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# Record No. 3513

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In the  
Supreme Court of Appeals of Virginia  
at Richmond

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**LAWRENCE DEAN AND FLOYD SHIFFLETT**

v.

**COMMONWEALTH OF VIRGINIA**

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FROM THE CIRCUIT COURT OF ROCKINGHAM COUNTY

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## RULE 14.

15. NUMBER OF COPIES TO BE FILED AND DELIVERED TO OPPOSING COUNSEL. Twenty copies of each brief shall be filed with the clerk of the court, and at least two copies mailed or delivered to opposing counsel on or before the day on which the brief is filed.

16. 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 names of counsel shall be printed on the front cover of all briefs.

M. B. WATTS, Clerk.

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

189 VA ~~426~~ 426

## RULE 14—BRIEFS

**1. Form and contents of appellant's brief.** The opening brief of the appellant (or the petition for appeal when adopted as the opening brief) 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 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 record where there is any possibility that the other side may question the statement. Where the facts are controverted it should be so stated.

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

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

The appellant may adopt the petition for appeal as his opening brief by so stating in the petition, or by giving to opposing counsel written notice of such intention within five days of the receipt by appellant of the printed record, and by filing a copy of such notice with the clerk of the court. No alleged error not specified in the opening brief or petition for appeal shall be admitted as a ground for argument by appellant on the hearing of the cause.

**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 reference 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 petition or opening brief. In other respects it shall conform to the requirements for appellee's brief.

**4. Time of filing.** (a) *Civil cases.* The opening brief of the appellant (if there be one in addition to the petition for appeal) shall be filed in the clerk's office within fifteen days after the receipt by counsel for appellant of the printed record, but in no event less than thirty days before the first day of the session at which the case is to be heard. The brief of the appellee shall be filed in the clerk's office not later than fifteen days, and the reply brief of the appellant not later than one day, before the first day of the session at which the case is to be heard.

(b) *Criminal Cases.* In criminal cases briefs must be filed within the time specified in civil cases; provided, however, that in those cases in which the records have not been printed and delivered to counsel at least twenty-five days before the beginning of the next session of the court, such cases shall be placed at the foot of the docket for that session of the court, and the Commonwealth's brief shall be filed at least ten days prior to the calling of the case, and the reply brief for the plaintiff in error not later than the day before the case is called.

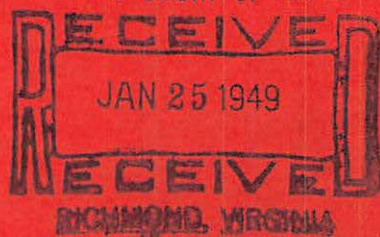
(c) *Stipulation of counsel as to filing.* Counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

**5. Number of copies to be filed and delivered to opposing counsel.** Twenty copies of each brief shall be filed with the clerk of the court, and at least two 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 names of counsel shall be printed on the front cover of all briefs.

**7. Non-compliance, effect of.** The clerk of this court is directed not to receive or file a brief which fails to comply with the requirements of this rule. If neither side has filed a proper brief the cause will not be heard. If one of the parties fails to file a proper brief he cannot be heard, but the case will be heard *ex parte* upon the argument of the party by whom the brief has been filed.

CLERK  
SUPREME COURT OF APPEALS



RICHMOND, VIRGINIA

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IN THE  
**Supreme Court of Appeals of Virginia**

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**Record No. 3513**

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LAWRENCE DEAN AND FLOYD SHIFFLETT,  
Plaintiffs in Error.

*versus*

COMMONWEALTH OF VIRGINIA, Defendant in Error

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PETITION FOR WRIT OF ERROR AND *SUPERSEDEAS*

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*To the Honorable Justices of the Supreme Court of Appeals of Virginia.*

Your petitioners, Lawrence Dean and Floyd Shifflett, of Elkton, Rockingham County, Virginia, respectfully represent that they are aggrieved by a judgment of the Circuit Court of Rockingham County, Virginia, rendered on the 23rd day of June, 1948, and the 8th day of July, 1948, wherein they were sentenced to confinement in the Virginia State Penitentiary for a period of two years, and fifteen months, respectively. The duly authenticated record in the said action accompanies this petition and is filed herewith.

STATEMENT OF MATERIAL PROCEEDINGS IN  
THE TRIAL COURT

On the 2nd day of May, 1948, the petitioners, Lawrence Dean and Floyd Shifflett, were arrested on a joint warrant charging them with malicious felonious assault, with intent to maim, disfigure, disable and kill. A preliminary hearing, a guaranteed

by the Constitution of Virginia, and Code Section 4842, was not granted these petitioners.

On May 17, 1948, petitioners, Lawrence Dean and Floyd Shifflett, were jointly indicted and charged with having, "on or about the 1st day of May, 1948, in the County of Rockingham, did unlawfully and feloniously combine, conspire and confederate together for the purpose of committing an assault and bodily injury upon H. E. Taylor, with intent him, 2\* \*the said H. E. Taylor, to main, disfigure, disable or kill, and in pursuance of said conspiracy and confederation, they, the said Lawrence Dean and Floyd Shifflett, in and upon the said H. E. Taylor did make an assault and him the said H. E. Taylor unlawfully, feloniously, and maliciously did beat and wound with their fists and cause him bodily injury; to-wit, a fractured nose, bruises and lacerations, with intent him, the said H. E. Taylor, then and there to main, disfigure, disable or kill \* \* \*"

On June 17, 1948, these petitioners demurred to the indictment and moved to quash the same on the ground that it included charges of two offenses, which demurrer and motion the Court overruled, and the petitioners duly excepted. Petitioners also moved the Court to strike from the indictment the charge of conspiracy, which motion the Court overruled and the petitioners duly excepted.

Upon arraignment a plea of not guilty was entered by both petitioners, a trial by jury was had, and the verdict and judgment complained of rendered.

Motion was duly made to set aside the verdict of the jury which motion was overruled and petitioners, Lawrence Dean and Floyd Shifflett, are at liberty under bond in the amount of \$2,500.00.

### STATEMENT OF FACTS

Your petitioners, Lawrence Dean and Floyd Shifflett, appeal because they are innocent of the charges against them.

We will endeavor to state the facts as briefly as possible.

On May 1, 1948, H. E. Taylor, an official inspector for the Virginia Alcoholic Beverage Control Board, in a fight near Elkton Virginia, received "a lot of bruises round his face"; a cut on the inside of his lip; a black eye; and a broken nose.

3\* \*The events leading up to the fight in which H. E. Taylor received the above mentioned injuries are briefly as follows:

On or about the 29th day of April, 1948, Messrs. Tom Bailey and John Duff, Investigators of the Alcoholic Beverage Control Board received complaints that John Crawford was violating ABC Law. These two officers went to the home of John Craw-

ford, who lives near Island Eord, in Rockingham County, Virginia, and searched the woods for an unlicensed still or untaxed whiskey, but their efforts were fruitless. After the search, the officers ask John Crawford to act as an informer for them, and the officers agreed to pay Crawford \$2.00 for each person he helped to catch. Arrangements were then made for Crawford to meet an undercover man of the ABC Board on Friday, April 30, 1948. On April 30th the undercover man, H. E. Taylor, and Tom Bailey, the ABC Investigator, went to the home of John Crawford for the purpose of getting Crawford to go on a trip to attempt to buy some whiskey, but Crawford was not able to go that night.

John Crawford testified that Saturday morning, May 1, 1948, he went to the Town of Elkton where he saw Lawrence Dean, at which time he advised Dean that he, Crawford, would bring a Revenue man around. The defendants denied that any such statement was made. On the evening of May 1st, Crawford and H. E. Taylor left from Crawford's home for Elkton to endeavor to purchase illegal whiskey. Taylor, the investigator, had a pint of whiskey with him at the time, and it appears from the testimony of John Crawford (Record, page 56) that both Taylor and Crawford took at least one drink each from this bottle prior to the fight.

Upon arriving in Elkton, Crawford contacted Lawrence Dean in an effort to purchase some whiskey. Lawrence Dean stated, "No, I haven't got any but probably I can take him up the road to find some." Lawrence Dean, Harry Lam, John Crawford and H. E. Taylor then went from the Town of Elkton to a service station, store and restaurant operated by Perry Bailey.

At Bailey's there were a number of loafers and shoppers. One of the shoppers was Floyd Shifflett. H. E. Taylor got out of the automobile in which he had ridden to the service station, and walked over and stood against or near the front wall of the service station. Lawrence Dean and Floyd Shifflett began to wrestle or scuffle in a friendly manner. The evidence for the Commonwealth is that during the course of the wrestle or scuffle between Lawrence Dean and Floyd Shifflett, Lawrence Dean, pushed or shoved Floyd Shifflett into H. E. Taylor. The evidence for the petitioners is that after Lawrence Dean and Floyd Shifflett quit wrestling or scuffling H. E. Taylor grabbed Floyd Shifflett from behind, and then Taylor and Shifflett began scuffling.

There is a conflict in the evidence as to what statements were made, if any, by Lawrence Dean before he attempted to separate Floyd Shifflett and H. E. Taylor who were in a playful scuffle. The evidence for the defendants is that Lawrence Dean stated, in substance, that they should "break it up" and that Shifflett

had "a bad ankle", while the evidence for the Commonwealth is that no such statement was made, or, at best, if made, was made by someone on the inside of the building (Record, page 73). Lawrence Dean then stepped between Shifflett and Taylor to separate them, and as he did so someone used the words "son-of-a-bitch" and Blanche Stanley (Record, page 152) testified that Taylor is the one who made this statement.

While Dean was attempting to separate Shifflett and Taylor, Dean and Taylor began to fight. To establish its case the Commonwealth relies on the evidence of John Crawford, H. E. Taylor and John Roach. As to who started the fight between Lawrence Dean and H. E. Taylor, we quote from the testimony of John Crawford (Record, page 55):

5\*     \*Q. Who passed the first lick?

A. I don't know. I thought Mr. Taylor hit him first. Dean hit him back of the head, Taylor told me.

Objection.

Q. But you took it to be that Taylor hit him first?

A. Lawrence Dean had Taylor under the chin. Lawrence could have hit him a dozen times.

John Roach, another witness for the Commonwealth testified (Record, page 73) that in separating Taylor and Shifflett, Lawrence Dean grabbed Taylor by the neck, and Taylor hit Dean.

The witnesses for petitioners, and the petitioners, testified that while Dean was attempting to separate Floyd Shifflett and H. E. Taylor, H. E. Taylor hit Dean, and that Taylor was the one who struck the first blow.

Petitioner Floyd Shifflett denies that he hit H. E. Taylor, or assaulted him or aided and abetted Dean in an assault. Petitioner Lawrence Dean denies that he is guilty of malicious assault with intent to main, disfigure, disable and kill, and denies that he hit or struck Taylor until after Taylor had assaulted him. Both petitioners deny that they had been advised by Crawford as to the identity of Taylor prior to the ruckus.

## ASSIGNMENTS OF ERROR

### 1.

The Court erred in failing to sustain the demurrer to the indictment, the motion to quash the indictment, and the motion to amend the indictment by striking therefrom the charge of conspiracy.

6\* \*The Court erred in failing and refusing to strike the Commonwealth's evidence when it rested its case, and likewise erred in failing and refusing to strike the Commonwealth's evidence at the conclusion of all the evidence in the case on the ground that the evidence was not sufficient to establish beyond a reasonable doubt that Floyd Shifflett was an aider and abetter of Lawrence Dean, or that Lawrence Dean was guilty of the offense charged, and that the verdict was contrary to the law.

3

*waived* The Court erred, during the course of the testimony for the defendants, in giving an instruction, verbally to the jury as to the testimony of Perry Bailey, on the ground that the instruction singled out and called the jury's attention to the testimony of one witness.

4

*waived as for* The Court erred in permitting the Commonwealth's Attorney, over the objection of the defendants, to ask Floyd Shifflett whether he had been convicted of petty larceny in the Trial Justice Court, February, 1946.

5

The Court erred in permitting the Commonwealth's Attorney, over the objection of the defendants, to ask Floyd Shifflett whether he had been convicted in the Trial Justice Court of Rockington County, in October, 1940, of assault and battery, and in the same Court in May, 1945 of assault and battery.

6

The Court erred in permitting the Commonwealth's Attorney, over the objection of the defendant, to ask Lawrence Dean whether he had been convicted on an assault charge.

7\* \*The Court erred in permitting the Commonwealth's Attorney, over the objection of the defendant, to ask Lawrence Dean; "and that is the usual way you settle your affairs, isn't it."

## ARGUMENT

We believe that there is no evidence to warrant the conviction of petitioners and that the Trial Court should have sustained the motion to strike the evidence. We believe that the rights

of petitioners were seriously prejudiced because of the two charges in the indictment, and because of the admission of improper and illegal evidence.

## ASSIGNMENT OF ERROR

### No. 1

The question presented by this assignment of error is to the failure of the Court to sustain the demurrer to the indictment and the motion to quash the indictment.

The indictment charges both conspiracy for the purpose of committing an assault, and assault with intent to main, disfigure, disable and kill.

"Duplicity, or double pleading, consists in alleging for one single purpose or object, two or more distinct grounds of complaint, when one would be as effectual in law as both or all. A defendant cannot be charged in one and the same count with two or more independent offenses, as such, subject to different penalties. The reason of this is to prevent useless prolixity, confusion and multiplication of issues. Furthermore, a defendant is entitled to know plainly the specific offense with which he stands charged so that he may be able to meet it with his proof. Consequently the state cannot frame the same count to cover several distinct offenses and then have the allegation as to those offenses not proved and treated as surplusage." (Lee's Criminal 8\* Trial \*in Virginia, Vol. 1, Sec. 35).

"An indictment or information which attempts to charge two or more offenses, not based on the same transaction, is said to be duplicitous, although it is for misdemeanors which may be prosecuted by penal actions; but duplicity, as shown in *infra* Section 162, generally is defined as referring to the charge of more than one offense in a single count. Charging one offense in the accusatory part and another in the descriptive part is held objectionable for duplicity; and under some statutes the fact that in the naming part of the indictment only one of the offenses is designated, which is supported by the evidence, does not cure the defect of misjoinder in the charging part." (C. J. S., Vol. 42, Page 1111, Sec. 161).

Section 4402 of the Code is purely statutory. The Supreme Court of Appeals of Virginia has many times held that indictments or presentments for statutory offenses must be couched in the language of the statute. In *Sink v. Commonwealth*, 152 Va. 1002, 147 S. E., 231, the Court, speaking through Judge Chichester, held "While it is true it is dangerous to charge a statutory offense in words different from those used in the statute, it is, nevertheless, well settled that it is unnecessary in an indict-

ment under a statute to use the precise language thereof in describing the offense, if the words used are equivalent to those used in the statute."

The indictment in this case does not follow the statute in that it also charges a conspiracy. The charge of conspiracy in the indictment prejudiced the right of these petitioners to a fair trial. The Court, under the provisions of Section 4878 of the Code, could have amended the indictment by striking out the charge of conspiracy, but this the Court did not do.

The jury by its verdict found Lawrence Dean guilty of 8\* wounding \*H. E. Taylor with malicious intent, and by its verdict found Floyd Shifflett guilty as charged in the indictment of aiding and abetting Lawrence Dean. Did the jury mean to find Floyd Shifflett guilty of aiding and abetting Lawrence Dean in a conspiracy, or in a malicious assault?

### ASSIGNMENT OF ERROR

#### No. 2

This assignment of error goes to the failure of the Court to strike the Commonwealth's evidence at the conclusion of the evidence for the Commonwealth, and the failure of the Court to strike the Commonwealth's evidence at the conclusion of all of the evidence.

The Commonwealth failed to establish beyond a reasonable doubt the charge of malicious assault with intent to maim, disfigure, disable and kill, and failed to establish beyond a reasonable doubt that Floyd Shifflett aided and abetted Lawrence Dean in such an assault or in a conspiracy.

Only one witness, H. E. Taylor, testified that Lawrence Dean started the fight between Dean and Taylor. The other witnesses for the Commonwealth, testified that Taylor was the one who struck the first blow between Dean and Taylor. Both Dean and Shifflett, as well as the witnesses who testified in their behalf, testified that while Dean was separating Taylor and Shifflett, Taylor struck Dean.

We need not recite authorities in support of our contention that one who has been attacked may use such force as to him seem reasonable to repel that attack. Dean did nothing more than protect and defend himself. After Dean and Taylor had been separated by the bystanders, and while Taylor was still lying on the ground, Taylor attempted to kick Dean in the privates. This, we think clearly demonstrates Taylor's pugnacious and aggressive attitude.

10\* \*In *Jackson v. Commonwealth*, 96 Va. 107, it was held that "a person assaulted while in the discharge of a lawful

act, and reasonably apprehending that his assailant will do him bodily harm, has the right to repel the assault by all the force he deems necessary, and is not compelled to retreat from his assailant, but may in turn become the assailant, inflicting bodily wounds until his person is out of danger." Quoted with approval in *Dodson v. Commonwealth*, 159 Va., 976, 167 S. E. 260.

In addition to the foregoing, the Commonwealth failed to prove both malice and the intent.

As was stated in *Roark v. Commonwealth*, 182 Va. 244, 28 S. E. (2d) 693, the Court stated: "Ordinarily, the fist is not regarded as a danger for deadly weapons. Hence, usually, death is not held to be a natural and probable result of a blow with the bare fist. Under ordinary circumstances no malice may be inferred from such a blow even though death results \* \* \* However, an assault with the bare fists may be attended with such circumstances of violence and brutality that an intent to kill will be presumed." In the same case the Court held, "While we have repeatedly held that mere words, however grievous, will not justify an assault, it is natural for a normal person to resent the use of vile epithets in regard to himself or a close relative, and when grossly insulting words provoke a simple assault, they may be and should be considered in mitigation of punishment. The relation of the parties, the facts leading up to the blow, the use of the left hand or fist, and the acts of defendant immediately after the blow clearly shows that the defendant did not intend to inflict serious bodily injury upon deceased. Under these circumstances, no malice can reasonably be inferred from proof of the killing."

In the case of *Harris v. Commonwealth*, 134 Va. 688, the Court stated, "Whether a person indicted under this statute (Section 4402) is \*guilty of malicious shooting, with intent to kill, depends upon whether, if he had killed the person at whom he shot, instead of only wounding him, he would have been guilty of murder, or would have been only guilty of manslaughter, or homicide in self defense."

See *Richardson v. Commonwealth*, 128 Va. 695, where the Court stated: "It has been long settled that where a homicide is committed in the course of a sudden quarrel, or mutual combat, or upon a sudden provocation and without any previous grudge, and the killing is from the sudden heat of passion growing solely out of the quarrel, or a combat, or provocation, it is not a murder, but is manslaughter only—voluntary manslaughter, if there be no further justification, and involuntary manslaughter if the killing be done in the commission of some lawful act, such as in justifiable self-defense."

## ASSIGNMENT OF ERROR

## No. 3 .

This assignment of error goes to an instruction given by the Court during the course of the cross examination of Perry Bailey, a witness who testified for the defendants. During the course of the cross examination of Bailey the following questions were asked and the answers given (Record, page 132):

Q. Didn't you talk with these people after this thing happened?

A. Talk to who?

Q. Didn't you hear Lawrence Shifflett talking around there after this thing happened?

A. When I talked to him first; I went to him first.

Q. Sir?

12\* \*A. I went to him first.

Q. You went to him first?

A. That's right.

Q. To Lawrence Shifflett?

A. Lawrence Dean.

Q. I'm talking about Lawrence Shifflett now. Don't you remember Lawrence Shifflett being there after the thing was over?

A. After the fight was stopped?

Q. Yes.

A. Yes, he was there.

Q. He hangs around there a good deal too, doesn't he?

A. Well, occasionally he comes in.

Q. And you heard Lawrence—

Mr. Sam Conrad: Now if your Honor please, any statement made by Lawrence Shifflett, who is not one of the defendants in this case, would certainly be hearsay evidence.

After discussion of the motion in chambers, the Court, counsel and the defendants returned to the Court room, and the following took place (Record, page 138):

By Mr. George Conrad, Commonwealth's Attorney:

Q. Mr. Bailey, let me see if I cannot refresh your recollection a little bit about when you learned this was an ABC man. Do you remember after this fight occurred Dean went in the rest room to wash the blood off of his face and came back in

13\* and you were there and Lawrence Shifflett was \*there, Lawrence Dean was there, Floyd Shifflett was there, John

Roach, and a boy named Kern, and Blanche Stanley, and everybody in there; do you remember that?

A. Yes, sir.

Q. And now at that time, isn't it a fact that Lawrence Shifflett, right then and there, said that Taylor was an ABC man? that John Crawford had told Lawrence Dean and Floyd Shifflett about 10:00 Saturday morning, that day, that Taylor was an ABC man and that he was helping him, that they wanted to employ him to catch people?

Mr. Hammer: If your Honor please, we object to the question and the Court overrules the objection and we except.

The Court: I want to instruct the jury that if Lawrence Shifflett made that statement, it does not go to show that the two defendants did know it beforehand but it is admissible for the purpose of testing Mr. Bailey on cross examination in view of the statement that he made on the witness stand to Mr. Saunders that he assumed or he thought that Taylor was an ABC agent.

Mr. Hammer: Counsel for the defendants excepts to the instruction the Court has given for the reasons heretofore assigned."

In the case of *Hensley v. Commonwealth*, 163 Va. 1018, 177 S. E. 104, in passing on an instruction which had been given 14\* by the lower \*Court in which instruction testimony of one witness was singled out, the Court held "It was error to single out, emphasize, and give undue prominence to any particular bit of testimony. These matters, in this state, under settled rules, are within the province of the jury. Moreover, the instruction was exceedingly harmful in that the jury might well have gathered from it that the judge did not believe Hurtle had told the truth. Whatever the facts may have been this was a fair deduction."

## ASSIGNMENT OF ERROR

### Nos. 4-7

Assignments of error Nos. 4 through 7 will be jointly treated. They relate to the action of the Court in permitting the Commonwealth's Attorney, over the objection of the defendants, to bring out on cross examination of the defendants, the commission of other crimes, and to make a general attack upon the character of the defendants.

As stated in *Culbertson v. Commonwealth*, 137 Va. 752, 119 S. E. 87, "That the Commonwealth could not, without the aid of this statute, attack his character unless he first put it in evidence himself is a proposition too well established to require any citation of authority in its support."

Likewise in *Colvin v. Commonwealth*, 147 Va. 663, 137 S. E. 476, "There is much to be said in favor of putting before the jury a man's general reputation in the community relevant to the character of the offense with which he is charged, though not first put in issue by him; but it is conceded by the Attorney General to be well settled in this state that evidence of the bad general reputation of one on trial for an offense cannot be offered by the Commonwealth unless the accused has put such character in issue by first offering evidence of his good general reputation."

15\* \*To the same effect, the holding in the case of *Jones v. Town of LaCross*, 180 Va. 406, 23 S. E. (2d) 142.

It is well recognized in this state that the Commonwealth cannot attack the character of the accused, unless the accused has put his character in issue, and that evidence of other crimes is an attack upon the character of the accused.

"A bill of exception appears in the record which is based upon the admission of testimony to prove that the accused had been convicted some five years before of stealing an automobile and had been confined in the penitentiary therefor, in fact this was elicited by the attorney for the Commonwealth on his cross examination of the accused. This, of course, was a separate and distinct crime from that charged and could not be properly and legally proven to show guilt in this case." *Bland v. Commonwealth*, 177 Va. 819, 13 S. E. (2d) 317.

"In contradistinction one may be guilty of the commission of a crime at one time, and at a subsequent time be as white as the driven snow. Repentance and reform are pillars of the structure of salvation upon which it is built." *Campbell v. Commonwealth*, 176 Va. 564, 11 S. E. (2d) 577.

## PRAYER

In consideration whereof, your petitioners, Lawrence Dean and Floyd Shifflett, who are innocent of the offenses charged against them, pray that they may be awarded a writ of error and *superseas* to the judgment entered by the Circuit Court of Rockingham County, Virginia, for that for errors herein assigned, the judgment may be reviewed and reversed by this Honorable Court.

(1) Counsel for Lawrence Dean and Floyd Shifflett respect-

## Supreme Court of Appeals of Virginia

fully requests that he may be allowed an opportunity to  
 16\* state orally his \*reasons why a writ of error and *supersedeas* should be granted.

(2) Counsel for Lawrence Dean and Floyd Shifflett represent and herewith advise the Attorney for the Commonwealth that this petition and a transcript of the record will be filed with the Honorable Herbert B. Gregory, one of the Justices of the Supreme Court of Appeals of Virginia, at his office in the Municipal Building in the City of Roanoke, Virginia, on October 21, 1948.

(3) Counsel for Lawrence Dean and Floyd Shifflett aver that a true and correct copy of this petition, on the 19th day of October, 1948; was mailed to the Attorney for the Commonwealth, Rockingham County, Virginia, to his office in the Court House in Harrisonburg, Virginia.

(4) That in the event a writ of error and *supersedeas* is awarded, Lawrence Dean and Floyd Shifflett request that this petition be printed with the record in lieu of an opening brief in their behalf.

And your petitioners will ever pray, etc.

LAWRENCE DEAN,  
 FLOYD SHIFFLETT,  
 By Counsel.

JULIAN K. HICKMAN,  
 Counsel.

Julian K. Hickman  
 Hostetter Building  
 Harrisonburg, Virginia

## CERTIFICATE

I, Julian K. Hickman, Attorney at Law, practicing in the  
 Supreme Court of Appeals of Virginia, do certify that in  
 17\* my opinion \*there is error in the judgment herein com-  
 plained of and that for said error the said judgment should  
 be reviewed and reversed by the Supreme Court of Appeals of  
 Virginia.

Given under my hand this 19th day of October, 1948.

JULIAN K. HICKMAN.

Filed before me this 21st day of October, 1948.

H. B. G.

Nov. 17, 1948—Writ of error and *supersedeas* awarded by the  
 court. No bond.

M. B. W.

**RECORD**

August 29, 1948

Honorable George D. Conrad  
Attorney for the Commonwealth  
Harrisonburg, Virginia

*Re:* Commonwealth of Virginia  
*v.*  
Lawrence Dean and  
Floyd Shifflett

Dear Mr. Conrad:

This is to notify you that on September 1, 1948, at 10:00 A. M. the undersigned, as attorney for the two above named defendants, shall present to Honorable William V. Ford, Judge of the Circuit Court of Rockingham County, Virginia, in the Court room at Harrisonburg, Virginia, Certificates of Exception in the above captioned case.

Yours very truly,  
/a/ JULIAN K. HICKMAN

JKH/pbp

Legal and timely service of the foregoing notice is hereby accepted.

/s/ GEORGE D. CONRAD  
Commonwealth's Attorney

page 1a { JULIAN K. HICKMAN  
Attorney-at-Law  
Hostetter Building  
Harrisonburg, Virginia

September 10  
1948

Honorable George D. Conrad  
Commonwealth's Attorney  
Harrisonburg, Virginia

*Re:* Commonwealth of Virginia  
*v.*  
Lawrence Dean and Floyd  
Shifflett

Dear Mr. Conrad:

This is to advise that we will on this date apply to the Clerk of the Circuit Court for Rockingham County, Virginia, for a transcript of the record in the above captioned case.

Yours very truly,

/s/ JULIAN K. HICKMAN

JKH/pbp

Legal and timely service of the foregoing notice is hereby accepted.

/s/ GEO. D. CONRAD  
Commonwealth's Attorney

page 2 } ORDER OF COURT OF MAY 19, 1948

This day came the attorney for the commonwealth and the accused, Lawrence Dean, was brought into court in the custody of the sheriff of this county, and being thereof arraigned, pleaded not guilty to the indictment; and the court fixed the 17th day of June next for his trial. And on motion of the accused he is admitted to bail in the penalty of \$2500.00. And thereupon, the said Lawrence Dean, with Ernest C. Shifflett as his surety, who justified as to his sufficiency, entered into and acknowledged bond in the penalty of Twenty-five Hundred Dollars, (\$2500.00), said bond being conditioned for the personal appearance of the said Lawrence Dean before this court on the 17th day of June next and to such other time or times to which this case may be continued or further heard, and to be bound under said recognizance until this charge is finally disposed of or is declared void by order of a competent court.

page 3 } ORDER OF COURT OF MAY 19, 1948

This day came the attorney for the commonwealth, and the accused, Floyd Shifflett, was brought into court in the custody of the sheriff of this county, being thereof arraigned, pleaded not guilty to the indictment; whereupon, the court fixed the 17th day of June next for his trial. And on motion of the accused, he is admitted to bail in the penalty of \$2500.00. And thereupon, the said Floyd Shifflett, with Ernest C. Shifflett as his surety, who justified as to his sufficiency, entered into and acknowledged bond in the penalty of Twenty-five Hundred Dollars (\$2500.00), said

bond being conditioned for the personal appearance of the said Floyd Shifflett before this court on the 17th day of June next and to such other time or times to which this case may be continued or further heard and to be bound under this recognizance until this charge is finally disposed of or is declared void by order of a competent court.

page 4 } ORDER OF COURT OF JUNE 18, 1948

This day came again the attorney for the commonwealth, and the accused, Lawrence Dean and Floyd Shifflett, came pursuant to their recognizance and by their attorneys, Charles A. Hammer, Jr., and Sam P. Conrad; and the jury impanelled and sworn for the trial of this case came pursuant to adjournment, and having completed the hearing of the evidence, the jury was discharged until seven o'clock p. m. And thereupon, the judge of this court, the attorney for the commonwealth, and attorneys for the accused, retired into chambers, and counsel for both of said accused renewed the following motions: to declare a mistrial for reasons heretofore assigned in the opening of this case; to declare a mistrial in this case, as under the verbal instruction of the Court in regard to the evidence of Perry Bailey, that it was a singling instruction to the jury, the effect of which was to warn the jury that his evidence should be viewed with undue caution; to strike the evidence in the case as to Floyd Shifflett, for the reason that there was no evidence that Floyd Shifflett was guilty of unlawful or malicious wounding or of assault and battery; to strike the evidence in this case in regard to Lawrence Dean, for the reasons heretofore assigned and to be assigned more fully in writing. Whereupon, the court, having heretofore considered said motions, adhered to its previous ruling and doth now over-

rule all of said motions; to which action of the court,  
page 5 } the said defendants, by counsel, excepted. And before the re-convening of court at seven o'clock p. m., the judge of this court, together with the attorney for the commonwealth, attorneys for the accused, and both of the accused in person, retired into chambers, and it having been suggested to the court that neither of the accused was present in chambers when certain motions were renewed and certain other motions were made by counsel for the defendants, thereupon, the court, in the presence of both of the accused, before having returned into the court room, rescinded any ruling made on the aforesaid motions and offered to the said defendants the right and option to renew said motions. And the said defendants, without waiving any rights, renewed said motions as heretofore made; and all of said motions, now having been made in the presence of

both of the accused, and having been heretofore considered by the court, the court doth now overrule all of said motions, to which action of the court the defendants, by counsel, excepted. And the court having reconvened, thereupon, came again the attorney for the commonwealth, both of the accused, pursuant to their recognizance and by their attorneys, Charles A. Hammer, Jr., and Sam P. Conrad; and the jury impanelled and sworn as aforesaid for the trial of this case came pursuant to adjournment. And having received the instructions of the court and having heard the argument of counsel, the jurors thereupon retired to their room to consider their verdict, and after some time they came again into court and returned the following verdict: "We, the jury, find the defendant, Lawrence Dean, guilty of wounding

H. E. Taylor with malicious intent, as charged in the  
 page 6 } indictment, and fix his punishment by confinement in  
 the penitentiary for two years. We, the jury, find the  
 defendant, Floyd Shifflett, guilty as charged in the indictment,  
of aiding and abetting the defendant, Lawrence Dean, and fix  
his punishment by confinement in the Penitentiary for fifteen  
months. H. E. Shomo, Foreman." And thereupon, both of  
 the accused, by counsel, moved the court to set aside said verdict  
 and grant a new trial on the ground that the verdict is contrary  
 to the law and the evidence and on other grounds to be assigned  
 on Wednesday, June 23, to which time this case is continued.

#### ORDER OF COURT OF JUNE 23, 1948

This day came the attorney for the commonwealth, and the accused, Lawrence Dean and Floyd Shifflett, came pursuant to their respective recognizances and by their attorneys, Charles A. Hammer, Jr., and Sam P. Conrad. And thereupon, the said Lawrence Dean and Floyd Shifflett, by counsel, filed the following additional grounds in support of their motion made at a former day of the term to set aside the verdict of the jury rendered in this case and grant a new trial: 1. That the verdict of the jury was contrary to the law. 2. That the verdict of the jury was contrary to the evidence. (3) That the verdict of the jury was contrary to the law and the evidence. 4. That the Court erred in admitting certain evidence offered by the Commonwealth and in refusing to admit certain evidence offered by the defendant. 5. That the Court erred in overruling the defendants' motion to quash the indictment. 6. That the Court erred in overruling  
 the defendants' motion to strike the evidence at the  
 page 7 } conclusion of the Commonwealth's case. 7. That the  
 Court erred in overruling the defendants' motion to  
 strike the evidence after all the evidence had been introduced  
 and to declare a mistrial. 8. That the Court erred in granting

certain instructions offered by the commonwealth over the objection of the defendants. 9. That the Court erred in refusing certain instructions offered by the defendants. 10. That the Court erred in singling out Floyd Shifflett as being an aider and abettor and in singling out Lawrence Dean as being the principal. Whereupon, the court doth overrule the said motion of said defendants, to which action of the Court the said defendants, by counsel, excepted. And it is therefore considered by the court that the commonwealth recover of the said Lawrence Dean and Floyd Shifflett the costs incident to this prosecution; that the said Lawrence Dean be confined in the Penitentiary of this State for the term of two (2) years at hard labor; and that Floyd Shifflett be confined in said Penitentiary for the term of fifteen (15) months at hard labor; it having been inquired of the prisoner if anything they had or knew to say why the court should not pronounce sentence on them in accordance with the verdict of the jury, and nothing having been offered or alleged in delay thereof. And each of the accused having indicated that he would apply to the Supreme Court of Appeals of Virginia for a writ of error to the judgment of this court, and it being suggested to the court that they might not be financially able to have the record herein copied, the court suspended execution of said sentence until July 8, at which time, if it is made to appear that the record is being copied, said accused, or either of them, may apply to this court to have the suspension extended.

page 8 } And the attorney for the commonwealth having made a motion for additional security on the bail of said defendants, thereupon, Ernest C. Shifflett and Blanche B. Stanley, being examined and sworn according to law, and having thereupon justified as to their sufficiency, the said Lawrence Dean and Floyd Shifflett, with the said Ernest C. Shifflett and Blanche B. Stanley as their surety, entered into and acknowledged bond payable to the Commonwealth of Virginia each in the penalty of Twenty-five Hundred Dollars, (\$2500.00), and conditioned and payable according to law for their personal appearance before this court on the 8th day of July next and to such other time or times to which this case may be continued or further heard, and not to depart thence without leave of court, and be bound under this recognizance until this charge is finally disposed of or is declared void by order of a competent court.

#### ORDER OF COURT OF JULY 8, 1948

This day come the attorney for the commonwealth, and the defendants, Lawrence Dean and Floyd Shifflett, came pursuant to their recognizance and by their attorneys, Sam P. Conrad and Charles A. Hammer, Jr. And on motion of the defendants, by

counsel, it appearing that the record in this case is being transcribed, execution of these sentences is further suspended for sixty (60) days from this date.

page 9 }

CERTIFICATE NO. 1

The following indictment was returned against the defendants by a grand jury at the April Term, 1948, of the Circuit Court of Rockingham County:

State of Virginia

County of Rockingham, to-wit:

In the Circuit Court of said County:

The grand jurors of the State of Virginia, in and for the body of the County of Rockingham and now attending the Circuit Court of said County, at its April Term, 1948, upon their oaths do present that Lawrence Dean and Floyd Shifflett, on or about the 1st day of May, 1948, in the County of Rockingham, did unlawfully and feloniously combine, conspire and confederate together for the purpose of committing an assault and bodily injury upon H. E. Taylor, with intent him, the said H. E. Taylor to maim, disfigure, disable or kill, and in pursuance of said conspiracy and confederation, they, the said Lawrence Dean and Floyd Shifflett, in and upon the said H. E. Taylor did make an assault and him the said H. E. Taylor unlawfully, feloniously and maliciously did beat and wound with their fists and cause him bodily injury; to-wit, a fractured nose, bruises and lacerations, with intent him, the said H. E. Taylor, then and there to maim, disfigure, disable or kill, against the peace and dignity of the Commonwealth of Virginia.

This indictment is found upon the testimony of H. E. Taylor and John E. Crawford, witnesses sworn in Court and sent before the grand jury to give evidence.

page 10 }

RETURN OF GRAND JURY ON  
INDICTMENT

A true bill, this 17th day of May, 1948.

(signed) C. B. KISER, Foreman.

Attest, this 8th day of September, 1948, to the defendants' Certificate No. 1, the same having been tendered to the undersigned on the 1st day of September, 1948, after notice to the Commonwealth's Attorney as required by law.

(signed) W. V. FORD,  
Judge of the Circuit Court  
of Rockingham County.

page 11 }

## CERTIFICATE NO. 2

The following order containing the defendants' timely demurr to the indictment, motion to strike part of the indictment, motion to quash the original and an amended indictment, the Court's rulings thereon and the defendants' exceptions thereto, which was entered on June 17, 1948.

Commonwealth

v.

Lawrence Dean and Floyd Shifflett

On an indictment for a felony (felonious assault).

This day came the attorney for the commonwealth, and the accused, Lawrence Dean and Floyd Shifflett, came pursuant to their recognizance and by their attorneys, Charles A. Hammer, Jr., and Sam P. Conrad. And counsel for both the accused having heretofore, in the absence of both of the accused, demurred to the indictment and moved to quash the same on the ground that it included charges of two offenses—one a misdemeanor and the other a felony—and the Court having heretofore informally overruled the said demurrer and motion to quash in the absence of both of said accused, and counsel for both the accused having also heretofore moved to strike out the allegations in the indictment as to conspiracy, and the Court in the absence of both of said accused having sustained said motion, and counsel this day having appeared and renewed said motions and both accused having appeared before the bar of this Court this day, and the aforesaid demurrer and motions having been renewed and counsel having also this day made a motion for change of venire

on the ground that some of the jurors sat on the trial page 12 } of the accused, Lawrence Dean, for another offense tried at this term of Court; the Court, after consideration of said demurrer and motions both overruled said demurrer and motion to quash and the motion for a change of venire and sustained the motion to strike from the indictment the portions thereof charging conspiracy, and thereupon both of the accused were arraigned on the indictment as amended by striking the portions charging conspiracy, and thereupon each in person pleaded not guilty to the same. And from persons summoned by the sheriff under a writ of *venire facias*, twenty persons were examined by the Court and found duly qualified and free from exception; whereupon a list containing the names of said twenty persons was handed to the attorney for the commonwealth and counsel for the accused, who each alternately struck therefrom the names of four persons, the remaining twelve, namely: W. T.

Leavel, Ashby Fitzwater, C. B. Reubush, M. G. Newman, A. R. Scott, Roy S. Heatwole, Claude Berry, G. Roscoe Knicely, J. B. Moyers, Joe Kagey, Turner Sandy, and C. E. Lokey, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the prisoners at the bar and a true verdict render according to the law and the evidence. And thereupon both of the said accused, by counsel, moved the Court to declare a mistrial on the ground that the Court passed informally on the demurrer above referred to and the motion to strike certain parts of the indictment above referred to when neither of accused was present in person, and thereupon the Court sustained said motions and declared a mistrial and discharged the jury from attendance on this page 13 } case. And it appearing to the Court that there are insufficient jurors present to try both the accused, the Court, acting under Section 4896, selected from the jury list as provided by Sections 5988 and 5990 the following twenty-four jurors to try said case, namely: J. A. Hollen, Harry C. Long, Robert F. Garber, Chas. W. Wampler, Jr., A. S. Kiser, Isaac C. Shifflett, Raymond Weaver, Roy L. Frank, J. F. Byerly, Beery H. May, J. O. Beard, John D. Moore, Dee C. Smucker, L. C. Hutton, Joe R. Rhodes, John P. Zirkle, H. Westbrook Hawkins, John H. Rolston, Paige P. Price, Hubert B. Layman, Garold Myers, D. C. Stickley, Harold E. Shomo, and C. William Frank. The following motions were made during the afternoon of this day in this case in the Chambers in the presence of both of the accused: The defendants, by counsel, moved the Court to quash the original and the amended indictment and further to dismiss the new venire summoned in this case on the ground that there is a material variation between the indictment returned by the grand jury and the indictment as amended and to which the defendants have pleaded.

Whereupon, the court ruled that the previous action of the court upon the demurrer and motion to strike part of the indictment was void or voidable and that all such previous rulings were annulled by the action of the court in declaring a mistrial, and that the case now stands on the original indictment, the arraignment of the two defendants thereon and their respective pleas of not guilty, and that the said motion to quash the indictment and dismiss the venire should be, and is accordingly, hereby overruled.

Thereupon defendants, by counsel, demurred to the original indictment on the ground that it embodies two complete and several offenses, one a charge of conspiracy and the other of felonious assault, and for the further reason that there is no such thing as a conspiracy to commit

felonious assault, under the statute; and the defendants, by counsel, also thereupon moved the court to strike from the indictment, without waiving former objections, the charge that Lawrence Dean and Floyd Shifflett "did conspire and confederate together for the purpose of committing an assault and bodily injury upon H. E. Taylor, with intent him the said H. E. Taylor to maim, disfigure, disable, or kill, and in pursuance of said conspiracy and confederation," and moved that that portion of the indictment be stricken, which demurrer and motion aforesaid the court overruled, to which action of the court in overruling said demurrer and motion, the defendants, by counsel, excepted. And the defendants, by counsel, objected to the charge to the jury "for the reason that the charge does not embrace therein the elements of conspiracy; although the charge of conspiracy may be merged in an indictment for felony, on proof and conviction, after the grand jury has returned an indictment, charging conspiracy and a felony, and it is the position of the accused that this jury could find them guilty of a conspiracy to commit felony without convicting them of a felony charge; therefore, the element of conspiracy should be embraced in the charge to the jury"; whereupon the court overruled said objections to the charge, to which action of the court the defendants, by counsel, excepted. And from the venire this day summoned as aforesaid for the trial of this case, only sixteen (16) of the persons in said venire having responded and being found duly qualified and free from exception, thereupon, the attorney for the com-  
page 15 } monwealth, with the consent of the court, waived the striking of his four names from the said panel, and the defendants, by their attorneys, struck therefrom the names of four persons therefrom, the remaining twelve, namely: J. A. Hollen, Robert F. Garber, A. S. Kiser, Isaac C. Shifflett, Roy L. Frank, J. F. Bylerly, Beery H. May, J. O. Beard, Jno. P. Zirkle, H. Westbrook Hawkins, Harold E. Shomo, and L. C. Hutton, selected as aforesaid to constitute the jury, were sworn to well and truly try and true deliverance make between the commonwealth and the prisoners at the bar and a true verdict render according to the law and the evidence, and having heard a portion of the evidence, were adjourned until tomorrow morning at nine-thirty o'clock.

Attest, this 8th day of September, 1948, to the defendants' Certificate No. 2, the same having been tendered to the undersigned on the 1st day of September, 1948, after notice to the Commonwealth's Attorney as required by law.

(signed) W. V. FORD,  
Judge of the Circuit Court  
of Rockingham County.

page 16 }

## CERTIFICATE NO. 3

The following charge was given to the trial jury to which the defendants, by counsel, objected and excepted.

In the Circuit Court of Rockingham County, Virginia:

Commonwealth

v.

Lawrence Dean.

## CHARGE TO JURY

If you find the accused, Lawrence Dean, guilty of wounding H. E. Taylor or causing him bodily injury, by any means, with malicious intent, as charged in the indictment, you will say so and fix his punishment by confinement in the penitentiary for a period of not less than one year nor more than ten years.

If you do not find him guilty of malicious wounding or malicious bodily injury, as charged in the indictment, but find him guilty of unlawful wounding or unlawful bodily injury, as therein charged, you will say so and fix his punishment by confinement in the penitentiary for a period of not less than one year nor more than five years, or, in your discretion, by confinement in jail not exceeding twelve months and by a fine not exceeding five hundred dollars.

If you do not find him guilty of either of the felonies aforesaid, but find him guilty of assault and battery, as further charged in the indictment, then you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

If you find him not guilty, you will say so and no more.

page 17 } Attest, this 8th day of September, 1948, to the defendants' Certificate No. 3, the same having been tendered to the undersigned on the 1st day of September, 1948, after notice to the Commonwealth's Attorney as required by law.

(signed) W. V. FORD,  
Judge of the Circuit Court  
of Rockingham County.

page 18 } CERTIFICATE NO. 4

The following charge was given to the trial jury to which the defendants, by counsel, objected and excepted:

In the Circuit Court of Rockingham County, Virginia:

Commonwealth  
v.  
Floyd Shifflett

### CHARGE TO JURY

If you find the accused, Floyd Shifflett, guilty of wounding H. E. Taylor or causing him bodily injury, by an means, with malicious intent, as charged in the indictment, you will say so and fix his punishment by confinement in the penitentiary for a period of not less than one year nor more than ten years.

If you do not find him guilty of malicious wounding or malicious bodily injury, as charged in the indictment, but find him guilty of unlawful wounding or unlawful bodily injury, as therein charged, you will say so and fix his punishment by confinement in the penitentiary for a period of not less than one year nor more than five years, or, in your discretion, by confinement in jail not exceeding twelve months and by a fine not exceeding five hundred dollars.

If you do not find him guilty of either of the felonies aforesaid, but find him guilty of assault and battery, as further charged in the indictment, then you will say so and fix his punishment by confinement in jail for a period not exceeding twelve months, or by a fine not exceeding five hundred dollars, or by both such fine and imprisonment.

If you find him not guilty, you will say so and no page 19 } more.

Attest, this 8th day of September, 1948, to the defendants' Certificate No. 4, the same having been tendered to the undersigned on the 1st day of September, 1948, after notice to the Commonwealth's Attorney as required by Law.

(signed) W. V. FORD,  
Judge of the Circuit Court  
of Rockingham County

page 20 }

## CERTIFICATE NO. 5

The following evidence on behalf of the plaintiff and defendants respectively, is all of the evidence which was introduced at the trial of this case at the June Term, 1948, of the Circuit Court of Rockingham County. Motions and objections, rulings and exceptions to the rulings of the Court were made during the progress of the trial as herein set forth in this certificate:

page 21 } Virginia:

In the Circuit Court of Rockingham County.

Commonwealth of Virginia, Plaintiff,

v.

Lawrence Dean and Floyd Shifflett, Defendants.

Heard in Harrisonburg, Virginia, June 17, and June 18, 1948.

Before Honorable W. V. Ford, Judge, and a jury.

Appearances: Mr. George D. Conrad, Commonwealth's Attorney, attorney for the Plaintiff. Messrs. Chas. A. Hammer, Jr., and Sam P. Conrad, attorneys for the Defendants.

Reported June 17 by F. F. Converse. Reported June 18 (except for the latter part of morning session by same Stenographer.

(Testimony taken by Mr. Lee, during latter part of morning session, June 18, 1948, should be inserted, when transcript is made by him, between Pages 99 and 101.)

page 22 }

(In Chambers.)

Mr. Hammer: Your Honor, please, without waiving the rights of the defendants in this case, for reasons which will be given in another motion immediately following this case and the swearing in of the jury in the event this motion is overruled, we now desire to move the Court for a continuance of the case charged in the indictment against Lawrence Dean and Floyd Shifflett, for the reason that at another day of this term of the court Lawrence Dean was charged on a similar indictment involving a similar or practically an identical offense, by the identical jury that is now in court. This jury

and the jury now called upon to try this case will be the same jury which acquitted Dean of the felony charge alleged in the former indictment but did convict him of a misdemeanor, that is, of a simple assault, and imposed a fine upon him of \$200.00 and costs. Now, if the defendants in the case be tried before this jury, is, in our opinion, allowing the Commonwealth to do indirectly that which they are prohibited from doing directly, that is, that in the trial of a felony case the Commonwealth cannot adduce evidence against a defendant of a former conviction for a misdemeanor unless specified by statute. There is no exception to that law. And by requiring the defendants in this case to proceed to trial today, the Court

would be aiding the Commonwealth indirectly in  
 page 23 } proving, as heretofore stated, what the Commonwealth cannot prove directly. We, therefore, move  
 Your Honor to continue the case to the next term of court, which commences on Monday of the coming week.

The Court: Is *all* all your ground?

Mr. Hammer: On the continuance.

The Court: It appears to the Court that the two cases against Dean, mentioned by counsel, are entirely unrelated, and that none of the parties involved in the first trial are involved in this case. The Court is of the opinion that the rights of neither defendant in this case will be prejudiced by a trial before a jury drawn from the same venire that the jury was drawn on the former trial, and accordingly the said motion is overruled.

Mr. Hammer: To the ruling of the Court, the defendants by counsel except.

(Parties returned to the Courtroom.)

page 24 } (In Chambers again.)

Mr. Hammer: We desire to move to quash the jury in this case and declare a mistrial. As Your Honor will recall, a motion was made in regard to the indictment in this case. That motion was made first on the demurrer to the indictment, which the Court overruled at a prior day of this term. After the overruling of the demurrer to the indictment, a motion was made to strike out from the indictment a charge of conspiracy, which the Court sustained. Your Honor, please, Section 4894 of the Code of Virginia reads as follows:

\* \* \* \* \*

"A person tried for felony shall be personally present during the trial. If when arraigned he will not plead or answer, and do not confess his guilt, the court shall have the plea of not guilty entered, and the trial shall proceed as if the accused had put in that plea. But for the purposes of this section, a motion for a continuance, whether made before or after arraignment, shall not be deemed to be part of the trial.  
\* \* \*

Mr. Hammer (continuing): Under the authorities of Virginia, Your Honor please, that is the only section in Virginia under which any action can be taken on the trial of a felony in which the accused is not present. We submit that the amendment of the warrant and the passing page 25 } upon the motion, in the absence of the accused, on a former day of this term, is error, and we are calling it to the Court's attention at this time in order that the record may be properly preserved, and we most earnestly submit to Your Honor that the indictment now contains a different charge. It is not the same charge returned by the grand jury, and we most earnestly insist that it is a right that cannot be waived by the accused themselves. We submit that this jury should be dismissed.

The Court: I sustain the motion and order a new venire, and we will proceed to trial at one o'clock.

Mr. Hammer: Wouldn't this be the position—

The Court: I will immediately draw a new venire. I don't know whether you have any right to make any complaint.

Mr. Hammer: He was arraigned under an indictment that was not returned by the grand jury.

The Court: Yes, he has taken me up on that. I overrule the motion.

Mr. Hammer: Defendants except, on the ground that the amended indictment is one upon which the grand jurors of this county did not indict the accused; that, although the accused pled to the amended indictment it was amended originally in the absence of the defendants, and for that reason any further action under the amended indictment would raise page 26 } the identical question of the presence of the accused at the time of the amendment. It is a right that the defendants cannot waive, even by their pleas.

The Court: Originally, in this case, the demurrer filed by defendants' counsel was overruled, on the ground that any allegation as to a conspiracy was merged into the greater offense of a felony and malicious assault. Then, upon the motion of defendants' counsel, the language alleging con-

spiracy was stricken, on the ground that it was surplusage. Both the demurrer to the indictment and the motion to strike were renewed in open court this day, and both the defendants were present in person and by counsel. After the renewed motion to strike the surplusage was made, and sustained by the Court, the indictment was amended by striking said language, and the defendants were re-arraigned and pled not guilty to the amended indictment, without objection. In view of these facts, I quashed the venire. Therefore, the motion to quash the indictment as amended is overruled.

Mr. Hammer: The defendants, by counsel, except.

page 27 } (In Chambers, soon after the re-convening of  
Court at 1:30 P. M.)

Mr. Hammer: Your Honor, please, this morning Your Honor sustained our motion to declare a mistrial on this case on the ground that action was taken in the case on certain matters during the absence of the accused. The jury which had been impaneled was in the box, and has been dismissed. There has now been a new venire summoned for the trial of this case. It is the position of the defendants in this case that the impaneling of a new jury will not rectify the error already committed. The indictment was originally amended during the absence of the accused. On this morning, they were arraigned upon the amended indictment. There have now been for these defendants two arraignments, one on the original indictment, returned by the grand jury, and one on the amended indictment. The action of declaring a mistrial, in our opinion, and impaneling a new jury, does not remedy the situation, although our motion to declare a mistrial was sustained. The action of the Court in amending the indictment was not a void act, but, in our opinion, voidable. It would now appear, and it appears to us, that there is a material variation between the indictment returned by the grand jury and the indictment as amended and to which the defendants have pleaded. We, therefore, move Your Honor to  
page 28 } quash the original and the amended indictment for  
the foregoing reasons, and, further, to dismiss the  
venire summoned in this case.

The Court: In the Court's opinion, it is immaterial whether the Court's action in overruling the demurrer and sustaining the motion to strike certain parts of the original indictment was void or voidable. If said action was void, it was without any effect at all. If it was voidable, defendants' counsel

moved for a mistrial on the ground that it was an illegal act, prejudicial to the defendants, and was, therefore, void, and when the Court sustained the defendants' motion it then became of no force and effect. It is the Court's opinion, after he sustained the motion to declare a mistrial, that everything, starting with the hearing of the demurrer to the original indictment, from there on, is annulled, and the situation of the case at this time is that we are proceeding on the original indictment, the arraignment of the two defendants thereon, and their plea of not guilty. Therefore, the Court overrules the said several motions of the defendants by counsel.

Mr. Hammer: Your Honor, please, we desire to demur to the indictment on the ground that it embodies two complete and several offenses, one a charge of conspiracy and the other of felonious assault, and for the further reason that there is no such thing as a conspiracy to commit felonious assault, under the statute.

page 29 } Mr. Hammer, continuing. Now, Your Honor, please, we move to strike from the indictment, without waiving our former objections, the charge that Lawrence Dean and Floyd Shifflett "did conspire and confederate together for the purpose of committing an assault and bodily injury upon H. E. Taylor, with intent him the said H. E. Taylor to maim, disfigure, disable, or kill, and in pursuance of said conspiracy and confederation". We desire that that portion of the indictment be stricken.

The Court: It is true that the Virginia statute authorizing indictments in certain specified cases for conspiracy does not include the offense of malicious assault. However, at common law it is an offense to conspire to commit any illegal act. It is the Court's opinion that the present indictment is a felony indictment, charging the commission of a malicious assault, and the conspiracy, if any is charged in the indictment, is merged into the felony, and that the indictment is not bad as charging two offenses. Therefore, the demurrer is overruled. It is the Court's opinion that any language in the indictment referring to a conspiracy, for reasons stated above, does not charge a separate and distinct offense, but is a matter of inducement or a part of the felony actually charged in the indictment. Therefore, the motion to strike is overruled.

Mr. Hammer: To which counsel for the defendants except, for the reasons heretofore assigned.

page 30 } Mr. Hamner, continuing: We object to the charge to the jury for the reason that the charge does not embrace therein the elements of conspiracy; although the charge of conspiracy may be merged in an indictment for

*Dr. N. M. Canter.*

felony, on proof and conviction, after the grand jury has returned an indictment, charging conspiracy and a felony, it is the position of the accused that this jury could find them guilty of a conspiracy to commit felony, without convicting them of a felony charge; therefore, the element of conspiracy should be embraced in the charge to the jury.

The Court: The Court has already ruled that anything referring to a conspiracy in this indictment is merged into the actual allegation that the accused committed a felonious assault and that the indictment charges only the felony. Therefore, the objection to the charge is overruled.

Mr. Hammer: The defendants, by counsel, object to the ruling of the Court for the reason aforesaid.

(The parties returned to the Courtroom.)

page 31 } (Beginning of testimony.)

Dr. N. M. Canter, first witness. Direct.

#### EVIDENCE INTRODUCED BY THE COMMONWEALTH.

DR. N. M. CANTER,  
sworn for the Commonwealth.

Direct examination was conducted by Mr. George D. Conrad, Commonwealth's Attorney:

Q. You are a practicing physician in the City of Harrisonburg, and specialize in X-ray work, do you not?

A. Yes, sir.

Q. How long have you been engaged in the practice of medicine, approximately?

A. Thirty odd years.

Q. How long have you been doing X-ray work?

A. The larger part of that time, since 1917.

In the City of Baltimore, I was associated with Dr. . . . . , and on the staff of two hospitals there.

Q. Doctor, did you interpret an X-ray picture of H. E. Taylor?

A. Yes, sir, they were made at the hospital. I think the plate was made the 2d.

Q. You did look at the plate, and have looked at it recently?

*Dr. Hollen Helbert.*

A. Within the last few hours.

Q. What were the injuries shown?

A. There was a fracture of the tip of the nasal bone, without displacement, no fracture of the spine, and no fracture of the skull (?).

That's all, Doctor. You may stand aside. You  
page 32 } are excused.

(Witness left the stand.)

DR. HOLLEN HELBERT,  
sworn for the Commonwealth.

Direct examination was conducted by Mr. Geo. D. Conrad:

Q. State your name.

A. Hollen Helbert.

Q. You are engaged in the general practice of medicine in the City of Harrisonburg?

A. Yes, sir.

Q. For how long?

A. About eight months.

Q. You are a graduate of what Medical School?

A. University of Virginia.

Q. Did you treat H. E. Taylor for injuries sustained May First?

A. Yes, sir.

..Q. Just state what his injuries consisted of.

A. He had a lot of bruises around his face; his left eye was shut, his nose was badly swollen, and had bled. His lips were badly cut on the inside, and he was tender over the back of his neck and over the back of his head.

Q. What treatment did you give him?

A. Principally, trying to ascertain how seriously injured he was. Gave him some codine for the relief of his pain, and had him taken to his room, and ice to reduce the swelling. He was brought back for an X-ray the next day.

page 33 } Q. Interpreted by Dr. Canter?

A. Yes.

Q. How long was he under your treatment?

A. The next day he came for the X-ray. He was allowed to go home. His other eye was almost shut by that time. He returned to the hospital and stayed until Monday evening, the 3d of May, at which time he went to his home, near Roa-

*Tom Bailey.*

noke. I had him X-rayed because I was afraid he might have sustained a break about the base of his skull or some of the bones of the vertebra or the neck. He had a fractured nose, but he did not have a broken neck or fractured skull.

Stand aside, Doctor. You are excused. Thank you very much.

(The witness left stand.)

MR. TOM BAILEY,  
sworn for the Commonwealth.

Direct examination was conducted by Mr. Geo. D. Conrad:

Q. State your name, age, and occupation.

A. Tom Bailey. I am. I live in Harrisonburg. I am an investigator for the A. B. C. Board.

Q. For how long?

A. This is the 8th year. I have been stationed in Harrisonburg since February a year ago.

Q. You married a local girl here?

A. Yes, sir.

page 34 } Q. Now, Mr. Bailey, state to the jury just how  
the investigations of the A. B. C. Board are conducted.

A. Our work is to inquire and find where violations of the A. B. C. Act have taken place.

Q. And just how do you proceed?

Objection; overruled; exception by Mr. Hammer.

A. We receive complaints from citizens, sometimes through letters, and then the policy of our department is to send men from one territory to another. Duff and I work together, in Page, Augusta, Rockingham, and Highland Counties, and the supervisors send men from one territory to another to do under-cover work.

Q. Are you also allowed to employ local men?

A. Yes, sir, we are authorized to pay each person \$2.00.

Q. Is that the customary practice all over the States?

A. Yes, sir.

Q. These informants are people who have access to the person who is suspected of selling?

A. Yes, sir.

Q. Did you employ John Crawford?

*Tom Bailey.*

A. Yes, sir. It was on Thursday, the 29th of April. Duff and I had received a complaint that John Crawford was violating A. B. C. laws. He lives near Island Ford. We went over there and searched the woods and didn't find anything at all. And in talking to Crawford about the violations in that section, Duff first was talking to him about page 35 } acting as an informer, in helping us to get information concerning some reputed bootleggers around Elkton. I told him I would pay him \$2.00 for each person he would help our under-cover man to find. He said

Objection; sustained.

Q. Did you arrange such employment with Crawford?

A. Yes, sir, Crawford agreed to go with our undercover man to take him to buy some whiskey from three persons at Elkton. Well, there were three or four persons in the section near Rocky Bar, and down near Port Republic.

Q. Where does Crawford live? This side of Elkton, or the other side?

A. No, beyond Elkton and to the south, east of the main highway.

Q. Was Taylor with you when you made these arrangements?

A. No, sir. Duff was.

Q. Did you arrange with Crawford to meet Taylor?

A. Made arrangements to meet Crawford around 7:30 on Friday evening, with our under-cover man.

Q. You took Taylor with you?

A. Yes, sir, Duff and Taylor, and I.

Q. Did he go with Crawford that night?

A. No, sir. Crawford said his wife was sick. We told him we would come back the following evening.

A. Did you go back the following evening?

page 36 } A. I went back with Taylor. Duff didn't. We turned off at McGaheysville, and went towards Island Ford. Taylor went down with me. I would say around a quarter of eight, or between that and eight o'clock.

Q. You left Taylor there with Crawford?

A. Yes, sir. I got to him around ten o'clock; received a call from Duff, at his home at McGaheysville. I think it was ten-thirty or a quarter to eleven.

Q. Just what was that call?

Objection; overruled.

*Tom Bailey.*

A. I understood from Duff that Taylor had been beaten up. I met him at the Pure Village. And then I took Taylor to the hospital.

Q. What was Taylor's condition?

A. He was bruised up pretty badly. His mouth was mashed. He was suffering from a severe pain at the back of his head or neck.

Q. Was he bleeding?

A. Yes.

Q. You sent him to the hospital?

A. Yes, sir.

Q. How did Taylor happen to come up here? Was he sent here on official business?

A. Yes, sir.

Q. Was he on official business at this time?

A. Yes, sir.

page 37 } Cross examination of witness was then conducted  
by Mr. Hammer:

Q. At that time, had you paid Crawford any money?

A. No, sir.

Q. It is your custom to employ stool pigeons? You get some one to violate the law, and then you boys come in and bounce on them?

A. We pay him \$2.00 for each person he helps us to get.

Q. He was suspected of selling moonshine liquor?

A. Yes, sir, of manufacturing it.

Q. So when you didn't catch the goose you went out to catch the gander.

Re-direct examination of witness was conducted by Mr. Conrad:

Q. How do you determine who might be violators?

A. People are complaining to us.

Q. You don't try to trap innocent people?

A. It is old established bootleggers.

Re-cross examination by Mr. Hammer:

Q. How do you know they are guilty?

A. We have information from reliable people.

Q. You listen to every bootlegger who gets ready to inform you on another one?

*John Duff.*

A. Yes, sir, and lots of times catch them.

Q. And lots of times you don't? But you are willing to pay that \$2.00?

page 38 } Re-re-direct examination by Mr. Conrad:

Q. That amount is fixed by the State, isn't it?

A. Yes, sir.

(Witness left the stand.)

MR. JOHN DUFF,  
sworn for Commonwealth.

Direct examination was conducted by Mr. Geo. D. Conrad:

Q. Your name is John Duff, is it not?

A. Yes, sir.

Q. You live near McGaheysville?

A. Yes, sir.

Q. What is your occupation?

A. Investigator for the A. B. C. Board.

Q. For how long?

A. Seven years, nearly, including the time I was in the service.

Q. Do you know H. E. Taylor?

A. Yes, sir.

Q. Under what circumstances did Taylor come here to work in this territory?

Objection; overruled.

A. He was sent here to do some under-cover work.

Q. In what section?

A. Around Elkton.

Q. You had some reports as to boot-legging activities around Elkton?

page 39 } A. Yes, sir.

Q. Was John Crawford employed by you and Mr. Bailey?

A. Yes, sir.

Q. Was he to assist Mr. Taylor in his work?

A. Yes, sir.

Q. Now, just state the circumstances of his employment?

A. It was on April 29 we searched John Crawford's home.

*John Duff.*

We found nothing. We were in his back yard, and got into a general conversation about different ones in the community selling whiskey, and after talking to him for some time Lawrence Dean and Floyd Shifflett—

Objection by Mr. Hammer; sustained.

Mr. Geo. D. Conrad: He could say what reports he had had.

A. Crawford never mentioned that.

The Court: He could testify that he had reports. I don't think he could put his finger on particular individuals.

Mr. Geo. D. Conrad, continuing:

Q. You employed Crawford to help you apprehend illicit dealers?

A. In the conversation between Bailey and myself and Crawford, Lawrence Dean and Floyd Shifflett's names were mentioned.

Mr. Hammer: Your Honor, please, we have a motion.

page 40 }

(In Chambers.)

Mr. Hammer: Your Honor, please, we move for a mistrial in this case, on the ground that the statements of this officer are highly prejudicial to these defendants. He has stated that these defendants were suspected of bootlegging. These defendants are charged with assault and battery. They are not charged with violating A. B. C. laws. It has no right to be in this case. This witness has told this story that they were suspected of that, and that they were discussing that with Mr. Crawford. We submit that it is highly prejudicial to these defendants, and we move for a mistrial.

Mr. Sam Conrad: And, in addition to that, this evidence has brought to the attention of the jury that these two men were suspected of being liquor violators, and indirectly it may be shown that they were convicted prior to this time, even though such evidence would not be admissible.

Mr. Geo. D. Conrad: This was in order to establish the fact that Taylor was engaged in his official duties. The evidence

*John Duff.*

is not prejudicial to the defendants, but simply explanatory as to whether Taylor was at the time acting in accordance with his official duties in attempting to get information. It is bound to come into the case. There is no way to keep it out.

Mr. Sam Conrad: The prosecution could have proved that he was acting in an official character, but this is merely an effort to bring before the jury that these men had page 41 } the reputation of being bootleggers. Hearsay rule is very plain. There are specific exceptions.

Mr. Geo. D. Conrad: There is no possible way to keep the jury from knowing that the reason they went to see him was because he was suspected of bootlegging. In many cases that would be true. For instance, if a policeman were asked why he pursued a man down the road, he could testify it was because he was suspected of stealing. It is not the hearsay rule, Judge. It is a state of facts that existed. How else can you explain it?

Mr. Hammer: In addition to that, Your Honor please, the Commonwealth can make out a case under the indictment if he has evidence to that effect, without having brought before the jury the implication that these boys were dealing in the illicit manufacture of alcohol. They are charged specifically with one offense, and they are on trial for that offense. Mr. Conrad has stated that it is so closely connected that you can't separate it. That is the burden of the Commonwealth,—to give to the jury no evidence prejudicial to their case. The jury has no right to know whether these men were charged with a violation, and if it is a charge of conspiracy that the Commonwealth desires to prove, it could be proven by Crawford, the informer in this case.

The Court: The Court is of opinion that this page 42 } evidence is material. The Commonwealth has avowed in his opening statement that Crawford communicated the fact of his employment, and that Taylor was an under-cover man. I don't think that Mr. Duff has a right to detail the conversation between Crawford and himself; that is as far as my ruling went. Therefore, the motion is overruled.

Mr. Hammer: We except to the ruling of the Court, for the reasons heretofore assigned, and for the further reason that this witness has detailed indirectly the conversation between Crawford and Bailey and himself, and, in so detailing, has stated that they talked to Crawford about informing Lawrence Dean and Floyd Shiftlett.

*John Duff.*

The Court: I am willing to instruct the jury to disregard any evidence of Mr. Duff that Crawford told him anything about Dean and Shifflett. It is not evidence against these defendants. It is evidence as to what reason Crawford took Taylor there. He is going to prove, or attempt to prove, that fact about Dean and Shifflett.

Mr. Hammer: Defendants, by counsel, except to the opening statement.

(Parties returned to the Courtroom.)

page 43 } The Court: Gentlemen of the jury, the Court instructs you that anything Crawford told Mr. Duff about Dean and Shifflett being suspected of bootlegging, you are instructed to disregard as violating the hearsay rule.

Mr. Geo. D. Conrad continuing:

Q. Did you make any arrangements with Mr. Crawford to do some under cover work with you?

A. Yes, sir, we gave him a list of names and offered to pay him \$2.00 for each person we caught.

Q. Were Shifflett and Dean on the list?

Objection by Mr. Hammer.

The Court: I think it is proper for him to state whom they directed him to.

Objection to the Court's ruling.

A. Yes, sir. We arranged to give him \$2.00 for each violator we found.

Q. Was Taylor here at that time?

A. No, sir, he came the next day.

Q. Where is he stationed?

A. In Rocky Mount.

Q. When did Crawford meet Taylor?

A. Met him, first, on Friday night. We took him over there to Crawford's house. Crawford said his wife was sick, and he couldn't go that night.

Q. Taylor was going with Crawford?

A. Yes, sir.

page 44 } Q. You didn't go back, yourself?

A. No, sir.

Q. Did you see him come down there Saturday night?

A. I saw him go by home.

Q. When was the next time you saw Taylor that night?

*John Crawford.*

A. Approximately nine o'clock, Taylor and John Crawford came to my house. Taylor had been beat up pretty bad. Both eyes were blood-shot. The bridge of his nose begin to swell. He couldn't breathe through it. He had blood over his face and shirt and trousers and nose. He complained with the base of his skull, with pain that he could hardly bear. I called investigator Bailey.

Q. He brought him to Harrisonburg in his car?

A. Yes, sir.

Cross examination of witness was then conducted by Mr. Sam Conrad:

Q. You all suspected Crawford, and were searching his place for a still?

A. Yes, sir, but we found none.

Q. Do you know how old he is?

A. Twenty-three years old. I checked the school record in Mr. Myers' office this morning, which is the same age he told us he was the same day we went there.

Mr. Conrad: I believe that is all. Stand aside, Mr. Duff.

(Witness left stand.)

page 45 } Testimony of

MR. JOHN CRAWFORD  
begins here.

Direct examination was by Mr. Geo. D. Conrad:

Q. Your name is John Crawford?

A. Yes, sir.

Q. How old are you?

A. 23.

Q. Married?

A. Yes.

Q. Have any children?

A. One.

Q. Where do you live?

A. About three miles from Elkton.

Q. Do you know these two men?

A. Yes, sir.

*John Crawford.*

Q. Did Mr. Duff and Mr. Bailey come to your place on April 29?

A. Yes.

Q. What did they come for?

A. To search me for whiskey.

Q. Did they find any?

A. No, sir. They told me they would give me \$2.00 for any man I would help catch, if I would go with them and offer to buy some whiskey. He came back to my house Friday night.

Q. Who?

A. Taylor, and Bailey and his wife.

Q. Taylor came there with Bailey?

A. We were supposed to go and buy some whiskey. I told them my wife was sick, to keep from going. I didn't want to go. I knew if I took Taylor down there, Shifflett and Dean would beat me up. I told them I couldn't go. They page 46 } asked me if I could go on Saturday night. I told them I could go. I went to Elkton on Saturday morning. I seen Dean at the railroad crossing and Floyd in front of Miller's. I told them these people were Revenue men. Floyd said he didn't have no whiskey, but he had something in a package.

Q. About *that* time of day was it?

A. I wouldn't have the least idea. I would say around eleven o'clock. Lawrence come along and stopped there, and Floyd come up.

Q. What did Lawrence say when you told him you were going to help this Revenue man?

A. He didn't say anything.

Q. Did you see Shifflett any later that day?

A. Yes. And he said he didn't have no whiskey, but had something in a package.

Q. Did Taylor come back later that night?

A. Yes.

Q. Who brought him?

A. Bailey, and his wife, I guess. We went down to buy some whiskey, and we ran against Lawrence, and asked him if he had any whiskey. He said, "No, I haven't got any, but probably I can take him up the road to find some." Me and Taylor went up there, and when Lawrence come, Harry Lam was with him. He come up on the hill, and we went up to Perry Bailey's, on the East Side Highway.

page 47 } Q. Do you turn to the right after you reach the intersection?

*John Crawford.*

A. Yes, going toward Merck's, from Elkton. Filling station, restaurant, grocery store, and all.

Q. You and Taylor were in the back?

A. That's right. Lawrence asked us if we were getting out of the car. We said Yes. Floyd was already there. He was talking to some one. Taylor walked over and put his hands in his pockets. Lawrence and Floyd got to scuffling about. I went in to get a package of cigarettes, and Floyd and Lawrence were scuffling together. I don't know whether they were mad, or not. Taylor and Floyd had their arms around one another when I come out. They got to scuffling there, and Lawrence went up and pulled Taylor off. Both of them went down to the ground together. Taylor turned his face to the ground, to keep him from beating him. I told Floyd to get him up. Finally, we helped Lawrence get him up. Taylor went off through the field, and I ran down the ditch.

Q. Was any one running after you?

A. Yes.

Q. You knew that Shifflett and Dean both knew that this was an under cover man?

A. Well, when I told them that morning. I told them that morning. This was done that evening.

Q. Did you tell Taylor anything about having told these men he was an under cover man?

A. No, sir.

page 48 } Q. Where did you go?

A. Me and Taylor come on back to town and up to John Duff's. He asked for John Duff; that he was in the same business he was.

Q. Did you see Dean later that night?

A. I seen him in the bowling-alley. He asked me whether he was beat up much. He asked me whether he was any kin to Taylor in Elkton.

Q. Did Dean and Shifflett come up to see you after that?

A. Several times, to tell me to tell that Taylor said they were sons of a bitch.

Q. How often did they come?

A. Three or four times in one day. I told them I had told the investigators the same story.

Q. Why did you tell them that?

A. Because I was afraid of them. I knew if I told them the truth they would beat me up.

*John Crawford.*

Cross examination of witness was then begun by Mr. Hammer:

Q. Whose son are you?

A. Robert Crawford's.

Q. Have you been bootlegging any?

A. No.

Objection.

page 49 } Mr. Hammer: You brought it up. You gentlemen have been objecting very vigorously.

The Court: I think that is as far as you can go.

Q. That was the first time the officers had been at your place?

A. Yes, sir.

Q. And in the conversation, as I understand you, you agreed to accept employment as a stool pigeon for \$2.00 for each man.

A. Call it stool pigeon if you want to.

Q. Well, what would you call it? What were you to do now for these gentlemen?

A. To try to go around and buy whiskey off of them, and to turn it in to the Revenue man. They were going to pay me \$2.00 for every one I helped to catch.

Q. They had already told you, then, different ones from whom to try to buy?

A. Yes, sir.

Q. That was Friday, and the next morning you went to Elkton, and you saw Lawrence Dean?

A. Yes, sir.

Q. When did you first decide to tell any one that this was an A. B. C. man?

A. My wife told me to; I knew they were tough guys, and I was afraid of them.

page 50 } Q. Why didn't you tell the officers that the night before?

A. They wanted me to buy whiskey off of people, and I didn't know what to do.

Q. So then you thought the best thing to do was to double-cross those men? First, you were going to double-cross your friends. When you bought whiskey from them, you were going to turn it over to the A. B. C. men. And you were to get \$2.00 for each one of those?

*John Crawford.*

A. For each one I helped to catch.

Q. And then you were going to lead these boys into that trap?

A. I told the A. B. C. men I would help.

Q. You were going to lead them right to the slaughter? If they sold it, you were going to get \$2.00 for each man, and that included these two boys?

A. Yes.

Q. On Friday, Mr. Duff and Mr. Bailey told you about these two boys, and you were going to help them catch them?

A. To catch any one I could.

Q. And you were going to stick that \$2.00 into your pocket, weren't you?

A. Yes.

Q. You knew these boys just as well on Thursday as you did on Friday?

A. I knowed them, but I was never acquainted with them.

Q. Did they offer you \$2.00 to double-cross the page 51 } A. B. C. officers? You did double-cross the A. B. C. officers when you told Dean and Shifflett? You knew you should not have told them?

A. I knew what they were going to do. They would beat me up. I didn't know what to do.

Q. First, you were going to double-cross Dean and Shifflett. Then you tried to double-cross the officers. Then you tried to buy whiskey from these boys?

A. He said he didn't have no whiskey.

Q. Why didn't you tell the officers that you were afraid of these boys, that you had told them who they were?

A. I was too upset.

Q. What else did they promise you, besides those \$2.00?

A. Nothing else. I didn't know what to do.

Q. What did you think Mr. Taylor would do to you if you had told him that you had gone down there and told these boys who they were?

A. I didn't think Mr. Taylor would beat me up.

Q. Where did you see these boys?

A. 40 or 50 yards from Miller's restaurant.

Q. You talked to Lawrence Dean first?

A. I think so. Then Shifflett come up. I was coming up from the Farm Bureau. I had just got in town.

Q. So you ran up on Lawrence Dean, and you told Lawrence Dean that an A. B. C. man was coming, and page 52 } you were coming down to trap him?

A. He said, What kind of looking man was he?

*John Crawford.*

I told him it was a big man. He said, "Maybe I sold some to him yesterday." Afterwards he told me it wasn't the man.

Q. Then you met Floyd Shifflett?

A. Floyd said he didn't have nothing, but that he had something in a package.

Q. Who was around and heard you talk to him?

A. I didn't pay much attention. I talked to Lawrence down about the railroad track, and then Floyd come up.

Q. When you and Floyd and Lawrence were together, what did you tell them then? On that one occasion, what did you tell them?

A. I told Lawrence it was a Revenue man, and I was going to bring him in.

Q. You say Floyd Shifflett came up?

A. Yes.

Q. What did they talk about?

A. I don't know what they talked about. I thought Lawrence would tell him.

Q. Why didn't you tell Floyd?

A. I thought they would talk it over. I did tell him, later.

Q. Where did you get Mr. Taylor that night?

A. He come up to the house around seven or seven-thirty, that night.

Q. Wasn't your wife sick Saturday night, too?

A. She wasn't sick Friday night.

page 53 } Q. Why did you tell the officers she was sick? You told them you would come Friday night?

A. Yes. They said: Would I go Saturday night? I told them I would.

Q. What changed your mind?

A. Nothing changed my mind.

Q. But you went? Then you met Lawrence Dean in town Saturday night, and he left the car.

A. I don't know whether he left the car on Saturday night, or not. We met him in front of the service station, and he told us to go up to his car and wait. We met him on the street and asked him if he had any whiskey. He asked, Was Miller there? Then he said he didn't have any whiskey but maybe he could pick some up.

Q. You and Taylor were on the back seat, and you went up to the filling station?

A. Yes, sir.

Q. And you still hadn't told the officers that you had told these boys that this was an A. B. C. man?

*John Crawford.*

A. No, sir. Floyd was talking to some one.

Q. Lawrence and Floyd got to scuffling?

A. Yes, and when I come out Floyd and Taylor had their arms buckled around each other.

Q. Tell the jury who all was present and saw all this.

A. Lawrence, Floyd, and his brother, and I don't know who else.

page 54 } Q. Did you see Blanche Stanley?

A. I don't know.

Q. Did you see Guy Monger?

A. I didn't recognize him.

Q. Did you see Perry Bailey?

A. Yes, he waited on me.

Q. Lawrence and Floyd were playing, weren't they?

A. They had their arms buckled around each other.

Q. When you came out, Taylor and Floyd were buckled together?

A. Yes, sir.

Q. Did you ever see Taylor when he grabbed Shifflett from behind?

A. Yes. I didn't see his hands there behind, but they were buckled there together.

Q. Do you know who grabbed one another first?

A. I don't know. Lawrence Dean grabbed Taylor off of Floyd, and went to fighting.

Q. Nothing was said?

A. Nothing was said that I heard. He must have said it mighty easy.

Q. Was Lawrence Dean hurt any in that fight?

A. I don't know whether he was, or not.

Q. Did you see any blood there when the fight was going on?

page 55 } A. I was trying to get them separated.

Q. Was there any blood on Taylor?

A. There was blood on Taylor's face.

Q. How about Dean?

A. I didn't pay no attention.

Q. Who passed the first lick?

A. I don't know. I thought Mr. Taylor hit him first. Dean hit him back of the head, Taylor told me.

Objection.

Q. But you took it to be that Taylor hit him first?

*John Crawford.*

A. Lawrence Dean had Taylor under the chin. Lawrence could have hit him a dozen times.

Q. But you didn't see Lawrence make any move to Taylor except to take him off Shifflett? But you did see Taylor hit Dean first? Tell the jury whether or not Mr. Taylor,—didn't Mr. Taylor say, "you son of a bitch, what have you got to do with it?"

A. I didn't hear Taylor say it.

Q. You won't say that Taylor did not say it? You won't deny that Taylor said it?

A. If he said it, I didn't hear it.

Q. Now, John, had you and Mr. Taylor had anything to drink that day?

A. We had two drinks apiece.

Q. And he came there in his car?

page 56 } A. He came there in Taylor's car.

Q. You drove in, in Mr. Taylor's car?

A. Yes, sir.

Q. After he had had these other drinks, you noticed that he was feeling a little better, didn't you? He was singing and carrying on in very high glee, wasn't he?

A. I don't know whether he was singing, or not. He taken one drink before, and one drink.

Q. How many times did you have a conference with Mr. Taylor and Mr. Duff right after this fight?

A. I don't know.

Q. How many times did they go over your story with you before they took it down in writing?

A. I would say three or four times.

Q. And Mr. Bailey and Mr. Duff told you what to put into that statement?

A. No, they didn't tell me what to suggest. The other one, the one from Richmond, was the one I told the truth to.

Q. Then you lied to these two, Mr. Bailey and Mr. Duff?

A. I did, when I didn't tell them that I had told these men who they were.

Q. Did they threaten you in any way?

A. No, they didn't.

Q. Well, why were you afraid to tell these officers that you had told Mr. Dean and Mr. Shifflett?

page 57 } Mr. Geo. D. Conrad: He has answered that before. He said he was afraid.

*John Crawford.*

Q. When was the first time you had attempted to tell them that you had ever talked to Dean and Shifflett?

A. I told the one from Richmond.

Q. How many officers had talked to you before that?

A. Duff and Bailey that I recognized, and the one from Richmond. He wasn't up at the house.

Q. You denied it up until the time that that officer got you to tell this? It is true, isn't it, that these officers suggested to you—

Mr. Geo. D. Conrad: You have already asked that, and he said they didn't suggest to him what to say.

A. They didn't ask me nothing. They asked me to tell the truth.

Q. When you finally told the man from Richmond that you had told Lawrence Dean and Floyd Shifflett that Taylor was an A. B. C. man, why did you tell the truth?

A. Well, it pays to tell the truth.

Q. Why didn't you tell the others the truth?

Objection; sustained.

Q. Who was the man from Richmond.

A. I don't know his name.

Q. Who else had talked to you?

A. No one else except Bailey and Duff.

Q. Did the man from Richmond ask you whether you were telling those officers the truth?

page 58 } A. No.

Q. Would you lie about it?

A. I did, but I told him the truth.

Q. And you can't name any one who heard any conversation between you and Lawrence Dean or you and Floyd Shifflett? Did you see any one close? Can you name one person other than Lawrence Dean and Floyd Shifflett?

A. I seen Millard Davis there.

Q. Where was he when you were talking to Lawrence Dean?

A. Above the railroad crossing.

Q. Where was he when you talked to Floyd Shifflett?

A. Up about Miller's.

Q. As I understand you, Taylor had two drinks, and you had two drinks.

A. Taylor had two drinks, one before and one after the fight.

*H. E. Taylor.*

Q. Did you ever get your \$2.00?

A. I didn't catch anybody.

Q. When were you born?

A. April 25, 1925.

Q. Why wouldn't you come up here to talk to Mr. Sam Conrad and myself?

Objection by Mr. Geo. D. Conrad; objection overruled.

A. Well, I just don't know the reason I didn't come.

Q. As a matter of fact, you had been told by the page 59 officers not to talk to anybody?

A. I didn't hear them say that.

Q. Why didn't you come up here and talk to Mr. Conrad and myself?

A. Well, I just didn't want to come. They come up to the house and wanted me to go. They saw me at Elkton, and wanted me to go. They had a lot of whiskey.

Q. You were afraid to ride with whiskey in the car?

A. I wasn't afraid. But I didn't want to mess with it. I take a drink once in a while.

Objection, as immaterial and irrelevant.

(Announcement of a five minute recess.)

(After recess.)

MR. H. E. TAYLOR,  
sworn for the Commonwealth.

Direct examination was conducted by Mr. Geo. D. Conrad:

Q. What is your name?

A. H. E. Taylor.

Q. How old are you?

A. Thirty-one.

Q. Are you a native of Virginia?

A. Yes, sir.

Q. Where is your home?

A. In Pulaski County, Virginia.

Q. Have you held any official position?

A. I was deputy sheriff for about two years, and chief of police of the Town of Dublin.

*H. E. Taylor.*

page 60 } Q. How long were you in the service?

A. A little less than four years.

Q. Did you have over-seas service?

A. Yes, sir.

Q. On your return did you take a position with the Alcoholic Beverage Control Board?

A. Yes, sir.

Q. What are your duties?

A. To find stills and to do under-cover work.

Q. Your official title is Official Inspector?

A. Yes, sir.

Q. What is your station now?

A. Rocky Mounty, Virginia.

Q. Did you come to this section some time prior to May 1 of this year?

A. Yes, sir, on approximately March 18 (?).

Q. Under whose orders?

A. Mr. Smith, the Supervisor's.

Q. Who is the head of the Division?

A. Mr. C. W. Saunders.

Q. And Mr. Smith is a Supervisor for your District?

A. Yes, sir.

Q. Who did you get in touch with, here?

A. Investigator Bailey and Investigator Duff.

Q. Did they tell you what you were to do here?

A. Yes, sir.

page 61 } Q. Just explain to the jury.

A. The usual dress was that a man won't look like an officer. Most of the time in khaki, and army shorts or pants, and a cap. I try to purchase whiskey from these violators. If I have no success, I try to get a known informant to go with me. The arrangement is usually made through the local investigator.

Q. Did you work down in the Elkton neighborhood?

A. Yes, sir, in and out, on different week-ends.

Q. Did you try to make any purchase down there?

A. No, sir.

Q. Did Mr. Bailey and Mr. Duff arrange to secure you the assistance of an informer there?

A. Yes, sir, they made arrangements with John Crawford to go around with me.

Q. Were Dean and Shifflett on the list of violators given you?

A. Yes, sir.

*H. E. Taylor.*

Q. Where did you first meet Crawford?

A. On April 30, at 8 o'clock. He claimed he couldn't go that night, that he could probably go on Saturday night, which we did.

Q. Who took you down there?

A. Mr. Bailey. We came back to my car on the other side of the river from here, and Mr. Bailey then took me and Crawford down there.

Q. Did you have any liquor with you?

A. Yes, sir, I had a pint of liquor.

page 62 } Q. Do you have occasion to offer any one a drink?

A. Sometimes you find an informant who is very nervous.

Q. On that occasion, did you have anything to drink?

A. That night, I did, sir. But it was later. When we returned to my car, I had this pint of whiskey, and I gave Crawford some. I didn't drink any at that time.

Q. After you left Duff's house, did you take any?

A. After leaving Duff's house, and again in Harrisonburg.

Q. What was your condition?

A. What I would call sober.

Q. Were you under the influence at all at any time?

A. Not as I could tell. I didn't feel like I was.

Q. Where did you go?

A. We went into a restaurant and come back out and met Lawrence Dean almost in front of a service station. Crawford asked Dean about some whiskey. Dean told him that he didn't have any, but we should go down to a place near the railroad, and he would come down and take us where we could get some. He told this other man that he had with him then, named Lam, to drive, and went down to a service station, where this fracas occurred.

Q. When you went to the service station, you and Crawford were in the back seat, and Lam was driving, and Dean was in the front seat?

page 63 } A. Yes, sir.

Q. Did you see anything of Floyd Shifflett around there?

A. There was a truck parked, and Dean and Crawford went over. And Dean and Shifflett started scuffling, and I went on up and leaned against the side of the building, and the scuffling came on up to where I was, and Dean knocked Shifflett into me. About that time I was attacked from behind I believe an arm went around me. I was hit three times. I

*H. E. Taylor.*

gave Dean several licks. I remember his hitting me after I started to get up. I went on down the road with Crawford.

Q. Were you in a dazed condition there at that time?

A. Yes, sir.

Q. Who were you trying to get away from?

A. Lawrence Dean. I went down into a field and into Elkton. And then I went to the home of Duff.

Q. What injuries did you have?

A. My nose was injured, and both eyes were black, and the next day I couldn't see out of either of them. Later I had an X-ray at the hospital, and later had another one in Roanoke.

Q. You had cuts inside your mouth?

A. Yes, sir, my lower lip was cut.

Q. What caused the sore condition at the back of your neck?

A. Licks on the back of my neck.

Q. Did they say anything to you?

page 64 } A. Shifflett hadn't said anything to me. The conversation took place between Dean and Shifflett.

Q. Just show the jury how he grabbed you.

A. (illustrating) Just about like this around the hips. Then I tried to free myself and take hold of him.

Q. Did you know why he grabbed you?

A. No, sir, I did not. I thought he was playing at the time.

Q. Do you remember anything being said about turning him loose?

A. No, sir.

Q. When Dean grabbed you, did you know whether he was playing, or not?

A. When he hit me in the back of the neck, I felt like it wasn't playing.

Q. Were you able to defend yourself?

A. Not after I hit the ground. I was still in a daze from the licks.

Q. Had you ever seen these fellows before that?

A. I hadn't seen them before that.

Cross examination of witness was conducted by Mr. Hammer:

Q. Did you ever have any amateur boxing in school?

A. A little.

Q. Did you ever box on a school team?

A. No, sir.

*H. E. Taylor.*

Q. Now, you went over here with Crawford and page 65 } got with Lawrence Dean and Shifflett?

A. Yes, sir.

Q. Did Crawford ever tell you that he had tipped off Dean and Shifflett?

A. No, sir.

Q. When was the first time you knew that?

A. When Saunders came and told me Monday of last week.

Q. There were quite a few people present, were there not?

A. Yes, sir.

Q. Isn't it a fact that you and Floyd started scuffling?

A. After Floyd had grabbed me.

Q. Did you try to run your hands over his pockets?

A. No, sir.

Q. Did you pick him up from the ground?

A. I don't remember.

Q. Did Shifflett say anything about his ankle being hurt, to let him alone?

A. Not that I recall.

Q. Isn't it true that Lawrence Dean came up and said, "He is a buddy of mine."?

A. No, sir.

Q. You hit him first, didn't you?

A. I didn't hit him until he hit me.

page 66 } Q. You were still in the clutches of Lawrence Dean?

A. Yes, sir.

Q. If your friend, Mr. Crawford, says you hit him first, is he right or wrong?

A. I was hit from the back.

Q. If Mr. Crawford told this jury that you hit the first blow, was he right or wrong?

Objection by Mr. Geo. D. Conrad.

Q. If Mr. Crawford says that the first blow he saw passed was by you, is he right or wrong?

The Court: He said that he couldn't state positively, but he got the impression that Mr. Taylor did.

Q. Was he right, or was he wrong when he said that?

Objection; sustained.

*John Roach.*

Q. Did you pay Dean any money,—I mean, Crawford?

A. No, sir.

Q. Never have? And you say there were numerous other people standing around there, that saw this whole thing?

A. I couldn't say how many people.

Q. Did you do any more fighting after you were on the ground?

A. I was in a daze. I remember reaching around and trying to get hold of him.

Q. Did you attempt to kick at him after Dean got up?

A. I couldn't say truthfully whether I did, or  
page 67 } not. I wouldn't deny it, and I wouldn't admit it.

Q. As I understand you, Mr. Crawford never told you that he had told Lawrence Dean and Floyd Shifflett that you were an A. B. C. man?

A. I don't recall his ever telling me that.

(Witness left the stand.)

MR. JOHN ROACH,  
sworn for the Commonwealth.

Direct examination was conducted by Mr. Geo. D. Conrad:

Q. Your name is John Roach?

A. Yes, sir.

Q. You are now a private in the United States Army?

A. Yes, sir.

Q. Where are you stationed?

A. Fort Jackson, South Carolina.

Q. How long have you been in the army?

A. Two weeks today.

Q. Where did you live?

A. Near Elkton.

Q. How old are you now?

A. 17.

Q. Were you living down at Elkton on May First?

A. Yes, sir.

Q. Do you know Lawrence Dean and Floyd Shifflett here?

A. Yes, sir.

page 68 } Q. They hang around the station there a good  
deal?

A. Yes.

Q. Who else? Mrs. Stanley? She works there, doesn't she?

*John Roach.*

A. No, she works at the restaurant.

Q. Were you at Perry Bailey's filling station May 1?

A. Yes, sir.

Q. Were you there when Dean and Crawford came up with Taylor?

A. Yes, sir.

Q. This station is on the east end? It is a regular filling station?

A. Part of the building is a filling station part, and the other end is a restaurant and grocery store.

Q. Were you in the restaurant part?

A. Yes.

Q. Then you were facing away from the front of the station, when they came up. When did you first see Lawrence Dean or Floyd Shifflett or Taylor? What was Taylor doing?

A. He was standing with his back up to the station. They all walked up, and Lawrence and Floyd started wrestling. They started wrestling, and I seen Lawrence give Shifflett a push towards Taylor. Taylor had a holt on his waistcoat. Floyd was trying to lift Taylor off the ground. Then they stood there a while, just holding each other. Lawrence came up and said, "Let Floyd loose. He has a bad ankle." Lawrence gets Taylor down with one knee in his stomach.

Q. How often did he hit him?

A. I would say 40 or 50 times.

Q. Lawrence had him with his right knee in his stomach?

A. Yes.

Q. How long did that go on?

A. I would say close to five minutes. They had turned Floyd loose then. Lawrence jumped between him, I think, and Floyd, and hit Taylor again.

Q. When he was just sitting there, helpless?

A. Yes.

Q. Where did they go then?

A. Taylor started down the road, and Lawrence ran Taylor and John Crawford down the road.

Q. When Dean got into it was when he grabbed Taylor around the neck, and, after that, Taylor hit him? Is that right?

A. Yes. Lawrence come back and he was washing the blood off of him.

Q. Did Lawrence make any statement?

*John Roach.*

A. Lawrence Shifflett said, "That's the last you will hear of that."

Q. Did Lawrence Dean make any statement about this being an A. B. C. man?

A. Yes, he was about two feet from the door. He said John Crawford had just told them that he could get \$50.00 for each man he caught.

page 70 } Q. He said Taylor was an A. B. C. man?

A. Yes.

Q. Did they tell you what you should say or not say?

A. They said I didn't see or hear nothing.

Cross examination of witness was conducted by Mr. Hammer:

Q. You say you were inside this station?

A. Yes, sir.

Q. You were inside when Shifflett and Taylor were wrestling, and at the time Shifflett and Dean were wrestling?

A. Yes, sir. I was inside when it all started.

Q. Then you saw Dean shove Floyd Shifflett toward Taylor?

A. That's the way it looked to me. I seen them all huddled up there together. They were all standing outside, and I just turned around and looked.

Q. They were all walking up close to the building, and Taylor was up close to the building?

A. Taylor had his foot up against the building.

Q. How could you see his foot?

A. I could see his knee setting up there. I could tell it was on the building.

Q. I believe Mr. Bailey came over to see you on the Sunday following this trouble, didn't he? He came there shortly after this, didn't he?

A. Yes, sir.

Q. And then they came back the following day,  
page 71 } and then the day after that?

A. They come and talked to me twice, only the two times.

Q. What did they come back for the first time?

A. They wanted me to tell all of them how it was.

Q. They asked you a lot of questions?

A. They wanted me to tell them how it was, and I told them.

*John Roach.*

Q. There were quite a few other people around that filling station?

A. Yes, sir.

Q. Mr. Bailey was inside, too?

A. Yes, sir.

Q. He had been waiting on you, hadn't he? Had you been waited on that night?

A. No, I was smoking a cigarette.

Q. Lawrence Shifflett was there? And Guy Monger?

A. Yes, sir.

Q. Blanche Stanley?

A. Yes, sir.

Q. They were inside, weren't they?

A. All but five, I think.

Q. The balance were outside, where this trouble took place?

A. Yes, sir.

Q. Did you get up and go outside?

A. I did when Lawrence hit this guy. Then I went back in.

page 72 } Q. You say you heard Lawrence Dean tell Mr. Taylor to let him alone, that the boy had a bad ankle? There is no question but that that was said, and you heard it?

A. Yes, sir. Lawrence Dean ran toward Taylor, and Taylor let Floyd go. And Lawrence grabbed Taylor in the neck, just like this.

Q. That is the only way he had hold of him?

A. Yes, sir.

Q. If he had hit him, you could have seen him? So you tell this jury that Dean here never hit Taylor in the back, and Floyd Shifflett never hit him at all, did he?

A. No.

Q. And Taylor grabbed Floyd Shifflett first?

A. Lawrence gave Shifflett a push, and Taylor grabbed him.

Q. How did Taylor get hold of Floyd?

A. From the back.

Q. This way?

A. Yes, sir. Floyd tried to pick him up.

Q. You are Floyd Shifflett. I am Taylor, and you are Floyd Shifflett. Now, show me how Floyd Shifflett was going to pick him up. You be Floyd Shifflett and try to pick me up. Oh, he had him this way, did he? Did you hear Floyd Shifflett say anything about his ankle?

*John Roach.*

A. I seen him limping on his foot, and he said page 73 } he had a bad ankle.

Q. That was before Lawrence Dean and Taylor got into it?

A. I don't know exactly when that was, but I know I heard it.

Q. Did you hear Lawrence Dean say "Break it up."?

A. No, sir.

Q. Did you hear any one say "Break it up. Floyd has hurt his ankle."?

A. I heard some one say that.

Q. While Floyd and Taylor were in this little scuffle, did you hear any one say, "Now break it up. The boy told you he had hurt his ankle."?

A. I heard some one inside say it. I didn't hear any one outside say it.

Q. Lawrence Dean said, "Break it up. He has a bad ankle." Taylor was in back of Floyd, and Lawrence was in at the back of his neck?

A. Trying to separate them.

Q. Right at that point, didn't you hear some one say, "You son of a bitch, what do you have to do with it?"

A. I didn't hear it.

Q. Didn't you see blood running out of his nose? Had Dean ever taken hold of Taylor?

A. He had him by the neck, and Taylor hit him.

Q. But Dean didn't have Taylor from the back? page 74 } A. No, sir, I didn't see him.

Q. As far as Floyd Shifflett was concerned, he never had anything to do with bothering Taylor at all, did he? He just stepped back, and never touched Taylor another time, did he?

A. Not after Dean and Taylor got into it.

Q. After that trouble was all over, you had gone back into the station, after Mr. Taylor and Mr. Crawford had left?

A. Yes, sir.

Q. How many people were in the station?

A. Quite a few.

Q. Who came up and talked to you?

A. They were just talking in there.

Q. Who said, "Remember you haven't seen anything."?

A. Both of them. Lawrence Dean said, "Now, you remember, you haven't seen anything. You don't know nothing."

Q. Where was Lawrence Shifflett?

*C. W. Saunders, Jr.*

A. In there.

Q. How about Charles Slye?

A. I don't know whether he was there, or not.

Q. How about Perry Bailey?

A. He was inside.

page 75 } Q. How about Guy Monger?

A. Inside.

Q. How about Blanche Stanley?

A. She was inside.

Q. Wasn't the statement made, "I would give \$50.00 if this hadn't happened at my place."?

A. I heard Perry Bailey say, "I would give \$50.00 if they would do Bailey and Duff the same way."

(Witness left stand.)

MR. C. W. SAUNDERS, JR.,  
sworn, for the Commonwealth.

Direct examination was conducted by Mr. Geo. D. Conrad:

Q. What is your name?

A. C. W. Saunders, Jr.

Q. You live in Richmond, do you not?

A. Yes, sir.

Q. What is your position?

A. Director, Division of Enforcement, Virginia Alcoholic Beverage Control Board.

Q. How long has Mr. H. E. Taylor been with the Department?

A. He was employed on April 16, 1946.

Q. He had previously been in the armed forces?

A. Yes, sir.

Q. In what capacity was he employed?

page 76 } A. As an investigator.

Q. What were his duties?

A. Investigator. As an investigator assigned to a territory at Rocky Mount and Franklin, his duties are to apprehend any type of law violators of the A. B. C. Act, and any other violators. His further duties are to assign people as undercover investigators.

Q. What is the method of your Department in detecting local sellers of alcoholic liquor?

A. When complaints are received, a special investigator is

*C. W. Saunders, Jr.*

assigned to that particular investigation. He is furnished with such equipment as we deem advisable,—not to disclose his identity. He comes into a territory to try to ascertain whether or not the complaints we have received are true. Usually this is done by the purchase of local alcoholic beverages. The only way we can cope with that local violation is by informants.

Q. Has the Department approved the use of informers?

A. Yes, sir, and the Government, and the Supreme Court.

Q. What is the fee?

A. In a case of illicit distilleries the same amount, \$10.00, may be paid. Most of the time it is \$2.00 per case.

Q. Who are usually employed?

A. Usually, the local people make the employment. They have insight and can vouch for the identity.

page 77 } Q. Was Mr. Taylor sent here at the direction of the Department?

A. Yes, sir.

Q. For what purpose? To investigate the local sales?

A. Yes, sir.

Q. Was it his duty to make these purchases through an informer?

A. It was.

Q. You investigated this matter after Mr. Taylor was injured, did you not?

A. Yes, sir.

Q. Did you talk to John Crawford?

A. Yes, sir.

Q. At first, did he make the same statement that he later made?

Objection; overruled; exception.

A. I was out of the City of Richmond when this occurred on May First. I returned to Richmond May 2, and was advised that this fight, assault, had taken place. I proceeded to Elkton on the morning of Monday, May Third. I met Investigators Duff and Bailey, and I had with me Supervisor Smith. I contacted this boy, John Roach, first, and obtained a statement from him. I then contacted this boy, John Crawford. John Crawford gave me a definite statement, which I have in my original notes. He told me exactly how this fight occurred. I knew at that time that that statement  
page 78 } was not correct, because my investigation that afternoon proved that the statement he gave me was

*C. W. Saunders, Jr.*

not correct. On the early morning of Tuesday, May Fourth, I contacted the same John Crawford, and apprised him of the fact that he told me misstatements. He admitted that he had, and I brought him to Harrisonburg, and he gave me and the Commonwealth's Attorney a true statement. He told the same statement to me that I have in front of me. I did not hear his testimony.

Q. Now, Mr. Saunders, how long have you known Mr. Taylor?

A. Only since April 15, 1946.

Q. You have had contact with him from time to time in the Department?

A. Yes, sir. I am very well acquainted with each investigator. I have visited in his home.

Q. Do you know his reputation for truth and veracity?

A. Yes, sir, I do. His reputation is excellent. He was for two years Chief of Police in Dublin, Virginia. Just out of the army with an excellent war record, and four citations. I contacted various people in the community as to his reputation for truth and veracity. Investigator Taylor has been assigned to numerous investigations throughout the State. He investigated

Objection; sustained.

Q. What is his reputation for truth and veracity?

A. Excellent.

Q. Would you believe him on oath?

A. Yes, sir.

page 79 } Cross examination of witness was conducted by  
Mr. Hammer:

Q. You assumed that that statement was false and went back and had him correct it?

A. I proved it by my investigation.

Q. You asked this boy to tell you the truth?

A. Yes, sir.

Q. And he gave you the truth?

A. I didn't say that.

Mr. Hammer: Now, please read that statement to the jury.

*C. W. Saunders, Jr.*

A. I will have to read my notes.

Q. Did you take a statement from him?

A. No, sir, I did not. I took a statement the following morning when the Commonwealth's attorney was present.

(Witness then read notes.)

Mr. Hammer: We desire to ask that the original notes be filed as an exhibit.

The Court: Mark them as an exhibit.

(Some pencil notes were handed stenographer, with the request that they be marked "Ex. 1 of Defendants", and they were so marked.)

Q. How many statements did you take from this boy?

A. I took these notes and then I was present when the statement was made Monday morning.

Q. Did you take any statement from the boy page 80 } named John Roach?

A. Yes, sir.

Q. How many?

A. Just one.

Mr. Geo. D. Conrad: This is the statement made by John Crawford at my office. Will you read that?

Objection by Mr. Sam Conrad; overruled; exception by Mr. Hammer.

(Mr. Saunders then reads a statement.)

Mr. Hammer resuming his cross examination:

Q. What offence did you warn him that he could be prosecuted for? Mr. Saunders, you were present when this statement was made?

A. Yes, sir.

Q. Now, who made this statement?

A. Mr. Conrad and myself were the only ones present except Mrs. Stickley.

Q. Do you know why that was put in there?

A. No, sir.

Q. Who dictated this statement?

A. Mrs. Stickley took it, and Mr. Conrad was assisting him.

*C. W. Saunders, Jr.*

Q. And you assisted him also?

A. Yes, sometimes.

Q. This is not the statement of the boy, but of you and Mr. Conrad and Mrs. Stickley?  
page 81 } A. That is not correct. The boy was making a statement.

Q. And somebody assisted him at times? Now, he says that he didn't see Guy Monger around that night. Who said anything about Guy Monger?

Objection by Mr. Geo. D. Conrad; overruled.

Q. How did that statement get in there?: "I know Guy Monger but I didn't see him around that night."

A. Off hand, I would say that statement was in there because I talked to Guy Monger myself.

Q. So you asked about Guy Monger?

A. Yes, sir.

Q. That was not his voluntary statement. Then, as I say, this is not in the identical language of a statement given by John Crawford?

A. This is a verbatim statement of his language.

Q. Now, did he tell you how Floyd and Taylor were holding on to each other?

Objection; sustained.

Q. Now, on Page 2, he told you in the first line he "was in the store buying a pack of cigarettes."

A. Yes, sir, he told me that both times. I knew that was a falsehood, because I knew he had bought some before that.

Q. Then you had things put into this statement  
page 82 } that you knew were not true?

A. No, sir.

Q. You just finished telling me that.

A. No, sir, I said I thought it was not. I was in Norfolk.

By Mr. Geo. D. Conrad:

Q. This was the first sworn statement taken from Crawford?

A. This is the only sworn statement taken from him.

(Witness left the stand.)

*H. E. Taylor.**V. O. Smith.*

(Adjournment to the next morning,—Friday, June 18, 1948.)

Beginning of morning session, June 18, 1948:

MR. H. E. TAYLOR,  
was recalled for further examination by Mr. Geo. D. Conrad:

Q. Are you still under treatment for the injuries that you received in this case?

A. Yes, sir, I am still under treatment. Dr. . . . . . of Roanoke said that the Sinus trouble was caused by injury.

Objection; overruled; exception.

Q. You have been under treatment ever since this occurred?

A. Yes, sir.

Q. At the time that you were put on this job down there by Mr. Bailey and Mr. Duff, were you told anything about the nature of these two men?

Objection; sustained.

Mr. Geo. D. Conrad: Stand aside.

(Witness left stand.)

*V. O. Smith.*

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MR. V. O. SMITH,  
sworn, for the Commonwealth.

Direct examination was conducted by Mr. Geo. D. Conrad:

Q. Your name is Smith?

A. Yes.

Q. Initials V. O.?

A. V. O., yes.

Q. What is your position?

A. Supervisor of the Virginia A. B. C. Board, Portsmouth.

Q. How long have you been with the Department?

A. About 13 years, I reckon; with the State a little over 26.

Q. Where do you live?

A. At Amherst, Virginia.

Q. Do you have charge of the enforcement in the whole State?

*V. O. Smith.*

A. No, sir; in the Western part, Pittsylvania, Halifax, Cumberland, Appomattox, Buckingham, Campbell, and then cases over by Luray.

Q. Does it include Rockingham County?

A. Yes, sir.

Q. Is Mr. H. E. Taylor under your supervision?

A. Yes, sir, he is an investigator stationed at Rocky Mount, Virginia.

Q. Now, Mr. Smith, did you send Mr. Taylor page 84 } here to do some work in Rockingham County?

A. Yes, sir.

Q. What was the nature of his assignment here?

A. It was what we call under cover assignment. We have to use these methods to catch them. Mr. Taylor wasn't known here, and I sent him here—

Same objection; overruled.

Q. Just tell us how these men are supposed to operate.

Objection; overruled; Mr. Hammer: Except to the ruling.

Q. Just state what is the method of operation in using an under cover agent.

A. Well, of course, the main thing is for the agent to be unknown to the people he is trying to catch. There is a lot of subterfuge used.

Q. Is the use of informers approved by the Department?

A. Yes, sir, it is almost impossible now for an agent to buy any whiskey from a bootlegger. You almost have to have informers along. Unless there is some one along, it is almost impossible to buy from them. The under cover agents have caught so many that they are afraid of them. They are paid a small fee.

Q. Do you recall when Mr. Taylor was called here for this work?

page 85 } A. No, I can't say the exact date. Some time in April, I think it was.

Q. Who was he supposed to work with, here?

A. With the investigator, Mr. Bailey, and Mr. Bailey was to make the arrangements with the informers.

Q. When you want to use an investigator for under cover work, you send him where he is not known?

A. Yes, sir. It is up to the local investigator to make con-

*V. O. Smith.*

tacts. We don't have any special squad of under cover men. We just have to use men from different territories.

Q. So the agent here gives them a list?

A. Yes, and sometimes they have to take him in their car, preferably at night, and show them the location.

Q. How long have you known Mr. Taylor?

A. About three years, I reckon.

Q. You are both acquainted with a number of people in the Department?

A. Yes, sir.

Q. You are acquainted with people in his community?

A. Yes, sir.

Q. Tell the jury what you think of his reputation for truth and veracity.

A. It is a good one.

Cross examination of witness was conducted by Mr. Hammer:

Q. That is the reputation he bears in the A. B. C. page 86 } Department?

A. No, sir, in the Rocky Mount community.

Q. What is the difference?

A. No difference whatever.

(Witness left stand.)

(In Chambers.)

Mr. Hammer: Your Honor, please, on behalf of Floyd Shifflett, we want to move the Court to strike the evidence as to any malicious or unlawful wounding. There is absolutely no evidence that would justify the submitting of the case at this time to the jury on these charges against Shifflett. The evidence, as Your Honor will recall, is that Dean pushed Shifflett into Taylor, and that they grappled there. There is a great conflict as to what actually occurred, in the Commonwealth's own evidence, as shown by the evidence of Taylor, himself, who testified that they were holding him one way, and the evidence of . . . . . Taylor himself has not testified that Shifflett injured him in any way. None of the witnesses have testified that. We submit that the entire evidence should be disregarded as to Shifflett, and that he should be dismissed at this time.

Mr. Geo. D. Conrad: It has been shown, and at page 87 } the present time is uncontradicted, that Shifflett and Dean were both informed that this man was an under cover agent; that they lured him from Elkton up to Bailey's station, outside of Elkton. They faked some sort of scuffle between themselves there, and that during the course of that, Dean pushed Shifflett into Taylor, and that Shifflett grabbed Taylor and undertook to throw him down, that then Dean jumped on him and beat him up. The jury would be almost obliged to conclude that the whole thing was a frame-up between these two men, because they had learned that he was an under cover agent for the A. B. C. and that, pursuant to that plan, Shifflett aided and abetted Dean by getting into a scuffle with him, undertaking to throw him down and to detract his attention, so that Dean could make an attack on him. It wouldn't be necessary for Shifflett to have laid hands on him to be aiding and abetting. It is just what the jury chooses to believe. You certainly don't contend that a man has to be charged in the indictment with aiding and abetting. I don't agree with that.

Mr. Hammer: The charge to the jury is actually a statement of what the Commonwealth intends to prove against these defendants in order to obtain conviction. It is in the nature of a bill of particular to the defendants as to what they are actually being charged with. Mr. Conrad started to say that the jury could infer—. There is an inference page 88 } once without evidence sufficient to prove the guilt of Floyd Shifflett. The jury would have to infer something from the Crawford boy's testimony, which we say is wholly unreliable, as shown by his evidence on the stand and the two conflicting statements. We submit that it wouldn't be fair to this defendant to submit the evidence—. The evidence as it now stands is wholly insufficient to prove the guilt of Floyd Shifflett. It then becomes the duty of the Court to strike the evidence.

Mr. Geo. D. Conrad: You can charge under an indictment with anything that may be a lesser offence. You can prove aiding and abetting; you can even prove assault and battery.

The Court: Under the well established rules, I think the case at the present time is a case that has to go to the jury. So the motion is overruled.

Mr. Hammer: We except to the ruling of the Court, for the reasons assigned and for the further reason that there is absolutely no evidence in this case showing that the defendant, Floyd Shifflett, procured, encouraged, countenanced, or approved the commission of the crime, or that he shared the

*Harry Lam.*

criminal intent, if any, of Lawrence Dean, or that he in any manner committed an overt act, as held in the case of *Spratley v. Commonwealth*, 154 Va. 854, and *Creasy v. The Commonwealth*, 166 Va. 721, and the cases therein referred to, and we further move that the evidence be stricken for the further reason, that the charge to the jury does not take into consideration that Floyd Shifflett was an aidor or abettor in the commission of any unlawful or malicious wounding, and prescribing the punishment therefor. We also at this time move that the indictment against Lawrence Dean be dismissed, for the reason that the evidence at this point has not show his guilt, or his intent, beyond all reasonable doubt.

The Court: The motion is overruled.

Mr. Hammer: Exception.

Mr. Sam Conrad: And further on the ground that the Commonwealth's own evidence shows that both defendants herein acted in self-defense.

(All parties returned to Courtroom.)

MR. HARRY LAM,  
sworn, for defendants.

Direct examination was conducted by Mr. Sam P. Conrad:

Q. You are Harry Lam? I believe you live down in Elkton?

A. Yes, sir.

Q. You know the defendants, Floyd Shifflett and Lawrence Dean?

A. Yes, sir.

Q. On May 1, 1948, in the evening some time, did you see Lawrence Dean?

page 90 } A. Yes, sir.

Q. Where?

A. Close to the railroad track, between the railroad track and the Gulf station.

Q. Did you go with him, then?

A. Yes, sir; he asked me where I was going, and I said "Down street." I started back up street with him.

Q. Did you run into any others?

A. This John Crawford and this fellow, at the time I didn't know, Taylor.

*Harry Lam.*

Q. Did you hear the conversation that took place between Crawford and Dean?

A. No, sir.

Q. Then what happened?

A. I was under the impression that we went to the car first. I wouldn't exactly say who went to the car first.

Q. Where did you go then?

A. To Perry Bailey's.

Q. Did you know the purpose of the trip?

A. I didn't know exactly, no, sir.

Q. When you went to Perry Bailey's station, who were outside when you first got there?

A. I wouldn't know just exactly. I got out last.

Q. Who all did you see, that you recall?

A. Well, Floyd Shifflett, Lawrence Shifflett, page 91 } Lawrence Dean, John Crawford, and Taylor.

Q. What did Crawford do? Did he stay out there?

A. I just wouldn't like to say. I didn't pay any attention as to whether Crawford was out there.

Q. Tell the jury whether or not you saw Floyd and Lawrence Dean get into a little tussle?

A. I saw Lawrence Dean and Floyd Shifflett tussling. Taylor comes up to separate them. He had Floyd Shifflett around the arms and was holding him up off the ground. It wasn't exactly from the back. It was back of him and from the side of him. Lawrence ran up and said something about Floyd's ankle being bad,—to turn him loose. Somebody said something about "You son of a bitch."

Q. Had Lawrence hit Taylor, when he hit him?

A. No.

Q. When Lawrence went in to separate them, was he pulling on Taylor alone or trying to push them both apart?

A. He went between them, and then he just pushed Taylor away. Taylor hit him.

Q. Did you see any blood on Lawrence Dean after Taylor had hit him?

A. Yes, sir.

Q. Who hit first?

A. Taylor. At the time Taylor hit Dean, I seen the blood. After that, Dean hit Taylor.

Q. Then it is true that Dean did hit Taylor back?

A. Yes, sir.

page 92 } Q. What happened then?

A. Taylor was giving Dean a pretty good fight,

*Harry Lam.*

in fact, I thought he was getting the best of it. Directly Taylor went down, and Dean went down with him. They fought on the ground for a while, and then Guy Monger and myself and somebody else,—in the excitement I couldn't just say—pulled Dean off Taylor, and when Taylor roused up he lifted his foot up to kick Dean. Then Dean ran back and hit him again.

Q. Now, on the way out there from Elkton, what indication did Mr. Taylor give that he had been drinking?

Objection; sustained.

Q. Did he give any indication that he had been drinking?

A. Not that I heard. The radio was going, and Taylor was singing and carrying on in the back.

Q. After the fight finally stopped, what did Taylor do?

A. Got up and ran, said, "I will get you," or something like that.

Q. Did Dean chase him down the road?

A. No, sir.

Q. At any time, did you see Dean grab Taylor around the neck and hit him in the back?

A. No, sir.

Q. Did he ever do it?

page 93 } A. No, sir.

Q. Just show me, the best you can, how Taylor had Floyd Shifflett, to start with.

A. Grabbed him a little like this.

Q. Putting his arms around so as to pin his arms down. Who did the first grabbing, Taylor or Floyd?

A. I would hate to say.

Q. I mean, at first. Did Taylor grab Floyd, or Floyd grab Taylor?

A. Taylor grabbed Floyd. Said he was a pretty good little man.

Q. After the thing was over, did you go inside?

A. I went in the rest room with Lawrence; he was washing the blood off. I went over into the store part, the grocery.

Q. Did you see John Roach around there?

A. No, sir.

Q. You were with Lawrence or with Floyd most of the time?

A. I was with Lawrence all the time, until I left him.

Q. Did you hear Crawford say at any time that Taylor was an A. B. C. man?

*Harry Lam.*

A. No, sir.

Q. If he had said that, would you have heard it?  
page 94 } A. I would have thought I would.

Q. Did you hear Lawrence say anything about Crawford having told him that they were going to give him \$50.00 for every one he caught?

A. No, sir.

Q. Would you have heard it if it had been?

A. I would have heard it, since I was in their presence.

Q. Did you hear Mr. Bailey say anything about \$50.00?

A. I heard Perry Bailey say he would have given \$50.00 if it hadn't happened at his place.

Q. Did you hear him say anything about his being willing to give \$50.00 if it had happened to Tom Bailey?

A. No, sir.

Q. Are you related to either one of these boys?

A. No, sir.

Cross examination of witness was then conducted by Mr. Geo. D. Conrad:

Q. What do you do?

A. I am a mechanic. Ross and I ran a little shop, or have been until I was sick last week.

Q. You have known Lawrence Dean quite a while?

A. Ever since he was a little boy?

Q. Known Floyd a long time, too?

A. Yes, sir; went to school with them.

page 95 } Q. You would dislike very much to have to testify against either one of them?

A. Not in that case.

Q. It doesn't give you pleasure, does it?

A. It doesn't give me pleasure to testify against anybody.

Q. They are good friends of yours?

A. Yes, sir.

Q. Where did you get with Lawrence?

Q. Met him between the railroad and the Gulf station.

Q. You were going down Main Street?

A. Yes, sir, I was right on the street.

Q. Did Lawrence come up to you there?

A. We both met. He asked me where I was going. I said, "Down street". He said, "Come on, let's go back up street", and we did. Then John Crawford called him. He was standing right in front of the Gulf station. Had Taylor with him.

*Harry Lam.*

Lawrence walked over and talked with them. I was a few feet away, maybe 8 or 10 feet.

Q. As far as from here to the fourth juryman from you?

A. As far as the third juryman.

Q. What was said?

A. I didn't hear. I wasn't interested in what they were going to talk about.

Q. What was the next thing that happened?

Q. As far as from here to the fourth juryman from you?  
page 96 } Q. Who went to what car?

A. We went to Lawrence Dean's car. I don't remember whether Crawford and Taylor went first, or whether we did.

Q. What happened next? How did you happen to go to the car?

A. Lawrence said, "Come on, let's go to the car". The car was parked between the old hotel and the station. It was headed I would say 45 towards the railroad track.

Q. Then Lawrence said he wanted you to drive the car?

A. Lawrence said to me, "I am drinking some, and a little full; how about you driving the car?"

Q. Had he been drinking some?

A. He might have. He is a young, robust fellow. I never can tell.

Q. Did he tell you where to go?

A. He said, "Go up the road", and when we got to Perry Bailey's, he said, "Stop at Perry Bailey's." I just drove on around Water Street and then up the highway?

Q. Why didn't you come up Main Street?

A. I just went around the block. It was parked at a 45 angle toward south and if I had come up Main Street I would have had to turn around.

Q. All you had to do was to back out and pull into Main Street.

A. I had to back out.

page 97 } Q. After you had backed out, you could have turned either to the right or the left, couldn't you? You wouldn't have had to turn around, but just back straight out and go right down to Main Street, couldn't you?

A. No, sir. The car was setting on a 45. I just took it out and went up that way. He told me to go up the road. He didn't tell me which way to go. He wanted to go up the East Side Highway. He said, "Go up the road here". He said, "Back out of here and go on around here".

*Harry Lam.*

Q. Did he tell you to turn to the left and go up that back street?

A. Yes, he told me to turn.

Q. And that is what he told you to do?

A. Yes, sir.

Q. You said you didn't know exactly what you were going up there for?

A. I didn't know what he was going for.

Q. What did you mean by exactly?

A. I didn't know what I was going for. I thought maybe there was going to be a drink of whiskey in it, and I would get one. That is the reason I said exactly.

Q. Have you been up there before?

A. I have done my dealing there.

Q. Lawrence and Floyd hang around there a good deal, too, don't they?

A. When I get my groceries, Floyd is getting his.  
page 98 } Both of them trade there at Bailey's Service Station. Floyd Shifflett was already there, sitting up in a truck. Lawrence and Floyd were scuffling when I got out of the car.

Q. When you pulled up, wasn't Floyd Shifflett already there?

A. I didn't see him then.

Q. You recognized his truck?

A. Yes, sir.

Q. You just sat in the car? When did you get out?

A. When I seen Lawrence and Floyd. I just got out and walked over there.

Q. What was there about that that caused you to get out? They just looked like they were playing there, didn't they?

A. That is the way they looked like. They were joking one another, like they were wrestling, like they were trying to throw each other down. Taylor and Crawford were already out there.

Q. Didn't you see Shifflett and Dean scuffling there?

A. That is when I got out. Taylor was standing over somewhere.

Q. He was standing right over by the filling station, wasn't he?

A. I wouldn't like to say where he was, because  
page 99 } I wasn't paying any attention.

Q. Wasn't he standing over there with his back to the filling station?

*Harry Lam.*

A. I just didn't pay any attention to where Taylor was at, and I wouldn't say exactly.

Q. Have you any explanation as to why your memory is so much better about these other things?

A. I was paying more attention to their scuffling. I didn't pay any attention to him. I just walked over and watched the two scuffling.

Q. They scuffled right over to where Taylor was? They scuffled over back toward the pumps and right back towards the filling station?

A. Yes, they did, from out in front of the truck.

Q. When they got back to the filling station, that is when Dean shoved Shifflett into Taylor?

A. No, sir, Taylor walked up and tried to separate them.

Q. Why did he separate them?

A. I don't know.

Q. You didn't attempt to separate them?

A. No, I wouldn't, either.

Q. Why did Taylor attempt to separate them?

A. I don't know.

Q. Did he say anything?

A. He just ran in.

page 100 } Q. Which one did he grab?

A. Neither one, particularly. He just ran in to separate them.

Q. What did he say?

A. I don't know.

Q. You were right there. You say Taylor ran in. What did he say? "Stop fighting, boys?"

A. He might have said, "Break it up".

Q. Well, did he say that?

A. I don't know.

Q. You were out of the car, weren't you?

A. I was right close to where they were scuffling.

Q. You were close enough to hear what they said?

A. I didn't hear Taylor say anything.

Q. You just remember part of what happened?

A. I only heard part of what was said.

Q. You only heard that one thing that was said? That was the only thing you heard?

A. No, sir. I heard Taylor or somebody say "Son of a bitch".

Q. That is the only thing you heard?

A. I heard Taylor when he told Floyd he was a pretty good little man.

*Harry Lam.*

Q. Then why couldn't you hear Taylor when he ran up there?

A. I don't know. I didn't hear it.

Q. Well, after this scuffle started there between page 101 } Shifflett and Dean,—as a matter of fact, didn't you state on May 6, 1948, that Taylor was standing in front of the building?

A. I don't remember making that statement.

Q. You remember making a statement?

A. I remember making a statement.

Q. Didn't you state, when you made a statement on May 6, that Taylor was standing near the building, in the inside driveway, which would be near the building, wouldn't it? I am asking you if you didn't make that statement to Mr. Saunders?

A. I never made no statement to Mr. Saunders. I made a statement to Mr. Bailey and Mr. Duff.

Q. You said that he was standing near the building, didn't you?

A. In the center driveway, near Shifflett and Dean.

Q. You say Taylor grabbed Shifflett. Did he seem to be mad?

A. I couldn't say that he was mad. He took a hold of him. He was separating them. He took hold of Floyd.

Q. Did he throw Floyd down?

A. No, he set him down on the ground pretty hard. Lawrence ran in and said, "He has got a bad ankle".

Q. What was the matter with his ankle?

A. He had strained it, or something, I don't page 102 } know.

Q. He didn't have such a bad ankle that Lawrence wouldn't wrestle with him, did he?

A. Well, he didn't have him off the ground.

Q. Did he make any complaint about his ankle when Lawrence was wrestling with him?

A. No.

Q. The first you heard about an ankle was when Lawrence volunteered that Shifflett had a bad ankle?

A. Yes.

Q. You didn't tell me that you had heard anything about a bad ankle, did you? And you didn't say anything about that, when you were asked about it on May 6, did you?

A. I don't think I did.

Q. Well, why didn't you?

*Harry Lam.*

A. Well, I didn't think about it at that time.

Q. This is the first time you ever said anything about it? The first time you said anything about a bad ankle was here to-day, wasn't it? Mr. Bailey asked you some questions, didn't he? I asked you some questions, didn't I? Did you ever tell us anything about that?

A. No.

Q. When Dean ran up to Taylor, how did Dean grab Taylor?

A. Dean didn't grab Taylor. He ran up and separated them. He just went in between them.

Q. Who did he touch?

page 103 } A. I reckon he touched both of them when he ran in between them. He just ran in between them with his arms. He was in between them when somebody said "a dirty son of a bitch". I don't know who said it.

Q. Who said that?

A. I don't know.

Q. Then it is just as likely that Mr. Dean said it as anybody else?

A. It could have been a by-stander.

Q. Who was a by-stander?

A. Lawrence Shifflett.

Q. Did it sound like that?

A. I don't know. I am not saying it was Taylor, and I am not saying it was Dean; it might have been one of the by-standers.

Q. As soon as Dean ran in there, and got them apart, Taylor hit him?

A. Taylor was giving Dean about all that I thought he could handle, then directly Dean got the best of Taylor and knocked Taylor down. And then he was on top of him, beating him in the face, and Taylor was perfectly helpless.

Q. How was he doing any fighting with Dean's knee in his stomach?

A. I didn't say he was. He was sitting a-straddle of him. They were hitting.

Q. How long did that go on there?

page 104 } A. Approximately a minute. I wouldn't say, because in the excitement I wasn't thinking about time.

Q. How many times did Dean hit him altogether?

A. I don't know.

Q. Well, was it five or fifty?

A. Well, I didn't count it.

*Harry Lam.*

Q. What would you imagine?

A. It may have been four or five, maybe half a dozen.

Q. Who pulled Dean off?

A. Guy Monger, and I for one.

Q. They were still fighting? Taylor was still hitting him?

A. Taylor was trying to hit him.

Q. Guy Monger is another buddy of Lawrence and Floyd?

A. I don't know.

Q. You do say they go together, don't you?

A. Sometimes. Taylor kicked at Dean. He kicked at him.

I don't think he ever hit him.

Q. Then Dean went up and hit Taylor in the face and knocked him down again, didn't he?

A. Yes, sir.

Q. And then Taylor got up and ran away? And Dean ran after him.

A. He ran as far as the mail box. He didn't run after him any further than Bailey's lot.

page 105 } Q. When Mr. Sam Conrad asked you, you said he didn't run after him at all, didn't you?

A. I don't know.

Q. You are not sure what you saw or heard, are you?

Objection; sustained.

Q. Whom did you leave with?

A. Lawrence Dean.

Q. What did he tell you about the fight?

A. He said he was a pretty good man, or something like that.

Q. Where did you all go?

A. To his home.

Q. Have a drink there?

A. No, sir, parked the car in town, walked down to his house; he went in. He told his wife that he had been in a fight.

Q. Then you went up to the railroad station, and you all got a couple of drinks?

A. He said he had some whiskey down at the house. We took a couple drinks at the railroad station, then up at the trestle we took a couple more.

Q. What did Dean tell you about this fight?

A. He never discussed it much.

Q. You were together practically all the evening and never discussed the fight?

*Harry Lam.*

A. He said something about his being a pretty  
page 106 } good man, or something. He said he hated for  
him to have a black eye, or something.

Q. That was all that was said about the fight all the time  
you and Dean were there together?

A. Yes, sir.

Q. You don't mean that you heard every single word that  
was said to the people around there?

A. No, sir.

Q. You are not attempting to say that Lawrence Dean did  
not tell Roach that this man was an A. B. C. man?

A. I never did see Roach.

Q. You don't mean to tell the jury that there was no state-  
ment made up there by Lawrence Dean that this man was an  
A. B. C. man?

A. No, sir.

Re-direct examination of witness was then conducted by  
Mr. Sam Conrad:

Q. What do you mean by that?

Objection by Mr. Geo. D. Conrad; overruled.

A. What did I mean by saying "No, sir"? I never heard  
anybody say that.

Q. If it had been mentioned, would you have heard it?

A. Well, he was in the rest room.

Q. That is the only time that it could have been said? How  
far was it from the place the fight was to the mail  
page 107 } box?

A. Maybe as far as from here to the wall.

Q. Did you give a signed statement to the Com-  
monwealth's Attorney or the A. B. C. officers?

A. No, sir.

Q. They did question you at length? They gave you a  
statement?

A. They asked me if I would sign it, and I said No.

Mr. Geo. D. Conrad resumed the cross examination of  
witness:

Q. Why wouldn't you sign it?

A. I don't put my name on just everything.

*Harry Lam.*

Q. You knew it was an official statement on behalf of the Commonwealth?

A. One reason, it was wroten out in pencil. When they brought it back, it was typed, and I didn't know what was on it.

Q. Mr. Lam, you remember talking to Mr. Saunders, don't you? Don't you remember telling Mr. Saunders that you were drunk and didn't hear anything?

A. No, sir. My son came in and said, "Daddy is not capable of answering any questions".

Q. You told him, yourself, that you were drunk and didn't hear anything?

A. I might have told him anything.

Q. Mr. Bailey tried to question you, and Lawrence Dean came up and said you shouldn't tell anything  
page 108 } about it? Then you didn't want to tell anything?

A. I didn't refuse to tell anything.

Q. Was that the reason you refused to sign a statement?

A. No, sir, I knew that I didn't have to sign any statement.

Q. When Lawrence Dean said that, it was the very time that the A. B. C. agent, Mr. Bailey, was trying to question you? Lawrence Dean said you didn't have to tell them?

A. Yes, he said that.

Q. You told Mr. Saunders that you drove the car, that you didn't have a driver's license? Didn't you on May 4 tell Mr. Saunders that you drove the car, that you didn't have any license, that you had been drinking on that occasion, and that you didn't remember what was done? I am asking you if you didn't state on May 4 to Mr. Saunders when he came down there, that you had driven the car that night for Dean, that you didn't have a driver's license, that you had been drinking, and that you didn't know what was said or done?

A. I have a faint recollection of their being there.

Q. After they got you awake, you knew they were there? You knew what they were asking you, too, didn't you?

A. Not exactly.

Q. And that is the statement you then and there made to them, wasn't it?

page 109 } A. I won't say I made that statement.

Q. Do you deny you made that statement?

A. I don't deny I made that statement; I won't say.

Mr. Sam Conrad then continued his re-direct examination:

Q. Is it, or is it not, true that Lawrence Dean told you

*Charles Slye.*

in the presence of the officer,—Mr. Bailey, I believe,—that all he wanted you to do was to tell the truth?

A. Yes, sir.

Q. How many times did Mr. Bailey talk to you?

A. Twice.

Q. On this occasion on May 4, were you in bed?

A. Yes, sir.

Q. Were you drunk?

A. Yes, sir.

Q. Did you advise them of that fact?

Objection.

Q. Were they advised of the fact?

A. He advised them then that "Daddy" wasn't in any shape to talk to them.

(Witness left stand.)

MR. CHARLES SLYE,

next witness for defendants, sworn, was examined, in chief, by Mr. Sam Conrad:

Q. Where do you live?

A. At Elkton.

page 110 } Q. Were you up at Bailey's filling station on the night of May First, when this tussle took place between Lawrence and the A. B. C. man?

A. Yes, sir.

Q. Did you see the original tussle between Lawrence and Shifflett?

A. Yes, sir. They were playing.

Q. Did you see Taylor around at that time?

A. Yes, sir. Dean and Shifflett—Shifflett was standing like this, and Taylor, this gentleman, walked in. Dean grabbed Shifflett and was fooling with him, and when he turns him loose this man grabs him. Shifflett was standing kind of backward. This man grabs him. Had one arm down around him, the other up around his shoulder. They had a little tussle there. Shifflett said something about his ankle. Dean said he had a crippled ankle. Shifflett said something about his crippled ankle. Dean walked up and said, "Break it up. He has a bad ankle,"—or "a crippled ankle". He taken his hand, like this, and shoved them apart. And some one used

*Charles Slye.*

a remark, one of them, I don't know which one said it, "the son of a bitch". This man strikes—

Q. Do you mean Taylor?

A. Yes, sir. Strikes Dean in the head. He knocked Dean entirely behind Shifflett. Then Dean comes back page 111 } at him, fighting, and both men were using their fists when I walked away.

Q. They were both still up off the ground when you walked away?

A. Yes, sir.

Q. At any time did you see Floyd Shifflett hit Taylor?

A. No, sir, neither one of them gentlemen didn't strike at each other, what time I was there.

Q. Did you see Shifflett lift him off the ground?

Objection.

Q. When Dean went in, to separate the two men, did he grab hold of just Taylor?

A. No, he ran in like that.

Q. He didn't grab hold of Taylor's throat?

A. No, sir.

Q. Did he hit Taylor?

A. No, sir, this man hit him on the face or some place.

Q. Did Dean have Taylor around the neck, punching him?

A. No, sir.

Q. If he had, at the first of the fight, you would have seen it, wouldn't you?

A. Yes, sir. They didn't fight but just a short time. I left when I seen these men fighting. I went back page 112 } into the filling station. I left the filling station when these men came into the filling station. I stopped in the store, and went on back into Bailey's kitchen and poured out a little coffee, and Dean, Shifflett, and some more were standing inside. Some one put something on Dean's hand.

Q. Did you hear anybody say anything about Taylor's being an A. B. C. man?

A. I didn't hear of it until the officers questioned Bailey.

Q. Did the officers question you, too?

A. Yes, sir.

Q. Did you give them a written statement?

A. No, sir.

Q. What was Lawrence's condition?

*Charles Slye.*

A. He had blood on his face, he had a black eye, the skin was bruised.

Q. Are you related to either one of these defendants?

A. No, sir.

Q. When Dean and Shifflett were having their horseplay there, did Dean shove Shifflett into Taylor?

A. No, sir, not that I seen.

Q. Did Taylor come up into them?

Objection.

Q. Did Taylor walk up to Shifflett, or Shifflett up to Taylor?

page 113 } A. Dean and this man walked up to where Shifflett was.

Q. I mean, at the time that you say Taylor grabbed Shifflett.

A. When Dean and Shifflett were a-fooling, this man was standing right at them. When they broke up fooling, this man grabbed Shifflett.

Cross examination of witness was conducted by Mr. Geo. D. Conrad:

Q. Where were they standing?

A. Right at the left of the door, right out from the door, I would say eight or ten feet, I wouldn't say for sure.

Q. Where were Shifflett and Dean when they started tussling?

A. Right there.

Q. When Shifflett and Dean started tussling, they were right up at the building?

A. I would say 8 or 10 feet. They never were out by the truck. The whole scuffling was right close to the building. What I seen, was.

Q. You are real sure it was right there, where it started, and where it finished?

A. I wasn't there when it ended.

Q. And Taylor was standing there right close to the building, just watching?

A. He was standing right where the two men were.

page 114 } Q. And Dean and Shifflett were then tussling together? There was no reason for Taylor to get into it?

*Charles Slye.*

A. I just thought it was some friend.

Q. Mr. Lam stated that they started tussling out in front of the truck.

A. Well, I couldn't say.

Q. You said they weren't ever scuffling out at the truck.

A. I still say that. I don't know just how far the truck was off.

Q. You are quite sure that nothing was said about any bad ankle?

A. I never heard anything about it.

Q. Did you hear everything that was said there?

A. I wouldn't say that. I wasn't thinking of there being any trouble.

Q. Were you close enough?

A. I was possibly as close as you are to me.

Q. As near as you can, tell the Court everything that was said.

A. Well, I just stated. When Dean and this man walked up to where Shifflett was standing, Dean grabbed Shifflett and was fooling with him. But I don't remember just what was said.

Q. Close to the door, what was said then?

page 115 } A. I couldn't say.

Q. What was the next thing they said, when Dean and this man had the little scuffle? Just tell the jury what was said.

A. I wasn't keeping any account of it.

Q. You have testified to some things.

A. I don't remember everything, except that I heard this man say he was a good little man. He said, "I believe he is a good little man." Then Dean said something about his bad ankle, and he walked in and separated them.

Q. You are not right positive about any of these things?

A. I want to tell it just as well as I remember it.

Q. How long have you known Lawrence Dean?

A. Something like 1½ years.

Q. And Shifflett?

A. About two years.

Q. You hang up there a good deal?

A. I go in and read the paper.

Q. And these men hang around there, don't they?

Re-direct examination was then conducted by Mr. Sam Conrad:

*Perry Bailey.*

Q. This is a little community store where many people go for their groceries?

A. Yes, sir.

Mr. J. O. Beard, a juryman, to the same witness: Do you know John Crawford?  
page 116 } A. No, I don't know him.

Mr. Geo. D. Conrad then continued his cross examination:

Q. Was Crawford there?

A. I don't know.

Q. Was Lawrence Shifflett there?

A. I believe he was. Maybe some people come in and went out.

Re-direct examination of witness was resumed by Mr. Sam Conrad:

Q. How about Guy Monger?

A. He was there.

Q. How about Perry Bailey?

A. Well, it was his place of business.

Q. Was Blanche Stanley there?

A. Yes, sir.

(Witness left stand.)

**MR. PERRY BAILEY,**  
sworn, for defendants.

Direct examination was conducted by Mr. Sam Conrad:

Q. Is your name Perry Bailey?

A. Yes, sir.

Q. I believe you operate a store and filling station just south of the corporate limits of Elkton, on the East Side Highway?

A. Yes, sir.

page 117 } Q. Were you in your store on the evening of May First at the time this trouble occurred between Dean and Shifflett and Taylor?

A. Yes, sir.

Q. Did you see the scuffling between Dean and Shifflett?

*Perry Bailey.*

A. Yes, sir. It looked like a play, horse-play, some people term it.

Q. Did you see when Mr. Taylor came in?

A. Yes, sir. The best that I can remember was that Mrs. Stanley and two Mr. Shiffletts came in a truck. Mrs. Stanley came inside. Mr. Shifflett, Mr. Floyd Shifflett, stayed outside. Mr. Dean and Mr. Lam and this other gentleman came in an automobile. I was waiting on my customers; I didn't pay any attention to it until I saw Lawrence Dean and Floyd Shifflett in this horse-play, and this other man standing there, dressed in khaki. There looked like there was some horse-play between Shifflett and this other gentleman.

Q. Did Shifflett and this other gentleman clinch in any way?

A. Wrestling. Shifflett had his back to me.

Q. Let me be Shifflett.

A. Taylor had Shifflett something like this.

Q. Did Taylor lift Shifflett up off the ground?  
page 118 } A. He was a kind of big man. He kind of had him up; I thought they were playing. Then Dean separated them. There was a kind of verbal statement made.

Q. Could you hear what it was?

A. No, sir, I was inside.

Q. When he separated them, did he throw his arm around him?

A. It was something like this. Then I saw this man stagger backward, with, it looked to me, like an awful hard hit.

Q. You saw Dean stagger back?

A. Yes, sir.

Q. From what?

A. From the lick from this strange man.

Q. Before the lick, had Dean struck Taylor?

A. No.

Q. Had Dean hit him in the back before that happened?

A. Not that I seen. I saw Dean move in, and he passed a few licks, and this other man seemed to have the advantage. Dean seemed to have been hurt. I moved from my position to the door, and it looked like he kind of concentrated on the man's mid section. And then I saw Mr. Taylor's knees buckle like, as if they gave way. This man seemed to be hurt then. But before he went on the ground, Dean took advantage of the fact that his knees were buckling and gave him a terrible lick on the face; then he went down.

page 119 } Q. Were both of them fighting then?

A. Both of them.

*Perry Bailey.*

Q. Who broke the fight up?

A. Charlie Slye, Guy Monger, Lawrence Shifflett, and Harry Lam. When they pulled him off of him, he raised up and kicked at them. He had jumped to his feet, and it seemed to me another lick passed. Then this man and Mr. Crawford went down the road together.

Q. Did Lawrence chase him down the road?

A. I don't remember.

Q. Did Lawrence come back?

A. Shifflett stayed outside, but Dean went over into my service station part, and into the men's room and was washing his face.

Q. Were you with him after he came out more or less constantly until he left in his automobile?

A. I would say Yes.

Q. Did you hear him say that this fellow was an A. B. C. inspector?

A. No.

Q. If such a statement had been made, would you have heard it?

A. Obviously, I would.

Q. Was such a statement made?

page 120 } A. No.

Q. Did you hear him make a statement to the effect that Crawford had said that Taylor was an A. B. C. man. Did Lawrence Dean say that Crawford had told him that Taylor was an A. B. C. man?

A. Definitely not. I didn't hear him say.

Q. John Roach has testified here that on that night you said that you would give \$50.00 to see Duff and Bailey get the same thing.

A. No. I asked Dean what was the idea of starting a fight in my driveway. If he had to fight, why did he have to fight in my driveway; that I would have given anything if it hadn't happened in my driveway and on my premises. I also repeated that in my store, I think.

Q. John Roach testified to that from the stand. Was he telling the truth, or not?

A. Definitely not. He could have misunderstood me and have misquoted me. But I definitely know that I didn't make any such statement.

Q. You have talked to these A. B. C. men?

A. Yes, sir.

Q. Including Mr. Saunders?

A. Yes, sir.

*Perry Bailey.*

(Witness left stand.)

(A five minute recess was called,---after which Mr. Lee took notes until the morning session was concluded.)

page 121 } Cross examination by Mr. George Conrad:

Q. Mr. Bailey, Mr. Charley Slye is your uncle, isn't he?

A. That's right.

Q. Mr. Dean hangs around there a good deal too, doesn't he?

A. Who?

Q. Lawrence Dean here.

A. Occasionally.

Q. Stayed at your place?

A. Occasionally.

Q. How about Floyd?

A. Occasionally.

Q. John Roach hangs around there some, doesn't he?

A. Occasionally.

Q. Is there anybody who hangs around there more than occasionally?

A. Regular customers.

Q. You mean to say none of these people are your regular customers?

A. Not real regular, you might say. I don't carry them on my books---that's what I call regular.

Q. Mr. Bailey, you say everything you told the ABC investigator was the truth?

A. Investigator?

Q. Yes.

page 122 } A. Was the truth?

Q. Was the truth.

A. To the best of my knowledge, yes.

Q. It was the truth then when you told Mr. Saunders that you thought that Crawford had told Lawrence Dean who Taylor was before the fight; didn't you?

A. I said I assumed that *that*.

Mr. Sam Conrad: If Your Honor please, that certainly is calling for an opinion which this witness could certainly have no idea of.

The Witness: I said I assumed it.

*Perry Bailey.*

Q. You did make that statement?

A. I assumed it.

Q. Why did you assume it?

A. Why did I assume it?

Q. Yes.

A. Well, after anything like this happens any place—place of business, dance hall, theatre, wherever—there's always the talk that follows—conversation, this, that, and the other. It was the next day that I learned that the man was an Alcohol Beverage Control agent.

Q. Who did you learn that from?

A. I don't know what source; I merely said I heard it. I wouldn't know.

Q. Can you tell the jury who told you?

page 123 } A. I don't know.

Q. You learned it Sunday?

A. Maybe Monday.

Q. Didn't you just say Sunday? "the next day".

A. No, I didn't say Sunday.

Q. Sunday was the next day?

A. Approximately the next day, or the next.

Mr. George Conrad: Look at the record, Mr. Lee.

The Reporter: (Reading) "It was the next day that I learned that the man was an Alcohol Beverage Control agent."

Q. What time the next day did you see him?

A. I said the next day, approximately.

Q. The statement you made is in the record there; you said the next day. Is that correct or isn't it correct?

A. I wouldn't say any particular day. I said after the fight. If I said the next day, I could mean the next one too, or the day thereafter.

Q. What did you mean when you said "the next day", did you mean the next day?

A. Let's say "after the fight". After the fight, I learned or I heard that the man was an Alcohol Beverage Control agent.

Q. Who did you learn it from?

A. I don't remember any more. I may have learned it from the Alcohol Beverage agent, Mr. Saunders. He  
page 124 } may have told me.

Q. Did he or didn't he?

A. Well, I don't know—yes, I beg your pardon, he did. Yes, he did tell me.

*Perry Bailey.*

Q. Is that the first you learned of it?

A. I wouldn't say that was the first but he did tell me.

Q. You mean to tell the jury that although you said "the next day" when I first asked you that now you don't know when it was that you learned it?

A. I learned it after the fight.

Q. Did you know it before or after you talked to Mr. Saunders?

A. Did I know it?

Q. Before you talked to Mr. Saunders.

A. I didn't know it to be a fact.

Q. Had you heard it?

A. I had heard it.

Q. Who did you hear it from?

A. I don't know.

Q. It was common talk around there in the community, wasn't it?

A. That's right.

Q. You were pretty well pleased about this ABC man getting beat up, weren't you?

A. Why should I be?

page 125 } Q. Didn't you say, right after that fight, right there in the presence of John Roach, who is a young man that lives in your community and trades at your place, that you would give \$50.00 to see Bailey and Duff get the same dose? didn't you say that?

A. I absolutely didn't.

Q. Wasn't the reason you said that was because Bailey and Duff had come over there and searched your place for liquor and picked up some slot machines and punch boards and you had gotten fined for it; wasn't that the reason?

A. No, I didn't make any such statement.

Q. It is a fact that you were raided within the past year?

A. 20th of June, '47.

Q. 20th of June, '47, and Duff and Bailey and the sheriff—and Duff and Bailey participated in the raid and that's the reason you made that remark?

A. Sheriff Callender made that raid; they were along with him.

Q. That was the reason that you had that feeling towards them and made that statement there right then?

A. Definitely not because I was breaking the law. I had no idea—

Q. Why do you suggest to the jury that Mr. Roach would come in here and tell any such thing as that if it wasn't true?

*Perry Bailey.*

A. Misunderstood me; could have.  
 page 126 } Q. How could you suggest to this jury that Mr. Roach would come in here and state under oath that you had made a statement like that down there that day if you didn't make it?

A. He could have misinterpreted it.

Q. Did he have any motive to misrepresent anything you said?

A. Possibly.

Q. What?

A. Well, that's beside the point. I don't think—

Q. It is quite to the point, Mr. Bailey.

A. The fact is, Mr. Roach, if he made any such statement, he emphatically said it in some sort of a mistaken way because I didn't make any such statement.

Q. Why is there any more reason that he would be mistaken than that you would be mistaken? he was right there.

A. I was there too.

Q. Why are you suggesting—

A. I more or less observe everything that goes on—try to.

Q. Do you know any reason to suspect that? he's a credible young man?

A. I have no reason to doubt that, so far as character is concerned.

Q. And you have no reason to suggest why he  
 page 127 } should come in here and undertake to say something that you had not said, do you?

A. I don't know, maybe somebody put words in his mouth.

Q. Who do you suggest put words in his mouth?

A. Mr. Saunders.

Q. You make that suggestion, do you?

A. I think it is in order to say that because he went and talked to him on several occasions.

Q. And you suggest that Mr. Saunders told Mr. Roach to come in here and testify under oath to something that was not true?

A. No, I beg your pardon, I didn't say that.

Q. What are you suggesting?

Mr. Hammer: If Your Honor please, it seems to me Mr. Conrad asked the question and got the answer. Mr. Conrad asked him about the suggestion and he said I'd suggest Mr. Saunders.

The Court: I think it is a proper line of examination.

*Perry Bailey.*

Q. Mr. Bailey, who did you say pulled Dean off of Taylor?

A. Floyd Shifflett's brother, Lawrence, Guy Monger, Charlie Slye, Harry Lam, and maybe Crawford, I don't remember. I didn't see all of that part.

Q. You are quite sure about the rest of them.  
page 128 } Who was the first person that undertook to pull him off?

A. I just don't remember any more which one. I mean—

Q. Just how did they pull him off? Who took hold of him?

A. It seemed to me like it was Monger and Shifflett and Lam.

Q. Are you sure just who it was?

A. I'm quite sure of those two.

Q. What part did Charlie Slye have in it and these others you mentioned?

A. All I remember, Charlie was there but I don't remember whether he took hold of him, or not.

Q. But you remember for sure that he was there when he was pulled off?

A. Seemed to me like he was.

Q. Are you sure that any of the others were there?

A. Well, I know Monger and the three that I mentioned did have hold of him because Monger had blood on his shirt and all.

Q. You are not real sure about anything in connection with that fracas there? it came up all of a sudden, you had no reason to pay any particular attention to it?

A. The horseplay, I observed it, and I followed it up from there on.

Q. You didn't see anything to indicate there was any trouble between Shifflett and Dean when they were  
page 129 } engaged in horseplay there, did you?

A. They were engaged in this horseplay, you might say, and when this thing occurred, at first it looked like it was play but later on it developed into this fight.

Q. Looked like play between Shifflett and Dean when it started?

A. What's that?

Q. It looked like play between Shifflett and Dean when it was started?

A. Yes, it looked like play between Dean, Shifflett, and Taylor.

Q. What were they doing, these two, when they started? where were they when they started scuffling?

*Perry Bailey.*

A. They was in front of my place.

Q. Whereabouts in front of your place?

A. In front of this plate glass window.

Q. Right up close to the window?

A. Fairly close.

Q. Where was Shifflett's truck parked?

A. In the outer part of the driveway.

Q. How far from the window was that?

A. 15 or 18 or 20 feet.

Q. Were they ever scuffling around out there near the truck?

A. Not as I recall, no.

page 130 } Q. The scuffle started and ended right there by the building?

A. Well, from there on out into the vicinity of the driveway on the state property.

Q. Taylor, when the scuffle started, was just standing there with his back against the building, wasn't he?

A. His back was to me.

Q. You were inside and his back was to you?

A. His back wasn't directly to me; his back was kind of like this gentleman here, only off on a 45 to me, looking right off across my counter to that window.

Q. And Taylor was right close to the building there, wasn't he?

A. Yes.

Q. Just standing there with his hands in his pockets?

A. No.

Q. What was he doing?

A. I didn't pay that much attention to that part of it. I just noticed this horseplay—scuffling, just—

Q. Was Taylor doing anything or just standing there?

A. Him and Shifflett was playing around. That's when I first noticed this.

Q. You mean you didn't see any horseplay between Dean and Shifflett?

page 131 } A. The horseplay—when they was playing—was like Taylor and Shifflett was wrestling around there a little bit.

Q. And Taylor was just standing there—

Mr. Hammer: That isn't what the witness said, Mr. Conrad.

Q. You say Taylor and Dean were wrestling; the first time

*Perry Bailey.*

you saw the wrestling then you didn't see any wrestling between Dean and Shifflett? you didn't see that?

A. Dean and Shifflett—that was at the beginning, at the first.

Q. Did you see that?

A. Yes.

Q. What was that? what took place at the building?

A. Approximately as far as from here to Mr. Hammer.

Q. Then Taylor was just standing there while that was going on?

A. Yes, sir.

Q. Just standing there against the wall?

A. Not against the wall; out toward the truck.

Q. Was he closer to the truck or closer to the wall?

A. I think it was closer to them. They were right close to about the third gentleman there from me.

Q. And he was right close to them, so he was right close to the wall.

A. Then Shifflett and this man started scuffling then after that, just playing—looked like play—just looked page 132 } like horseplay to me.

Q. All of it looked like play to you?

A. Horseplay.

Q. Until the fight started?

A. That's right.

Q. Didn't you talk to these people after this thing happened?

A. Talked to who?

Q. Didn't you hear Lawrence Shifflett talking around there after this thing happened?

A. When I talked to him first; I went to him first.

Q. Sir?

A. I went to him first.

Q. You went to him first?

A. That's right.

Q. To Lawrence Shifflett?

A. Lawrence Dean.

Q. I'm talking about Lawrence Shifflett now. Don't you remember Lawrence Shifflett being there after the thing was over?

A. After the fight was stopped?

Q. Yes.

A. Yes, he was there.

Q. He hangs around there a good deal too, doesn't he?

*Perry Bailey.*

page 133 { A. Well, occasionally he comes in.  
Q. And you heard Lawrence—

Mr. Sam Conrad: Now if Your Honor please, any statement made by Lawrence Shifflett, who is not one of the defendants in this case, would certainly be hearsay evidence.

The Court: Let him ask the question first.

Mr. George Conrad: You do not know what I am going to ask him.

Mr. Sam Conrad: He is going to quote the misstatement and then it will be too late to object.

Mr. George Conrad: I think, in view of the witness' statement, that he didn't know anything about this man being an ABC man, that I have a right to ask him when he learned, and all.

Mr. Sam Conrad: I would like for the question to be asked in chambers so the Court can pass on it.

The Court: I do not know what the question is but, of course, maybe I had better hear it.

Mr. George Conrad: If Your Honor please, it has already been testified to by Mr. Roach. I do not know what possible difference it makes.

Mr. Hammer: Then why ask the question.

Mr. George Conrad: I am asking the question because this witness has said that he did not know anything about it being an ABC man at the time.

Mr. Sam Conrad: May we hear it in chambers?

page 134 { (In Chambers.)

(The defendants were present.)

Mr. Sam Conrad: If Your Honor please, the Commonwealth, one way or another, has gotten in a lot of evidence by showing procedure of the ABC Board. These statements here, which he's used to contradict witnesses, have expressions in them which would otherwise not be admissible. He is now asking from the witness on the stand about a statement made by Lawrence Shifflett who is not one of the defendants in this case. And I state to the Court now that that is entirely inadmissible unless it be shown that any statement by Lawrence Shifflett was made in the presence of the accused.

The Court: I still do not know what the question is. What are you going to ask him?

Mr. George Conrad: If Your Honor please, here is the situation. These gentlemen opened up this question by asking—I didn't even ask Roach on cross examination about statements because I was going to ask him on rebuttal; but these gentlemen kindly assisted by bringing out on cross examination the very statement that he made when he asked Roach, to the effect, for example, that Lawrence Shifflett said Taylor was an ABC man and that Perry Bailey said Lawrence Dean beat that buy up and he'd give \$50.00 to see Bailey and Duff get the same thing. Then I asked him about whether or not he hadn't told the ABC man that he thought page 135 } that Crawford had told Dean that Taylor was an ABC man, and, of course, he said he didn't but he denies that he had any knowledge of it. Now I am asking him whether or not—and he said the next day or some time later he learned about it. I want to ask him whether or not he did not hear Lawrence Shifflett say that night right there in the station that Taylor was an ABC man and that John Crawford had told Lawrence Dean, John Dean, and Lawrence Shifflett about 10:00 o'clock in the morning.

Mr. Sam Conrad: That is pure hearsay unless it was shown it was done in the presence of the accused.

The Court: The difficulty of that question is it is not binding on Dean and Shifflett what Lawrence said. But it is perfectly proper to ask Bailey, on his own cross examination, if Lawrence Shifflett didn't advise him. He has refused to state when he learned it; he said he learned it subsequent to the fight.

Mr. George Conrad: That is the reason I am asking him, because I happen to remember that according to Roach's testimony Lawrence Shifflett made that statement right there that night.

The Court: It is not binding on Dean and Shifflett but it is a proper cross examination of this man after his own testimony. He volunteered the statement, I think; it was not directly asked him, that he had told Mr. Saunders, I believe it was, that he made some statement that he assumed or that he knew or had heard something, that he page 136 } though that Taylor was an ABC agent.

Mr. Hammer: We further submit that the question asked by the Commonwealth's Attorney is highly prejudicial to the rights of these defendants; that the answer attempted to be elicited by the Commonwealth, if it should appear was in the affirmative, would not be binding upon these defendants, and yet the effect of it is to let the jury go into

the realms of speculation again in assuming that these defendants, or one of them, had been advised of the identify of the ABC agent.

The Court: The only thing that Court can do, under the circumstances, is to advise the jury that it is not binding on Shifflett and Dean. Then you have offered a witness in behalf of the defense and the Commonwealth has a right to cross examine him and test his credibility.

Mr. Sam Conrad: Is that a signed statement you have?

The Court: You have to lay the foundation, whether it is or isn't.

Mr. George Conrad: What if it is or isn't, either way?

The Court: If he lays the foundation and does not contradict it, that is—

Mr. George Conrad: I want to check with the witness and see if the statement was made.

page 137 } The Court: Do that. I will have to let it in.

Mr. George Conrad: You are not letting it in so far as the statement of Lawrence Shifflett—

The Court: You have made the objection. I am going to have to instruct the jury that that question is admissible only for the purpose of contradicting Bailey and goes to his credibility only, that it is no way binding upon Lawrence Dean and Shifflett.

Mr. Hammer: Can you give such an instruction as that to the jury?

The Court: Certainly. On the objection, it is usually handled that way.

Mr. Hammer: We object. Isn't that singling out that one witness from the others before the jury?

The Court: This witness is on cross examination. He is the only witness whose credibility is at issue at this particular time. You have to contradict each witness as they take the stand, not generally.

Mr. Hammer: We want to except to the ruling of the Court on the grounds that it is unduly emphasizing the credibility of the witness in this case and singling out this particular witness from the others. In the case of *Hensley v. The Commonwealth*—I can't give you the citation right now—the Supreme Court of this state has held that such singling out is erroneous when instructed by the Court.

page 138 } Mr. Sam Conrad: And on the further ground that the mere instruction to the jury will not cure the obvious injury to the defendants in this case by admitting hearsay testimony.

(All parties returned to the courtroom and the trial was resumed.)

By Mr. George Conrad:

Q. Mr. Bailey, let me see if I cannot refresh your recollection a little bit about when you learned this man was an ABC man. Do you remember after this fight occurred Dean went in the rest room to wash the blood off of his face and came back in and you were there and Lawrence Shifflett was there, Lawrence Dean was there, Floyd Shifflett was there, John Roach, and a boy named Kern, and Blanche Stanley, and everybody in there; do you remember that?

A. Yes, sir.

Q. And now at that time, isn't it a fact that Lawrence Shifflett, right then and there, said that Taylor was an ABC man? that John Crawford had told Lawrence Dean and Floyd Shifflett, about 10:00 o'clock Saturday morning, that day, that Taylor was an ABC man and that he was helping him, that they wanted to employ him to catch people?

Mr. Hammer: If Your Honor please, we object to the question, and the Court overrules the objection and we except.

The Court: I want to instruct the jury that if Lawrence Shifflett made that statement, it does not go to page 139 } show that the two defendants did know it beforehand but it is admissible for the purpose of testing Mr. Bailey on cross examination in view of the statement that he made on the witness stand to Mr. Saunders that he assumed or he thought that Taylor was an ABC agent.

Mr. Hammer: Counsel for the defendants excepts to the instruction the Court has given for the reasons heretofore assigned.

Q. Isn't that where you learned about his being an ABC man?

A. Was it then?

Q. Didn't he make that statement right there then?

A. Not to me he didn't make any such statement.

Q. Whether he made it to you or whether he made it to somebody else, wasn't that statement made right there in your presence at that time?

A. I never heard it.

Q. Was there any reason you could not have heard it?

A. I shouldn't think so.

Q. You were right there?

*Blanche Stanley.*

A. If there had been any such statement made, it is obvious that I would have heard it because the place is no bigger than from here to you.

Q. Weren't you right there in the room where Lawrence Dean came right back out of the washroom and page 140 } wasn't Lawrence Shifflett there?

A. Lawrence Dean was in the washroom and I went over there to where he was at.

Q. When he came back out into the restaurant part there, you were all there, and this young man John Roach was there. Wasn't Lawrence Shifflett there?

A. Lawrence Shifflett?

Q. Yes.

A. It seems to me like he was.

Q. Didn't he make some statements there at that time?

A. Along that line?

Q. Did he make any statements?

A. I don't remember of him making anything like that there. He was talking just about the fight, what happened, "look at your eye", "look in the mirror at your eye; you ought to see your eye".

Q. They were talking about the fight then?

A. Yes.

Q. Didn't Lawrence Shifflett, right in that conversation about the fight, say Taylor was an ABC man?

A. Not that I heard.

Mr. George Conrad; That's all.

Mr. Sam Conrad: That's all.

(The witness stands aside.)

page 141 }      **BLANCHE STANLEY,**  
sworn for the defendants.

Direct examination by Mr. Hammer:

Q. You are Blanche Stanley?

A. That's right.

Q. Where do you live, Miss Stanley?

A. In Elkton.

Q. Were you at Bailey's filling station on the evening of May 1 when there was some trouble there?

A. That's right.

Q. Miss Stanley, after that trouble occurred, will you tell

*Tom Bailey.*

this jury whether or not the officers of the ABC Board talked to you?

A. Yes, sir.

Q. On how many occasions?

A. Twice.

Q. Did they take from you a written statement?

A. That's right.

Q. Where is that statement?

A. Mr. Bailey has it.

Mr. Hammer: We'd like to have that statement, if Your Honor please.

Mr. George Conrad: I do not see, Your Honor, that Mr.—

Mr. Hammer: We are calling for it.  
page 142 } The Court: On what ground are you calling for it?

Mr. Hammer: If Your Honor please, we are calling for that statement on the grounds that it is in evidence in this case as taken by the officers, and we think that the jury has the right to know what was in it.

Mr. George Conrad: That is no ground.

Mr. Hammer: We are now prepared to introduce that statement before this jury. If the Commonwealth has not done it, the defendant has a right to do it, and that is what we are now calling for, that paper.

Mr. George Conrad: That is no legal ground, if Your Honor please.

The Court: I see no ground for that statement to be introduced at this time. The motion will be overruled.

Mr. Hammer: All right, sir, we except.

Stand aside. We want her to stand aside and recall Mr. Bailey.

TOM BAILEY,  
recalled by the defendants.

Examination by Mr. Hammer:

Q. Mr. Bailey, did you take a written statement from Miss Blanche Stanley?

A. Yes, sir.

page 143 } Q. Do you have that statement?

A. I think I have a copy of it. Mr. Conrad has the original, I believe.

*Tom Bailey.*

Q. Will you get the original from Mr. Conrad and tell us whether or not that is the one she signed?

Mr. George Conrad: If Your Honor please, the Court ruled that is not admissible.

The Court: I make the same ruling. I cannot see on what ground you are introducing that statement.

Mr. Hammer: We desire to introduce it to contradict certain statements made to the officers. I think it will be apparent.

The Court: You have not laid any foundation that the Court can see at this time.

Q. Mr. Bailey, is it or is it not true that Lawrence Dean, when you were talking to these witnesses and to Charlie Slye or to Lam, told him, in your presence, that all he asked him to do was tell the truth to you officers?

A. No, sir, I can't recall he made that statement.

Q. Do you say that he did or did not?

A. I'll say he didn't.

Q. Where did you talk to him?

A. I was talking to Harry Lam out east of Elkton on Route 33 about a half mile out of town.

Q. Near the reservoir or Kite's filling station?

page 144 } A. I don't know where the reservoir is.

Q. Do you know where Kite's filling station is?

A. It is a filling station that's closed out there.

Q. At that point—

A. Dean came there while we were talking to Harry Lam and said, "You know, Harry, you've talked to the attorneys over there, now you don't have to tell them a thing and don't sign nothing. They told you so." From that on, Lam said he didn't want to sign anything. And I said, "We are wasting our time and yours too" and we disbanded.

Q. Lawrence told you he had talked to the attorneys and on the advice of the attorneys he didn't have to sign anything for the officers?

A. That's right.

Mr. Hammer: That's all.

Examination by Mr. George Conrad:

Q. In other words, Dean told you that his attorneys had advised this man Lam that he did not have to make any

*John Duff.*

statements to a Commonwealth officer who was investigating the case?

A. That's right, and not to sign anything.

Q. Said his attorneys so advised him?

A. Yes, sir.

Q. And Lawrence Dean came up there and butted in and tried to keep Lam from making any statement to page 145 } you in your official investigation?

A. That's right.

Q. There was no charge against Mr. Lam of any kind, was there?

A. No, sir.

Q. You were just there in the course of an official investigation of this matter, were you not?

A. That's right.

Mr. George Conrad: That's all.

(The witness stands aside.)

Mr. Hammer: Call Mr. Duff.

JOHN DUFF,  
recalled by the defendants.

Examination by Mr. Hammer:

Q. Mr. Duff, you were with Mr. Bailey out near Kite's filling station when you were talking to Harry Lam, were you not?

A. Yes, sir.

Q. And Lawrence Dean came up there; is that right?

A. Yes, sir.

Q. What statements did he make there at that page 146 } time?

A. He told Harry Lam that he didn't have to make any statement to us or sign any statements, that he had talked to his lawyers and you all advised him not to say anything.

Q. We had advised him not to say anything?

A. That's right.

Q. That who had talked to the lawyers?

A. From the way he put it, that Harry was along with Lawrence when he talked to you all.

*John Duff.*

Mr. George Conrad: That Harry was along with Dean and talked—

The Witness: That's right. He said, "We have talked to the lawyers".

Q. What was said? that he didn't have to sign any statement?

A. That's right.

Examination by Mr. George Conrad:

Q. And didn't have to answer any questions?

A. Yes, sir.

Q. Were you there in the course of an official investigation on behalf of the Commonwealth?

A. Yes, sir.

Q. Dean just walked up and butt in there?

A. No, Lawrence, he drove by in his car. There page 147 } was another fellow with him in the car. And Lawrence just got out and come back and stuck his head in the car, in the door, and told Harry that he didn't have to make any statements.

Q. In other words, he saw Harry there with you and realized you were questioning him so he came back and tried to keep him from telling you anything?

A. Yes, sir.

Examination by Mr. Hammer:

Q. Did he tell you anything after that?

A. No, sir.

Q. He told you before?

A. He had made a statement before but he had not signed it.

Q. You were getting ready to sign a statement?

A. He was making a statement.

Q. He had already made one, why were you wanting him to make another one?

A. Because we knew that wasn't true.

Q. Didn't you hear Lawrence also tell him there, at that time, that if he did talk to you all, all he wanted him to do was tell you the truth?

A. I believe he did.

Mr. Hammer: That's all.

(The witness stands aside.)

page 148 }

BLANCHE STANLEY,  
recalled.

Direct examination by Mr. Hammer resumed:

Q. You say you were there on the evening of May 1?

A. Yes, sir.

Q. How did you go there, Blanche?

A. I went with Floyd in the truck.

Q. You went up with Floyd Stanley in the truck?

A. Yes, sir.

Q. Do you live there or have a home there in Elkton?

A. Yes, sir.

Q. Do you take in roomers?

A. I have two with Floyd; I have one besides him.

Q. Talk a little louder, some of the jurors down here can't hear. You say that you do have?

A. Yes, sir.

Q. How many?

A. Two.

Q. Who are they?

A. Floyd and a Mr. Morgan.

Q. Floyd and a Mr. Morgan?

A. Yes, sir.

Q. How long have they lived there with you?

A. Floyd has been there over a year and Mr. Morgan about five weeks.

page 149 } Q. What was the purpose of your going to the store that night?

A. I went over to buy some groceries.

Q. You went over to buy some groceries?

A. Yes, sir.

Q. How far is that from where you live?

A. I don't know, just a few minutes' walk, maybe five or ten minutes' walk. I don't know exactly how far.

Q. All right, when you got there, was there anyone else around?

A. Yes, it was others there.

Q. Who were they?

A. Well, let's see. Guy Monger and a Mr. Charlie Syle, Mr. Bailey.

Q. When you got there, what did you all do?

A. Well, I got out of the truck and went on in to get my groceries and was standing there talking to Mr. Bailey that runs the store. I was messing around in the store there buying some things, looking over groceries, buying some celery

*Blanche Stanley.*

and some peppers and different things. I don't know just how long I was in there but a few minutes; right smart little while. What we were talking about was Mr. Miller, the man I had worked for, had bought a new restaurant. That was our conversation.

Q. After you had been there a while, did you page 150 } see anything of Lawrence Dean and anyone else come up on the place?

A. After that, I did, yes.

Q. Tell us what you know about that then. What happened when they got up there? did you see what occurred outside at that time?

A. Well, I walked to the door intentions of asking Floyd if it was anything else he wanted me to get in the store. So about that time, I noticed Floyd and Lawrence Dean in this scuffle, just playing like horseplay, I guess you would call it, and they wrestled around there for a few minutes, just laughing and carrying on. And so I still stood there at the door and waited for him to tell me and while they was playing, he didn't. In the meantime, when Floyd and Lawrence broke apart from their play, this guy, whoever he was—Taylor, I've learned is his name—was standing sort of back with his back towards me.

Q. How close was Taylor standing, up close to the filling station, or not?

A. I don't know whether he was standing right up against it; he was standing right at the wall.

Q. Right close to the wall.

A. Right close to the wall; yes, sir.

Q. Then what happened?

A. Well; I still stood there, and when this guy—when Floyd —when they broke loose, Floyd and Lawrence page 251 } Dean broke loose, Floyd just stepped back and this guy grabs him around his waist, like this (illustrating).

Q. How did he grab him—from the front, or how?

A. No, he grabbed him from the back.

Q. You mean Taylor was holding Floyd?

A. This guy was holding Floyd from the back. So he picked him up off the ground and threw him around just like that and then Floyd sort of—I don't know, he turned some way, he got around towards him, faced him, and so he mentioned about his foot?

Q. Who mentioned about whose foot?

A. Floyd had mentioned about his foot.

*Blanche Stanley.*

Q. What about his foot?

A. He said he had hurt his foot.

Q. Had he hurt it?

A. He had hurt it but he hurt it again that night.

Q. You say he had hurt it but he had hurt it again. You mean he had injured that foot before that?

A. Yes, sir. And so he turned his ankle, or whatever it was; he hurt his foot that night, he turned it over, and mentioned about his ankle. So this guy Taylor, he runs—well, in the meantime then, Lawrence says—he walked between them and says, “You all break this up”. says, “This guy has got a bad foot”.

Q. Who was wrestling when Lawrence Dean page 152 } came?

A. Well, this fellow had Floyd.

Q. You mean that man over there and Floyd?

A. Yes, sir. So when Lawrence told him to break it up, this guy called Lawrence a dirty name, ugly name, and so he socked him in the face.

Q. When you said that man over there, you mean the man Taylor?

A. I looked to see; I don't know who you are talking about.

Q. You mean the man over there you were talking about breaking it up was Taylor?

A. Yes, the man by the name of Taylor. I don't know him. So he hit Lawrence in the face and called him this name; called him an ugly name and hit him.

Q. What did he call him?

A. He called him a dirty son-of-a-bitch.

Q. You mean Mr. Taylor—

A. Called Lawrence Dean.

Q. He's the man that called—

A. And hit him and asked him what he was trying to do. So from that, they went into fighting.

Q. Then what happened? Let me ask you: did Lawrence Dean ever have a hold of this fellow Taylor from the back or around the neck in any way?

A. Not that I saw; no, sir.

page 153 } Q. If he had had him by the back and beating him in the back, had his arm around his neck and hitting him in the back, would you have been in a position to have seen it?

A. I was standing in the door and could have seen it.

Q. If it happened that way, could you have seen it?

A. Yes.

*Blanche Stanley.*

Q. Did it happen?

A. No.

Q. Who struck the first blow?

A. This fellow Taylor.

Q. Did you see any blood on anyone there?

A. No, I saw—well, I saw blood on Lawrence's hand and about his eye.

Q. Tell the Court and jury whether that blood was ever on Lawrence's face before Taylor ever struck?—Dean ever struck?

A. It was on during the course of this fight.

Q. After Taylor hit Dean, then they went into it?

A. They went into it.

Q. What happened then?

A. Well, they stood there and fought for a few minutes, one fighting as much as the other, he fighting Dean and Dean fighting him. So they finally got down. I don't know who throwed who, but this guy was on the bottom and Dean on top of him.

Q. How was Dean on top of him?

page 154 } A. Sort of astraddle him.

Q. Did Floyd Shifflett, during any of that time, ever attempt to hit or cause any trouble with Taylor?

A. No, sir.

Q. What happened after they got down? were they still fighting on the ground?

A. Yes, they were still fighting when they were on the ground.

Q. Then what happened?

A. He was fighting Lawrence and Lawrence was fighting him and he was fighting up at Lawrence.

Q. What finally broke up the fight there?

A. Well, it was some fellows pulled him off.

Q. Do you know who they were?

A. I remember Guy Monger and Harry Lam and Floyd, but who else, I just don't remember.

Q. You remember Guy, Harry, and Floyd pulling him off but you don't know who else?

A. No, sir.

Q. As they pulled him up, did you see anything else there?

A. Well, this fellow looked like he was going to get up and he raised up. Then when he raised up he kicked at Lawrence Dean.

Q. Then what happened?

*Blanche Stanley.*

A. So Lawrence Dean went back onto him again page 155 } and hit him another crack or two; I don't know how many because I never counted them.

Q. What happened after that then?

A. Well, I don't know when this fellow got up. I turned and went on back into the station there from the door and they went around the corner; must have went to the rest room to wash off the blood because this one, whoever it was, I don't know, said they was going—"Let's go wash the blood off of your face." So they went on around.

Q. And you went on back in the station?

A. I was in the station but I turned from the door and they went on around.

Q. And you remained there until what time?

A. Oh, I don't know how long I was in there.

Q. About how long? Were you in there when John Roach was in there?

A. I know the Roach boy when I see him and I remember seeing him in there.

Q. Were you in there the whole time that he was there?

A. I don't know when he left.

Q. You don't know when he left?

A. No, sir.

Q. After this fight was over and Lawrence Dean and the others came back in from outside, was there any page 156 } statement made there in the place by anyone about this man being an ABC officer?

A. No, sir. If there was, I didn't hear any.

Q. If it would have been said, could you have heard it?

A. It looks like I could; I was there.

Q. Was there anything said by Mr. Bailey that he would have given \$50.00 if it had been Tom Bailey and Duff in the same fix?

A. No, sir, I didn't hear any statement.

Q. Was any such statement as that ever made?

A. No, sir.

Q. If it had been made, could you have heard it?

A. I think so, I was close enough.

Q. Did you heard Mr. Bailey make any statement at all about the fight?

A. No, sir.

Mr. Hammer: Take the witness.

Cross examination by Mr. George Conrad:

*Guy Monger.*

Q. Mrs. Stanley, isn't it a fact that you are divorced and that Floyd Shifflett has been living at your house ever since you were divorced?

A. No, not ever since.

Q. How long has he lived there?

A. He's been living there a little over a year.

page 157 } Mr. George Conrad: Stand aside.

Re-direct examination by Mr. Hammer:

Q. The mere fact that he is a boarder there, you wouldn't come here and tell an untruth to this jury?

A. He's a boarder but he hasn't been in my house no two years, since I have been divorced.

Q. The mere fact that he is boarding at your home, you wouldn't come here and tell this jury an untruth?

A. No, sir.

Q. You have told it exactly as you have seen it?

A. That's true.

Q. And you did give a statement to the officer?

A. Yes, sir.

Mr. Hammer: That's all.

(The witness stands aside.)

GUY MONGER,  
sworn for the defendants.

Direct examination by Mr. Hammer:

Q. You are Guy Monger?

A. That's right.

page 158 } Q. Where do you live, Mr. Monger?

A. I live at Elkton; two miles out of Elkton.

Q. Two miles out of Elkton?

A. That's right.

Q. What is your occupation?

A. Coal dealer.

Q. Mr. Monger, on the evening of May 1, were you at Bailey's store?

A. I was.

Q. Did you see anything of any trouble there between Lawrence Dean and another man?

*Guy Monger.*

A. I did.

Q. What were you doing up there at the store on that occasion?

A. Well, I do some dealing there, buy my gas there, cigarettes.

Q. Buy you gas and cigarettes there?

A. That's right.

Q. Were you there when Floyd Shifflett came to the station?

A. I was inside of the station; yes, sir.

Q. You were inside of the station?

A. Yes, sir.

Q. What occurred there at that station? just tell the jury there in your own words what happened there.

page 159 } A. Well, I was inside there and bought some cigarettes and back at the juke box, back at the back end of the store, and I saw a little tussle between Floyd and this strange guy.

Q. Had you seen any tussling there between Lawrence Dean and Floyd Shifflett?

A. No.

Q. You did not see the beginning of it?

A. No.

Q. You saw some tussling there between Lawrence Dean and some strange fellow?

A. No, Floyd Shifflett. Well, I didn't pay any attention to it. It looked to me as if they were playing. Then a few minutes later I looked out again and Lawrence Dean and this guy were knocking quite a bit, so I goes on out to the door, on outside then.

Q. All right.

A. And they was having a rather strong fight there, I thought, until they was knocking around there quite a while and this one guy was down, was knocked down.

Q. When you say one guy was knocked down, was this Mr. Dean or the other man?

A. That was the other man. Well, they both had been down, I think, during the fight, and they had been knocked around. And so this guy was on the ground and he started to get up, or he got up, and when he got up he said, "This thing is not finished with," and he went on down the road.

page 160 }

The Court: I cannot hear you. A little louder, please.

*Guy Monger.*

Q. When he got up, he said what?

A. He said, "I'll see you later"—said to Lawrence, Lawrence Dean, and started on down the road. Which he left at that time.

Q. All right, did Dean go out to the road or follow him down the road any?

A. Dean said to him, said, "Well, you can see me now." and started on out to the road and he never did go to the road. He turned around and come on back. This guy went on down the road, walking.

Q. In other words, this man, as I understand it, told him, after the fight was over, that "This thing is not over yet. I'll see you later."

A. No, this guy said to Dean, said, "I'll see you later." And Dean said, "Well, you can see me now," and started after him again.

Q. You say he was walking or running down the road. Which way was the other fellow going?

A. He was going toward town.

Q. Walking or running?

A. Well, I would hate to say, I just don't know whether he was walking or running. He wasn't fooling any  
page 161 } time; he wasn't losing any time; he was in a hurry.

Q. Now did you go back into the filling station after the fight?

A. I went back in there a few minutes was all.

Q. While you were in that filling station, was there anything said by anyone that this fellow was an ABC officer?

A. I didn't hear anything said.

Q. You didn't hear anything said along that line?

A. No, I didn't.

Q. If it would have been said, would you have heard it?

A. Yes, while I was there, I would have.

Q. Was John Roach in there while you were in that station?

A. I don't remember seeing him.

Q. You don't remember whether he was in there, or not?

A. No.

Q. Was there anything said in that station about any money that someone—did Perry Bailey state that he would have given \$50.00 if it had been Tom Bailey and John Duff in the same beat up condition that Taylor was?

A. No, I didn't hear that.

*Guy Monger.*

Q. Was there any such statement as that made?

A. There was some statement around later that Perry said he would have given \$50.00 if it hadn't happened in his driveway.

page 162 } Mr. Hammer: Take the witness.

Cross examination by Mr. George Conrad:

Q. Mr. Monger, you are a pretty good buddy of Floyd and Lawrence?

A. No; I see quite a bit of Lawrence.

Q. See quite a bit of Lawrence?

A. Yes, sir.

Q. Run around all hours of the night with him, don't you?

A. No, I wouldn't say that.

Q. You haven't been with him at pretty late hours?

A. Well, I come through town sometimes late.

Q. Haven't you run around Elkton at very late hours with him?

A. Once or twice, maybe, yes.

Q. You all drink a good deal together?

A. I don't do much drinking.

Q. You don't do much drinking?

A. That's right.

Q. What time did you get up to the station that night?

A. Up at the station?

Q. Yes.

A. I had been there probably a half an hour or three quarters.

page 163 } Q. With whom did you come?

A. Myself.

Q. By yourself?

A. By myself.

Q. How did you happen to go up there?

A. Bought some gas.

Q. What?

A. Bought gas there.

Q. To buy gas?

A. That's right.

Q. It didn't take you all that time to buy gas?

A. It was Saturday night; I usually loafed around there Saturday night.

Q. You usually loaf—

*Guy Monger.*

A. That's right.

Q. Lawrence usually loafs there too, doesn't he?

A. He comes up there occasionally.

Q. And Floyd loafs up there too?

A. Floyd doesn't come up there quite as much as Lawrence does but he's occasionally there.

Q. He hangs around there a good deal?

A. That's right.

Q. And they are pretty good friends of Bailey, trade there with Bailey, and you are all good friends together?

A. That's right.

page 164 } Q. All of you are good friends there?

A. Yes.

Q. When did you first learn this man was an ABC man?

A. When I was stopped by some guys from Richmond and was questioned.

Q. When was that?

A. It was probably a week later; three or four days later.

Q. It was all over town down there Sunday, was it not?

A. I didn't know anything about it.

Q. You were in town Sunday?

A. On Sunday?

Q. Yes, the next day. It happened Saturday night; you were there Sunday?

A. Well, I don't fool around town much on Sunday. I was there Sunday evening.

Q. It was all around town Sunday evening that he was an ABC man?

A. The first I knew he was an ABC man was when this guy from Richmond stopped me and questioned me and told me he was an ABC man and told me his name.

Q. That was when?

A. It was a few days later.

Q. Was it Monday, Tuesday, Wednesday, or when?

A. I don't recall which day it was.

page 165 } Q. That was the first thing you ever heard it was an ABC man?

A. It was the following week, I know that.

Q. You and Lawrence never talked about the fight after it happened?

A. No, sir.

Q. Never said a word about it?

A. No, sir. In fact, I don't guess I saw Lawrence to talk to him, maybe, until a week later.

*Guy Monger.*

Q. After the fight was over there that night, there wasn't any talk around there about the fight was it?

A. They was talking about the fight, you know.

Q. What was said about it?

A. Well, what they generally talk about a fight.

Q. You tell the jury, you are testifying what did they say about the fight that night?

A. Just about the fight, about how the licks passed; this, that, and the other.

Q. Everybody knew who this fellow Taylor was?

A. Not as I know of. Didn't nobody seem to know him. He was a stranger there.

Q. Did they discuss it or speculate there about who he was?

A. No, they didn't know who he was. They was wondering about who he was.

page 166 } Q. Any body have any idea who he was?

A. I didn't hear anybody mention.

Q. Never heard a word about it?

A. That's right.

Q. Were you in the station there with John Roach and the rest of the crowd when Lawrence came out of the washroom?

A. No, I didn't stay there too long after the fight was over; I left.

Q. You didn't stay there too long?

A. That's right.

Q. You didn't hear what went on?

A. I was there 10 or 15 minutes after the fight.

Q. Were you there when Lawrence came out of the washroom?

A. I didn't say I was. They was over at the other side.

Q. Like who says?

A. I said I can't say as I was.

Q. In other words then, you don't know whether you were in there when Lawrence came out of the washroom?

A. I don't think I was in there when Lawrence came out. He was on the other side.

Q. How do you know there wasn't any conversation about the man being an ABC man?

A. I didn't say there was conversation there about anybody being an ABC man.

page 167 } Q. Mr. Hammer asked you whether certain remarks were made there and you said they weren't made. And asked if you couldn't have heard them if they

*Guy Monger.*

were made and you said you could have heard them if they were made in there.

A. Well, if the remarks were made in there.

Q. Were you or were you not—

A. I was in the filling station 10 or 15 minutes after the fight.

Q. Were you in there when Lawrence Dean came out of the washroom?

A. No, I don't think I was.

Q. Then you do not know what was said when he came out of the washroom?

A. No, I don't know.

Q. And you had never talked to him at any time after this fight about how it happened at all?

A. No.

Q. Never discussed it?

A. It may have been a week later I talked with him. Sometimes it goes for a week before I see him or talk to him.

Mr. George Conrad: That's all.

Mr. Hammer: That's all.

(The witness stands aside.)

page 168 } The Court: We will adjourn for lunch now.

Gentlemen of the jury, we will take an hour for lunch. I will give you the usual warning not to talk to anyone or permit anyone to talk about the case in your presence.

(A recess was taken for lunch at 12:41 p. m.)

page 169 } (Note by Stenographer: Between Page 99 and  
this page should be inserted Mr. Lee's transcript  
when it is made.)

Afternoon session, June 18, 1948, began about two o'clock.

MR. LAWRENCE SHIFFLETT,  
sworn, for defendants.

Direct examination of witness was conducted by Mr. Sam Conrad:

Q. I believe you are a brother of Floyd Shifflett?

A. Yes.

Q. On the night of May First, were you up at Perry Bailey's filling station?

A. Yes, sir, went up with my brother.

Q. Who else?

A. Blanche Stanley.

Q. What did you do?

A. I got two loaves of bread and five pounds of sugar.

Q. Were you there when Lawrence Dean and Crawford and this man drove up?

A. Just at the time I got out there, some other guy and Floyd had started wrestling.

Q. Who was the other guy?

A. Taylor. Taylor grabbed hold of Floyd.

Q. Grab me like he grabbed Floyd.

A. He had him and picked him up off the ground, and said, "He is a right good little man, isn't he? Floyd kind of turned around like he was going to get hold of Taylor, and he said, "I hurt my ankle." Dean walked in and kind of pushed them apart. He said, "That boy has a bad ankle."

page 170 } Some one said, "You dirty son of a bitch." And about that time Taylor hit Dean. And then they both went into slugging. And Dean he took hold of Taylor. Taylor looked like he was getting best of Dean, and then Dean got hold of him and commenced pouring it into his stomach. He let go of Taylor then, so Taylor hit him again, and, when he did, Dean hit him, and Taylor went down, and Dean went down on top of him. A couple of us got hold of them and separated them. And Taylor got into a sitting position and kicked at him. Then Dean let loose again. Then this guy got up and said, "I will see you later." Dean said, "If you want to see me, see me right now. There ain't no better time." This guy went off down the road. Dean went down, too, to the end of the driveway, about as far as to the end of the Judge's bench.

Q. That was the last you saw of Taylor?

A. Yes. We went back into the rest room, and Dean was all bloody. He washed, and we come out. And I had got my

*Lawrence Shiflett.*

stuff, and had never paid for it. I paid for my stuff, and stood around there a while. Then Floyd took me on home. I couldn't get my truck started.

Q. Did you see anything of John Roach?

A. No, sir, I don't remember seeing him.

page 171 } Q. Who went into the lavatory with Dean?

A. Me and Floyd and Harry Lam, all I remember.

Q. At any time, did you hear Dean say that Crawford had told him that Taylor was an A. B. C. man?

A. No, sir.

Q. Did you hear anything like that?

A. No, sir, I didn't know it until John Duff told me the next day.

Q. Did you hear Perry Bailey make any remark that he would give \$50.00 to see Duff and Bailey the same way?

A. No, I don't know that I heard anything like that.

Q. Well, you know whether you heard him, or not.

A. I didn't hear him. I heard him tell Dean that he would give \$50.00 if it had happened somewhere else instead of in his driveway.

Q. Did you make the statement there that Crawford had told Floyd and Lawrence that Taylor was an A. B. C. man?

A. No, sir, I did not.

Q. As I understand you, as far as Floyd and Taylor were concerned, Taylor grabbed Floyd first, and as far as the fighting was concerned Taylor hit Dean first? When  
page 172 } Dean got in there, did he take hold of him around the neck?

A. No, sir, all he did was to shove the two of them apart.

Mr. Sam Conrad: I believe that is all. That is all.

Cross examination of witness was conducted by Mr. Geo. D. Conrad:

Q. How did you happen to go up there?

A. I went with Floyd.

Q. Does he always buy his groceries up there?

A. The best part of them.

Q. Who was buying the groceries?

A. Blanche was in there.

Q. Does she keep house for him?

A. He boards with her.

*Lawrence Shifflett.*

Q. You went up there in Floyd's truck? What time did Floyd suggest that you go up there?

A. I come over in a truck. He was backing out. I asked him to give my truck a little shove. He said, "You might as well go on up there, and then I will give you a shove."

Q. Where was his truck?

A. In the lot by the depot.

Q. What time?

A. I reckon along about eight o'clock.

Q. How long were you up there before Lawrence and the others came up there?

page 173 } A. I suppose about 15 or 20 minutes.

Q. What time did you see Lawrence downtown?

A. I don't remember seeing him at all that day until he came up there.

Q. What time that day did Floyd tell you that Crawford had told him about this A. B. C. man?

A. He didn't tell me. There wasn't no name called or nothing.

Q. He told you that Lawrence Dean wanted you to come up there to Bailey's station to meet him, didn't he?

A. No, sir.

Q. You know John Roach, don't you?

A. Yes, sir.

Q. You know he was up there?

A. I didn't see him.

Q. Have you and John Roach had any trouble?

A. No, sir.

Q. Has he got anything against you?

A. Not that I know of.

Q. You were there in the rest room, right after this fight, just a few minutes? Who else was there?

A. A good many, some coming and going.

Q. Were you there when Lawrence came out of the rest room?

A. Yes. I think me and Floyd, and Harry Lam,  
page 174 } and Lawrence; as well as I remember, that is all  
that was back there when he went back there, when he went in.

Q. Was Blanche in the restaurant when he came out of the rest room?

A. Yes.

Q. Practically every one was there, talking about the fight, weren't they?

*Lawrence Shifflett.*

Q. All I heard was that Bailey said that fighting would have to stop in his driveway. He said, "I don't want none of that kind of stuff. I have a business to look after." I heard him tell that he would give \$50.00 if it had happened somewhere else than in his driveway.

Q. It isn't so unusual to have fights down there in Elkton?

Objection; sustained.

Q. What was so serious about a fight that Mr. Bailey would give \$50.00 not to have a fight in his driveway? And you deny to this jury on your oath that you stated in the presence of those people there, and particularly in the presence of this man Roach, that this man Taylor was an A. B. C. undercover agent, and that Crawford had told Lawrence and Floyd?

A. Yes, sir. Mr. Duff told me at the jail-house, outside the jail-house.

Q. Who else was there?

A. Blanche, and my father was there. I guess page 175 } that was all.

Q. Where was Mr. Bailey?

A. Inside.

Q. And just what did John Duff tell you about that?

A. He said it was an A. B. C. man. He asked us what had happened down there.

Q. And then volunteered that he was an A. B. C. man, undercover man? He wasn't telling you anything new, was he?

A. I didn't know anything about it.

Q. It was all over Elkton Sunday morning, wasn't it?

A. I wasn't in Elkton, Sunday. I was at home. Blanche came up and asked me to bring my brother in here to give a bond.

Q. You told plenty of people around Elkton, didn't you? How many times have you been over what you testified to?

A. I haven't been over it at all.

Q. How many had you told before you came in here?

A. I haven't told nobody except what I told John Duff.

Q. You never talked to Lawrence about it?

A. Yes, we have talked about it. He asked me if I knowed nothing about it.

Q. So he didn't even know what you were going to say on the witness-stand? You never told Floyd what page 176 } you were going to testify?

A. No.

*Lawrence Shifflett.*

Q. You never told Mr. Hammer?

A. I told Mr. Hammer that Sunday over at the jail.

Q. Then you talked to Mr. Hammer, you talked to Mr. Duff, and just who else? You talked to your brother about it. You never sat down and talked to your brother about what you were going to say?

A. No, sir.

Q. He never asked you what you saw there?

A. No, sir.

Q. Lawrence never asked you what you saw and what you heard?

A. No; I don't remember.

Q. Nobody inquired who Taylor was?

A. I did hear Floyd ask Lawrence if he was kin to him. He said he was a pretty big guy. He said, "I thought maybe it was some of Lawrence's kin."

Q. Did Lawrence say he wondered who he was?

A. I don't remember his saying anything about it.

Q. Did anybody say, "Who was that fellow?" And you never talked to Floyd?

A. Sure, I talked to Floyd. I talk to him every day.

Q. You never discussed the case with him?

A. No, sir.

page 177 } Re-direct examination of witness was conducted  
by Mr. Sam Conrad:

Q. You talked to Mr. Hammer before he had ever seen Lawrence and Floyd?

A. Yes, sir.

Q. And your father and Blanche were both there?

A. Yes, sir.

Q. What did you at that time tell Mr. Hammer? The same thing you have said to-day?

A. Yes, sir.

Q. Had Mr. Hammer talked to Lawrence or Floyd at this time?

A. No, sir.

(Witness left stand.)

(After a slight recess, Mr. Lawrence Shifflett was re-called, and further cross examined by Mr. Geo. D. Conrad.)

*Floyd Shifflett.*

Q. Mr. Shifflett, when Dean went into the rest-room to wash the blood from his face, didn't you make the statement, "You won't hear any more of that"? And didn't Perry Bailey then say, "Lawrence Dean sure beat that guy up, and I would give \$50.00 to see Tom Bailey and John Duff beat up, for the \$90.00 fine they cost me", or words to that effect?

A. No, sir.

Q. And didn't you tell John Roach, "Remember you didn't see nothing and don't know nothing"? After you made that statement about Taylor being an A. B. C. man, and page 178 } that Crawford had told Lawrence Dean and Floyd about it Saturday morning, didn't you turn to John Roach and say, "Remember, you didn't see nothing and don't know nothing"?

A. No, sir.

(Witness left stand.)

MR. FLOYD SHIFFLETT,

one of the defendants, sworn, on behalf of defendants.

Direct examination of witness was conducted by Mr. Sam Conrad:

Witness: That night I went to town. Blanche had two children down there at the show. She wanted to get some groceries. I told her we might as well go and get them, then pick the children up, later. My brother said he couldn't get his truck started. I told Lawrence, "I am going over to Perry Bailey's and get what groceries she wants, and then we will go over home". Lawrence rode along over there,—my brother, Lawrence Shifflett.

Q. Had you seen him first?

A. Not that night. We went on over to Perry's, and there was a guy there, ....., and he asked me if I wanted to buy any slab wood. He has a saw-mill, and he wanted to know if I wanted to buy any wood. He said it was all pine wood. I said it was too hard to get rid of. We talked, I guess, ten or fifteen minutes, maybe, and just as he page 179 } started to back out Lawrence Dean and Harry Lam walked up. I don't remember who walked up first. This strange guy was with them. I didn't pay much attention at first. Lawrence and I go out a lot of times and wrestle and throw each other around. We don't get rough, because Lawrence knew I had this bad ankle. We just played around

*Floyd Shifflett.*

there a while. This guy grabbed me from the back; I don't know what his reason was. So he threw me all around. He said, "He is pretty stiff for a little man, isn't he?" Then he ran his hands all around me. I goes to turn towards him. That is when I turned this ankle. I mentioned about my ankle, and Lawrence Dean said, "Take it easy there, fellow; that fellow has a bad ankle". That guy didn't let me loose then until Lawrence pushed us apart. When he pushed us apart, this guy said to Lawrence, "You son of a bitch", and then he hit him. They put up a pretty good fight. Guy Monger and Harry Lam and my brother, and perhaps separated them. After they got them separated, this guy raised up on his elbow, and tried to hit Lawrence. They pulled him off again. And Lawrence went after him. This guy went off down the road. Lawrence came back. This guy comes out to the road, and said to Lawrence, "I will see you later". He said, "You don't have to see me later. You can see me right now". When he went away, Lawrence went after him, just to the highway, and come back.

Q. Did you know Taylor was an A. B. C. man?

A. Not then.

page 180 } Q. Did you go in with Lawrence when he went in to wash his face?

A. Yes, we talked in there a while. I just figured out maybe it was some of Lawrence's people. I said, "Who was that guy?" Lawrence said, "I don't know. He wanted to get a bottle of whiskey".

Q. And you didn't know until the next day that he was an A. B. C. man? Did you and Lawrence have any preconceived idea of getting together and assaulting that man?

A. I haven't seen Lawrence since that morning until Saturday morning. I got out of my truck, and John Crawford was over there, talking to Lawrence then. The only thing John Crawford ever talked to me about was trying to sell me moonshine liquor.

By Mr. Geo. D. Conrad:

Q. That was Saturday morning?

A. I often heard him trying to sell Lawrence Dean moonshine liquor.

Mr. Sam P. Conrad continuing his direct examination:

Q. Did Crawford tell you that Taylor was an A. B. C. man, and that he was going to bring him down?

*Floyd Shifflett.*

A. He never told me that.

Q. Did Lawrence Dean ever tell you that Crawford had told him that Taylor was an A. B. C. man?

A. No.

page 181 } Q. Now, on this occasion, did you and Lawrence Dean go up to Rocky Bar to talk to Crawford about this case?

A. Yes, sir. Tried to get him to come up and talk to Mr. Hammer.

Q. Did he make any reference to Mr. Duff or Mr. Taylor?

A. We asked him if he knew this guy, and he said that he didn't. When we went up there to his house—

Objection by Mr. Geo. D. Conrad.

The Court: The Commonwealth's objection is sustained.

Mr. Hammer: We except to the ruling of the Court, and for the reasons whereof say and avow that John Crawford, when called as a witness for the Commonwealth, denied that he had ever dealt as a bootlegger or in the manufacture or sale of moonshine liquor, and we avow that if this question were answered the witness would testify that he was in that business.

Mr. Sam Conrad continuing:

Q. Did Crawford tell you that he didn't know who the man was, even after this happened?

A. Yes, sir. We went up there three times one day. And from what I can understand he was out making whiskey that day.

Q. And that was after this happened?

A. He wanted to sell us some of the whiskey.

Q. After this happened, at any time did you hear your brother make the statement that Crawford had  
page 182 } told you all that Taylor was an A. B. C. man?

A. He never said that. I hadn't talked to him that day until night.

Q. He didn't make that statement in your presence?

A. No, sir.

Q. Did you hear any statement made by Perry Bailey to the effect that he would give \$50.00 to see Duff and Bailey have the same treatment?

A. The only thing Perry Bailey said was that he kind of jumped on Lawrence, and wanted to know what the trouble

*Floyd Shifflett.*

was. He said, "This other guy started it". So Perry said, "I would give \$50.00 if it hadn't happened in my driveway". That is the only statement I ever heard Perry make outside of

Q. And you say on your oath that you didn't know Taylor was an A. B. C. man, and that he jumped on you?

A. Yes, sir.

Q. Do I understand you to say that he hit Lawrence first?

A. Yes, sir.

Cross examination of witness was conducted by Mr. Geo. D. Conrad:

Q. You knew that you were indicted by the grand jury, didn't you?

A. I didn't know it until the next day.

page 183 } Q. You asked Crawford what he testified to before the grand jury, didn't you? Didn't you ask Crawford what he had testified to before the grand jury, and didn't you say to Crawford then, "If you said anything other than what you said to us, let us know, so we can change our story"?

A. No, sir.

Q. Didn't you and Lawrence Dean several times, once or twice, go over to Crawford's house to see him and take some whiskey along?

A. I give him a couple drinks.

Q. Didn't you tell him that he should testify in this case that Taylor had jumped on Dean and called him "a son of a bitch"?

A. No, sir.

Q. And didn't you tell Crawford to say that Taylor had kicked Lawrence?

A. No, sir. He did try to do it. I told you that when they pulled them up, he tried to kick him.

Q. How many times did you go over there?

A. Three times, one day, if I am not mistaken.

Q. What day was that?

A. I don't remember that. It was a few days after the fight. Mr. Hammer said he would like to talk to him. He kept telling us he would come. But he kept putting it off. We finally saw him in Elkton late that evening.

page 184 } Q. Each time you took whiskey with you?

A. Not then. The first time I had a bottle of whiskey with me and gave him a drink.

*Floyd Shiflett.*

Q. What you asked him was whether he had told Mr. Bailey and Mr. Duff anything different from what he told you?

A. We were wondering about this guy.

Q. You asked him who he was?

A. Yes, sir.

Q. You did go over there on Monday? And you asked him if he was an A. B. C. man?

A. Asked him who the man was. I never knew until Mr. Bailey read that warrant to me.

Q. That was before you went over there? You knew before you went over there who this man was?

A. We asked John.

Q. And why were you asking Crawford who he was?

A. I was just wondering what kind of guy he was.

Q. You didn't think it was proper for Mr. Crawford to aid the law officers in enforcing the law?

A. Not him being a moonshiner, no, sir. I don't think a man making moonshine ought to go around—I never sold him a bottle.

Q. You never sold any whiskey?

Objection; sustained.

page 185 } Q. Who sold you?

Objection; sustained.

Q. Didn't you talk to Crawford about noon on Saturday, after he had talked to Lawrence Dean?

A. I might have talked to John, and remarked just a few words. He said that he didn't know him very well; he knew his brother. He never told me anything about this fellow. I never asked him that.

Q. You did a while ago. If you will answer the questions asked, we will get along better. Did you talk to Crawford about noon on Saturday?

A. I think I did. I think he was talking with his father, and I just talked to him a few words.

Q. You know now, don't you? To the best of your recollection, you did talk to him about noon on Saturday? You saw him again, after that, about noon that day?

A. I don't know. He never talked about this.

Q. What was there to impress it upon your mind that you talked to him then? If he says that he did talk to you about noon, then, as far as you can say, that is true, isn't it? You

*Floyd Shifflett.*

wouldn't deny it, would you? What was the subject of conversation? Did he try to sell you moonshine whiskey? What did you talk to Crawford about, about noon, that day?

A. I don't know. I am not sure that I talked to him, after that.

Q. You are sure that he was over there, talking to Lawrence Dean?

page 186 } A. Yes.

Q. Then tell the jury what they were talking about?

A. He didn't stand there but just about a minute after I went up there.

Q. Did you hear him say anything?

A. I don't know what he was talking about.

Q. Now, isn't it a fact that when Mr. Crawford came over there and talked to you about noon that day that you already knew about this A. B. C. man, and that you told him then that you didn't have any whiskey for him, but that you had something in a package?

A. No, sir, when he told that, he told a story. I never told him that. He never asked me about any whiskey.

Q. You can't remember one word you said?

A. He never asked me about any whiskey. I never asked him nothing about this A. B. C. man. I never knew about it until the next day, who the man was.

Q. Now, Mr. Shifflett, isn't it a fact that when Mr. Bailey and Mr. Duff came down there and took you up that you wouldn't make any statement about this matter.

A. They never asked me to make statement.

Q. Did they tell you why they were taking you up?

A. They read this warrant to me. I told them it wasn't true.

Q. Did you tell them what happened?

page 187 } A. I didn't tell them anything. Coming up the road, I told them about this guy who threw me around.

Q. Isn't it a fact that you told them there had been a fight there, and that is all you would tell them?

A. They didn't ask a whole lot about it. They didn't ask but a very few questions.

Q. Isn't it a fact that the only statement you would make about it was that there was a fight there?

Objection; sustained.

*Floyd Shifflett.*

Q. Did you, or did you not, refuse to make a detailed statement to the officer?

A. Well, I don't really think they asked me to make any statement.

Q. You were willing to make a statement?

A. I could very easily have told them what happened.

Q. Well, did you tell them?

A. I don't remember. I was just nervous after it happened.

Q. You say that Taylor jumped on you?

A. Must have. I didn't know what the man meant.

Q. You didn't do anything at all? All you did was to defend yourself?

A. I didn't defend myself. I did try to turn towards him, and then I hurt my ankle.

Q. His testimony that you tried to throw him down is false?

A. I didn't try. He didn't try to throw me, page 188 } either.

Q. You had never seen this man before? He just deliberately jumped on you?

A. He didn't jump on me. He grabbed me and kind of threw me around. He said, "He is pretty stiff for a little man, isn't he?" Then he started running his left hand around me. I had a jacket on.

Q. Who started this thing between you and this gentleman?

A. I think he started it.

(In Chambers.)

Mr. Geo. D. Conrad: We propose to ask this witness if he has not been convicted, on three or four or five occasions, of assault and battery, on the authority of *Rasnake v. Commonwealth* and *Beauford v. Commonwealth*.

The Court (after an off the record discussion): It is admissible, if it is the same Floyd Shifflett.

Mr. Hammer: Your Honor, please, it seems that we have lost sight of the fact that this is not, as far as Floyd Shifflett is concerned, a case of self-defense. There is no evidence, nor has it been indicated by any of the witnesses, that he was acting in self-defense. The entire evidence shows that Shifflett did not assault the prosecuting witness in this case, Taylor.

There has been no claim made that Shifflett would page 189 } rely upon self-defense. That being true, Your Honor, please, if evidence of this sort is to be used by the Commonwealth's attorney, at this time it is im-

*Floyd Shifflett.*

proper to allow the introduction of this evidence, for the reason there is nothing before the Court showing that he acted in self-defense, and that it would be premature,—both of the Commonwealth's witnesses, Crawford and Roach, having testified that Taylor, the prosecuting witness in this case, was the aggressor.

The Court: Both Taylor and Crawford have testified that Shifflett grabbed Taylor when he was standing at or near the wall. Shifflett has denied this, and said that Taylor grabbed him first. Under the circumstances, the question is who was the actual aggressor, and I think the evidence is admissible. That is the Court's ruling.

Mr. Sam Conrad: We desire to except to the Court's ruling.

Mr. Hammer: We further except to the ruling of the Court on the ground that the admission of this evidence will be highly prejudicial to the rights of the other defendant, Lawrence Dean.

Mr. Geo. D. Conrad then continued his cross examination (in Chambers) of witness, Mr. Floyd Shifflett:

Q. Were you convicted of petty larceny in the Trial Justice Court on February . . . , 1946?

Objection.

A. No, I was not.

page 190 } Q. Were you convicted in the Trial Justice Court of Rockingham County in October (?), 1940, of assault and battery on Albert Gooden?

A. Well, yes, sir, I was, in 1940. That was mine, I know.

Q. Were you convicted in 1945, May 21, of assault and battery on G. D. Hensley?

A. I don't know whether it was an assault and battery charge, or not. I don't know whether it was just assault and battery. I was convicted on that charge.

Q. That was the charge you were tried on, of being drunk in public, and on assault and battery?

A. Yes, sir.

Q. That was another man charged with assault and battery against Randolph Roach?

Q. Yes, sir.

*Floyd Shifflett.*

Mr. Hammer: On this warrant here, the warrant charges unlawfully being drunk in public (reading warrant).

Now, that carries the charge of drunkenness, a charge of assault and battery, of cursing and abusing G. D. Hensley. This doesn't show on which counts he was convicted.

Mr. Geo. D. Conrad: It shows that he was convicted on all of them.

Objection; overruled; exception by Mr. Hammer.

Mr. Geo. D. Conrad: I want to ask him if he was convicted of an alleged sale of whiskey in November of last page 191 } year.

The Court: I don't think that is relevant.

Mr. Hammer: We propose, Your Honor, please, to ask this witness whether or not he was ever granted a preliminary hearing under the original warrant in this case, and we further expect to prove that he was indicted before being given the benefit of the preliminary hearing, although the preliminary hearing was set for June 4.

The Court: The Court rules that what the Commonwealth Attorney did, in indicting before a preliminary trial was held, was perfectly legal, and the question of whether he had a preliminary hearing, or not, is wholly immaterial on the question of his innocence or guilt, and is a question in which the jury is not at all concerned.

Mr. Geo. D. Conrad then resumed his cross examination of witness, after the return of parties to the courtroom.

Q. This is not the first time you have been in court on an assault charge?

A. First time in the Circuit Court.

Q. Weren't you convicted in the Trial Justice Court of assault and battery on Albert Gooden, in September (?), 1940? Were you not convicted on that date?

A. Yes, sir.

Q. Weren't you convicted in Trial Justice Court page 192 } again in 1945, of assault and battery against G. D. Hensley?

A. I was convicted, but he did as much cursing as I did.

Q. Weren't you convicted and sentenced to jail—

Objection; overruled; exception.

Q. Were you not?

Yes, sir.

*Floyd Shifflett.*

Mr. Hammer then resumed his direct examination of witness:

Q. You say you were arrested on May First,—on the Sunday following?

A. Yes, sir.

Q. You were arrested on the Sunday following this alleged assault upon Mr. Taylor? You were arraigned before the Trial Justice of Rockingham County, Virginia, and your preliminary hearing was set for the 4th day of June, 1948?

Objection.

The Court: The Court sustains the objection, on the ground that it is immaterial whether a preliminary hearing was held, or not.

Mr. Hammer: If this witness had been allowed to answer the question, he would have stated that he had been arraigned.

Mr. Geo. D. Conrad: I will withdraw the objection to the question. You may now answer that question.

Mr. Hammer continuing:

Q. Were you allowed a preliminary hearing in this case?

A. No, sir.  
page 193 } Q. Although it had been set for trial on the 4th day of June?

A. Yes, sir.

Q. The three times that you went up there to see Mr. Crawford, did you find him at home?

A. No, sir. We saw him in town.

Q. Did Mr. Crawford tell you that he would come up to talk to me?

A. He always made some excuse, that he would come the next day, or something.

Mr. Geo. D. Conrad: The Commonwealth thinks it is pertinent; the statement of Taylor about what Dean said I think gives the Commonwealth the right to ask this question.

By Mr. Geo. D. Conrad:

Q. Mr. Shifflett, so far as you know, is anybody engaged in the sale of whiskey at Perry's station?

Objection; sustained.

Stand aside, please, sir.

(Witness left stand.)

MR. LAWRENCE DEAN,  
the other defendant, sworn, on behalf of defendants.

Direct examination of witness was conducted by Mr. Hammer:

Q. You are Lawrence Dean?

A. Yes, sir.

Q. How old are you, Lawrence?

page 194 } A. Twenty-three years old.

Q. I believe you are a son of a former police officer on the force at Elkton, Virginia?

A. Yes, sir.

Q. Are you acquainted with John Crawford?

A. Yes, sir, some.

Q. Did you see John Crawford on Saturday, May First?

A. Yes, sir.

Q. Where?

A. Below the railroad track.

Q. What time of day was that?

A. I would say it was 10 or 11 o'clock. He asked me whether I was going to have any whiskey that night, and I told him, I would.

Q. What else occurred there?

A. Just local talk. I drove on. He then stopped me there.

Q. Did he ever tell you on that occasion that Mr. Duff and Mr. Bailey had employed him as a stool pigeon?

A. No, sir, he didn't.

Q. Did he ever tell you he was going to bring a man down there that was on the Alcoholic Beverage Control Board? Did Mr. Crawford tell the truth when he testified that he told you that he was bringing an A. B. C. man down there?

A. No, sir, he didn't tell me.

page 195 } Q. When was the first time that you knew, or learned of, the identity of the man that you had this trouble with?

A. I was in bed when they came down to arrest me, and going up the road they told me who it was.

Q. Who?

A. Mr. Bailey or Mr. Duff.

Q. Was that the first time?

A. Yes, sir.

Q. You did, I believe, did you not, take John Crawford and Harry Lam and Mr. Taylor up to the service station?

A. Yes, sir.

*Lawrence Dean.*

Q. Prior to that time, had you had any conversation with John Crawford?

A. That was the first and only time.

Q. Did you ever have any discussion with Floyd Shifflett as to the identity of any man that Crawford was to bring there?

A. No, sir.

Q. When was the next time you saw Crawford?

A. That Crawford boy came along that night, and said, "Have you got any whiskey?" We all went there and got in the automobile. So, going over, Mr. Taylor was in the back. He got to singing and hollering, and we went over to the filling station.

Q. Did Crawford introduce you to that man?

A. He said he worked in Alexandria with him.

Q. And Crawford told you he had worked with him in Alexandria?

A. Yes, sir.

page 196 } Q. When you got up to Bailey's service station, what happened there?

A. We all got out, and me and Floyd got to playing. We got to tussling around there. Well, we got away from each other. This fellow runs and grabs Floyd.

Q. You and Floyd are pretty close friends?

A. That's right; I hope so.

Q. After you and Floyd had wrestled there, you turned him loose?

A. Yes.

Q. And then Taylor grabbed him?

A. Yes, sir, just about like this. Floyd finally turned around towards him. Then he said, "Wait, I have hurt my ankle. I said, "This fellow has got a bad ankle; break it up". When I pushed them apart, he said, "You son of a bitch". He knocked me backward, and I come back fighting.

Q. What was the result of the blow?

A. I had a black eye, and the blood ran from my nose.

Q. How long did that black eye last?

A. Probably about two weeks.

Q. Did you ever grab Taylor around the neck?

A. No, sir.

Q. Who hit the first blow?

A. Taylor.

Q. Did you strike him first?

*Lawrence Dean.*

A. No, sir. One time I thought I was about to page 197 } go down. Then we both went down. And then when he got up a little, he hit me in the straddle. And, later, he said, "I will see you later", and I said, "You can see me right now".

Q. Did you run him down the road?

A. No, sir. I went into the service station and washed my face.

Q. Where were you standing when he had told you that he would see you later?

A. I said, he wouldn't have to wait. He could see me then.

Q. Did you run him down the road?

A. No, sir.

Q. Did Floyd Shifflett ever lay a hand on that man?

A. No, sir.

Q. Did you go back into the filling station?

A. After I had washed my eye, I went on back.

Q. Did you make any statements that you knew this man was an A. B. C. officer?

A. No, sir.

Q. Did you hear any statement made by Lawrence Shifflett that he was an A. B. C. officer?

A. No, sir.

Q. Did you hear any one say that they would give \$50.00 to see Bailey and Duff get the same thing?

A. No, but I heard Perry Bailey say something else. He wanted to know what had happened; that he had a page 198 } business place. I said I couldn't help it, that the man started hitting me. He said it didn't make any difference; it had to be cut out.

Q. Had you and Mr. Shifflett made any arrangements about bringing this man up there to beat him up?

A. No, sir.

Q. Did you have any reason to do it?

A. No, sir. The man hadn't done anything to me.

Q. Did you go up to John Crawford's, at my request, to get him to come to see me?

A. Yes, sir.

Q. How many times did you find him at home?

A. Very seldom. He never would agree to come.

Q. He refused to come up here?

A. That's right. He give excuses.

Q. Mr. Dean, did you or Floyd Shifflett or any of you go and talk to John Crawford and ask him to testify that Taylor was drunk?

*Lawrence Dean.*

A. No, sir, I did not.

Q. Did you and Floyd Shifflett, together, go up there and ask him to testify that Mr. Taylor had called you the son of a bitch?

A. No, sir.

Q. You did see Harry Lam?

A. Yes, sir.

Q. What did you tell him?

page 199 } A. I told Harry in the presence of Mr. Duff and Mr. Bailey that he didn't have to sign anything; that my attorneys told me that. I told Mr. Bailey and Mr. Duff all that I asked for Harry to do was to tell the truth. Mr. Bailey denied it here on the stand, and Mr. Duff did, too. I told them at least three or four times, I know, the same thing.

Q. When you went to Bailey's station that night, did you know that Floyd Shifflett or any of those people were going to be there?

A. No, sir, I did not.

Q. Where was your car parked when you got into it?

A. It was parked there next to the hotel, sort of the way the track runs, to the south.

Q. Which was the easiest way to go up to the place you were going to?

A. The way the car was headed.

Q. You did tell Harry to drive the car, that you had been drinking?

A. Yes, sir. I told him to go up the road. That street comes to a dead end. I told him when we got to the cross roads to turn right. When we got to Perry Bailey's, I told him we would go in.

page 200 } Q. Now, why were you going up to Bailey's?

A. It is a little embarrassing, but I am going to tell the truth. I went up to get him a pint of whiskey, and if he hadn't been such a bully, he would have got it.

Q. Whose whiskey?

A. Mine.

Q. Where did you have it?

A. I had some up there near the filling station, on the other side of the street. I had put it there, and I was going to go up there and get it for him. If he had behaved himself, he would have had some.

Mr. Geo. D. Conrad conducted the cross examination of witness:

*Lawrence Dean.*

Q. What do you do?

A. Employed by the railroad.

Q. And sell whiskey?

A. Well, I told you how it was.

Q. Now, Mr. Dean, you say you met Crawford down there about the railroad station?

A. Yes, sir.

Q. And Mr. Shifflett was there,—Floyd?

A. Yes, sir. He didn't hear the conversation. I don't think he did.

Q. After the conversation, you told him what Crawford wanted, didn't you?

A. No, sir.

page 201 } Q. He knew that you were selling whiskey?

A. I think so.

Q. You are pretty handy with your fists?

A. No, sir.

Q. You defended yourself, you are telling the jury, that is all? You have been in quite a few fights, haven't you? You were recently convicted on an assault charge?

A. Yes, sir.

Q. Who was that?

A. It was Winegord.

Q. Who is he?

Objection; overruled.

A. A man I worked on the railroad with.

Q. He is the conductor?

A. What time he isn't off, being drunk.

Q. And you used to work for the railroad company, yourself, didn't you?

A. Yes, sir.

Q. You had plenty of whiskey at home, didn't you?

A. Probably I did. Yes, I had.

Q. How much did you have?

Objection; overruled.

A. I had a couple bottles, maybe three.

Q. Maybe five or six?

A. No, sir, I didn't say that.

Q. Why didn't you run out to your house?

page 202 } A. It looks bad. It was close to the filling station, on the other side of the street.

*Lawrence Dean.*

Q. Is that where you do most of your selling?

A. No, sir, it is a very poor place.

Q. Why didn't you take this man home, when you had whiskey there?

A. It is safe at home.

Q. Why didn't you go home and get the whiskey instead of luring him up to the filling station?

A. At home it was safe. I wanted to get rid of this first.

Q. The real reason was that you and Shifflett had cooked up this thing against this fellow?

A. I am not that kind of fellow.

Q. Even if you had known that he was an A. B. C. man, you would have kept away from him? You don't settle your affairs with fights?

Objection; overruled.

Q. That is the usual way you settle your affairs, isn't it?

A. No, sir.

Q. The fact of the matter is that Crawford told you that very morning that this man was an A. B. C. agent, and that he was going to buy some whiskey from you?

A. No, sir.

page 203 } Q. And you immediately told Floyd about it?

A. No, sir.

Q. And the reason you went up the back way was that you didn't want to be seen going up there?

A. What difference would that make? It wouldn't make no difference, I don't think.

Q. How drunk were you that night,—too drunk to drive a car?

A. I was feeling pretty good.

Q. If you went up there to get whiskey, why didn't you go over there and get it?

A. I was playing there with Floyd. Pleasure comes before business.

Q. Floyd's bad ankle didn't interfere with your wrestling with him?

A. We didn't play rough.

Q. When you got there, and Crawford had gone on into the building, why didn't you go across the street and get the whiskey?

A. I got to playing.

Q. Taylor was standing there, waiting for him?

*Lawrence Dean.*

A. Yes, sir.

Q. Who else besides you knew the whiskey was up there?

A. No one else.

Q. Whom had you told?

page 204 } A. I hadn't told any one.

Q. Is that your usual whiskey hiding place?

A. No, sir, it is not.

Q. You and Floyd were just playing there?

A. Yes, sir.

Q. When Taylor grabbed him, it was just playing?

A. Yes, sir.

Q. He didn't intend to hurt him?

A. He handled him rough, and I tried to separate them.

Q. What was your business in it?

A. I knew Floyd. I didn't know the other fellow. I didn't want to see any trouble between them.

Q. What was your interest in them?

A. I didn't want to see any trouble between them. I tried to separate them. Taylor called me a name.

Q. You hadn't said anything to him?

A. I just shoved them apart.

Q. So then you knocked him down?

A. We fought a good while.

Q. And you finally got him down?

A. Then he kicked at me. When he was finally able to get away, he said, "I will see you later."

Q. Was Roach there?

A. I don't know. He could have been there.

Q. Who was there after the fight?

page 205 } A. Perry,—I don't know how many. I was all excited. I wasn't bothered about looking at any one.

Q. You all discussed the fight, didn't you, who Taylor was, and all that?

A. No, sir.

Q. You mean to say that nobody said a word about who that fellow was?

A. They wondered who he was, and did he hurt him any.

Q. Everybody wondered who he was, and you heard Perry Bailey say he would give \$50.00 if they did that to Bailey?

A. Perry didn't say that.

Q. The fact that you went down to the house with Lam—you went home and told your wife you had been in a fight?

A. Yes, sir.

*Lawrence Dean.*

Q. Lam is mistaken when he said you didn't talk about the fight?

A. There wasn't much said.

Q. Did you all, or didn't you, talk about the fight?

A. Some.

Q. The next day it was all over Elkton? And when the officers picked you up, you refused to tell them anything?

A. As well as I remember, I told them a good deal.

Q. Did you tell them the details about the fight, or not? Isn't it a fact that you refused to tell them that there had been a fight? You told them all about it?

page 206 } A. I think I told them all about it.

Q. You not only wouldn't talk to them, but you also tried to keep Lam from talking to them?

A. I talked to Mr. Hammer, and he said I didn't have to talk to anybody.

Q. You stated that Mr. Hammer said that they didn't have to talk or make any statement?

A. I don't know whether those are the very words.

Q. Did Mr. Hammer say that the witnesses who saw the fight didn't have to tell the officers anything about it?

A. He said they could tell in court about it.

Q. Did he tell you to tell the witnesses that they didn't have to tell the officers anything about it?

A. That they didn't have to sign a statement.

Q. Why were you so hot to go over there to talk to Crawford?

A. I wanted to ask him whether he knew the A. B. C. man.

Q. What would you have done if he had said that it was an A. B. C. man? You wouldn't have been pleased at all if he had told you that he knew it was an A. B. C. man?

A. No.

Q. The thing you were interested in was whether or not Crawford was going to tell that he had "let the cat out of the bag"?

A. No. Mr. Hammer wanted to see the boy.

page 207 } Q. Why did you want to see Mr. Crawford?

A. He was with this man.

Q. Lam was with him, too, wasn't he?

A. Well, we talked to Lam.

Q. Crawford was the man you went to see?

A. All I wanted John to do was to tell the truth, but he didn't do it.

Q. You wanted him to go into court and testify that this man had started the fight with you, and that he had tried to

*Lawrence Dean.*

kick you and had called you the son of a bitch? That was really what you wanted?

A. No, sir.

Q. You didn't want him to tell the officers and you practically camped up there? You were up there every time you got a chance?

A. Trying to get him to come up to Mr. Hammer.

Q. The reason that you were so anxious to see Crawford was that you wanted to be sure that he wouldn't "let the cat out of the bag."

A. There wasn't any cat in the bag.

Q. You suggest to the jury now that Mr. Roach, a disinterested young man down there in the community, has lied about what occurred there that night?

Objection; sustained.

Q. Didn't Lawrence Shifflett state there in page 208 } your presence that Crawford had told you all Saturday morning about this man being an A. B. C. man?

A. No, sir.

Q. Then you say that Roach, a disinterested person would commit perjury?

A. Well, it sounds that way.

Q. A young man of good reputation?

A. I don't know much about the boy.

Q. And you don't know any reason he would come here and testify to a falsehood? Didn't you see Crawford in Elkton the day before you were indicted by the grand jury?

A. I don't know.

Q. You don't know the day you were indicted?

A. No, I didn't pay any attention to it.

Q. Didn't you try to see Crawford that very same day, after he had testified before the grand jury?

A. I don't know what day it was, even.

Q. Do you deny that you did?

A. No, I won't deny. I don't know.

Q. Whatever day it was, after you were indicted by the grand jury did you, or not, talk to Mr. Crawford?

A. I don't know what day it was. I can't say Yes, and I can't say No.

Q. After he testified before the grand jury, didn't you talk

*Lawrence Dean.*

to Mr. Crawford and ask him what he testified to,  
page 209 } before the grand jury?

A. I can't remember.

Q. Do you mean to tell the jury that you can't even remember whether you asked him what he had testified to before the grand jury?

A. No, sir, I don't.

Q. And didn't you tell him that if he had testified to anything different that you wanted to know it, so that you could change your story?

A. No, sir, I didn't tell Crawford anything like that.

Q. Who was the first person that told you this man was an A. B. C. man?

A. One of them, coming up in the car; it seems to me it was Mr. Bailey.

Q. Shifflett,—was he along? He said it was up here at the jail.

Objection by Mr. Hammer.

Mr. Hammer: That is not what Mr. Shifflett said.

Objection sustained.

Q. That is the first time you and Shifflett knew anything about it?

A. That is the first I knew about it.

Q. And that is the first he knew?—As far as you know?

A. As far as I know.

I believe that is all, Mr. Dean.

page 210 } Mr. Hammer resumed his examination of witness.

Q. Mr. Conrad has asked you about this conviction. That court found you guilty and fined you \$200.00?

A. Yes, sir.

Q. And you were only convicted of a misdemeanor?

A. Yes, sir.

Q. Tell the jury, if you know, why Mr. Roach would come in here and testify that Mr. Taylor was the man who hit you first?

A. I really don't know.

That is all.

(Witness left stand.)

Testimony in rebuttal was then begun.

MR. JOHN ROACH,

Recalled,—was examined by Mr. Geo. D. Conrad:

Q. John, after this trouble occurred, after Lawrence Dean had gone in the wash room, and after he came out, was Lawrence Shifflett there?

A. Yes, sir.

Q. Was Lawrence Dean?

A. Yes, sir.

Q. Floyd Shifflett?

A. Yes, sir.

Q. State whether or not Lawrence Shifflett stated, in the presence of Lawrence and Floyd, that Taylor was an A. B. C. or revenue man, and that Crawford had told  
page 211 } Dean and Floyd Shifflett about it that Saturday morning?

A. Yes, sir.

Q. He did make that statement?

A. Yes, sir.

Q. And did Perry Bailey at that time say, "Lawrence Dean sure did beat that fellow up" and he would give \$50.00 if Bailey and Duff were beat up for the fine he had to pay?

A. Yes, sir.

Sur-rebuttal testimony,—Mr. Hammer examining said witness.

Q. Who was the first person you told what Lawrence Shifflett had told?

A. I told them when they told me to tell it.

Q. They said that Lawrence Shifflett had made a statement, and did they mention what Lawrence Shifflett had said?

A. No, sir.

Q. And they told you what Perry Bailey had said?

A. No, sir.

Q. You were in there? John Crawford was in there?

A. No, sir.

Q. Where was Mr. Taylor when that was said?

A. I don't know exactly.

Q. Where was Harry Lam?

page 212 } A. I don't know.

Q. Charles Slye,—where was he?

A. I don't know whether he was, or not.

Q. Perry Bailey you know was in there?

A. Guy Monger was, Blanche Stanley, and Lawrence Dean and Floyd Shifflett.

*John Roach.*

Q. Where were you? You were sitting up on this counter, smoking a cigarette? You bought a pack, didn't you?

A. No, sir, I had it when I went in.

Q. Did you go up there to buy cigarettes?

A. No, sir.

Q. Did you tell the officers that that was what you had gone up there for?

A. I didn't tell them.

Q. What were you doing, loafing around there?

A. I just happened to be there.

Q. Why did the officers come to talk to you?

A. I don't know.

Q. You are just as positive as you were about the statement that Taylor hit Dean?

A. Taylor hit Dean after he grabbed him in the neck.

Q. Didn't you testify that Mr. Taylor was standing outside with one foot against the station, and you said that Taylor grabbed Floyd Shifflett?

A. After Shifflett ran into him.

page 213 } Q. You didn't mention that before, did you?

Objection; sustained.

Q. And the only one you heard make any statement was that Lawrence Shifflett said that Floyd Shifflett and Lawrence Dean had been told by Crawford that Taylor was an A. B. C. officer?

A. No, that wasn't the only thing I heard.

Q. Did you hear anything that Dean said?

A. Dean and Shifflett both said that. They said that Crawford told them that Taylor was an A. B. C. man, and that he would give \$50.00 for every man he caught.

Q. Of these other people, you have testified that Harry Lam, Lawrence Shifflett, Perry Bailey, Blanche Stanley, Guy Monger, Floyd Shifflett and Lawrence Dean were there when that statement was made?

A. Yes, sir.

Q. Did Lawrence Dean also say at that time to remember—that you didn't see anything or know anything?

A. Yes, sir.

(Witness again left stand.)

MR. JOHN CRAWFORD,

Recalled, was examined again by Mr. Geo. D. Conrad:

Q. On the day that the grand jury met up here, May 17, which was Monday, did you see Lawrence and Floyd?

A. Yes, sir, in front of Miller's.

page 214 } Q. About what time of day?

A. After I left up here. They were in a car. They called me over to the car.

Q. What did they ask you?

A. If I would come up here and talk to their lawyer, and did I tell the same story before the grand jury that they had told me to tell. They asked me if I had told anything different, if I did, to tell them because they would have to make up another tale.

Q. How many times did Shifflett and Dean come over to your house?

A. I would say between ten and fifteen times.

Mr. Conrad: I believe that is all.

Sur-rebuttal testimony, Mr. Hammer examining said witness

Q. Why was it that you couldn't come up here to see me?

Objection.

Q. Why was it that you wouldn't come up here to see me?

Objection again.

Q. Were you told by any of the officers not to come to talk to me?

A. No officer told me. I was afraid.

page 215 } Q. What time did you say it was that you got back to Elkton?

A. Soon after I left here.

Q. Was it in the afternoon, or that morning yet?

A. I don't know just what time. It was after dinner.

*John Crawford.*

Q. Was it as late as three o'clock?

A. I don't know.

Q. Was it as late as six o'clock?

A. I don't know.

Q. Had you had your supper yet?

A. I hadn't eaten anything.

Q. You got home before dark, didn't you?

A. Yes.

Q. How long before?

A. I don't know.

Q. Where did you see Lawrence and Floyd?

A. In front of Miller's. I went with my brother.

Q. Why did you go through Elkton?

A. I had to get some seeds and stuff.

Q. Do you know what time you were up here?

A. Some time that morning.

Q. You can't tell us just what time you had this conversation?

A. They asked me why I hadn't told them that the grand jury was held that day; I told them that I didn't  
page 216 } have time.

Q. You didn't know until that day that you were going before the grand jury? Who came with you?

A. I came with my brother.

Q. Did the officers serve a summons on you that morning?

A. Bailey did, I think.

Q. You didn't come back with Bailey?

A. I come with my brother.

Q. What day of the week was it?

A. I can't tell you.

Q. Was it as late as three o'clock you talked to these fellows?

A. I don't know.

Q. It was before you had supper?

A. It was before dark.

Mr. Hammer: That's all.

(Witness again left stand.)

MR. H. E. TAYLOR,  
recalled, was examined by Mr. Geo. D. Conrad:

Q. Tell the jury whether or not you ever cursed Lawrence Dean?

A. No, sir.

Q. Did you call him the son of a bitch? Did you  
page 217 } curse him in any way?

A. No, sir.

Q. Did you at any time attempt to kick him in the privates?

A. Not that I recall.

Q. Did you unintentionally at any time kick him in the  
privates?

A. No, sir.

Q. Just how did you go down the road?

A. I think I ran.

Q. Did Crawford go with you?

A. Yes, sir.

Q. Did you tell Dean you would see him later?

A. I don't remember.

Q. You don't deny it, do you?

A. Yes, sir, I deny that.

Q. You don't remember trying to kick him? Do you know  
what you said then?

A. I don't recall it.

Q. You testified that you grabbed Shifflett first?

Objection.

Mr. Conrad: Stand aside.

(Witness again left stand.)

Mr. Conrad: That is all, Your Honor.

page 218 }

LAYTON DEAN,  
sworn, in chambers.

Examination of said witness was conducted by Mr. Sam Conrad:

Q. On the 17th day of May, when Lawrence Dean and Floyd Shifflett were indicted by the grand jury, please state how you were advised?

A. I got a call that my boy was indicted before the grand jury.

Q. What time was that call?

A. I think it must have been very close to eight o'clock.

Q. Do you recall who made the call?

A. No, I never asked who made the call.

Mr. Sam Conrad: I will vouch, for the record, that I made the call.

Mr. Sam Conrad continuing:

Q. Did you communicate with Lawrence and with Floyd?

A. I did, as soon as I could. I went over to the house, and told my boy he was indicated by the grand jury.

Q. Did he know it before?

A. Not that I know of.

Objection by Mr. Geo. D. Conrad.

Mr. Sam Conrad: I don't think either of them knew.

The Court: I think this witness's evidence is immaterial.

Mr. Hammer: Then I will put Mr. Conrad on.

The Court: I will have to have him retire from page 219 } the case. The Court of Appeals has ruled on that quite recently.

Mr. Sam Conrad: This boy's statement was, after the grand jury's indictment they wanted to know what he testified to.

The Court: I don't think it is material.

Mr. Hammer: Are you resting, Mr. Conrad?

Mr. Geo. D. Conrad: Already rested.

Mr. Hammer: Your Honor, please we desire to renew our

motion in this case to declare a mistrial for the reasons heretofore assigned in the opening of this case. We also desire, Your Honor, please to renew our motion to declare a mistrial in this case, as, under the verbal instruction of the court in regard to the evidence of Perry Bailey, that it was a singling instruction to the jury, the effect of which was to warn the jury that his evidence should be viewed with undue caution. We also at this time desire to renew our motion to strike the evidence in the case as to Floyd Shifflett, for the reason that there was no evidence that Floyd Shifflett was guilty of unlawful or malicious wounding or of assault and battery. We likewise desire to renew our motion to strike the evidence in the case in regard to Lawrence Dean, for the reasons heretofore assigned and to be assigned more fully in writing.

The Court: Gentlemen, all these motions have page 220 } been heretofore considered, and the Court adheres to his previous ruling, and overrules all of said motions.

#### Exception.

The above motion—renewal of motions, rather,—was made, in Chambers, Friday afternoon, June 18, 1948,—following the testimony given there,—soon after court had been adjourned, (at the conclusion of the testimony in open court), until evening.

(Work on instructions to jury came next; see bottom of Page 153 and top of Page 154.)

The Court (later, the same evening, just before the reconvening of Court for the evening session): Gentlemen, counsel, when we came back to Chambers for the purpose of considering the instructions, and after some of the instructions had been offered to the Court, counsel for the defendants renewed certain motions and made certain other motions in connection with this trial, which the Court at that time overruled. It has been suggested to the Court that the defendants were not personally present when these motions were renewed and made, and the Court, being uncertain as to whether they were, or were not, the Court doth now, in the presence of both the accused and before having even returned to the courtroom from Chambers, rescind any ruling he may have made on

said motions, and does now offer to the said de-  
page 221 } fendants the right and option to renew said  
motions.

Mr. Hammer: Without waiving any right,—which I understand the law or counsel cannot waive any rights of the accused, nor can the accused themselves waive said rights,—however, in view of the Court's ruling, we at this time renew said motions as heretofore dictated.

The Court: All of these motions, now being made in the presence of both defendants, have been made and considered, before, during the trial of this case, and for the reasons then stated from time to time, all of said motions are overruled.

Mr. Hammer: To the ruling of the Court, the defendants by counsel except.

(In between the making of motion or rather, the renewal of motions shown on Page 151—and the Court's ruling thereon,—and the proceedings reported in last paragraph of Page 152 and top of this page, namely, the Court's rescinding of ruling on certain former motions, and the renewal of said motions, and the overruling of same by the Court, and exception thereto, came the dictation concerning the acceptance or rejection of instructions and the copying of said instructions in some instances or the transcript of dictation of other of the instructions, and some discussion of certain instructions, and in at least one instance, the explanation  
page 222 } of the reason for the offering of a certain instruction refused by the Court, and exception to the Court's rejection of it.)

(Instructions filed with the court papers, whether given or refused, are copied on pages following, as well as the two exhibits in the case.)

page 223 } Attest, this 8th day of September, 1948, to the defendants' Certificate No. 5, the same having been tendered to the undersigned on the 1st day of September, 1948, after notice to the Commonwealth's Attorney as required by law.

(Signed) W. V. FORD,  
Judge of the Circuit Court of  
Rockingham County.

On June 18, 1948, after all evidence had been introduced and both sides had rested, the following proceedings were had, in Chambers, with both defendants present:

Mr. Hammer: Your Honor, please we desire to renew our motion in this case to declare a mistrial for the reasons heretofore assigned in the opening of this case. We also desire, Your Honor, please, to renew our motion to declare a mistrial in this case, as, under the verbal instructions of the Court in regard to the evidence of Perry Bailey, that it was a singling instruction to the jury, the effect of which was to warn the jury that his evidence should be viewed with undue caution. We also at this time desire to renew our motion to strike the evidence in the case as to Floyd Shifflett, for the reason that there was no evidence that Floyd Shifflett was guilty of unlawful or malicious shooting or of assault and battery. We likewise desire to renew our motion to strike the evidence in the case in regard to Lawrence Dean, for the reasons heretofore assigned and to be assigned more fully in writing.

The Court: Gentlemen, all these motions have been heretofore considered, and the Court adheres to his previous ruling, and overrules all of said motions.

#### Exception.

The Court later, the same evening, just before the reconvening of Court for the evening session): Gentlemen, counsel, when we came back to Chambers for the purpose of considering the instructions, and after some of the instructions had been offered to the Court, counsel for the defendants renewed certain motions and made certain other motions in connection with this trial, which the Court at that time overruled.

It has been suggested to the Court that the defendants were not personally present when these motions were renewed and made, and the Court, being uncertain as to whether they were, or were not, the Court doth now, in the presence of both the accused and before having ever returned to the courtroom from Chambers, rescind any ruling he may have made on said motions, and does now offer to the said defendants the right and option to renew said motions.

Mr. Hammer: Without waiving any right,—which I understand the law or counsel cannot waive any rights of the ac-

cused, nor can the accused themselves waive said rights,—however, in view of the Court's ruling, we at this time renew said motions as heretofore dictated.

The Court: All of these motions, now being made in the presence of both defendants, have been made and considered, before, during the trial of this case, and for the reasons then stated from time to time, all of said motions are overruled.

Mr. Hammer: To the ruling of the Court, the defendants by counsel except.

Attest, this 8th day of September, 1948, to the defendants' Certificate No. 6, the same having been tendered to the undersigned on the 1st day of September, 1948, after notice to the Commonwealth's Attorney as required by law.

/s/ W. V. FORD,  
Judge of the Circuit Court of  
Rockingham County.

page 226 } JUDGE'S FINAL CERTIFICATE.

I, W. V. Ford, Judge of the Circuit Court of Rockingham County, Virginia, do hereby certify that the foregoing page 1 to page 177, inclusive, is a true and correct stenographic copy of report of all the testimony that was introduced and other incidents of the trial therein, including all other writings introduced in evidence or presented, (the original exhibits, instead of being copied in the record, upon request of counsel for the defendant, are hereby directed to be certified and forwarded by the clerk of this court to the clerk of the Supreme Court of Appeals of Virginia in time for hearing of an appeal of this case, in the event a writ of error is granted the *defendant* to said Supreme Court of Appeals) to the trial court, all questions raised and all rulings thereon in the case of Commonwealth of Virginia v. Lawrence Dean and Floyd Shifflett, tried in the Circuit Court of Rockingham County, Virginia, on the 17th and 18th days of June, 1948, and it appears in writing that the Attorney for the Commonwealth of Virginia has had reasonable notice of the time and place when this report of the testimony and other incidents of trial to be tendered and presented to the undersigned for certification, which is certified within sixty days after final judgment.

Given under my hand this 8th day of September, 1948.

/signed/ W. V. Ford, Judge.

page 227 } State of Virginia,  
County of Rockingham, To-Wit:

I, J. Robert Switzer, Clerk of the Circuit Court of Rockingham County, Virginia, do hereby certify that the foregoing is a true transcript of the record in the case of Commonwealth of Virginia *v.* Lawrence Dean and Floyd Shifflett, on an indictment for a felony. I further certify that notice required in cases of appeal was duly given by the attorney for the defendants to the attorney for the Commonwealth.

Given under my hand this 21st day of September, 1948.

J. ROBERT SWITZER, Clerk.

Transcript Fee, \$15.00.

A Copy—Teste:

M. B. WATTS, C. C.

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