

Records Nos. 5766, 5767

**In the
Supreme Court of Appeals of Virginia
at Richmond**

RUBEN PIERCE

v. (Record No. 5766)

COMMONWEALTH OF VIRGINIA

HUBERT EARL HOFFLER

v. (Record No. 5767)

COMMONWEALTH OF VIRGINIA

FROM THE CIRCUIT COURT OF THE CITY OF SUFFOLK

RULE 5:12 BRIEFS

§5. **NUMBER OF COPIES.** Twenty-five copies of each brief shall be filed with the clerk of this Court and three copies shall be mailed or delivered by counsel to each other counsel as defined in Rule 1:13 on or before the day on which the brief is filed.

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

HOWARD G. TURNER, Clerk.

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

IN THE
Supreme Court of Appeals of Virginia

AT RICHMOND.

Record No. 5767

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Wednesday the 16th day of October, 1963.

HUBERT EARL HOFFLER

Plaintiff in error,

against

COMMONWEALTH OF VIRGINIA,

Defendant in error.

From the Circuit Court of the City of Suffolk
James C. Godwin, Judge

Upon the petition of Hubert Earl Hoffler a writ of error and *supersedeas* is awarded him to a judgment rendered by the Circuit Court of the City of Suffolk on the 15th day of April, 1963, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas*, however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

Record No. 5766
Ruben Pierce
v.
Commonwealth of Virginia

page 1] COMMONWEALTH OF VIRGINIA,

CITY OF SUFFOLK, to-wit:

In the Circuit Court of said City.

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Suffolk, and now attending the March, 1962, term of said Court of said City, upon their oaths present, that Ruben Pierce, on the 13th day of January, 1962, in the City of Suffolk, he, the said Ruben Pierce, being then and there armed with a dangerous weapon, to-wit, with a loaded pistol, in and upon one Joseph Jordan, feloniously did make an assault, and him, the said Joseph Jordan, in bodily fear did put, and one ignition key to a truck, the property of Joseph Jordan, of the value of .35¢, of the goods and chattels of the said Joseph Jordan, from the person and against the will of the said Joseph Jordan, then and there, to-wit, on the day and year aforesaid, in the City aforesaid, feloniously and violently did steal, take, and carry away, against the peace and dignity of the Commonwealth of Virginia.

(Reverse side)

Virginia,

In the Circuit Court of the City of Suffolk

Commonwealth

v. INDICTMENT FOR ROBBERY FROM THE
PERSON

Ruben Pierce

Witnesses

Det. R. H. Early, Sr.
Police Dept.

Joseph Jordan
104 Crumplers Lane
Sgt. G. C. Daniels
Police Dept.
Florida Staton
104 Crumplers Lane
Ruffus Smith
1703 Norfolk Rd.
Rosa Lee Wallace
1807 Freeney Ave.

April 15, 1963 Plea of not guilty Jury waived guilty as charged 5 yrs. in Penitentiary.

J.C.G.

A True Bill

DANIEL E. COWHAND
Foreman

page 2] Circuit Court of the City of Suffolk, on Monday,
 the fifteenth day of April, in the year of our Lord,
one thousand nine hundred and sixty-three:

PRESENT: The Honorable James C. Godwin, Judge

COMMONWEALTH

V Indictment — Robbery From the Person (Case #68)

RUBEN PIERCE

This day came again the Attorney for the Commonwealth and Ruben Pierce who stands indicted of a felony, to-wit: Robbery from the Person (Case #68), appeared according to the condition of his recognizance and came also Thomas L. Woodward, Robert J. Parr and Major Hillard, Jr., attorneys for the accused.

Whereupon the accused was arraigned and after private consultation with Thomas L. Woodward, Robert J. Parr and Major Hillard, Jr., his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person.

And thereupon the accused, after having been first advised by his attorneys, waived trial by a jury and with the concurrence of the Attorney for the Commonwealth and the court, here entered of record, the court proceeded to hear and determine the case without the intervention of a jury as provided by law, and at the same time and together with case #73 against Hubert Earl Hoffler for Robbery from the Person with the consent of and at the request of the said defendants, Ruben Pierce and Hubert Earl Hoffler, and with the consent of the Attorney for the Commonwealth, and having heard the evidence doth find the accused guilty of Robbery from the Person (Case #68) as charged in the indictment and ascertains his punishment to be five (5) years in penitentiary.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law, and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this court that the said Ruben Pierce
page 3] be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of five (5) years, the period by the court ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Ruben Pierce its costs by it about its prosecution in this behalf expended, and the defendant by counsel moved the Court to set aside its judgement, as being contrary to law and evidence and without evidence to support it, thereupon, the Court doth overrule said motion, to which action of the Court in overruling the said motion, the defendant by counsel duly excepted.

Thereupon the defendant, by counsel, moved the Court for time to apply for a writ of error to the foregoing judgment, which motion, having been heard by the Court, is sustained, and it is ordered that the execution of the foregoing judgment be postponed for the period of ninety (90) days or until the Supreme Court of Appeals of Virginia shall deny said writ of error if prior thereto.

The Court certifies that at all times during the trial of this case the accused was personally present.

And the prisoner is remanded to jail.

★ ★ ★ ★ ★

page 6]

★ ★ ★ ★ ★

Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, this 14 day of June, 1963.

Wm. S. HOLLAND, Clerk.

Commonwealth

Plaintiff

vs.

Ruben Pierce

Defendant

To: WILLIAM S. HOLLAND, CLERK
CIRCUIT COURT OF THE CITY OF SUFFOLK
SUFFOLK, VIRGINIA

Ruben Pierce hereby gives notice of appeal from final judgment rendered in this case on April 15, 1963, to the Supreme Court of Appeals of Virginia, and assigns the following errors:

(1) That the judgment of the Court is contrary to the law and evidence and without the evidence to support it.

(2) That this defendant in no way acted in concert with the defendant, Hubert Earl Hoffler. That there was no pre-conceived conspiracy to commit any crime whatsoever, and this defendant made no threats of any kind and committed no acts of violence against the complaining witness.

(3) That there is no evidence in this case of any intent to steal any of the property of the complaining witness.

You are further requested to promptly make up the record in this case in accordance with Part 5, Paragraph 5, of the Rules of the Supreme Court of Appeals of Virginia.

Respectfully,

RUBEN PIERCE
By ROBERT J. PARR
Counsel for Defendant

★ ★ ★ ★ ★

Record No. 5767
Hubert Earl Huffer

v.
Commonwealth of Virginia

page 1] COMMONWEALTH OF VIRGINIA,

CITY OF SUFFOLK, to-wit:

In the Circuit Court of said City.

The Grand Jurors of the Commonwealth of Virginia, in and for the body of the City of Suffolk, and now attending the March, 1962, term of said Court of said City, upon their oaths present, that Hubert Earl Hoffer, on the 13th day of January, 1962, in the City of Suffolk, he, the said Hubert Earl Hoffer, being then and there armed with a dangerous weapon, to-wit, with a loaded pistol, in and upon one Joseph Jordan, feloniously did make an assault, and him, the said Joseph Jordan, in bodily fear did put, and one ignition key to a truck, the property of Joseph Jordan, of the value of .35¢, of the goods and chattels of the said Joseph Jordan, from the person and against the will of the said Joseph Jordan, then and there, to-wit, on the day and year aforesaid, in the City aforesaid, feloniously and violently did steal, take, and carry away, against the peace and dignity of the Commonwealth of Virginia.

(Reverse side)

Virginia,

In the Circuit Court of the City of Suffolk

Commonwealth

**v. INDICTMENT FOR ROBBERY FROM THE
PERSON**

Hubert Earl Hoffer

Witnesses

Det. R. H. Early, Sr.
Police Dept.

Joseph Jordan
104 Crumplers Lane, 1809 Freeney Ave.

Sgt. G. C. Daniels
Police Dept.

Florida Staton — 156 Tynes St.
104 Crumplers Lane

Ruffus Smith
1703 Norfolk Rd.

Rosa Lee Wallace
1807 Freeney Ave.

April 15, 1963 Plea of not guilty Jury waived guilty as charged 5 yrs. in Penitentiary.

J.C.G.

A True Bill

DANIEL E. COWHAND
Foreman

page 2] Circuit Court of the City of Suffolk, on Monday,
the fifteenth day of April, in the year of our Lord,
one thousand nine hundred and sixty-three:

PRESENT: The Honorable James C. Godwin, Judge

COMMONWEALTH

V Indictment — Robbery From the Person (Case #73)

HUBERT EARL HOFFLER

This day came again the Attorney for the Commonwealth and Hubert Earl Hoffler who stands indicted of a felony, to-wit: Robbery from the Person (Case #73), appeared according to the condition of his recognizance and came also Thomas L. Woodward, Robert J. Parr, and Major Hillard, Jr., attorneys for the accused.

Whereupon the accused was arraigned and after private consultation with Thomas L. Woodward, Robert J. Parr and Major Hillard, Jr., his counsel, pleaded not guilty to the indictment, which plea was tendered by the accused in person. And thereupon the accused, after having been first advised by his attorneys, waived trial by jury, and with the concurrence of the Attorney for the Commonwealth and the court, here entered of record, the court proceeded to hear and determine the case, without the intervention of a jury as provided by law, and at the same time and together with case #68 against Ruben Pierce for Robbery from the person with the consent of and at the request of the said defendants, Hubert Earl Hoffer and Ruben Pierce, and with the consent of the Attorney for the Commonwealth, and having heard the evidence doth fine the accused guilty of Robbery from the person (Case #73) as charged in the indictment and ascertains his punishment to be five (5) years in penitentiary.

And it being demanded of the accused if anything for himself he had or knew to say why judgment should not be pronounced against him according to law and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this court that the said Hubert Earl Hoffer be and he is hereby sentenced to confinement in the penitentiary of this Commonwealth for the term of five (5) years, the period by the court ascertained as aforesaid, and that the Commonwealth of Virginia do recover against the said Hubert Earl Hoffer its costs by it about its prosecution in this behalf expended, and the defendant by counsel moved the Court to set aside its judgment, as being contrary to law and evidence and without evidence to support it, thereupon, the Court doth overrule said motion, to which action of the Court in overruling the said motion, the defendant by counsel duly excepted.

Thereupon the defendant, by counsel, moved the Court for time to apply for a writ of error to the foregoing judgment, which motion, having been heard by the Court, is sustained, and it is ordered that the execution of the foregoing judgment be postponed for a period of ninety (90) days or until the Supreme Court of Appeals of Virginia shall deny said writ or error if prior thereto.

The Court certifies that at all times during the trial of this case the accused was personally present.

And the prisoner is remanded to jail.

★ ★ ★ ★ ★

Filed in the Clerk's Office of the Circuit Court of the City of Suffolk, Virginia, this 14 day of June, 1963.

Wm. S. HOLLAND, Clerk.

Commonwealth

Plaintiff

vs.

Hubert Earl Hoffler

Defendant

To: WILLIAM S. HOLLAND, CLERK
 CIRCUIT COURT OF THE CITY OF SUFFOLK
 SUFFOLK, VIRGINIA

Hubert Earl Hoffler hereby gives notice of appeal from final judgment rendered in this case on April 15, 1963, to the Supreme Court of Appeals of Virginia, and assigns the following errors:

(1) That the judgment of the Court is contrary to the law and evidence and without the evidence to support it.

You are further requested to promptly make up the record in this case in accordance with Part 5, Paragraph 5, of the Rules of the Supreme Court of Appeals of Virginia.

Respectfully,

HUBERT EARL HOFFLER
By ROBERT J. PARR
Counsel for Defendant

Joe Jordan

Records Nos. 5766 and 5767

★ ★ ★ ★ ★

page 1]

★ ★ ★ ★ ★

Stenographic report of the testimony taken in the case of *Commonwealth vs. Ruben Pierce* and *Hubert Hoffer*. Tried in the Circuit Court of the City of Suffolk on April 15, 1963, before the Honorable James C. Godwin, Judge.

APPEARANCES: Moody E. Stallings
Commonwealth Attorney

Messrs. Robert J. Parr
Thomes L. Woodward
Major Hillard

page 2] At this time both defendants, Hubert Hoffer and Ruben Pierce, were arraigned.

The Court: Do you waive trial by jury?

Mr. Woodward: Yes, sir.

Mr. Hillard, one of the Attorneys for the defendants, nodded affirmatively.

Defendant Hoffer and defendant Pierce both entered pleas of not guilty.

Mr. Woodward: Move to exclude the witnesses.

The Court: All the witnesses, step out in the hall, please.

At this time all witnesses withdrew from the courtroom.

At this time the Commonwealth Attorney made an opening statement.

page 3] Mr. Hillard, Counsel for the defendants, at this time made an opening statement.

JOE JORDAN,
a witness for the Commonwealth, after having been first duly sworn, took the witness stand and testified as follows:

Joe Jordan

EXAMINED

By Mr. Stallings:

Q. You are Joe Jordan?

A. Yes, sir.

Q. Where do you live?

A. 146 Culloden Street.

Q. Where were you living in February of last year?

A. I lived down Norfolk Road, Freeney Avenue.

Q. Now on the thirteenth of January, last year, do you remember seeing Mr. Hoffler?

A. Yes, sir.

Q. And Pierce?

page 4] A. Yes, sir.

Q. Where did you see them?

A. 104 Crumpler Lane.

Q. Was that your house?

✓ A. No, that's where my girlfriend was staying.

Q. Florence Staton?

A. Yes, sir.

Q. Had you ever seen Hoffler before that time?

A. No, sir.

Q. How about Pierce, had you ever seen him before then?

A. Yes, sir.

Q. Where?

A. I had seen him on the street and he had been around to the house.

Q. He had been around to the house?

A. Yes, sir.

Q. Did you talk to Pierce that morning?

A. Yes, sir.

Q. Well, where was that conversation?

A. He came around and got me.

Q. Was that Freeney Avenue or Crumpler Lane?

A. Crumpler Lane.

Q. Tell what happened.

page 5] A. He came around there to see me about the truck. He came around there and told me he was going to take me to see his buddy. He was going to get the money to pay me for the truck.

✓ Q. Well, did you agree to sell the truck to Pierce?

✓ A. Yes, sir, I told him I would sell it to him.

Q. How much?

✓ A. A hundred fifty dollars.

Joe Jordan

Q. He came to get the truck to take it to his buddy?

A. Yes, sir. Before we got down there —

Q. Where?

A. To this junk yard, like going to the overhead bridge.

Q. You mean down here Smith-Douglas?

A. Yes, sir.

Q. Go ahead.

✓ A. And he told me before we got there that he was going to give me \$32.00 and three cases of liquor for my truck. I told him I didn't want that; I wanted the money for my truck.

Q. Who told you that, Pierce?

A. Yes, sir. I told him I didn't want that.
page 6] So, he brought me back to town and come back again. He said he was going to get the money after I wouldn't, you know, talk no terms about that. So, when he come back, he brought Mr. Hoffler back with him, when he come back and Mr. Hoffler came in. He came in first. He asked me was I ready to turn the deal. I told him "No" not for no \$32.00 and three cases of liquor. Hoffler asked me why did I make a deal with him and then want to back out. I told him I didn't make no deal like that, about no whiskey and \$32.00 for my truck. Mr. Hoffler whipped out a pistol and hit me up 'side the head and shot up in the house.

Q. What else did he do?

A. He held the gun on me; asked me where the keys was at to the truck, and I had them in my pocket and he told me to give them to Mr. Pierce. So, I gave them to Pierce.

Q. Pierce was standing right there all the time?

A. Yes, sir.

Q. They came in together?

A. Pierce came in first and Hoffler came in behind him.

Q. Did he say anything to you about the truck?

A. No, just asked me why did I make a deal with the man
and now want to back out and I tried to explain
page 7] to him that I had not made any deal like that,
and I looked around to say something to Pierce
and when I looked back, Hoffler whipped out a pistol and hit me up 'side the head with it and shot in the house.

Q. Shot in the house?

A. Yes, sir.

Q. Well now, did you give Pierce the keys?

A. Yes, sir.

Q. Why?

Joe Jordan

A. He was holding a gun on me, what was I supposed to do?

Q. Had you made any deal with him about any whisky?

A. No, sir.

Q. Had you ever seen Hoffler before in your life?

A. No, sir, first time I ever seen him was that Saturday.

Q. In your house?

A. Yes, sir.

Q. Well, did they take the truck away then?

A. Yes, sir.

Q. Have you gotten the truck back?

A. Yes, sir.

page 8] Q. Well, did they offer you any money?

A. \$32.00 and three cases of liquor; that's what he told me he would give me.

Q. Now, when did you first talk to Pierce about your truck?

A. It was one day during the week, I disremember what day it was, it has been so long now, but I know I met him one day and he asked me did I want to sell the truck and I told him "Yes" I would sell it to him.

Q. What kind of truck was it?

A. '55 Chevrolet pick up.

Q. The back of the truck wasn't closed in, was it?

A. No, sir.

Q. Open pick up truck?

A. Yes, sir.

Mr. Stallings: Answer these gentlemen.

CROSS EXAMINATION

Examination By Mr. Hillard:

page 9] Q. Ruben — not Ruben but Joe —

A. Yes, sir.

Q. What day of the week was it that you first talked to Ruben Pierce?

A. I disremember whether it was on Tuesday or Wednesday or what; I don't remember what day it was, but it was during the week.

Q. You all had a discussion about selling the truck to Pierce for \$150.00?

A. That's right.

Q. And Ruben told you at the time that he was negotiating with someone else?

Joe Jordan

A. With —

Q. Did he tell you he was negotiating for someone else at the time?

A. He said he wanted to buy it; he didn't say who he was buying it for.

Q. Where did this take place?

A. What?

Q. The discussion about selling the truck with Ruben Pierce.

A. I met him on the street one day and we stopped at a service station.

Q. What service station?

page 10] A. I think it was down there, Bay Smith's Service Station.

Q. Had you known Ruben before that?

A. I mean I had been seeing him backwards and forwards on the street. Then I told him where I lived. He told me he was coming around there and talk with me about it.

Q. You let Ruben have the truck, didn't you?

A. That's right.

Q. Did you let him have it that day?

A. He said he wanted to let his buddy look at it.

Q. You gave him the keys to the truck?

A. That's right.

Q. He drove it down to Cofield's?

A. I don't know where he drove it to.

Q. How long did he keep it?

A. About three days, I think it was.

Q. Well, you let him take the truck and drive it off and you didn't know the man except by sight and the deal had not been made?

A. The deal had not been made?

Q. Yes, for the sale of the truck?

A. He said that he wanted to buy the truck. He said he wanted to take it to his buddy and let him look at it.

page 11] Q. You didn't know the man except by seeing him on the street, did you?

A. That's right.

Q. Did you know his address?

A. No, I didn't.

Q. And you let him take your truck and go on off with it?

A. I mean, I had been seeing him for about — quite awhile. I knew him whenever I *seed* him.

Joe Jordan

Q. Actually you made a deal with him before you let him have that truck, didn't you?

A. That's right, but he never gave me no money.

Q. When did you see him again?

A. After he —

Q. After he took your truck?

A. I disremember.

Q. Well, he drove the truck to Suffolk, didn't he, and picked you up?

A. That's right.

Q. Where did he pick you up?

A. Crumpler's Lane.

Q. Is that what they call "The Alley?"

A. That's right.

Q. You got in the truck with him and you all
page 12] went to Cofield's?

A. That's right.

Q. And at Cofield's, you talked to Hoffler?

A. No, I didn't.

Q. Who did you talk to down there?

A. He went in — he didn't carry me in. He told me to wait. I didn't see Mr Hoffler.

Q. You sure that you didn't talk to Hoffler and he paid you a hundred and fifteen dollars on the truck?

A. No, sir.

Q. I want to put you on your guard, because I expect to contradict you.

A. No, sir, he ain't give me nothing. When I seed Hoffler, was when he come to Suffolk, because he didn't let me go in with him at Cofield's.

Q. After you had agreed to sell the truck for \$150.00, you got a better offer for the truck, didn't you?

A. No, sir.

Q. You had already sold the truck before that to Gilbert Rollins?

A. No, sir. I had bargained to sell it to him.

Q. How much had Gilbert Rollins paid you?

A. He had paid me \$115.00, I believe it was.

Q. So Gilbert Rollins had paid you \$115.00 on
page 13] the truck?

A. Yes, sir.

Q. He was going to buy it for \$150.00?

A. That's right.

Q. You had his money in your possession?

Joe Jordan

A. I went to Gilbert and talked to him about it. He told me I could bring him his money back or either sell the truck if I wanted to; that's what Gilbert told me.

Q. You had his money, \$115.00, in your pocket, is that right?

A. I didn't say I had it in my pocket then or not, but that's what he told me.

Q. You had not given it back to him?

A. No.

Q. You made the deal to sell the truck to Ruben?

A. That's right.

Q. You had his truck sold two times, one truck?

A. I couldn't *sell* it two times; nobody gave me money but once and that was Gilbert.

Q. Well now, where was the title to the truck at the time?

A. I had it.

Q. You had it?

page 14] A. That's right.

Q. Didn't you agree down at Cofield's to give Mr. Hoffler his \$115.00 back?

A. I didn't.

Q. Well, let me ask you this, didn't you and Ruben ride back to Suffolk in an automobile that day?

A. Ride back to Suffolk in an automobile?

Q. Yes, and Mr. Hoffler drove the truck back up here.

A. No.

Q. You don't remember that?

A. No, sir, I sure don't.

Q. Well, on the day this happened do you know how Mr. Hoffler got up to Suffolk?

A. Came up there on a black Ford.

Q. Had a black Ford?

A. That's right.

Q. Who was with him?

A. Mr. Pierce.

Q. How did the truck get back up here?

A. The truck was setting parked down Norfolk Road on Freeney Avenue; that's where he carried the truck away from. He went back to Freeney Avenue and picked up the truck.

page 15] Q. Do you know how the truck got from Cofield's up here?

A. Mr. Pierce drove it back up there.

Joe Jordan

Q. How did you get back?

A. I come back with him.

Q. In the truck?

A. That's right.

Q. I see. Mr. Hoffler came in the car?

A. Yes.

Q. Yes.

A. Mr. Hoffler didn't come with him then.

Q. Where was the truck parked?

A. Freeney Avenue.

Q. How had you gotten to the place where you were?

A. I had a car.

Q. Did you take Ruben Pierce to the place where you lived?

A. No, sir.

Q. Where did you leave him?

A. He had his car parked around there. He drove his car back and told me he was going back to get the money.

Q. Let me see if I can get it straight. I thought
page 16] you two came back in the truck?

A. He had — his car was already there in Suffolk; that's what I was trying to tell you.

Q. Mr. Hoffler didn't drive the car up here?

A. No, sir.

Q. Do you know how he got there?

A. I told you him and Mr. Pierce came up together in the car.

Q. Then you must have driven the truck?

A. No, sir, I didn't drive the truck.

Q. Well, you let Pierce drive the truck back, you said?

A. That's right.

Q. He still had the keys?

A. No, I had the keys; he *gave* me the keys after he got back to Suffolk. He gave me the keys to the truck.

Q. Then they came by your place?

A. Yes.

Q. Well, they came by for the purpose of getting the money back?

A. No.

Q. Had you delivered them any title?

A. Ain't nobody had no title but me before I sold it to Gilbert.

Joe Jordan

page 17] Q. You sold it to Gilbert?

A. That's the only somebody had the title to it. I sold the truck to Gilbert after that happened, after I got my truck back. In other words, he told me I could sell the truck to whoever I wanted as long as I give him his money back. That's what I figured on doing. I figured on selling it to him and give the money back to Gilbert.

Q. Do you recall the trial of this case in Lower Court?

A. I reckon I do.

Q. Do you remember when this case was heard in the Lower Court before it came to the Grand Jury?

A. Yes, sir, I remember it.

Q. Didn't you testify down there that you sold the truck to Hoffer or Ruben Pierce for three cases of whiskey?

A. No, sir, I didn't say that. I said they offered me three cases of liquor and \$32.00.

Q. I want to put you on your guard, because I expect to contradict you.

A. All right.

Q. After this incident occurred, you got a warrant against Mr. Hoffer charging him with grand larceny of a truck in Nansemond County, right?

A. I got a warrant for him for taking my truck.

page 18] Q. That's right. You got a warrant charging him with grand larceny of your truck from Nansemond County, not the City of Suffolk, remember that?

A. That's right.

Q. Do you remember what you told the Judge in that case?

A. Where, in the county?

Q. When the case was heard?

A. Well, I mean, I didn't press no charge against the county about the truck no way — I didn't press no charge on him about the truck in the county.

Q. Then you got a false warrant against him?

A. No, he asked me would I drop the charge against him, so that's what I did.

Q. Didn't you tell the Judge in that case —

Mr. Stallings: I object.

Mr. Hillard: I'm merely going to give his reply; I think it's pertinent.

The Court: I will allow the question; go ahead.

Joe Jordan

page 19] Examination By Mr. Hillard Continued:

Q. Didn't you tell the Judge in the court that you received \$115.00 from them for the truck?

A. No, sir, I did not.

Q. Did you not testify in Lower Court in the County Court, both courts, City of Suffolk and Nansemond County Court that Hoffler nor Pierce did not steal or rob you of the truck?

A. No, sir, I didn't. When it was in the county they called us up there and Mr. Parr told the Judge that I wanted to withdraw the warrant; I wasn't going to press no charge and Judge Andrews asked me was I satisfied at that. So, I told him "Yes" so that was all there was to it. I didn't press no charge on him in the county about the truck.

Q. You got the warrant out against him?

A. The people told me I had to get a warrant before I could get my truck back.

Q. You got a warrant against him charging him with grand larceny for the truck for the purpose of getting the truck back?

A. It was mine; nobody give me nothing for it.

Q. That's the reason you got the warrant so that you could get your truck back?

page 20] A. Sure.

Q. How much did you value the truck at at the time that you got the warrant?

A. How much did I value the truck?

Q. Yes.

A. I give \$550.00 for it when I bought it.

Q. How much did you put the value of the truck on the warrant that you charged him with stealing?

A. I ain't put nothing on no warrant; I told them what happened, I mean about I offered to sell it to him for \$150.00.

Q. You swore to the warrant before the Justice of the Peace, didn't you?

A. That's right.

Q. And the Justice of the Peace wrote the warrant for grand larceny of the truck?

Mr. Stallings:

I don't want to stop him, but I don't see what purpose the warrant in the county —

Joe Jordan

Mr. Hillard:

I want to know what value he gave the Justice of the Peace as to the value of that truck when he charged this man with grand larceny.

page 21] Mr. Stallings:

I don't think it's pertinent.

The Court:

If he knows, he can answer it and if he doesn't know — do you know what the value of the truck was — what value you gave the man when you got the warrant?

A. No, sir, I don't.

Examination By Mr. Hillard Continued:

Q. Where do you work, Joe?

A. For Mr. Bennie Hedgepeth.

Q. How long have you been working there?

A. I don't know. I work there every peanut season, but *they* factory closed down now; I'm supposed to go back to work sometime this week.

Q. What kind of place of business does he run?

A. I used to run a fish market.

Q. What kind of place of business were you running at the time this occurred?

A. I won't running no kind of business; I just sold out the market and that's the reason I was selling the truck.

Q. One more question, didn't Pierce, after you
page 22] turned over possession of the truck to him,
didn't he keep that truck for about a week or
ten days?

A. No, sir.

Q. What day did you let him have it?

A. I disremember.

Q. What day did he bring it back?

A. Brought it back that Saturday morning.

Q. You know what day you let him have it?

A. No, sir, I don't.

Q. Where did he bring it to?

A. Brought it back to Freeney Avenue.

Q. Well, you didn't live there, did you?

A. That's where I was living.

Joe Jordan

Q. Didn't you make the deal with him out there on Freeney Avenue?

A. No, but that's where I kept the truck.

Q. Where did you deliver the truck to him?

A. I haven't delivered it to him.

Q. When you let him have it?

A. Off Freeney Avenue.

Q. When he came back to see you, that's where he came?

A. He came to Freeney Avenue; I wasn't there and he came on up to Crumpler's Lane.

page 23] Q. How did he know you were up there after he left Freeney Avenue?

A. Because he had been up there.

Q. How many times had he been up there?

A. I don't know; he had not been up there over twice.

Q. Did he know your girlfriend?

A. Who?

Q. Ruben?

A. No, he didn't.

Q. How did he know to come up to her house?

A. Because I told him I would be there if I won't home. I gave him the house number; that's how he knowed to get there.

Mr. Hillard: That's all.

RE-DIRECT EXAMINATION

Examined By Mr. Stallings:

page 24] Q. When you all came back from Smith Douglas and parked the truck on Freeney Avenue and you took the keys, was the deal off then?

A. Supposed to be.

Q. In other words, you had said you weren't going to take three cases and \$32.00?

A. That's right.

Q. As far as you were concerned, the deal was off?

A. That's right.

Q. Had you ever at anytime prior to that seen Mr. Hoffler anywhere?

A. No, sir.

Q. When did Rollins tell you, was it before you started dealing with Pierce to go on and sell the truck and give him \$115.00?

Joe Jordan

A. Yes, sir.

Q. That was before you started dealing with Pierce?

Mr. Woodward: I object to what Rollins told him.

The Court: He testified to that on cross examination.

Examination By Mr. Stallings Continued:

page 25] Q. What you planned to do was to return
 his money?

A. That's right.

Q. Now when Pierce and Hoffler — when you all got back with the truck, I understood you to say on cross examination you had your car parked there and the truck was parked there and Pierce had his car there?

A. Yes, sir.

Q. You took the keys —

Mr. Woodward: We object to him leading him and straightening out his witness by his own testimony.

The Court: I sustain your objection.

Examination By Mr. Stallings Continued:

Q. Did you then go to 104 —

Mr. Woodward: I object to him leading the witness. Mr. Stallings is testifying.

Q. How long had you been at 104 Crumpler's Lane when Hoffler and Pierce came up there?

page 26] A. I had been up there a long time. When they walked in, I was standing up there talking and that's when Hoffler come out with the gun and hit me up 'side the head with it.

Q. What time did you and Pierce get back from Portsmouth?

A. We got back before ten o'clock.

Q. What time was it when Hoffler and Pierce came to 104 Crumpler's Lane?

A. In the evening after dinner, I reckon, I don't know; I imagine about 1:30 or 2:00 o'clock.

The Court: Did either Pierce or Hoffler ever give you any money?

Joe Jordan

A. No, sir.

The Court: All right.

RE-CROSS EXAMINATION

Examined By Mr. Hillard:

page 27] Q. Yet you delivered possession of the truck
to Pierce and let him take it away?

A. Yes, sir, he brought it back.

Q. Let me ask you this, did you go to the doctor after
you were hit beside the head?

A. No, sir, I didn't.

Q. Isn't it true that where this ruckus took place, where
you claim they took the keys, was your girlfriend's house?

A. Yes, sir.

Q. How many people were there?

A. Won't but four, Hoffler and Pierce and me and my
girlfriend, just us four.

Q. Isn't it true that you pulled a knife on Hoffler?

A. No, sir, I don't have no knife; I ain't carried a knife
in years.

Q. Have you ever been convicted of a felony?

A. What you mean?

Q. Of a crime punishable for one year or more in the
State Penitentiary?

A. Yes, sir, I sure have.

Q. Was it for stealing?

A. It wasn't; it was for fighting.

page 28] Q. Fighting?

A. That's right.

Mr. Hillard: That's all.

RE-DIRECT EXAMINATION

Examined By Mr. Stallings:

Q. Joe, when Pierce first took his truck — took your
truck and kept it for two or three days, where was his
car at that time?

A. Well, I don't know where his car was at; I imagine
he carried it back with him.

Q. He didn't leave it with you?

A. No, sir.

Florence Staton

Q. Did you ever give the title to the truck to Hoffler or Pierce?

A. No, sir.

Q. Did you have it?

A. Yes, sir.

page 29] Mr. Stallings: That's all.
Mr. Hillard: No questions.

At this time the witness withdrew from the witness stand.

FLORENCE STATON,
a witness for the Commonwealth, after having been first duly sworn, took the witness stand and testified as follows:

Examined By Mr. Stallings:

Q. Your name is Florence Staton?

A. That's right.

Q. In January of last year, where were you living?

A. I was living on Tynes Street, but I was down at 104 Crumpler's Lane.

Q. Were you there when Joe Jordan came
page 30] there?

A. I was; we had been there all the morning.

Q. And did you see this man Pierce come there?

A. Ruben came there first.

Q. Ruben did?

A. Yes, sir.

Q. What took place when he came?

A. He and Joe was talking about the truck and he had offered Joe some money and Joe told him that he couldn't accept that so he said, "Wait a minute," he'll call his buddy. So, he went out to the car and brought in Hoffler.

Q. Had you ever seen Mr. Hoffler before?

A. No.

Q. What took place after Hoffler got in?

A. So, when he got in, Joe was trying to explain to him the terms that he and Ruben had got on. So, Ruben, he hauled out with a pistol and hit Joe 'side the head and shot all the same time.

Q. Who did?

A. Hoffler.

Florence Staton

Q. What did he say?

A. He said he could kill a nigger for five cents and four damn pennies in change.

Q. Did Joe give him the keys to the truck?

A. He handed the keys to Ruben: he was
page 31] standing closest to him.

Q. Where was the gun at that time?

A. Hoffer still had the gun in his hand.

Q. Where was he pointing it?

A. He was pointing at Joe.

Q. Did he ever fire the gun?

A. Yes, he fired it and it went through the wall.

Q. Was that before or after he took the keys?

A. That was after he took the keys.

Q. Did you know Pierce before this?

A. I saw Pierce — met him one evening *comeing* out of the driveway as I was coming from work.

Q. Was anybody else there but you four?

A. No.

Q. Do you know who driving the car when they came up?

A. No, I don't.

Q. Now, you say you saw this man with him with the pistol, did you see Joe have any weapon of any kind?

A. No.

Q. How about Pierce?

A. I didn't see him with anything.

Q. Did they give Joe any money when they took
page 32] the keys?

A. No, no money involved at all.

Mr. Stallings: All right.

CROSS EXAMINATION

Examined By Mr. Woodward:

Q. You say you were living on Tynes Street at the time?

A. That's where I live, but I was round at 104 Crumpler's Lane.

Q. What were you doing around there?

A. I know him and I go around there.

Q. Joe was living on Freeney Avenue, wasn't he?

A. I don't know.

Q. What were you doing at 104?

A. Joe was round there and I knew him.

Florence Staton

Q. How did you know he was around there?

A. I knew *you* was around there.

Q. Isn't that where he dispenses whiskey?

page 33] A. I haven't seen any there.

Q. Didn't you go from Tynes Street to 104 Crumpler's Lane to sell whiskey?

A. No, I didn't sell any.

Q. What did you go there for?

A. Because I knew Joe.

Q. How did you know Joe wasn't going to be there, seeing it wasn't his home?

A. He's always around there during the day.

Q. Who runs the place?

A. The house belonged to him at the time.

Q. Belonged to who?

A. Joe was renting the house at the time.

Q. Is Joe right when he says he lives on Freeney Avenue or is he right when he says he lives at 104 Crumpler's Lane?

A. I didn't know he lived on Freeney.

Q. Is that just some fake address of his at Freeney Avenue?

A. I don't know.

Q. You were around there at 104 Crumpler's Lane with Joe?

A. Yes.

Q. What were you doing?

page 34] A. I was sitting there watching television.

Q. What was he doing?

A. Sitting there watching television.

Q. How long had you been there that day?

A. We had been there a good little while.

Q. Any beds in the house?

A. Yes.

Q. Downstairs furnished?

A. Yes, sir.

Q. All of this took place downstairs that you have related?

A. Yes, sir.

Q. What room?

A. Front room.

Q. Who came in first?

A. Pierce.

Q. What conversation, if any, did he have with Joe?

A. They was talking about the truck.

Florence Staton

Q. Well, I believe you testified before that Pierce came in and offered him some money?

A. I didn't say that.

Q. What did you say he offered him?

A. I said they were talking about the truck and
page 35] he said that he was going to give him some money.

Joe said he couldn't let the truck go for that kind of money. He said he would go get his buddy.

Q. What was Joe charging him for the truck then?

A. I don't know.

Q. Didn't they discuss it?

A. Not with me; I don't know how much he was asking for the truck.

Q. Did you hear the discussion about the amount of money that was to be paid?

A. No, he said he was going to offer him some money, but the amount, I don't know.

Q. Isn't it a fact that he had already paid \$115.00 —

A. I don't know.

Q. You don't know anything about the hundred and fifty dollars?

A. No.

Q. Isn't it a fact, McClenny had the title to the truck all the time?

A. I don't know.

Q. You don't know anything about the truck?

A. No.

Q. You don't know who owned it?

page 36] A. That's right.

Q. All you know is that Joe had some keys?

A. That's right.

Q. Where was the truck?

A. I don't know where it was; it wasn't up there in the lane.

Q. Where is Joe supposed to live?

A. I don't know where he's supposed to live. He's supposed to live at 104 Crumpler's Lane, as far as I know.

Q. You never have been to Freency Avenue where he's supposed to live, have you?

A. No, sir.

Q. After Pierce talked to him about having to go see his buddy, did the man leave right then, did Pierce leave then?

A. He went to the store and called his buddy.

Florence Staton

Q. Well, that's the same man that said he could kill a nigger for five cents and give four cents change?

A. Same man.

Q. Then they came back together?

A. Yes.

Q. Were you still in the room?

A. Yes, sir, sitting there watching television.

page 37] Q. You still kept looking at television?

A. Yes, sir.

Q. Was it loud, soft or what?

A. I didn't have it too loud.

Q. You had it loud enough for you to hear it?

A. Yes.

Q. You were paying attention to the television?

A. Yes.

Q. What was on?

A. I don't know what was on; it was a western on, because it was Saturday morning.

Q. You were looking at television instead of Joe and Pierce and Hoffler?

A. That's right.

Q. Nothing to distract your attention from the television?

A. They were arguing.

Q. Where were you sitting in the room?

A. Right at the door.

Q. Where was the television; as far as you were concerned, it was in front of you?

A. It was on the side. I was setting like this and the television was over here.

Q. To your left?

page 38] A. Yes, sir.

Q. The television was to your left?

A. Yes, sir.

Q. They were to your right, weren't they?

A. Yes, sir.

Q. Now, did you hear that conversation over and above the television?

A. Yes, I heard it when Joe tried to explain it to Hoffler, about what he had agreed to.

Q. What was he explaining?

A. They were explaining the terms that they had made. Joe was trying to tell Hoffler the terms he and Pierce had made on the truck.

Florence Staton

Q. Well, what were the terms?

A. He was explaining to him that he was going to give him so much money and so many cases of whiskey.

Q. They had made an agreement about that and Joe said that he couldn't do it?

A. Well, the way I understood it, Pierce had come down here and Joe didn't want to come on these terms. He didn't want the whiskey.

Q. Well, where did you get that idea?

A. The way they was talking.

Q. What did they say to make you think that?
page 39] A. Because Pierce said that he couldn't go on them terms.

Q. And Joe said that he couldn't go on those terms?

A. That's right.

Q. Both disagreed about the terms?

A. Yes, but they were not arguing.

Q. Had you ever seen that truck before?

A. Sure, I had seen it before.

Q. Had you been in it?

A. No.

Q. You had just seen it?

A. Joe had a fish market.

Q. Do you know where the truck was then?

A. No, I don't.

Q. What did Pierce do?

A. Do what?

Q. After they had the discussion, you said they couldn't agree, and Pierce went out to get his buddy and came back in, what did Pierce do?

A. Pierce was standing up there and Joe was trying to explain to Hoffer the terms and Hoffer hauled back and hit Joe 'side the head and shot all the same time. Hoffer told him he didn't come there to make any trouble.

page 40] Q. What?

A. Ruben told Hoffer he didn't want to make any trouble; he didn't want to have no trouble.

Q. Ruben said that?

A. Yes, sir, after he hit him and fired the pistol.

Q. Well, Joe is a right big boy, isn't he, he could have hit Joe if he wanted to?

A. Who?

Q. Hoffer.

A. Yes, he could.

Florence Staton

- Q. He could have shot him if he had wanted to right there?
A. Yes, he had the pistol in his hand.
Q. What sort?
A. I don't know.
Q. How do you know it was a pistol if you don't know what it was?
A. It was a gun and I know it shot.
Q. Was it a shotgun or —
A. It looked like it was about that long.
Q. Long barrel pistol, is that what you're telling us?
A. I don't know what kind it was.
page 41] Q. Do you know what color the handle was or anything of that kind?
A. No.
Q. Was it nickel, blue steel or what?
A. I don't know.
Q. All you know, he shot in the floor?
A. I know he shot up in the top of the house.
Q. I understood it went into the hall.
A. It went through one room and out in another room.
Q. That's not the ceiling then, is it?
A. That's where it went, through the ceiling.
Q. It went through the ceiling and came through in the other room?
A. That's right.
Q. Well, can you tell us how that can be done?
A. I don't know how it can be done, but that's where it went.
Q. How was he holding the pistol when it hit Joe?
A. I don't know.
Q. Where did he hit him?
A. Beside the head.
Q. Where on his head?
page 42] A. I don't know where on his head, but I know he hit him.
Q. All you know, he hit him about the head?
A. That's right.
Q. What happened then?
A. Nothing, but Joe gave the keys to Pierce and he backed out the door.
Q. What did Joe say, if anything, about giving the money back?
A. Who said?

Mr. Ray Early

Q. What did Joe say, if anything, about giving the money back?

A. Didn't nobody pass any money out.

Q. What did he say about giving him the keys?

A. Won't nothing to do but hand him the keys.

Q. What did Joe say about giving him the keys?

A. What did Joe say?

Q. Yes.

A. He didn't say nothing.

Q. Did he say he was or wasn't going to give them?

A. I don't remember hearing him say he won't going to give them.

page 43] Q. You didn't hear him say that, well, could you have heard him if he had said it?

A. Yes, sir, if he said it, I could have heard it.

Mr. Woodward: That's all.

REDIRECT EXAMINATION

Examination by Mr. Stallings:

Q. When Hoffer asked for the keys, did he have the gun out?

A. Yes, sir. He kept the gun on him until he backed out of the door.

Mr. Stallings: That's all.

Mr. Woodward: No questions.

Mr. Stallings: Come down.

The witness withdrew from the witness stand.

page 44]

MR. RAY EARLY,

a witness for the Commonwealth, after having been first duly sworn, took the stand and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Stallings:

Q. You are Ray Early?

A. Yes, sir.

Q. An investigator for the Suffolk Police Department?

Mr. Ray Early

A. Yes, sir.

Q. After the complaint was made, did you have occasion to examine 104 Crumpler's Lane?

A. Yes, sir, I did.

Q. What did you find relative to the house?

A. I found in the wall of the front room a bullet hole and I also had turned over to me a slug.

Mr. Woodward: We object to that.

page 45] Mr. Stallings: Who turned the slug over to
you?

A. Joe Jordan.

Mr. Woodward: We object to it.

The Court: On what ground?

Mr. Woodward: On the ground that there's no connection between what Joe Jordan turned over to him and the commission of the offense. Joe has not testified to anything about the bullet or the slug.

Mr. Stallings: I think you're right and I'll put Joe back on the stand to connect it.

By Mr. Stallings:

Q. That is the slug that was turned over to you by Joe Jordan?

A. Yes, sir.

Q. Where was the bullet hole in the wall?

A. In the front room on the north side of the
page 46] wall.

Q. What type hole was it in the wall?

A. In other words, I examined the wall and found in the wall, which this was a plasterboard on the wall, a hole approximately the size of a thirty-eight caliber slug or thirty-eight caliber bullet.

Q. That was how long after the thing was supposed to have taken place?

A. This happened on the thirteenth and I believe it was about two days later that I went over there and checked that.

Mr. Stallings: That's all.

Mr. Joe Jordan

CROSS EXAMINATION

Examined By Mr. Woodward:

Q. There's been a lot of shooting around on Crumpler's Lane in the last fifteen or twenty years?

A. Yes sir.

Q. Could you look at the hole and tell who made
page 47] it?

A. No, sir.

Mr. Woodward: Stand aside.

Mr. Stallings: No questions.

At this time the witness withdrew from the witness stand.

MR. JOE JORDAN,

a witness for the Commonwealth, after having been previously sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Stallings:

Q. Did you determine where the bullet fired had gone in the wall at your house?

Mr. Woodward: We object to what he determined.

page 48] Examination By Mr. Stallings Continued:

Q. Where did you find it?

A. It went through from the front room into the kitchen.

Q. Did you find the bullet?

A. I found the lead that came out of it, because I give it to
Mr. Early.

Q. Where did you find it?

A. In the kitchen.

Q. In the kitchen?

A. Yes, sir.

Q. Is that the one?

A. Yes, sir.

Q. You turned it over to Mr. Early?

A. Yes, sir.

Mr. Stallings: All right, that's all.

Mr. Woodward: No questions.

Mr. W. A. McClenney

At this time the witness withdrew from the witness stand.

page 49] Mr. Stallings: That's the Commonwealth's
Case, Your Honor.

Mr. Woodward: I move to strike the evidence of the Commonwealth because it has not been proved that the keys were delivered to either one of these men by virtue of any intimidation; in fact they say it was afterward instead of before the shot was fired.

The Court: I overrule the motion.

Mr. Woodward: We save the point.

Mr. Hillard: Could we have a ten minute recess before we put the evidence on?

The Court: Yes, sir.

At this time the court took a recess.

At this time court was called to order.

Mr. Parr: Mr. Hoffer had to make a phone call, Your Honor.

page 50] Mr. Woodward: You overruled the motion to strike the evidence as to both of them, which I'd like to take exception. Now, with reference to Pierce alone, I move to strike because there is no evidence that connects Pierce with any unlawful act. There's no evidence of conspiracy or combination to affect any particular result. Because Pierce having been present when somebody else did something else, I don't think he was responsible for that.

The Court: I overrule that motion.

Mr. Woodward: We save the point.

MR. W. A. McCLENNY

a witness for the defendants, after having been first duly sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Parr:

Q. You are Mr. W. A. McClenney?
page 51] A. Yes, sir.

Q. You operate a garage here in the City of Suffolk?

A. Yes, sir.

Mr. W. A. McClenny

Q. How long have you operated a garage here?

A. On my own you mean?

Q. Well, how long have you been engaged in the garage business?

A. About twenty years.

Q. Do you know Joe Jordan, the prosecuting witness in this case?

A. I do.

• Q. Do you know Florence Staton?

A. I don't believe I know her.

Q. In the month of January between the first of January and the thirteenth of January, 1962, did you have any dealings with Joe Jordan with respect to a 1955 Chevrolet pick up truck?

A. Yes.

Q. Would you state to the Court what those dealings were?

A. I had a title in a safe belonging to Joe Jordan on the truck and holding it for repairs on a Buick, I forget the model of the Buick.

page 52] Q. How long had you held this title?

A. I don't remember exactly.

Q. Do you recall when you finally delivered the title to Joe Jordan or someone pursuant to his request?

A. I didn't deliver it to Joe, but I don't remember the exact time I delivered to Gilbert Rollins. He paid me and I credited the money to the account. He paid a portion of the money on a bill that Joe owed on the Buick.

Q. Do you recall how much money he paid to you at the time?

A. If I remember correctly, it's seventy-five dollars.

Q. Do you recall the date approximately that he paid it?

A. I do not, but the title would speak for that, because it was notarized on that day.

Q. Were you aware of an altercation that took place at the house rented by Joe Jordan on Crumpler's Alley on Saturday, thirteen — January 13, 1962, in which Mr. Hoffler and Ruben Pierce were charged with robbery?

A. I was aware of it, but I don't know exactly what time I was aware of it. I posted the bond.

Q. Were you familiar with — strike that question. When Rollins paid the money for the purchase of
page 53] this truck and the title was delivered to him,
was it after you had bonded Mr. Hoffler and Ruben Pierce?

Mr. W. A. McClenny

A. Yes, sir, it was.

Q. Has Joe discussed this — did Joe discuss the sale of this truck with you when he made the sale to Rollins?

A. Not that I remember. The first I knew about it, Rollins came up and said Joe was to sell him the truck and then he came up later and told me that when Gilbert came by to sign the title over to him and to collect the money and apply it to the account.

Q. Well, did Joe Jordan discuss the agreed sale of this truck to Ruben Pierce with you?

A. If he did, I don't remember it.

Q. Who delivered the title to you to hold for a repair bill on the Buick?

A. Joe Jordan.

Q. Do you recall how long you had held the title before you delivered it to Rollins?

A. No.

Q. Do you recall how much money he paid Joe Jordan down, how much Rollins paid for him?

A. Twenty-five dollars.

Q. Where was the truck, if you know, at the page 54] time that you delivered the title to Rollins?

A. I do not know.

Q. Do you recall whether you had had this title just a few days or whether you had it a few weeks or a month or two.

A. It had been a considerable amount of time; I feel reasonably sure it was over a month.

Q. What were the circumstances under which you were asked to deliver the title to Rollins, if you remember?

A. That Rollins would pay the money to pay off the bill that was pending on the Buick.

Q. Do you know how long it was from the time you were told to deliver it to him until the time you got the money?

A. I don't recollect, Mr. Parr.

Q. Until you actually made delivery of the title?

A. No, I don't.

Q. When Joe Jordan asked you to deliver the title to Rollins, did he tell you anything about having had previous negotiations with Ruben Pierce or Mr. Hoffler about the sale of the truck?

A. I don't remember, Mr. Parr, it has been a good while

Mr. W. A. McClenny

ago. If he mentioned it, it slipped my mind.
page 55] Q. Well, did Joe talk to you about this case
against Mr. Hoffer and Ruben Pierce and the sale
of the truck to them?

A. It was some mix-up after I delivered the title, but I don't remember what.

Q. Did you say there was some mix-up, did that information come from Joe Jordan himself?

A. I'm not real sure. I don't know; I just don't remember.

Mr. Parr: Answer Mr. Stallings.

CROSS EXAMINATION

Examined By Mr. Stallings:

Q. Do you know when you got this title?

A. I don't remember; I know I had it.

Q. Was it in '62?

A. It was — it wasn't but about a month when he signed it over.

Q. Well, was it in '61.

page 56] The witness made no reply.

Q. It wasn't this year?

A. No, sir, it wasn't this year; it was in '62, if I'm not mistaken.

Q. Do you know what month?

A. No, but I could go back and check the books and find when I wrote the receipt.

Q. You knew you were going to testify here, why didn't you bring that information?

A. I didn't know about it until nine o'clock this morning.

Q. You don't know when it was that you got it?

A. No, sir, not exactly.

Q. I'm going to ask you this, do you know whether you did or did not have the title on January 13, 1962?

A. I don't remember the time. As I said, if you produce the title, it was notarized on the date.

Q. Was it signed to you?

A. It was left open.

Q. There was for repair work?

A. Repair work to the Buick; not to the truck.

Mr. W. A. McClenny

Q. I understood you to say you don't know when he left the title there?

page 57] A. Not exactly; I would have to check the books.

Q. Well, have you got any way that you can pin point it?

A. I can go back down there and check my ledger.

Q. Would you have any way of knowing when you gave the title up?

A. The only way I would know was when I notarized it over.

Q. Did you notarize the signature of Gilbert Rollins?

A. I notarized the signature when I got it and I notarized Gilbert Rollins' signature so he could get the license.

Q. You notarized Joe's signature?

A. Yes, so if I had to — anything happened and I would have to sell the car, it was to secure the Buick; it was there notarized.

Q. You would have had to put the title in your name?

A. I hold it open for a few short days and then give it back to him; it was held as collateral security for work that I had done on his Buick.

Q. When Gilbert Rollins got the title and paid you the money, that was after Joe told you to do that?

page 58] A. That's right, he told me — stopped by and said to turn the title over to Gilbert; that Gilbert would bring the money.

Q. Was this after the Hoffer and Pierce incident?

A. Yes, sir.

Q. After that?

A. Yes, sir.

Q. And you don't know whether or not you had the title the day that happened or not, do you?

A. No, I'm not sure.

Mr. Stallings: That's all.

Mr. Woodward: We'd like to produce the date the repairs were made on the Buick and the date he credited the money on the account.

The Court: If he's got it, he can bring it in.

Mr. Woodward: The date the repairs were made on the truck.

Ruben Pierce

A. Not the truck.

page 59] Mr. Woodward: I mean on the Buick and the date you credited his account.

The Court: If you have those records, we'd like to have them.

Mr. Stallings: I want the written records. I want the written records produced.

Mr. Woodward: He can bring his ledger sheet.

The Court: Whatever record you have.

Mr. Parr: Come down.

At this time the witness withdrew from the witness stand.

RUBEN PIERCE,

a defendant, after having been first duly sworn, took the witness stand and testified as follows:

page 60]

DIRECT EXAMINATION

Examined By Mr. Woodward:

Q. What's your name?

A. Ruben Pierce.

Q. Where do you live?

A. Portsmouth, Virginia.

Q. Where?

A. 22 Manley Street.

Q. How long you been living in Portsmouth?

A. In Portsmouth?

Q. Yes.

A. Since 1927.

Q. Prior to this incident, were you friendly with Joe Jordan?

A. Well, I know him by meeting him once or twice and by other people that recommended me to him at the time that I did do business with him.

Q. Well now, on this particular occasion about the truck, I want you to turn and tell His Honor just exactly what happened with respect to this truck; the arrangements you made, how much was paid and how much was to be paid; all about it, give us the details of the arrangements with Joe to buy the truck, how, where and when you made them.

Ruben Pierce

A. In Suffolk.

page 61] Q. Do you know where in Suffolk?

A. When I first talked with him or he spoke to me about it was on Main Street at the filling station, the main drag going through Suffolk. How I got onto it, Joe had told another friend I know in Suffolk that he had the truck and that he wanted to sell it. I saw him and he spoke to me about it. He wanted to know if I wanted to buy the truck. I told him I would and he carried me and we looked at the truck and he made a price on the truck and I made agreement with him to take the truck at the price that he said.

Q. Let's go back and get the details. Where did you make arrangements to buy the truck?

A. When I made him?

Q. Where did you make the deal to buy the truck?

A. On the street right here in Suffolk, near the Phillip's 66 Station.

Q. Did he have the truck with him?

A. Yes, sir, he was driving the truck that day.

Q. Then where did you next deal with him about the truck?

A. When I bought the truck it was up on Norfolk Road near a filling station.

page 62] Q. What were the terms of the purchase?

A. I paid him a hundred and fifteen dollars down on the truck at the price of a hundred and fifty dollars and I owed him \$35.00 and he delivered the truck to me then.

Q. Where did you pay him \$115.00?

A. On Norfolk Road near the Amoco Station up there, Smith's Filling Station.

Q. Did you give this to him in cash, check or what?

A. Cash.

Q. What did he give you then?

A. He turned the truck over to me, the keys to the truck and I taken the truck and taken it to Norfolk to Mr. Cofield.

Q. When was he going to deliver the title?

A. Well, he told me — I told him in a day or two I would bring the other money and pick up the title.

Q. Why did you hold back \$35.00?

A. Well, at that particular time I didn't have the other money right in my pocket then. He didn't put the pressure on me for it and I told him I was going to give him the other money when I picked up the title.

Ruben Pierce

Q. When did you next get together with him about paying the balance?

page 63] A. It was about a week or eight days or later when I come to Suffolk and picked Joe up.

Q. Where did you pick him up?

A. On Norfolk Road where he was supposed to have been living. It was about a block off from Norfolk Road.

Q. Freeney Avenue, isn't that it?

A. Yes, sir, I picked him up and taken him to Norfolk to Mr. Cofield's Place. On the way down he got to discussing that he won't going to take the price that he offered to let me have the truck for. And I said, "Joe, that's not fair." I said, "You made me a promise of the truck at the price and I have carried it down there and Mr. Cofield and *seveaal* of them said that's all it's worth." I said, "That's all I can afford to give you for the truck." So, I carried him down there to Mr. Cofield's.

Q. What were you riding in then?

A. In a car.

Q. Well, he went down to Portsmouth with you?

A. He went all the way down with me and after I wouldn't agree to give him more money, Mr. Hoffler and Mr. Cofield — Mr. Hoffler said, "Well, take him on back and let him give you your money back."

Q. Who was there when all that took place?

page 64] A. Me, Mr. Hoffler, Mr. Cofield and —

Q. Where was Joe?

A. He was there.

Q. He heard all the conversation?

A. Yes, sir, he was present there. We were right there on the lot in front of the office door and Joe said, "Take me back to Suffolk and I'll give you your money." I brought him all the way back to Suffolk and we had left the truck still in Norfolk. When I got here, he says, "I ain't going to give you no money until you go bring the truck back." I gets right back in the car and goes back to Norfolk where the truck was and —

Q. You mean Norfolk or Portsmouth?

A. Portsmouth and gets Mr. Hoffler to drive the truck back. He parks the truck and we goes around for the money. Then he says, "I'm not going to give you the money and I'm not going to give you the truck."

Q. Where did that take place?

Ruben Pierce

A. That took place — I don't know the name of the place; it was off in front of a peanut factory.

Q. Are you talking about Crumpler's Alley?

A. Yes, sir.

Q. Is that where he told you he wasn't going to give you the money or the truck either?

A. That's right.

page 65] Q. Where did you first bring the truck back from Portsmouth?

A. I brought it back and delivered it where I picked it up from.

Q. That's on Freeney Avenue?

A. That's right.

Q. Well, who brought it up to Crumpler's Alley?

A. We left it where we had delivered it at.

Q. How did you get from there up to 104 Crumpler's Alley?

A. I drove the car.

Q. Who was with you?

A. Mr. Hoffler was with me at the time I drove around there.

Q. What was the purpose of going to Crumpler's Alley?

A. To get the money that I had given him.

Q. Who had the keys then?

A. I had the keys.

Q. Well now, tell us what happened.

A. Well, Joe said, "I'm not going to give you the truck and I'm not going to give you the money."

Q. Where were you then?

A. Well, he told me to come inside his house.

page 66] I walked inside his house.

Q. Did Mr. Hoffler go with you?

A. No, sir, he was outside.

Q. What room were you in in the house?

A. In the front room.

Q. Who was in the room?

A. This lady was in there. There were two or three on the outside walking around the door. They didn't come in; people on the outside, but nobody inside.

Q. Television playing?

A. Yes, sir.

Q. Go ahead.

A. Well, after he made them remarks, acted like he didn't intend to give me the truck back or either the money, I said,

Ruben Pierce

“Well Joe, that’s not right.” I said let me tell Mr. Hoffler — speak to Mr. Hoffler about it, see what kind of arrangements we can make. He said, “Call him in here and let’s get it over with.” I called Hoffler and Hoffler walked in and he asked him why he wouldn’t give him the money back or why he wasn’t willing to give the money back. He asked him was he willing to give the money back. He said, “No” and blowed up there and made a rush there and —

Q. What?

page 67] A. He said “No, I ain’t going to give you your money back,” and Joe also made a — sorta got loud in his talk and in a minute or two the gun fired and that’s all there was to it. We didn’t get the money and we didn’t get the truck.

Q. What about the keys?

A. We left the keys there.

Q. When did he get the keys back from you?

A. When did he get them back?

Q. Yes.

A. I had offered — I don’t remember whether I give him the keys — I offered him the keys when I offered to him about the money and he made the remark that he won’t going to give the money or the truck and I don’t remember whether I handed him the keys back then or whether I still held the keys.

Q. Well, did Mr. Hoffler get any key from Joe?

A. No, sir.

Q. Did not?

A. No, sir.

Q. Well, who got the keys?

A. I had the keys.

Q. You had the keys?

A. Yes, sir.

page 68] Q. Joe give up anything?

A. No, sir. He didn’t have no money. If he had any money, he wouldn’t — he said he wasn’t going to give no money up.

Q. Wasn’t going to give you the title or money either?

A. No, sir.

Q. Did you have anything to do with striking Joe beside the head?

A. No, sir.

Q. What reason did Joe give for not giving any money?

Ruben Pierce

A. Well, he didn't give no reason; acted like he wanted to take the money and the truck. It seemed like he had made hisself —

Q. You knew Joe was a bootlegger, didn't you?

A. Well, I have heard it.

Q. What, if anything, was said about three cases of whiskey and \$32.00?

A. I haven't heard anything about any whiskey.

Q. Any whiskey in the car at that time?

A. No, sir.

Q. Any in the truck that you know of?

A. No, sir.

page 69] Q. What you owed him then was \$35.00?

A. That's right.

Q. What did you do about the truck then?

A. Well, Joe, he finally — I said, "Joe, that's no way to treat a person." And he said, "Take the truck back until I get the money or make some other arrangements." He said, "Take the truck back."

Q. Well, did you carry the truck back?

A. We taken the truck back to Portsmouth.

Q. How long did you keep it?

A. Well, we kept the truck until some officers come got the truck.

Q. Ever get your \$115.00 back?

A. No, sir.

Mr. Woodward: That's all.

CROSS EXAMINATION

Examined By Mr. Stallings:

page 70] Q. You say a gun was fired?

A. A gun was fired.

Q. Did you fire it?

A. No, sir.

Q. Did you see the gun?

A. No, sir.

Q. How big a room were you all in?

A. I guess it was maybe twelve by twelve.

Q. Four of you sitting in there?

A. It was four of us.

Ruben Pierce

Q. And you were standing up Mr. Hoffler was standing up and Joe was standing up?

A. Yes, sir.

Q. And you didn't see any gun?

A. No, sir.

Q. Were you looking at Joe all the time?

A. Was I looking at him?

Q. Yes.

A. No, not in the face.

Q. If Joe had a gun, would you have seen it?

A. He could have a gun and I not have seen it.

Q. Could Hoffler have had a gun and you not have seen it?

A. Yes, sir.

Q. You weren't paying a whole lot of attention
page 71] to what was going on?

A. Yes, sir, I was paying attention. I didn't see nothing going on other than talking along just like men would talk.

Q. Is that why he fired a gun?

A. I don't know why he fired the gun.

Q. Who fired the gun?

A. I don't know.

Q. You were right in there.

A. Yes, sir.

Q. You were right in there all the time?

A. All the time.

Q. You work for Hoffler, don't you?

A. No, sir.

Q. What was Hoffler doing coming up here with you?

A. I asked him to drive the truck back.

Q. Well, why would he come up here to get in an argument?

A. He didn't come up here to get in an argument.

Q. Why did you have to call him in the house?

A. I did that so he could hear what Joe said.

Q. What did he have to do with it?

A. He didn't have anything to do with it. Mr.
page 72] Hoffler had bought several trucks and old automobiles of all kinds from Mr. Cofield and so had I. When I find one — Mr. Cofield runs a junk yard and he sells parts.

Q. Who buys the automobiles?

A. He sells parts.

Q. Who does?

A. Cofield.

Ruben Pierce

Q. What would Hoffler have to do with them?

A. We sell to Cofield when we can buy right.

Q. Why did you bring trucks to Cofield?

A. He's a junk man. I work around there and I gets a little pay for it, that's the reason why.

Q. Who pays you to buy a truck from a junk dealer?

Mr. Parr: He says he buys some for Mr. Cofield; not from him.

Q. I thought he said that he and Mr. Hoffler bought from him?

A. Not from him, but for him. I do that not only with him, but there are — I do the same thing with other automobile dealers in Portsmouth. If I can get a customer and
page 73] make a deal, I get a commission on the deal from several places; not only Cofield.

Q. What were you buying the truck for?

A. To fix it up to either sell the truck or the parts.

Q. Who was buying it, you or Mr. Cofield?

A. I was buying it and I was making the deal for it.

Q. For yourself or Mr. Cofield?

A. I was making it for resale or get something out of it.

Q. You don't work for Mr. Hoffler?

A. No, sir.

Q. You don't work for Mr. Cofield?

A. No, sir.

Q. Now, I ask you again, what did Mr. Hoffler have to do with your and Joe Jordan's deal?

A. If there had been anything made out of the truck like several others he bought, he could have paid me something for the overrun of it.

Q. Who, Hoffler?

A. No, Cofield.

Q. Why did Hoffler have to come in the house and get in an argument over yours and Joe's deal?

A. He didn't have to.

page 74] Q. You called him in, why did you call him in?

A. Because he taken the truck back from me and I wanted him to tell Cofield what happened to the money.

Q. You wanted who to tell Mr. Cofield?

A. I wanted him to know that I didn't get the money back.

Q. Cofield wasn't there?

Ruben Pierce

A. No, he wasn't there, but I had borrowed the money from Cofield.

Q. Why did you call Hoffler into the house?

Mr. Woodward: The evidence is that he stated in affect that he wanted Hoffler there because he wanted some witness. I understand that you want to mix him up.

The Court: He said that he wanted Mr. Hoffler in there so he could tell Mr. Cofield where the money went.

Mr. Stallings: He never has said that.

Examination by Mr. Stallings continued:

Q. That's why you called Hoffler in?

A. Yes.

page 75] Q. What did Hoffler say to Joe after he got in the house?

A. What did he say?

Q. Yes.

A. He explained — he just said, "Joe, I don't see why you don't give the money back or let him keep the truck or give him the title to the truck." There won't a *while* lot of questions made on neither side.

Q. Joe gave you the keys?

A. He give me the keys — I had the keys when I drove the truck up.

Q. You gave them to Joe, didn't you?

A. I don't remember definitely whether I had given them to Joe or not.

Q. Now, the truck was on Freeney Avenue at that time?

A. That's right.

Q. Joe had the keys, didn't he?

A. I left the truck and went around to Joe's, I had the keys myself. And I went around there; I said, "Joe, your truck is back in the same spot that I got it from." I says, "I want to get the money." He said, "I ain't going to give you the money and you can't have the truck."

Q. What time did you bring the truck back?

page 76] A. I don't remember exactly what time of day it was.

Q. Well, did you carry the keys to Joe?

A. I had the keys when I went around to Joe's.

Q. Well, did you have the keys already when Hoffler came in?

A. Did I have the keys, yes, sir.

Ruben Pierce

Q. You're sure of that now?

A. I had the keys when Hoffler came in, yes, sir.

Q. You say that you paid him \$114.00, did you get any receipt for that?

Mr. Woodward: He said a hundred fifteen dollars.

A. No receipt.

Q. Never got any receipt?

A. No, sir.

Q. Just word of mouth?

A. Yes, sir.

Q. You didn't get any receipt, title or anything?

A. No title, no receipt, just —

Q. Who was there when you paid the \$114.00?

A. Mr. Dug Cofield.

page 77] Q. Is he here today?

A. No, sir, not yet.

Q. He saw you pay Joe a hundred fourteen dollars?

A. Yes, sir. — \$115.00. He counted the money himself.

Q. Who counted the money?

A. Mr. Cofield.

Q. Well now, is he an automobile dealer?

A. Well, he repairs automobiles, makes them up and resells them and sells parts and junk and handles automobiles in several different ways.

Q. Cofield was loaning you part of the money and he paid Joe \$115.00, didn't Cofield advise you to get a receipt?

A. No, sir.

Q. He didn't?

A. No, sir.

Mr. Woodward: Is that all?

Mr. Stallings: No, sir, you wait.

Examination by Mr. Stallings Continued:

page 78] Q. Did you see Hoffler hit Joe?

A. No, sir.

Q. All you know is that there was a shot?

A. That's right.

Q. You didn't see anything?

A. No, sir.

Ruben Pierce

Q. Well, who drove the truck back to Norfolk after you all got it from Joe?

A. Mr. Hoffler.

Q. Mr. Hoffler took the truck?

A. He drove it back.

Q. Why was Hoffler driving your truck back?

A. I couldn't drive the truck and the car too. I drove the car up and then he drove the truck back.

Q. Well, this happened on January 13, didn't it?

A. I don't remember the date, somewhere approximately.

Q. Well then, on January 14, you talked to Mr. Early about this case, didn't you?

page 79]

A. Yes, sir.

Q. The next day?

A. Yes, sir.

Q. But he took the truck to his house when he went back, didn't he, Mr. Hoffler?

A. I don't think he carried — I don't know exactly where he carried it. I don't think he carried it back to his house; I don't know exactly.

Q. You didn't see it from the time you left until you were talking to Mr. Early, did you?

A. No, sir.

Q. You didn't see the truck anymore?

A. No, sir.

Q. I ask you if Mr. Early didn't ask you in relation to this thing that happened on Crumpler's Lane, he asked you if you talked with Joe and got the keys from Joe's house in front of the peanut plant?

A. Yes, sir.

Q. Now, isn't that true, isn't that what you told Mr. Early?

A. I got the keys —

Q. Mr. Early asked you this question: "You talked to Joe and got the keys from Joe's house in front of the peanut plant," and you said, "Yes, sir, Saturday,"

page 80]

A. I had the keys and truck all the time for seven or eight days.

Q. I'm asking you isn't this what you told Mr. Early?

Mr. Woodward: He's confusing the witness.

A. Is that when I first got the truck or when?

Ruben Pierce

Examination by Mr. Stallings Continued:

Q. I'm talking about when Mr. Early was asking you about the incident.

Mr. Hillard: Specify the date.

Mr. Stallings: January 14, the day after the truck was taken and he took a statement from you, which you signed.

Mr. Hillard: He ought to specify the date that he was supposed to have gotten the key.

Mr. Stallings: January 13. I'm now referring to page 81] the day of the indictment.

Examination By Mr. Stallings Continued:

Q. You talked to Mr. Early the very next day after the incident, didn't you?

A. Yes, sir.

Q. That's when he asked you about the key?

A. Yes, sir.

Q. I'll ask you, didn't you tell him that you got the key from Joe's house near the peanut plant?

A. Well, I told him I had the keys when I drove the truck away. I had the keys to drive it away; I didn't steal the truck.

Q. Well, you deny telling him you got the keys when you got the truck?

A. I'm not denying; I just don't remember what I said about the keys. I know it was there in that room that I had the keys. Mr. Hoffler didn't have the keys.

Q. Well, didn't you tell Mr. Early that you got the keys from Joe that Saturday?

A. I had the keys for to drive the truck away.

Q. You got them from Joe when you and Mr. Hoffler were in the house?

page 82] A. I had the keys — got them from Joe when?

Q. When you and Mr. Hoffler were in Joe's house, that's when you got the keys from Joe?

A. I got the keys in the house?

Q. You got them from Joe, didn't you?

A. Yes, sir, I got them from him.

Q. You got them because Hoffler had the pistol pointed at Joe?

A. No, sir.

Q. You got them from Joe that day?

A. Yes, sir.

Ruben Pierce

Q. He gave you the keys?

A. Yes, sir.

Q. Now, you said awhile ago that you had the keys all the time, now which is right?

A. Well, when I went round to Joe's, I had the keys.

Q. You had them, well, how did Joe get them?

A. When I had the keys myself, Joe says, "I'm not going to give you your money back," and then I got the keys. I just carried the keys back around there to tell him I had put the truck right back where I got it from. He said, "I ain't going to give you the money or the truck," and I still had the keys. He said, "I'm not going to give you the truck." So, page 83] I still had the keys.

Q. You just that minute testified that — Mr. Jackson put it down — that you got the keys from Joe while Mr. Hoffler was in the house.

A. Maybe I handed the keys to Joe and he handed them back to me.

Mr. Woodward: You're sticking words in his mouth.

Examination by Mr. Stallings Continued:

Q. Joe said, "I'm not going to give you the money and I'm not going to give you the truck," and you said, "Here are the keys, Joe," is that what happened?

A. When I went in, I said, "Joe, here's your keys," like anybody else. I walked up to him and I had the keys in my hand. I said, "Give me the money, the truck is back in the same place." He said, "I'm not going to give you the money," and if he taken the keys, he handed them back to me and told me to take the truck on back until he could get the money.

Q. Was that before Hoffler came in?

A. It was maybe all about three or four minutes.

Q. Who had the keys when Mr. Hoffler came in?
page 84] A. I must have had the keys when he come in.

Q. Not "must," did you have them or didn't you have them?

Mr. Woodward: He's answered it the best way he can.

Mr. Stallings: Been evasive as he could.

Mr. Woodward: That's for the Court.

Mr. Stallings: I think I've heard three different things about it. I'm going to keep on asking him as long as he keeps telling me different stories.

Ruben Pierce

Examination By Mr. Stallings Continued:

Q. Who had the keys when Hoffler came in the house, when you called Hoffler in the house?

A. Well, when Mr. Hoffler and Joe was talking, he give me the keys during that time. Mr. Hoffler walked in and Joe give me the keys during that time.

Q. Joe gave the keys to you while Hoffler was in there?

A. Yes, sir, the time I said he was in the page 85] house.

Q. In other words, when Hoffler was in there, you got the keys and a shot was fired, is that correct?

A. There was a shot fired.

Q. You got the keys?

A. Yes, sir.

Q. You got the keys while Hoffler was in there?

A. Yes, sir.

Q. You ever been convicted of a felony?

A. I ever been convicted of what?

Q. A felony.

A. I don't know too much about felony.

Q. Something you can go to the penitentiary for.

A. Oh, yes, sir, I have been convicted.

Q. How many times?

Mr. Hillard: Objection.

Mr. Woodward: Let him answer.

Mr. Hillard: He's limited to the question of, "have you ever been convicted of a felony."

page 86] The Court: I sustain it.

Mr. Stallings: I think I can ask him how many times.

The Court: I don't think it matters how many times.

Mr. Stallings: That's all.

Mr. Woodward: Wait a minute.

RE-DIRECT EXAMINATION

Examined By Mr. Woodward:

Q. What were you convicted for?

A. I was convicted of conspiracy of whiskey law.

Q. In connection with alcoholic beverages?

A. Yes, sir.

Gilbert Rollins

Mr. Stallings: I think they have opened the door; I think I
can show how many times he has been convicted.
page 87] The Court: I think you can show it now, if they
want to bring it out.

RE-CROSS EXAMINATION

Examination By Mr. Stallings Continued:

Q. You were convicted in 1946 of Internal Revenue Viola-
tions, weren't you?

A. That's right.

Q. Twice in 1946?

A. What for to go to the penitentiary? Not but once; I
ain't never been convicted but twice.

Q. You were convicted again in '55?

A. That's right.

Q. Of a penitentiary offense?

A. That's right.

Q. Involving whiskey?

A. Conspiracy.

Mr. Stallings: That's all.
page 88] Mr. Woodward: That's all, come down.

GILBERT ROLLINS,

a witness for the defendants, having been previously duly
sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Woodward:

Q. You are Gilbert Rollins.

A. Yes, sir.

Q. Where do you live?

A. 214 Spruce Street.

Q. Do you know Joe Jordan?

A. Yes, sir.

Q. Do you know where he lives?

A. Yes, sir.

Q. Did you have any dealings in the early part of 1962 or
latter part of 1961 about the purchase of a pick up truck from
him?

Gilbert Rollins

- A. Yes, sir.
- page 89] Q. How much were you to pay for the truck?
A. \$300.00.
- Q. When did you have these dealings with him?
- A. Around 1960, I think. I started paying for it in 1960 and I finished paying for it in 1962.
- Q. Who did you make the last payment to?
- A. Mack.
- Q. You had been paying on it all that time?
- A. Yes, sir.
- Q. Why had you not gotten the truck?
- A. Because I had not paid him for it.
- Q. Was he still using it?
- A. Sometime I used it and sometime he used it.
- Q. You still using the truck yourself some?
- A. That's right.
- Q. Who had the title at that time, do you know?
- A. He had it. Now, Mr. McClenny might have had it; I'm not sure.
- Q. But you had bought the truck in 1960 and was paying on it up until January 13, 1962?
- A. That's right.
- Q. How much did you pay him, do you remember?
- A. I paid him \$50.00 the first time I paid him,
- page 90] and I paid him \$10.00 a week, \$5.00; just anything I had when I got it.

Mr. Woodward: That's all.

CROSS EXAMINATION

Examined By Mr. Stallings:

Q. Well, Gilbert, you say you were paying on the truck from 1960, that was over a year before you finally paid for it, because you said that you didn't finish until 1962?

A. That's right.

Q. What month in 1960 did you make the bargain with him, do you know?

A. It was October, because it was the same week of the fair.

Q. In other words, October, 1960, you started buying the truck?

A. That's right.

Gilbert Rollins

Q. And made the final payment to Mack McClenny in 1962?

A. Yes.

Q. Who had the title when you first bought the truck, do you know?

A. No.

Q. You don't know when Mack McClenny got it?

A. No.

Q. I understood you to say that you were supposed to pay three hundred dollars for the truck?

A. That's right.

Q. And because you were paying on it, you had the right to use it?

A. That's right. That's the bargain we made. I could use it if I wanted to and he could too.

Q. Did Joe tell you he was planning to sell the truck to somebody else?

A. No, he just said that he wanted to sell it. He wanted to know if it would be all right with me if he sold the truck. I said it would be all right as long as he brought me the money back that I paid on it.

Q. Was that before the thing happened?

A. I don't know anything about the thing happened.

Q. When Joe told you that he had tried to sell the truck, was that before?

A. Yes.

Q. And you said, "If you sell it, bring me my money back?"

A. That's right.

Mr. Stallings: That's all.

RE-DIRECT EXAMINATION

Examined By Mr. Woodward:

Q. How much money did he owe you back at that time?

A. I had paid him all the money but a hundred fifty-four dollars.

Q. You had paid him a hundred forty-six dollars?

A. That's right.

Mr. Woodward: That's all.

Mr. W. A. McClenney

page 93] RE-CROSS EXAMINATION

Examined By Mr. Stallings:

Q. Was he going to keep some of that for your having used it?

A. No.

Q. That wasn't the deal?

A. No, sir.

Mr. Stallings: That's all.

Mr. Woodward: No questions.

At this time the witness withdrew from the witness stand.

MR. W. A. McCLENNY,
a witness, after having been previously sworn,
page 94] took the witness stand and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Stallings:

Q. You have the date?

A. I got the dates that — January, 1962, is when I gave Joe the credit for the \$50.00 on the bill.

Q. That's when Gilbert Rollins paid it?

A. No, I think Gilbert probably paid me four or five days before that and I held it until Joe got there and I don't know exactly how many days, but it was a few days before Joe came in. When Joe came in, I straightened up with him and give him the receipt.

Q. When was the work done?

A. The work, it's a continuation of work.

Q. When did you take the title?

A. I took the title on November 28, it looks like here, at the same time that he give me a payment and left the title for the balance so that he could go ahead. That was November 28, 1961.

Q. Now, what was your understanding as to the title?

A. My understanding was that Joe was going to pick the title up and pay me the balance of the money.
page 95] If he did not, I would go ahead and fill out the complete form and take the truck over.

Q. What was the amount that he owed you?

Mr. Ray H. Early

A. \$61.40. He paid me \$50.00 and that still left a balance of \$11.40.

Q. Anytime he had paid \$61.40, he could have picked up the title, is that right?

A. Yes, sir.

Mr. Woodward: No questions.

At this time the witness withdrew from the witness stand.

Mr. Woodward: Call Mr. Ray H. Early.

MR. RAY H. EARLY,
a witness for the defendants, after having been previously sworn, took the witness stand and testified as follows:

DIRECT EXAMINATION

page 96] Examined By Mr. Woodward:

Q. You have already testified?

A. Yes, sir.

Q. You are a member of the Staff of the Suffolk Police Department?

A. Yes, sir.

Q. Do you know Joe Jordan?

A. Yes, sir, I do.

Q. Do you know his general reputation for truth and veracity and honesty and integrity in the City of Suffolk?

A. Well, I have been knowing Joe, I would say, approximately twelve years, Mr. Woodward, and from general conversation and general talk, I know his reputation.

Q. Well, is it good or bad?

A. Well, he's always had the reputation of messing with some whiskey.

Q. How about his integrity?

A. Well, it's just fair, I would say.

Q. Not good then?

A. Well, I wouldn't say it was good or bad; just fair.

page 97] Mr. Woodward: That's all.

CROSS EXAMINATION

Examined By Mr. Stallings:

Q. Have you had occasion to question him about certain matters?

Mr. Hubert Hoffler

A. Yes, sir, I have.

Q. Where is the information you got —

Mr. Woodward: Objection.

The Court: I sustain the objection.

Mr. Stallings: That's all.

Mr. Woodward: No questions.

At this time the witness withdrew from the witness stand.

page 98] MR. HUBERT HOFFLER,
 a defendant, after having been first duly sworn,
took the witness stand and testified as follows:

DIRECT EXAMINATION

Examined By Mr. Woodward:

Q. What's your name?

A. Hubert Hoffler.

Q. Where do you live?

A. 97 Jamerson Street, Portsmouth, Virginia.

Q. How long have you been living there?

A. That particular address, about eight years.

Q. Where are you originally from?

A. Elizabeth City, North Carolina, I've been in Portsmouth about twenty years.

Q. How long you been knowing Ruben Pierce?

A. I'd say roughly ten years.

Q. What, if anything, did you have to do with the purchase of this truck from Joe Jordan?

A. Pierce owed me some money; that's about all
page 99] I have to do with it, on some other cars that we
 had bought. I bought some from him; he sold
some to Cofield and he still owed me a little money, I think,
on some he bought from me.

Q. Did Pierce owe you some money?

A. Yes, sir.

Q. Well, what was the general course of the dealing about the cars?

A. Well, Pierce told me he had bought — made arrangements to buy a truck in Suffolk, that was a pretty good buy, and he wanted me to take a look at it with him. So, we met Joe Jordan out at the Amoco Station on Norfolk Road.

Mr. Hubert Hoffler

Q. Where the junk yard is?

A. No, sir, the Amoco Station on the Old Norfolk Road in Suffolk.

Q. Go ahead.

A. Pierce looked at the truck and —

Q. Don't tell anything about the conversation between you and Pierce.

A. He said he thought it was a good buy and I paid the man a hundred and fifteen dollars and took the truck on back to the junk yard.

Q. You mean the junk yard down in Portsmouth?

A. Cofield's, and kept it there about a week or ten days and then I asked him did he ever get it straight-
page 100] ened out. He said, "No" he was going to go find the boy. He came to Suffolk and got the boy, Joe Jordan, and came back up to Cofield's and then Jordan went up \$50.00 on the price. I guess he wanted \$80.00 more instead of \$35.00.

Mr. Stallings: You telling something you heard Jordan say?

A. I was present when the deal was made at the Amoco Station and I was present when Joe Jordan and Pierce come there to Cofield's.

Mr. Stallings: All right.

A. Anyway, he had gone up on the price to \$200.00. So, I said, "Why don't you go on and let the man give you your money back and you pay me and forget about the truck." The man said he would give him the money back if he brought him back to Suffolk. He said he would have to take the truck back to Suffolk before he could get the money. I drove it back to Suffolk. I left it at the Amoco Station, one block away from there.

Q. Would that be Freeney Avenue.

A. Yes, something like that. And Jordan said
page 101] he would go up town to get the money at another place. So, we got in the car — I got in the car with Pierce and we went up there and Pierce went inside to get the money. He came back out and said the man wouldn't give him the truck or the money either one. I said, "What's the trouble?" He said, "Jordan said come on in and we'll get the damn mess straight right now." I went in the house and asked,

Mr. Hubert Hoffer

"What's all the argument about?" I said, "Give him the money back or give him the truck; the deal you agreed on." And he said, "Well, I don't have no money." I said, "I don't want the hundred and fifteen dollars now." I said, "Let me take the truck back and you can pick *the* up when you get the money." He said, "No, I ain't going to take the money no damn place." He reached his hand in his pocket and brought out a knife. He said, "You ain't got a damn thing to do with it." I had the pistol in my pocket. I took it out and hit him beside his head. I said, "Make another move with that knife, I'll kill you." We backed out the door and got in the truck and left.

Q. Do you know anything about the keys being involved?

A. No, Pierce had the keys.

Q. Did you ever see any keys passed by virtue of you hitting him beside the head?

page 102] A. No, Jordan give him the truck a week before and Pierce still had the keys to it. There was no question about the keys at all. The only question was about the \$115.00; was he going to give it back to him or was he going to keep the truck or what was he going to do and Jordan didn't want to do either one. He said, "You'll get the money." He said, "You can't take the truck nowhere." I said, "You mean we can't take the truck?" He said, "You ain't got a damn thing to do with it," I said, "Make another move and I'll kill you." The gun went off accidentally.

Q. Did it go off before or after you hit him?

A. It went off when I hit him.

Q. You sure of that?

A. Not positive, no, sir. I know it went off during the course there, but it won't my intention of trying to hit him. There was no way in the world I could miss hitting him if I had wanted to, but I had no intentions to shoot. But I wanted to make sure that he didn't get to me with that knife.

Q. Did you ever get any keys yourself?

A. Oh, no, sir, it was no question about the keys. He gave the truck to Pierce a week or ten days before that. I don't know how long he had had the truck. He gave the truck to him when

I gave him the \$115.00. Pierce kept the truck for
page 103] a week or ten days.

Mr. Woodward: Answer Mr. Stallings here.

Mr. Hubert Hoffler

CROSS EXAMINATION

Examined By Mr. Stallings:

Q. I understand you to say that you met—you and this man met Joe at an Amoco Station up here in Suffolk the first time, is that correct?

A. Yes, sir.

Q. That's when you saw Pierce give him the \$115.00?

A. That's right.

Q. You sure you saw that?

A. Yes, sir.

Q. It wasn't down at Cofield's Place then, was it?

A. Not when Joe got the \$155.00, no.

Q. Pierce was mistaken when he testified that
page 104] it was?

A. If he testified to that, he was.

Q. Didn't you hear him?

A. No, sir, I never heard anything like that.

Q. Did you hear him say Mr. Cofield was there and saw him give Joe the \$115.00?

A. He said Cofield was there?

Q. We'll read the record back.

Mr. Woodward: I haven't got the question or answer either one.

Examination by Mr. Stallings:

Q. The money was passed at the Amoco Station up here?

A. Yes, sir.

Q. Pierce gave him the money?

A. Yes.

Q. You sure of that?

A. Yes, sir.

Q. What is your occupation?

A. Car salesman.

Q. For whom?

A. Myself. I buy and sell wholesale. I do busi-
page 105] ness with Kimnoch-Ford and Victory Motors; you
can check all of them, if you like.

Q. Well, what is Pierce's occupation?

A. Well, he messes around with cars.

Q. What else does he do?

A. I don't know.

Q. He owed you money for some he bought from you?

Mr. Hubert Hoffler

A. Cars. Yes, I loaned him some money to buy cars with. I loaned him money to buy cars and he has bought cars from me and he's paid me back a number of times. I think I have even gotten money from him once or twice.

Q. This is the first time you've testified or made any statement about this case?

A. Yes, sir.

Q. You say you went in the house, why?

A. Pierce came to the door and asked me to come in.

Q. You said Jordan started pulling the knife as soon as you put your foot in there?

A. No, sir.

Q. What happened?

A. During the conversation I asked him why didn't he give the man the money back or why didn't he take
page 106] the \$35.00 and deliver the truck. He said he couldn't sell the truck for that price. I asked him why he didn't give the man the money back and he said that he didn't have no money. I told him we were going to take the truck back to Cofield's and he said, "You ain't going to take the truck nowhere."

Q. What did you do then?

A. Well, he reached for the knife.

Q. Was Pierce right there?

A. Yes.

Q. Pierce was standing right there?

A. Yes, sir, him and the woman in the place was jabbering; I don't know what they were talking about; it was during the course of the conversation.

Q. You pulled your gun out and said what?

A. I said, "You make another move with that knife and I'll kill you."

Q. Kill you?

A. That's what I said.

Q. Well, you had a gun, there's no question about that.

A. Which I picked it up on the way to get it repaired.

Q. Where did you have it?

A. In my pocket.

page 107] Q. You pulled it out?

A. Yes, sir.

Q. What's the reason — why couldn't Pierce see it?

A. I don't know whether Jordan was between Pierce and myself or how it was.

Mr. Hubert Hoffer

Q. Was there any reason he couldn't hear you tell Jordan that you were going to kill him if he advanced with that knife?

A. I don't know; the woman acted like she was crazy. There was a bunch of noise out there. Now, with all the jabbering and arguing around there, I don't know where he was at the time; I was watching Jordan.

Q. You backed out of the door holding the gun, didn't you?

A. That's right, absolutely.

Q. Well now, if Pierce says that Jordan gave him the keys while you were in there, he's mistaken?

A. Yes, sir.

Q. He didn't do that?

A. I never heard no keys mentioned.

Q. What kind of gun was it?

A. Thirty-eight.

page 108] The Court: Thirty-eight what?

A. Revolver.

Q. Well, you say that you hit him up side the head with the pistol?

A. Yes, sir.

Q. Then when did the gun go off?

A. I'm not sure. I was a little bit excited; I was concerned about the man with a knife. I don't know when it went off.

Q. How close was he standing to you when he pulled the knife out?

A. Close enough for me to hit him with the gun.

Q. Is that when you hit him with the gun?

A. Yes, sir.

Q. Well, could Ruben have seen the knife?

A. If he was looking, he could have seen it, sure.

The Court: I'd like to straighten one thing out here. I understood you to say that he reached for a knife.

A. Yes, sir.

page 109] The Court: Did you ever see the knife?

A. Yes, sir, it was right along here when I hit him with the gun.

Examination by Mr. Stallings Continued:

Q. Did he ever get the knife out?

A. I think so. I think it fell out of his hand on the floor.

Q. In other words, he never got the knife out of his pocket?

A. Yes it was. He had it out when I hit him with the gun. When I hit him, the knife fell on the floor.

Mr. Hubert Hoffler

Q. It wasn't open, was it?

A. At that time, no, sir.

Q. It never was open, was it?

A. No.

Q. He didn't reach down and open it while you were holding the gun on him, did he?

A. No, I think he stood there and I said, "If you make another move with that knife, I'll kill you," and I backed out of the door.

Q. Did you drive the truck back to Portsmouth?

page 110] A. Yes, sir.

Q. Where did you take it?

A. Cofield's. Then later on that night, I didn't have a car, so I drove it back to my house that night.

Q. Whose car did you come up here in?

A. I drove the truck up here.

Q. You drove the truck up here?

A. Yes, sir, Pierce and Jordan came in another car; I don't know whether it was Jordan's Car or Pierce's Car now.

Q. Have you ever been convicted of a felony?

A. Yes, sir.

Q. Convicted of a felony?

A. Yes, sir.

Mr. Stallings: All right.

RE-DIRECT EXAMINATION

Examined by Mr. Woodward:

Q. Who was present when the money was paid?

page 111] A. Pierce, myself and I think one of the Cofield Boys was there.

Q. Can you remember which one?

A. No, sir, right offhand I don't. It's four of them. I was with them all that day one time or another. I don't know for sure which one it was.

Q. That took place at Johnny Edwards' Place on the New Norfolk Road?

A. No, sir, it was at an Amoco Station on the Old Norfolk Road. I don't know where it is. I think it's the Old Norfolk Road, the one that leads out to the main highway.

Q. The main road that comes out at Magnolia?

Mr. Hubert Hoffler

A. It turns at Magnolia and comes into Suffolk by the place where Sheriff Culpepper used to live.

Mr. Woodward: That's the Old Norfolk Road.

A. Yes, sir.

Mr. Woodward: That's all.

RE-CROSS EXAMINATION

page 112] Examined by Mr. Stallings:

Q. Didn't you just tell me that and answered my question that it wasn't any Mr. Cofield present when the money was paid; that you were there —

Mr. Parr: I believe the question is —

A. What's this?

Mr. Stallings: Let's get the record.

Mr. Parr: I believe the question you asked him was if the money was passed at Cofield's Place.

Examination by Mr. Stallings Continued:

Q. But you're now testifying that one of the Cofield Boys was present at the Amoco Station?

A. I think one was there, yes.

Q. Do you think or know?

A. I'm not positive; it was four or five people around.

Q. Were they up here — who had ridden up
page 113] here with you?

A. I met Pierce up here. I was up here at Windsor with the Cofield Boys. They were over here too. It was three or four of us up there together. If they were still there — I'm — I don't know; I know Cofield was there at one time, but whether he was there when the transaction took place, I'm not sure.

Mr. Stallings: That's all.

Mr. Woodward: No questions.

At this time the witness withdrew from the witness stand.

The Court: That the case?

Mr. Stallings: Yes, sir.

At this time Mr. Stallings, Commonwealth Attorney, made a closing statement.

Mr. Parr, counsel for the defendants, at this time made a closing argument.

page 114] Mr. Woodward, counsel for the defendants, at this time made a closing argument.

Mr. Stallings, Commonwealth Attorney, made his final closing argument.

The Court: I find both defendants guilty.

Mr. Stallings: I recommend five years on each one of them, Your Honor.

The Court: I fix your punishment at five years in the State Penitentiary.

Mr. Woodward: We want to except to Your Honor's Ruling and judgment on the ground that it's contrary to the law and evidence and without evidence to support it and plainly wrong. I would like to have ninety days to prepare a case for the Court of Appeals, Your Honor.

The Court: Is that for the purpose of having the record written up?

page 115] Mr. Woodward: Yes, and we have to file the record within sixty days and it will take probably thirty days longer to get the Petition in the Court of Appeals.

The Court: I'll give you the ninety days that you've asked asked for.

page 116] I, James C. Godwin, Judge of the Circuit Court of the City of Suffolk, who presided over the trial of Commonwealth vs. Ruben Pierce and Hubert Hoffler, in Said Court, do certify that the foregoing is a true and correct transcript of the evidence adduced, of the exhibits offered in evidence of the objections to the evidence, or any part thereof, offered, admitted, rejected, or stricken out, and other incidents of the trial of said cause. The original exhibits introduced in evidence by complainant have been initialed by me for the purpose of identification and making them a part of the record.

I further certify that this certificate has been tendered and

signed by me within sixty days of the entry of final judgment in this cause and that reasonable notice has been given to the attorney for the Commonwealth of the time and place at which such certificate has been tendered.

Given under my hand this 14th day of June, 1963.

JAMES C. GODWIN
Judge of the Circuit Court of
the City of Suffolk.

page 117] I, William S. Holland, Clerk of the Circuit Court of the City of Suffolk, do certify that the foregoing is a true and correct transcript of the record in the cause of Commonwealth vs. Ruben Pierce and Hubert Hoffler, lately depending in Said Court, and do further certify that the same was made up at the request of the defendants; that counsel for the Commonwealth had due notice thereof and of the intention of defendants to apply to the Supreme Court of Appeals of Virginia for an appeal and *supersedeas* to the judgment therein rendered.

Given under my hand this 9th day of July, 1963.

WM. S. HOLLAND
Clerk of the Circuit Court of
the City of Suffolk.

A Copy—Teste:

H. G. TURNER, Clerk.

INDEX TO RECORD

	page
Writ of Error and Supersedeas awarded, Record No. 5766	1
Writ of Error and Supersedeas awarded, Record No. 5767	2
Record No. 5766, <i>Ruben Pierce v. Commonwealth</i> :	3
Indictment	3
Judgment, April 15, 1963	4
Notice of Appeal and Assignments of Error	6
Record No. 5767, <i>Hubert Earl Huffler v. Commonwealth</i> :	7
Indictment	7
Judgment, April 15, 1963	8
Notice of Appeal and Assignments of Error	10
Records Nos. 5766, 5767:	11
Proceedings	11, 35, 67
Witnesses:	
Joe Jordan	11, 34
Florence Staton	25
Mr. Ray Early	32, 58
Mr. W. A. McClenney	35, 57
Ruben Pierce	40
Gilbert Rollins	54
Mr. Hubert Hoffler	59
Certificates	67