquire in the various dealers' places? A Yes.

Q And you were unable to find him? A No, sir.

CROSS EXAMINATION BY MR. PECORA:

Q Do you know Harry Rosen personally? A No, sir.

Q You never saw him in your life, so far as you know?

A No, sir.

Q you simply went to a number of places that you were told

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to go to. A Yes, sir.

Q By the defendant or his counsel? A By Mr. McGrath.

Q So far as you were concerned, you might have been talking to Harry Rosen and not have known him? A I would not know him if I seen him.

MR. PECORA: That is all.

BY MR. McGRATH:

Q I told you to make a search, didn't I? A Yes, sir.

MR. McGRATH: That is all; the defendant rests.

MR. PECORA: The People rest.

MR. McGRATH: Now, your Honor, I wish to renew the motion made at the close of the people's case, to advise the jury to acquit this defendant on the ground that the only evidence here is that of an accomplice in this case, and that does not implicate this defendant in the commission of any crime, and on the face of it it does not show beyond a reasonable doubt that he alone could have committed this crime.

Motion denied. Exception taken.

MR. McGRATH: Will your Honor indicate to the jury that your denial of my motion and any exceptions taken during the trial was not indicative of your Honor's opinion?

THE COURT: I so direct the jury. They relate merely to legal questions which do not concern the jury.

(Mr. McGrath summed up to the jury on behalf of the

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defendant at 2:40 p. m.)

(Mr. Pecora summed up the case to the jury on behalf of the People at 3:00 p.m.)

THE COURT: Well, it is practically four o'clock, and I think we will take a recess until tomorrow morning. I will not submit the case to the jury tonight.

Gentlemen of the jury, remember that you must not talk about this case with anyone, and that you must refrain from forming or expressing any opinion until the matter is submitted to you by the court for your decision. You must keep an open mind on the question of the guilt or the innocence of the defendant, and when you retire at the end of the case then you may discuss it. That is the time to decide it and not before that. Please come back at half past ten tomorrow morning.

(Whereupon an adjournment was taken to Wednesday, December 21, 1921, at 10:30 o'clock a. m.)

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THE COURT'S CHARGE TO THE JURY

THE COURT (MULQUEEN, J.): Gentlemen of the Jury, in presenting this case to you I deem it only proper to express the appreciation of the Court for the close and unwearied attention that you have given to this trial up to the present time. We must keep in mind always that the performance of jury duty is the most important trust imposed upon our citizens in time of peace. In time of war it is necessary to make every sacrifice, even of life itself, to maintain the peace, quiet, independence and security of the nation; in time of peace our citizens are called upon from time to time to put aside their personal concerns and private business and devote themselves to the public service which is required of them as jurors. You have responded and have been prompt, punctual and faithful in the performance of your duty and therefore the Court thanks you.

You understand that in the trial of a criminal action there is a division of labor and responsibility. There are two parties to the action. One of the parties, the complainant, is the People of the State of New York. That term means organized society in this state, made up of ten millions or more of people who desire to secure for

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themselves the blessings which will be derived and enjoyed by all if the law is observed. They wish to have their lives, their persons and property protected from unlawful interference, and that is the reason why that society exists.

Now, they complain that one person has broken the rules which that society has found it necessary to make for the accomplishment of the object of its existence. That person is the defendant at the bar who, together with others, has been charged with the commission of the crime set forth in the indictment.

The People are represented by the District Attorney, who is their lawyer. He is not selected to try single cases, but his duty is to prosecute all the cases that arise within that period of time for which he is elected by the People, and he presents before the Court and Jury, either in person or through his assistants, the evidence on which the complaint is based. The defendant has a right to be represented by counsel, whose duty it is to protect the interests of his client in every proper way, and the more diligently, zealously and faithfully he performs that duty the more his services will be appreciated by the Court. And then the Court is here to be an umpire, as it were, between the respective parties. The Court has no interest in the controversy. In fact, he knows nothing about it until the facts are developed. The Court is as ignorant of the facts in the beginning of the trial as you are. It

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is the duty of the Court to see that the defendant receives a fair trial. That means a legal trial, a trial according to the established rules of law in which all his rights are safeguarded and in which he is represented by counsel. He has a right to call witnesses and to take the stand in his own behalf. His counsel is permitted proper cross-examination of the witnesses for the People. All that has been done. The Court decides the legal questions that arise from time to time during the trial. In this case there has been no legal question of any difficulty whatever. The law is perfectly simple. Then the Court submits the issue to you and it is your duty to decide the facts, because you are the sole and exclusive judges of the facts and the credibility of the witnesses. That term "credibility of witnesses" means the worthiness of belief of the witnesses. It is for you to decide what witnesses on the stand were worthy of belief, - what stories were credible in your opinion or not credible, and it is your duty to reject what you think is untrue or false and unworthy of belief, and to select the evidence that you think is credible and worthy of belief, and then to base your judgment accordingly. When you do that the defendant has had a fair trial.

I say these things to you because during this trial there has been some clash between counsel on

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both sides, and at times between the counsel and the Court, which you must not take into consideration at all; you must ignore that altogether. As I said, it is the duty of counsel on both sides to be diligent and faithful in the performance of their duty, and any errors in that respect must be attributed to excessive zeal for which the counsel is not to be reproved but commended. But such things must not influence you in any way whatever. Those matters concern the Court alone.

Now, what charge are we investigating here? The indictment is the complaint, you understand. You must not infer that the defendant is guilty, because he has been arrested and indicted. Our laws are based on a different theory. The defendant is presumed to be innocent. The presumption is that he did nothing wrong. The indictment is a mere complaint, and the complaint in this case is two-fold, -- first, that he stole an automobile of the value of \$900. During the trial the Court decided as a matter of law that upon the evidence in this case, that count could not be submitted to the jury. The second count charges, not that he stole an automobile but that there was a stolen automobile and that he knew that it was stolen, and that notwithstanding, with guilty knowledge, he received it or bought it, and that he had a guilty purpose and intent when he received or bought it.

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The automobile is said to have been the property of one J. Kendrick Noble. It is said that it was stolen in the County of New York on the 20th of October, 1921. The count which is submitted to you is known as the crime of criminally receiving stolen property in the first degree. Our law says that one who buys or receives any stolen property with guilty knowledge that it was stolen and with a guilty intent, is guilty of a crime, and that crime is called criminally receiving stolen property. The law makes two degrees of that crime, and the degree of the crime is determined by the value of the property so received. If the property be of greater value than \$50 it is the first degree of that crime. If the property be of the value of \$50 or less it is the second degree of the crime. The indictment says the automobile was worth \$900, but that is no proof of value; that is a mere allegation. However, in order to avoid a long drawn-out cross-examination on the question of value I told counsel that it would be conceded that this machine was not worth \$500. You heard the testimony of the complaining witness that he paid about \$900 for it with the accessories, and that the machine in Detroit was worth, I think he said \$665, and that he bought it on the 8th of October and it was stolen on the 20th of October; and while it was a secondhand machine, nevertheless the Court submits to you that there is ample evidence

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for you to consider on the question of the degree of the crime. If you think the machine was worth more than \$50 it would be the first degree of that crime. If you are not satisfied beyond a reasonable doubt as to the value of the machine, that it was worth more than \$50, why it would be the second degree of the crime. But no matter what the value of the machine was, if it was stolen and was subsequently received by this defendant, either alone or in conjunction with others with guilty knowledge of its stolen character and with guilty intent, it would be a crime. The value only affects the degree of the crime.

Now you know what stealing is. It is first necessary for the People to prove that this machine was stolen, that a larceny had been committed. Our law defines larceny in very simple language. It says that a person who with an intent to deprive the true owner of his property or of the use and benefit of it, takes from the possession of the true owner or any other person, personal property, steals that property and is guilty of larceny.

You heard the story of the complaining witness that he drove the machine down to New York in the evening, that he went to a theater and left his machine parked in 59th Street, that when he returned after the performance the machine was gone. If any person took that machine from 59th Street with the intent to deprive the owner of it permanently, that person was a thief and the crime of larceny

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was committed. That is the first thing that must be proved. Secondly, it must be shown that the stolen machine was received by this defendant or by somebody acting for him, acting in concert with him.

Under our law, two or more persons may commit a crime. One person may commit a crime; two or three or twenty may commit a crime. All the persons who aid or abet each other in the commission of a crime, who counsel or advise that a crime be committed, who take part in the commission of the crime in any ^{way} knowingly and consciously, are all guilty of the crime. They are all principals, or all accomplices, as we put it in the law. So that the fact that this defendant is indicted with other persons must not mislead you on the question whether he was guilty or not, or whether other persons were guilty or not. The question is whether he did any act, either alone or in concert with others, to receive a machine which he knew was stolen, - whether he did in fact take that machine under his control or dominion. Of course, when you speak of receiving a thing, you have to view those words in connection with the article in question. If it were a diamond ring that were stolen, you would expect it to be found on the person, in a house, or in a trunk or other receptacle of the person accused of receiving it. But a man cannot take an automobile into his vest pocket or parlor or his bedroom. So when you say that a man receives an automobile, if you prove that he exercised any act of dominion over it,

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whether it was on the street or in a garage or any other place, that is all that the law requires on the question of receiving.

You will remember the testimony of Schmitt. He says that at the request of this defendant he did work on machines for him. Well, the work he did in this case, according to his own story, was the changing of the handles on the door of the car, and the steering wheel, taking off tires, and putting on license plates in a garage at Lenox Avenue and 146th Street. Now, if the defendant ordered Schmitt to do that work, that is submitted to you as evidence of possession. If you or any other person ordered a man to change the tires on a machine in the street, - whether it was in a garage or not, or to take off the handles and put on others or to change the steering wheel and put on another steering wheel, that would be evidence of control on your part, evidence of dominion over or of possession of the article in question. If you believe that this defendant did exercise such control or dominion over any machine, the question arises as to what machine he exercised such control over and it is necessary therefore to establish the identity of the car on which Schmitt worked at the direction of the defendant, - if you believe he worked on any car at his direction. You heard the complainant on the stand. He described his car as a Ford sedan

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which he had had for twelve or thirteen days before it was stolen. He described the articles which he said he had put on the machine himself. He mentioned certain handles. He said he knew them by the number on them, which corresponded to the key which he had for the handle. You heard him testify about the Decker steering apparatus which he had put on and which had a number, and for which he had a key, he said, with the corresponding number on it. And then he spoke of a scratch on the car. He said there was a special oil gauge on it, which might have been on thousands of machines. As to the scratch on it, he said that one day when the machine was standing near a public school, one of the children scratched the door and made a sort of name on it which was not very legible, but that it looked like "Smith" to him, and that that scratch was on the machine which he found at the station house. Of course when he lost his machine he reported it to the police, and when they found a Ford sedan they notified him to look at it. It is of course necessary to prove the identity of a car with great particularity and certainty because you know there are so many Ford sedan machines. Indeed, I think there were four or five Ford cars taken to the police station from Vogelsang's garage in Brooklyn at the time that this machine is alleged to have been taken and when the defendant was arrested. I asked the complainant about the motor

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number not through idle curiosity, but it is well known that these motors have a number, and the number on the machine at the station house was not the number of the machine that he had bought and which was stolen from him, and it would be necessary to account for that change, if there was a change. The mere statement of the witness that the number had been changed is a conclusion and of no value whatever. It was his duty to describe the motor and the number of it at the time it was stolen, and also the condition of the motor when he found it so that you might determine from the testimony whether any change had been made or not. That was the only object the Court had in asking any question, to bring out the fact; not that the Court knew any fact or had any interest in the action other than to get at the truth so that a proper decision might be made by the jury when the time came for them to express their opinion on the case. Therefore, those are two of the elements that must be established beyond a reasonable doubt, -- first, the stealing of the car, and second, its possession by this defendant. It is also necessary to prove that he had guilty knowledge and intent. A man might buy a stolen article from someone without knowledge that it was stolen. He might believe that the person had authority to sell it, that it was an honest transaction, and under those circumstances he would be guilty of no crime. How can guilty knowledge be proven? Well, knowledge is/

locked up

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in the man's heart or mind. You cannot see it as you see that lamp, for example, but you may prove it by circumstances, - by the manner in which the article was acquired, or by the manner in which it was dealt with by the person.

Now, these garages up there at 146th Street and Lenox Avenue, as I understand it, were single, portable garages made of sheet iron and they could hold one car. Schmitt says that he was told by this defendant to go to one of those garages and do some work on a car. His testimony is that it was virtually a new car, and you may determine whether that work was necessary for honest persons, or whether it was intended to disguise and change the appearance of that car so that it might not be recognized if it were found in the possession of this man, and from his method of dealing with it you may determine whether he knew that he was dealing with stolen property. It is for you to say whether he was acting like an honest merchant or not.

Now, I spoke of guilty intent. If a policeman took that stolen car into his possession, knowing that it was stolen, for the purpose of giving it back to the true owner, of course that would not be a crime. The statute is silent about guilty intent, but intent is necessary. If a receiver of stolen goods buys a car, knowing that it is

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stolen, in order to sell it and make a profit on it, why
of course that is a crime, and it is for you to say
whether, if there was a car stolen and this defendant re-
ceived it subsequently with knowledge that it was stolen,
what his intent was. Was it to find out the true owner,
or were his dealings with the car an evidence of intent to
sell it and make a profit?

As I told you the defendant is presumed to be innocent.
All the presumptions favor the defendant. Nothing is taken
for granted in a criminal action. There must be proof of
every essential point, and the law says further that there
must be enough proof to satisfy the jury of the guilt of
the defendant beyond a reasonable doubt; otherwise he must
be acquitted.

The term "reasonable doubt" means a doubt based on
reason. That is why it is called a reasonable doubt. It
is not a doubt that is based on any caprice, such as sym-
pathy, or a desire to avoid doing your duty if it is
unpleasant. You know this court is not a pleasure resort.
It is a very stern necessity, created by the People in their
efforts to make life safe and peaceful for the decent people
in this county, and we must all do our duty whether it is
pleasant or not. So if your duty be disagreeable you must
nevertheless do it, and the man who would through weakness,
goodnature, sympathy or prejudice of any kind, fail to render

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an honest verdict could not honestly say that he had a reasonable doubt. A reasonable doubt is based on the evidence in the case, - a doubt arising out of the evidence in the case, or sometimes based on the lack of evidence, or the quality of the evidence in the case. In other words, after you have tested the credibility of the witnesses in the manner I have told you before, and you have selected the evidence that you deem worthy of credence, - if you weigh that evidence and you are then firmly convinced by it to a moral certainty that Mr. Noble's car was stolen and that this defendant subsequently received it with guilty knowledge that it was stolen, and with guilty intent, -- if those facts are clearly proved to you, if moral certainty as to those facts is produced in your mind, that is all that the law requires; that is proof beyond a reasonable doubt, and then your duty is to find the defendant guilty. However, if you have a reasonable doubt on any of those points you must acquit him.

Your powers are very great. As I told you, the Court is merely an umpire to rule on the legal questions that arise, and to see that the defendant has a fair trial. This defendant has had a fair trial. A defendant cannot have a trial made to order. He must have a trial according to the established rules of law and his counsel must conform to those rules. He must not think that the Court has any prejudice either against the

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defendant or his counsel. The Court is absolutely indifferent. It is immaterial to the Court what you do. The Court merely does its own duty, and the Court must protect its dignity. And if I rebuked counsel it was because I thought his conduct did not tend to promote respect for courts in general, and especially on the one statement of defendant's counsel where I thought he said that I sustained the People's objection, - "of course", - which might lead to the implication or inference, - and which he denied or repudiated, however, that the Court was helping the District Attorney. The Court helps no one. The Court holds the District Attorney and counsel for the defendant to the same rules. They are both always on the same plane. There are two parties here and each one has the same right to be heard, and no more. Each side is entitled to a fair hearing. That is the duty of the Court, to give each side a fair hearing and to present the case to you with proper instructions in the law, and when the Court does that the Court's duty is done; the Court's conscience is clear, and your conscience, gentlemen of the jury, will be clear if you render an honest verdict. It is the duty of each man on the jury to make up his mind to be honest. That is all the word "verdict" means, a true, honest statement. Give an honest statement.

Weigh all the evidence carefully. Consider the testimony

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of each of the witnesses; consider his manner while on the stand, - the interest of the witness in the controversy, -

the motive which the witness might have in testifying falsely, and select what you think is true from the story of each witness. You may reject the entire story of a witness if you think it is false, or you may reject part and believe part. But you must be influenced only by what you deem to be true. If you think any witness went on the stand with a motive to deceive you, to testify falsely on a material point, why you may reject all the testimony of such a witness although some other statements made by the witness may be true. You have that power. A witness may be honestly mistaken, however. A witness may go on the stand intending to tell you the truth and yet make a mistake through loss of memory, or otherwise. A witness may be honestly mistaken. He may make statements which he believes to be true. Of course that is not a crime, but if you think any witness was honestly mistaken on any particular point why you will reject his testimony on that point, because it would not be fair to reject the rest of his evidence on that ground alone. So scrutinize the evidence carefully. Consider all the facts testified to by Schmitt, and by the police officers and the other witnesses. Consider the demeanor of the defendant at the time of his arrest, whether it indicated innocence or guilt. Schmitt says that when he entered Vogelsang's office in

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where the detectives were.

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Brooklyn, the defendant placed his finger on his lips, in the way he indicated on the stand, - indicating silence, and shook his head in a negative way. If he did that, was it to conceal something; was it evidence of a consciousness of guilt or not? If it was, did that consciousness of guilt extend to this particular automobile? I believe there were five or six automobiles taken by the police over there; Whether the others were stolen or not is immaterial to us; we are dealing only with one, the one set forth in the indictment.

Now there was some discussion during the case about Schmitt being an accomplice. Well, an accomplice is one who is concerned in the commission of a crime. If a person buy a stolen automobile with guilty knowledge that it is stolen, and with guilty intent, the crime is completed as soon as he buys it. The evidence in this case, according to Schmitt, is that he was told to go to a garage and do some work on a machine. If that be true, the machine had already been received and the crime completed. No man can become an accomplice after the crime has been committed. He may become an accessory after the fact. But if Schmitt had an arrangement with this defendant, if he knew the defendant was buying stolen cars, and he agreed to help him in his business of buying stolen cars, and went to this garage knowing that he was helping him in receiving

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the stolen car, then he might be considered an accomplice. Now assuming that he was an accomplice, which is the view that the defendant wants taken of his case, there is a rule of law that while an accomplice may testify, no conviction can be had on his evidence alone. There must be other proof tending to connect the defendant with the crime. There must be other proof that the crime was committed, and other proof to connect the defendant with the commission of the crime. The People claim that in this case, assuming that Schmitt was an accomplice, there is ample proof. Schmitt says that the defendant had garages at 146th Street and Lenox Avenue, and the police testified to the discovery of those garages there, and whether the defendant was the agent or lessee of those garages is absolutely immaterial. Whether any such person as Rosen exists is absolutely immaterial. Defendant's testimony on that point is that he had permission from Rosen to use them for storing cars; that is in corroboration of Schmitt's testimony. The defendant's demeanor with the police when they took him to Lenox Avenue and 146th Street is also submitted to you as corroboration on that point. They found on him keys to certain garages and they went up and examined the numbers on the west side of Lenox Avenue which the keys did not fit. They say the defendant was there and said nothing. That one of them went back to Schmitt in the station house from whom he had received the

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information about the garages. They had heard where the changes on the car were made, and getting further information they went back to the east side of Lenox Avenue and 146th Street and there they found locks on the garages which the keys fitted, and in those garages they say they found a Decker steering wheel, and handles which the complaining witness identified. It is for you to say whether or not he is mistaken in his identification. Schmitt identifies them as the articles which he took from the car there after receiving instructions over the telephone from this defendant to take them off. It is for you to say whether or not Schmitt is mistaken in his identification. That Schmitt went over to Brooklyn with him is corroborated, the People claim, by the fact that they were all arrested over there.

What the Court has to do with corroboration is this; it is a legal question for the Court to decide whether there is corroboration or not, and the Court in submitting the case to you decides that there is corroboration. Now the weight to be given to that corroborative evidence is not for the Court but for you to pass upon. In fact that is the rule as to all evidence. The Court merely decides what evidence is proper, competent and legal, and you decide what weight to give to the evidence. It is not for the Court to decide what weight to give to the evidence.

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I do not think there is anything further to be said.¹⁸¹
But remember that you must not regard the defendant as a
guilty man. He is presumed to be innocent. That pre-
sumption exists in his favor throughout the entire case,
until you, by your verdict, decide that he is not inno-
cent but guilty. And you must view the evidence from that
standpoint. You must be cool, calm and neutral. All the
strife of the trial is ended and the evidence is in. You
must not consider any evidence which the Court has reject-
ed, and you must not be influenced by any ruling of the
Court during the trial. Those are matters that do not
concern you. You have to consider two things: first,
the law, and I think the law is as plain as day. I have
tried to make it simple: And second, there are the facts.
The facts you get, not from the District Attorney or the
counsel for the defense or the Court, but from the wit-
nesses on the stand. You heard all the witnesses; what
witnesses in your opinion were worthy of belief, or what
part of the testimony of any witness was worthy of be-
lief? They all swore to tell the truth, the whole truth
and nothing but the truth. Did they mean it or not? And
if they did intend to tell the truth did they succeed, or
did they, through forgetfulness or loss of memory while on
the stand, tell some things which were not true. Select
the true evidence, therefore, from the false and weigh it

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calmly and neutrally, without leaning to one side or the other. That is your obligation under your oath. When you do that, and your minds are firmly convinced that the law has been violated in the manner charged by the second count of this indictment, pronounce him guilty as charged in the second count of the indictment. If you are not satisfied of that on every material point beyond a reasonable doubt, acquit him. Your verdict therefore should be guilty as charged in the second count of the indictment or not, ^{guilty.} Are there any requests?

MR. McGRATH: I respectfully except to that portion of your Honor's charge wherein you indicate to the jury what is corroboration, and I ask your Honor to charge first, that no inference ^{can be drawn} from the silence of the defendant when he is under arrest, and, second, he is not under any obligation of duty to say anything or make any statement to the police.

THE COURT: I will decline to charge that, because the evidence here is that he was not silent at all times, that he made gestures and that he denied he knew Vogelsang or the other man. What you said is true as a legal proposition. He might have stood upon his rights and remained silent, but did he remain absolutely quiet?

MR. McGRATH: The defendant's statement is that he was silent at certain periods.

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THE COURT: The jury may believe that or not. The defendant had a right to be silent, but if he chose to make a statement voluntarily, it may be used against him. And his demeanor is always a proper subject for investigation and consideration by the jury. Of course, the Court does not say that he did anything. As I told you before, the Court finds no fact. I will charge what you ask as a proposition of law but with the exception that if they find he did not remain quiet, they may consider what he ^{said or} did at that time.

MR. McGRATH: At times there is some evidence that he did remain quiet.

THE COURT: He has a right to remain quiet. I go further; I have always held that the police have no right to ask a man any questions. I go very far on that. You were in the District Attorney's office, and you know that I am very strict in maintaining the rights of defendants in that respect.

MR. McGRATH: I ask your Honor to charge the jury that Schmitt was an accomplice as a matter of law.

THE COURT: Well, while viewing the case from one aspect I think he is not an accomplice, still I will charge that he was an accomplice.

MR. McGRATH: And that so much of your Honor's charge as referred to the question of fact to be left to the jury

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is to be taken from their consideration, and they are only¹⁸⁴
to consider him as an accomplice.

THE COURT: I said I would assume that he was an accomplice in law. I said that was the attitude you took, and perhaps it was the proper one, and I would charge that he was an accomplice and that no conviction can be had on his testimony unless there be other evidence tending to show that the crime was committed and to connect the defendant with it. In other words, a conviction must not rest alone on the testimony of the accomplice; that is the law. There must be proof of some other material facts by other witnesses.

MR. McGRATH: I respectfully ask your Honor to charge that the corroborating facts taken by themselves must show that the defendant was implicated.

THE COURT: I so charge. They must tend to connect him with the crime.

MR. McGRATH: I ask your Honor to charge that association with an accomplice is not sufficient corroboration, but is consistent with innocence.

THE COURT: Well, mere association, yes.

MR. McGRATH: I ask your Honor to charge the jury that the corroboration of an accomplice must connect the defendant with the crime, not merely with the person who committed it.

THE COURT: I so charge. I think I covered that fully.

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MR. McGRATH: I ask your Honor to charge the jury that the corroboration, under Section 399, requires evidence from an independent source of some other material fact tending to show not only the crime but that defendant was implicated therein.

THE COURT: I so charge. But the detectives are other witnesses. An accomplice cannot corroborate himself. The owner of the car, Mr. Noble, and the detectives are submitted as other witnesses. If their testimony does not corroborate the accomplice they must acquit the defendant.

MR. McGRATH: I take an exception to that portion, that they are corroborating witnesses.

THE COURT: I said they are other witnesses whose testimony is offered in corroboration of the story told by Schmitt. Whether it does corroborate him or not is for the jury to say. It is for the jury to say what weight they will give to the testimony. The Court merely decides that as a matter of law such testimony is in the nature of corroboration. It is for the jury to say what weight they will give to it.

MR. McGRATH: I ask your Honor to charge that if the jury find he was over at Vogelsang's upon an honest mission, that they acquit him.

THE COURT: I so charge; yes sir. Mr. Pecora, have you any requests?

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MR. PECORA: Merely that the jury be instructed that they may find corroboration in all the circumstances reflected by all the evidence in the case.

THE COURT: By all the witnesses except the alleged accomplice. All the other witnesses are called to corroborate the accomplice; whether they have succeeded in doing that or not is for the jury to determine.

MR. McGRATH: But their evidence can only be considered as to material facts, and they must spring from an independent source. They must prove material facts by some independent source; they must prove some material fact connecting the defendant with the commission of the crime; otherwise they must acquit him.

MR. McGRATH: And if any act of corroboration is susceptible of an innocent interpretation the defendant must have the benefit of it.

THE COURT: I so charge.

MR. McGRATH: I think that is all.

THE COURT: I think everything has been covered now.

MR. PECORA: I think so.

THE COURT: You may pass out, gentlemen.

Mr. McGrath consents that the exhibits may be sent to the jury room.

The jury retire at 11. 25 A.M.

THE COURT: A request is made for the exhibits and

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Mr. McGrath consented, but I want the defendant to consent in person.

THE COURT (Addressing defendant): Do you consent that they be given to the jury?

THE DEFENDANT: Yes sir.

THE COURT: Well, they may be sent to the jury.

The jurors return at 12.45 P.M.

THE CLERK OF THE COURT: Gentlemen of the jury, have you agreed upon a verdict?

THE FOREMAN: We have not agreed.

THE COURT: I have sent for the jury because I received a communication reading as follows: "May the jury read the minutes of the testimony given by Officer Horan", signed by the foreman. The jury are not permitted to read the testimony but they may have it read by the stenographer if they wish it.

The jury desiring to have such testimony read, the testimony of the witness Horan is read by the stenographer.

THE COURT: Is there anything further, gentlemen; does any juror wish to make any further statement?

THE FOREMAN: Not for the moment, your Honor.

THE COURT: If you have any requests to make, I would like you to make them now; otherwise you may retire.

The jury retire and return at 4 P.M.

THE CLERK OF THE COURT: Gentlemen of the jury, have

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you agreed upon a verdict?

THE FOREMAN: We have.

THE CLERK OF THE COURT: How say you; do you find the defendant or not guilty?

THE FOREMAN: We find the defendant guilty of the indictment as charged.

THE CLERK OF THE COURT: Hearken to your verdict as it stands recorded. You say through your foreman you find the defendant guilty of criminally receiving stolen property in the first degree, knowing the same to have been stolen, so say you all?

THE FOREMAN: Yes sir.

MR. YARCHOVER: At this time may I request that I reserve my motions until day of sentence?

THE COURT: Yes; it is so ordered. Sentence will be imposed on the 28th of December and all rights of counsel to make motions are reserved until that day, when he may make such motions as he may deem advisable. Defendant's rights are fully protected.

L. LUTZ,
Official Stenographer.

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New York, December 28, 1921.

The defendant is arraigned at the bar for sentence.

THE CLERK OF THE COURT: Meyer Miller, what have you now to say why judgment should not be pronounced against you according to law?

MR. JORDAN: If your Honor please, I understand that the motions on behalf of this defendant were postponed until the day of sentence. Now in his behalf I desire to move for a new trial and that the verdict be set aside, upon the ground that the verdict is against the weight of evidence, against the law and upon the exceptions taken during the trial, for the exclusion of proper evidence, and the inclusion of improper evidence, and upon all the grounds mentioned in the Code of Civil Procedure and referred to in the Code of Criminal Procedure. I desire to call the Court's attention specifically to questions of corroboration. The Court submitted to the jury as a matter of law that there was some corroboration of the testimony of an accomplice, and upon that legal proposition I desire to call your Honor's attention to the fact that while it is, -- and it is of course a question of law as to whether there has been any corroboration, -- the Court properly submitted that question to the jury as to whether it did corroborate, -- yet, it seems to me from

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reading the minutes of the case, that there was a lack of corroboration as to any connection that this defendant had with the car in question. There is corroboration of the fact that he had possession of a garage. There is corroboration of the fact that he had keys in his pocket that fitted the locks of this garage or garages. There is corroboration of the fact that he told the officers that he did not know either Schmitt or the man to whom the cars were sold. Each one of those matters, if they were important to this case, were corroborative, but none of them proves any connection that the defendant had this car in question because of the fact that there is absolutely no evidence that he was in the garage or near the garage from the time the car in question was stolen up to the time of his arrest, except only the testimony of Schmitt.

Now, if it is important that there should be corroboration of his criminally receiving stolen property, and if it is important that that stolen property should be confined to the car in question, then there is no evidence connecting him with that portion of the crime. He was acquitted of the crime of stealing. Recent possession would have been some evidence of the larceny, but it is not evidence of criminally receiving stolen property unless there is affirmative proof that someone else stole the car. Now when it comes to the question of corroboration, it

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seems to me that there must be some corroboration, not of some story that the defendant has told, not of some particular isolated fact which might be consistent with his guilt and yet which would be equally consistent with innocence, - but it must be corroboration that proves that the defendant had something to do with the particular transaction under discussion. While it is a deplorable fact that sometimes people lie and sometimes lie to policemen, and that is always to be frowned upon, yet suppose he did deny that he was the owner of a garage or did deny that he had keys to a garage, or that he ever seen them before, that would not be proof of the fact that he took the car of the complainant in this case. It might be just as consistent with something else that it was desirable to conceal from the Court or from the officers, - as that he had anything to do with this car in question. And I say, if your Honor please, that from a perusal of this testimony it appears to me that there is no evidence that this defendant ever saw that car, much less had it in his custody or possession, -- that he had it either constructively or actively in his possession and under his control, except the testimony of the witness Schmitt. Your Honor held that he was an accomplice, and the jury could have hardly found otherwise, because he was indicted; that is one of the tests. A man may be indicted and the

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fact that he was properly indicted is settled by the fact that he pleads guilty. Schmitt pleaded guilty. So the question that he was an accomplice is set at rest once and for all, and therefore there must be corroboration of some outside circumstances, or at all events there must be other evidence than the testimony of the accomplice. Now, there is not one scintilla of evidence that this defendant personally had anything to do with that car, except the evidence of the accomplice. The testimony is that Schmitt had a key to this garage. Well, the brother of the defendant had a key to the garage. That is the testimony of the accomplice. So it was not necessary that this defendant should be there in order that the car might be taken into his possession, any more than a man might go to my office, commit a crime there while I am here, without my knowledge or consent, and then be able to prove, in support of his statement, that I had the office, that I had the key to it as well as he. That does not prove anything. It proves just one of the circumstances which are consistent with his story, with the very reverse. There is not any evidence that this defendant was near the garage for two days or for a week or for a month, except the evidence of the accomplice, and without some intelligent evidence to connect him with the crime the evidence of the accomplice as a matter of law is insufficient, and upon that ground I ask for a new trial.

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Motion denied.

Exception.

(Whereupon the defendant is sentenced to State Prison for not less than two and a half years nor more than five years.)

Jan. 8, 1922

I hereby certify that the foregoing
is a correct transcript
of the proceedings had in
the trial of the case

Ludwig Lutz
Official Stenographer

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