

4070  
199VA 184

# Record No. 4655

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**WILLIAM RAY FOUT, JR., ET AL.**

v.

**COMMONWEALTH OF VIRGINIA**

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FROM THE HUSTINGS COURT OF THE CITY OF ROANOKE.

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## RULE 5:12—BRIEFS.

§5. NUMBER OF COPIES. Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

§6. SIZE AND TYPE. Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

H. G. TURNER, Clerk.

Court opens at 9:30 a. m.; Adjourns at 1:00 p. m.

199VA 184



## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned, and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of the record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of said fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**§5. Number of Copies.** Twenty-five copies of each brief shall be filed with the clerk of the Court, and at least three copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

**§6. Size and Type.** Briefs shall be nine inches in length and six inches in width, so as to conform in dimensions to the printed record, and shall be printed in type not less in size, as to height and width, than the type in which the record is printed. The record number of the case and the names and addresses of counsel submitting the brief shall be printed on the front cover.

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.





IN THE

**Supreme Court of Appeals of Virginia**

AT RICHMOND.

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**Record No. 4655**

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VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Monday the 1st day of October, 1956.

WILLIAM RAY FOUT, JR., ET AL.,      Plaintiffs in error,  
*against*

COMMONWEALTH OF VIRGINIA,      Defendant in error.

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From the Hustings Court of the City of Roanoke

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Upon the petition of William Ray Fout, Jr., and Jennings Coffey, a writ of error and *supersedeas* is awarded them to a judgment rendered by the Hustings Court of the City of Roanoke on the 16th day of May, 1956, in a prosecution by the Commonwealth against the said petitioners for a felony; but said *supersedeas*, however, is not to operate to discharge the petitioners from custody, if in custody, or to release their bond if out on bail.



RECORD

\* \* \* \* \*

The grand jurors in and for the body of the said City of Roanoke, Virginia, and now attending said Court at its MARCH TERM, in the Year 1956, upon their oaths do present:

That CLARENCE ROBERT HALL, WILLIAM RAY FOUT, JR. and JENNINGS COFFEY, heretofore, to-wit: on the day of December, 1955, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, unlawfully and feloniously did break and enter a certain storehouse known as 4221 Melrose Avenue, N. W., located in the City and State aforesaid, belonging to Owen-Weaver, Incorporated, with intent the goods and chattels of the said Owen-Weaver, Incorporated, in the said storehouse then and there being, then and there unlawfully and feloniously to steal, take and carry away, and

divers guns,	
of the value of . . . . .	\$2,551.89
2 cameras,	
of the value of . . . . .	105.00
8 boxes of ammunition,	
of the value of . . . . .	28.00
and of the aggregate value of . . . . .	\$2,684.89

of the goods and chattels of the said Owen-Weaver, Incorporated, in the said storehouse, in the City and State aforesaid, then and there being found, then and there unlawfully and feloniously did steal, take and carry away,

Against the peace and dignity of the Commonwealth of Virginia.

(on back)

INDICTMENT FOR STATUTORY BURGLARY AND LARCENY A FELONY.

A True Bill.

O. S. CLARK  
Foreman Grand Jury.

Received and filed Mar. 5, 1956.

W. R. CARTER, JR.  
Deputy Clerk.

VERDICT.

We, the jury, find the defendants guilty as charged and fix their punishment at confinement in the penitentiary for eight (8) years.

C. F. KEELEY  
Foreman.

(1) Wm. Ray Fout Jr., and Jennings Coffey.

page 2 }

\* \* \* \* \*

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the fifth day of March, 1956.

This day O. S. Clark, Joseph T. Crews, F. Roy Hunt, William A. Fink and R. H. Wills appeared in Court to serve as Special Grand Jurors pursuant to a writ of *venire facies* issued under the direction of the Judge of this Court and duly executed upon them, were examined and accepted as the law directs.

Thereupon the Court selected O. S. Clark as foreman, who took the oath prescribed by law, and he, together with Joseph T. Crews, F. Roy Hunt, William A. Fink and R. H. Wills were sworn a Special Grand Jury in and for the body of the City of Roanoke, Virginia, and having received their charge, retired into their room to consider their indictments and after some time returned into Court the following indictments, viz:

STATUTORY BURGLARY AND LARCENY.

FELONY.

Commonwealth of Virginia

v.

Clarence Robert Hall, William Ray Fout, Jr., & Jennings Coffey.

"A true bill.

O. S. Clark,  
Foreman."



And the Special Grand Jury, having finished the business before them, were discharged for the term.

\* \* \* \* \*

page 3 }

\* \* \* \* \*

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 27th day of March, 1956.

\* \* \* \* \*

It is ordered that this case be continued on motion of the defendants, Clarence Robert Hall, Williams Ray Fout, Jr., and Jennings Coffey.

And at another date, to-wit: April 12, 1956.

This day came the defendant, Clarence Robert Hall, in person and by his attorney, and thereupon the said Clarence Robert Hall, by his attorney, moved the Court to furnish him with a statement in writing, whereupon the Court ruled that it would be proper to present in said statement only the date of the alleged offense and the number of guns alleged to have been stolen.

Thereupon the defendant, Clarence Robert Hall, by his attorney, moved the Court to sever in the prosecution of this case, which motion the Court sustained.

\* \* \* \* \*

page 256 }

\* \* \* \* \*

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 24th day of April, 1956.

\* \* \* \* \*

This day came the Attorney for the Commonwealth of Virginia, and the prisoners, William Ray Fout, Jr. and Jennings Coffey, were brought into Court in the custody of the Ser-

geant of the City of Roanoke, Virginia, and set to the bar. Also came the defendants' attorneys.

Thereupon the said William Ray Fout, Jr. and Jennings Coffey were arraigned, and having been advised by their attorneys, pleaded not guilty to the charge of statutory burglary and larceny alleged against them in the indictment and for their trial put themselves upon the country.

Thereupon came twenty (20) persons citizens of the City of Roanoke, Virginia summoned by the Sergeant of the City of Roanoke, Virginia, pursuant to writs of *venire facias* issued as the law directs, and Court having examined said persons and finding them free from all legal exceptions and qualified to serve as jurors according to law, the Attorney for the Commonwealth and the prisoner having struck from said list four (4) of said jurors, the remaining twelve (12), to-wit: Eugene E. Barton, A. M. Eckstein, Horace L. Hollister, James W. Ireland, Harry G. Johnson, Jr., Edwin F. Johnston, J. Franklin Keel, C. Francis Keeley, B. H. McKeever, Paul W. Miller, Thomas D. Taylor and C. Stuart

Thompson were sworn to well and truly try the  
 page 257 } prisoners at the bar, and having heard the evidence of the Commonwealth, adjourned until  
 April 25, 1956 at 2:00 o'clock p. m.

And the prisoners are remanded to jail.

\* \* \* \* \*

page 258 }

\* \* \* \* \*

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 25th day of April, 1956.

\* \* \* \* \*

This day again came the Attorney for the Commonwealth of Virginia, and the prisoners, William Ray Fout, Jr. and Jennings Coffey, were brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar. Also came the defendants' attorneys. There also came into Court the jury sworn in this case pursuant to their adjournment.

Thereupon the defendant, William Ray Fout, Jr., by counsel moved the Court to strike the evidence introduced on behalf of the Commonwealth on the grounds that the same had not



connected the said William Ray Fout, Jr. with the possession of any guns alleged to have been stolen, which motion the Court overruled, and the defendant, by counsel, excepted.

Thereupon the jury having heard more of the evidence adjourned until Thursday, April 26, 1956 at ten o'clock a. m. And the prisoners are remanded to jail.

\* \* \* \* \*

page 259 }

#### INSTRUCTION A.

The Court instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that the defendants, Jennings Coffey and William Ray Fout, Jr., by themselves or with others, broke and entered the building described in the indictment belonging to Owen-Weaver Company, Incorporated with the intent to commit larceny therein, and committed larceny therein, or were present aiding and abetting another or others at the time of the breaking and entering, with the aforesaid intent, then you should find the defendants guilty as charged, and fix their punishment by confinement in the penitentiary for a period of not less than one nor more than ten years, or in the discretion of the jury, by confinement in jail not exceeding twelve months and a fine not exceeding Five Hundred Dollars.

Given.

page 260 }

#### INSTRUCTION B.

The Court instructs the jury that if you believe from the evidence in this case beyond a reasonable doubt that Owen-Weaver Company, Incorporated was broken and entered and the goods in question were guns taken from the Owen-Weaver Company, Incorporated and that the breaking and entering and larceny was all a part of the same transaction, that is, committed at the same time and by the same persons, and that the property or a part of the property taken has been found in the exclusive possession of the defendants, then the persons found in exclusive possession are presumed to be the persons who committed the breaking and entering and larceny, and requires evidence giving a reasonable explanation of how they came in possession of such goods and should the evidence fail so to do, the presumption of being the persons who broke and entered and committed larceny remains and they are presumed to have committed the crime of breaking and entering and committing larceny.

Given.

page 261 }

INSTRUCTION C.

The Court instructs the jury that one charged with crime may be convicted upon circumstantial evidence alone, or upon circumstantial evidence connected with other evidence, if the jury believe beyond a reasonable doubt from such circumstantial evidence, or from such circumstantial evidence connected with other evidence, that the persons so charged are guilty of the crime alleged against them in the indictment; therefore, the court instructs the jury in this case that they have the right to convict the defendants upon circumstantial evidence alone, or upon circumstantial evidence coupled with other evidence, if the jury from such circumstantial evidence or from such circumstantial evidence connected with other evidence, believe the guilt of the defendants beyond a reasonable doubt. And the Court further instructs the jury that circumstantial evidence is not only competent but is sometimes the only mode of proof, and, therefore, if the jury believe from the evidence and circumstances in this case, beyond a reasonable doubt, that the accused committed the offense as charged against them in the indictment herein, then it is their duty to find them guilty.

Given.

page 262 }

INSTRUCTION D.

The Court instructs the jury that where the State has established a *prima facie* case and the defendant relies upon the defense of alibi, the burden is upon him to prove it, not beyond a reasonable doubt nor by a preponderance of the evidence but by such evidence and to such a degree of certainty as will, when the whole evidence is considered, create and leave in the mind of the jury a reasonable doubt as to the guilt of the accused.

Given.

page 263 }

INSTRUCTION I.

The Court instructs the jury that the burden of proof is upon the Commonwealth to prove beyond reasonable doubt that the defendants Fout and Coffey, on the night of December 24, 1955, between the hours of 9:15 p. m. and 1:15 a. m. of the morning of December 25, 1955, broke and entered the store of Owen-Weaver with the intent to commit larceny of



the goods therein, and unless the Commonwealth has proven beyond a reasonable doubt that the defendants, Fout and Coffey, broke and entered as aforesaid, then the jury must find the defendants Fout and Coffey "not guilty."

Given.

page 264 }

### INSTRUCTION II.

The Court instructs the jury that when the burden of proof rests on the Commonwealth, the burden can be successfully borne only if the evidence satisfies you of the guilt of the defendants beyond a reasonable doubt. A doubt engendered solely by Sympathy or by dislike to accept the responsibility of convicting the defendants is not a reasonable doubt. The law does not require absolute certainty, nor does it require proof beyond all possibility of a mistake. The law does require, however, that if after carefully and impartially considering and weighing all the evidence in this case, before you can find a verdict of guilty you must reach the conclusion that the defendants are guilty with such degree of certainty that you would act on the faith of it in your own most important and critical affairs.

page 265 }

### INSTRUCTION III.

The Court instructs the jury that the presumption of innocence is not a mere form, to be disregarded by the jury at pleasure, but it is an essential part of the law of the land, and binding on the jury in this case; and it is the duty of the jury to give the defendants in this case the full benefit of the presumption unless and until the Commonwealth has overcome this presumption by proving the guilt of the defendants beyond a reasonable doubt.

Given.

page 266 }

### INSTRUCTION IV.

The Court instructs the jury that the presumption of innocence goes with the defendants throughout the entire trial and applies to each and every stage thereof.

Given.

page 267 }

INSTRUCTION V.

The Court instructs the jury that it is not sufficient that the guilt of the defendants is probable only or more probable than their innocence. Nor can the defendants be convicted upon mere suspicion. No amount of suspicion, however strong, will warrant their conviction. But in order to convict, the evidence of guilt must be so strong that there can be no rational theory arising from the evidence consistent with their innocence.

Given.

page 268 }

INSTRUCTION VI.

The Court instructs the jury that larceny is the unlawful taking and carrying away with the intention of permanently depriving the owner of the use thereof and that all of these elements must concur before there can be larceny.

page 269 }

INSTRUCTION NO. VII.

The Court instructs the jury that the failure of Jennings Coffey to testify creates no presumption against him, and in considering his guilt or innocence, his failure to testify is not a circumstance which the jury is entitled to consider.

Given.

page 270 }

INSTRUCTION NO. VIII.

The Court instructs the jury that any statements allegedly made by William Ray Fout to any of the officers in the absence of Jennings Coffey, is not evidence either for or against Jennings Coffey and can not be considered in determining the guilt or innocence of Jennings Coffey.

Given.

page 271 }

INSTRUCTION IX.

The Court instructs the jury that if on a fair and impartial consideration of all the evidence in this case, they find there are two theories reasonably supported by the evidence in this case, one of which is consistent with the guilt of the defendants and the other consistent with their innocence, and if the jury have a reasonable doubt as to which theory is right,

then the law makes it the duty of the jury to give the defendants the benefit of such doubt and to find them not guilty.

Refused 4/26/56.

D. A. K.

page 272 }

### INSTRUCTION X.

The Court instructs the jury that if they believe that the evidence in this case is equally susceptible of two or more interpretations, one of which interpretations points to the guilt of the accused or either of them, and the other interpretation, just as reasonable, points to the innocence of the accused or either of them, then it is the duty of the jury to accept that interpretation pointing to the innocence of the said defendants and give said defendants the benefit of the presumption of innocence and find the said defendants not guilty.

page 273 }

### INSTRUCTION NO. XI.

The Court instructs the jury that where the Commonwealth relies partly upon circumstantial evidence to prove its case it is essential that all the circumstances from which the conclusion is drawn shall be established by full proof; that every circumstance which is essential to the conclusion must be proven in the same manner and to the said extent as if the whole issue had rested upon the proof of each individual and essential circumstance; and that such evidence is always insufficient when, assuming all to be true which the evidence tends to prove, some other hypothesis may still be true, for it is the actual exclusion of every other hypothesis which invests circumstances with the force of proof.

page 274 }

\* \* \* \* \*

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 26th day of April, 1956.

\* \* \* \* \*

This day again came the Attorney for the Commonwealth of Virginia, and the prisoners, William Ray Fout, Jr. and

Jennings Coffey, were brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia and set to the bar. Also came the defendants' attorneys. There also came into Court the jury sworn in this case pursuant to their adjournment, and heard all of the evidence.

Thereupon the defendant, William Ray Fout, Jr., by counsel moved the Court to strike the evidence introduced on behalf of the Commonwealth insofar as the said William Ray Fout, Jr. was concerned prior to the time he was found in the woods, which motion the Court overruled, and the defendant by counsel excepted. The said William Ray Fout, Jr. by counsel then moved the Court to strike the evidence introduced on behalf of the Commonwealth on the grounds that it had not proved that he was in possession of any guns or that he did steal, take and carry away any guns, which motion the Court overruled, and the defendant by counsel excepted.

Thereupon the jury received the instructions of the Court and heard the argument of counsel retired to consider their verdict and after some time returned into Court the following verdict, viz:

"We, the jury, find the defendants, Wm. Ray Fout, Jr. and Jennings Coffey, guilty as charged and fix their punishment at confinement in the penitentiary for eight (8) years.

C. F. KEELEY, Foreman."

page 275 } and the jury were discharged.

It is therefore considered by the Court that the said William Ray Fout, Jr. and Jennings Coffey be confined in the State Penitentiary at Richmond, Virginia for eight years, and it is ordered that, as soon as practicable, the said William Ray Fout, Jr. and Jennings Coffey be removed from the jail of the City of Roanoke, Virginia and safely conveyed to said State Penitentiary at Richmond, Virginia, therein to be kept imprisoned and treated in the manner prescribed by law. The defendants shall be allowed credit for the time they have been confined in jail awaiting their trial. And the prisoners are remanded to jail.

\* \* \* \*

page 276 }

\* \* \* \*

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 4th day of May, 1956.

\* \* \* \* \*

This day came the defendant, William Ray Fout, Jr. and Jennings Coffey, by counsel, and moved the Court to set aside the verdict of the jury rendered in this case on the 26th day of April, 1956 and grant them a new trial in this case, and filed their grounds in writing supporting said motion, which motion the Court takes time to consider.

\* \* \* \* \*

page 277 }

\* \* \* \* \*

Received and Filed May 4, 1956.

F. L. SEYMOUR,  
Deputy Clerk.

# MOTION TO SET ASIDE THE VERDICT OF THE JURY AND AWARD A NEW TRIAL.

This day came Jennings Coffey and moved the Court to set aside the verdict of the jury rendered in this action on the 26th day of April, 1956, and in support of said motion, assigns the following grounds:

(1) That the verdict of the jury is contrary to the law and evidence.

(2) The Court admitted over the objection and exception of the defendant, inadmissible and prejudicial evidence for the reasons assigned in the record.

(3) The Court, over the objection and exception of the defendant, gave at the instance of the Commonwealth, instructions that were erroneous and inapplicable to the evidence in the case. Such instructions were highly prejudicial to the rights of the defendant.

(4) The jury and each and every member thereof violated the instructions of the Court in that they were informed of the verdict rendered by another jury on the 24th day of April, 1956, in the case of *Commonwealth v. Clarence (Fuzzy) Hall*.



Certain members of the jury in violation of the instructions of the Court, read newspaper articles as to the verdict rendered in the Hall case. Hall was jointly indicted with this defendant and charged with the same offense. The verdict in the

Hall case was brought to the attention of each and page 278 } every member of the jury and was discussed by the jury during their deliberations in the case of this defendant. It is here and now charged that the verdict in the Hall case influenced the verdict in this case. Such is bound to be true because there would not have been any discussion of the verdict rendered in the Hall case during the deliberations of the jury in the case of this defendant.

(5) It was conclusively established by the records of the Tidewater Construction Company, the testimony of the office manager, general foreman and other employees that this defendant was at work on the 21st, 22nd and 23rd days of December, 1955, at the Lone Star Cement Company in Botetourt County, Virginia, approximately 18 miles north of the City of Roanoke. It was likewise conclusively established that this defendant worked every day with the exception of the 19th day of December, 1955, when he was ill at his home. The testimony of the Commonwealth's star witness, a negro, Frank Scales, was that on the 22nd and 23rd days of December, 1955, between the hours of 10:00 a. m. and 8:00 p. m. this defendant was in the automobile of one Abie Hasson and in the company of Clarence (Fuzzy) Hall and the said Frank Scales. According to the testimony of the said Frank Scales, all of the parties left Pulaski, Virginia, and came to the City of Roanoke, stopped at the Owen-Weaver Company and arrangements made for the breaking and entering of said establishment and stealing therefrom. Such was the testimony of the said Frank Scales at the trial of Clarence (Fuzzy) Hall on the 23rd and 24th days of April, 1956. Such was the testimony of the said Frank Scales at the trial of this defendant on the 25th and 26th days of April, 1956.

page 279 } On the 27th day of April, 1956, the said Frank Scales, at the trial of the case of *Commonwealth v. Abie Hasson*, who was also indicted for breaking and entering said establishment of Owen-Weaver, Frank Scales completely refuted the testimony given before two different juries on the 23rd and 24th of April and on the 25th and 26th days of April, 1956. At the trial of Abie Hasson on the 27th day of April, 1956, the defendant swore that Jennings Coffey was not in the Hasson automobile and did not accompany Hasson or Hall to the Owen-Weaver establishment.

It was therefore conclusively established that the verdict of the jury in the case of this defendant was founded upon false and perjured testimony of the negro, Frank Scales.

In support of this motion there is filed herewith a transcript of the testimony of Frank Scales at the trial of the case of *Commonwealth v. Abie Hasson* and likewise filed the ruling of the Court on the motion to strike the evidence of the Commonwealth.

Wherefore, this defendant moves the Court to set aside the verdict of the jury rendered in his case and to award him a new trial.

JENNINGS COFFEY.  
T. W. MESSICK  
By Counsel.

\* \* \* \* \*

page 280 } I hereby certify that on the 4th day of May,  
1956, the original of the foregoing pleading was  
filed in the Clerk's Office of the Hustings Court of the City  
of Roanoke, Virginia, and a true and correct copy thereof  
mailed to C. E. Cuddy, Commonwealth's Attorney, Roanoke,  
Virginia.

T. W. MESSICK.

page 281 }

\* \* \* \* \*

Received and Filed May 4, 1956.

F. L. SEYMOUR, Deputy Clerk.

# MOTION TO SET ASIDE VERDICT OF THE JURY AND AWARD A NEW TRIAL.

This day came William Ray Fout and moved the Court to set aside the verdict of the jury rendered in this action on the 26th day of April, 1956, and in support of said motion, assigns the following grounds:

(1) That the verdict of the jury is contrary to the law and evidence.

(2) The Court admitted over the objection and exception of the defendant, inadmissible and prejudicial evidence for the reasons assigned in the record.

(3) The Court, over the objection and exception of the defendant, gave at the instance of the Commonwealth, instructions that were erroneous and inapplicable to the evidence in the case. Such instructions were highly prejudicial to the rights of the defendant.

(4) The jury and each and every member thereof violated the instructions of the Court in that they were informed of the verdict rendered by another jury on the 24th day of April, 1956, in the case of *Commonwealth v. Clarence (Fuzzy) Hall*. Certain members of the jury in violation of the instructions of the Court, read newspaper articles as to the verdict rendered in the Hall case. Hall was jointly indicted with this defendant and charged with the same offense. The verdict in the Hall case was brought to the attention of page 282 } each and every member of the jury and was discussed by the jury during their deliberations in the case of this defendant. It is here and now charged that the verdict in the Hall case influenced the verdict in this case. Such is bound to be true because there would not have been any discussion of the verdict rendered in the Hall case during the deliberations of the jury in the case of this defendant.

(5) It was conclusively established by the records of the Tidewater Construction Company, the testimony of the office manager, general foreman and other employees that this defendant was at work on the 21st, 22nd and 23rd days of December, 1955, at the Lone Star Cement Company in Botetourt County, Virginia, approximately 18 miles north of the City of Roanoke. It was likewise conclusively established that this defendant worked every day with the exception of the 19th day of December, 1955, when he was ill at his home. The testimony of the Commonwealth's star witness, a negro, Frank Scales, was that on the 22nd and 23rd days of December, 1955, between the hours of 10:00 a. m. and 8:00 p. m. this defendant was in the automobile of one Abie Hasson and in the company of Clarence (Fuzzy) Hall and the said Frank Scales. According to the testimony of the said Frank Scales, all of the parties left Pulaski, Virginia, and came to the City of Roanoke, stopped at the Owen-Weaver Company and arrangements made for the breaking and entering of said establishment and stealing therefrom. Such was the testimony of the said Frank Scales at the trial of Clarence (Fuzzy) Hall on the 23rd and 24th days of April, 1956. Such was the

testimony of the said Frank Scales at the trial of this defendant on the 25th and 26th days of April, 1956.

page 283 } On the 27th day of April, 1956, the said Frank Scales, at the trial of the case of *Commonwealth v. Abie Hasson*, who was also indicted for breaking and entering said establishment of Owen-Weaver, Frank Scales completely refuted the testimony given before two different juries on the 23rd and 24th of April and on the 25th and 26th days of April, 1956. At the trial of Abie Hasson on the 27th day of April, 1956, the defendant swore that Jennings Coffey was not in the Hasson automobile and did not accompany Hasson or Hall to the Owen-Weaver establishment.

It was therefore conclusively established that the verdict of the jury in the case of this defendant was founded upon false and perjured testimony of the negro, Frank Scales.

In support of this motion there is filed herewith a transcript of the testimony of Frank Scales at the trial of the case of *Commonwealth v. Abie Hasson* and likewise filed the ruling of the Court on the motion to strike the evidence of the Commonwealth.

Wherefore, this defendant moves the Court to set aside the verdict of the jury rendered in his case and to award him a new trial.

WILLIAM RAY FOUT.  
CLYDE LANHAM,  
By Counsel.

\* \* \* \* \*

page 284 } I hereby certify that on the 4th day of May, 1956, the original of the foregoing pleading was filed in the Clerk's Office of the Hustings Court of the City of Roanoke, Virginia, and a true and correct copy thereof mailed to C. E. Cuddy, Commonwealth's Attorney, Roanoke, Virginia.

CLYDE LANHAM.

page 285 }

\* \* \* \* \*

Received and Filed May 16, 1956.

W. R. CARTER, JR., Deputy Clerk.

ORDER.

This day again came the defendants, Jennings Coffey and William Ray Fout, and the attorneys for the defendants, and came as well the attorney for the Commonwealth, and the defendants filed with their motion to set aside the verdict of the jury rendered in this cause on the 26th day of April, 1956, a transcript of the testimony of Frank Scales at the trial of one Abie Hasson, together with certain rulings of the Court in the Hasson case, and requested that said evidence and rulings be filed in support of the motions filed to set aside the verdicts of the jury, which motions were filed on the 4th day of May, 1956.

On consideration whereof, it is Ordered that the testimony, evidence and rulings above referred to be, and is hereby, filed in this cause marked defendant's exhibit #1, with the motions heretofore made to set aside the verdicts of the jury and award the defendants and each of them a new trial.

The motions to set aside the verdicts of the jury and award the defendants and each of them a new trial, having been fully heard by the Court, is overruled, and to which action of the Court in overruling said motions the said defendants and each of them, by counsel, duly excepted for the page 286 } reasons assigned in their motions to set aside the verdicts of the jury and award a new trial.

Whereupon it being demanded of the defendants and each of them, if anything for himself, he had or knew to say why the Court should not here and now proceed to pronounce judgment against the defendants and each of them according to law, and nothing being offered or alleged in delay of judgment, it is therefore considered by the Court that the said Jennings Coffey and William Ray Fout, each, be confined in the Penitentiary of this Commonwealth for a period of 8 years, subject to a credit of such time as the defendants and each of them spent in jail awaiting trial.

Thereupon, the said defendants and each of them, by counsel, moved the Court for time in which to apply for a writ of error and *supersedeas* to the foregoing judgments, which motions having been fully heard by the Court, is sustained and executions of the foregoing sentences is hereby postponed for a period of 60 days or until the Supreme Court of Appeals of Virginia shall deny said writ of error, if prior thereto.

Enter May 16, 1956.

D. A. K. Judge.

\* \* \* \* \*



page 287 }

\* \* \* \* \*

Received and Filed May 16, 1956.

W. R. CARTER, JR., Deputy Clerk.

## ORDER.

This day came the attorney for the Commonwealth and likewise came the attorneys for the defendants and each of them, and it appearing to the Court that on the 26th day of April, 1956, the jury that tried the above styled actions returned a verdict of guilty and fixed the punishment of the defendants and each of them at 8 years in the Virginia State Penitentiary; that the Court immediately proceeded to sentence the defendants and each of them to the terms imposed by the jury in their verdicts, and;

It further appearing to the Court that on the 4th day of May, 1956, the defendants filed their respective motions to set aside the verdict of the jury and award them a new trial; that in the meantime the defendants were removed from the jail in Roanoke City to the Virginia State Penitentiary.

On further consideration, the Court is of the opinion that the Clerk of this Court issued executions of the judgments before said judgments became final; that the defendants and each of them are inadvertently confined in the Virginia State Penitentiary, it is Ordered that the Superintendent of the Virginia State Penitentiary, do, as expediently  
page 288 } as possible, return the defendants and each of them to the Roanoke City, Virginia, jail.

And this action is continued.

Enter May 16, 1956.

D. A. K., Judge.

page 289 }

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William Ray Fout, Jr., et al., v. Commonwealth of Va. 19

In the Hustings Court for the City of Roanoke.

VOL. #2.

CASE NO. 25429.

STATUTORY BURGLARY AND LARCENY.

Received and Filed May 16, 1956.

W. R. CARTER, JR., Deputy Clerk.

COMMONWEALTH OF VIRGINIA, Plaintiff,

v.

ABIE HASSON, Defendant.

TRANSCRIPT OF TESTIMONY OF FRANK SCALES  
AND MOTION TO STRIKE THE EVIDENCE OF  
THE COMMONWEALTH—APRIL 27, 1956.

DEFENDANT'S EXHIBIT #1.

\* \* \* \* \*

page 291 }

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In the Hustings Court for the City of Roanoke.

CASE NO. 25429.

STATUTORY BURGLARY AND LARCENY.

COMMONWEALTH OF VIRGINIA, Plaintiff,

v.

ABIE HASSON, Defendant.

Transcript only of testimony of Frank Scales and motion to strike the evidence of the Commonwealth, which proceedings were had on April 27, 1956, in the above styled case tried in the Hustings Court for the City of Roanoke, Virginia, before the Honorable Dirk A. Kuyk, Judge, and a jury.

*Frank Scales.*

Appearances: C. E. Cuddy, Esq., of Roanoke, Virginia, Commonwealth's Attorney. Arthur B. Crush, Esq., of Roanoke, Virginia, Assistant Commonwealth's Attorney.

William B. Hopkins, Esq., of Roanoke, Virginia and Philip M. Sadler, Esq., of Pulaski, Virginia, Counsel for Defendant.

page 292 }

## FRANK SCALES

having been first duly sworn, was examined and testified as follows:

## DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Is your name Frank Scales?

A. Yes, sir.

Q. Talk out so the jurymen can hear you, Frank.

A. Yes, sir.

Q. Where do you live, Frank?

A. Pulaski, Virginia.

Q. Do you know Abie Hasson?

A. Yes, sir.

Q. Where does Abie Hasson live?

A. Pulaski, Virginia. *Resident* on Draper, in Draper.

Q. In Draper?

A. Yes.

Q. Approximately how long have you known Abie Hasson?

A. About fifteen or sixteen months.

Q. Do you know Fuzz Hall?

A. Yes, sir.

Q. How long have you known Fuzz Hall?

A. About twelve months.

Q. Do you know Jennings Coffey?

A. Yes, sir.

page 293 } Q. How long have you known Jennings Coffey?

A. Just during the *Month* of December.

Q. Now, Frank, during the month of December did you come to Roanoke with Abie Hasson?

A. Yes, sir.

Q. How many times?

A. Three times.

Q. Now, you go ahead and relate to the jury who came with you the first time?

A. Hasson and Fuzz and myself.

Q. The first time you came down here, who came with you the first time that you came?

*Frank Scales.*

A. Hasson and Fuzz and myself.

Q. That is Abie Hasson, Fuzz Hall and you. And where did you go that time?

A. We came down here. We didn't go by no store or anything. We just came down here in town and Fuzz saw his wife and started arguing. Hasson said he didn't want to be involved in nothing so he said he wanted to go back to Pulaski. So, we went on back.

Q. Then did you come back a second time?

A. Yes, sir.

Q. And who was with you on that occasion?

A. Hasson, Fuzz, Coffey and myself.

Mr. Cuddy: Can you gentlemen hear him all right?

Jurors: Yes.

page 294 } By Mr. Cuddy:

Q. There were three of them besides you on the second occasion?

A. Yes, sir.

Q. Where did you go then?

A. Well, we came in the town and we went over here by the Owen and Weaver. We pulled up there in between the driveway. Fuzz got out of the car about middleways of the store. Hasson and myself and Coffey, we stayed in the car. Hasson didn't say anything. Neither no one else didn't say anything in the car while Fuzz was out. Fuzz came back and he mentioned something about some rollers and a bar. Hasson laughed and said, "Are you ready to go," just like that. And Fuzz said the job was cased and so we pulled on off. Hasson didn't say anything concerning the place, not then.

Q. Now, when you drove in there it is a hard surface or concrete driveway, isn't it?

A. Yes, sir.

Q. Where were you when Hall got out of the car?

A. In the back seat.

Q. I mean, where was the car?

A. Oh, about middleways of the store.

Q. And then did you see where he went?

A. No, sir. He went down toward the front.

Q. Toward the front of what?

A. The store and the liquor store. But he was  
page 295 } on the side, he got out on the side where the store  
was.

*Frank Scales.*

Q. That is Owen-Weaver's store?

A. Yes, sir.

Q. Where did you move the car to, then?

A. We went back to the edge of the wall. There is a little rail wall there. We went back to the edge of that and we waited on him.

The Court: Just a minute. Mr. Allman is wanted on the telephone.

Mr. Hopkins: That is all right.

Mr. Cuddy: All right. He says it is all right.

The Court: There is a call for Captain Allman. You have no objection?

Mr. Hopkins: No objection.

By Mr. Cuddy:

Q. Now, when you stopped the car and parked, Hall got out of the car?

A. Yes.

Q. Where did you then move? Where was the car then moved to and parked?

A. Toward the back of the store.

Q. Was it beyond the rear of the store or not?

A. We went all the way to the rear.

Q. Would you just explain to the jury what you could see of the Owen-Weaver store when you were parked?

A. You could see a large panel window in the back of it.

Q. And about how long were you parked there?  
page 296 } A. About five minutes.

Q. Now, Hall then came back?

A. Yes, sir.

Q. And when he came back to the car what did he say?

A. He mentioned something about some rollers and a bar and a crowbar.

Q. What else did he say about the place?

A. He said the job was cased.

Q. Then you got in the car and drove away?

A. Yes.

Q. Did you come back into town again?

A. Yes, sir.

Q. Who was with you on that occasion?

A. Hall, Hasson, Coffey and myself.

Q. There were four of you that time?

A. Yes, sir.

Q. Where did they bring you at that time?



*Frank Scales.*

A. I went over toward,—they let me out over on the bridge over next to Henry Street. Hasson said he had to go see something about his operator's permit.

Q. And I believe you were let out of the car?

A. Yes, sir.

Q. Who was in the car when you got out? Who did that leave in the car?

page 297 } A. Hasson, Coffey, Fuzz.

Q. And how long were they gone?

A. About two hours.

Q. Did they pick you up then on Henry Street?

A. Yes, sir.

Q. Who was in the car when they came back to Henry Street?

A. Hasson, Coffey, Fuzz.

Q. Was any statements made at that time about anything being needed or desired?

A. No, sir, not that I can recall.

Q. Any discussion at all with reference to any tools or anything like that?

A. No, sir.

Mr. Hopkins: Object to that. That is a leading question.

The Court: That is a leading question.

Mr. Sadler: I move the Court to instruct the jury to disregard it.

The Court: All right. The question is leading and the objection is sustained.

Mr. Cuddy: All right, sir.

By Mr. Cuddy:

Q. Then you got in the car and then where did you go?

A. We came back to Pulaski.

Q. Went back to Pulaski. On the second trip  
page 298 } that you came to Roanoke, as I understand it, you  
came in and went to Owen-Weaver's place. Then  
where did you go?

A. We came back up on some street here in Roanoke. Hasson said he had to get back home just like that and so Fuzz said he had to see some guy. Well, Hasson said he had to get back for an appointment. He said he didn't want to be down here too long. Fuzz said, "It won't be longer than about quarter to five." Then he said, then Hasson said, "Well," he said, "I might could wait on you that long. I am not for sure." Then we went on up to Salem. We stayed up there

*Frank Scales.*

until around about four-thirty and we drove out to a restaurant up there and Hasson and Coffey, they got out. Hasson asked Fuzz, he said, "What are you going to do with Scales?" He said, "I brought him down here and I have got to take him back." He said, "Well, I will take him with me. I have got to see this guy." Hasson and them got out of the car.

Q. Hasson and who?

A. Coffey got out of the car. They went in this restaurant. We come on back and went down Wholesale and Turnpike Road.

Q. Whose place were you looking for?

A. A guy named Fout.

Q. How do you know you were looking for a man named Fout?

A. He went by a place called Casa Loma and he mentioned this guy Fout's name to someone up there. And page 299 } they give him the directions to the house. So, we went down there to where he lived at. He went in the house and I stayed in the car and he was gone around about forty or forty-five minutes. Then he came back out and he was arguing. And so we left and we came back and picked up Hasson and them. When we got back in the car, Hasson asked what took him so long. He acted like he was kind of mad. He had an appointment to make. We went on back to Pulaski.

Q. What was the exchange of words and what was said between Hasson and Hall when they were kind of arguing. Just what was said about it?

A. Hasson asked him why did he take such a long time. He told him he had an appointment to make. He didn't say why it took so long. We went downtown. He stayed in the place about forty-five or fifty-five minutes. It took us around about twenty or twenty-five minutes to find the place.

Q. Then you went on back to Pulaski?

A. Yes, sir.

Q. Is the the man that brought you down here? (Indicating defendant.)

A. Yes, sir.

Q. And he brought you down here on at least three occasions?

A. Yes, sir.

Q. All right, sir. Now, Frank, you let on here page 300 } about this break-in?

A. Yes, sir.

Q. About when did you hear about it?

*Frank Scales.*

A. It was about the week after Christmas I went down to the barber shop and I read something about it in the paper.

Q. Now, after this break-in did you see Coffey in Pulaski?

A. Yes, sir.

Q. When did you see him in Pulaski?

A. Christmas morning.

Q. What did he have?

A. A red maroon car.

Q. What was in that car?

A. Some guns.

Q. Do you know approximately how many guns or can you estimate the number of guns you saw?

A. I say about thirty some.

Q. What time was that?

A. It was early in the morning. I came from home to get some clothes out of the cleaners and the cleaners wasn't opened. I called the man who ran the cleaners, Mr. Howard, and asked was he coming down and he said, yes, he would be down when the boys come down to clean up. So, I went on down to the Deluxe Cab Stand.

Q. Did you see Hall up there about that time  
page 301 } with any car?

A. Yes, I believe Hall was in the car. I couldn't say for sure.

Q. In the car with whom?

A. Coffey.

Q. Did you see Hasson that day?

A. I saw Hasson but I didn't see Hasson with these fellows?

Q. Where did you see him?

A. The car had gone. I saw Hasson around about eleven, ten-thirty, about ten-thirty, eleven o'clock. I was in the cab stand shining some shoes and he came down. He said, "Merry Christmas." And I said, "The same to you." He said, "Here is your Christmas present." He gave me three dollars. He said, "Do you want to go for a ride?" I said, "Yes." He got a cab. I got in and he told me to get in the back. We went from the Deluxe Cab Stand about two blocks to Maple Lodge. He got out of the cab and he said, "I will see you," just like that. And I said, "O. K." And the next time I saw him, I heard about his picture being in the paper. He had his head busted.

Mr. Cuddy: All right. Take the witness.

*Frank Scales.*

CROSS EXAMINATION.

By Mr. Sadler:

Q. Frank, you say you have known Abie Hasson about fifteen months?

A. Yes, sir.

page 302 } Q. Have you seen him frequently during that time in Pulaski?

A. Not too much. Occasionally because at one time he was selling pictures. He was working with some company selling pictures.

Q. Selling pictures. And you shined shoes occasionally there by his brother's barber shop in Pulaski?

A. Yes, sir.

Q. Across the street. Is that where you see him most of the time on those occasions?

A. Yes, sir.

Q. What kind of an automobile did Abie Hasson have during the time you knew him?

A. Oldsmobile.

Q. What color was it?

A. Blue.

Q. Do you know what model it was?

A. No, sir, only I know it was a blue two tone. I wouldn't say. I believe it was a '53 or '54. I am not for sure.

Q. New model?

A. Yes, sir, at that time. I can't drive. I don't know too much about cars.

Q. But you knew his car well, didn't you?

A. Yes, sir.

page 303 } Q. Now, you have told this jury that on three occasions you made a trip down to Roanoke with Hasson and Fuzz Hall. Prior to that time had you ever come down here with Hasson before?

A. No, sir.

Q. You never came to Roanoke with Abie Hasson?

A. Yes, sir. I came here with Abe by himself. Not with Abe and Fuzz.

Q. You told the jury you made three trips down here with Abie Hasson and Fuzz Hall in December. Whose *care* were you in those trips, Frank?

A. The best of my remembering, I think to my remembering, I think it was Abe Hasson's.

Q. The best you remember. You know it was, don't you?

*Frank Scales.*

A. Yes, sir.

Q. You know it was his car you came in?

A. Yes, sir.

Q. You knew his car well, didn't you?

A. That is right.

Q. And you now tell this jury under oath you came in his car each time?

A. Yes, sir.

Q. On two of those trips you say Jennings Coffey was with you?

A. Yes, sir.

page 304 } Q. Where does Jennings Coffey live, do you know, Frank?

A. I don't know too much about Jennings Coffey.

Q. As a matter of fact, you weren't too sure Jennings Coffey was with you until people showed you pictures of him, were you?

A. That is right.

Q. You weren't too sure then, were you?

A. I never have seen Jennings Coffey until at this time.

Q. Did you ever see him before then?

A. No, sir.

Q. Were you shown some photographs of a boy named Fout and a boy named Jennings Coffey?

A. Yes, sir.

Q. That was some time in January or February of this year?

A. It was about the last of February.

Q. About the last of February. Did you then identify Jennings Coffey as being the man with you?

A. Yes, sir.

Q. Did you say, "That was him," or "That looks like him because it isn't the little fellow"?

A. I said, "It looks like him."

Q. "It looks like him." Do you know what he was doing in Pulaski at that time?

A. No. As I said, I didn't know Jennings  
page 305 } Coffey.

Q. How far apart were these three trips you testified to at which time Fuzz Hall and Abie Hasson were together?

A. We came down each day.

Q. Each day. Now, the last trip you made, do you know about what time it was?



*Frank Scales.*

A. We got here around about noon.

Q. I am talking about the day of the month.

A. Well, to the best of my remebering, it was during the week, just like Christmas fell on Sunday, why it was during the week before Christmas in those last three days. It was during the last part of the week.

Q. Now, on one trip down here you came down here to get your clothes, is that right?

A. Yes, sir.

Q. That Captain Allman had or you had up at the jail?

A. Yes, sir.

Q. Which trip was that?

A. That was the one we went by the, over here by the store.

Q. That was the trip? You are sure of that?

A. Yes, sir.

Q. Now, isn't it true that that is the last trip you made down here?

A. No. I made one more. That was the second trip. We came the first day and we came again. The day  
page 306 } we came down here after my clothes, that is the only time I seen Hasson go by the store.

Q. Well now, I am asking you this. Wasn't that the last trip you made?

A. No, sir.

Q. Wasn't that the trip that Captain Allman told you to stay out of town?

A. Yes, sir.

Q. Did you come back to Roanoke then after that?

A. I didn't come back to Roanoke with him. That was the last trip that we made.

Q. The last trip you made was when Captain Allman told you not to come back to Roanoke any more?

A. Yes, sir.

Q. And that was the trip you got your clothes?

A. No, sir. The first time we came, we came down and went on the market. Then the next day we came down and I went and got my clothes. The next time I came down here, I went over at the hotel and had dinner while he fixed his operator's permit.

Q. And the trip that you picked up your clothes and Captain Allman told you to stay out of town was the second trip?

A. Yes, sir.

Q. And the last trip was the next day then?

*Frank Scales.*

A. Yes, sir.

page 307 } Q. Frank, how definite are you on those dates?

A. Well, I couldn't swear that they were the correct days.

Q. Isn't it the best of your recollection it was along, the trip you made to pick up your clothes was along the first or middle of December?

A. I know it wasn't the first because I just had came back from the farm. I got out November 26th and I know it wasn't the first. But I wouldn't swear it was that week but I know it was some week in December.

Q. Some week in December. To the best of your recollection it was around the middle of December?

A. No, it was during the time that the people were rushing for the last minute Christmas shopping.

Q. Haven't you on two occasions, three occasions before this told me that it was around the middle of December that you came down here and got your clothes?

A. Yes. I told you that the best I could recall it was around about the middle of December.

Q. That is right. Now, is that what you are saying now, that is the best you remember?

A. It was between the middle *and the while* I just said.

Q. But it was while Abie Hasson had his automobile? You know that?

A. Yes.

Q. And the trip you made when you picked up  
page 308 } your clothes, is that the trip you made when you  
stopped in Salem when you and Fuzz Hall went  
to somebody's house?

A. Yes, sir.

Q. That is the same trip. I believe you said on that trip that Jennings Coffey was with you and that you went to the store, is that right, this store out on Melrose Avenue?

A. Yes, sir.

Q. And there is a whiskey store right next to that store, Frank. That is right, isn't it?

A. Yes, sir.

Q. And I believe you told Mr. Cuddy you pulled up in the alley and parked. Is there a no parking sign in that alley?

A. I don't know. I am not for sure.

Q. You didn't see it?

A. No.

Q. Do you know who was driving the automobile when you pulled in there?

*Frank Scales.*

A. Hasson.

Q. You are sure of that?

A. Yes, because Fuzz, he got out.

Q. Which side of the car did he get out on?

A. On my right.

Q. Well, haven't you told me on two different occasions that you didn't remember who was driving, that it could have been Fuzz Hall?

page 309 } A. Yes, but Fuzz got out and Hasson didn't get out of the car.

Q. You admit you told me on two different occasions you weren't sure?

A. Yes.

Q. Before you pulled in there, Frank, did you have any conversation about where they were going or anything like that that you recall?

A. No, sir. We didn't have any conversation. Hasson came down to the barber shop and he asked me did I want—

Q. I am talking about before you pulled in by the store there while you were in Roanoke?

A. No, sir.

Q. You had gone by the jail and picked up your clothes and gone back to the car. Who was in the car at that time?

A. Hasson and Coffey.

Q. Were they all there at that time? Didn't you pick up two of them down on the market?

A. Wait a minute. We picked up two down there at some-where between the market.

Q. That was Fuzz Hall and the other fellow?

A. I think Fuzz went over to some hotel for something. Anyway, we met him. We didn't go with him.

Q. That is the time you got your clothes and that is the time you went by this store?

page 310 } A. Yes.

Q. And that is the time you went back to the car and Hasson was there by himself?

A. Yes, sir.

Q. And Hasson had told you that he was coming down here to see something about his driver's license, or something like that, hadn't he?

A. Yes, sir.

Q. And he went,—before you all left Pulaski, didn't he go over in Drapers Valley where he lived to get some papers to bring down here with him?

*Frank Scales.*

A. Yes, sir.

Q. Now, while you were down on the market, did you see Fuzz Hall's wife down there?

A. Yes, sir.

Q. Were they still mad at each other?

A. Fuzz and his wife?

Q. Yes.

A. Yes, sir.

Q. The fellow that came down here with you, Frank, besides Fuzz Hall and Abie Hasson, the other fellow, wasn't there some question there about his calling up Fuzz's wife and telling her he was here, or something?

A. Yes, sir. This other fellow, he called Fuzz's wife and Fuzz said, "Man, what did you do that for? I didn't want her to know I was down here." She came back to the  
page 311 } car and they were arguing. Hasson said, "I don't want that stuff. I don't want to get in no trouble." So we pulled off.

Q. And after you pulled off, you went on to Salem, is that right?

A. Yes.

Q. And you stopped over there, you say, and you left Abie Hasson and the other fellow there at a truck stop somewhere out of Salem?

A. Yes, sir.

Q. And you went with Fuzz Hall to see somebody?

A. Yes, sir.

Q. Now, I understood you to say, also, that Abie Hasson wanted to get back home, that he had a date, or something, is that right?

A. That is right.

Q. Did Fuzz Hall say who he was going to see in the presence of Abie Hasson?

A. No, sir.

Q. Did Abie Hasson know who he was going to see?

A. He didn't say like he seemed like he did. When we came back through Draper, Hasson got his paper. Fuzz was standing somewhere between his father's store. And Hasson stopped and he told Fuzz, he said, "I got to go to Roanoke to see something about my operator's permit," and he had a paper in his hand where Fuzz was standing on the outside  
page 312 } looking in the window. He said, "I will go down with you. I have got to see a fellow." So after we got down here, Hasson tell him, told him after he came back after seeing about his permit, he said, "I have

*Frank Scales.*

got to go back home. I have got a date. I ain't got too much time." Fuzz said, "It won't be too much time before this fellow gets off from work about quarter of five." He said, Hasson said, "Try to make it back before six. I have got to get home." Then we took Hasson and this other fellow up to some truck stop. Hasson and this other guy got out and me and Fuzz, we went on to see this guy we was going to see. He went down and parked the car in front of the little white house and he stayed in there about forty-five or fifty-five minutes.

Q. Did you see the man he talked to?

A. No, sir.

Q. And you, I believe, testified before when he came out of the house he was angry or upset about something?

A. Yes, sir.

Q. But Abie Hasson wasn't with him when he went down there?

A. No, sir.

Q. You were the only one with him?

A. Yes, sir.

Q. And you had left Abie Hasson and you had left the other fellow at a truck stop out of Salem while you went up there?

A. Yes, sir.

page 313 } Q. When you came back and picked up Abie Hasson and the other fellow and went on to Pulaski, was there any conversation at that time about the man Fuzz Hall went to see?

A. Not when we got back. He asked, I mean Hasson asked Fuzz, he asked him what took him so long and Fuzz was already angry and then he got angry for Fuzz staying on so long.

Q. And you tell this jury now that when you started to Pulaski, that on your way from Pulaski you went to Drapers Valley. That is across the mountain out of Pulaski, isn't it?

A. On our way back?

Q. No, before you left Pulaski?

A. Oh, yes, before we left Pulaski, we went over.

Q. Went over to get some papers to turn in to the Division of Motor Vehicles?

A. Yes, sir.

Q. And on your way back you passed by Mr. Hall's house where Fuzz was staying?

A. I think it was his father's store.

Q. Did Hasson stop there and ask for Fuzz Hall?

*Frank Scales.*

A. No, he didn't stop and ask for Fuzz.

Q. Where did you see Fuzz Hall?

A. Well, the store sets back off the highway. Fuzz was on the porch. We was coming around a sharp curve and Fuzz, he had done walked out from his father's store about as far as from here to the table over there and he  
page 314 } threw his hand up just like that and Hasson stopped. And they started talking and Hasson asked him had he saw Otto or somebody. And he said, "No," just like that. And he started up and Fuzz asked where was he going. He said, "I have got to go to Roanoke to see to my operator's permit." Fuzz said, "Well, I will go with you," just like that. He said, "I have to see a fellow down there about quarter to five."

Q. And that is the trip, I mean this trip you are talking about now is the trip you went by the store?

A. Yes.

Q. And that is the only time you went to the store on Melrose Avenue?

A. That is the only time I went to it.

Q. That is the only time you went there with Fuzz Hall and Abie Hasson and the other fellow?

A. Yes, sir.

Q. And you are certain you were in Abie Hasson's car?

A. Yes, sir.

Q. So, Frank, let me ask you this. That was before Abie Hasson wrecked his car, wasn't it?

A. I didn't know he ever wrecked.

Q. You didn't know he wrecked his car?

A. No, sir.

Q. Well, it is bound to have been before it was wrecked, isn't it?

page 315 } A. Yes, sir.

Q. Because you are certain it was his car?

A. Yes, sir.

Q. And if you went in Abie Hasson's car on this trip you are talking about, then it was before his car was wrecked?

A. Yes, sir.

Q. That is wrecked so it couldn't have been driven. You didn't see any marks or dents on it?

A. No, sir. There wasn't any marks on it.

Q. Now, you told Mr. Cuddy that Jennings Coffey went with you on two of these trips, is that right?

A. Yes, sir.

Q. Do you know a fellow named Fred Bell in Pulaski?

*Frank Scales.*

A. Yes, sir.

Q. Do you know him,—how well do you know him?

A. Well, I didn't know Bell until it was after Christmas when he started working up to Norman's. Then I got to know him pretty well because he was always down to the barber shop and he carried on a whole lot of jokes and things like that.

Q. Let me ask you this, Frank. Isn't it true that on this trip you are talking about that Fred Bell came with you, rather than Jennings Coffey?

A. Well, the trip we went to the store, see at that time I had never seen Jennings Coffey. But at that time we went to the store, it was Bell that went.

page 316 } Q. It was Bell?

A. Yes. I had never seen no pictures of Coffey.

Mr. Sadler: Please bring in Fred Bell.

By Mr. Sadler:

Q. If I get you straight now, you are saying you never saw Jennings Coffey—

A. Until I saw some pictures.

Q. Some pictures. And you said you thought it looked like him, is that right?

A. Yes, sir.

Q. Now you say Fred Bell was with you?

A. Bell was with us the day we went by the store.

Q. How do you know that?

A. At the time I didn't know Bell too good. In fact, I hadn't never seen him until this day that Hasson and I met him. And then he came down here after Christmas. He would always come down and kid and joke and then he would ask had I ever seen Hasson.

Q. Do you know this fellow here, Frank? (Indicating individual who just entered the courtroom.)

A. Yes, sir.

Q. What is his name?

A. Bell.

Q. Fred Bell. Isn't it a fact he was with you on this trip to Roanoke instead of Jennings Coffey, both trips you talked about somebody else being with you?

page 317 } A. Yes, sir.

Q. And Jennings Coffey was never with you on your trips to Roanoke?

A. He wasn't with us the first day.

*Frank Scales.*

Q. How about the second time? Wasn't the same man with you both times?

A. Yes, sir.

Q. Wasn't it Fred Bell? You, Fuzz Hall and Abie Hasson made three trips down here?

A. Yes, sir.

Q. On two of those trips you said Jennings Coffey was with you?

A. Yes, sir.

Q. Well now, is it now your testimony Fred Bell was with you instead of Jennings Coffey?

A. Yes, he was with us.

Q. Was Jennings Coffey with you?

A. No, he couldn't have been. But see at that time I didn't know Jennings Coffey. I hadn't never seen nothing but a picture of him.

Q. They showed him to you when they got you down here?

A. I saw a picture of Coffey before I ever came down here.

Q. In other words, you told the investigating officers that there was four of you in the car?

page 318 } A. Yes, sir.

Q. And they showed you the pictures of a boy names Fout and a boy names Coffey?

A. Yes, sir.

Q. And you then told them that the picture of Coffey looked like the man that was with you, is that right?

A. Yes, sir.

Q. And are you now certain Coffey was not with you, that it was Fred Bell?

A. Yes, I am positive.

Q. You are certain about that. Did you ever see Jennings Coffey and Abie Hasson together at any time?

A. No, sir.

Q. Did you ever see Fout and Abie Hasson together?

A. Never saw Fout in my life until he came in this court-room.

Q. You told Mr. Cuddy you saw Mr. Coffey in Pulaski in a maroon car on Christmas day with some guns?

A. Yes, sir.

Q. And you saw Fuzz Hall with some guns?

A. Yes, sir.

Q. Did you ever see Abie Hasson with some guns?

A. Hasson wasn't with us.

Q. Did you ever see him in the presence of those men while they had any guns?



*Frank Scales.*

page 319 } A. No, sir.

Q. Now, isn't it true Fuzz Hall's wife lives in Roanoke?

A. I think so.

Q. With a child? Isn't that right?

A. I think so.

Q. So far as you know, she still lives here?

A. Yes, sir.

Q. And Fuzz Hall was living in Pulaski and staying with his father, is that right?

A. Yes, sir.

Mr. Sadler: All right.

### RE-DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Frank, yesterday and day before yesterday you took the stand and you were in the presence of Jennings Coffey, weren't you?

A. Yes, sir.

Q. You saw him?

A. Yes, sir.

Q. You saw him here on Monday?

A. Yes, sir.

Q. You saw him on Tuesday?

A. Yes, sir.

Q. You saw him on Wednesday?

A. No, I didn't see him on Wednesday.

page 320 } Q. You saw him on Thursday?

A. Yes, sir.

Q. What did you say about him being with you on those occasions?

A. Well, at first when I saw those pictures and those police, they started asking me questions and all of that, I was nervous at the time but when I walked in here I saw Coffey. I had knowed Coffey then but the day I saw Coffey with those guns, I knowed him. But the day he asked did I know Coffey, I wasn't too sure I knowed Coffey and I knew I didn't know Bell at the time. After then I remembered that it was Bell but I had already told the police and everybody that it was Coffey that was with me and I had been telling the law that it was Coffey, but I did know Coffey after the morning I saw him with the guns.

Q. You knew him after that. That was on December 25th?

*Frank Scales.*

A. That is right.

Q. And you saw him in this courtroom yesterday and you said he was the man, didn't you?

(No reply noted.)

Q. You saw him in here Monday and you said he was the man, didn't you?

(No reply noted.)

Q. You saw him in here Tuesday, you said he was the man, didn't you? Didn't you Frank?

page 321 } (No reply noted.)

Q. Now, Frank, you and Abie Hasson are very good friends, aren't you?

A. That is right.

Q. And you only this morning talked with them about it, didn't you?

A. Talked with who?

Q. With the attorneys on the other side about it?

A. Well, this morning the attorney asked—

Q. I asked you if you didn't talk to them?

A. I talked to the attorneys.

Q. And when were you first told that Bell was the man that was along? What? Who told you Bell was the man that was along?

A. No one.

Q. When did you decide Bell was the man that was along?

A. Well, when I saw him? I can't,—can I say one thing?

Q. Yes, you can say one thing. You can answer the question.

A. The time that the police asked me had I knowed Coffey, well then I was all confused. I hadn't never saw Coffey and Bell, I hadn't never heard even mention of Bell's name. But Bell was in the car. The first, the last day, two days we came to Roanoke.

Q. And you are telling that for the first time  
page 322 } right now. You were in here on yesterday, Monday, Tuesday and yesterday and you saw and

*Frank Scales.*

looked at Jennings Coffey and you said then he was the man, didn't you? Didn't you?

(No reply noted.)

Q. Now, you have known Bell ever since you say early before Christmas after you went to work as shoe shine boy. He came in daily, didn't he?

A. Yes, sir.

Q. And you have known him all of that length of time, haven't you?

A. Yes, sir.

Q. And there was no question about knowing him, was there?

A. No, sir.

Q. You knew his name, didn't you?

A. I knowed his last name.

Q. You knew his last name was Bell and you have known that since you were up there shining shoes about Christmas time, and nobody here talked with you until March about Coffey Jennings, Jennings Coffey, did they?

A. No, sir, no one here.

Q. That is when Captain Allman and I were talking to you about it. It was in March, wasn't it?

A. Yes, sir.

Q. And you said,—you picked out Jennings page 323 } Coffey's picture and you said you thought that was the man, didn't you?

A. Yes, sir.

Q. And then when he came in the courtroom you said, "That is the man," didn't you?

A. Yes, sir.

Q. And you have maintained it until just this minute, haven't you?

A. Yes, sir.

Q. And you knew Bell well because Bell came into your shoe shine shop almost daily, didn't you?

Mr. Sadler: I take it now that the Commonwealth is cross-examining this witness. He put him on.

Mr. Cuddy: I think it is so obvious as to what has been done. He turned out to be an adverse witness at this point. So, I think with the Court's permission I have good cause and I want to continue this examination.

*Frank Scales.*

Mr. Sadler: He is now determined to be an adverse witness to the Commonwealth?

The Court: As to this point. Go ahead.

Mr. Cuddy: That is all I care to ask him. All right, Frank, stand aside.

RE-CROSS EXAMINATION.

By Mr. Sadler:

Q. Frank, let me ask you this. Mr. Cuddy asked you about talking to me this morning. You did talk to me page 324 } this morning, didn't you?

A. Yes, sir.

Q. Haven't I talked to you on two occasions in Pulaski about this matter?

A. That is right.

Q. On any one of those times did I ever mention to you the name of Fred Bell?

A. No, sir.

Q. Isn't it true that the first time you heard me mention Fred Bell was here today in this courtroom?

A. Yes, sir.

Q. Have you *seed* Fred Bell down here during these trials?

A. No, sir.

Q. You have seen Jennings Coffey. When they showed you these pictures, you had seen him before?

A. I saw Coffey in March.

Q. You saw him in with some group, didn't you?

A. Yes, sir.

Q. You had never seen Fout, had you?

A. No, sir.

Q. When they showed you these two pictures, you knew you had seen Coffey before, isn't that true?

A. Yes, sir.

Q. And you identified him as being the man?

A. Yes, sir.

page 325 } Q. And I believe you told Mr. Cuddy after you did that you felt like you were stuck with it?

A. Yes.

Q. Although you remembered—

Mr. Cuddy: Told me what?

Mr. Sadler: I don't believe he used those words.

Mr. Cuddy: No. I am quite confident he didn't use those words.

*Frank Scales.*

By Mr. Sadler:

Q. Between the time you first identified Jennings Coffey and the other man, had you then decided that the boy that was with you was Fred Bell?

A. Had I what?

Q. Had you then decided that the boy with you was Fred Bell, rather than Coffey?

A. I didn't understand that question.

Q. When did you change your mind about who was with you and remembered Fred Bell was with you?

A. Well, it was like this. When I was picked up, I was picked up a little bit before Hasson was and they took me in the police department and they asked me did I know the guy. I had never been down here. I was in Pulaski at the time. Earl Bolling was asking me—Earl Bolling, he is a police officer—he asked me did I know a guy by the name of Hasson. I told him, “Yes.” He asked me did I know a guy by the name of Fuzz Hall. I told him, “Yes.” Earl Bolling had seen me a couple of times with Hasson. He said, page 326 } “How good a friend are you and Hasson?” And I said, “All right. He never did nothing, did he?”

Q. All right. Go ahead.

A. And then they had some,—after this break-in in this motel, they had some pictures up there of Coffey and Mr. Shelton, he picked me up and he asked me a few questions but he didn't ask me anything about Coffey. Then Mr. Bolling, the first time I ever saw Coffey's picture was in Pulaski court. He asked me did I know the guy. I told him I saw him Christmas day.

Q. When did you first tell the officers he was with you on two of these trips to Roanoke?

A. I told him that the first night he picked me up.

Q. Did you know then that that was not true?

A. No, sir.

Q. When did you remember Frank Bell was with you and not Coffey?

A. Well, I had saw Bell a couple of times and I had saw Coffey during this Christmas time. But it is the truth, so help me God, Bell was with us on two of those trips. That is all I know.

Q. Well, isn't it true that on one trip Bell came down here to see something about the union about a job, getting a job through the Union? Do you know that?

*Frank Scales.*

page 327 } A. No.

Q. About why he came down here?

A. I don't know that.

Q. Has anybody told you, Frank, to change your story about who was with you?

A. No, sir.

Q. Is the first time you have heard Fred Bell's name mentioned, or asked you, been in this courtroom today?

A. Yes, sir.

Q. Is this the first time you have seen Fred Bell during the course of these trials?

A. Yes, sir.

Mr. Sadler: All right, sir.

RE-DIRECT EXAMINATION.

By Mr. Cuddy:

Q. It was just this morning that you decided that it was Bell. When you sat in that chair and pointed to Jennings Coffey and said he was the man, it was Jennings Coffey as far as you were concerned, wasn't it?

(No reply noted.)

Q. And it was this morning and only just sitting there just a minute ago the first time you ever said or thought it was Bell, isn't it?

(No reply noted.)

page 328 } Mr. Cuddy: All right. Stand aside.  
The Court: All right. Stand aside. Let's take  
a five-minute recess. The jury may go to your  
room.

(Witness excused.)

(Short recess.)

(Thereupon, the Court and Counsel retired to Chambers and the following proceedings were had, to-wit:)

W. R. BALL

having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Mr. Ball, did you just come in to my office after you came down from the jail and advise me that Scales wished to see me?

A. A deputy Sergeant brought this colored boy, Scoogie Scales back upstairs now and he asked me to get Mr. Cuddy, that he would like to make a statement to him and I asked him what it was about.

Q. You asked him and went back?

A. And I came down and got Mr. Cuddy and we went in the consultation room with him and he said he was threatened before he came down to court this morning and Fuzz Hall was talking around in the back of the jail hollering to Hasson, I believe it was, and said that if this colored boy made any statements, or anything, why his brother Otto, I  
page 329 } believe is his name, would take care of him.

Q. Then, did he voluntarily say who was in the car on those two occasions?

A. Yes, sir.

Q. Who did he say it was?

A. Coffey one time and Bell.

Q. What did he say when he came down here with Bell?

A. With Bell?

Q. About the time?

A. I don't remember that, sir.

Q. Didn't he make the statement he came down here one time with Bell but that was before these occasions?

A. Yes, sir.

Q. Who did he positively say was with him on these occasions?

A. Coffey.

Q. Involved in this case?

A. Mr. Coffey.

Mr. Cuddy: Now, if your Honor please, I think he ought to be called back and put on the stand and the jury should be given the benefit of that evidence.

*W. R. Ball.*

Mr. Sadler: May it please the Court, Frank Scales went on the stand and testified as a witness for the Commonwealth. Regardless of what threats might have been made, as the Commonwealth's Attorney now says were made, page 330 } he went on the stand and swore under oath to the fact that Jennings Coffey was in the car with him. On the stand today, he swore to facts which he has sworn to on previous occasions just the same, regardless of threats, and I submit to the Court that whatever threats might have been made, or what he says now, has no effect on him because in fact, he testified to those facts which he testified to previously and he did not deviate from them until on cross examination when he was confronted by the boy Fred Bell who had not been in court prior to today.

The Court: I think this witness under the facts as testified to by the Deputy Sergeant should be called back before the jury and warned that he must tell the truth and that he must be given the opportunity to make any additional statement about his testimony that he now desires to make. I think, otherwise, there may be a miscarriage of justice in this case.

Mr. Sadler: We except to that ruling because we submit he has testified to those facts already in this case.

The Court: The Court does not know what his testimony will be but I do think he should be called back to the stand in accordance with the statement I just made a moment ago. All right.

Mr. Sadler: We except to the ruling.

Mr. Cuddy: All right. Will you get him back from downstairs, please, sir.

The Court: All right.

page 331 } (Thereupon, Court and counsel returned into the courtroom where the following proceedings were had, to-wit:)

The Court: I want the record to show that this witness is recalled as a Court's witness.



FRANK SCALES (Recalled).

having been previously duly sworn, was recalled and examined and testified further as follows:

Examination by the Court:

Q. Scales, information has come to me that you may wish to make a statement about your testimony given just a few moments ago. I want to warn you that you are under oath and that you must tell the truth now. Do you wish to make any statement about the evidence that was given a few minutes ago?

A. Bell came down here with us. That was about the first week in December. And yesterday evening when Captain Allman came upstairs to see me, I was setting in the back next to the shower that is on the lower end. And we are setting there; Hasson was hollering over there talking to Fuzz.

And Fuzz hollered over there and these are the page 332 } very words he said, "I mean you have messed every boy up upstairs in that room up there." Hasson asked him, "My trial probably will be tomorrow." He said, "They will probably bring that little black nigger down here tomorrow." Fuzz said, "Hell, he has been down here all of the time." He said, "He is upstairs." And then when they brought Coffey and Fout back in there, Fuzz said, I think he asked him what did they do. I couldn't hear too good. Fuzz spoke out and said, "He can't live in Richmond because if he comes down there I am going to kill him. And if he goes back to Pulaski, Otto and them are going to take care of him." But it was Coffey that was in the car at the time we went over by that store.

Q. In other words, you tell the jury that it was Coffey in the car?

A. Yes.

Q. At the time you went to the parking area next to the ABC Store?

A. Yes, sir.

Q. There is no question about that?

A. No, sir.

Q. Well, why did you not tell this jury that when you were on the witness stand just five or ten minutes ago?

A. Because Fuzz Hall called up and said Otto was going to be down here; said that they was going to do something with me.

*Frank Scales.*

Mr. Hopkins: He did tell them that the first page 333 } time.

The Court: The jury has heard the evidence and knows what the testimony has been. Are there any further questions of this witness?

RE-DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Was it Coffey, Jennings Coffey or Bell that was in the car with you and Hasson and Fuzz Hall when you went over to that store?

A. It was Coffey.

Mr. Cuddy: All right.

RE-CROSS EXAMINATION.

By Mr. Sadler:

Q. Where is your cell in the jail, Frank?

The Court: Wait a minute, Mr. Sadler. I didn't catch your question.

Mr. Sadler: I asked him where his cell in the jail was.

The Court: All right. I didn't hear. That is all.

The Witness: Number 7.

By Mr. Sadler:

Q. Are there two floors in the jail?

A. Yes, sir.

Q. Number 7 is on which floor?

A. On the top.

Q. On the top. And what cell is Fuzz Hall and Abie Hasson in?

page 334 } A. They are not in the same cells. Hasson is on the cell under me. Fuzz is on the back of me downstairs.

Q. Both of them downstairs?

A. Yes, sir.

Q. Where were you talking to Captain Allman?

A. Captain Allman came up and he told me, he said—

Q. Now, I didn't ask you what he said. I asked you where in the jail you were talking?

A. To Captain Allman?

Q. Yes.

A. Between the bars.

Q. In your cell?

*Frank Scales.*

A. No, sir, up there. They have got a rack when you go into the part where you sleep at.

Q. That is on the second floor?

A. Yes, sir.

Q. And Fuzz Hall was on the first floor?

A. Yes, sir.

Q. And Abie Hasson was on the first floor?

A. Yes, sir.

Q. And you heard this conversation between them with you up there and them down on the first floor?

A. Yes, sir. This other boy, we was playing cards. We were right down next to the end of the jail.

Q. Maybe Mr. Cuddy will ask you about that.  
page 335 } Just answer my question. You heard this conversation. That conversation didn't frighten you any, did it, Frank?

The Court: I didn't catch the question.

Mr. Sadler: I asked him if that conversation frightened him any, sir, if he heard it.

The Witness: Yes, sir. He said I couldn't live in Pulaski.

By Mr. Sadler:

Q. I will ask you if you were frightened?

A. Yes, sir.

Q. You were scared. Is that what you are telling this jury?

A. Yes, sir.

Q. And what you told the Judge. Well now, Frank, let me ask you this. You went on the stand this morning, didn't you, and testified that Jennings Coffey was in that car when you made those two trips up here?

A. Yes, sir.

Q. Didn't you testify to that before this jury?

A. Yes, sir.

Q. Under oath?

A. Yes, sir.

Q. So that didn't scare you enough to make you change that testimony, did it?

A. He said—

page 336 } Q. Answer my question.

A. Yes, sir.

Mr. Cuddy: He has a perfect right to explain.

The Court: He has a right to make an explanation.

*Frank Scales.*

Mr. Sadler: I want him to answer the question first, sir.

Mr. Cuddy: You want him to answer it just like you want it.

Mr. Sadler: I want him to answer the question and then he can explain it if he wants to.

The Court: Go ahead.

By Mr. Sadler:

Q. I say, you didn't change your testimony before this jury this morning as a result of those threats, did you?

A. Yes, sir. I changed it when Bell walked in here.

Q. That is right. But when you were testifying and Mr. Cuddy was asking you questions, you told this jury the same story you have told all of the time, didn't you?

A. Yes, sir.

Mr. Sadler: Under oath. All right.

RE-DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You say you changed it when Bell walked in here?

A. Yes, sir.

Q. Are you afraid of Bell?

page 337 } A. Well, I am afraid of all of the Hall boys because they will hurt you. I know that.

Q. Bell and Coffey and Hasson and the Halls, all close friends of Bell?

A. Yes, sir.

Mr. Hopkins: I object to that.

Mr. Cuddy: All right, sir.

RE-CROSS EXAMINATION.

By Mr. Sadler:

Q. You told me, when I asked you a question, that Bell was along before Bell ever came in this courtroom?

A. Yes, sir, Bell did come before. That was shortly after he come out.

Q. I am talking about the trips you are talking about when you went by the store. You told me Bell was with you before Bell ever came in this courtroom and you ever saw him, didn't you?

A. Yes, sir.

The Court: All right. Stand aside.

(Witness excused.)

Mr. Sadler: May it please the Court, we would like to make a motion in Chambers.

The Court: All right. I reckon we might just as well let the jury go back to their room. Give you a little exercise.

page 338 } (Thereupon, the Court and Counsel retired to  
Chambers and the following proceedings were  
had to-wit:)

Mr. Sadler: May it please the Court, the defendant Abie Hasson, by counsel, at this point moves the Court to declare a mistrial and dismiss this jury and impanel a new jury on the grounds that the admission of the statements, or putting the witness Scales back on the stand and the manner in which it was done is highly prejudicial to the defendant and we submit, sir, that under the way this case has progressed at this time that Abie Hasson, we feel, can not get a fair trial from this jury.

The Court: I am simply going to overrule your motion. I see no reason to make any further statement.

Mr. Sadler: We except.

Mr. Cuddy: If your Honor please, I would like to make this recommendation to the Court since the question has been raised whether or not he could hear that conversation. I would like—I think probably it would be wise at some time during the trial—to let the jury view the jail to see how it is constructed and how easily it would be to hear that conversation, and if necessary to summons all of the people that were back there with him and heard that conversation between Hasson.

Mr. Sadler: We submit that the conversation if true is not material to this case because the witness went on  
page 339 } the stand and testified to things that he said he  
was afraid of his life to testify to.

The Court: All right. At the present time, I am simply going to overrule your motion.

Mr. Sadler: All right, sir. We except.

(Thereupon, the Commonwealth introduced further evidence and rested, and the following proceedings were had in Chambers:)

Mr. Sadler: May it please the Court, at this point the Commonwealth has rested. On behalf of the defendant Abie Hasson, we move the Court at this time to strike the evidence of the plaintiff and instruct the jury to bring in a verdict of not guilty in this case on the following grounds:

That the Commonwealth has not proved beyond a reasonable doubt the guilt of the accused as is required by law; that

the Commonwealth has failed by believable evidence to place the defendant Abie Hasson in the presence or in the concerted action with or a plan with Jennings Coffey, Fout and Fuzz Hall.

There is no evidence in the case, whatsoever, that Abie Hasson at any time received any of the stolen property or was seen in possession of the stolen property. All of the evidence in the case is that after Christmas eve 1955 Abie Hasson was not seen in the presence of Hall, Coffey or Fout.

The only testimony in the case that places Abie Hasson even in the presence of Fuzz Hall is the testimony of one Frank Scales and we submit to the

page 340 } Court that he is by his own testimony a perjurer. He has admitted under oath that he has lied under oath. He has told contradictory statements every time he has gone on the stand and we submit to the Court that his evidence is not worthy of belief to the extent of proving a case beyond a reasonable doubt, which is necessary. Even if you believe him, we submit to the Court he has not made out a case against Mr. Hasson. He places Hall and Hasson together at the place which was broken in on one occasion. On that occasion by his testimony, even if by any stretch of the imagination you believe it, no conversation was had prior to the time that they pulled in the alley beside the store or in the parking lot beside the store, and that Fuzz Hall without any statement or any conversation got out of the automobile and walked toward the front of the store; that the car then proceeded on into the lot and picked him up; that he got in the car and said that "the joint is cased;" that Abie Hasson took no part in it, no conversation; that after that Fuzz Hall went to the home of Fout; that Abie Hasson under the testimony of Scales did not know where he was going nor who he was going to see. Hasson was anxious to get back to Pulaski. And that is the only occasion which he places him in the presence of Fuzz Hall as to this break-in. And we submit to the Court under the evidence in this case as it now stands we are entitled to have the evidence struck on behalf of this defendant.

It is the undisputed evidence here at this time  
page 341 } that Scales—even if you believe him—testified that he came in Hasson's car on every occasion. We now have the evidence in the case that that car was wrecked and in a garage in Pulaski on December 15th.

Even if you put him in the presence of Hall, we submit to the Court that on December the 15th was a remote time from the time this break-in took place. And all of the evidence is that he was in the presence of Hall on one occasion.

We submit that under all of this evidence, may it please the Court, that we believe that the Court will be compelled to set aside a verdict of guilty in this case and we feel that due to the wide publicity given the other cases—I know jurors are bound to read those things—and due to the fact that in the opening statement of the Commonwealth's Attorney he has brought in Jennings Coffey, Fout and Fuzz Hall and the witnesses, they are in the case. And although a juror may on his oath say that he will reasonably try to forget those things, they are all human and we submit under the evidence in this case if the Court allows it to go to the jury and a verdict of guilty is returned, it will be the duty of the Court to set that verdict aside and we ask the Court at this time to strike that evidence.

The Court: Do you want to answer, Mr. Cuddy?

Mr. Cuddy: If your Honor please, I submit page 342 } that the evidence is a jury question. The State has proven the break-in and the recovery of a portion of the property. It has proven that this man Hasson in company with two other men who were jointly indicted, or jointly indicted for the same crime, that is Hall and Coffey, in whose possession the property was recovered, made trips immediately or a short space of time prior to the break-in, that on one occasion they went to the place. Hall got out and went toward the front. He came back and made the statement there that "the place is cased," that they needed rollers and a bar. And also the man whom he was with, that is Hall, has been positively identified by the store owner that at least on three occasions Hall was seen in the place and from the evidence as presented it certainly could be construed as for no other purpose than to look the place over and observe it for the purpose of seeing the possibilities of breaking in. I submit it is a jury question.

The Court: The evidence in this case is not nearly so strong as it is in the other cases. There is no question about that.

Mr. Cuddy: Judge, had it been, it would have been one of the first cases tried.

The Court: Insofar as Scales' testimony is concerned, it is true that it is conflicting but it is up to the jury to determine what part of his evidence they will believe and if they care to believe his evidence, it seems to me that that page 343 } evidence connected with the other evidence in the case makes it a case for the jury. So I am going to overrule your motion and let the case go to the jury.

Mr. Sadler: We except to that may it please the Court.

(Thereupon, a recess was taken for lunch, after which a request by the Commonwealth to introduce further evidence was granted, and at the conclusion of such evidence the Court and Counsel retired to Chambers where the following proceedings were had, to-wit:)

Mr. Hopkins: Is that your case?

Mr. Cuddy: Yes, sir.

Mr. Hopkins: As soon as Mr. Sadler gets here, we will renew our motion, of course. Our man from Wytheville hasn't come here yet and we want him to be our first witness.

The Court: I think he will be here.

The Court: Did I understand you gentlemen want to make a motion?

Mr. Hopkins: We will renew our motion to strike based on the argument given by Mr. Sadler before.

The Court: Well, gentlemen, as you all know, I overruled the motion just before lunch. But the more I thought about this case—and I have also thought about it from the standpoint of the additional evidence just introduced—I have just  
page 344 } about firmly come to the conclusion that the prosecution has failed to make out a case that should be allowed to go to the jury. Of course, there are suspicions that this man participated, and probably he did. But the burden, of course, is on the prosecution to prove that he participated in this breaking and entering. And the more I thought about it since leaving here to go to lunch, the more firmly I have become convinced that it is my duty to grant the motion to strike and I will give Mr. Cuddy an opportunity to say anything else that he wishes to say in regard to that motion before passing a final judgment on it.

Mr. Cuddy: Of course, I say the same thing I said before and, of course, with this additional evidence putting them together on that night as one of the persons who are jointly indicted and who have been convicted in this case. Frankly, I think it is very definitely a jury case.

The Court: Well, the more I have thought about it, as I said, the more firmly convinced I am that it is not a jury case. Prior to the breaking and entering, as I recall it, the only evidence that might connect this man with it was the evidence which I am accepting as true that this man was in the automobile at the time Hall went in to look around in the sporting goods store and that this defendant was in the automobile when Hall came back and stated that the job is cased. He, of course, made, as far as the evidence is concerned, no comment  
page 345 } one way or the other. It strikes me that any perfectly innocent person in that car would not have been called upon to make any comment under



those circumstances, not knowing why Hall had gone into the place and there simply is not sufficient evidence as to this man's conduct afterwards, or on the night of the breaking according to this last witness's testimony, to implicate this man in the breaking and entering.

I dislike very much to take the responsibility of turning loose a man who may be guilty but if the evidence is not sufficient as a legal matter to convict him, then it is my duty to grant the motion to strike. I am going to grant the motion, gentlemen, because I don't feel that there is sufficient evidence for it to go to the jury.

Mr. Sadler: All right, sir.

(Thereupon, the Court and Counsel returned into the courtroom.)

page 346 }

\* \* \* \* \*

#### NOTICE.

To: The Honorable C. E. Cuddy,  
Commonwealth's Attorney,  
Roanoke, Virginia.

NOTICE is hereby given that on the 20th day of June, 1956, at 11:00 o'clock, A. M. or as soon thereafter as it may be heard, the undersigned will present to the Honorable Dirk A. Kuyk, Judge of the Hustings Court of the City of Roanoke, Virginia, the testimony and other incidents of trial in the cases of Commonwealth of Virginia *v.* Jennings Coffey and William Ray Fout, to be by said Judge, signed and made a part of the record in said actions, for the purpose of applying to the Supreme Court of Appeals of Virginia, for a writ of error and *supersedeas* to certain final judgments of the Hustings Court of the City of Roanoke, Virginia.

Received and filed June 28, 1956.

W. R. CARTER, JR.  
Deputy Clerk.

\* \* \* \* \*

page 347 } Legal service of the foregoing notice accepted  
this 20th day of June, 1956.

C. E. CUDDY  
Commonwealth's Attorney,  
City of Roanoke, Virginia.

page 348 }

\* \* \* \* \*

Received and filed June 26, 1956.

W. R. CARTER, JR.  
Deputy Clerk.

#### NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

NOTICE is hereby given that the undersigned, Jennings Coffey and William Ray Fout, Jr. appeal to the Supreme Court of Appeals of Virginia, from a certain final judgment or judgments entered on the 16th day of May, 1956, and assign the following grounds of error:

##### ONE.

The Court erred in failing and refusing to set aside the verdict of the jury and award the defendants and each of them a new trial, upon the grounds that the verdict is contrary to the law and evidence and upon the further ground that such verdict was founded upon the false and perjured testimony of one Frank Scales. It was clearly established that the testimony of Frank Scales was perjured as shown by his testimony given at the trial of Commonwealth v. Abie Hasson on the 27th day of April, 1956.

##### TWO.

The Court erred in admitting over the objection of the defendants, the testimony of Frank Scales, for the  
page 349 } reasons shown on Pages 29-31 inclusive of the  
record.

##### THREE.

The Court erred in admitting over the objection and exception of the defendant, Fout, the testimony of Frank Scales, as found on Pages 61 and 62 of the record.

## FOUR.

The Court erred in failing and refusing to strike the evidence of the Commonwealth for the reasons assigned on Pages 82 to 84 inclusive of the record.

## FIVE.

The Court erred in failing to admit the testimony of the witness, W. H. Simms, for the reasons assigned on Pages 91 to 94 inclusive of the record.

## SIX.

The Court erred in admitting the testimony of the witness, Cochran, found on Pages 157 to 159 inclusive of the record, for the reasons assigned therein.

## SEVEN.

The Court erred in failing and refusing to permit the witness, Fout, to be examined as to the written statement given to Captain Allman of the Detective Department, for the reasons assigned on Pages 191 and 192 inclusive of the record.

## EIGHT.

The Court erred in failing and refusing to strike the evidence of the Commonwealth for the reasons assigned on page 350 } signed on Pages 234 and 235 inclusive of the record.

## NINE.

The Court erred in giving at the instance of the defendant, Commonwealth's Instruction "D," for the reasons assigned on Pages 236 to 238 inclusive of the record.

## TEN.

The Court erred in failing and refusing to set aside the verdict of the jury and award a new trial upon the ground that Frank Scales, on the 27th day of April, 1956, testified at the trial of Abie Hasson, that Jennings Coffey was not in the Hasson automobile in the alleged trips from Pulaski to Roanoke, which testimony was in direct conflict with the testimony of Frank Scales, given at the trial of Jennings Coffey

and William Ray Fout, Jr. on the 24th, 25th and 26th of April, 1956. At the trial of Hasson on the 27th day of April, 1956, the Commonwealth's principal witness, Frank Scales, completely *refuted* the testimony he had given at said trial of Coffey and Fout.

\* \* \* \* \*

page 351 } CERTIFICATE.

I hereby certify that on the 25th day of June, 1956, the original of the foregoing Notice of Appeal and Assignments of Error was filed in the Clerk's Office of the Hustings Court of the City of Roanoke, Virginia, and a true and correct copy of same delivered to the Honorable C. E. Cuddy, Commonwealth's Attorney, Roanoke, Virginia.

T. W. MESSICK.

page 352 }

\* \* \* \* \*

#### SUPPLEMENTAL ASSIGNMENT OF ERROR.

The defendants, Jennings Coffey and William Ray Fout, Jr., assign as error the action of the Trial Court in failing and refusing to set aside the verdict of the jury and award them a new trial for the following reasons: Misconduct of the jury in obtaining information as to the verdict of the jury rendered in the case of Commonwealth *v. Hall*, and in discussing the verdict rendered in the Hall case during their deliberations in the case at Bar. Clarence Hall was indicted and tried for the same offense on April 23rd and 24th. The jury that tried Hall found him guilty and imposed a sentence of 7 years in the penitentiary. The jury in the case at Bar were carefully examined on their *voir dire* as to any knowledge of the verdict rendered in the Hall case. The jury were instructed by the Court not to read the papers or obtain any information as to the verdict in the Hall case. In spite of the instructions of the Court the jury obtained information as to the verdict in the Hall case, considered and discussed it during their deliberations in the case at Bar.

Received and filed July 10, 1956.

W. R. CARTER, JR.  
Deputy Clerk.

\* \* \* \* \*

page 353 }

\* \* \* \* \*

*C. W. Weaver.*

CERTIFICATE.

I hereby certify that on the 10th day of July, 1956, the original of the foregoing pleading was filed in the Clerk's Office of the Hustings Court of the City of Roanoke, Virginia, and a true and correct copy thereof mailed to Mr. C. E. Cuddy, Commonwealth's Attorney, Roanoke, Virginia.

T. W. MESSICK.

page 5 }

\* \* \* \* \*

TRANSCRIPT OF EVIDENCE.

The above-captioned case was tried before the Hon. Dirk A. Kuyk, Judge of the Hustings Court for the City of Roanoke Va., on the 24th, 25th and 26th days of April, 1956.

Received and filed June 28, 1956.

W. R. CARTER, JR.  
Deputy Clerk.

\* \* \* \* \*

page 8 }

C. W. WEAVER,  
a witness of lawful age, after being duly sworn,  
testifies as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Mr. C. W. Weaver?

A. Yes, sir.

Q. You are one of the partners, or owners, of the Owen-Weaver, Inc., sporting goods place?

A. Yes, sir.

Q. What is the location of your place of business?

A. 4221 Melrose Ave., Northwest.

Q. That in the City of Roanoke, Va.?

A. Yes, sir; it is.

Q. Wish you would describe the location of your building, with reference to the A. B. C. store, and also premises on which it sits.

*C. W. Weaver.*

A. The store is actually on the east side of the liquor store—

Q. A. B. C. store?

A. A. B. C. store; that's right, sir.

Q. Go ahead, sir. It's on the east side of the A. B. C. store?

A. That's right, sir.

Q. Approximately what is the distance in between the two places of business?

A. I would say 80 feet.

Q. Now, what is the condition of the surface of page 9 } the ground in between the two buildings?

A. It is a concrete surface.

Q. Wish you would draw here just a sketch of the two buildings, and the parking lot. Believe this ground in between the two buildings is used as a parking lot for both places of business, are they not? (Hands witness paper and pencil)

(Witness marks on paper.)

Q. You hold this up and explain it to the Jury. I believe this indicates the north side of the dual highway of Melrose Ave.?

A. That's right, sir. This is our store, lying east of the A. B. C. store. And coming down Melrose Ave., going west toward Salem, this is the entrance to the A. B. C. store, going in this way. The parking lot of the A. B. C. store is divided for one-lane traffic—one way traffic—entering and coming out, which, which you come into our right, over there, the cars are parking at a parallel angle here.

Q. Angular parking?

A. That's right. And then, of course, when you go into the A. B. C. store, they come out—they have to make the circle back around to come back to approach Melrose Ave. there.

Q. Now, this indicating the parking lot?

A. That's right, sir.

Q. That the parking lot extending beyond, in the rear?

A. All the way back to the rear of the buildings.

Q. Rear of the stores?

A. This is the rear of the two stores.

Q. Will you locate the window and store—I mean door, on the back of your store?

page 10 } A. It is the window in the middle of the back, and the door is on the east side of it—right-hand side.

*C. W. Weaver.*

Q. Just east of the window?

A. That's right.

Q. On Christmas morning, December 25, 1955, did you receive a call in reference to your business?

A. Yes, I did.

Q. At what time you receive that call?

A. It was between 15 minutes of two, and 5 minutes after two, somewhere in between there.

Q. You were called by the Police Dept.?

A. Yes, sir.

Q. You go the store?

A. That's right; to wait on them.

Q. Between 2:00 and 3:00 o'clock?

A. I was there 5 minutes after two.

Q. 5 minutes after 2:00 o'clock. What did you find when you arrived there, Mr. Weaver?

A. Well, I found that the back door to the building, on the east side, had been pried open.

Q. Show you a picture here—Is that the picture of the back door, taken from inside of the building?

A. Yes, sir.

Q. What marks were there on the door?

A. Well, to me it looked like it had been a crowbar used in this area, which made the impressions into the door.

Q. Is this the section of the door? (Exhibits section for witness)

page 11 } A. Yes, sir.

Q. Taken out just around the lock?

A. That's right.

Q. Now, will you explain to the Jury how this door was fastened?

A. This is the door, walking toward the back—say, to go out—and it had the regular lock, plus a strap hinge, and a padlock on to it, and a strap hinge there—what you call "lugs," I guess—which went into the wall—they went in about 6 inches into the wall, and they had been pried out entirely, and this lock broken to the door.

Q. When you got there, is that the condition—does that show the condition of the door on your building?

A. Yes, sir; it does.

Q. I'd like to introduce these into evidence.

(Four photographs introduced into evidence as Exhibits Nos. 1, 2, 3 and 4)

*C. W. Weaver.*

Q. Exhibit here three other pictures to you. Will you take these and show them—hold them up to the Jury and explain them as best you can.

A. This is going from the front of the store, off of Melrose Ave., into the store, which shows right-hand side—which would be east side—showing Johnson motor sitting back over half-way through the store. When we left on Saturday night, this motor was sitting up next to the door, and had been carried back to the back about mid-ways of the store there.

Q. What was the size and weight of that motor?

A. Motor was a 35 horsepower motor, and page 12 } weighed 126 lbs.

Q. You found it right where it's shown?

A. That's right.

Q. How many doors are there in the back?

A. Two swinging doors that go to the back of the store.

Q. Is this light on back here—is that directly behind one of the doors?

A. That is the heating system there behind the doors.

Q. Were reference to this heating system, where is the back door located?

A. Over to the right.

Q. To the right?

A. Yes.

Q. Where is the other door located?

A. It's over to the left, on the west side.

Q. Where does that door lead to?

A. It leads to the rest room and into the stock room, too.

Q. This one big rest room on the right side?

A. Yes.

Q. I show you another picture; will you explain what that shows?

A. This is on the west side of the building, where we have our guns in the racks there. They were—and this particular rack here is where the rifles were kept in, and the case just over to the right of that is the case with the pistols, and the cameras were kept in these two compartments there, too.

Q. I show you another picture; is this the building just to the west of this?

A. That's right.

page 13 } Q. In other words, it's a section—

A. It's on the west side still, but this is to the south, on towards the front of the store, showing where the shotguns and rifles were stored, also. And got a little corner



*C. W. Weaver.*

of the pistol case in here, too, which—that's the way we found that when we arrived—completely blank.

Q. Mr. Weaver, what time did you close on the 24th day of December?

A. It was between 8:30 and 9:00 o'clock when we closed.

Q. And who were the last people that left the building?

A. Mr. Owen and myself.

Q. You and Mr. Owen left together?

A. That's right.

Q. And approximately what time did you leave the building?

A. It was around a quarter after nine.

Q. About 9:15?

A. Yes, sir.

Q. What was the condition of these racks and this case, here, at the time you left the building?

A. They were filled up with rifles, shotguns, and the case with pistols.

Q. Where was your ammunition?

A. Ammunition is underneath the two gun racks, here; down underneath the shelves.

Q. When you got there, what was the condition of those racks?

A. Well, the racks were completely empty, and the pistol case—it had been gone through, the boxes thrown  
page 14 } out on the floor, knocked out of the cases, and there  
was one pistol left inside of the case, which was not  
seen because there was a book lying on top of the case.

Q. How many guns, cameras, and how much ammunition taken from your place?

A. 46 rifles, shotguns and pistols from us, and two cameras.

Q. What was the value of the guns?

A. The guns, value was between \$2,500 and \$2,700.

Q. What was the value of the cameras?

A. \$150, roughly.

Q. What was the value of ammunition?

A. Run between twenty-seven and twenty-six—twenty-eight on the ammunition.

Q. And you had approximately \$3,000?

A. That's right; yes, sir.

Q. Mr. Weaver, you know, or have seen Clarence Fuzz Hall, have you not?

A. Yes, sir.

Q. You know who I am talking about?

*C. W. Weaver.*

A. That's right.

Q. Prior to Christmas, did you see him in your store?

By Mr. Messick: If your Honor please, I object—

By Mr. Cuddy: Can't prove everything at the same time; I have to prove it in steps.

page 15 } By the Court: Connect it up, can you not?

By Mr. Cuddy: Yes, sir.

By the Court: Go ahead.

By Mr. Messick: We want to save the point. We object to it unless it is connected up by reliable testimony.

By the Court: Go ahead.

By Mr. Cuddy:

Q. All right. You know who I am talking about?

A. Yes, sir.

Q. Did you see him in your store any time prior to Christmas?

A. You mean before Christmas? Yes, sir.

Q. How many times you see him in your store?

A. I saw him three times.

Q. Three times?

A. Yes, sir.

Q. You know approximately the dates of those times?

A. On the 21st, 22nd and 24th.

Q. Now, did he go to the rear of your building?

A. Yes, sir; he did.

Q. Back in the stockroom?

A. That's right.

Q. Did you hear a conversation that he had, with  
page 16 } reference to where he was going, between he and  
someone else?

A. Yes, sir; I did.

Q. Tell the Jury just what that was.

A. He asked to use our rest room, and the fellow that was working with us directed him over to the left side of the swinging door to the rest room, which is actually on the west side of the building, and he started back towards the swinging door on the right-hand side, which is on the east side of the building; and our clerk, that was helping us, asked him to use the other door. He insisted on it again, and he went on through the door, when he was asked to use the other door.

Q. Then, which door did he come out of?

A. He came out the west-side door.

*C. W. Weaver.*

Q. How long was he back there?

A. Around 5 minutes.

Q. You noticed where he went after that?

A. After he left the building?

Q. After he left the rest room.

A. He came back through the store.

Q. Went out the front?

A. Yes.

Q. You saw him, I think, about three occasions?

A. That's right.

Q. Now, Mr. Weaver, on the—in February, about the 18th of February—shortly after that—were you called to the Police Dept. with reference to identification of guns?

A. Yes, I was.

Q. When you have guns, do you have records of page 17 } them?

A. Yes, we do.

Q. How do you keep the records of them?

A. We take the serial numbers and make of gun and caliber.

Q. And you have them on your records?

A. That's right; yes, sir.

Q. Were you asked to compare some guns in the Police Dept. with your records?

A. Yes, sir; I was.

Q. Were these four guns, which I exhibit here to you, were they shown you?

By Mr. Messick: Have the record—the records that he has?

By Mr. Cuddy: I don't know whether he has the records. He has checked his records. That's all that's necessary.

By the Witness: I have my records. (Examines paper)

By Mr. Cuddy:

Q. Was this gun exhibited to you?

A. Yes, sir; it was.

Q. To whom does this gun belong?

A. That belongs personally to Mr. Owen.

Q. Where was this gun up in the rack? Was it in your place of business on the 24th?

A. Yes, sir; it was.

Q. Is this one of the guns taken out of the—

A. Yes, sir; it is.

*C. W. Weaver.*

page 18 } Q. —out of the store?  
A. That's right.  
Q. Now, two revolvers here. Have you examined these revolvers?

A. Yes, sir; I have.

Q. Displayed to you by the Police Dept.?

A. Yes, sir.

Q. At the time displayed to you, were any marks on them?

A. Rusty, when they were shown to me.

Q. These spots here indicate where they were rusted?

A. That's right.

Q. Believe there is a serial number on the butt of each gun?

A. That's right.

Q. And serial number stamped on the frame?

A. That's right.

Q. To whom do these guns belong?

A. They belong to the store.

Q. And where were these guns taken from the store?

A. Pardon?

Q. Where and when were these guns taken from the store?

A. They were taken out of the gun case on the eve of Christmas, '55.

Q. Exhibit here another gun to you; have you examined this gun?

A. Yes, sir.

Q. Have you examined this gun? (Exhibits another gun)  
To whom does this gun belong?

A. That's the property of the store.

page 19 } Q. When was it taken from the store?

A. On the same day—eve of the 24th.

Q. All four of these guns taken from your store on the 24th day—night of the 24th of December, 1955?

A. Yes, sir; they were.

Q. All right. Take the witness.

### CROSS EXAMINATION.

By Mr. Messick:

Q. Mr. Weaver, you told us that this motor, which is a 35 horsepower Johnson, had been moved in the store?

A. Yes, sir.

Q. About what distance had it been moved?

A. It had been moved about 40 feet.

*C. W. Weaver.*

Q. That motor is of a smooth surface, is it not?

A. Pardon?

Q. The motor is of smooth surface; I mean by that, painted smooth surface?

A. That's right, sir.

Q. Now, the case in which the rifles and shotguns were carried—were they wood cases, or did they have glass in them?

A. The pistol case—the top is made of glass, and the front of it is glass; the rest is wood, with sliding doors on to that.

Q. It has wood sliding doors?

A. That's right; wood sliding doors.

Q. But the pistol case does have glass?

A. On the surface of it, and the front; that's right.

Q. And in the front. To enter the pistol case, page 20 } you have to open those glass doors?

A. Sliding wooden doors; you have to slide them.

Q. Now, were there any lights on in the building?

A. Yes, sir. Christmas tree lights, and our night light that we leave on—it's about the back of the building, in front of the stockroom.

Q. Now, the light that you left on—it's at the back of the building; is that over the door?

A. It's this side of the door; it's back this way of the door. (Gestures)

Q. It's inside the building?

A. That's right.

Q. Of course—was that light on when you got there?

A. Yes, sir; it was. There is a light in the back of the building, outside, at the east entrance to the back.

Q. That was—was that burning when you all left?

A. It was burning when we left.

Q. Was it burning when you discovered the break-in at 1:15?

A. I didn't discover the break-in, but the officers did, and they noticed the light out.

Q. And the light was out?

A. Yes, sir; it had been knocked out. The screw-in part of the base of the bulb was inside of the socket for the light, and the light had been knocked over some distance, of about 12 feet.

Q. The bulb broken?

A. The bulb was not broken, but broken out of the socket.

Q. But the bulb was not broken?

*C. W. Weaver.*

A. That's right.  
page 21 } Q. Now—

A. Thick glass to start with, because it's an outside light to start with.

Q. The cameras—were they kept in a display case of any kind?

A. No, sir; they were kept in the display cabinet, but it's not concealed.

Q. What is the construction of the display cabinet?

A. Would you want me to show you that in the picture?

Q. Yes; appreciate it.

A. This gives a clear view of that. This is open display, is what it is. And the cameras are kept right in these two sections, here.

Q. I see.

A. It's pegboard arrangement, which we arrange it onto the pegboard.

Q. Did you take these pictures, or did the Police Dept.?

A. The Police Dept. took those pictures.

Q. Speaking of the ammunition that was taken—(Exhibits picture to the Jury) You gentlemen of course saw that—speaking about the cameras hanging on this pegboard proposition back there. I think most of you are acquainted with the store.

Q. Ammunition that was taken; what type of ammunition was taken, Mr. Weaver?

A. Well, there were shotgun shells taken, and rifle cartridges, and pistol, or revolver, ammunition, too.

Q. All three types of ammunition?

A. That's right.

page 22 } Q. Christmas lights burning, also?

A. That's right; in the front of the store.

Q. Were they burning when you got back to the store shortly after 1:00 o'clock?

A. Yes, sir; they were.

Q. You got a chimney to that store?

A. Chimney?

Q. Um-hum.

Q. No, sir; now you got me; I can't say, because it's gas-controlled heat, anyway, and maybe—I believe there is a vent. I've never been on top of the building, but I believe there's a vent back there; it has to be, I think.

Q. I suppose the Police Dept. made a very careful investigation there, didn't they, sir?

*C. W. Weaver.*

A. Yes, sir; they did.

Q. As they always do?

A. They spent until almost 8:00 o'clock Sunday morning.

Q. Um-hum. I believe they have a photographic department in the Police Department here, too, do they not, sir?

A. That I can't answer; I don't know; I presume they have.

Q. They took the pictures?

A. That's right.

Q. Do you know whether or not they have a finger-printing department, and a picture-printing department, too?

A. Yes, they do have.

Q. And they took finger prints?

A. They did.

Q. I notice on this door, portion of the door, page 23 } seems to be quite a number of finger prints on it, don't they?

A. Finger prints taken off it.

Q. And they took the finger prints off that door, and I believe, both sides of the door were what you might consider a smooth surface, are they not?

A. Fairly smooth.

Q. During Christmas Eve, didn't see any reindeer tracks around there, did you?

A. We looked for them; wasn't enough snow.

Q. Just one other thing, or, I don't have any particular interest—how was this man, Clarence Hall, dressed that came in your store?

A. How was he dressed?

Q. Yes, sir.

A. He was wearing boots, riding pants and a leather jacket.

Q. Boots, riding pants and a leather jacket. Have a hat or cap on?

A. I don't recall whether he did or not.

Q. Did he wear glasses?

A. No, sir; didn't have glasses on.

Q. Now, as I understand, he was in your store on the 21st of December, the 22nd of December, and the 24th of December; will you tell me the approximate time he was in there on those three days?

A. On the 21st, I can't say the exact time he was in there it was during the middle part of the day, as well as I can recall of that.

Q. Kate Smith says, "We'll call it high noon."

*C. A. Stanley.*

- page 24 } A. High noon.  
Q. Okay, now the 22nd; what time was he—  
A. It seems to be around the same time of that,  
too—high noon.  
Q. All right, sir; and the 24th?  
A. It was between 12:00 and 2:00.  
Q. Still high noon?  
A. Starting gradually to go on back down.  
Q. All right, sir. And he—was Hall dressed the same  
way on all three occasions?  
A. Yes, sir.  
Q. Did he make any purchases of any kind?  
A. Never did. He was inquiring, but he never did buy any-  
thing.  
Q. Approximately, what length of time was he in the store  
on the various, sundry dates?  
A. Well, his longest time of staying would not exceed 10  
minutes; most time it was around 5 minutes, and to 10.  
Q. Mr. Weaver, has any ammunition that was taken been  
recovered?  
A. No, sir; it hasn't.  
Q. No further examination.  
By Mr. Cuddy: Stand aside.

C. A. STANLEY,  
a witness of lawful age, after being duly sworn, deposes as  
follows:

DIRECT EXAMINATION.

- By Mr. Cuddy:  
page 25 } Q. You Police Officer C. A. Stanley?  
A. Yes, sir.  
Q. Mr. Stanley, on the night of December 24th, early morn-  
ing of December 25th, were you working patrol car, Police  
Dept., City of Roanoke?  
A. Yes, sir.  
Q. Believe that Officer Huels was working with you?  
A. Yes, sir.  
Q. Officer Huels ill at this time?  
A. Yes, sir.  
Q. Now, were you assigned—were you patrolling Northwest  
section of Roanoke?  
A. Yes, sir.  
Q. In your patrols, did you go by, or were you in the  
vicinity of Owen-Weaver sporting goods place?



*C. A. Stanley.*

A. Yes, sir.

Q. Believe you checked all the places of business around through that section?

A. Yes, sir.

Q. About what time did you check by Owen-Weaver sporting goods place?

A. Approximately 1:15 A. M.

Q. And when you got there, what did you find there?

A. We pulled up between the buildings in the back; door was open.

Q. Back door was standing open?

A. Yes, sir.

Q. Is there a light that extends out on the back page 26 } door?

A. Yes, sir.

Q. What was the condition?

A. The bulb was taken out and thrown over to one side.

Q. Did you go into the building then?

A. Yes, sir.

Q. What did you find when you got in there?

A. Looked around first at all places anyone could be hiding, and went to the front and noticed all the guns was missing.

Q. Believe you then notified the Police Dept.?

A. Yes, sir.

Q. And the owners of the store—had the owners been notified?

A. Yes, sir.

Q. You remained there until Mr. Weaver and the Detective Dept. got there?

A. Yes, sir.

Q. Officer M. O. Cochran was sent out?

A. Yes, sir.

Q. You then turned over the investigation to Mr. Cochran?

A. Yes, sir.

Q. How long did you and Mr. Huels remain?

A. After they arrived, we remained approximately 15 minutes.

Q. You left at that time?

A. Yes, sir.

Q. Place located in the City of Roanoke?

A. Yes, sir.

By Mr. Cuddy: Take the witness.  
page 27 } By Mr. Messick: No questions.

Witness stands aside.

M. O. COCHRAN,  
a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Mr. Cochran, Police Officer M. O. Cochran?

A. That's right, sir.

Q. Connected with the Detective Dept., City of Roanoke?

A. That's correct, sir.

Q. Mr. Cochran, you receive call on Christmas morning to go to Owen-Weaver sporting goods place?

A. I did, sir.

Q. What time did you receive the call; approximately what time did you arrive?

A. It was about 2:00 A. M.; I received the call at home, and from there I had to take my own car and go to headquarters and get my finger-print and camera equipment. I guess roughly 2:20 when I arrived, maybe 2:30 when I got to Owen-Weaver.

Q. You carried camera equipment along?

A. Yes, sir.

Q. You the one who took these pictures? (Exhibits photographs)

A. I did all the investigating; yes, sir.

Q. Also have a section of the door taken out; is this the section? (Exhibits door section)

A. Picture shows the lock.

page 28 } Q. Lock is—

A. Yes, sir.

Q. What did you find on the inside of this door, Mr. Cochran?

A. Well, sir, it had been—someone had entered it through the rear door.

Q. How had it been entered?

A. Door had been prized off what appeared to be a cross-bar.

Q. And what was the condition of the inside of the store?

A. The gun racks were empty, and a little pistol case there was—quite a lot of boxes and so forth in behind it, and no pistols left in the case.

Q. Believe you attempted to get finger prints?

A. I did, sir.

Q. On the door?

*M. O. Cochran.*

A. I checked the door, the cases, and everything I thought there was a chance there may be prints on.

Q. Did you get finger prints of some of the employes?

A. I did, sir.

Q. Could you find any other finger prints?

A. The only ones we have identified have been of the employes, or owners—one or the other.

Q. Mr. Cochran, is it possible to leave finger prints if you wear gloves?

A. Gloves definitely don't leave finger prints.

Q. All right, sir. Take the witness.

page 29 }

CROSS EXAMINATION.

By Mr. Messick:

Q. Did you find any gloves there, Mr. Cochran?

A. No, sir.

Q. Did you find any gloves on Coffee?

A. I didn't arrest James Coffee.

Q. You mind getting that information for me?

A. I believe that—I don't know—I believe Sgt. Lemon was one of the uniformed officers that went to his house in the middle of the night, *quote* sometime later, though.

Q. Well, as a matter of fact, it was about seven of them, weren't there?

A. I honestly couldn't tell you, Mr. Messick.

Q. I wish you would check that with the Police Dept. and let me have that information.

A. We can have it done; yes, sir. Their names will be on the docket; dates they were arrested.

Q. And you took no part in the checking of the arrest?

A. I took no part in the arrest.

Q. Mr. Cochran, the City of Roanoke maintains what is known as a Bertillon department—do I pronounce that right?

A. What we have there is—five of us, we are qualified in both finger prints and photography. We do all of our own work, and—as well as developing our own pictures.

Q. You are qualified, as recognized as experts in that field?

A. That's correct, sir.

Q. And you also have the use of that department  
page 30 }

A. We have the facilities of the F.B.I. available, and the department at Richmond; yes, sir.

Q. You know whether or not the F.B.I. made any investigation of this case at all?

*M. O. Cochran.*

A. Not to my knowledge, sir.

Q. I believe you all did call in Mr. Steve Shelton, who is known as an expert investigator for this particular section of the State—for the State of Virginia, didn't you?

A. I didn't have anything to do with calling in Mr. Steve Shelton; I am well acquainted to him; he is State Police Investigator for this section of Virginia.

Q. Is he here?

A. He is involved in the case; yes, sir.

Q. Do you know where Jennings Coffee was living in December of last year?

A. No, sir.

Q. I wish you would be sure and get that information for me right away.

By Mr. Cuddy: Doesn't he know?

By Mr. Messick: Hall?

By Mr. Cuddy: Doesn't Jennings Coffee know where he's living?

By the Court: He means information about the page 31 } arrest.

By Mr. Messick: That's all.

### CROSS EXAMINATION.

By Mr. Lanham:

Q. You said you did make a check of these finger prints that you found on the door?

A. Yes, sir.

Q. There were a number of finger prints on the door; you find there Fouts' finger prints on the door?

A. When we got back to where I've got the finger print equipment—I don't remember distinctly where I got legible prints. I tag each one as I take it from the location where I get the print. If I took one off the pistol case, I would tag it—lift it from the under-side of the second cabinet, or second shelf, or what have you. I don't remember just *where* the prints came from. There were some prints obtained from either the pistol case, or gun rack, which were identified as belonging to either Mr. Weaver, Owens or Carmack. However, there was no identification made on any of the defendants.

Q. Are there any finger prints on the Johnson motor?

A. Didn't find any prints at all; I may have gotten one off there.

*Frank Scales.*

Q. Are you one of the officers that searched Mr. Fouts' house immediately after?

A. No.

Q. You know who they were?

A. To my knowledge, their houses were not searched until quite sometime later, after they were arrested.

page 32 }     Witness stands aside.

**FRANK SCALES,**

a witness of lawful age, after being duly sworn, testifies as follows:

**DIRECT EXAMINATION.**

By Mr. Cuddy:

Q. Your name Frank Scales?

A. Yes, sir.

Q. You live at Pulaski, Frank?

A. Yes, sir.

Q. Frank, do you know Abie Hasson?

A. Yes, sir.

Q. How long you known Abie Hasson?

A. About 18 months.

Q. Do you know Clarence Fuzz Hall?

A. Yes, sir.

Q. How long you known Clarence Fuzz Hall?

A. About 12 months.

Q. Where does Fuzz Hall live?

A. Pulaski.

Q. Where does Hasson live?

A. Well, he stays in Pulaski lots of the time, but I think his residence is in Draper.

Q. Draper, Va.? Do you know Jennings Coffee?

A. I know him ever since about the first of December, last year.

Q. When did you first know him; when was it you first had contact with him?

page 33 }     A. When I came back from Bland; first time I saw Coffee, I was with Fuzz Hall.

Q. With Fuzz Hall?

A. Um-hum.

Q. Where?

A. Main St., in front of the Sunset Barber Shop.

*Frank Scales.*

Q. Now Clarence—Frank, did you make several trips from Pulaski to Roanoke during the month of December, 1955?

A. Yes, sir.

Q. How many trips did you make in company with any, or all of the three that I have named—Hall, Coffee and Hasson?

A. Made two with Coffee, and three with the rest of them.

Q. Now, the first time you came down, who did you come with?

A. Fuzz, Hasson and myself.

Q. Fuzz Hall, Abie Hasson and yourself?

A. Um-hum.

Q. On that occasion where did you go?

A. Rode around Salem here, and went over to Police Headquarters and picked up my clothes, and went back and told Hasson, Capt. Allman said they was going to put me in jail for vagrancy, and we went back to Pulaski.

Q. You were with Fuzz Hall and Hasson that time; you see anybody else down here that time?

A. No, sir; not that I can recall of.

Q. When did you come back next time?

A. The next following day.

Q. And who came back with you?

page 34 } A. Coffee. (Witness gestures)

Q. And who?

A. Hasson, and Hall and myself.

Q. Hasson, Hall, Coffee and yourself. Where did you go when you came to Roanoke on that occasion?

A. Well, we—when we first came through Salem, we came on in to Roanoke; we came in this way (Witness gestures), and went over on Orange Ave., and went by this Melrose sporting goods store, and pulled up in between the driveway.

Q. Who was in the car at that time?

A. Four of us—Hasson, Hall, self and Coffee.

Q. Now, you say you pulled into the—

A. Driveway.

Q. Their driveway is between what?

A. Liquor store and sporting goods store.

Q. Any one get out of the car there?

A. Hall.

Q. And then where did you park your automobile? Who was driving the car?

A. Hasson.

Q. Where was the car parked?

A. When Hall got out, it was parked middleways of the

*Frank Scales.*

store, and then we pulled back to where they could see the window.

Q. To the rear of the lot?

A. Yes, sir.

Q. How long was Hall out of the car?

A. He was out of the car, I say—estimated—between 5 or minutes.

page 35 } Q. When he came back to the car, was any statement made by Hall, Hasson and Coffee; anything said?

A. Was any statement made by Coffee or Hasson?

Q. Was any statement made by either Hall, Hasson, or Coffee?

A. They said the job was cased—I mean Hall, he came back and he said, “Well, the job was cased”—just like that. And then they got in the car and started talking about tools—that included all of them.

Q. Started talking about tools? You go anywhere else that day?

A. We went up—we came away from the store, and we went down a piece, and there’s a cut in the street where you turn around, and get back to the highway coming back toward Roanoke. We got on the highway and came back into Salem, and Hall said about time for him to go see this fellow, sitting on the end here (Witness gestures) only he didn’t, at first he didn’t call his name. He didn’t call his name until we got to a place called Casa Loma, coming down old Turnpike Road, and we left Coffee and Hasson out of the car. Hasson asked what we was going to do, so I wouldn’t have to stand in the cold.

Q. Where did Hasson and Coffee get out of the car?

A. They got out up at a restaurant about five or six miles out of Salem.

Q. West of Salem?

A. Yes, sir.

Q. Then you and Hall came back?

A. Yes, sir.

page 36 } Q. And just describe to the Jury what you were trying to do there

A. We was trying to locate a fellow’s house. Hall, he didn’t know exactly where the fellow lived, so he made two trips to place called Casa Loma, and he went inside each time, and last time he came out, someone had told him—

*Frank Scales.*

By Mr. Messick: That would have to be corroborated—any statement of Hall's conversation between Hall and this man. We object.

By the Court: Don't—

By Mr. Cuddy: What his intention of going there—

By the Court: Tell what you did, but don't tell what conversation you had.

By the Witness (Continuing) We left Hasson at this restaurant. We came back. We went to a white house on the side of the road, over Salem Turn Pike Road. We pulled over on the lot.

Q. Was there a question as to where the person lived?

A. Yes, sir.

Q. And what person were they trying to locate?

A. Fouts.

By Mr. Messick: Just a minute, if your Honor please. We object to that.

By Mr. Cuddy: I submit that is proper.  
page 37 } By the Court: Who was driving the car?

By the Witness:

A. Fuzz Hall was driving the car.

By the Court: I mean at the time you were looking for the house?

By the Witness:

A. Fuzz Hall, who was—

By the Court: Who was looking for a house, you, or Fuzz Hall?

By the Witness:

A. Fuzz Hall.

By the Court: Go ahead.

By Mr. Messick: Well, now, just a question, as the basis of a objection. How did you know what house you were looking for?

By the Witness:

A. Because, at the time we went by that place, at first I didn't know exactly where we were going—old Salem Turn-



*Frank Scales.*

pike Road—and he asked me, said, “Do you know which road is the Salem Turnpike Road?” and I said, “No”, and we found old Salem Turnpike Road, and two or three fellows sitting in the car in front of Casa Loma. Well, he told me—rolled the window down and asked this fellow could he give him some information on this fellow. Said, whereabouts—and asked did he know anybody lived on this road named Fouts.

By Mr. Messick: All the result of the conversation between him and Hall, in the absence of Fouts, and would not be admissible.

By the Court: I think it's proper evidence. Go ahead.

By Mr. Messick: Exception, if your Honor please.

By Mr. Cuddy:

Q. Did you get the directions to a house?

A. Yes, sir.

Q. Did you go to the house?

A. Yes, sir.

Q. Where is that house located?

A. It's located right before you get into the town corporation limits. You turn up off the dirt road, and you go up a little alley, and a large house sitting on the first side, and a little white house sitting on opposite side of it.

Q. Small white house one you went to?

A. Yes, sir.

Q. Right off the Turnpike Road?

A. Yes, sir.

Q. Who went into the house?

A. Hall.

Q. Where did you go—stay?

A. In his car.

Q. How long was Hall gone?

A. About 45 or 55 minutes.

Q. Did you see anybody else at all?

A. No, sir.

page 39 } Q. Then after you came back from there where did you go?

A. We went—we came back—when Hall came back to the store—car, we went back and picked up Hasson, then.

Q. After that trip did you later ascertain or find out who lived in that white house?

A. Yes, sir.

*Frank Scales.*

- Q. Who lives there?  
A. This fellow on the end. (Witness gestures)  
Q. That Fouts?  
A. Yes, sir.  
Q. Now, you went back to Pulaski that evening?  
A. Yes, sir.  
Q. Did you come to Roanoke again with them?  
A. Yes, sir.  
Q. Who did you come to Roanoke with that time?  
A. Same four, Hasson, Hall, Coffee and myself.  
Q. Where did you go on that occasion?  
A. I went over there to Henry St., and Hall, Hasson and Coffee, they was gone up, say about two hours, when they came back. They asked me was I ready to go.  
Q. Put you out at Henry St.?  
A. Yes, sir.  
Q. You remained there?  
A. Yes, sir.  
Q. How long was it before they picked you up?  
A. About two hours.  
Q. What was—any statements made by any of the three, Hall, Hasson or Coffee, about any job or anything, at that time?  
page 40 } A. Yes; they said that they needed some crow-bars and some rollers, and Hall, he said that he seen this fellow here—he mentioned his name—he said that he had saw Fouts.  
Q. Hall made a statement he had seen Fouts?  
A. Witness nods head)  
Q. Was there anything said about numbers?  
A. Hall said that they wouldn't have this worry about any numbers, because Fouts—he thought Fouts could be able to change.  
Q. Now, after Christmas, shortly after Christmas, did you see Hall—I mean, see Jennings Coffee?  
A. Yes, sir; I did.  
Q. Where did you see him?  
A. In front of barber shop, in back of car with lid up in the back.  
Q. What city or town?  
A. Pulaski.  
Q. And what did they have in that car?  
A. Guns.  
Q. Did you see them?

*Frank Scales.*

A. I saw part of them.

Q. About how many—could you estimate how many guns you saw in that car?

A. Between 30—about 35 it was, I know; 30-some—a lot of them in there.

Q. A lot of guns; and where were they?

A. In back of red maroon Ford, or Mercury.

Q. You saw those, too?

A. Um-hum.

page 41 } Q. Take the witness.

## CROSS EXAMINATION.

By Mr. Messick:

Q. You saw your name is Frank Scales?

A. Yes, sir.

Q. What do you do, Frank?

A. For a living?

Q. Um-hum.

A. I stay with my grandmother.

Q. Poor grandma. What did you do for your own livelihood, that's what I mean; what kind of work do you do, if any?

A. I worked at the powder plant before I got cut off.

Q. When was it you got cut off in the powder plant?

A. '54.

Q. Well, now, down to '56—what you been doing since 1954?

A. Well, at the end of '54, I first saw Hasson, and that's when I first—I got working. I met Hasson, here, and I got myself in trouble.

Q. Well, now, I know, but what kind of work do you do?

A. Well, I told you before I worked at the powder plant. After I got cut off at the powder plant, I met Hasson. Me and them got in the—messed up, and I had to pull time for it.

Q. You had to pull some time for—what I'm getting at now, have you done any work of any character?

A. Shine shoes.

Q. Shine shoes? Where did you shine shoes?

A. Nowhere at the present. I did shine at Sunset Barber Shop.

page 42 } Q. Where is Sunset Barber Shop located?

A. In East Main St. in Pulaski.

Q. Who owns this barber shop?

A. I don't know.

*Frank Scales.*

Q. Does Hasson have anything to do with it?

A. Hasson's brother worked there.

Q. Hasson's brother worked there?

A. (Witness nods head)

Q. I understood you to say that you came up here to the Police Dept. for some purpose; what did you come up here for?

A. I was convicted for 6 months here, and they had my clothes here for identification. I came back to get them.

Q. And you came back here to get your clothes?

A. (Witness nods head)

Q. Now, what was it Capt. Allman said he was going to put you in jail for, vagrancy?

A. Yes, sir.

Q. And you hoofed it back to Pulaski?

A. I went back to the car and told them what he said. Hasson asked me what did he mean when he said vagrancy. Fuzz said, "Six months chilled him," like that.

Q. Six months probably chilled him—that's what Hasson said?

A. That's what Fuzz said.

Q. That's what Fuzz said. I want to come down to just a few very concrete facts. When was the first time that you came to Roanoke with Hasson?

A. First time?

page 43 } Q. Um-hum.

A. In this event, or the first time in my life?

Q. The first time in this event.

A. Week of during Christmas.

Q. Week of during Christmas. Well, now, Christmas of 1955?

A. Christmas of 1955, that's right.

Q. What was the date of the first day you came to Roanoke?

A. I don't know exactly the date, but I know we came three straight days; it was in the going of Christmas.

Q. Let's see if we have a Christmas calendar around here any place. (Examines paper) Well, I find, now, that turning to Christmas of 1955, that the first day was Sunday the 18th; the next day was Monday the 19th; the next day was Tuesday the 20th; and the next day was Wednesday the 21st; and the next day was Thursday the 22nd; and the next day was Friday the 23rd; and Saturday fell on the 24th. Now, what was the first day that you came to Roanoke that Christmas week?

*Frank Scales.*

A. It was in the week; what I meant by the end of the week of Christmas, the week of Christmas follows in the week that people was going shopping for Christmas.

Q. Well, that is—now, Frank, you may as well come out—didn't you swear the first time you came to Roanoke, the first time you came to Roanoke in connection with this event, was on the 21st day of December, 1955?

A. I said we came 21st, 22nd and 23rd, then.

Q. You came the 21st, 22nd and 23rd, did you?

A. Yeah.

page 44 } Q. No question about that?

A. We came—I know it was the latter part of the week.

Q. Latter part of the week would have been the 21st, 22nd and 23rd, unless you came on the 24th, which was the day before Christmas, or Christmas Eve; did you come that one?

A. I don't know.

Q. You don't know?

A. No.

Q. Didn't you swear in no uncertain terms yesterday?

A. I said we came 21st, 22nd and 23rd.

Q. Is that the truth, or not?

A. Yes, it's the truth.

Q. Okay, *than* that's all I want to know. Let's get that perfectly straight. Who came with you on the 21st day of December?

A. Hasson, Hall and myself.

Q. Hasson, Hall and yourself. Jennings Coffee didn't come with you, did he?

A. No.

Q. What time did you all leave Pulaski on the 21st day of December?

A. Say what?

Q. What time did you all leave Pulaski on the 21st day of December?

A. I don't know.

Q. Approximately?

A. We left some time in the morning.

Q. Well, what time did you get to Roanoke, then?

A. I don't know, because I never have seen a  
page 45 } town clock in Roanoke.

Q. Do you have to have a town clock to give a jury, or anybody, the benefit of an approximate time of day of arrival?

*Frank Scales.*

Q. Town clock? You said you wanted me to make sure estimates.

Q. I didn't ask you to make any sure estimates. I'm asking you to tell me the approximate time.

A. I—we got here about midday.

Q. All right, midday. Where did you and Hasson and Hall go that day?

A. Over to the market.

Q. Over to the market. How long did you *say* in Roanoke.

A. We stayed in Roanoke, I say, around about hour and 35 minutes, somewhere like that.

Q. Hour and 35 minutes. And then what did you do?

A. While we was here?

Q. I don't care what you did; what did you do after you stayed here an hour and 30 minutes?

A. At first we got over on the market. Hall seen his wife, and they started to arguing. Hasson told me to go ahead, and I came over here, and I waited in the Police Dept, 30 or 40 minutes, waiting on Capt. Allman.

Q. I said what did you do after you had been in Roanoke for an hour and a half?

A. I told you.

Q. Where did you go to?

A. Went back to Pulaski.

Q. Okay. That was the 21st, which you say was page 46 } the latter part of the week of Christmas, and you went back to Pulaski. About what time did you get back to Pulaski?

A. I don't know, because I went to the show.

Q. Well, can't you give me some idea?

A. Onliest thing I know, it was not evening.

Q. Was not evening. Was it dark, or was it still light?

A. Sun was shining.

Q. Sun was shining. So it was the afternoon, instead of evening? That's correct, isn't it?

A. Yeah.

Q. All right. Now, Frank, then there was no question about it that the following day you came back to Roanoke, didn't you?

A. Yes, sir.

Q. Who did you come with on that occasion?

A. Hasson, Hall, Coffee and myself.

Q. Four of you—Hasson, Hall, Jennings Coffee, and yourself.

A. (Witness nods head)

*Frank Scales.*

Q. And that would, of course, be the following day, the 22nd of December, 1955. Now, I want you to tell the Jury what time of day did you all leave Pulaski on the 22nd day of December, 1955?

A. Well, when we left Pulaski it was pretty early that morning, because we got here—we got in Salem before twelve.

Q. You got in Salem before twelve, and you left pretty early. So you must have left, say around eight, or nine, or ten o'clock?

A. I didn't say for sure what time we left; we got in Salem before twelve.

page 47 } Q. Then you got into Salem before twelve; and I'd like to know what you mean by "pretty early."

A. It wasn't exactly—I couldn't say 11 o'clock or after; I know it was pretty close to something there; it was anywhere in there between 11:00 o'clock, because we got to Salem before twelve.

Q. You got to Salem before twelve, and you know it takes at least an hour to drive?

A. It didn't take a hour the way we were driving.

Q. You all was coming down the highway? How long did it take you?

A. I don't know.

Q. You have your watch along and time it?

A. No, I didn't have the watch that time. I happened to be looking at the speedometer.

Q. You happened to be looking at the speedometer. You got to Salem before twelve on the 22nd day of December, 1955? Now, when you got to Salem, what did you do?

A. Well, we got up there and parked the car, and we came through Salem on Main St. We went down a few blocks to—east, to the station. We turned around and went back and parked in front of the Five-and-Ten, on opposite side. Hasson got out of the car and got in somebody's station wagon, and took overcoat and got back in his car, and we pulled off and went up into some restaurant, six or seven miles out of Salem, and then Hasson and Coffee, they got out and went inside the restaurant. Then they came back and went down Old Salem Turnpike Road.

Q. Then, after you went down the road—Salem Turnpike Road—you hold the direction on the Old Salem Turnpike Road?

A. Yes, sir.

page 48 } Q. Did you return to Pulaski that day, on the 22nd?

*Frank Scales.*

A. Yes, sir.

Q. Now, what time did you get back to Pulaski?

A. It was late.

Q. Well, now, how late?

A. Round about 8:30.

Q. Round about 8:30. Well, now, where had you been from about 12:00 o'clock until 8:30?

A. Well, from 12:00 o'clock we rode around, we rode around up there in Salem, between Salem and Roanoke, until around about a quarter of five.

Q. Until about a quarter of five?

A. Yes; that is what time Hall said he had to see Fouts. Around about a quarter of five we drove up to Salem at this restaurant. We left them out, and we came back, and he stayed down at this fellow's house about 45 or 55 minutes; then we came away from down there and went back and picked them up, and when we got out to Radford, east on Station, lights was out—one of the lights went out of the car, and they stopped up there at the garage and fixed it.

Q. If I understand you correctly, from approximately 11:00 o'clock, or maybe a little before—you got to Salem at 12:00—you were with Hasson and Hall, and Jennings Coffee up until about a quarter of five that afternoon—is that what you're telling this Jury?

A. Yes, sir.

Q. And at a quarter of five where did you let Coffee and Hall out—or, Hasson out?

page 49 } A. In a restaurant.

Q. At a restaurant where?

A. About 6 miles out the other side of Salem.

Q. All right. Then, after you let them out about a quarter of five, you came on down to Roanoke with Hall—you said you had gotten back to Pulaski about 8:00 o'clock. Did you see anything more of Coffee or Hasson after a quarter of five on the afternoon of December 22, 1955?

A. After what time?

Q. Any more of them after a quarter to five, when you let them out at that restaurant west of Salem?

A. No.

Q. Did they go back to Pulaski?

A. We went back and picked them up.

Q. What time?

A. I don't know.

Q. Give us some idea.



*Frank Scales.*

A. We went down there about a quarter of five. I say it took us 15 or 20 minutes to find this man's house.

Q. Yeah?

A. And then we stayed down there about 55 minutes.

Q. I'm going to count that up. Now, you got up to 55, so that would be a hour and 10 minutes. And that up for you. It must have been something around 6:20 or 6:15 when you went back up to the restaurant?

A. Something like that.

Q. And did you pick Coffee and Hasson up there at that time?  
page 50 } A. Yes, sir.

Q. You went back to Pulaski?

A. Yes, sir.

Q. Now, we got that definitely set. Now, did you come to Roanoke the next day?

A. Yes, sir.

Q. And that would have been the 23rd day of December, wouldn't it?

A. Yes, sir.

Q. There's no question in the world about that? Now, I want you to tell the Jury who accompanied you from Pulaski to Roanoke on the 23rd day of December, 1955?

A. Same four—Hasson, Hall, Coffee and myself.

Q. The same four. Now, I want you now to tell the Jury approximately what time did you leave Pulaski?

A. We left—

Q. On the morning, or day of the 23rd day of December?

A. We left Pulaski around about 11:00 o'clock. We got in Roanoke; we started up Henry St. bridge pretty close, to about 12:00 or 12:30, because Hasson give me a dollar, and said, "Go somewhere and get yourself something to eat." He said, "Stay around the pool rooms and I'll come back and pick you up."

Q. You got into Roanoke about 12:30 on the 23rd day of December, is that right?

A. Yes, sir.

Q. Left Pulaski, the four of you, about 11:00 o'clock?

A. About what?

Q. Huh?

page 51 } A. About what?

Q. The four of you left Pulaski about 11:00 o'clock?

A. Um-hum.

*Frank Scales.*

Q. Did you all stop any place?

A. Stopped down here, after we got down here.

Q. Got down here? "Here" is pretty wide sort of territory. Where you mean?

A. I told you, on Henry St.

Q. Didn't stop any place else on 23rd of December, huh?

A. No.

Q. Stop any place on the 22nd of December?

A. Yeah.

Q. Where?

A. Made a whole lot of stops up in Salem—at front of Five-and-Ten, and stopped two or three places before we got here.

Q. Where else did you stop?

A. Parking meters. We stopped some place and asked policeman in Salem—and then we stopped here in Roanoke between Sears & Roebuck Co., down in between the alley, stopped in between that.

Q. Did you stop any place between Salem and Roanoke?

A. Yeah.

Q. Where?

A. On which day?

Q. Well, on the 21st, 22nd or 23rd—either one.

By Mr. Cuddy: I submit—

By the Court: Tell him what day you are talking about, Mr. Messick.

page 52 } By Mr. Messick:

Q. Down to the 23rd—I've carried him through the 23rd, and got him down to the 23rd. Now, I want to know—

A. On the 23rd—if you are talking about did we go back by this store, we went back that way, and went through the colored section, and went out Owens Ave. High School, out that way.

Q. When did you go to the store, and what day was it?

A. We went to the store the second day.

Q. That would have been the 22nd of December, then?

A. Yeah.

Q. Was that the only day you went to the store?

A. Only day we went to the parking lot; went by the store the last day, third day.

Q. 23rd, and didn't stop?

*Frank Scales.*

A. No.

Q. Let me get this straight; you went there on the 22nd of December; about what time of day did you go to the store that this event is in question—we'll put it this way: the Owens-Weaver store, that's next to the A. B. C. store?

A. When we left Pulaski we came straight down here, and went over there, and we started down the road there—I say anywhere between, somewhere between 2:00 o'clock, anywhere between there—I don't know exactly what time it was; we didn't question it, because we stopped up there and asked him—police—something. Whatever he said, he gave Hall a smart answer.

Q. Smart cop in Salem?

A. I don't know if they got smart cops, or not.

Q. What time was it you got to Owen-Weaver's store?

A. I don't know exactly what time we got there.  
page 53 } I know we got somewhere—it was after lunch.

Q. It was after lunch?

A. Yes; we pulled up in this driveway.

Q. Didn't you tell us yesterday, around noon?

By Mr. Cuddy: If your Honor please, I submit he did not make any such statement. Let's ask him to quote him correctly.

By Mr. Messick:

Q. All right, what time was it then? Give me an approximate time now.

A. It was after lunch.

Q. How long? What time did he have the lunch, and what time of day was it?

A. I didn't have lunch that day.

Q. What time was it that you went to Owen-Weaver's store?

A. It was after lunch. I'm not making no false—you don't want me to make no false statement?

Q. I don't want any false statement; I want to get the truth. You tell this Jury approximately what time it was.

A. After lunch.

Q. What time was it?

A. I mean after lunch—after 12:00 o'clock.

Q. Was it 1:00 o'clock?

A. If it wasn't one, it was close to it; if it wasn't one, it was nothing but a few minutes of one.

Q. We got that settled. If it wasn't one it was close to it,

*Frank Scales.*

and it was just a few minutes after. Well, at page 54 } least say it was between 12:00 and 2:00; we'll fix it way. How's that? That all right?

A. All right with you, it's all right with me.

Q. I don't know, I think anything would be all right; I think anything would be all right with you. But—

By Mr. Cuddy: If your Honor please, I submit that those sort of remarks are absolutely wrong in the trial.

By the Court: Go ahead, Mr. Messick. Question the witness.

By Mr. Messick:

Q. Got it established somewhere between 12:00 and 2:00, haven't I? Is that correct, Samo Scales? Was it between 12:00 and 2:00, or not?

A. Yes, it was between 12:00 and 2:00.

Q. That's that—22nd day of December, 1955. All right, Coffee was with you up there?

A. Coffee was with us.

Q. Did he get out of the car?

A. No, he didn't.

Q. Okay. Now, on the 23rd day of December, was Coffee with you?

A. He wasn't with me. He was in the car. I told you they let me out over on Henry St.

Q. All right. Whose car did you come in?

A. Abie Hasson's.

Q. What kind of car was it—Oldsmobile?

A. Oldsmobile.

page 55 } Q. Will you describe the Oldsmobile?

A. A blue.

Q. Blue. Four-door sedan, or two-door sedan?

A. Two-door.

Q. Blue two-door. What color is the top?

A. Blue.

Q. Blue top. Was it hard-top, or not?

A. Yes, hard-top.

Q. And you came all three days on that?

A. Yes, on the Oldsmobile.

Q. Yes?

A. Yeah.

Q. Who does it belong to?

A. Abie Hasson had it ever since 1954, when I first met him.

Q. And you've known Abie Hasson well?

*Frank Scales.*

A. I know Abie Hasson well.

Q. All right. Now, let's get this other thing straight. Mr. Cuddy asked you, if shortly after Christmas, if you saw Coffee and—in Pulaski. What did you tell him?

A. Told him "Yeah".

Q. You said that was just a few days after Christmas, that is, didn't you?

A. I didn't say a few days after Christmas. He asked me if I saw him after Christmas.

Q. How long after Christmas?

A. I saw him Christmas morning.

Q. You saw him Christmas morning in Pulaski.  
page 56 } Well, now, how long after Christmas was it before  
you saw Coffee in Pulaski with some guns?

A. I saw him Christmas morning with some guns.

Q. You saw him Christmas morning with some guns in this red maroon car? I am going to give you a chance, boy.

By Mr. Cuddy: If your Honor please, I submit that's improper.

By the Court: Go ahead with your questions, and leave the remarks aside.

By Mr. Messick:

Q. I'll go ahead with my questions. Didn't you tell Mr. Cuddy in your direct examination that a short time after Christmas you saw Coffee in Pulaski in a red automobile, that the back was up and he had 30 guns in it?

A. I saw Coffee Christmas day with these guns all right. Earl Boll Wayne was on the corner; he said, "Frank, come up to my house. I got your Christmas present." Hasson was standing on the corner. It was Christmas day, between 7:00 and 8:00 o'clock, and Hasson will tell you the same thing. He reached in his pocket and pulled out a whole fistful of money, and he gave me three \$1 bills, and he got in this cab and we went up to Maple Lodge, where he said he stayed that night. He gave me \$2—\$3, and he gave the cab driver a dollar and told him to keep the change, and this guy had the door standing over in front of the barber shop. Four hours later I heard they had done broke in the motel, and Hasson was wounded on Turnpike Road busting in the—

Q. I know. I just asked one simple question,  
page 57 } and you can answer it. On direct-examination by

Mr. Cuddy, didn't you swear that a short time after Christmas—

*Frank Scales.*

A. He asked me.

Q. Wait a minute. A short time after Christmas, if you didn't see Coffee in Pulaski in a red automobile, and that the back was up, and some guns in it, didn't you tell him?

A. He asked me had I seen Coffee a short time after Christmas. I didn't see that man Christmas. I ought to know a man when I see him.

Q. I know all that. I just want to ask you what you told this Jury.

A. I told it.

Q. All right. Deny you tell this Jury that there were 30 or more guns in that car?

A. Yeah.

Q. That's what you told them. Now, I'll ask you, on yesterday—and ask the reporter to turn back to his notes—if you didn't swear that several days after Christmas you saw Coffee in Pulaski in a red automobile, and that the back end was up, and that there were 15 guns in the back end? Didn't you swear that yesterday? Did you, or did you not?

By Mr. Cuddy: If your Honor please, I submit if he's going to do that he better be prepared about the problem.

By the Court: Yes.

By Mr. Messick: I am prepared; I am prepared.

By the Court: All right.

page 58 } By Mr. Cuddy: I think that there ought to be—the question was put, and I asked it: "Didn't you, after Christmas—" He did say "a few days". He responded to the question directly.

By Mr. Messick: This is what he said: "Some few days after—".

By Mr. Cuddy: Those are your notes.

By Mr. Messick:

Q. Did you, or did you not swear to that? Tell this Jury.

A. Did I swear to what?

Q. Did you swear on yesterday that some few days after Christmas, Jennings Coffee was in Pulaski with more than 15 guns in his car—more than 15—that the back end was up, and that man took it down.

A. Yes; I said 30-some—at least, that's what I meant to say.

Q. I'm asking you.

A. I'm pretty sure I said 30-some.

*Frank Scales.*

Q. I'm asking you if you didn't swear yesterday, some few days after Christmas, you saw Coffee in Pulaski in a red automobile that the back end was up, and that there were 15 guns in that car? Did you say that or not?

A. I don't know if I did, or not.

Q. Was it the truth, or not?

page 59 } By the Court: Let him finish his answer, Mr. Messick.

By Mr. Messick:

Q. You say you don't know whether you did, or not?

A. I'm telling you, I seen that man Christmas Day, standing up there with the guns. I stood on a parking meter and talked to him.

Q. I'm asking you what you swore to yesterday.

A. I told that man 30-some guns in that car Christmas Day. I saw them.

Q. I ask you if you didn't swear on yesterday that some few days after Christmas you saw Jennings Coffee in Pulaski with more than 15 guns in the car, that the back end was up, and it was a red automobile? Did you swear that, or not?

A. I told you once I didn't know.

Q. If you did swear it, was it the truth, or not?

A. I told you I swear to this: I saw Jennings Coffee Christmas Day—

Q. One more opportunity to tell the Jury—

By Mr. Cuddy: If your Honor please, I submit that's absolutely improper.

By the Court: Let's don't have the remarks, Mr. Messick. Go ahead with your questions.

By Mr. Messick:

Q. I'll ask you the question again.

page 60 } By the Court: Scales, try to answer that in any way you want to, but go ahead and answer the question, and make any explanation you care to make.

By Mr. Messick:

Q. —some few days after Christmas I saw Jennings Coffee in Pulaski, with 15 or more guns in his automobile; the back of the car was up. Did you swear to that on yesterday, or not?

*Frank Scales.*

A. I don't know.

Q. You don't know. Well, if you did swear to it, was it the truth, or not?

A. I saw Jennings; the truth is, I saw Jennings Coffee Christmas Day with these guns.

Q. Why didn't you tell the truth yesterday?

By Mr. Cuddy: I submit there's no proof that isn't exactly the words he said. I submit Mr. Messick's questioning is absolutely improper.

By Mr. Messick: I'll vouch for the record; we'll prove it.

By the Court: I think, if you are going to carry this any further, we ought to have the court reporter go do it now. I hate to take that much time with this, but I think that's probably the way to do it.

By Mr. Cuddy: As a matter of fact, you laid the foundation, and laid him open to impeachment later.

By Mr. Messick: I called attention to the time and place.

By the Court: He has answered the question.  
page 61 } He says he doesn't know exactly what he said yesterday.

By Mr. Messick: He doesn't know what he said.

By the Court: If there is any question about whether he's told the truth, just what he testified to yesterday—

By Mr. Messick:

Q. I'm going to ask you one other question, and don't answer the question until I get the court reporter to read the record. Haven't you changed your story since yesterday, and made it on Christmas Day, instead of, some few days after Christmas, because since yesterday you have learned that on the 20th day of December Jennings Coffee was in jail, and was kept in jail for sometime now?

A. Here's my hand to God, if anyone ever mentioned to me about Coffee, or anybody, being in jail, anybody in jail upstairs. Haven't any information one of them mentioned anything to me.

Q. Nobody's mentioned any case to you?

A. I don't have to tell no—this man was up there; I was laying on front of the parking meter. I had just got through talking to Lt. Boles—Hasson will tell you the same thing. This guy had the back of a red maroon Ford, with this North Carolina license tag to it.

(On motion of Mr. Messick, Court and Counsel retired to chambers, where the following took place:



page 62 } At Mr. Messick's request, the court reporter was asked to find a statement, allegedly made by Frank Scales in his testimony on April 23, 1956, in the case of the *Commonwealth v. Clarence Robert Hall*, that he, Frank Scales, had testified that he saw Jennings Coffee on the 23rd day of December, 1955. The reporter was unable to find the statement.

### IN OPEN COURT.

(The court reporter was duly sworn and took the stand.)

Mr. Messick asked the court reporter to find a statement allegedly made by Frank Scales, in the case of the *Commonwealth v. Clarence Robert Hall*, that he, Frank Scales, saw Jennings Coffee in Pulaski "some few days after Christmas." The reporter replied to Mr. Messick that it would be necessary to read the whole testimony of Frank Scales in order to find the alleged statement. Mr. Messick then asked the court reporter to find a statement of Frank Scales, in which he said he saw "15 guns" in the back end of a car. The court reporter read the following from notes taken on the 23rd day of April, 1956, in the case of the *Commonwealth v. Clarence Robert Hall*:

### "DIRECT EXAMINATION.

"By Mr. Cuddy:

"Q. Now, Frank, some few days after Christmas, were you in Pulaski?

"A. Yes, sir.

"Q. Did you see Jennings Coffee?

"A. I saw him in front of a barber shop.

"Q. And what—how was he travelling?

"A. In a red maroon Ford, or red maroon  
page 63 } Mercury.

"Q. And what was in that automobile?

"Q. Was guns like this. (Witness points)

"Q. How many guns did you see in that automobile?

"A. I couldn't say—more than one.

"Q. More than one?

"A. Yes, sir.

"Q. Did you—could you estimate about the number that you saw?

"A. The back end was up. I do know I saw more than—I'd estimate it around about 15 in it."

Frank Scales.

Mr. Cuddy then asked that the first question be re-read, as follows:

“Q. Now, Frank, some few days after Christmas, were you in Pulaski?”

“A. Yes, sir.”

Mr. Cuddy then asked the court reporter if the answer given to his question was responsive, and the reporter answered that it was.

(Reporter’s note: The court reporter, because of inexperience or negligence, did not take his recording equipment into chambers, or to the witness stand, for a verbatim recording of the preceding. The preceding narrative account is offered as true and accurate, to the best of the reporter’s recollection, based on notes made within an hour and a half after the preceding conference in chambers, and his testimony from the witness stand.)

By Mr. Messick: Mr. Sims, and Mr. Farmer,  
page 64 } and Mr. Gibson, and Mr. Sease, all you gentlemen  
on that front row, would you mind standing up?

(Three men rise on the front row of the spectators’ benches.)

Q. Do you know who these gentlemen are?

A. I don’t know nary one of them.

Q. Don’t know nary one of them? It is possible you could have been mistaken in your testimony if those gentlemen—

By Mr. Cuddy: I submit, to compare his testimony with what somebody else might say is absolutely improper.

By the Court: Objection sustained.

By Mr. Messick:

Q. I will ask you to tell the Jury whether or not you know that on the—that every day during the month of December, with the exception of the 24th and 25th of December, and the 26th, when Jennings Coffee was arrested, he worked every single, solitary day for the Lone Star Cement Co. in Boteourt County, Va., and worked seven—

By Mr. Cuddy: Wait a minute. Ask him the question.

By Mr. Messick:

Q. Do you know it, or not—that Jennings Coffee worked every single, solitary day during the—

A. I do know this: Jennings Coffee came to Roanoke with me twice; I know Jennings Coffee was in the Ford car with me; and I wouldn't take it over this day to a man that run no nip-joint, and the guy at the motel told Coffee—he got down here some way—if they ever testify against anything, he knows enough to put them in jail for 20 years.

page 65 } Q. You know all that, of course, yes. But I'm asking you, do you not know that every day during December, with the exception of Sunday, that that man worked for Lone Star Cement Co. from 8:00 o'clock in the morning to 5:00, or 4:30 in the afternoon, and the man you're accusing here—

By Mr. Cuddy: If your Honor please, I submit—

By the Court: That's not a proper comment. This witness is accused; he's not *a* accuser in this case.

By Mr. Cuddy: We indicted him, and the Grand Jury found the indictment. That man has not been before the Grand Jury.

By Mr. Messick: I want to give him an opportunity—

By Mr. Cuddy: If your Honor please—

By the Court: Wait a minute. You've been asked a question: If you knew anything about this man working at the cement company. You know anything about that?

By the Witness:

A. No, sir.

By the Court: Go ahead with the questioning, Mr. Messick.

By Mr. Messick:

Q. I want you to tell this Jury whether or not  
page 66 } you, any time during the month of December, or coming down to the "end," as you call it, particularly time of Christmas week, if you came to Roanoke with Abie Hasson in any automobile other than Hasson's car?

A. We came Christmas—during Christmas we came in Abie Hasson's Oldsmobile, and I rode in that Oldsmobile over a year, and I think I should know it.

Q. When was Abie Hasson's automobile wrecked?

A. I don't know. But I do know one thing: I know the Oldsmobile; it's blue all over, and it's blue inside, and got blue cloth seat covers in it—I do know that.

*Frank Scales.*

Q. Certainly didn't come in here in any cream-colored Chevrolet hard-top, with black top on it?

A. We came in a blue Oldsmobile.

Q. Hasson's blue Oldsmobile?

A. We came in Hasson's blue Oldsmobile.

Q. You sure of that? Just why were you riding to Roanoke with Hasson?

A. Because, the reason I had been with Hasson, we—me and Hasson had been friends for a long time, and I got sent up for a rap I didn't do.

Q. You and Hasson have been friends for a long time, until you came down here and got sent up for a rap?

A. That's right.

Q. These gentlemen would send you up.

By the Court: Wait a minute. That's not a proper question.

page 67 } By Mr. Cuddy: Objection.

By the Court: Objection sustained.

By the Witness: I was found guilty because I didn't have no witness and I didn't have no way to get a lawyer.

By Mr. Messick:

Q. Who was it that sent you up?

A. I sent myself up for the way I talked, I guess.

Q. Who was it sent you up for something you didn't do?

By Mr. Cuddy: If your Honor please, I submit—

By the Court: I don't know that that's material.

By Mr. Messick: I think that's most material—just shows the wild statements that the man makes.

By Mr. Cuddy: Objection.

By the Court: Objection sustained, Mr. Messick.

By Mr. Messick: Objection, your Honor.

By Mr. Messick:

Q. How long you and Hasson been such good friends?

A. Long time; over a year.

Q. Long time, over a year? How long?

A. Pretty close to about two years.

page 68 } Q. Pretty close to about two years?

A. I been riding with him, I say, 'round about 14 or 15 months, somewhere like that, and—

Q. And you—and of course you know Hasson's automobile well?

A. I know Hasson's automobile well.

By Mr. Lanham:

Q. Frank Scales, how long have you known Mr. Fouts, or do you know him?

A. Don't know him.

Q. You never saw Mr. Fouts any time in this matter?

A. No, sir.

Q. So far as you know, you've never been to Mr. Fouts' house, have you?

A. So far as I know, only thing I know about Fouts is Fouts' name, and exactly where Fuzz said he lived.

Q. You don't know anything at all yourself?

A. No, sir.

Q. And anything so far as Mr. Fouts is concerned is hearsay on your part? I vote to strike out anything about Mr. Fouts on the grounds of hearsay.

By the Court: I don't know how I can strike out; you've got two defendants here.

By Mr. Lanham: I move to—

page 69 } By Mr. Cuddy: Mr. Fouts is certainly proper about going and looking for his house, and looking for a house he learned to be Fouts' house. Certainly that's proper.

By the Court: I think that's proper, too.

By Mr. Cuddy: But it doesn't make any difference who he learned it from.

By Mr. Lanham:

Q. How did you find out it was Fouts' house?

A. I found out one way by Fuzz.

Q. That's all you know—somebody told you about Fouts' house?

A. Fuzz say, "I'm going to look for a guy named Fouts." At Casa Loma I was on the side—we pulled up the street, and I was on the side where Casa Loma was, and he told this fellow, whoever he was—

Q. You don't know yourself where Mr. Fouts' house is?

A. No. I—

Q. I make motion to strike.

By Mr. Cuddy: I'll connect more of it, if you want it, later on.

By Mr. Lanham: I would like to save the point.

By the Court: Any further questions for this page 70 } witness?

By Mr. Lanham: No, sir.

By the Court: Stand aside.

S. M. LYNCH,  
a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Deputy Sheriff of Roanoke County, S. M. Lynch?

A. Yes, sir.

Q. Mr. Lynch, on the 19th day of February of this year—11th day of February of this year, were you patrolling in the radio car south of the City of Roanoke?

A. Yes, sir.

Q. Just how far south of the City of Roanoke?

A. It's approximately 3 miles from the Roanoke City Limits.

Q. What is the section known as?

A. It's patrolling road known as Buck Mountain Road. It turns off at 220, going back west over toward Starkey.

Q. Just where?

A. Clearbrook School.

Q. Clearbrook School is at the foot of a long hill, stands down by that nice looking tourist court?

A. That's right.

Q. All right. About what time of day was it?

A. Approximately 3:30 P. M.

Q. About 3:30 P. M. on February 11th?

page 71 } A. Yes.

Q. Now, you left Route 220 and turned to your right. How far did you go?

A. Mile and 2 tenths.

Q. Mile and 2 tenths west of Route 220?

A. That's correct.

Q. And does that then intersect with another road?

A. Road leads off to the left, south, up into Buck Mountain.

Q. Up into Buck Mountain?

A. Yes.

Q. Did you hear anything as you were patrolling?

A. Yes, sir; just as I pulled up on top of the mountain—the road leads off south in the mountain—I heard this shot fired. And I pulled up in there to investigate the shot. And after I left the hard surface road I get up in there approximately a hundred yards, not quite that far—approximately a hundred yards—road forks, prong that winds 'round to the right, and prong keeps straight up the mountain. And I found a 1949 Mercury four-door sedan was parked in this road

*S. M. Lynch.*

that keeps straight. So, I taken the right-hand prong and pulled my car up the mountain approximately two hundred yards, and turned around and headed back down the mountain, and got out of my car, and I walked down to where this Mercury was parked.

Q. You checked the license number on that Mercury?

A. Yes, sir.

Q. To whom does this automobile belong?

A. It was registered in—to William Ray Fouts. I got out of my car and walked down to where this Mercury  
page 72 } was parked, and just as I got down to where it was parked, I heard some pretty loud voices over in the woods to my left, and I heard one of them say to the other one, "I know he went this way, and he came back down the road." I could see them in the woods there, moseying around to the woods. I stooped down and—in front of this Mercury, and I stayed there approximately ten minutes. And I raised up and I noticed Fouts walking toward the back of this Mercury, with this bag here. (Witness points)

Q. Is this the bag he had in his hand?

A. —carrying it behind him. That's the bag he had; yes, sir.

Q. All right.

A. He got up about ten feet of the back of this Mercury. I walked 'round beside of this Mercury, and I saw Coffee, and he was about fifteen feet behind Fouts, walking. He was carrying this .22 rifle in his hand, and reached in his pocket and pulled out two more pistols and throwed them down to the ground.

Q. What did he do with the rifle?

A. He throwed that down on the ground.

Q. And this rifle, he threw on the ground?

A. That's correct.

Q. Which of these guns did he pull out of his pocket and throw down?

A. (Witness indicates) That revolver; this one here—throwed both of them, and throwed them on the ground. So, I walked up in Fouts' face there, and I asked Fouts—and I asked his name. He said, "William Ray Fouts." And I asked him if that car belonged to him, and he said it did. I asked him to show me his registration card and  
page 73 } operator's license. He pulled them out and showed them to me, and I asked him what he was doing out there in the woods, and he said he was looking around. And I said, "What were you looking for?" And he said,

*S. M. Lynch.*

"Nothing—just looking." I asked him where he got this plastic bag, and he said he found it over in the woods. So, by that time, Coffee had walked to where Fouts and I were standing, and I asked Coffee his name, and he told me his name was Jennings Coffee. I said, "Well, both of you are under arrest; turn around and walk back out on there to where you threw the guns down." And he said, "What guns?" And I said, "The gun and rifle you throwed down, and the two pistols you had in your pocket." So, he walked back out to where he throwed them down, and stopped. And I said, "Turn around and put your hands up." Both of them turned around with their backs to me, and stuck their hands to me. I said—I searched Fouts; I didn't find anything on Fouts. And I found that .22 automatic—

Q. You search Coffee?

A. I searched Coffee, and I found that .22 automatic Italian make pistol in Coffee's right-hand pocket.

Q. You took that out of his pocket?

A. I took it out of his right-hand pocket, and I marched them back up the mountain where my car was parked, and my handcuffs was in the car, and I reached in the car and got my handcuffs out and handcuffed them together, and put them on the front seat of my car and drove back to the hard surface of the road—the road that leads up to the mountain. I asked them if they wanted to talk and tell me where he got these guns, and Coffee stated, he said, "I'm not telling you anything." He says, "I'll talk to Paul Vest, if you'll  
page 74 } get Paul out here." And I said, "I will get Paul Vest out here." And I placed the call to headquarters in Salem, and told them to get in touch with Paul Vest and send him out there on the mountain. So Capt. Allman, Det. Vest, Det. Shelor, Det. Britt, came out there, and I turned them over to them.

Q. You then turned Fouts and Jennings Coffee over to Roanoke City Police?

A. That's correct.

Q. Mr. Lynch, what was the condition of the gravel, with reference to moisture, at that time?

A. Wet, raining a little bit, and a few days before that we had a little snow, too.

Q. What was the condition of this bag that you saw?

A. Been wet, and was all stuck together; you couldn't tell what it was.

Q. Damp?

A. Yes, sir.



*S. M. Lynch.*

Q. When you got these guns, did you examine them?

A. I did.

Q. Show you marks on this gun.

A. Yes, sir?

Q. And this gun over here—what was this?

A. Rusty marks, spots.

Q. Rusty spots?

A. Yes, sir.

Q. Were these wet at that time?

Q. From appearances, could you tell whether or not they had been out there for some little time?

page 75 } A. Yes, sir; some little time.

Q. Where you arrested them, was in Roanoke County?

A. Yes, sir.

Q. All right. Take the witness.

#### CROSS EXAMINATION.

By Mr. Messick:

Q. Mr. Lynch, about four or five miles from the City?

A. It's approximately 3 miles from Roanoke City limits.

Q. Route in Roanoke County?

A. That's correct.

Q. And it's known as Buck Mountain Road?

A. Yes, sir.

Q. Is there a place up there known as the "Dump"?

A. Looks a dump on the side of the road.

Q. A dump up there?

A. Yes, sir.

Q. Would you mind, just for the benefit of the Jury, sort of drawing that road where you turn off to go up 220 to Buck Mountain Road, and give me where the dump is located, and where the prongs are?

A. No dump—like trash on the side of the road.

Q. Known as a dump?

A. They don't call it a dump.

Q. What do you call it when you throw out a lot of trash?

A. That's a dump, too.

Q. It's a little dump, instead of a big dump?

A. (Witness draws of paper) This is 200. This is road leads off 220, goes back towards Starkey.

page 76 } Q. Buck Mountain Road?

A. Buck Mountain Road.

*S. M. Lynch.*

Q. Okay.

A. That is the road up here that leads up into the mountain.

Q. Good drawing, and show it to the Jury.

A. (Witness holds up sketch for the Jury) Now, when you get up here, this road winds around here, like that. And that one here keeps straight on up.

Q. Straight on up the mountain?

A. This Mercury was parked in this road, here.

Q. Where is the dump?

A. There's no dump up in there. In other words, there's a little dump up here on the side of the road.

Q. Dump up here?

A. Trash in this—there.

Q. A little dump, they call it?

A. This road here, leads around here, is road I taken.

Q. You went over this road, and this Mercury parked here? Trash and stuff is there, where the dump—were you right here at this Mercury, and you say there was trash and stuff thrown up there?

A. Trash and stuff thrown there, but Coffee and Fouts was over in the woods, approximately 50 yards.

Q. But when you saw them up in the road—

A. They was walking back toward the Mercury.

Q. Back to the dump? Stand up, and let's see if I've got that straight. This is 220, and that's headed south.

A. That's correct.

page 77 } Q. Going to Rocky Mount, and this is what's known as Buck Mountain?

A. Buck Mountain Road.

Q. And this road turns—

A. Off Buck Mountain Road, and—

Q. —and goes up on the mountain?

A. Yes.

Q. And then that road branches; one goes that way, and the other one goes that way?

A. That's right.

Q. And the Mercury was parked off in this one that goes straight—here?

A. That's right.

Q. And along here you say that there was trash and stuff, and you saw Coffee and Fouts right along there, didn't you?

A. Back of this Mercury.

Q. Back of this Mercury?

A. Yes.

Q. And you turned up this road here?

*S. M. Lynch.*

A. Yes.

Q. You gentlemen understand that diagram? You want to ask any questions, perfectly all right. We'll call this Route 220, and we'll put south down there. Of course, this will be north. Then the Buck Mountain Road would go west, wouldn't it?

A. That's right.

Q. Buck Mountain?

A. Um-hum.

Q. All right. Now, from Route 220 on to Buck  
page 78 } Mountain Road about how far is it to where this  
other road turns off south?

A. Mile and two tenths.

Q. Mile and two tenths?

A. That's right.

Q. One and two-tenths miles?

A. Um-hum.

Q. And then you turn off. What do you call that road, another piece of Buck Mountain?

A. That's the road that goes up into Buck Mountain.

Q. More Buck Mountain—how's that? And how far is it from main Buck Mountain Road to where this intersection is?

A. I say approximately a hundred yards, maybe a little less.

Q. A hundred yards?

A. Yes.

Q. And people have used this road along here as a sort of trail?

A. Yes.

Q. And what I'm putting here is a "X"—a Mercury.

A. Um-hum.

Q. And the road that turns to it?

A. Leads up on the mountain.

Q. That would be—we call that Little Southwest?

A. I imagine.

Q. Southwest branch, we'll call it, and that's the one you parked your car?

A. That's the road I drove up, and parked my car.

Q. Let's make this "X," and "M" for a Mer-  
page 79 } cury. What kind of car were you driving?

A. Ford.

Q. Ford, then; okay. Now, we got it straight. We offer that as an exhibit.

*S. M. Lynch.*

By the Court: All right.

By Mr. Messick:

Q. Mr. Lynch, you have any particular reason for patrolling out there?

A. No particular reason. I was talking to Mr. Beasley just a few days before I was looking that afternoon, and he asked me, any time that I passed, he'd appreciate my checking along there. He owned that land up to where the Sky-line Drive is, and he said he'd appreciate if I would check it.

Q. I see. You doing a little checking?

A. That's right.

Q. You heard a shot fired?

A. Yes, sir.

Q. And when you heard the shot fired you decided that you would make an investigation, did you?

A. Yes, sir.

Q. Now, you've heard some people talking down in the woods, didn't you?

A. Yes, sir.

Q. And you also heard somebody say, "I know he went that way," didn't you?

A. That's correct.

Q. Now, you told us that you searched Jennings page 80 } Coffee, that's correct, isn't it?

A. That's correct.

Q. Did you find any bullets or ammunition of any kind on him?

A. Didn't find any bullets or ammunition, either one.

Q. "Either one of them"—that meant you searched Fouts, too?

A. I searched Fouts first, and I searched Jennings Coffee, and as I stated, I got that .25 automatic pistol out of the right-hand hip pocket.

Q. You found no ammunition of any kind of character on either of these men, no?

A. No ammunition; I checked rifle and gun.

Q. That was next question. Was there any ammunition in the rifle or pistols, or revolvers, that you found?

A. No, I didn't find anything.

Q. They were free of ammunition?

A. No ammunition on them.

Q. Now, Mr. Lynch, when you asked whose car that was,

*S. M. Lynch.*

that Mercury car, Mr. Fouts didn't hesitate at all to tell you it was his, did he?

A. I asked him if it belonged to him, and he said it belonged to him—Fouts.

Q. You asked him what his name was, and he told you his name was William Ray Fouts?

A. That's correct.

Q. He made no effort of any kind or character to conceal his identity, did he?

A. I asked him to show me his operator's license page 81 } and registration card, and he showed them to me.

Q. Now, Mr. Lynch, you asked Mr. Coffee what his name was, didn't you?

A. Yes, sir.

Q. And he told you his name was Jennings Coffee?

A. That's correct.

Q. He didn't hesitate a moment to disclose his identity to you, did he?

A. Huhn-un.

Q. Did he offer any resistance of any kind or character towards you?

A. Well, Coffee kind of spoke kind of sassy when I told him to walk back down to where he threw those guns down.

Q. And he talked just sassy when you asked him if he wanted to tell about these guns, and he said, to use his exact words, I believe is what he said, "I'm not telling you anything"?

A. That's right.

Q. "I'm not telling you anything"?

A. That's right.

Q. "Talk to Det. Paul Vest"?

A. That's correct.

Q. Now, he meant by that, Paul Vest who is a detective of Roanoke Police Dept., is that correct, sir?

A. Yes, sir.

Q. And is that Mr. Vest standing over there, the gentleman with the grey suit and red tie, leaning, sort of, on the banisters?

A. Yes, sir.

Q. And he told you that what he had to say he page 82 } was going to tell Det. Paul Vest?

A. That's correct.

Q. Now, did you know whether or not Jennings Coffee talked to Det. Paul Vest?

*S. M. Lynch.*

A. When they came out there I think Paul got in the car, and what they said I don't know. Whether he talked or not, I don't know.

Q. You do know they talked?

A. I know they got in the car together; whether they talked I don't know.

Q. What they talked about—

By Mr. Cuddy: Said he didn't know.

By Mr. Messick: He said they got in the car, and he didn't know whether they talked, or not.

Q. When they got in the car, what did they do?

A. They got in the car and sit down.

Q. See their lips moving?

A. I wasn't looking at their lips.

Q. Then, a few of them got in the car and sat down?

A. I didn't time them; I don't know how long.

Q. Could you approximate?

A. 10 or 15 minutes; I don't know.

Q. Well, it was some time, wasn't it—10, or 15 or 20 minutes?

A. Well, I sit there 15 minutes; I don't know.

Q. Of course, I'm not trying to confuse you.

page 83 } A. You're not going to confuse me.

Q. I want to know—anybody else in the car with him—them?

A. I don't think so; I wouldn't say so; I don't think they were.

Q. According to your best recollection, after Jennings Coffee told you that he would talk about this matter, he sat in an automobile approximately 15 or 20 minutes, is that correct?

A. They stayed in the car maybe 10 or 15 minutes; maybe it might not have been that long.

Q. Take your own word for it; 10 or 15 minutes that he sat in the car alone? You asked Mr. Fouts where he got that bag, didn't you?

A. That's correct.

Q. And he told you he found it?

A. Found it over in the woods.

Q. Then you asked him what he was doing up there, and he said he was looking around?

A. That's correct.

*S. M. Lynch.*

Q. Mr. Lynch, what day of the week that, February 11th, on Saturday?

A. On a Saturday.

Q. On Saturday. Of course this whole affair was reported to the Police Dept. of Roanoke City, and to the Sheriff's office in Roanoke County, wasn't it?

A. I don't know whether it was reported to the Sheriff's office in Salem, or not; I couldn't say.

page 84 } Q. You are a deputy sheriff, and did you report it to Mr. Clark, your superior?

A. That's correct; when I got them back to the road, I called the Sheriff.

Q. It was reported to the Sheriff's office in Roanoke County? Do you know whether or not it was reported to the Dept. about the robbery?

A. About the robbery?

Q. I am talking about what you found in the mountain.

A. It was reported later on, after I caught them.

Q. You phoned in?

A. I called Sheriff's office; that's correct.

Q. You radioed in?

A. Yes, sir.

Q. That very same afternoon?

A. That's correct.

Q. Now, you know whether or not the Department of State Police were notified of it?

A. I wouldn't know.

Q. Can you give us any information of whether or not an extensive search was made of Buck Mountain that afternoon?

A. Yes, sir; on Sunday morning after that, we went back out there and we looked around some, but we didn't find anything.

Q. How long did you all search out there?

A. I don't know; out there 40 minutes, maybe a hour; I don't know.

Q. How many of you participated, or engaged in that search?

A. I don't know how many there was. Let's  
page 85 } see—there was Det. Coleman, Det. Vest, and, I believe, Det. Cochran was along.

Q. Sir?

A. I believe Det. Cochran was along. And Capt. Allman, and Lt. Webb, and I don't know—remember whether anyone else along, or not.

*Frank H. Webb.*

Q. Then, of course, if you conducted the search, you certainly searched the best you could?

A. We found—but we didn't find anything.

Q. The best you knew how?

A. Did the best we could.

Q. The best you could. On this map over here, if you don't mind, would you check me about right along here, right along in through here—L. D.—along here L. D. L. D. indicating a little dump.

A. What you call it—a little dump; a big dump.

Q. Well, still a dump. That's all.

**CROSS EXAMINATION.**

By Mr. Lanham:

Q. One question: All those guns have all been cleaned up and oiled since you found them?

A. I don't know.

Q. When you found them, they were rusty?

A. Rusty spots on them.

Q. Not the same now as when you found them?

A. They showed evidence of having laid out in the open some time.

Witness stands aside.

page 86 } FRANK H. WEBB,  
a witness of lawful age, after being duly sworn,  
testified as follows:

### DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Capt. Webb, Supt. of Police for the City of Roanoke?

A. Yes, sir.

Q. Capt. Webb, in this investigation did you, in company with Frank Scales, go out to a house just on the outskirts of the City of Roanoke?

A. Yes, sir.

Q. Directed there by Frank Scales?

A. Yes, sir.

Q. Is that where you were given the description and address of it?

A. The best I can describe it is this, Mr. Cuddy—



*Frank H. Webb.*

Q. Is that where you were given a description of what kind of house it was, and how to get there?

A. Yes, sir.

Q. By Frank Scales?

A. Yes, sir.

Q. And then did you go there by following that direction given by him?

A. In his company.

Q. House pointed out to you?

A. Yes, sir.

Q. Who lives at that house?

A. Later learned the house belongs to Fouts.

page 87 } By Mr. Messick: All this is hearsay.

By Mr. Cuddy: Doesn't make any difference whether it was in his presence or not; he identified the house.

By the Court: No objection. Go ahead; take the witness.

#### CROSS EXAMINATION.

By Mr. Lanham: I had trouble getting this; this is all over my head. I couldn't hear—something about Fouts—

Q. You went out there with who?

A. With Frank Scales—colored man—and Steve Nelson.

Q. Where did you go?

A. Lt. Griggs and myself.

Q. Where did you go?

A. We went out on the road toward Salem, just across the Creek. There's a big white house, and back of it there's a small white house, and he showed us the small house as being the one he went to.

Q. When did you go?

A. On the afternoon of January 5th.

Q. That was shortly after this robbery took place, is that right?

A. About the burglary—as I remember, took place on the night of December 24th.

Q. What time did you go out there?

A. In the afternoon 2:30, or 2:40 P. M., on  
page 88 } January 5th.

Q. Who was home at the time?

A. We didn't go in the home; he showed us where the house was.

*Frank H. Webb.*

Q. Were you present when the house was searched?

A. No, sir.

Q. You didn't take part?

A. No, sir.

Q. Somebody pointed out the house to you?

A. Frank Scales, colored fellow, he pointed out a house to us, and said what—that was the house he and Hall and Hasson went to.

Q. One of those two white houses?

A. He showed me which white house.

Q. You didn't even know whether Mr. Fouts was home at that time, or not, did you?

A. No, sir.

By Mr. Messick:

Q. Capt. Webb, you say he told you that was the house that he and Hall and Hasson went to?

A. Correct.

Q. Sir?

A. That's right.

Q. That's what he told you?

A. On that particular time, yes, sir.

Q. That he and Hall and Hasson went to ? Didn't he tell you that Hasson and Coffee were up at a restaurant about six miles west of Salem, and that only he and Hall went down there?

A. Not at that time, Mr. Messick; he did not.

Q. And Capt., did you take the statement from page 89 } Frank Scales when he was sent up down here for something he didn't do?

A. No, sir.

Q. Do you know what officer it was that took the statement?

A. No, sir. The only time I have talked with Frank Scales was that day—I mean that was the first time I walked with him.

By Mr. Lanham:

Q. Capt.—now, Major, did you participate in this search of this Buck Mountain area?

A. Yes, sir; I did.

Q. I suppose you all conducted a pretty thorough search?

A. Well, somewhat of a loss out there—too much territory to cover. We tried to search in the area as near as possible to where Mr. Lynch had showed us he found some of the other guns.

*Frank H. Webb.*

Q. Showed you where he found some of the other guns?

A. Where Mr. Coffee and they were at the time he first saw them, I believe.

By Mr. Lanham: That's all, Major. Thank you.

By Mr. Cuddy: That's all. State rests.

(Court adjourned until 2:00 o'clock the following day, April 25, 1956.)

(Court resumes April 25, 1956, at 2:00 P. M.)

### IN CHAMBERS.

By the Court: I understand you want to make page 90 } a motion.

By Mr. Lanham: I want to make the motion to strike the evidence as to Mr. Fouts. He had a little plastic bag that was all torn, of no value at all. This was not even—is not even a subject of larceny in this case, and so far as we know, never came from the store of Owen-Weaver; it wasn't found in the possession of anyone. He didn't have any guns; even if he could be *construed* to be in possession, he explained the fact that what they had was found on that occasion. Now, ordinarily, possession, reasonably assumed after a commission of a crime, places a presumption of larceny only, not of housebreaking. However, in the case it was some six weeks after the commission of the offense, there was a bunch of rusty guns found in the woods; my client did not have none of them. The only evidence in connection with the case was the fact that the other defendant had a pistol in his pocket—not even in view—and was carrying a rifle in his hand; and that after he came up, the other defendant took the pistol out of his pocket and threw them down. There's no evidence here at all to connect with Fouts—with the gun, and I believe it should be—I think a motion to strike the evidence should be sustained.

By the Court: All right, Mr. Cuddy.

By Mr. Cuddy: Circumstances other than that in connection with the case, and the law is that possession of recently stolen property in the exclusive possession, where the larceny and the burglary was simultaneous act, also attaches to the breaking and entering.

page 91 } By the Court: I don't think there's any question.

*W. H. Sims.*

By Mr. Cuddy: No question about that. Here were two men in the woods, certainly right together. Certainly, in moving on this motion you've got to give the most favorable interpretation to the Commonwealth's evidence. Here with the four guns, the two men together—he carrying a bag; certainly the Jury can think from what was proven that the guns had been wrapped in it. Coming out of there together—he hasn't made any explanation at all. As to how he came into possession of them—and the burden of proof is upon him now to explain it to the satisfaction of the Jury, I submit.

By the Court: The evidence connects him with these defendants, both before, and after the breaking and entering, and although the evidence is not as strong in the case of Fouts, as it is in the case of the other defendant, I think there is sufficient evidence for question to go to the Jury. Going to have to overrule the motion.

By Mr. Lanham: I'd like the record to show that we excepted.

#### IN OPEN COURT.

By Mr. Cuddy: The state rests.

W. H. SIMS,  
a witness of lawful age, after being duly sworn, testifies as follows:

#### DIRECT EXAMINATION.

By Mr. Messick:

page 92 } Q. Mr. Sims, what are your initials, sir?

A. W. H.

Q. Mr. Sims, what do you do?

A. I am office manager for Tidewater Construction Corp.

Q. Mr. Sims, and you're office manager for the Tidewater Construction Corp.?

A. Yes, sir.

Q. What is the Tidewater Construction Corp.?

A. It's a heavy construction outfit out of Norfolk, Va.

Q. Have you all been working any place in this vicinity?

A. Yes, sir.

Q. Whereabouts, sir?

A. Out on the Lone Star cement plant in Botetourt County.

Q. You all been working on the Lone Star Cement Co. in Botetourt County?

*W. H. Sims.*

A. Yes, sir.

Q. How far is that from the City of Roanoke?

A. Approximately 22 miles.

Q. Mr. Sims, as office manager of the Tidewater Construction Co., did you keep the records of the time and payments to employees of that company, for work performed?

A. Yes, sir.

Q. Did you have in your employ, in December of 1955, one Jennings Coffee?

A. Yes, sir.

Q. Do you have his records of the days that he worked, and the hours, sir?

A. Yes, sir.

page 93 } Q. I wish you would turn to the 21st, and 22nd, and the 23rd of December, 1955, and tell the Jury if Jennings Coffee worked on those three days, and the number of hours, and the period of time he was on the job.

A. J. S. Coffee, iron worker.

Q. What is the rate of pay?

A. \$2.85 per hour. On the 21st, 8 hours; 22nd, 8 hours; 23rd, 8 hours and a half.

Q. All right. This will be Thursday, Friday and Saturday just before Christmas?

A. No; that's Wednesday, Thursday and Friday.

Q. Wednesday, Thursday and Friday?

A. Yes, sir.

Q. Just before Christmas of 1955?

A. Right.

Q. Now, of course the 24th was Saturday. Did you work on the 24th?

A. No, sir; we do not.

Q. Didn't work on the 24th?

A. No.

Q. Work on the 20th?

A. Yes, sir.

Q. Mr. Coffee work on the 20th?

A. I'm sure he did, sir; yes, sir, 8 hours.

Q. 8 hours on the 20th?

A. Yes, sir.

Q. The 20th was on Tuesday?

A. That's correct, sir.

page 94 } Q. Do you have his work record for the—how much did you all pay him for the—ask you this: Did he work on the 19th day of December, which was a Monday?

A. No, sir.

*W. H. Sims.*

Q. Do you know where he was on that day?

A. No, sir; I do not. All I have is his absent report on the time card.

Q. But he worked, Tuesday, Wednesday, Thursday and Friday, and could—did not work on Saturday the 24th?

A. That's correct, sir.

Q. Now, what was his pay for the week of December 19th?

A. The week—my week runs from Wednesday through Tuesday, which would be this particular week, would be the 14th through the 20th. Is that the week you want?

Q. No.

A. The 21st—23rd, is that the one you want?

Q. 21st, 22nd and 23rd; Wednesday would be the 23rd.

A. His net earnings?

Q. His gross?

A. Gross is \$71.25, I believe—it looks like.

Q. That was a short week on account of Christmas?

A. That's correct; yes, sir.

Q. Did you see Mr. Coffee on the job on the 21st, 22nd and 23rd?

A. I'm sure I did, sir. He checked in at my office. I couldn't say I saw Mr. Coffee, but I'm sure if somebody else came up and called for his brass, I would have noticed.

Q. Who is Mr. Coffee's foreman?

page 95 } A. O. H. Farmer.

Q. Now, on the days that you all worked during the month of December, Mr. Coffee was employed by your company; you want to tell the Jury if he missed any day other than the 19th?

A. No, sir; he did not. From the 7th—he was employed on the 7th of December.

Q. Employed on the 7th of December?

A. 7th; and he worked every day the job worked, through the 23rd, with the exception of the 19th.

Q. Through the 23rd, with the exception of the 19th, and the 24th was on Saturday, and you all didn't work then?

A. That's correct, sir.

Q. Do you know where he worked before he came to work for you all?

A. No, sir; I do not know; I haven't got it.

Q. Haven't got any record? Do you know—have information whether he worked for General Electric?

A. I believe he did.

Q. Who was Mr. Coffee's foreman?

A. O. H. Farmer.

*W. H. Sims.*

Q. Mr. Farmer, you stand up, please, sir? (A man among the spectators stands) And who was the general foreman on the job?

A. Mr. G. E. Sides.

Q. Stand up, please. (A man among the spectators stands) Now he worked 8 hours on the 21st, 8 hours on the 22nd, and 8 hours and a half on the 23rd. Will you tell us the time they started to work, and the time he quit.

A. Started at 8 o'clock, and quit at 4:30. Unless page 96 } they worked overtime on Friday, he quit at five.

Q. Quit at five on Friday the 23rd?

A. May I add that I happen to know he was there, too, because we had a crane-boom to unload, and we had to hold him there to help unload.

Q. You had a crane-boom to unload, and you had to hold him on Friday 23rd?

A. Yes, sir.

Q. Where he was working was 22 miles from the City of Roanoke?

A. That's correct; yes, sir.

Q. And that is, instead of being towards Pulaski, is towards Buchanan, isn't it, sir? It's north of Roanoke?

A. That's right.

#### CROSS EXAMINATION.

By Mr. Cuddy:

Q. Mr. Sims, you say you are the office manager?

A. Yes, sir.

Q. Of course, on these days you checked people in as they came in?

A. Yes, sir.

Q. Or check them in there—foreman, or somebody, that gives you the information? You check each one of them individually?

A. We have brass system; it's a brass cylinder that has the same number that his badge has. He has to come to my office and ask for that brass when he goes to work, and that brass is turned in in the afternoon.

Q. You don't remember definitely seeing Mr. page 97 } Coffee on each one of those days, do you?

A. I know that Mr. Coffee was there Friday.

Q. The only time you know he was there was on Friday?

A. Yes, because reason for that, I stated just now, we had a boom to unload, and it came in just about quitting time.

*W. H. Sims.*

Q. Those days you refer to—that is the only day that you definitely have remembrance of seeing him on the job? That was on Friday?

A. Yes.

Q. You don't recall seeing him on Thursday?

A. No, I don't.

Q. You don't recall seeing him on Tuesday? When did he first come to work?

A. On the 7th of December.

Q. On the 7th of December?

A. 7th of December.

Q. You have his work sheets there?

A. Pardon me?

Q. You got all the records with you?

A. Yes, sir.

Q. He was absent on the 19th?

A. Yes, sir.

Q. On the 19th, definitely no record showing his presence on the 19th?

A. That's correct.

Q. And out of all that you can recall Friday as the only day you remember seeing him?

A. Yes; may have seen him; I don't remember page 98 } every man on the job.

By Mr. Cuddy: All right, sir; stand aside.

By Mr. Messick:

Q. Mr. Sims, what did you call that thing, a "brass"?

A. We call it, "Brass check." Little piece of brass with name on it, corresponds with the number on the badge.

Q. You know Mr. Coffee, of course?

A. Oh, yes.

Q. You're not in the habit—

By Mr. Cuddy: Your Honor, I object to that; I object. Certainly nothing that's been brought out on his new evidence at all.

By Mr. Messick: He said he would not have given any one else Mr. Coffee's brass.

By Mr. Cuddy: Mr. Sims stated that he didn't recall anybody coming up and asking for it. Now, he's going back over



*W. H. Sims.*

something that was not touched on cross-examination at all. It's nothing new in the evidence, and I submit he has no right to go back and examine him on something he examined him, or should have, on direct.

By the Court: I think Mr. Cuddy is correct.

By Mr. Messick: Let's see—

By the Court: Mr. Cuddy asked him as to the page 99 } method of checking him out and in.

By Mr. Messick: He asked him about the brass that had never been mentioned.

By Mr. Cuddy: He said—

By the Court: Just a question of going any further than that, and I see no reason to go into any more details about it than that.

By Mr. Messick: We take exception.

By Mr. Lanham: I happen to want to ask questions on behalf of my client. May I have an opportunity to ask questions?

By Mr. Cuddy: If your Honor please, I submit he has no right to ask any questions.

By the Court: There's been no reference by this man to anything pertaining to your client.

By Mr. Lanham: But they are both being tried together, if your Honor please, and this evidence which is brought out here about Mr. Fouts—yesterday made motion to strike it out, and the Court overruled me. Said cases about—were being tried together; didn't see how it could. Seems like I have a right to ask questions myself.

By the Court: I see no reason for you to be page 100 } given that right, because there's no evidence by this witness pertaining in any way to your client.

By Mr. Lanham: Anything Mr. Coffee did apparently seems to effect my client; it did yesterday when I asked the Court to strike out the *evidene*.

By the Court: I'll give you this privilege if you want to question this witness about anything pertaining to your client. You may go ahead.

By Mr. Lanham: My client doesn't work there.

By the Court: I understand.

By Mr. Lanham: Understand you overruled. Like to save the point.

By Mr. Messick: Take exception, if your Honor please, on the ground that the question of the tag was brought out by Mr. Cuddy on cross-examination. I think I have a right to

*W. H. Sims.*

enlarge on it so the Jury will fully and completely understand, and I want to vouch the record that the witness testified he handed—

By Mr. Cuddy: I object to that.

By the Court: Objection sustained. He said he had no recollection.

By Mr. Cuddy: And he said it on direct-examination.

By Mr. Messick: Then I have a right to ask page 101 } him—that wasn't on direct-examination.

By Mr. Cuddy: It was so.

By Mr. Messick: I have to vouch the record, your Honor.

By the Court: You vouch the record. Let's go ahead.

By Mr. Messick: I vouch the record that Mr. Sims would testify that he—

By Mr. Cuddy: If your Honor please, I submit that if he's going to vouch it, to take the witness out of the presence of the Jury, and let him answer the question.

By the Court: Go out of the court room if you want to do it.

By Mr. Messick: Go out of the court room.

## IN CHAMBERS.

By Mr. Messick:

Q. Mr. Sims, you told us that you were acquainted with Mr. Coffee; that's correct, isn't it?

A. Yes, sir.

Q. Now, did you personally hand out the tags, or the brass, that you all call it, when they came to the job?

A. I hand out some of them. I have two boards, and I had another man—

page 102 } Q. Do you have another man that helps you?

A. Yes, sir.

Q. Who is that?

A. Fred Farris, another clerk in the office.

Q. Knowing an employee, would you hand out wrong brass to the wrong man?

A. May I elaborate on that a little bit?

Q. Yes, sir.

A. I have 300 men out there, and I know Mr. Coffee, yes; but I can't say that if somebody else was to come up and ask for Mr. Coffee's number, I wouldn't give it to him; I just can't say that. I have 300 men, and I don't know the number, offhand, of every man out there.

*W. H. Sims.*

By Mr. Cuddy: You want him to answer that in the presence of the Jury?

By Mr. Messick: I want the Jury to know what the truth was, and I'm perfectly willing for the Jury to know what the truth was in every respect. I have no objection to his answering.

By the Witness: We have a pretty good check system. I guarantee that it's not absolutely proven.

By the Court: You waive your objection?

By Mr. Cuddy: Yes.

By Mr. Messick: Frankly, I won't question the page 103 } statement. We can't take the time of the Court, asking the Court to sustain an objection.

By Mr. Cuddy: If you want to put it on, Mr. Messick, we won't object.

By Mr. Messick: Got it in the record. I want to know what the record is.

#### IN OPEN COURT.

By the Court: Mr. Messick, as I understand it, Mr. Cuddy waived his objection to that question. You want the question answered?

By Mr. Messick:

Q. Tell the Jury everything about the check system.

By the Court: The witness doesn't understand the question.

By Mr. Messick:

Q. Mr. Sims, you come around and tell the Jury about the check system. Mr. Sims, how many employees you all have?

A. Approximately 300.

Q. Who checks those employees in?

A. Myself and, let's see now—I have three men in there; at the time I think two of us.

Q. Who was the other party?

A. Fred Farris.

Q. Mr. Fred Farris? Coming down to the check system,

*W. H. Sims.*

you give them this brass, as you call it, when they come in? Do you hand it to them personally, you and Mr. Farris?

A. Yes, sir.

Q. Now, did you know Mr. Coffee?

page 104 } A. Yes, sir.

Q. You in the habit of giving brass to some other employee, other than—

By Mr. Cuddy: I object to that. That's not proper.

By Mr. Messick: —habit of giving—

By the Court: Just ask him with reference to this one particular employee involved in this transaction.

By Mr. Messick: That was the very question.

By the Court: Isn't a question of habit, Mr. Messick.

By Mr. Messick: I said, call it custom, habit—either one, if your Honor please. I asked him that very question. Mr. Cuddy has withdrawn his objection to it, and *how* he wants to object again.

By Mr. Cuddy: That wasn't the question.

By Mr. Messick: Custom, then.

By the Court: Ask him about custom or practice.

By Mr. Messick:

Q. Custom, practice or habit—put it all three ways. Custom, practice or habit to give brass to an employee other than the one to whom it belongs?

page 105 } A. I will have to say "No" to that. If I know it—

By Mr. Cuddy:

Q. You wouldn't intentionally do it?

A. No.

Q. You can't say it hasn't been done?

A. That's correct.

Q. And it's not unusual, or not unlikely, that it might be done?

A. That's correct.

By the Court: Stand aside.

O. H. FARMER,

a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Messick:

Q. Mr. Farmer, what are your initials?

A. O. H.

Q. What do you do, Mr. Farmer?

A. I was structural iron worker foreman.

Q. Are you a foreman for Tidewater Construction?

A. I was, but ain't right now.

Q. Were you a foreman for Tidewater Construction Co. in December of 1955?

A. Absolutely.

Q. Did you work at the plant in Botetourt County?

A. Yes, sir.

Q. Do you know Mr. Jennings Coffee?

page 106 } A. Yes, sir.

Q. Does he work for that company?

A. He was here.

Q. On the 20th, 21st, 22nd and 23rd of December, was he working for that company?

A. Yes, sir.

Q. You were his immediate foreman?

A. Right.

Q. Do you know what type of work he was doing on those days?

A. He is a welder.

Q. Do you know the men he was working with?

A. Yes, sir.

Q. Who were the men he was working with?

A. One of them sitting back there.

Q. What's his name?

A. Gibson.

Q. You know what Mr. Gibson and Mr. Coffee were doing on the 20th, 21st, 22nd and 23rd of December, 1955?

A. Welding in the hopper.

Q. What is a hopper?

A. Big thing where you keep—store cement in.

Q. Big thing where you store cement in? How big is it?

A. 30 feet in diameter, and 120 feet tall. Ten of them right together.

Q. 30 feet in diameter, and 120 feet across—tall?

*O. H. Farmer.*

A. Yes, sir.

Q. As foreman, did you check on your employees?

A. I check on them every 30 minutes.  
page 107 } Q. Check on them every 30 minutes? Now, on  
the 20th, 21st, 22nd and 23rd of December, did you  
check on your employees about every 30 minutes?

A. Absolutely I did.

Q. Can you tell the Jury whether or not Jennings Coffee  
was working on those days, between the hours of 8 o'clock in  
the morning, and 4:30 in the afternoon, from your checks?

A. I know that he sure was.

Q. Who is the general foreman?

A. Mr. Sides.

Q. Does Mr. Sides check also?

A. He didn't check as often as I did; he was over the whole  
thing.

Q. Over the whole thing?

By Mr. Messick: Cross-examination?

By the Court: Mr. Lanham, you want to ask this witness  
any questions?

Mr. Lanham: No, sir.

### CROSS EXAMINATION.

By Mr. Cuddy:

Q. Mr. Farmer, how many men working there?

A. You mean the whole job?

Q. Yes.

A. I couldn't tell you exactly how many men there was.  
There was half as many men working now.

page 108 } Q. Approximately how many?

A. I say 150.

Q. More than—closer in the neighborhood of 300?

A. Not then it wasn't.

Q. You don't know, but you estimate 150?

A. Yes, sir.

Q. How many working under you, sir?

A. About 12 or 13.

Q. 12 or 13?

By Mr. Messick: I didn't understand.

By Mr. Cuddy: There wasn't any use—

By the Court: Go ahead.

*O. H. Farmer.*

By Mr. Cuddy:

Q. Mr. Farmer, how long had Jennings Coffee worked there?

A. He went to work the 7th.

Q. December?

A. '55.

Q. How many days did he work?

A. Worked every day up till the 19th; he was off the 19th; that's the only day he was off up till Christmas.

Q. How do you happen to remember that he was off the 19th?

A. I keep the time.

Q. You remember that, now?

A. Yes.

Q. You checked the records?

A. Yes.

page 109 } Q. Of course, this hadn't been mentioned to you until in December—wasn't mentioned to you?

A. This?

Q. The fact of his working?

A. See, I keep the time-work all the time; I carry every day of work.

Q. When were you first interrogated—anyone first asked you about whether Jennings Coffee was there on the 20th, 21st, 22nd and 23rd?

A. Well, there's been nobody asked me when he was there.

Q. No one asked you at all?

A. Not till—

Q. Today?

A. First time.

Q. In the meantime you've gone back and checked all the records?

A. I didn't go back. I had a time-book; I kept Coffee.

Q. You went back to your records, I mean?

A. Yes.

Q. And you've checked them?

A. Um-hum.

Q. No one said anything till this morning?

A. No one said anything to me about how many days he worked, or anything else.

Q. You know where he was on the 19th?

A. He told me he was off—some kid was sick.

Q. You know where he was?

page 110 } A. No, I don't.

Q. Is it possible, or frequently men check in and

*O. H. Farmer.*

check out, and leave the job—away from the job—for a while?

A. Absolutely no way for him to get out of there without I found it out.

Q. How long have you known—

A. Mr. Coffee?

Q. Mr. Coffee?

A. About 15 years.

Q. About 15 years. You work with him when he was down to Norfolk?

A. No, sir.

Q. And one time he had a position, sort of a travelling representative for one of the unions—C. I. O., I believe?

A. I heard about it.

Q. You worked under him at that time?

A. No, sir.

Q. What did you do? How long you been working?

A. I was A. F. L., all the time A. F. L.

Q. Was he in the same organization with you?

A. He's been in the same organization I have.

Q. Was he your supervisor, or—

By Mr. Messick: Wait till he finishes working.

By Mr. Cuddy: Did you want to ask—

By the Witness: (Continuing)

A. When he's in the C. I. O., I wasn't.

page 111 } Q. You wasn't?

A. No.

Q. You've known him for about 15 years?

A. Yes, sir.

Q. Pretty friendly with him?

A. I didn't see much of him. He worked for me, '41 I believe, around '41, when they first built the powder plant at Radford; he worked under me.

Q. Worked under you then?

A. Yes.

Q. Back in the Forties?

A. Yes, sir.

Q. Where else have you worked together?

A. We didn't work together no more; this is the first job since then.

Q. First job?

A. Yes, sir.

Q. All right. Stand aside.



G. E. SIDES,  
a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Messick:

Q. Mr. Sides, where do you live, sir?

A. Right off Williamson Road, right close to Cloverdale.

Q. Um-hum. You live close to Cloverdale?

A. Yes, sir.

Q. What do you do?

page 112 } A. I am general steel foreman for Tidewater  
Construction Co.

Q. How old are you, sir?

A. I am 43.

Q. How many men are employed in that steel department of Tidewater Construction Co., or were employed in December of 1955?

A. About 23.

Q. Do you have general supervision over those men?

A. Yes, sir.

Q. Mr. Sides, were you working at the Lone Star plant for the Tidewater Construction Co. in December of 1955?

A. Yes, sir.

Q. Do you know Jennings Coffee?

A. Yes, sir.

Q. Did Jennings Coffee work for the Tidewater Construction Co.?

A. Yes, sir.

Q. At the Cloverdale plant, or Lone Star Cement Co. plant, December, 1955?

A. Yes, sir.

Q. Coming to the 20th, 21st, 22nd and 23rd of December, that is Christmas week, starting with Tuesday through Friday—did Mr. Coffee work those days?

A. Yes, sir.

Q. What hours did he work?

A. From 8:00 to 4:30.

Q. 8:00 to 4:30? 23 men under you; do you make check on their time?

page 113 } A. I check time cards every morning if the  
foreman turns in in the afternoon.

Q. Do you work with the man on the job—see the men on the job?

*G. E. Sides.*

A. I see them, yes, sir. I don't do any work with any tools or anything.

Q. I see. You are general foreman, and watch the progress of the work, and see they do it right, is that right?

A. Yes, sir.

Q. On the 20th, 21st, 22nd and 23rd of December, 1955, did you see Mr. Coffee on the job?

A. I know that he was on the job, but where he was working you couldn't see him.

Q. What was he working in?

A. He was working in a tank.

Q. Large tank, like has been described here?

A. Yes, sir.

Q. Who was he working with?

A. Gibson.

Q. Did you keep account of the progress of that work?

A. I checked them about once in the morning, and once in the afternoon.

Q. In other words, you made two checks on it a day?

A. Approximately; yes, sir.

Q. On the checks that you made during the day, on those days during that period of time, did you see Mr. Coffee?

A. I passed Mr. Coffee; Mr. Coffee passed me. On one occasion, I think he was going to get some water, page 114 } but when I would check them in the bottom of the tanks, as long as I seen fire falling from three welders, that was all I cared about.

Q. In other words, you went to the tank, and you had three welders in there, and if you saw a fire coming from the three welding torches, you knew men were in there?

A. That's all I cared about.

Q. Are you in position to tell this Jury whether or not Mr. Coffee was on the job during those days and hours of December, 1955?

A. He was. Now, I left the job at 12:00 o'clock on Friday, myself, going home. But he was there that morning, because I checked on him about 10:20.

Q. You checked on him about 10:20?

A. Yes, sir.

Q. And you left the job on Friday, 23rd?

A. At 12:00 o'clock.

Q. At 12:00 o'clock?

A. Yes, sir.

Q. Since you left the job, you don't know anything about

*G. E. Sides.*

half-hour extra work on the thing that was done—Mr. Sims told us about?

A. On Tuesday morning, I noticed he had half an hour overtime on his card, and I wanted to know why, and Mr. Farmer told me.

Q. That was for the 23rd?

A. That's right.

By Mr. Messick: Cross examination?

page 115 } CROSS EXAMINATION.

By Mr. Cuddy:

Q. You are the superintendent out there?

A. No, sir.

Q. What—general foreman?

A. Yes, steel foreman.

Q. General steel foreman, and the foreman checks in in the morning to give you the number that's reported?

A. No, sir.

Q. You check each one of them individually?

A. No, sir.

Q. How do you check?

A. The foreman fills out a time card, in the afternoon, of the men that worked that day, and I check those cards next day to see they charge what they do to the right hopper.

Q. Then you don't, lots of time, you don't see any individuals other than the foreman?

A. I see all the men in the tank; couldn't see them, but in the tank.

Q. You don't check them in the morning?

A. That's the time keeper's job.

Q. As far as you can remember, you only saw Jennings Coffee one time?

A. I remember him passing me, and I spoke to him, and he spoke to me.

Q. That's the only time?

A. I've seen him before that.

Q. I'm talking about during those times; that's page 116 } the only definite time you can remember?

A. I've seen him from the office. We have two rooms right next to it, and I've seen him walking from there down to the job.

Q. You relying on somebody's card?

A. On Farmer's.

*G. E. Sides.*

Q. You don't know where he was there?

A. I've seen him.

Q. A few minutes ago you said you saw him one time.

By Mr. Messick: I object, if he's going to quote him.

By Mr. Cuddy: I'm trying to quote him.

By Mr. Messick: He says he only saw him one time, and that's when he went to have a drink of water. The witness testified he saw him at 10:20 on the 23rd.

By the Court: Go ahead.

By Mr. Cuddy:

Q. You stated a few minutes ago, before you said you saw him at 10:20, that you remember seeing him one time when he passed you on the way to get a drink of water.

A. I assumed he was going to get a drink of water; he walked by me.

Q. One time?

A. Yes.

Q. You saw him on the 23rd one time; you checked him out, as I understand it?

page 117 } A. I didn't see him; I saw fire from the welder.

Q. You saw fire coming from a welder? Who was in there? You taking that from what the foreman told you?

A. We have three welders, and that was the ones doing the welding.

Q. The foreman give you a card the next day to show who was in there?

A. That's right.

Q. Days go by, you don't see any particular worker individually?

A. I see all the iron workers every day, except when they are in a hopper like that.

Q. There are a number of days when some particular welder is there working, and you don't see him?

A. I wouldn't say so.

Q. That's what I understood you to say.

A. I said those boys working in tank, and bottom of it closed up; as long as fire was coming from three welding machines, that's all I cared about.

Q. Am I correct when I say, on a portion of those days, if not all those days, the only thing you did, went by hoppers, you saw fire flying because there were welders in there; you didn't look in to see?

*Jack Gibson.*

A. I couldn't see; no, sir.

Q. How did you check them?

A. Because fire coming.

Q. That's what you saw—the fire?

A. That's right, but I didn't see them.

page 118 } Q. You didn't see the individual?

A. No, sir.

Q. You don't know who was in there, except what the foreman told you?

A. These men were hired as welders, and they were welding.

Q. But you didn't see them?

A. No, sir.

Q. The foreman told you certain men were in there?

A. On the card.

Q. He turned the card over to you?

A. That's right.

Q. Whether or not Jennings Coffee was in that place at that time, you can't say, can you?

A. Only by the fire coming out.

Q. All right, stand aside.

JACK GIBSON,

a witness of lawful age, after being duly sworn, testifies as follows:

### DIRECT EXAMINATION.

By Mr. Messick:

Q. Gibson? What's your first name?

A. Jack.

Q. What do you do, Mr. Gibson?

A. Welder.

Q. In December of 1955, were you employed by the Tidewater Construction Co.?

A. Yes, sir.

page 119 } Q. Did you work at the Botetourt plant where they were building hoppers and things for the Lone Star Cement Co.?

A. Yes, sir.

Q. Do you know Jennings Coffee?

A. Yes, sir.

Q. Did you work with Jennings Coffee?

A. Yes, sir.

*Jack Gibson.*

Q. What were you and Jennings Coffee doing in December of 1955?

A. Welding, and dogging down hoppers.

Q. All right. How many of you worked in that hopper?

A. Two of us.

Q. Two of you?

A. Yes, sir.

Q. How many welders were there working in there?

A. Two.

Q. Now, on the 20th, 21st, 22nd and 23rd of December, were you working with Jennings Coffee?

A. Yes, sir.

Q. Now, just tell the Jury what you were doing on those days.

A. We were welding and dogging down the hoppers, pulled up, pulled up from the back-up strip.

Q. All right. Did Jennings Coffee work on those days with you?

A. Yes, sir.

Q. That's during Christmas week?

A. Yes, sir.

Q. What time did he go to work?

page 120 } A. 8:00 o'clock.

Q. How long did he work?

A. He worked 8 hours; quit at 4:30, and on Friday he came out of the hoppers, Mr. Farmer stopped him and wanted him to go over and unload a boom off a truck.

Q. On Friday, the 23rd, when you came out of the hoppers, Mr. Farmer stopped him and asked him to go over and unload a boom?

A. That's right.

Q. Did he do that?

A. I reckon he did. I went up and got paid and went home.

Q. But you left him on the job at 4:30 Friday afternoon, 23rd day of December?

A. Yes, sir.

Q. Had he been there with you all day?

A. Yes, sir.

Q. I want you to tell the Jury, do you men eat lunch together?

A. Yes, sir.

Q. You eat lunch with him every day?

A. Yes, sir.

Q. How many men eat lunch?

A. Oh, I'd say around 20 or 25 men.

*Jack Gibson.*

Q. Well, now, for the benefit of the Commonwealth, so we can name all of them who had lunch with you during—

By Mr. Cuddy: Do it for the benefit of the Jury.

By Mr. Messick: I just wanted to show the man  
page 121 } was there.

By the Court: Go ahead and question the witness.

By Mr. Messick:

Q. Name the man that was working there on the job.

A. Harold Kursler.

Q. Where does he live?

A. On Williamson Road.

Q. All right.

A. Jack Burton.

Q. Jack Burton. Where does Jack Burton live?

A. Salem.

Q. All right, sir. Who else?

A. Pete Sullins.

Q. Pete Sullins?

A. Yes, sir.

Q. You know how to spell his last name?

A. No, I don't—Sullions, I believe it is.

Q. Where does he live?

A. Garden City.

Q. All right, now. Who else?

A. O. H. Farmer.

Q. He's the foreman. Who else?

A. James Jean Lavelle.

Q. Where does Mr. Lavelle live?

A. Garden City.

Q. Who else?

A. Jean Drury.

Q. Where does he live?

page 122 } A. Garden City.

Q. Anybody else?

A. Lee McGraw.

Q. Where does he live?

A. Radford, Pulaski—I don't know which it is.

Q. I think you've named enough. If he wants any more, give it to you.

By Mr. Messick: Cross examination?

*Jack Gibson.*

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You work with the same crew all the time?

A. Yes, sir; foreman, he has a certain gang.

Q. Do you work with the same crew all the time?

A. No, sir.

Q. You work with—assigned to certain workmen?

A. Yes, sir.

Q. While you were working there, you work with Jennings Coffee; you worked also with other people?

A. Yes, sir.

Q. Lots of days you didn't work with Jennings Coffee?

A. That's correct.

Q. Can you remember each individual day you worked with Jennings Coffee?

A. No, sir; I knew he was in the same gang I was in.

Q. Same gang with you? He was working in a different location?

A. On some days.

page 123 } Q. You don't know—remember whether you worked with him on the 19th?

A. Yes, sir; we were dogging down hoppers.

Q. You were all down at the hoppers on the 19th?

A. No; 19th.

Q. I asked you, the 19th?

A. No, sir.

Q. You remember where he worked that day?

A. No, sir.

Q. Did you work with him on the 20th?

A. Yes, sir; we were dogging down hoppers.

Q. Did you work with him on the 10th?

A. No, sir; I couldn't say.

Q. For a fact you don't remember each individual day when you worked with him?

A. No, sir; all I know, when Mr. Coffee came in to help weld on the hoppers, he was through on the field, and helped dog down those hoppers.

Q. He was down in the hopper to help?

A. Yes, sir.

Q. You and he—and two working in the hopper?

A. Yes, sir.

By Mr. Cuddy: All right, sir. Stand aside.



PETE SULLINS,

a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

page 124 } By Mr. Messick:

Q. What is your name, sir?

A. Pete Sullins.

Q. Where do you live, Mr. Sullins?

A. I live in Garden City.

Q. How old a man are you?

A. 56.

Q. What do you do, sir?

A. I am a structural iron worker.

Q. Structural iron worker? Were you working for the Tidewater Construction Co. in December of 1955?

A. Yes, sir.

Q. What do you do for them, sir?

A. Well, I'm supposed to be the steward on the job.

Q. What's a steward?

A. He's a representative of the local union.

Q. And you were steward on the job?

A. Yes, sir.

Q. You know Jennings Coffee?

A. Yes, sir.

Q. How long have you known him, Mr. Sullins?

A. I've known him—well, I've known Jennings, I expect, ever since 1941.

Q. How did you know him then, sir?

A. Sir?

Q. How did you know him then?

A. By working with him on jobs off and on. I been living in Roanoke ever since 1941, and I got connected  
page 125 } with him, and I believe, well, it might have been '43.

Q. What kind of work does he do?

A. Jennings?

Q. Um-hum.

A. He's a structural iron worker. I think he has a welders book—I don't know.

Q. Now, Mr. Sullins, were you working for the Tidewater Construction Co. Christmas week of December, 1955?

A. Yes, sir.

Q. Jennings Coffee working for them that week?

A. Yes, sir.

*Pete Sullins.*

Q. Evidence here that he worked the 20th, 21st, 22nd and 23rd. Do you know whether or not he worked those days?

A. He worked from the 20th to the 23rd. He was there the 20th; up till 5:00 o'clock the 23rd.

Q. You see him on the job?

A. Yes, sir.

Q. What would he be doing when you saw him?

A. Two or three times it was cold down there, and right outside the silos he'd be welding up in these hoppers. He come out to get warm. They had a big old barrel of a thing, and they had a fire, and he'd come out and warm, and I think I went around every day—I was around two to five times—and I seen Jennings practically every day, and I'd talk to him a little bit, and we'd talk on the weather, and he'd get warm and go back. And these boards over the hoppers—they had to get up on the hoppers—they had to pull the boards back to keep the metal—anything—from falling down on anybody was passing by. And that's the reason they were  
page 126 } closed up there in the hopper.

Q. Did he eat lunch with you?

A. Well, we have change-house; we all go and eat lunch, and I'd see Jennings eatin' his lunch during those days, and we changed clothes every morning, and then we changed clothes every night after we went in and out of the change house.

Q. You saw him at lunch; you saw him at work; you saw him when he came in the morning; you saw him—

By Mr. Cuddy: I object to that sort of comments.

By the Court: Let him testify, Mr. Messick.

By Mr. Messick:

Q. I'll ask you—Did you see him when he changed clothes in the morning?

A. Yes, sir.

Q. Did you see him at lunch?

A. Yes, sir.

Q. Did you see him when he changed clothes when he quit work?

A. Yes, sir.

Q. What kind of a house was it you all said you had lunch in?

A. Just what we call it, "Change-house."

Q. What did he call them—"Change—"?

A. Just a building, fixed up, room enough for as many men

*Pete Sullins.*

as we have—that we're gonna have, practically, on the job,  
and this building for this bunch who get in there  
page 127 } to change their clothes, eat our dinner or lunch,  
keep our tools.

By Mr. Messick: Your witness, Mr. Cuddy.

### CROSS EXAMINATION.

By Mr. Cuddy:

Q. What was the name, Pete Sullins? Mr. Sullins, you remember each individual day—is that during the month of December?

A. Are you referring to the Christmas week?

Q. No, I'm referring to the month of December.

A. Yes, sir; Mr. Coffee was on the job all but the 19th.

Q. And you remember every individual day?

A. Well, I wouldn't say that I could remember 30 days like that.

Q. Then, there may have been days in which he wasn't there?

A. I'm speaking of the—I think I went on this job, now, let's get this straight; I was hired on that job some time in—it might have been the first week in December.

Q. You don't even know the day you went to work. Do you know that?

A. Our time keeper has it.

Q. No. That is what I am trying to get you to do—testify from what you know.

By Mr. Messick: Don't—wait a minute. I object. Let him answer the question.

By the Court: Mr. Messick, I think Mr. Cuddy's statement to the witness is perfectly proper. Go ahead, Mr. Cuddy.

By Mr. Messick: I object.

By Mr. Cuddy:

Q. Do you know what day you went to work? Do you know that?

A. Well, as well as I can remember, it was between the 10th and 12th of December, somewhere in that neighborhood.

Q. Between the 10th and the 12th. Was it the 10th?

A. I can't—

Q. Was it the 12th? Was it the 11th?

*Pete Sullins.*

A. I wouldn't say—between the 10th and 12th of December.

Q. You don't even remember the first day that you went to work there?

A. No, I couldn't say it right off, but I have it at home on my pay slip. I could tell you then if I could see it.

Q. Did you eat lunch with Mr. Coffee every day?

A. Every day that he was on the job, he'd come in our change—

Q. Every day he was on the job, but you don't recall how many days he didn't eat lunch with you, do you?

A. During the month?

Q. During the month of December?

A. Every day he was there from the time I went there, till the 23rd—the days that he worked.

Q. All right. How many days did you work in December?

A. I couldn't tell you exactly.

Q. You can't remember how many days you worked, yet you can remember the days that Jennings Coffee worked?

A. I can remember the days that I was there page 129 } that he worked.

Q. All right, what were the days you were there that he worked?

A. I'll say from the 10 working days up till the latter part, last of December, which we worked five days a week, and we were off on Sunday.

Q. This thing is awfully hazy to you, isn't it?

A. What do you mean—hazy?

Q. What went on, how many days Coffee Jennings was there, how many days you worked, when you went to work. All right, sir. Now, when did you say you met him?

A. Jennings?

Q. Yeah.

A. It was, I think, it was in '41 to '43, somewhere along there.

Q. Where did you meet him in '41?

A. I met him on a—I think it was Martinsville or somewhere over there.

Q. Are you sure?

A. It was either '43 or '41, somewhere.

Q. You can't remember the year that you worked with him?

A. Well, I been connected with him in the local union from '46 up till now.

Q. But you worked with him, you said, in '41 or '43?

A. I think I've knowed him ever since.

*Louis Breedlove.*

Q. Did you ever work with him at Blue Rock Ordnance Works in Sandusky, Ohio?

A. No, sir.

page 130 } Q. Isn't that where he worked in '41?

A. Well, I wouldn't know about that.

Q. You wouldn't? You work in the—with him in '47?

A. No, I was business agent at that time.

Q. Do you know anything about his work? Stand aside. That's all.

By Mr. Messick: Write up a list of the people that testified he worked there with them in December. Issue a court summons for all of them. Question them about it.

## LOUIS BREEDLOVE,

a witness of lawful age, after being duly sworn, testifies as follows:

## DIRECT EXAMINATION.

By Mr. Messick:

Q. What's your name, sir?

A. Louis Breedlove.

Q. Mr. Breedlove, what business are you engaged in?

A. Automobile business.

Q. What company are you with?

A. Pulaski Motor Co.

Q. What type, or character or motor vehicles does the Pulaski Motor Co. sell?

A. Ford.

Q. Do you know a man by the name of Abie Hasson?

A. Yes, sir; I know him.

Q. Do you know the automobile that Abie Hasson owned?

A. Yes, sir.

Q. What kind of an automobile was it?

page 131 } A. '54 Oldsmobile Eighty-Eight.

Q. A '54 Oldsmobile Eighty-Eight. What was the color of that car?

A. I believe it was blue.

Q. Does he own any other—does he own, or did he, in December, own any other Oldsmobile, other than that Oldsmobile Eighty-Eight sedan, or what it is?

A. I don't know about that.

Q. Did you ever see him in any other Oldsmobile Eighty-Eight except that?

*Louis Breedlove.*

A. No, sir.

Q. 1954 model?

A. I believe it was.

Q. I want you to tell the Jury if that automobile was brought into your garage, or if you brought it in in December of 1955?

A. Yes, sir; on the night of the 15th of December, he wrecked it about, I guess, about three and a half miles out of Pulaski, and we towed it in with the wreck truck.

Q. The night of December 15th, Hasson's '54 Oldsmobile Eighty-Eight, blue—was it a sedan or hard-top?

A. I don't remember.

Q. Was wrecked about three miles from—

A. About three and a half miles—I imagine half way between Pulaski and Dublin.

Q. That car was brought in on December 15, 1955. How long did that car remain in your garage?

A. According to my records, it was in our garage two days.

Q. That would be the 16th and 17th, then?

page 132 } A. That's right.

Q. What become of that car?

A. Wytheville Motor Co. came and got it.

Q. Wytheville Motor Co., Wytheville, Va.? Was that car—did that car need repairs?

A. Yes, sir.

Q. Do you know who repaired it?

A. I suppose they did; I don't know.

Q. Have you seen the car recently?

A. I haven't seen it since.

By Mr. Messick: You may cross-examine.

By Mr. Cuddy: I think this witness probably goes to—see if the other attorney wants direct-examination of the man.

By the Court: Mr. Lanham, do you want to examine?

#### DIRECT EXAMINATION.

By Mr. Lanham:

Q. Was the car badly wrecked?

A. I don't know. I am not a body man, and we didn't make an estimate.

Q. What was the damage?

A. I believe the front end and fenders—I wouldn't be positive there about that.

*Earl D. Bannock.*

Q. Was the car in such you can drive it, or did you have to tow it?  
page 133 } Q. Had to tow it because it was so badly wrecked?

A. Yes.

### CROSS EXAMINATION.

By Mr. Cuddy:

Q. You don't know how many cars Abie Hasson had access to, do you?

A. No.

Q. You don't know how many trips he made to the City of Roanoke?

A. No.

Q. And you don't know with whom he did?

A. No, sir.

By Mr. Cuddy: Stand aside.

EARL D. BANNOCK,

a witness of lawful age, after being duly sworn, testifies as follows:

### DIRECT EXAMINATION.

By Mr. Messick:

Q. You are Mr. Earl D. Bannock?

A. That's right, sir.

Q. I believe you got a summons this morning, or late yesterday afternoon, to be here today, did you?

A. Yes, sir.

Q. What business are you engaged in, Mr. Bannock?

A. Automobile business.

Q. Where is your place of business?

A. Wytheville, Va.

page 134 } Q. What's the name of your company?

A. Wytheville Motor Co.

Q. What is your connection with the company?

A. I am one of the owners.

Q. One of the owners?

A. Yes.

Q. What type of vehicles do you all handle, or sell, or anything?

A. Dodge and Plymouth.

Q. Dodge and Plymouth?

*Earl D. Bannock.*

A. (Witness nods head)

Q. Do you know Mr. Abie Hasson?

A. Yes, sir.

Q. Are you acquainted with the '54 Oldsmobile Eighty-Eight, blue sedan, or hard top, that he owns?

A. The one that I know of, yes, sir.

Q. The one you know of? Did, or did not your company obtain that car from the Wytheville—I mean the Pulaski Motor Co.?

A. Yes, sir. According to our records, we picked it up.

Q. What day did you pick it up?

A. December 19th—December 21, 1955.

Q. You picked it up December 21, 1955? Where did you pick it up from?

A. At the Pulaski Motor Co., in Pulaski, Va.

Q. Was, or was not that car in a wrecked condition?

A. Yes, sir; it was wrecked when we picked it up.

Q. Did your company repair it?

A. Yes, sir.

page 135 } Q. How long did that car stay in your garage at Wytheville, from the time you obtained it in Pulaski on the 21st day of December, 1955?

A. As I stated, from the 21st of December, '55, till the—March 12, 1956.

Q. Until March 12, 1956? Was that car out of your garage from the 21st of December, 1955, till March 21st, 1956?

A. Yes; we had the shop foreman check it out, and tried it out down the road. It wasn't out of our hands.

Q. Wasn't out of you all's possession during that period of time?

A. No, sir.

Q. That's all. Thank you, sir.

By Mr. Cuddy: Questions, Lanham?

(Mr. Lanham shakes head)

### CROSS EXAMINATION.

By Mr. Cuddy:

Q. You know how many automobiles Abie Hasson has, and had access to?

A. No, sir.

Q. You know how many different cars he drove?

A. No, sir.



*Earl D. Bannock.*

Q. Could you say whether or not he drove cars to Roanoke during that period? Could you say he drove other cars to Roanoke?

A. No, sir.

Q. You don't know who was in the automobile, either, do you?

page 136 } A. No, sir.

By Mr. Cuddy: Stand aside.

By Mr. Lanham: I have a question to ask him—if he drove a car to Roanoke; if he drove this particular car to Roanoke during that time.

By Mr. Cuddy: I don't see that has anything—

By Mr. Messick: Direct-examination.

By the Court: On direct-examination he said the car was not out of his possession.

By Mr. Messick: Scales testified that the Oldsmobile owned by him was driven here. Show absolutely impossible for it to be driven here.

By Mr. Cuddy: He answered the question.

By the Court: He's already testified to that Mr. Lanham. He asked him—he wanted to make sure he didn't drive this car.

By Mr. Messick: Just one minute—

By Mr. Cuddy: Make any difference what I'm contending?

By the Court: Let's everybody quiet down. Unless there is some other question for this witness—  
page 137 } By Mr. Lanham: If your Honor please, may I ask him one question—drive the car down here? I want to make sure he didn't drive this car here during the time he had it in the garage.

By the Witness:

A. No, sir. This car was—wasn't out of our possession.

By the Court: Same question as on direct-examination. Does either side want this witness?

(The witness, by agreement of Court and Counsel, was excused.)

(A ten-minute recess is taken.)

(IN CHAMBERS.)

By the Court: Before we go any further, now that we are out of the presence of the Jury, I simply want to say that it's my recollection you tried to pin the colored boy down to the 21st, 22nd and 23rd, and he told you, if you wanted to make it those dates, it was all right with him. That's yesterday.

By Mr. Messick: Now, I am making this motion, in view of the statement of the Court, that on neither day was he definite as to the dates. Now, I vouch the record, and the record will show that on Monday, when he testified in the Hall case, in no uncertain terms, he swore in direct-examination by Mr. Cuddy, that first time that he came to Roanoke was on the 21st, and he came with Hasson and Hall; that, on the following day, the 22nd, he came with Hasson and Hall and Coffee, and that on the 23rd, the following page 138 } day, he also came with Hasson, Hall and Coffee.

There wasn't any indefiniteness in his testimony as to the days, and in any respect, and I want to court reporter to show that he was absolutely certain and positive of the dates in direct-examination by the Commonwealth's Attorney in the whole case on Monday. Now—and I'll also say that in direct-examination by Mr. Cuddy in this trial, Mr. Cuddy never asked him what day it was he came, what was the date, or anything. And it was only on cross-examination that I brought out that it was the 21st, 22nd and 23rd, and he said to me, that if I wanted to make it those days, it was all right with him. But that was—it was not his testimony on Monday. It was in direct-examination by Mr. Cuddy, the first time he ever came was on December 21st, and came on the following day, the 22nd, and on the 23rd.

By the Court: Overruled.

By Mr. Messick: We save the point. The record definitely will show that we save the point. We are entitled to show that in direct-examination on Monday, the witness, Frank Scales, testified that on the 22nd day of December, 1955, and on the 23rd day of December, 1955, that he came from Pulaski with Jennings Coffee. And we ask that his testimony in that connection be put in the record. And he came from Pulaski to Roanoke with Jennings Coffee, Hall and Hasson.

By the Court: Think the record, this record, should show that we have had the court reporter check his notes taken on Monday, and the witness Scales, on Monday, according to the records, testified that he and some of the defendants came to Roanoke about the 21st, 22nd, and 23rd. All page 139 } right.

By Mr. Messick: Won't be any question about

*Frank Scales.*

it. We vouch what the record shows, and as a part of the record, put in his testimony as given transcribed by the court reporter. Don't you see?

By the Court: All right.

(By agreement of Court and Counsel, the following testimony of Frank Scales, given during the direct-examination of Frank Scales by the Commonwealth Attorney, in the case of the *Commonwealth of Virginia v. Clarence Robert Hall*, Hustings Court for the City of Roanoke, Va., April 23, 1956, is set forth, as follows:)

## "DIRECT EXAMINATION.

## FRANK SCALES

"By Mr. Cuddy:

"Q. Your name Frank Scales?

"A. Yes, sir.

"Q. Frank, your home in Pulaski, Va.?

"A. Yes, sir.

"Q. Route #3?

"A. Yes, sir.

"Q. Do you know Fuzz Hall—Clarence Hall?

"A. Yes, sir.

"Q. How long have you known him?

"A. Practically about two years.

"Q. You know Abie Hasson?

"A. Yes, sir.

"Q. How long you known Abie Hasson?

page 140 } "A. About 14 or 15 months.

"Q. You know Jennings Coffee?

"A. I saw him.

"Q. When did you first see Jennings Coffee?

"A. Came to Roanoke with him.

"Q. How many times you come to Roanoke with him?

"A. Twice.

"Q. Frank, just prior to Christmas in December of last year, did you come to Roanoke in an automobile?

"A. Yes, sir.

"Q. How many times did you come?

"A. Came twice with Coffee, and came three times with Hasson, here.

"Q. The first time you came—you remember the date?

"A. Around about the 21st.

*Frank Scales.*

"Q. About the 21st of December?

"A. Yes, sir.

"Q. Who came with you the first time?

"A. Hasson, and Hall and myself.

"Q. Just the three of you?

"A. Yes, sir.

"Q. When you came to—down, what did you do?

"A. We came to town; we rode around and went over to the market. Hall, here, saw his wife and we left.

"Q. Went on back?

"A. (Witness nods head)

"Q. The next day, did you come to Roanoke?

"A. Yes, sir.

page 141 } "Q. And who was with you when you came on that trip?

"A. Hasson, Hall and myself, and Coffee.

"Q. Three of them besides yourself—Hasson and Hall, Coffee—Jennings Coffee—and yourself?

"A. (Witness nods head)

"Q. When you came in where did you go?

"A. When we first came down here we stopped in Salem, then came on in over here.

"Q. When you stopped in Salem, did you stop near an automobile?

"A. Yes, sir.

"Q. What happened there?

"A. We parked behind this automobile, and we stayed there, I'd say around about 40 or 45 minutes. And Hasson, he got out and got in a station wagon, and got—when he got there—overcoat, and came back out.

"Q. And after you left Salem, where did you go?

"A. Came to Roanoke.

"Q. Who came to Roanoke with you then?

"A. All four of us.

"Q. Where did you go in Roanoke?

"A. First, I came over here, and then we went back through the colored section, and went out through Orange Ave., and went down by this sporting goods store, and went in between driveway, between the store and whiskey store, and we went in there. We parked behind there for about five minutes.

"Q. Did anyone get out of the car?

"A. Hall.

page 142 } "Q. Where did he go when he got out of the car?

"A. 'Round toward the front.

"Q. Toward the front of what?

*Frank Scales.*

"A. Store.

"Q. Which store?

"A. The sporting goods store.

"Q. Anyone else get out of the car?

"A. No, sir; we went around to the back, 'round there in the back.

"Q. And how long was it before Hall came back?

"A. About five minutes.

"Q. And what was said when he came back?

"A. He mentioned a window in the back, and said the job was cased, like that.

"Q. The job was cased? What was said when he came back to the automobile?

"A. Mentioned window that was in the back of the store, large window, and said that the job was cased, like that.

"Juror #2: What? I didn't understand.

"By Mr. Cuddy: Cased. If you don't understand, ask questions.

"By Mr. Cuddy:

"Q. Now, then, did you leave there?

"A. Yes, sir; we left there and went back to Salem, and went about 7 miles out of Salem; Hasson and them got out of the car.

"Q. Hasson and who?

"A. And Hasson asked Hall what was he going  
page 143 } to do with me, and Hall said, "I'll take him with  
me, so he won't have to stand in the cold." We  
came back and went to place called Casa Loma.

"Q. What did you go by there for?

"A. Hall looking for somebody.

"Q. Someone? Who was he looking for?

"A. At the time he said he was looking for Fouts.

"Q. All right.

"A. And he went down by this house twice, then he came back and he went in this place called Casa Loma, and he came back out, and said, 'I found it out this time,' and went down to corporation limit right above the bridge, and turned over to here, our left going down, and he parked in front of white house, and he got out of the car and went in, and stayed around 45 minutes, and I sit in the car—but I didn't see.

"Q. Who was that you were with?

"A. Hall.

"Q. Then he—when he came out, what happened?

*Frank Scales.*

"A. He was talking about somebody—was cussing and said something about a deal going to be pulled, just like that. When he came back out he said that the deal was going to be pulled, just like that, and he talked all the way back until we picked Hasson up.

"Q. You picked Hasson up, and Hall up, in Salem?

"A. Yes.

"Q. Where did you go?

"A. Went home.

"Q. All right. Then that was 23rd of December, was it?

"A. About the 22nd.

"Q. 22nd? All right. Did you come back again with them?

"A. Yes, sir.

page 144 } "Q. When did you come back with them, the  
next day-time?

"A. The next day.

"Q. Who was with you?

"A. All of us.

"Q. Name them.

"A. Hall, Coffee, myself and Hasson.

"Q. Where did he take you that day?

"A. I got out over on Henry St. Hasson said he had to see somebody about fixing driver's permit, something about had to mail something about his driver's permit. I got out on the bridge here, and they picked me up around about two or four hours later.

"Q. When you got out, who was left in the automobile?

"A. Hasson, Hall and them.

"Q. Hasson, Hall and—

"A. Coffee.

"Q. You said about three hours later they picked you up?

"A. Um-hum.

"Q. Take you back to Pulaski then?

"A. Yes, sir.

"Q. Did they have some talk when they picked you up, about any instruments of any kind?

"A. He mentioned something about some tools and some rollers—Hall, he mentioned.

"Q. As well as you can remember, state exactly what Hall said about those.

"A. I know he said he needed three rollers and a bar.

"Q. Three rollers and a bar?

page 145 } "A. Yes, sir.

"Q. Believe you all went on back to Pulaski?

*Frank Scales.*

"A. Yes, sir.

"Q. And best you can fix was on the 23rd day of December, 1955?

"A. Yes, sir.

"Q. Frank, was there any discussion about serial numbers on guns?

"A. There was discussion with—about serial numbers on the guns at the time we went to this fellow's house.

"Q. What was said about serial numbers?

"A. Something about removing them, or add another one to them.

"Q. Who made that statement?

"A. Me and him in the car then. (Witness points)

"Q. Just you and him in the car?

"A. (Witness nods head)

"Q. Now, Frank, some few days after Christmas were you in Pulaski?

"A. Yes, sir.

"Q. Did you see Jennings Coffee?

"A. I saw him in front of a barber shop.

"Q. And what—how was he travelling?

"A. In a red maroon Ford, or red maroon Mercury.

"Q. And what was in that automobile?

"A. Was guns like this. (Witness points)

"Q. How many guns did you see in that automobile?

"A. I couldn't say—more than one.

page 146 } "Q. More than one?

"A. Yes, sir.

"Q. Did you—can you estimate about the number that you saw?

"A. The back end was up. I do know I saw more than—I'd estimate it around about 15 in it.

"Q. More than 15? Frank, when you saw those guns in the car did you hear any discussion with anybody about guns?

"A. Well, I heard discussion about making a deal to sell some.

Q. Who was in that discussion? Who was talking about the sale of the guns?

A. It was some stranger; I don't know him well. In fact, I didn't know Coffee at the time. He came first, and I knowed Coffee; I had seen him twice, that's the reason I know it was him. Otherwise, I don't know.

"Q. You heard discussion there about guns?

"A. (Witness nods head)

*James E. Lemon.*

"Q. Did you hear discussion in another barber shop about guns?

"A. Yes, sir.

"Q. Who was that with?

"A. Well, I went down East End, and I was in there, and Hall came in. I was in there talking to fellow—barber—Hall came in. He mentioned guns, like that, and said he had a deal, and fellow give him some money, and said, 'I give you the rest later on.' Me and him came up the street, and I borrowed a dollar from him.

"Q. What did they say about guns at that time?  
page 147 } "A. Talking about uniform match, or something—shooting match arranged.

"Q. Say how many guns to be delivered?

"A. Somewhere in the thirties.

"Q. Somewhere in the thirties?

"A. Um-hum.

"Q. Did you see approximately how much money was passed?

"A. When he pulled out his money in his pocket—he had it in his pocket—he pulled a dollar out to give me—I saw around about six or seven twenties, some ones.

"Q. And who gave him that money; you see the man when he gave it to him?

"A. He said—first he gave him some, and said he had to borrow some.

"Q. Operator of the barber shop?

"A. Yes, sir.

"Q. That was in Pulaski, Va.

"A. Yes, sir."

\* \* \* \* \*

JAMES E. LEMON,

a witness of lawful age, after being duly sworn, testifies as follows:

#### DIRECT EXAMINATION.

By Mr. Messick:

Q. Mr. Lemon, you are Officer Roanoke Police Dept.?

A. Yes, sir.

Q. What's your rank?

A. Sergeant.



*James E. Lemon.*

Q. On the night of December 26, 1955, or the page 148 } early morning of December 27, 1955, did you arrest Jennings Coffee?

A. Yes, sir.

Q. Where did you arrest him?

A. At his home.

Q. Where was his home?

A. In the sixteen hundred block—fifteen or sixteen hundred block, Patterson Ave. I don't know the exact number; I know where the house is.

Q. What time did you arrest him?

A. It was shortly after twelve, midnight.

Q. Shortly after twelve, midnight? Then that would be on the night of the 26th of December, or early morning hours of the 27th?

A. 27th, what it was.

Q. Just shortly, you mean, a few minutes after midnight, or ten minutes, or what?

A. Ten—at about 12:10 or 12:15.

Q. About 12:10 or 12:15. Did you put him in the Roanoke City jail?

A. Yes, sir.

Q. You know how long he was kept in jail?

A. No, sir.

Q. That's all, sir.

#### CROSS EXAMINATION.

By Mr. Cuddy:

Q. Mr. Lemon, he was arrested on a warrant from another jurisdiction, was he not?

A. Yes, sir.

page 149 } Q. From Pulaski County?

By Mr. Messick: Not a question of what he was arrested on.

By Mr. Cuddy: I certainly think we are going to investigate this case, and I want the Jury to know he wasn't arrested at that time on this case.

By the Court: It's proper.

By Mr. Messick: Save the objection.

By Mr. Cuddy:

Q. He was arrested from complaint from another jurisdiction?

*James E. Lemon.*

A. Yes, sir.

Q. Pulaski County, wasn't it?

A. Yes, sir.

Q. At that time did you see an automobile, or was an automobile involved?

A. Yes, sir.

Q. What automobile was it?

A. The teletype was on a Ford, to pick up a Ford, including Jennings Coffee, and another unknown subject.

By Mr. Messick: We object to all that.

By Mr. Cuddy: I think it's absolutely proper to show why he was picked up, and under what conditions.

page 150 } By the Court: I think it's proper. Had nothing to do with this case.

By Mr. Messick: He's already shown that.

By Mr. Cuddy: I think more than that.

By the Court: What is your decision?

By Mr. Cuddy: I think that should be explained out of the presence of the Jury. I'll be glad to step up there.

By the Court: Go ahead. Any objection Mr. Messick can make—

By Mr. Cuddy:

Q. Was an automobile taken into custody?

A. No, sir.

Q. Later on, did you take one in custody?

A. We turned that over to Capt. Allman, and all the information.

By Mr. Messick: One minute, if your Honor please. One simple question that I asked him as to when he arrested this man, and he has told us that, shortly after 12:00 o'clock. Mr. Cuddy has proved that it was from another jurisdiction; that was on a warrant.

By the Court: I don't know. Can you connect it up?

By Mr. Cuddy: I think that the Court should  
page 151 } understand that—I don't think *in* the Court rules on it, it should be before the Jury. If it's wrong, it would be prejudicial to that case.

By the Court: Better take it up in chambers.

By Mr. Cuddy:

Q. Mr. Lemon—

*James E. Lemon.*

By Mr. Messick: If your Honor please, we put Mr. Lemon on for one purpose: to prove that on the early morning hours of the 27th day of December that this man was in jail—Jennings Coffee; that he was arrested.

By the Court: I understand that you are objecting. That's the reason?

By Mr. Cuddy: My witness. It's all right.

By Mr. Messick: It's not any part of anything that we brought out on direct examination.

By the Court: I don't know whether he can connect it up in any way with the direct examination. That's what we are here to find out now.

By Mr. Cuddy:

Q. Mr. Lemon, you and Officer Moore went up there to make a arrest?

A. That's right.

Q. Did you also search an automobile?  
page 152 } A. Car was searched; yes, sir.

Q. Who's automobile was it?

A. Both cars—two cars searched—both cars were searched Mercury and a Ford.

Q. Who did the Mercury belong to?

A. Belongs to Fouts.

Q. Where was it located?

A. Setting in Jennings Coffee's house.

Q. And what was found in the rear of it?

A. Crow-bar, coveralls and pistol.

Q. That's what I want to show—in his automobile?

A. Yes, sir.

By Mr. Messick: I object.

By Mr. Cuddy: I submit that's proper in this case, when he shows arrest. Certainly evidence that these two people were together, jointly indicted, evidence all through that the place was broken into with crowbar, and found in his automobile the second night. After the arrest, crowbar and coveralls and guns—I think it's proper.

Mr. Messick: Your Honor—

By the Court: Mr. Cuddy, it appears to me that is not proper on cross examination, but if you want to put this witness on as your witness—

By Mr. Cuddy: If the Court rules it is not  
page 153 } proper as a cross examination, I'm perfectly willing that he be taken as a Commonwealth witness.

*Burrell Shumate.*

By the Court: I think you can take him as your witness, but not on cross examination.

By Mr. Lanham: If your Honor please—

By the Court: And it appears that you could have put him on at the conclusion of defendant's evidence.

By Mr. Lanham: If your Honor please, this involves my client, Mr. Fouts, and nobody, according to my recollection, has testified how they broke in. Somebody testified that he broke in, and he's brought a part of a door here to show break-in. Nobody found any crowbar. Rested its case—the Commonwealth rested its case, and now wants to take up the defense.

By the Court: There was evidence by one witness that it appeared a crowbar had been used, that the damage indicated that a crowbar had been used.

By Mr. Cuddy: And the section of the door was introduced.

By Mr. Lanham: Nobody had a crowbar.

By the Court: I'm going to sustain the objection of Mr. Messick.

By Mr. Cuddy: Shall I ask him now, or at the conclusion of the evidence?

By the Court: I think it would be better if you let them conclude their evidence. If you wish to put him back on at that time, you may do so.

By Mr. Cuddy: I reserve the right to put him on at the conclusion of the evidence, and Mr. Moore.

By the Court: All right, sir.

Witness stands aside.

**BURRELL SHUMATE,**

a witness of lawful age, after being duly sworn, testifies as follows:

**DIRECT EXAMINATION.**

By Mr. Messick:

Q. Mr. Shumate, where do you live, sir?

A. I live at Garden City.

Q. What do you do?

A. I'm a business agent for Iron Workers Local #697.

Q. Business agent for Iron Workers Local #697?

A. Yes, sir.

Q. Do you know Jennings Coffee?

*Burrell Shumate.*

A. Yes, sir.

Q. Mr. Shumate, do you know where he worked before he went to work for the Tidewater Construction Co.?

A. Yes, sir.

page 155 } Q. Where did he work, sir?

A. He worked at G. E. plant for Roanoke Engineering Co. on defense job. He was referred to the G. E. plant for Roanoke Engineering Co.

Q. Is this the slip that showed that he was working at the —for the Roanoke Engineering Co., and was transferred from there to the Tidewater Construction Co.?

A. This shows he was *referred* to the job to go to work—duplicate copy of our referral slip.

Q. What time was he supposed to go to work for the Tidewater Construction Co.?

A. On Tidewater Construction Co. job, I called him up—General Electric job—on the 5th—on the 6th, night of the 6th, and told him to come to Tidewater Construction Co. job on the following day as iron worker-welder.

Q. Is that your slip?

A. Roanoke—for Roanoke Engineering.

Q. Is that the one, #697, bearing date of December 26th, transfer?

A. That is correct.

By Mr. Messick: We offer this in evidence, if your Honor please. I'll show it to the Commonwealth Attorney.

By the Court: No objection to it.

By Mr. Cuddy: Don't see that has any connection to the case. But if he wants to put—

page 156 } By the Court: It's a question of showing he was working for that company, before he worked for Tidewater Construction Co.

By Mr. Messick:

Q. (Reading paper) Iron Workers' Local. Member of Local, 1955. Names Jennings F. Coffee; Occupation—Iron Worker; Rate—\$2.85 per hour. Contractor—Tidewater Construction Co. Superintendent—Mr. Smithers. Lone Star Cement Plant. Business Agent—W. B. Shumate. Is that the transfer from one plant to the other?

A. That's correct. Transfer Slip #1.

Q. Now, Mr. Shumate, it is in evidence here that on the morning, approximately 12:10 A. M., of December 27, 1955, that Mr. Jennings Coffee was arrested, and placed in jail

*Burrell Shumate.*

in Roanoke City. Do you know if he was confined in jail, either in Roanoke, or in Pulaski, Va., for any period of time, and if so, what period of time was it?

A. Only thing that I know, that he was in Pulaski jail when I talked to him, at that time.

Q. When was it, sir?

A. That was—that was on a Thursday after the Christmas holidays.

Q. Well, Monday was the 26th, Tuesday was the 27th, Wednesday was the 28th, and 29th—

A. Approximately the 29th; I don't know exactly.

Q. You know how long he stayed in the Pulaski County jail?

A. Not the exact days; no, sir.

By Mr. Messick: You gentlemen admit it with-  
page 157 } out having to teletype to the Pulaski jail to get  
the jail records to prove it?

By Mr. Cuddy: Mr. Messick, if you verify that the date of release is correct, I'm willing to accept it.

By Mr. Messick: He was in jail from the time of his arrest until February.

By Mr. Cuddy: Not the 19th; he was arrested out here on February 11th.

By Mr. Messick: If you will just hold your horses, I'll get the exact date. Well, it was December 27th, and 28 days more after that he was confined.

By Mr. Cuddy: I'm perfectly willing to do this: No certainty over that. I'm perfectly willing that the jail records be called over the 'phone. Have the Sergeant of the City of Roanoke get the date of the commitment, and the date of release.

By Mr. Messick: Perfectly agreeable to me.

By the Court: All right, Mr. Messick, get that information.

By Mr. Messick: Just want to show he was in jail.

By Mr. Messick:

Q. Mr. Shumate, coming down to the 24th day of December, 1955, did you see Mr. Coffee that day?

A. Yes, sir; Mr. and Mrs. Coffee both came to  
page 158 } our house about—around 2:00 or 2:30, and stayed  
approximately a hour, and brought me and my  
wife—brought a Christmas present.

*Burrell Shumate.*

By Mr. Cuddy: What date?

A. December 24th.

By Mr. Messick:

Q. December 24, 1955. You say that they came to your house around 2:00 or 2:30?

A. Yes, sir.

Q. And stayed about an hour?

A. Hour, or hour and a half; getting up late in the afternoon.

Q. Brought you and your wife a Christmas present?

A. That's correct.

Q. That's all.

#### CROSS EXAMINATION.

By Mr. Cuddy:

Q. Mr. Shumate, this slip that was introduced into evidence, did you write that?

A. I wrote one, and I believe my secretary wrote one.

Q. But this is merely authorization to transfer from one job to another?

A. That's right.

Q. Whether or not he went down on the job, you don't know?

A. No.

Q. The only thing you were authorizing him, he might transfer jobs?

A. Yes, sir.

page 159 } Q. You don't know what happened to him after that?

A. No, sir.

Q. You don't know where he was, except the few times you saw him?

A. Going to the job, I might see something—might have seen him.

Q. You certainly don't know where they were during the month of December?

A. That's correct.

Q. Both these men members of your organization?

A. Yes, sir.

Q. I believe you said that you went to Pulaski, and saw them in jail, you think, December 29th?

*Burrell Shumate.*

A. Somewhere in the neighborhood of it; a few days after they was arrested.

Q. You don't know when they were arrested?

A. Don't know exactly when they was arrested.

Q. I believe you went on bond?

A. I'm on Fouts' bond.

Q. I believe you also came and wanted to get off that bond?

A. That's correct.

By Mr. Cuddy: All right. Stand aside.

By Mr. Messick:

Q. Mr. Shumate, question Mr. Cuddy asked you—I want to refresh your recollection. He asked you if you know whether or not Mr. Coffee transferred to the Tidewater Construction plant down at Botetourt County. Did you, at any time in December, 1955, go to that plant?

page 160 } A. Yes, sir; constant visitor to the plant, at least once a week.

Q. Tell the Jury whether or not you saw Mr. Coffee working at the Tidewater plant in Botetourt County, Lone Star Plant.

A. The first time I seen Coffee, he was working up in the chutes in the silos.

Q. When was that?

A. It was either the 18th or 19th of December. I just don't know the—exactly the date. 19th I was called down by Mr. Smithers in a dispute on millwrights, about a valve that goes on the ends of the chute down there—connecting them. Jack Gibson was in one chute, Coffee was in the other, and Jack Burton welding some enclosure on a small chute coming down through there, and got them all down in there, and they showed me the way the valve went off.

Q. You told us you thought it was the 18th or 19th. 18th was on a Sunday in December.

A. Well, I keep a record of my activities. It was Christmas week.

Q. Christmas week?

A. Yes, sir.

Q. So that you could be certain about the dates and activities of yourself, would you kindly refer to your records, and tell us what day it was during Christmas week you saw Mr. Coffee?



*Burrell Shumate.*

By Mr. Cuddy: He's attempting to contradict his own witness. He's already made a statement, positive statement as to the dates on direct examination. That's his witness, and *how* he wants to contradict him.

page 161 } By Mr. Messick: Well, it just so happens it wasn't my witness.

By Mr. Cuddy: What?

By Mr. Messick: No witness belongs to anybody.

By Mr. Cuddy: You put him on; you vouch for him.

By Mr. Messick: I put him on, and you were the man that asked him whether or not he knew that Mr. Coffee actually transferred. All right, you were the one that brought that out. Then—

By the Court: There's no disagreement about that part of it. There's a question about the 18th or the 19th, and he made a definite statement he was there and saw this man working on the 18th or 19th.

By Mr. Messick: I'm asking him the same as any witness has the right to do, who keeps a record of their activities, to refer to his records and to come here, and tell the Jury the date that he was there.

By the Court: Can you give us a correct date?

By the Witness: I could, sir, but I don't have the records with me. I keep a record of my activities day by day, and who I meet, and who I talk to, in records as to my activities. It was in the week of Christmas holidays, I do know. Mr. Smithers, the man who called me down—

page 162 } By the Court: Didn't you say it was the 18th or 19th?

A. I could be mistaken. I can't keep dates in my mind.

By the Court: Did you check this information before you came to court?

A. No, sir.

By the Court: Did you know you were going to be put on the witness stand?

A. No, sir.

By the Court: How did you fix the 18th or 19th as dates?

A. Sometime in that part of the month, latter part of the month, when it was.

*Burrell Shumate.*

By the Court: All right.

By Mr. Messick: He wasn't put on, if your Honor please, in regard to this information whatsoever. The first time he was ever asked about it was on cross examination.

By Mr. Cuddy: I didn't ask him one word—

By Mr. Messick: You asked him if you—if he knew whether he transferred.

By Mr. Cuddy: I asked him?

page 163 } By Mr. Messick: Then I asked him—

By the Court: As I understand it, he has no record to present to check from now.

By Mr. Messick: But he has it, and will get it.

By the Court: I don't know how long it will take him to get it.

By Mr. Messick: I'm going to ask him, when he leaves the stand, to go get it.

Q. Will you, when you leave the witness stand, will you go get your records?

A. I will. I keep a little note book.

Q. Will you go get them?

A. Yes, sir.

By Mr. Cuddy:

Q. You think it was the 18th or 19th?

A. I couldn't say that.

Q. That was your recollection?

By Mr. Messick: It's apparent to anybody.

By Mr. Cuddy: If your Honor please—

By the Court: Don't let's argue. You'll have your chance to argue it.

page 164 } By Mr. Messick: The 18th was Sunday, and everybody knows they don't work on Sunday.

By the Court: This witness made a statement it was the 18th or 19th, two days he said; shown by the evidence this man was at work.

By Mr. Messick: That's the reason I wanted the records checked, to get the truth, that's all.

By Mr. Cuddy: I submit it's not proper for him to contradict his witness.

By Mr. Messick: I'm not contradicting anybody.

By the Court: If he can present a record to show he made up this record—

*M. O. Cochran.*

By the Witness: Your Honor, I don't know whether I can get back here before you adjourn.

By the Court: I don't know—between you and Mr. Messick.

By Mr. Messick: It just so happens, Judge, that it's possible the records are the best evidence, and I'm asking him to get them and bring them as soon as he can. That's all I can do.

By the Court: Whether he gets them in time page 165 } is another matter. Let's have the next witness.

M. O. COCHRAN,

a witness of lawful age, after being duly sworn, testifies as follows:

#### DIRECT EXAMINATION.

By Mr. Lanham:

Q. Mr. Cochran, state your name and your business to the Reporter, please.

A. Det. Sgt. M. O. Cochran, Roanoke Police Dept.

Q. You know Mr. Cochran, Fouts?

A. I've known him for a good many years.

Q. You both live in Roanoke?

A. I'm a Roanoke boy, and I believe he is—except the first time I met him.

Q. Will you state that prior to the time that he was arrested, charged with having possession of some guns, whether you gave him your card?

A. I did, sir.

Q. And asked him to try to help you to find out if he possibly could, what—who had broken into the place, or what happened to them.

A. He came to the Police Dept. bureau one morning for the purpose of getting some coveralls which had been taken from him at the time of his arrest here. At that time I talked to—with him, and we already had information to the effect—

By Mr. Lanham: Just a minute—

By Mr. Cuddy: I think he has a perfect right page 166 } to explain.

By Mr. Lanham: Hearsay information. I want you to tell the fact, only.

By Mr. Messick: Let him answer the question.

By the Court: Go ahead and answer the question.

*M. O. Cochran.*

By the Witness:

A. We gave out cards to people for the purpose of getting information, which I had hoped Fouts was in a position to give. He was a close friend of Jennings Coffee, and saw right much of him.

By Mr. Lanham: Now, just a minute. If your Honor please, it's perfectly all right for a officer to make insinuations or things of that kind, but his question should be responsive to what was asked.

By Mr. Cuddy: He was.

By Mr. Messick: We object to any comments of that kind. Asked him whether or not he gave this man his card, and asked him to try to get some information for him in regard to this Owen-Weaver robbery.

By the Court: I think he's entitled to explain why.

By Mr. Messick: We didn't ask him why.

By the Court: I think he's entitled to explain.

By Mr. Messick: As far as Mr. Coffee is compage 167 } cerned, I except.

By Mr. Lanham: I except as to Mr. Fouts.

By the Court: All right. Go ahead.

By Mr. Lanham:

Q. Now, you knew he was an iron worker, and worked at iron construction work, did you not?

A. I guess in a way, I did. I didn't actually know of my own knowledge. I do now.

Q. In other words, you don't know much about him?

A. I don't know much about him. And when I was a young boy in high school, I had several dates with his sister, but at the time I was 12, or 15, maybe 16 years old.

Q. So you did give him your card, and asked him that if he found out, or learned anything, to get in touch with you?

A. Absolutely.

Q. And that was the occasion when he came down here to pick up his clothes?

A. That was when I talked to him.

#### CROSS EXAMINATION.

By Mr. Cuddy:

Q. Mr. Cochran, he came down to pick up coveralls?

A. Yes, sir.

Q. He come down to pick up anything else?

A. I'm reasonably sure, just a pair of coveralls. I talked with him, and told him he'd have to contact Capt. Allman

*Dorothy Fouts.*

about it—any one of the things he wanted, and the only thing I distinctly remember is coveralls, which had been  
page 168 } taken from him at the time of the arrest, or from the automobile.

Q. Was a bar mentioned by anybody?

A. I don't remember him mentioning a bar.

By Mr. Cuddy: All right. Stand aside. One other question:

Q. You gave him the card, which is a information card on the Police Dept.?

A. Usually give that to informers.

Q. You didn't get information from him?

A. No, sir.

By Mr. Lanham:

Q. When he was arrested, you took that card off him?

A. I didn't take that card off him.

Q. Did it have your private telephone number?

A. I think it had my private home and office; all the rest of them did.

Witness stands aside.

**DOROTHY FOUTS,**

a witness of lawful age, after being duly sworn, testifies as follows:

**DIRECT EXAMINATION.**

By Mr. Lanham:

Q. State your name, please.

A. Dorothy Fouts.

Q. And you are the wife of William Ray Fouts, the defendant?

A. Yes, sir.

page 169 } Q. And where do you live?

A. Salem Turnpike.

Q. Beg pardon?

A. Salem Turnpike.

Q. After your husband was arrested—you recall the day?

A. He was arrested—do you mean this last time?

Q. Um-hum.

A. February 11th, on Saturday.

Q. February 11th?

A. Yes, sir.

Q. Now, going back to Christmas, you remember where your husband was on Christmas Eve?

*Dorothy Fouts.*

A. I went to the grocery store Christmas morning, Christmas Eve morning, and brought groceries home, and that afternoon he stated he was going back down town, and I asked him to bring me some Christmas tree lights home, and because I was afraid they'd burn out, and he did.

Q. What time did he get home?

A. About 8:30.

Q. All right. Now, after that what happened; where was he after that?

A. He stayed home, and helped me finish decorating Christmas tree.

Q. Did he go out after that, Christmas night?

A. No, sir.

Q. Stayed home all night?

A. Yes, sir.

Q. And he was there 'till the next day?

page 170 } A. Yes, sir.

Q. You were there all the time?

By Mr. Lanham: Cross examination?

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You are Fouts' wife?

A. Yes, sir.

Q. Do you live just off the Salem Turnpike?

A. Yes, sir.

Q. Your home is a small white house, sits behind a big white house, isn't it?

A. Yes, sir.

By Mr. Lanham: One more question.

Q. You state whether or not your house was searched right about that time, or prior to that time, by the police?

A. My house was searched right after Christmas.

Q. Searched right after Christmas?

A. Um-hum.

Q. Searched by the police, do you know?

A. I don't know; I wasn't home. I did know when I went home on Tuesday night. I noticed that my house had been searched.

Q. Searched?

A. I wasn't home.

*Dorothy Fouts.*

By Mr. Cuddy: Judge, I do have some questions. Permis-  
sion to go ahead?  
page 171 } By the Court: Yes.

By Mr. Cuddy:

Q. Mrs. Fouts, do you remember talking to Capt. Allman about this case?

A. Yes, sir.

Q. You did talk to him?

A. Yes, sir.

Q. Where did you talk to him?

A. Downstairs in his office.

Q. In his office, Detective Dept. of the City of Roanoke?

A. Yes, sir.

Q. When was that?

A. I really don't know the exact date.

Q. But you remember being there and talking to him, don't you?

A. Yes.

Q. And you talked to him about this case, didn't you?

A. Yes, sir.

Q. And didn't you tell Capt. Allman that you and your husband went to Jennings Coffee's house on Christmas Eve, and that Jennings Coffee and your husband left the house and were gone for a while, and you didn't know where they went. Didn't you make that statement to Capt. Allman?

A. I don't remember.

Q. You don't remember?

A. No.

Q. You don't deny it, do you?

A. I don't remember.

page 172 } Q. I say, you don't deny it, do you?

A. I really don't know.

Q. You don't know whether you made that statement or not?

A. No, sir.

Q. All right. Stand aside.

By the Witness (Continuing)

A. It's been so long ago.

Q. What was your question?

A. It's been so long ago, I can't remember that far back, sir.

Witness stands aside.

EDGAR L. WINSTEAD,

a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Messick:

Q. You are Mr. Edgar Winstead, Sergeant of the City of Roanoke?

A. Yes, sir.

Q. At my request did you—rather, Mr. Cuddy's request, both of us requests, did you ascertain—at the request of all of us then—did you call the Pulaski jail to find out what period of time Jennings Coffee was confined in the Pulaski jail, from the 27th of December on?

A. I called, and the desk report—jail report—says that Jennings Coffee was confined in the Pulaski County jail on December 27th, 1955, at 2:15 P. M.

page 173 } Q. December 27, 1955, at 2:15 P. M.?

A. Yes, sir.

Q. And when was he released?

A. January the 27th—23rd, 1956, at 5:30 P. M.

Q. January 23, 1956, at 5:30 P. M.?

A. Yes, sir.

Q. Now, that's all. Thank you, sir.

By Mr. Messick: Mr. Cuddy, will you agree that after his arrest at 12:10 on the morning of December 27th, he was held in Roanoke jail until turned over to Pulaski authorities?

By Mr. Cuddy: By the time he was taken into custody, until the Pulaski officers came after him, he was in custody.

(Court adjourned for the day at 5:00 P. M.)

(Court reconvened the following day, April 26, 1956, at 10:00 A. M.)



(BURRELL SHUMATE

is recalled to the witness stand.)

RE-CROSS EXAMINATION.

By Mr. Cuddy:

Q. Mr. Shumate, you on yesterday testified having seen Mr. Coffee on the job at the Lone Star Cement Co., and you gave what you thought was the date you saw him. You further testified that you had a book containing your activities, and I will ask you if you have that book with you?

A. Yes, sir; I have my activities from one meeting night through the month of December. I was incorrect in my answer yesterday. I was on the Lone Star Cement Plant the 12th and 22nd. Beginning my day I placed pickets on the Ninth St. job, and also checked B. F. Price job; N. & W. Car Shop; also checked disputed work at Lone Star Cement Plant in regard to valves. That day I called Jack Gibson out of one hopper, and Coffee out of the other one. The additional welder was beading some chutes on the lower end, the valves attached to the hoppers. And it was a dispute between iron workers and millwrights how far the iron workers came down in performing their work. I discussed how far the chutes come down.

Q. It was on the 22nd of December that you talked to Coffee there?

A. That is correct.

Q. He was in one chute?

A. Butts.

Q. Now, I want you to tell the Jury, as well as you can recollect, about what time of day it was.

A. It was 10:30, or 11:00 o'clock, just before lunch.

Q. And your record shows that was the date you were there?

A. That day, but I don't have the time.

By Mr. Cuddy: That's all I care to ask the witness.

RE-DIRECT EXAMINATION.

By Mr. Lanham:

Q. Mr. Shumate, how long have you been in your present position?

A. 8 years, sir.

page 175 } Q. And how long of that time have you known the defendant, Fouts?

*Burrell Shumate*

A. I been knowing Fouts since 1946.

Q. I see. Worked under your supervision part of this time?

A. Yes, sir.

Q. And will you state whether or not he worked pretty regular on the job?

A. Yes, sir; he worked pretty regular.

Q. Is he a good worker?

A. Good mechanic.

Q. Work steady?

A. Well, like most iron workers, they'll take a day off now and then; that's about all. He worked pretty regular when he was working.

By Mr. Cuddy:

Q. Got any records for those two dates?

A. Not through November.

Q. Then your records that you have went to Lone Star Cement on the 12th?

A. 22nd I was on Lone Star Cement Plant; only two times I was on it.

Q. What was it you said about the 20th?

A. 12th month.

Q. 12th month?

A. Yes—22nd, 12th; 12th, 22nd.

Q. 12th month, 22nd day? That's the only time you know Coffee was there.

page 176 } A. Yes, sir.

Q. And at the time he was working by himself?

A. Yes, sir.

Q. You don't know the time?

A. Approximately 10:00.

Q. But you don't have any record of it?

A. No, sir.

Q. And prior to this time, before refreshing your memory, you thought it was the 18th or 19th?

A. That's correct.

By Mr. Lanham:

Q. How long were you there?

A. I was there until after lunch. I stayed and went over to the shack where the fellows eat their lunch, and talked to several different ones.

Q. State whether or not he was there at lunch-time?

A. He was there at lunch-time.

*William Ray Fouts, Jr.*

By Mr. Cuddy: I don't know how many times they want to take them back.

By the Court: That should have been asked on direct-examination.

By Mr. Lanham: That's all I want to ask, your Honor.

WILLIAM RAY FOUTS, JR.,  
a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Lanham:

page 177 } Q. Mr. Fouts, state your name, please.

A. William Ray Fouts, Jr.

Q. You are one of the defendants here?

A. Yes, sir.

Q. William, how old are you?

A. 32.

Q. Married?

A. Yes, sir.

Q. Any children?

A. Two.

Q. How old is the children?

A. Five and two; boy, five; and girl, two.

Q. Now, will you tell the Jury whether or not you had anything to do with the breaking in of the place of Owen-Weaver store.

A. I absolutely did not.

Q. Did you have anything to do with stealing anything belonging to them?

A. I absolutely did not.

Q. You ever been convicted of stealing anything from anybody?

By Mr. Cuddy: I object to that.

By the Court: Objection sustained.

By Mr. Lanham:

Q. Coming up to question of day or two before Christmas, do you know anything about Mr. Hall being out to your house day or two before Christmas?

page 178 } A. Mr. Hall visited my house, I have no knowledge of it.

Q. Now, coming back to the time, the first connection you

*William Ray Fouts, Jr.*

had—one other question; going back to the time of this gentleman over here, Deputy Sheriff, found you out in the woods carrying a little sack—how did you happen to go out there?

A. On a 'phone call at Mr. Coffee's house, requesting us to meet him out there in regard to the purchase of some guns.

Q. Prior to that time, will you tell the Jury whether or not you was asked to aid one of the police officers, over there, in connection with trying to find those guns?

A. I was.

Q. Who asked you to help find them?

A. Det. Sgt. Cochran.

Q. That's the gentleman?

A. Yes.

Q. Will you tell whether or not he gave you his card?

A. He did.

Q. Private telephone number on it?

A. Yes, sir.

Q. How long have you known Mr. Cochran?

A. Several years.

Q. A good many years?

A. Yes, sir.

Q. On this occasion you say you got a telephone call; did you get that, or Mr. Coffee get it, or both of you get it?

A. We was at his house, and we both received the call.

By Mr. Cuddy: What was the answer?

page 179 } By the Witness: The man wanted to see both  
of us.

By Mr. Cuddy:

Q. Did you talk to this man on the 'phone?

A. No, sir.

Q. Then your answer is what Coffee told you?

A. Yes.

By Mr. Cuddy: I submit it's improper. I object to it.

By the Court: As to the telephone call.

By Mr. Lanham: If your Honor please, as I understood the Court's ruling, it was there where the statement was made to him, and he acted pursuant to this statement and went to the place.

By the Court: He can tell what he did and with whom he did it.

*William Ray Fouts, Jr.*

By Mr. Lanham:

Q. Tell the Commonwealth as to this conversation, alleged conversation with Pete Scales and Hall.

By the Court: He can't quote the telephone conversation, because he is not a party to it.

By Mr. Lanham:

Q. Tell what Coffee said to him pursuant to the call.

By the Court: Tell about that, but you can't tell about the telephone conversation.

page 180 } By Mr. Lanham:

Q. Now, this telephone call came from—to Mr. Coffee; what did Mr. Coffee say or do?

A. Mr. Coffee stated that, after he received the 'phone call, he and I engaged in conversation about the 'phone call. He said the man wanted to see he and I out on the Buck Mountain Road at the dump, in regards to our inquiries around town about purchasing some guns, and he asked me would I be willing to go out there on the strength of Murray Cochran, and also on the man that requested him to try to secure some of the stolen property, by going out there, and try to secure information for the Police Dept.

Q. You go out there?

A. Yes, sir.

Q. You ever been on Buck Mountain before this?

A. Yes, sir; I have.

Q. How recently?

A. At least 9 or 10 years ago, during our working hours, and I drove a cab.

Q. You haven't been there since that time?

A. No, sir.

Q. When the officer came up, what were you all doing?

A. We was examining the guns.

Q. The officer came up, you said Mr. Coffee had the pistols in his pocket and had the rifle in his hand. Where did Mr. Coffee get the rifle and pistols, if you know?

A. On the right-hand side of the left branch of the road.

Q. Close to the road? And what was the condition of the pistols and rifles, as appearing to be new, or rusty?

page 181 }

A. We didn't have too much time to examine them.

*William Ray Fouts, Jr.*

Q. Appear to be rusty?

A. Um-hum.

Q. Where did you get that bag, that somebody produced here, that plastic bag? Where is that plastic bag? By the way, the plastic bag—where did you get that plastic bag?

A. This plastic bag was in the immediate vicinity of the—where the guns was.

Q. Roped in the plastic bag?

A. No, sir.

Q. Laying open?

A. Sir?

Q. Open?

A. Bag or guns?

Q. The guns?

A. They were along the road.

Q. Downside of the road?

A. Yes, sir.

Q. That's where you picked them up?

A. Yes, sir.

Q. Rather, where Coffee picked them up? I understand. Now, then, what happened when the officer came up?

A. He asked us what we were doing.

Q. Who are you talking about, Deputy Sheriff?

A. Yes, sir.

Q. Go ahead.

A. We told him nothing.

page 182 } Q. Any argument or any fuss, or attempt to get away on the part of anybody?

A. No, sir.

Q. You told him just what happened?

A. I didn't tell him nothing.

Q. You didn't tell him anything. Who told him you found the guns there?

A. We told him.

Q. You told him you found the guns there?

A. Correct.

Q. Were the guns found there?

A. Yes, sir.

Q. And now, then, what happened after that?

A. Asked me my name, and I give him my name. And he asked me if that was my car, and I said, "Yes," and he said, "Get me your driver's permit and registration card."

Q. What kind of car you have?

A. '49 Mercury.

*William Ray Fouts, Jr.*

Q. How old a car is that, by the way, Bill?

A. 6 years old.

Q. '49 Mercury?

A. Yes, sir.

Q. Only car you got?

A. I had to sell it to feed my babies.

Q. That's the only car you had?

A. Yes, sir.

Q. 1949 Mercury?

A. Yes, sir.

page 183 } Q. You been in jail since when?

A. 11th of February.

Q. Been in jail all the time?

A. Yes, sir.

Q. You were in Service during the War, were you not?

A. Yes, sir.

Q. What branch of the Service you serve in?

A. Amphibious forces of the Navy.

By Mr. Cuddy: That's improper.

By the Court: That's not material to this case.

By Mr. Lanham: I've never seen a case—

By the Court: Are you putting his character in issue?

By Mr. Messick: I have no objection.

By Mr. Cuddy: Are you going to put his character in issue?

By Mr. Lanham: Just a minute. Not a question—got a right to show what a man's doing, if your Honor please.

By the Court: No reason in this case to go back to his Service in the War. That's too far back to have any bearing in this case.

By Mr. Lanham: I want to save the point, if your Honor please.

page 184 } DIRECT EXAMINATION.

By Mr. Messick:

Q. I'd like to ask you a few questions, sir. I believe you've known Jennings Coffee, and have worked with him, have you not?

A. Yes, sir.

Q. And I also believe that your wife and Mr. Coffee's wife are friends, aren't they?

A. Yes, sir.

Q. You have visited some back and forth in your home?

*William Ray Fouts, Jr.*

A. Yes, sir.

Q. You're both iron workers and you work together, and have known each other for some years?

A. Yes, sir.

Q. Now, if I understand you correctly, you testified that Mr. Cochran, Mr. Murray Cochran, who is a member of the Detective Dept. of Roanoke City, asked you to help him, if possible, to locate some of the guns or property that was taken from the Owen-Weaver store?

A. Yes, sir; he did.

Q. Do you recall that Jennings Coffee, when asked by Deputy Sheriff Lynch, if he wanted to say anything about the guns, replied, "I'm not telling you anything. I'll talk to Det. Paul Vest?"

A. He said that.

Q. From information that you had, had Det. Paul Vest made the same request of Jennings Coffee?

A. That's correct.

page 185 } Q. Now, after you were requested by Mr. Cochran, and Jennings Coffee was requested by Det. Vest, did you and Coffee attempt to locate property that had come from Owen-Weaver's?

A. We did.

Q. I want you to tell the Jury if you circulated around town at various places, that you all were interested in buying guns?

A. We did.

Q. How did it happen to be that you and Mr. Coffee were together—I think it was Saturday, 11th day of February that Mr. Lynch saw you at the woods or mountain—how did you all happen to be together?

A. We had came to your office on other matter.

Q. Was that in connection with the matter which—for which Mr. Coffee had been arrested on the night of December 26th—early morning hours of December 27th?

A. Yes, sir.

Q. But what time were you all at my office?

A. I was—I would say 1:00 or 2:00 o'clock.

Q. And from my office where did you go?

A. Directly to Mr. Coffee's home.

Q. Now, I want you to tell the Jury if you heard the telephone call at Jennings Coffee's home.

A. You mean the ring, or the conversation?

Q. The 'phone ring, and hear Mr. Coffee talk?



*William Ray Fouts, Jr.*

A. I did.

Q. Pursuant to that telephone conversation, did you all go to Buck Mountain?

A. Immediately.

page 186 } Q. Did you go in the vicinity of this dump?

A. We drove up in the dump.

Q. Now, approximately how long had you been there when Mr. Lynch drove up?

A. I would say 15 or 20 minutes.

Q. Now, while you were there, did you hear any shot of any kind fired?

A. Yes, sir.

Q. How many shots did you hear?

A. One.

Q. Did you see any persons there in the woods, other than you and Jennings Coffee, at that time?

A. I did; I saw a glimpse of a man running through the woods. He had on blue coveralls or blue clothes, I couldn't tell which.

Q. Did you make any statement that he "Went that a-way"?

A. I did.

Q. You saw a man running away, and you made the statement that, "He went that a-way"?

By Mr. Cuddy: If your Honor please, this is his witness; I submit he should not lead him so very much. He's put him on.

By the Court: Don't repeat your question; don't repeat his answer.

By Mr. Messick: If your Honor please, if I understand the rule correctly, this man is a defendant, has been put upon the stand. I have a right to examine him.

page 187 } By the Court: You have a right to examine him.

By Mr. Messick: He's not on direct-examination, as far as I'm concerned.

By Mr. Cuddy: If he was not—

By the Court: You called him as your witness.

By Mr. Messick: I take any witness that's put on the stand for anybody, for the purpose of examination, and if he is put on by somebody else, I have a right to examine him under the law.

By the Court: As to this matter, I see no necessity for your repeating his answers. Let him answer, and you go ahead with your next question.

*William Ray Fouts, Jr.*

By Mr. Messick: Respectfully except, if your Honor please.  
By the Court: All right, sir.

By Mr. Messick:

Q. Now, with reference to where you saw this man running, and you made the statement to Jennings Coffee that you said you made, and that the officer said he heard made, where did you see these guns in that bag there?

A. They weren't in the bag, Mr. Messick.

Q. I said, where did you see the guns and bag?

A. There's a main road going up into Buck  
page 188 } Mountain proper, and there's a road that leads  
to the right, and one to the left, one 30 or 40 feet  
from it, where it is, on the left-hand side, close to the road,  
was where the guns and bag were lying; and at right angles—  
to the left—is where I saw this man running.

Q. If I understand you correctly, then, the guns were found by you and Mr. Coffee approximately where you saw this man running, is that correct?

A. That's correct.

Q. Now, Mr. Fouts, does Jennings Coffee have any red automobile, or any red Ford automobile, that you know of?

A. No, sir; he has a blue and white '54 Ford Skyliner.

Q. A man here by the name of Frank Scales has testified in this matter. Do you know Frank Scales?

A. No, sir.

Q. When was the first time that you ever saw Frank Scales?

A. This spot here.

Q. Here in this court room?

A. Right here. (Witness points)

Q. Mr. Fouts, said he had a conversation with you when you came to the Police Dept. to obtain some coveralls?

A. They were overalls.

Q. Overalls and coveralls, I reckon, are practically the same thing, aren't they?

A. No, sir.

Q. Whats' the difference?

A. The overalls have straps, and coveralls completely cover your body.

Q. What did you use your overalls for?

page 189 } A. To work in.

Q. Did you come here to get your overalls?

A. I came here twice.

Q. Did you get them?

*William Ray Fouts, Jr.*

A. No, sir.

Q. Know where they are?

A. I don't have the least idea. They didn't have them.

Q. Few gentlemen in the Police Dept.—

By Mr. Cuddy: Happened to be in Pulaski. They were turned over to the Pulaski authorities, Mr. Messick. I think he knows that very definitely.

By Mr. Messick:

Q. And a pair of overalls you worked in?

A. That's right.

Q. Where were those overalls at the time they were taken from you, we'll say?

A. I keep my tools and my overalls in the back of the car when I'm working.

Q. Keep your tools and your overalls—

A. And my tool belt.

Q. You're an iron worker?

A. Yes, sir.

Q. Did you have in your car any crowbar?

A. No, sir.

Q. Did you have any bars of any kind, or tools of any kind, sir?

A. I think there were two spud wrenches, and  
page 190 } I think they found a tire tool in my car.

Q. Was that in your car? (indicates)

A. Yes, sir.

Q. Tire tool?

A. Tire tool.

Q. Is that any crowbar?

A. No, sir; spud. A crowbar—you'd see a distinct difference.

Q. And what else in the way of tools and everything was in your car?

A. Well, I think there was a pair of pliers, a tool box, and it contained several small tools I used in finish work, such as end wrenches, crescent wrench, and a plumb bob, rule and square, and a 50-foot tape measure. I do believe there was a couple of crookers.

Q. Hum?

A. Role slings.

Q. Mr. Fouts, after you and Mr. Coffee were arrested by Detective—I mean, by Deputy Sheriff Lynch, did Mr. Coffee

*William Ray Fouts, Jr.*

talk to Det. Paul Vest of the Roanoke City Detective Dept.?

A. He did.

Q. Did you hear the conversation?

A. No, sir; I did not.

Q. Where did they talk?

A. In a car in back of the one I was settin' in.

Q. Was there anybody else in the car besides Mr. Vest and Jennings Coffee?

A. No, sir.

page 191 } Q. About how long did they talk?

A. I'd say 15 or 20 minutes.

Q. Mr. Fouts, would you and Jennings Coffee have gone to Buck Mountain, at the dump there, on Saturday, 11th of February, if you had not received this telephone conversation?

A. No, sir.

Q. And that was the sole purpose in you all going there?

A. Yes, sir.

Q. Either you or Coffee attempt in any way to run, or conceal your identity in any respect?

A. No, sir.

Q. How long have you lived in Roanoke, this section?

A. I was born in Roanoke, but I left for the Service in 1940.

Q. Born and raised in Roanoke?

A. Yes, sir.

Q. And lived here all your life?

A. Yes, sir.

By Mr. Messick: You may cross-examine.

### CROSS EXAMINATION.

By Mr. Cuddy:

Q. Mr. Fouts, a crowbar—you are a steel worker, deal in tools all the time—a crowbar is usually a good-sized bar?

A. Yes, sir.

Q. And these bars, like this (Exhibits) are usually called "pinch bars"?

A. That is a tire tool.

Q. What's the difference between this and a  
page 192 } pinch bar?

A. A pinch bar would have two straight edges.

Q. Would not have the straight edge here, only difference between this and a pinch bar is that the pinch bar has two straight edges, and this has one curved edge?

A. Except for these—to change tires.

*William Ray Fouts, Jr.*

Q. Otherwise, they are exactly alike?

A. Similar in appearance.

Q. But this is right heavy steel, isn't it?

A. Good stuff.

Q. Made out of good stuff? Mr. Fouts, you at Jennings Coffee's house on Saturday night the 24th of December?

A. Yes, sir.

Q. You were at his house, then? Did you go to Pulaski with him on Sunday the 25th?

A. No, sir.

Q. You didn't?

A. No, sir.

Q. You deny that you went up there on the 25th?

A. Absolutely didn't.

Q. Now, you with him on the night of the 26th?

A. Yes, sir.

Q. You were at his house on the night of the 26th?

A. Yes, sir.

Q. You were there early morning of the 27th?

A. Yes, sir.

Q. When the officers arrived?

A. Yes, sir.

page 193 } Q. Your automobile was at Coffee's home?

A. Yes, sir.

Q. You were there?

A. Yes, sir.

Q. And out of that automobile they secured this, as you call it, "tire tool"?

A. Yes, sir.

Q. And a pair of coveralls, or overalls—you want to call them?

A. Yes, sir.

Q. And a revolver?

A. Yes, sir.

Q. And they were in the front part of the car, weren't they?

A. I don't recall exactly where they were in the car.

Q. Your working tools were in the back of the car, in a box, weren't they?

A. That's a tool box.

Q. In a tool box; and this was not with it? And there was also a short maul, or sledge hammer with short handle on it, wasn't it?

A. Yes, sir.

Q. And that was with it?

A. I don't know.

*William Ray Fouts, Jr.*

By Mr. Lanham: Where is the sledge hammer?

By Mr. Cuddy: I think probably at Pulaski;  
page 194 } I'm not sure.

By Mr. Lanham: How could it be in Pulaski?

By Mr. Cuddy: He admits he had it.

By the Court: Go ahead on cross examination.

By Mr. Cuddy:

Q. Did you have that hammer?

A. Yes, sir.

Q. That was a light sledge hammer, of what you call a  
"maul hammer"?

A. Hand hammer.

By Mr. Lanham: We didn't put in anything about a hammer. Couldn't be cross examination about a hammer. We don't know anything about that.

By the Court: Think the evidence is entirely proper. Go ahead, Mr. Cuddy.

By Mr. Cuddy:

Q. There was a hammer?

A. Yes, sir.

Q. When you were arrested—Mr. Lynch arrested you, you denied that there was any guns, that you knew anything about any guns?

A. No, sir; I didn't deny it.

Q. You didn't deny to Mr. Lynch—you hadn't seen any guns?

A. I did not.

page 195 } Q. Later on, you denied you *new* anything about  
any guns out there?

A. He asked me if I—

Q. Didn't you tell him you didn't know anything about it, as to any guns?

A. That's correct.

Q. Didn't you tell him that you did not have the guns in your possession?

A. I didn't.

Q. Now did you see Jennings Coffee with the guns in his possession? Didn't you tell him that?

A. Ask the question over.

Q. Didn't you tell Capt. Allman you did not have the guns in your possession?

A. Did I?

*William Ray Fouts, Jr.*

Q. Didn't you also tell him you did not see Jennings Coffee have them in his possession?

A. I don't remember telling him nothing other than I didn't have nothing to do with the robbery.

Q. Didn't you deny knowledge of stolen guns, and didn't you say you did not have the guns in your possession, nor did you see Jennings Coffee with guns, nor did you hear a gun fired, as related by Deputy Sheriff Lynch? Didn't you tell Capt. Allman that?

A. No, sir.

Q. You deny you told him that?

A. Yes, sir.

Q. You know you wanted to go out there to look at guns?

A. No, sir.

page 196 } Q. No names?

A. No names mentioned.

Q. And where were you to buy these guns?

A. I didn't know we was going out there to secure the guns until we got there, and found guns.

Q. I thought you said you were going out there to look at guns?

A. In his conversation; I didn't know the guns was there until I arrived.

Q. And when you got there, you found these (Exhibits guns)—are the four guns you found, aren't they?

A. Yes, sir.

Q. You talking about them being so rusty; here's a place of rust; here's a place of rust. Any other rust on those guns?

A. There were at the time.

Q. They're all blue guns. Rust will remove the blue. Point out the places other than that place.

By Mr. Lanham: I object to him testifying.

By Mr. Cuddy:

Q. You're a steel worker—

By the Court: I think the evidence is entirely proper, Mr. Lanham.

By Mr. Cuddy:

Q. Why on earth would you be dragging something like this up through the woods? (Exhibits plastic bag)

A. I wasn't dragging it through the woods. It was in the roadway.

*William Ray Fouts, Jr.*

page 197 } Q. You had it in your hands?

A. Yes, sir.

Q. That was what the guns was wrapped in? The guns were right there with that bag, weren't they?

A. I didn't see the guns wrapped in that bag; no, sir.

Q. When you came up through the woods, you were some little distance away from the car, weren't you?

A. 30 or 40 feet.

Q. The guns were not on the roadway, were they?

A. They were.

Q. Did you carry them into the woods?

A. No, sir.

Q. Who carried them?

A. I don't have the least idea.

Q. You saw them in the woods?

A. I did not; I saw them in the road.

Q. You didn't see Jennings Coffee drop those guns?

A. My back was turned to Mr. Coffee.

Q. You and Jennings Coffee came walking toward the car, didn't you?

A. I assumed he was walking toward the car, and I was.

Q. Mr. Lynch stepped out from behind the car and told both of you to walk back to where you dropped those guns?

A. He did.

Q. And you walked right back to the spot the guns were on the ground?

A. I didn't see where the guns were laying on the ground then; he picked them up.

page 198 } Q. You and Jennings Coffee went there together, didn't you?

A. We went to Buck Mountain together; yes, sir.

Q. Now, I ask you this: Didn't you tell Capt. Allman that you and Jennings Coffee only went out there to take a drink of whiskey?

A. I don't remember.

Q. Do you deny it?

A. I don't deny it; I don't remember telling him.

Q. Didn't you tell him that the reason you went out there to take a drink of whiskey was because you didn't want to be seen in town with Jennings Coffee?

A. I'll have to give you the same answer.

Q. Did you, or did you not say it?

A. I don't recall it.

Q. You not denying it?

A. No, sir.



*William Ray Fouts, Jr.*

Q. Not affirming it?

A. No, I'm not.

Q. You remember talking with Capt. Allman?

A. I remember him asking me about the robbery, and I distinctly remember telling him I do not know, and that was the length of our conversation.

Q. What?

A. I was kept out there for some time.

Q. Talked to you about being out there?

A. He did.

Q. You gave him the reason for going out there?

A. No, sir.

page 199 } Q. You deny that?

A. I don't deny it, but I don't remember.

Q. You said "No"; you denying it?

A. No, I'm not denying it.

Q. You're not denying, and not affirming it, but you did have quite a little conversation?

A. Yes, sir; he questioned me for quite a while.

Q. And you had been with Jennings Coffee on Christmas Eve night, you say. Now, you denying that you went to Pulaski with him on Christmas Day? Are you denying that?

A. No.

Q. You not denying it? Did you say it? Did you tell Capt. Allman you went to Pulaski with Jennings Coffee on Christmas Day? Didn't you tell him where you went, what happened? Come on now and answer the question. Where was this interrogation at? Interrogation right down here.

By Mr. Messick: If I might interpose just an objection. Just a minute, Mr. Cuddy. If there's any written statement, it would be the best evidence.

By Mr. Cuddy: If your Honor please, I have a right to examine the man.

By the Court: I heard nothing about a written statement. Certainly in evidence on cross examination. It is proper. Go ahead.

By Mr. Messick: If it was a written statement as to their conversation?

page 200 } By the Court: Nothing about a written statement.

By Mr. Messick: I'm asking if there is a written statement.

By the Court: He's on cross examination.

By Mr. Cuddy: Mr. Messick put him on the stand for his

*William Ray Fouts, Jr.*

witness. He certainly ought to remember. Let you have him now, and tell what he said.

By Mr. Messick: If your Honor please, just happens I didn't put him on the stand, and I don't—I wanted to state the basis of my objection, your Honor. And the basis of my objection is, if there's any written statement taken from a man, the written statement is the best evidence, and if you are going to examine him in regard to it, he should be shown the written statement.

By Mr. Cuddy: Did I ask him any question about written statement?

By Mr. Messick: I'm now inquiring whether the Commonwealth has in its possession any written statement? That is the best statement; permanent recollection of conversation, good or bad, and statement in black and white.

By the Court: Go ahead.

By Mr. Messick: I except.

page 201 } By Mr. Cuddy:

Q. Now, I'm talking about—repeating the question to you: did you tell Capt. Allman that you and Jennings Coffee went to Pulaski on Sunday, Christmas Day, went up there together; this conversation took place when you, Capt. Allman and Mr. Bolling, the Chief of Police of Pulaski—Police Capt. in Pulaski—were in Pulaski jail; you remember that?

A. I remember Capt. Allman being there.

Q. You remember talking to him?

A. Yes, sir.

Q. You remember whether or not you made that statement to him?

A. No, sir; I don't remember.

Q. Did you make that statement?

A. I don't remember.

Q. Did you go to Pulaski on Christmas Day with Jennings Coffee?

A. I don't remember.

Q. Don't remember? All right. Now, you were also questioned in the Police Dept., City of Roanoke, by Capt. Allman, were you not?

A. Yes, sir.

Q. You were also permitted to see your wife in the interrogation room, weren't you?

A. Yes, sir.

Q. You did talk to your wife, didn't you?

*Dorothy Coffee.*

A. Yes, sir.

Q. And didn't you tell her not to make any  
page 202 } incriminating statements, your lawyer told you  
          } to keep your mouth shut? Didn't you make that  
statement?

A. Not in those words; no, sir.

Q. All right, repeat it in the words you made the state-  
ment.

A. I told her Mr. Lanham was handling my case, and he  
would do all the answering of questions.

Q. Told her not to make any incriminating statements?

A. I told her not to make any statements except to Mr.  
Lanham.

Q. Ask you this: When Deputy Sheriff Lynch arrested  
you, didn't you tell him you were out there looking around?

A. I don't remember my exact words.

Q. You don't remember them? Stand aside.

DOROTHY COFFEE,

a witness of lawful age, after being duly sworn, testifies as  
follows:

DIRECT EXAMINATION.

By Mr. Messick:

Q. Mrs. Coffee, I believe you are the wife of Jennings  
Coffee, are you not?

A. Yes, sir; I am.

Q. How long have you all been married?

A. Five years, Labor Day, September, '56.

Q. How long?

A. Labor Day, September of '56, will be five years.

Q. September will be five years? Mrs. Coffee I believe  
you and your husband lived in Norfolk for some  
page 203 } years, did you not?

A. Yes, sir; we have.

Q. When did Mr. Coffee come to Roanoke to go to work  
for the General Electric plant, Radford General Electric  
plant?

A. Sir, he come in the month of November.

Q. Did he work for the General Electric plant?

A. He did.

Q. Until what time?

A. 'Till the month of December.

*Dorothy Coffee.*

Q. And where did he go to work then?

A. For the Roanoke Sill Co.

Q. And where did he work?

A. At Salem factory; I'm not acquainted with Roanoke. But I know it's called the Salem factory.

Q. Working down at the Lone Star Cement factory?

A. Um-hum.

Q. Did your husband work every day at the Lone Star Cement Co. from the 7th of December, until the 24th day of December, with the exception of one day?

A. My husband worked every working day, except Saturdays and Sundays, and one Monday that he was sick. He had a cold, and I treated him for that cold, which was on a Monday.

Q. And that is the only day he missed from work, then?

A. In the month of December.

Q. The day that he had the cold, and you treated him for that? Mrs. Coffee, you all have any red Ford automobile, or any red car of any kid?

A. We have no red car of any kind. I'm partial to blue, and every time we buy a car that would be blue.  
page 204 }

Q. What kind of a car do you have?

A. Right now we have a '54 Skyliner Ford, which is white and blue.

Q. Mrs. Coffee, let's come down to the 24th day of December, 1955, and I want you to tell the Jury what your husband did on that day, and what you did as far as you can remember. I don't expect you to remember everything that occurred that day. Tell the Jury what you did on that day.

A. Well, this is Christmas Eve day, now, the 24th. We got up in the morning, had breakfast with the children, and Jennings—

Q. How many children?

A. I have two boys; one 16 months old, and a 2-year-old boy. Jennings asked his mother what she would like to do that day, and she said she wanted to get a wreath for Jennings' father, who had been dead for a number of years. I said, "I don't know Roanoke, but I remember the flower shop named Hodges." We bought a wreath.

Q. Who went to get the wreath, now?

A. My mother-in-law, my two boys, my husband and myself.

Q. And you went and got a wreath? And what did you all do with the wreath?

*Dorothy Coffee.*

A. We went to the cemetery, and placed it on my father-in-law's grave. We got home around noon, as I remember—time to eat. I fixed lunch for the children. Then we asked my mother-in-law to take care of the children, while we went for some last-minute Christmas shopping. Jennings and I were in town and bought a few things, last-minute shopping;

then we went over to Mr. and Mrs. Shumate's  
page 205 } home to give them some Christmas presents. We got home, I'd say, around 4:00 or 4:30. Were there about 10 minutes, and Mr. Fouts came over, and Jennings asked him if he would help him to make a base for our Christmas tree, which he did. And he had something to eat, and he went home, which I would say was around 7:00 or 7:30, maybe 8:00 o'clock; I can't tell you definitely; it was around 7:00 to 7:30 or 8:00 o'clock. After that, Jennings's mother and I and the children stayed up a while, and we fixed the tree. Jennings and I, and his mother went to bed, and we went to bed after the tree was trimmed. That's all I can tell you about Christmas Eve day.

Q. And that was what Jennings Coffee did on Christmas?

A. And I, together.

Q. You were with him the whole day, were you?

A. Yes, sir; I was.

Q. On Christmas what did Jennings—what else do you recollect?

A. Christmas morning the children—one boy is old enough to walk up the steps—he woke Jennings up, to come down and open up the Christmas presents. We stayed home and opened up presents, and after that the family came over to eat. And Jennings has a brother that works for Norfolk & Western; he's the only one that didn't come to dinner—he had had an emergency call. Mr. Fouts and Jennings—Mr. Fouts came over about 5:00 o'clock—went to deliver this food to Norfolk & Western place where his brother works.

Q. Part of that Christmas dinner, wasn't it?

A. Yeah.

page 206 } Q. And he was unable to come?

A. He had emergency call to go to work, but rest of the family was home to dinner.

Q. About how long was Jennings gone?

A. Wherever his place Norfolk & Western—not far from the house. He was back in 20 minutes.

Q. What else did he do that day, as well as you recall?

A. Play with the children like any father would do on Christmas Day.

*Dorothy Coffee.*

Q. Now, did—Christmas night, the 25th of December, did you all have any guests, or anything in—

A. Yes, sir; we had Mr. and Mrs. Fouts over with their children. They stayed the night, and they went home and came back the 26th, and stayed until about midnight, when the policemen came. They had had the fire going the 26th, and intended to stay the night of the 26th, if they hadn't been called out.

Q. You mean—you say they had a fire? What kind of fire did they have?

A. Something about their stove had blown up, and the soot and everything. Couldn't have no heat in the house, and we asked them to stay over this night, and were playing records until about 12:00 o'clock, when the police officers came to our home.

Q. You were there playing records about 12:00 o'clock, when the police officers came in your home?

A. Yes, sir; they did.

Q. Did those officers search this home?

A. Those officers, which were quite a few of them—six or eight of them—I never seen so many officers at  
page 207 } one time, and kind of scared me a little, and Jennings didn't have no coat, and he said he had to go upstairs to get the coat, and police officers accompanied him upstairs. And I reached in the drawer to get some money, and he asked me what I was reaching for, and I told him, as far as searching, that was all right, other than asking my mother-in-law. They could search the house if she had no objection.

Q. That your mother-in-law?

A. Yes. (Indicates)

Q. You all have any objections to searching home?

A. We had no objections, and one of them asked if they wanted to go ahead, they didn't care; but he asked me—the officer—what I took out of the drawer, and I told him, some money.

Q. Now, there's in evidence here that Jennings was arrested on 12:10 on the morning of December 27th, and he was confined in jail in Pulaski until January 23, 1956, at 5:30 P. M.; is that correct?

A. Yes, sir.

By Mr. Messick: You may cross examine, Mr. Cuddy.

*Dorothy Coffee.*

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You the wife of Jennings?

A. Yes, sir.

Q. Now, Jennings was arrested on the early morning of the 27th of December?

A. (Witness nods head).

Q. At the time Fouts was there?

A. Yes, sir.

page 208 } Q. Fouts had been there on Christmas?

A. He had come over for something.

Q. He had also been over on Christmas Eve, then?

A. He was there Christmas Eve until around 7:30, putting the base of the Christmas tree together.

Q. Wasn't he there quite late in the evening, or early morning?

A. He wasn't there late in the evening; I'd say—

By Mr. Messick: I'd like to ask Mrs. Coffee one question I overlooked.

By Mr. Cuddy: Go ahead.

By Mr. Messick:

Q. Did Mr. Coffee occupy the same room with you?

A. Yes, sir; he does.

Q. Did you all, or did you not sleep in the same bed?

A. Yes, sir.

Q. On Christmas Even<sup>g</sup>, December 24th, between the hours of 9:15 and 9:30, and 1:15 in the morning, was Jennings Coffee away from you at all?

A. No, sir.

By Mr. Messick: That's all.

By Mr. Cuddy:

Q. Well, if the Fouts were there on Christmas Eve—

A. Christmas Eve, Mr. Fouts.

Q. What?

A. Mr. Fouts.

page 209 } Q. Mrs. Fouts?

A. No.

Q. You sure?

A. Positively.

Q. Positive that the Fouts weren't at your home?

*Dorothy Coffee.*

A. Mr. Fouts, or Mrs. Fouts?

Q. Both of them.

A. Both of them weren't there. Mr. Fouts, Christmas Eve, was.

Q. Mrs. Coffee, now when the officers came up there and arrested him, and officer with you, and Mr. Coffee upstairs, you reached in and got some money—and you say the only searching they did—and pulled out quite a roll of money?

A. I believe it was \$80.

Q. \$100 bill there, wasn't it?

A. And a \$100 bill.

Q. A \$100 bill was a part of it?

A. Um-hum.

Q. Then the officers arrested him, and brought him on back?

A. (Witness nods head).

Q. You recall his remark to you when the officers started taking him away?

A. He said, "Keep quiet. Don't say nothing, honey." I tell you why he said that—

Q. Just answer my questions, and I'll give you a chance to make any explanation you want.

By Mr. Messick: Just a minute, if your Honor page 210 } please—

By Mr. Cuddy: All the opportunity to explain.

By Mr. Messick: All right. Let her explain now. She started to answer the question, and explain. I think she has a right to continue the explanation.

By Mr. Cuddy:

Q. All right. If you wish to make your explanation, make it now.

A. He said, "Keep quiet. Don't say nothing." July of last summer I had lost a baby here in Roanoke. Jefferson Hogan and Jennings knew I was pregnant, and thought I was getting excited because there were so many officers in the house, so he told me to keep quiet.

Q. How do you know what Jennings thought?

A. I know my husband. Don't you know sometimes your wife's thoughts?

Q. I'm not on examination. You are.

A. I'm trying to explain best I can.

Q. Is that your explanation?

A. Yes, sir.



*Dorothy Coffee.*

Q. Now Mrs.—weren't the words he told you, statement to you, "Stay away from headquarters, and keep your damn mouth shut"?

A. No, sir.

Q. Isn't that what he said?

A. No, sir.

Q. You deny he said that?

page 211 } A. I deny he said that to me.

Q. You deny his making that statement? He

talked to you about this case, didn't he?

A. Yes, he did.

Q. You made the statement to him that on Christmas Eve, and Christmas, there was quite a bit of drinking going on there?

A. There was some drinking.

Q. You and the Fouts were having Christmas, and quite a bit of drinking was going on?

A. I don't know—say the Fouts, because I don't drink.

Q. You told them they were celebrating there in the holidays, and the Fouts were there and quite a bit of drinking went on.

A. There couldn't be quite a bit of drinking. I don't like drinking people. My mother-in-law don't allow it.

Q. I asked you if you made the statement to Capt. Allman?

A. I said we had a few drinks in the house.

Q. You deny that statement?

A. I deny that.

Q. That's all I want to ask.

(Court takes a five-minute recess).

By Mr. Cuddy:

Q. Mrs. Coffee, one other question. Mrs. Coffee, I understood you to say one of the places he went on Christmas Day was out to Mr. Sutherland's home for the purpose of delivering Christmas presents?

A. Shumate's home.

Q. Mr. Shumate is the man who testified here?

page 212 } A. He's been in court.

Q. One who testified taking Christmas presents out there?

A. To him, yes.

Witness stands aside.

MRS S. A. COFFEE,  
a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Messick:

Q. Mrs. Coffee, what was your husband's name?

A. His name was Alathiel; everybody called him Laither, in Roanoke. His name was Alathiel; it's a Bible name.

Q. That's what they called him?

A. Yes.

Q. What business was he engaged in?

A. Transfer and furniture business.

Q. How long have you all lived in Roanoke?

A. We came here in '24, settled here in '24.

Q. Lived here ever since? Jennings Coffee is your son?

A. Yes, sir.

Q. How old are you, Mrs. Coffee?

A. Me?

Q. Yes.

A. I was 74 fifth day of last August.

Q. Is Mr. S. A. Coffee dead?

A. He's been dead five years. He died in 1950, October 5th.

Q. Mrs. Coffee, where is your home?

A. My home?

Q. Um-hum.

page 213 } A. 1518 Patterson Ave., Roanoke.

Q. How long you all lived there?

A. 12 years.

Q. Has—during December of last year was your son and his family living in your home?

A. Yes, sir; they were.

Q. Was your son Jennings working?

A. Yes, sir.

Q. Where was he working, Mrs. Coffee?

A. Well, he worked up at the electrical place, where they're building up there.

Q. General Electric?

A. General Electric. He worked there until sometime in the first of December. I wouldn't know exactly the date that he was transferred to the Cement Plant.

Q. That was Lone Star Cement Plant?

A. Yes, sir.

Q. Did he work, or go to work every day, or not?

*Mrs. S. A. Coffee.*

A. He went with his lunch every day, and he came in and he looked like he had been working, in the afternoons.

Q. Do you know, whether any time during December, he had been sick, or not?

A. Yes; he had a very bad cold, and one day he did not work. He was very sick, and he taken penicillin, and he went to work then. He really shouldn't have gone, but he went.

Q. What time would he go to work in the mornings?

A. He usually left home—after he went to the  
page 214 } Cement Plant—he didn't have to go as early up  
at this other place, but he left home about six; that  
give him about an hour—

Q. Leave home about six, and about what time would he return?

A. About six o'clock in the evening; why, anywhere from a quarter to six, to six—about that time.

Q. Jennings have any red automobile?

A. No, sir; he doesn't; never had.

Q. Ever seen him in a red automobile?

A. No, sir; I haven't.

Q. Let us come down to 24th day of December, which is—

A. Christmas Eve.

Q. Who called day before Christmas, or night before Christmas, or Christmas Day—where were you on the 24th of December?

A. At home pretty much in the morning; I suppose it must have been around 11:00; I wouldn't know exactly the time we left and went over to Hodges' florist, and bought a wreath. My son and myself, my daughter-in-law and the children, and we went from there to the cemetery and put the wreath on my husband's grave.

Q. Tell the—then what else you know?

A. Then we came back home and had lunch, and Tony—his wife—and himself, went down town, and said they had to do a little shopping, and they also told me they were going over to Mr. Shumate's to take some gifts they had gotten for them.

Q. Jennings do any shopping for you while he was downtown?

A. Yes, they did.

Q. Did they get what you had instructed them to get, or told them to get?

page 215 } A. I didn't mean that he done any shopping that  
day for the house, but they bought me a present,  
was all.

Q. Well, approximately what time Jennings and his wife leave to go shopping after lunch?

*Mrs. S. A. Coffee.*

A. Well, it must have been around 1:00 o'clock, pretty soon after. We came back to the house. Just as soon as we had sandwiches and coffee, and they went on, right on then. I wouldn't know exactly what time, for I didn't pay any attention exactly to the time.

Q. Nobody expected you to?

A. I wasn't exactly; that's right.

Q. Approximately what time did they return that day, if they did return to the house?

A. Must have been around 4:00 or 4:30, and why I say that correct time—my sister had a stroke—she's living with me—she's 80-some years old, and she had—we had just sent her to the hospital, and they taken her to the hospital; it was just about 4:00 or maybe 4:15 when they left the house; the ambulance came for her.

Q. Your sister had a stroke, you say?

A. Yes, sir.

Q. And she was taken to the hospital about 4:00 or 4:10 in an ambulance?

A. Yes, sir.

Q. What hospital did she go to?

A. Jefferson.

Q. And what is your sister's name?

A. Mrs. E. J. Massey, or Mrs. Ella Massey.  
page 216 } Q. Had Jennings and his wife returned at the time she was taken to the hospital?

A. They came right after, just pretty soon after the ambulance pulled out; we hadn't gotten off the porch. I had to stay home with the children, and my daughter-in-law went to the hospital with my sister and son.

Q. Your daughter-in-law went to the hospital?

A. With my sister; they followed the ambulance in.

Q. Who you mean, Jennings and his wife went?

A. No, no; my Charles and his wife, my oldest son.

Q. Charles, your oldest son?

A. Yes.

Q. His wife went to the hospital with your sister?

A. Yes.

Q. What did Jennings and his wife do after they returned as well as you recollect?

A. Well, they just hung around the house there. We had—we didn't have right then—I started to say we had lunch; we didn't have lunch until around six, I guess. And they talked, and—like people will do, but he was there.

Q. Anything done about a Christmas tree?

*Mrs. S. A. Coffee.*

A. Later, after we had lunch, they—

Q. Call it lunch, or dinner, or supper.

A. Well, we just had lunch; I didn't feel like cooking, and I didn't do it. Sliced some ham, and gave them coffee and sandwiches.

Q. We call that sort of a late snack.

A. Well, that's what they had, and they went page 217 } —Mr. Fouts came down there, and he and Jennings went in the basement and made—you'd call it a platform, something for the Christmas tree to stand in; put a hole in this for the tree to stand in, and put the tree on that, and brought it up in the house, and put it up. And Mr. Fouts went home. After—shortly after that, I don't know exactly what time, not very long, it must have been around, I'd say, quarter till 8:00, or 8:00 o'clock, something like that, maybe not quite 7:30 to 8:00—

Q. Now, when you put the Christmas tree up, anything done to that Christmas tree?

A. *Bed* pardon?

Q. Was anything done to it?

A. Nothing but putting it up, until he and his wife trimmed it afterwards, between then and time I went to bed before they had finished the work downstairs.

Q. You went to bed before they had finished decorating the tree?

A. Yes, sir; yes, sir.

Q. About what time did you go to bed, Mrs. Coffee?

A. Well, it must have been around 10:00 or 10:30; I don't know the exact time. I was tired enough to go, and went just as quick as I could go.

Q. And when you went to bed they were still decorating the tree?

A. Yes.

Q. Now, Mrs. Coffee, where do you sleep in your home?

A. I sleep on the first floor.

Q. Where did Jennings and his wife sleep?

page 218 } A. They slept upstairs. They went upstairs, well, I don't know exactly what time, but I hadn't gone to sleep. It must have been—it's kind of hard for me to go to sleep; I can rest, but I don't sleep very well. But I heard them go up, and it must have been around, I'd say, 11:00 or 11:30, something like that, from the time I had laid there until they come up.

Q. Now, in order to get to their room, do they have to use the stairway?

*Mrs. S. A. Coffee.*

A. Yes; my bedroom downstairs is, say here (Gestures) and the stairway comes up there, this way; platform is right there, and two or three steps goes up into the hall. Go right up; it's almost impossible for anybody to go up the steps without awakening you.

Q. In other words, the stairway is right by your bedroom as you walk up those steps?

A. Yes.

Q. And of course, your best remembrance of the time it was, in the neighborhood of 11:00 or 11:30, that you heard Jennings and his wife?

By Mr. Cuddy: If your Honor please, I think that's a question she should answer.

By the Court: That's right.

By Mr. Messick: Repetition, Judge. She said it was around 11:00.

By the Court: That's correct, she's already said that.

page 219 } By Mr. Messick:

Q. Now, Mrs. Coffee, did anyone leave the upstairs portion of that house any time during the night that you know of?

A. No, sir; they did not.

Q. I want you to tell the Jury whether or not if your son Jennings had of left that house, would you have heard him, or not?

A. I have no idea but what I would have heard him if he had come down the steps; if he had left the house in the night.

Q. What time did you get up Christmas morning?

A. I got up about 6:00 o'clock; I do every morning; anywhere from 6:00 to 6:15. I don't sleep late any time.

Q. When you got up on Christmas morning, was your son, Jennings, at home, or not?

A. Yes, sir.

Q. Was his wife there?

A. Yes, sir.

Q. Children there?

A. Yes, sir.

Q. Tell the Jury what happened there Christmas morning, after you got up.

A. Well, most of people know what the routine is. You get up and make breakfast, and then straighten up everything, of course, and so that was what happened there. This house had to be straightened up, and after we had breakfast,

*Mrs. S. A. Coffee.*

why, that was the next thing, of course, to be done. By that time, it was pretty well on to noon.

Q. Well, Christmas morning was there anything else done?

A. The Christmas presents were opened, of page 220 } course. And that was about all. We made preparation for our dinner.

Q. Now, I want you to tell the Jury if you all had Christmas dinner at your home that day.

A. Yes, sir.

Q. Approximately what time did you have it?

A. Well, I suppose around 2:00 o'clock, because we didn't have very early dinner; we had late breakfast, and I reckon, I would say something about that; I wouldn't know exactly what time we had that. I know it must have been later than that, because my son—of course he had been called before—the oldest boy is a conductor, and he was called to work, emergency call, and he had planned to be there for dinner. It must have been around 4:00 o'clock when we had dinner. I wouldn't be real sure.

Q. That's you son, Charles?

A. Yes, sir.

Q. He'd planned to be there?

A. Yes, sir; he had. But he was called—some men off, and he just had to be—to go out; felt like he did—duty to his company, of course.

Q. Well, was Jennings there for dinner?

A. Yes, sir; they were all there, except Charles.

Q. What arrangements were made about Chris—Charles having his Christmas dinner?

A. Well, Jennings, Mr. Fouts and my son-in-law, Bill Blackwell—

Q. What was the name?

A. Bill Blackwell. They got in the car and taken the dinner over to Charles, over on the yard—conductor. page 221 } Q. Would you mind, the best you can, tell the Jury approximately what time it—that was?

Q. Well, that was—they taken that over—they call the time they eat on the railroad, they say "Taking their twenty," and we tried to get his over there in time for him to have it—I reckon about 7:00 o'clock when they usually take their "Twenty."

Q. But how long was Jennings gone?

A. Oh, that; he wasn't gone very long, just a short distance from my house, as you know, over to the railroad yard, and

*Mrs. S. A. Coffee.*

they just went over and came back, and then the children were all there for a while, and they all went home then.

Q. You all went?

A. To their homes. Mrs. Blackwell and her husband and daughter was there, and Charles' wife and two children.

Q. Was Charles there? Did he come?

A. No, they—his wife and children went home. He didn't get in until his eight hours was up there—three to eleven, I believe it was.

Q. He worked three to eleven?

A. Yes.

Q. Christmas night, did your son Jennings and his family stay at your home?

A. Yes, sir.

Q. Mr. Fouts and his wife and children stayed there Christmas night?

A. They only had one child with them.

Q. One child?

A. Hum? Um-hum, one little boy at their  
page 222 } grandmother's, they said.

Q. And had little girl with them?

A. Yes.

Q. Had they had Christmas dinner with you?

A. Yes.

Q. Fouts and his wife and child was invited there for Christmas dinner? And they spent Christmas night?

A. Yes.

Q. Coming down to Monday after Christmas, the day after Christmas, which would have been the 26th day of December, you recall what happened? Your best recollection, Jennings was at home, where he was, or anything about it—just want to know?

A. The 26th?

Q. Yes.

A. Yes, he was at home, and his wife helped to clean up; I don't know what it was—an explosion of some kind, flue dust and soot, rather, not dust, on the things in the house, and they had quite a bit of water in cleaning up—made the floor and all, damp. The Foutses come back down to my house that night. I told Jennings, I said, "They might—baby might take a cold, even if they could protect themselves. So bring them down here. I have a spare bedroom." And was glad to have them come that night. They meant to spend the night, but Mr. Fouts was deprived by the officers—came in there—wife and little girl spent the night.



*Mrs. S. A. Coffee.*

Q. Officers come to your home that night, Mrs. Coffee?

A. On Monday night. They certainly did. I say "the officers" did; not just an officer.

Q. I see. About how many of them come, as page 223 } well as you recollect?

A. The hall was standing full. I was so excited when I opened my bedroom door. I heard the talking, and I knew it wasn't my folks there—voices, and I thought, "What has happened?"

Q. I just asked you the question, if they came there?

A. They certainly did.

Q. Number of them in the hall?

A. Bed pardon?

Q. And a number of them in the hall?

A. I don't know how many was there.

Q. Anything said by anyone about searching your home, or permission to search your home?

A. No, sir; not at that time. They taken the children on down, brought them on down here. And one of the officers—I don't know his name—two of them, it was two cars came back up and parked in front of my house. One came, and a little while later another came, and there was four officers, two in each one of those cars. And one of the gentlemen came to the door and knocked, and we, of course, was still up. Tony was down here—that's Jennings' wife.

Q. You know if they took Jennings' wife to jail with him?

A. They brought her down here for some purpose I don't know. I'm just telling you what they did. She came with them, and I was worried about her, of course. So, and of course, about him. I don't know what was what, but, anyway, this gentlemen—I don't know whether I'd recognize him even if I saw him now, or not; I don't think so—police officer to me, and I don't pay much attention to what they

look like. He knocked on my door, and I answered page 224 } the door, and he asked me could he come in, and

I said, "Certainly, come in." And he said, "Mrs. Coffee, is that your bedroom?"—he had seen me come out of there when the officers came to arrest the family. I said, "Yes, it is." He said, "I'd like to talk to you," and I said, "Come on in." And he did. And he stood there against the flue, and I sit down on the cedar chest. Then after he stood there for a little bit, he asked me if I—he said, about the best I remember that question was if Jennings had any firearms there. I said, "Fire arms?" He said, "Yes," and I said, "Well, he has a revolver. I don't know

*Mrs. S. A. Coffee.*

whether it's here, or in the car, or where it is." I said, "He does have a revolver," and, "if that's what you mean." And he said, "Well, Mrs. Coffee, does he have any other guns around here?" And he said to me then—I said, "Well, no, that's all that I know of." And he said, well—you know, he told me what place broken into. I don't know whether he said the night before, or when. It had already been broken into. I said to the man, I said, "Well, do you think that Jennings would have done that?" He said, "Mrs. Coffee, this is just a question, just a routine. We don't know who done it." He was just as nice as he could be. And, of course, I had no idea, but I told him, though, I said, "If you think there's any other guns here, you are at liberty to search this home from the attic to the basement. I'd be glad for you to." I think them are about the words were used, and he said, "No, he'd take my word for it, and he did not search the house.

By Mr. Messick: Cross-examination.

By Mr. Cuddy: You want to?

page 225 } By Mr. Lanham: No.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You are Jennings Coffee's mother?

A. Yes, sir; as you well know.

Q. Yes, ma'am. Mrs. Coffee, the Foutses are fairly frequent visitors with Jennings and his wife, aren't they?

A. They come occasionally, not too often. On Christmas time they was there, for Mr. Fouts and Jennings, of course, work together.

Q. *There* were there on the night of the 26th, early morning of the 27th, weren't they?

A. Yes, sir.

Q. They had been there the day before?

A. Yes, sir.

Q. They had been there the day before, hadn't they?

A. Just the two days; they wasn't there three days.

Q. All right. That's all, Mrs. Coffee. Stand aside. No more question.

A. No more questions?

Witness stands aside.

(Court takes a short recess.)

K. E. ALLMAN,  
a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

page 226 } By Mr. Cuddy:

Q. Capt. Allman, are you Captain of Detectives, City of Roanoke?

A. Yes, sir.

Q. In this investigation have you talked with Mrs. Fouts?

A. Yes, sir.

Q. Have you talked to Mr. Fouts?

A. Yes, sir.

Q. Talked to both in Roanoke, and in Pulaski, Va.?

A. Yes, sir.

Q. Capt. Allman, now when you talked to Mr. Fouts after he was arrested, what did he tell you why he was out on Buck Mountain Road with Jennings Coffee?

A. He told me he went out there to take a drink.

Q. Did he tell you why he went out there to take a drink?

By Mr. Messick: Just a minute, if your Honor please. This conversation, or any other in this respect, would be admissible against Mr. Fouts, and not against Mr. Coffee.

By the Court: That's understood.

By Mr. Cuddy:

Q. Now, what did Mr. Fouts say he went out there to take a drink for?

A. Yes, sir.

Q. And why did he say he went out there to take a drink?

A. He said he went out there because he did not want to be seen in Roanoke City with Jennings Coffee,  
page 227 } afraid he would get picked up.

Q. Did you then overhear a conversation between he and his wife later on, in the interrogation room in the City of Roanoke?

A. Yes, sir.

Q. What statement did he make to Mrs. Fouts?

By Mr. Messick: Wouldn't that be a confidential communication between husband and wife?

By Mr. Cuddy: When both have taken the stand, and both have been questioned in the same thing.

*K. E. Allman.*

By the Court: I think it's proper evidence.

By Mr. Messick: All right, your Honor; either you are right, and I am wrong—

By Mr. Cuddy:

Q. What did he say to her about any statement?

A. He told her not to make any statements; said he had been advised by his lawyer not to make any statements; that he had already talked too much about it in the Pulaski deal, and that his lawyer would have gotten him out on a writ of *habeas corpus* if she had kept her mouth shut, and not to make any statements, and not to forget to tell that he was at home Christmas Eve.

Q. Did you talk to him in Pulaski with reference to his whereabouts on Sunday, Christmas Day?

A. Yes, sir.

Q. Who was he with?

page 228 } A. Yes, sir.

Q. Who did he tell you he was with on Sunday, and where did he tell you they went?

By Mr. Messick: I might at this point ask Captain a question.

Q. Take a written statement from him, Captain?

A. No, sir; I didn't take a written statement.

Q. O. K.

By the Court: Answer the question.

A. He said he went to Pulaski with Jennings Coffee on Sunday night, Christmas, December 25th.

Q. And was that statement also made in the presence of Mr. Steve Nelson?

By Mr. Lanham: I object. Let him say who it was in the presenec of. This is his cross-examination.

By Mr. Cuddy: All the proper foundation has been laid, and that's a proper way to ask the question.

By the Court: Go ahead.

By Mr. Cuddy:

Q. Statement made in the presence of Mr. Steve Nelson?

A. Yes, sir.

Q. And I believe one other police officer?

A. Two other police officers.

*K. E. Allman.*

Q. Of Pulaski County?  
page 229 } A. Yes, sir.

Q. In the jail in Pulaski, Va.?

A. Yes, sir.

Q. Now, did you have a talk with Mrs. Fouts in Police Headquarters in the City of Roanoke?

A. Yes, sir.

Q. Was that sometime after the arrest on February 11th?

A. Yes, sir.

Q. Do you know approximately the day you talked with her?

A. It was within a few days after February 11th.

Q. After February 11th?

A. Yes, sir; just a few days, three or four days later.

Q. Did she tell you, make a statement, where she and Mr. Fouts were on Christmas Eve night, evening?

A. Yes, sir.

Q. And where did she say they were?

A. Over at Jennings Coffee's house, fifteen hundred block, Patterson Ave.

Q. Say to you also over on the 26th?

A. Yes, sir.

Q. And there at the time of the arrest on the 27th?

A. That's right.

Q. Did she make any statement to you with reference to what, if anything, her husband Mr. Fouts, and Jennings Coffee, did that evening?

A. With reference to Saturday night, December 24th, Christmas Eve, she said they left, and they were gone for a while. Said she thought they went to get a loaf of bread, and she didn't know exactly where they went, or how  
page 230 } long they were gone.

Q. On Christmas Eve?

A. Christmas Eve.

Q. Now, did you have some conversation with Mrs. Coffee about that case?

A. Yes, sir.

Q. Did she make any statement to you with reference to the people that were in her—where she was living on Christmas Eve, and Christmas Day, and drinking?

A. Yes, sir.

Q. What did she say about that?

A. She said the Fouts were over, and quite a bit of drink-

*K. E. Allman.*

ing; said she didn't pay much attention to time, she couldn't relate the exact time, or the hour they were there, or just exactly what they did during that time.

Q. Now, when you talked to Mr. Fout about the trip out on Buck Mountain, what did he say about the guns?

A. He denied it. I reminded him of the Deputy Sheriff's taking a gun from the pocket of Jennings Coffee, and finding the other guns there, and seeing Jennings Coffee dispose of the guns on the side of the road, and he denied that he knew anything about the guns; said he didn't see Jennings Coffee with the guns, and didn't hear a shot fired.

Q. Those statements made to you by Fouts?

A. Yes, sir.

By Mr. Cuddy: All right, sir. Take the witness.

#### CROSS EXAMINATION.

page 231 } By Mr. Lanham:

Q. Captain, why didn't you report this down in writing? Why didn't you put it down in writing, and get him to sign it?

A. I dictated the remarks, and I did have it in writing.

Q. Where are those remarks now, you're talking about?

A. I have—

Q. No signed statement?

By Mr. Cuddy: No signed statement.

By Mr. Lanham:

Q. In other words, you have hundreds of these cases?

A. Right many.

Q. Beg pardon?

A. Handle a lot of them.

Q. And you're relying on what your memory—for all of them, like this, without making any record?

A. I made a record of it.

Q. But you don't have a record now?

A. Yes, sir; I do have a record.

Q. You may have some record. Now, so far as telling the man to keep quiet and not make any statement, that's probably pretty good advice, isn't it, to get him locked up?

A. I don't know whether it is good advice, or not.

Q. It's good advice from the defendant's standpoint.

A. I was interested in knowing the facts.

*K. E. Allman.*

Q. Did you warn him, or tell him, you were—might use any of these statements?

A. Yes, sir; I told him what he was charged with.

Q. And that any statement he made might be page 232 } used against him?

A. Yes, sir.

By Mr. Messick:

Q. Captain, I suppose you all made a very thorough and extensive investigation in this matter, haven't you, sir? *Journied—*

A. We been doing the best we could on it, Mr. Messick.

Q. And of *couse*, I suppose you knew—and your Department used any legitimate means you could to try to solve this break-in, haven't you?

A. Yes, sir.

Q. That's all.

By Mr. Lanham:

Q. Did you, or your men search Mr. Fouts' house?

A. Some men in the Bureau did; yes, sir.

Q. When was the search made?

A. I don't have the date.

Q. Well, was it—you remember all these other things, places—as near as you can?

A. That was shortly after the—believe it was shortly after the arrest by the Pulaski authorities.

Q. Both of them took place within two days—one Christmas Eve, and Christmas night? It was immediately after that you searched Mr. Fouts' house? Did you find anything there, other than tools and a crowbar in his car?

A. Tool was found in his automobile while it was up at Jennings Coffee's house.

Q. That's that tool there?

page 233 } A. Yes, sir.

Q. Other tools there at the same time?

A. Everything taken out of his automobile, parked at Jennings Coffee's house.

Q. You said you found this hammer? Where is that?

A. I don't believe that was turned over to the Pulaski officers.

Q. And you don't have that?

A. And I'm not sure of that.

Q. The only thing you kept was a bar?

*K. E. Allman.*

A. Yes.

Q. You don't call that a bar?

A. Pinch bar.

Q. Isn't a pinch-bar a short bar, much heavier than that, with a heavy end?

A. Well, I've seen different kinds; one with a hook on the end, as a nail-puller.

Q. And they used the heavy one, isn't that right?

A. That's about the size of it. I have a pinch-bar about that size in diameter.

Q. You have?

A. Yes, sir.

Q. You have any tire tools in your car?

A. Yes, sir.

Q. Uh-hum. You have one to take tire off with?

A. Yes, sir.

Q. Does that look different than a tire tool—than some of these *guages* use?

Q. I realize there are various kinds of tire tools.  
page 234 } Q. I guess that's all.

By Mr. Messick: Question I overlooked to ask the Captain.

By the Court: All right.

By Mr. Messick:

Q. Captain, those guns were cleaned in an effort to remove the rust, at your directions, weren't they, sir?

A. They were; yes, sir. They were oiled to preserve the guns. The guns were in new condition when he brought them from out there where they were found, to the Detective Bureau, and a couple of the revolvers had very light spots of rust on it, and of course in handling the guns, with your hands and the perspiration, could possibly rust the guns, and they were oiled to preserve them.

Q. Your finger-print expert in the Department?

A. *Bed* pardon?

Q. I said, who is your finger-print expert in the Department?

A. We have several.

A. I'm one; Griggs, Cochran, Coleman.

Q. Didn't realize you were finger-expert, Captain. Thank you, sir.

Witness stands aside.



STEVE SHELTON,

a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

page 235 } By Mr. Cuddy:

Q. Mr. Shelton, believe you are State Investigator?

A. Yes, sir.

Q. By the Commonwealth of Virginia?

A. Yes, sir.

Q. I believe you have assisted the Roanoke Police Department and the Pulaski Police Department in this investigation?

A. Yes, sir.

Q. You were up in Pulaski when Capt. Allman, here, talked to Mr. Fouts?

A. I was.

Q. You hear that conversation?

A. Capt. Allman talked to Mr. Fouts by himself, and then came out after a while, and said he'd like for me to come in; after that point, I heard the conversation.

Q. You hear Mr. Fouts make statement with reference to going to Pulaski on Christmas Day?

A. I did.

Q. And who did he say he went with?

A. He was with Jennings Coffee, and after he got in Pulaski, with Abie Hasson.

Q. Did he relate incidents or facts with reference to incident in Pulaski County?

A. He did.

Q. And told you at that time, and Capt. Allman, he and Jennings Coffee were in Pulaski on Christmas Day?

A. He did.

page 236 } By Mr. Cuddy: All right. Questions?

CROSS EXAMINATION.

By Mr. Messick:

Q. Mr. Shelton, a question or two I wanted to ask you. You are an Investigator, Police Department, in connection with matters of this kind, are you not?

A. Yes, sir.

Q. Did you go to Tidewater Construction Co. and investigate the record of work, record of Mr. Jennings Coffee?

*Steve Shelton.*

A. No, sir.

Q. Do you know who did that?

A. No, I don't.

Q. Did you obtain any information that that had been done, either by the Police Department, or Federal Bureau of Investigation?

A. No, sir. But their participation in this investigation was the part that took place west of Roanoke.

Q. I asked you if you obtained any information in regard to the Tidewater Construction Co.?

A. No, sir.

Q. Investigate?

A. No, sir.

Q. All right, sir. Now, Mr. Shelton—

By Mr. Cuddy: If your Honor please, call the Court's attention—this man was put on as a rebuttal witness for the specific purpose of Fouts' statement up there, and as to any other matter they bring out. He is a witness of the defense.

page 237 } By the Court: I understand.

By Mr. Messick: Glad to make him a defense witness.

Q. Mr. Shelton, did you investigate the 1954 blue Oldsmobile that belonged to Mr. Hasson, to determine whether or not that car was wrecked on December 15th?

A. I didn't have any reason to check into it until after Christmas. I do know it was not in the possession of Mr. Hasson from Christmas up to the week prior to the time I arrested him *him* for the Police Department for the City of Roanoke, and that's been about a month ago.

Q. Do you know it was in the Wytheville garage being repaired?

A. I didn't know that until maybe a week or two before the arrest.

Q. But you made an investigation and found that to be true, didn't you?

A. Yes, sir.

By Mr. Messick: Stand aside, sir.

R. L. MOORE,

a witness of lawful age, after being duly sworn, deposes as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Police Officer R. L. Moore?

A. Yes, sir.

page 238 } Q. Mr. Moore, I believe you participated in the arrest of Mr. Fouts and Mr. Coffee?

A. Yes, sir.

Q. On the night of the arrest at Coffee's home, you hear a statement made by Mrs. Coffee—by Jennings Coffee, to his wife, about coming to the Police Department?

A. About the Police Department?

Q. Coming to the Police Department?

A. As we were leaving the building, he said, "You stay at home, and keep your damn mouth shut and don't come to headquarters."

Q. And then, did Mr. Coffee ask you about the arrest?

A. As we was coming down in the patrol car, Sgt. Lemon and myself—

Q. I believe he arrested him on a teletype message from Pulaski?

A. We did.

Q. When you got to the Police Department, you show him, or read him that teletype message?

A. Sgt. Lemon told him what we was bringing him down for.

Q. Was a teletype message?

A. Yes, sir.

Q. Read and exhibited to him?

A. Yes, sir.

Q. And what did he say at that time?

A. He said, "I don't care what rap you got, I can beat it."

By Mr. Lanham: Who said that?

A. Mr. Coffee.

page 239 } Q. I didn't get your name?

A. R. L. Moore.

By Mr. Messick:

Q. I don't care to ask you any questions—that's your recollection of what was said?

*George Burton.*

A. That is what was said.

Q. Your recollection?

A. Yes, sir.

Q. You didn't understand the exact words?

A. That's the only thing I can picture in my mind. That's the question that was asked.

Q. That's what I thought. You won't attempt to give anybody's exact words. Thank you, sir.

Witness stands aside.

By Mr. Cuddy: State rests.

Court recesses for lunch).

(The trial resumes after lunch).

GEORGE BURTON,

a witness of lawful age, after being duly sworn, testifies as follows:

DIRECT EXAMINATION.

By Mr. Messick:

Q. Mr. Burton, what's your first name?

A. George.

Q. Where do you live, sir?

A. Salem.

Q. What do you do, Mr. Burton?

page 240 } A. Iron worker, welder.

Q. In December of last year, where were you employed?

A. Tidewater Construction Co., and Lone Star Cement Plant.

Q. I believe you are working there, are you not?

A. Yes, sir.

Q. You were called as a witness here around noon, and asked to be here this afternoon?

A. Yes, sir.

Q. Mr. Burton, on December 23, 1955, were you working for the Tidewater Construction Co. at Lone Star Cement Plant?

A. Yes, sir; I was.

Q. Did you see Jennings Coffee there that day?

A. Yes, sir; I did.

*George Burton.*

Q. Now, with reference to a Christmas tree, was there anything done in regard to a Christmas tree?

A. Yes, sir; we went up in the woods after 4:30, after quitting time, and Coffee and myself cut down this tree and put it in the back of his car, and I rode with him up the road to where #11 and #220 intersect there, and that's where I meet fellow I ride home with.

Q. Was there more than one Christmas cut down?

A. No, sir; I think we just cut one.

Q. Who was it cut for?

A. For Coffee.

Q. Did you intend to cut one over, anything of that kind?

A. Yes, sir; I intended to, but it had cement dust all over them, and I didn't want to take the trouble to wash it off, and I didn't get one.

page 241 } Q. Didn't cut one yourself? Are you positive that was on the 23rd of December?

A. Friday, last day we worked before Christmas.

Q. Friday, last day you worked for Christmas? That's all.

### CROSS EXAMINATION.

By Mr. Cuddy:

Q. After 4:30 in the evening when you saw him?

A. Yes, sir; at that particular time.

Q. All right, sir. Stand aside.

By Mr. Messick:

Q. Had you seen him at all before that date?

By Mr. Cuddy: If your Honor please—

By Mr. Messick: You asked him if it was after 4:30.

By Mr. Cuddy: Now, he takes him back to something he questioned him about before.

By Mr. Messick: On the 23rd, that day.

By the Court: It was understood that the witness would go into the question of cutting that Christmas tree.

By Mr. Messick: Cuddy opened the question.

By Mr. Cuddy: I asked him exactly what you asked him.

By the Court: You may ask him what time you asked him he cut the Christmas tree. That's all

page 242 } Mr. Cuddy asked him.

By Mr. Messick: Asked him?

*George Burton.*

By the Court: You didn't understand that? He asked him if it was after 4:30 when he saw him, and he said, "Yes."

By Mr. Messick:

Q. Had you seen him before that date? O. K. All right.

(In Chambers).

By Mr. Lanham: I have a motion. If your Honor please, I want to make the motion to strike out all of the evidence in the case, insofar as Mr. Fouts is concerned, prior to the time he was found in the woods with this little bag in his hands. The only thing that was said about Mr. Fouts, as far as I know—try to connect him up—was statement of this colored man that he went out with Mr. Hall to Mr. Fouts house on the 22nd. He said he didn't see Mr. Hall or Mr. Fouts; he said he didn't know whether Mr. Fouts was there, or not. But he said he went to Mr. Fouts house. That doesn't connect with Mr. Fouts in any way with this particular place, even if he had seen him. We don't know whether he was home at all. The only connection with Fouts had—was found in the woods with this bag, and there's no evidence to hook him up with anything else prior to that time, and I believe all the evidence insofar as might possibly affect him should be stricken out.

page 243 } By the Court: Seems to me that's a matter of argument. Not a question of striking the evidence; question of whether the Jury thinks that the evidence is sufficient as to your client.

By Mr. Lanham: Do I understand you're going to overrule my motion? I want to save the point. Now, if your Honor please, I want to make a motion to strike all the evidence as to Mr. Fouts in this case, and on the same basis that I made before—fact that there was no evidence to show that he at any time had any guns, or that he took and carried away any guns, or no evidence to show he broke in any place; no evidence to show criminal intent or action on his part at any time in connection with this case. It could possibly be construed to mean that he, by reason of being there, was technically in possession; then he has explained his possession, which would take away question of larceny.

By the Court: He admitted he had possession; but because he admitted he examined the guns, he admitted possession. I'm going to overrule the motion. I think it's a

question for the Jury, as to whether or not they think the evidence is sufficient.

By Mr. Lanham: Then I want to save the point.

By Mr. Cuddy: Question of explanation. Question for the Jury to decide whether or not it's a reasonable—

By the Court: No question now; he's admitted he had possession.

page 244 } INSTRUCTIONS ON BEHALF OF THE  
COMMONWEALTH.

“A”—Accepted.

“B”—Accepted.

“C”—Accepted.

“D”—

By Mr. Messick: We're not dealing with the question of any alibi here.

By Mr. Cuddy: Judge, both of them have taken the stand, preceded Fouts to the stand, and said he was home on Saturday night; that he didn't leave the house, and they have put evidence on by other persons, other than Coffee, that he remained at home during those hours. If that isn't alibi, I don't know what is. That he was at another place at the time the crime was committed.

By Mr. Messick: Instructions with—the burden is upon him to prove burden upon him.

By Mr. Cuddy: The burden is upon him.

By Mr. Messick: The burden is not upon him.

By Mr. Cuddy: Upon the defendant; doesn't say the defendant has to take the stand and testify, but the burden is upon the defendant to establish it.

By the Court: Mr. Messick, I see no possible objection to that instruction.

page 245 } By Mr. Messick: I don't see instruction of alibi has any place in this case. In the case, there's not a word of evidence to show they were there on this night.

By the Court: On that theory, of course, the Court ought to strike the evidence, and get rid of the case.

By Mr. Messick: On the question of circumstantial evidence, it may be. But for a man to say, “I'm home at a time I am accused of being some place else,” is not an alibi. And what is a *prima facie* case? Haven't established any *prima facie* case.

By Mr. Lanham: Can't convict a man on a *prima facie*

case. Looks like that is wrong. Looks—establish a *prima facie* case, and the defendant's got to prove his innocence.

By Mr. Cuddy: That's innocence.

By Mr. Lanham: And *prima facie* case is not sufficient to convict a man. You got to beyond a reasonable doubt.

By Mr. Messick: No intent of alibi, or lying in this case at all.

By the Court: I think the instruction is correct, and will be given.

By Mr. Messick: We except, if your Honor please. Except on the grounds we are not relying on any alibi, that no explanation or meaning of *prima facie* case, and page 246 } that the burden is not upon the defendant to prove it. It may be established by the evidence of the Commonwealth, itself, and no burden upon a defendant to overcome any *prima facie* case, because a defendant cannot be convicted upon a *prima facie* case. The burden is on the Commonwealth to establish guilt beyond a reasonable doubt.

By the Court: A man accused of crime says that he was at home at the time the alleged offence was committed, is not undertaking to establish an alibi, and the defense of alibi is not applicable to this case at all?

By Mr. Messick: That's our objection, Judge.

By Mr. Lanham: Defendants jointly indicted, and since the same grounds of his exceptions, plus the fact that Fouts takes the position that the Court's instruction amounts to the effect that the Jury can find him guilty by reason of the Commonwealth proving merely a *prima facie* case, it will be putting on the defendant the burden of proving himself not guilty.

#### INSTRUCTIONS ON BEHALF OF THE DEFENSE.

#1—Accepted.

#2—Accepted.

#3—Accepted.

#4—Accepted.

#5—Accepted.

#6—Accepted.

page 247 } #7—Accepted.

#8—Accepted.

#9—

By Mr. Cuddy: Judge, I object to that.

By the Court: Guilt or innocence.

By Mr. Messick: And it's also a question of alibi, or not alibi.



By Mr. Cuddy: Not a case for—

By the Court: Instruction #9, refused.

By Mr. Messick: It also goes to the theory that they came into possession by reason of the fact they were out there working on behalf of the Police Department, and that's the theory.

By the Court: All right, sir.

#10—Accepted.

#11—Accepted.

(The Court instructs the Jury).

(Closing arguments are made to the Jury on behalf of the Commonwealth and the two defendants).

(The Jury go to their rooms to consider their verdict).

(The Jury return a verdict of Guilty, and fix defendants' punishment at eight (8) years' confinement in the penitentiary).

page 248 } By Mr. Messick: Like to have the Jury polled.  
By the Court: Gentlemen of the Jury, is that your verdict?

By the Jury: Yes, sir.

(The names of the Jurors are read by Mr. Winstead).

E. G. BARTON

By the Court: Mr. Barton, you've heard the verdict; is that your verdict?

A. Yes, sir.

A. M. ECKSTEIN

By the Court: Mr. Eckstein, you've heard the verdict; is that your verdict?

A. Yes, sir.

HARRIS L. HOLLISTER

By the Court: Mr. Hollister, is that your verdict?

A. Yes, sir.

JAMES W. IRELAND

By the Court: Mr. Ireland, is that your verdict?

A. Yes, sir.

HARRY G. JOHNSON, JR.

By the Court:

page 249 } Q. Mr. Johnson, is that your verdict?

A. Yes, sir.

J. EDWIN JOHNSTON

By the Court:

Q. Mr. Johnston, is that your verdict?

A. It is.

J. FRANKLIN KEEL

By the Court: Mr. Keel, is that your verdict?

A. Yes, sir.

C. FRANCIS KELLY

By the Court: Mr. Kelly, is that your verdict?

A. It is.

B. H. McKEEVER

By the Court: Mr. McKeever, is that your verdict?

A. Yes, sir.

PAUL W. MILLER

By the Court: Mr. Miller, is that your verdict?

A. Yes, sir.

C. STUART THOMPSON

By the Court: Mr. Thompson, is that your verdict?

A. Yes, sir.

THOMAS D. TAYLOR

By the Court: Mr. Taylor, is that your ver-

page 250 } dict?

A. It is, sir.

By Mr. Messick: If your Honor please, like to have the Jury asked on the poll if any of them read, or heard any discussion of the verdict that was rendered in the Hall case, since this case began.

By the Court: You heard the question.

By Mr. Cuddy: I submit to the poll; that's their verdict.

By the Court: I don't think—that question comes rather late, but I'm going to let it be answered anyway, for the record. All right, Mr. Messick, you frame your question.

By Mr. Messick: Question is: Did any of the members of the Jury know of, or hear of, or any discussion of the verdict that was rendered in the case of Clarence Hall, the first of this week, been brought to you all's attention in any way.

Juror #6: Was your question whether we heard discussion of it, or whether we heard the verdict?

By Mr. Messick: Heard discussion of it, and what was done in that case.

Juror #4: I'm still not clear—during progress of this trial, heard anything about the verdict that was rendered in the case of the Commonwealth *against* Hall, the other man that was indicted in this matter? Would that in-page 251 } clude what the sentence was?

By Mr. Messick: Yes. Or heard what the finding of the Jury was. Any of you gentlemen heard that discussed, or heard anything about it?

Juror #7: I heard the amount—sentence.

By Mr. Messick: When did you hear that, sir?

Juror #7: I was going down the steps of the Court House yesterday afternoon; Mr. Farmer, one of the witnesses here, was called to by a man across the street, and asked if he was in this trial; he said he was. And the other man, from across the street, hollered he heard Hall got seven years, and I'm not sure of Mr. Farmer's answer and I did not try to verify the truth of that verdict.

By Mr. Messick: Taylor, did you hear he was convicted?

A. I heard he had gotten seven years.

By Mr. Messick: How about you?

Juror #5: Yes, sir; I heard it.

Juror #6: I heard it.

By Mr. Messick: Anybody on the Jury that didn't hear the verdict in this case, and the amount of punishment was given?

page 252 } Juror #2: I did not hear it until we were in the jury room.

By Mr. Messick: You heard it in the jury room?

A. I had nothing to do with the verdict.

By Mr. Messick: You heard it in the jury room—Mr. Hall had been convicted and got seven years.

A. I hadn't heard it before.

By Mr. Messick: Anybody else on the Jury that didn't know what the verdict in the Hall case, or heard what the discussion *were* in the Hall case?

By the Court: I want to ask the Jury one question. I want you gentlemen to state whether or not your verdict in this case was influenced by the fact that you heard something about the Hall case, and the term that was imposed in that case?

By the Jury: No, sir. (In unison).

By the Court: In other words, did you decide this case strictly on the evidence and the law as presented in this case.

By the Jury: Yes, sir. (In unison)

By the Court: All of you confirm that?

page 253 } By the Jury: Yes, sir. (In unison)

page 254 } JUDGE'S CERTIFICATE.

I, Dirk A. Kuyk, Judge of the Hustings Court for the City of Roanoke, Virginia, do hereby certify that the foregoing is a true and correct stenographic copy or report of all the testimony that was introduced, and other incidents of the trial therein, all questions raised and all rulings thereon and the exceptions noted, in the case of *The Commonwealth of Virginia v. Jennings S. Coffee and William Ray Fouts*, tried in the Hustings Court of the City of Roanoke, Virginia, on the 24th, 25th and 26th days of April, 1956, and it appears in writing that the Attorneys for The Commonwealth have had reasonable notice of the time and place when this report of the testimony and other incidents of trial would be tendered and presented to the undersigned for certification, which was presented to me within sixty days after final judgment, and signed by me within seventy days.

I also certify that the Court Reporter reporting said case was sworn to take down and transcribe the proceedings faithfully and accurately to the best of his ability.

Given under my hand this the 22nd day of June, 1956.

DIRK A. KUYK  
Judge.

page 255 }      CLERK'S CERTIFICATE.

I, W. H. Carr, Clerk of the Hustings Court for the City of Roanoke, Virginia, do hereby certify that the foregoing stenographic copy or report of testimony and other incidents in the trial of the case of *The Commonwealth of Virginia v. Jennings S. Coffee and William Ray Fouts* was filed with me as Clerk of said Court on the 28th day of June, 1956.

W. H. CARR  
Clerk.

A Copy—Teste:

H. G. TURNER, Clerk.

## INDEX TO RECORD

	Page
Writ of Error and <i>Supersedeas</i> Awarded . . . . .	1
Record . . . . .	2
Indictment and Verdict . . . . .	2
Order—March 5, 1956 . . . . .	3
Order—March 27, 1956 . . . . .	4
Order—April 24, 1956 . . . . .	4
Order—April 25, 1956 . . . . .	5
Instructions . . . . .	6-10
Judgment—April 26, 1956 . . . . .	10
Order—May 4, 1956 . . . . .	11
Motion of Jennings Coffey to Set Aside the Verdict, etc. .	12
Motion of William Ray Fout to Set Aside the Verdict, etc. .	14
Judgment—May 16, 1956 . . . . .	17
Order—May 16, 1956 . . . . .	18
Defendant's Exhibit No. 1—Transcript of Testimony in Commonwealth v. Hasson . . . . .	19, 48
Witnesses:	
Frank Scales . . . . .	20, 44
W. R. Ball . . . . .	42
Notice . . . . .	52
Notice of Appeal and Assignments of Error . . . . .	53
Supplemental Assignment of Error . . . . .	55
Proceedings . . . . .	56, 110, 141, 209
Witnesses:	
C. W. Weaver . . . . .	56
C. A. Stanley . . . . .	67
M. O. Cochran . . . . .	69, 158
Frank Scales . . . . .	72, 93
Frank Scales (Testimony in case of <i>Commonwealth</i> v. <i>Hall</i> . . . . .	142
Court Reporter . . . . .	92
S. M. Lynch . . . . .	97
Frank H. Webb . . . . .	107
W. H. Sims . . . . .	111
O. H. Farmer . . . . .	120
G. E. Sides . . . . .	124
Jack Gibson . . . . .	128
Pete Sullins . . . . .	132
Louis Breedlove . . . . .	136
Earl D. Bannock . . . . .	138
James E. Lemon . . . . .	147

## Index to Record

	Page
Burrell Shumate . . . . .	151, 164
Dorothy Fouts . . . . .	160
Edgar L. Winstead . . . . .	163
William Ray Fouts, Jr. . . . .	166
Dorothy Coffee . . . . .	182
Mrs. S. A. Coffee . . . . .	189
K. E. Allman . . . . .	198
Steve Shelton . . . . .	204
R. L. Moore . . . . .	204
George Burton . . . . .	207
Instructions on behalf of the Commonwealth . . . . .	210
Instructions on behalf of the Defense . . . . .	211
Judge's Certificate . . . . .	215
Clerk's Certificate . . . . .	216