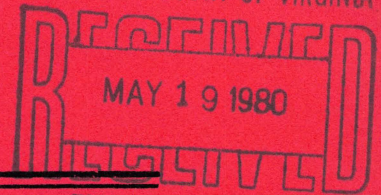


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SUPREME COURT OF VIRGINIA



IN THE
Supreme Court of Virginia
AT RICHMOND

RECORD NO. 800375

WILLIE LLOYD TURNER,

.....Appellant

v.

COMMONWEALTH OF VIRGINIA,

.....Appellee

VOLUME II
JOINT APPENDIX

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24. DEFENDANT'S EXHIBIT 1

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1 ROBERT K. EUBANKS, called as a witness on behalf of
2 the Commonwealth, having been first duly sworn, was examined
3 and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. GRIZZARD:

8 Q Detective Eubanks, state your name, your
9 address and your occupation, please, sir.

10 A Robert K. Eubanks, 143 Dale Circle,
11 Franklin, Virginia. Employed by the City of Franklin as a
12 police detective.

13 Q And were you so employed on July 12, 1978?

14 A Yes, I was.

15 Q On that date, did you have occasion to go to
16 Smith Jewelers?

17 A Yes, I did.

18 Q Would you tell the Court when you first went
19 there, sir.

20 A First I went to headquarters. I had left
21 Smith Jewelers when I first came in.

22 Q While you were at police headquarters in the
23 City of Franklin, what did you do at that time, sir?

24 A That's when I first arrived was approximately
25 12:15 p.m. when I talked to Officer Bain at headquarters.

- 1 Q Did you receive anything from Officer Bain?
- 2 A Yes, sir. I took his service revolver.
- 3 Q Anything else?
- 4 A Officer Bain was present. I received some
5 other things from Sergeant Poole.
- 6 Q All right, sir. What were they?
- 7 A There was a twelve-gauge, bolt-action, sawed-
8 off shotgun, three shotgun shells and a green towel.
- 9 Q I show you Commonwealth's Exhibit Number 4
10 and ask you if you have ever seen that before, sir?
- 11 A Yes, sir.
- 12 Q Where did you see it?
- 13 A That's Officer Bain's service revolver that
14 I received on that date.
- 15 Q I show you Commonwealth's Exhibit Number 2,
16 a green towel. Have you ever seen that before, sir?
- 17 A Yes, sir.
- 18 Q And where have you seen that?
- 19 A This is the towel I received at headquarters
20 that day.
- 21 Q I show you Commonwealth's Exhibit Number 1
22 and ask if you have ever seen that before, sir?
- 23 A Yes, sir.
- 24 Q And where?
- 25 A That's the shotgun I received that day.

1 Q Now, you mentioned three shells. Where did
2 you first see any of those shells?

3 A Sergeant Poole had two, I think, already out
4 of the gun. There was one jammed in the gun that him and I
5 removed from the shotgun at the office.

6 Q Detective Eubanks, I show you these three
7 shells and ask you if you have ever seen these shells before?

8 A Yes, sir. They appear to be the three
9 shells.

10 MR. GRIZZARD: If it please the Court, I
11 would like to have these three shotgun shells marked
12 as Commonwealth's Exhibit Number 15.

13 (Marked in evidence by the Clerk as
14 Commonwealth's Exhibit Number 15.)

15
16 BY MR. GRIZZARD:

17 Q Detective Eubanks, I show you Commonwealth's
18 Exhibit Number 8 and ask you if you have ever seen this
19 before?

20 A Yes, sir.

21 Q And where have you seen that, sir?

22 A I received it from Detective Dixon at
23 Franklin Police Department.

24 Q When, sir?

25 A 7/13/78, approximately 12 o'clock noon.

1 Q I show you Commonwealth's Exhibit Number 5
2 and ask you if you have ever seen that before, sir?

3 A Yes, sir.

4 Q Whose handwriting is that, sir?

5 A That's my own.

6 Q Will you explain to the ladies and gentlemen
7 of the jury the circumstances under which you wrote out
8 Commonwealth's Exhibit Number 5.

9 A Yes, sir. When we left the scene, we carried
10 the jewelry --

11 Q When you speak of the scene, where are you
12 talking about?

13 A Smith Jewelers. When we left, we carried
14 the jewelry and the money that was placed in the bags and
15 left on the counter with us to Southampton County Bank,
16 Sergeant Poole and myself.

17 Q Detective Eubanks, when you went to Smith
18 Jewelers that day, did you place the money in the bags or was
19 it already in the bags when you got there?

20 A It was in the bags.

21 Q Where were the bags in the store, if you
22 recall?

23 A The best of my knowledge, there was, I
24 believe, two bags on the counter to the right of the store
25 and I think there was one bag on the back counter kind of in

1 the middle to the left of the store.

2 Q So a total of three bags?

3 A Yes, sir, I believe.

4 Q All right, sir. Is this the inventory of
5 that?

6 A Yes, sir. When we got to the bank, this is
7 what we inventoried. This was what was in the bags.

8 Q I show you an item marked Commonwealth's
9 Exhibit 6 and ask you what that represents?

10 A Yes, sir. This is the inventory that I
11 typed up from the rough inventory and it's where we turned
12 the jewelry items back over to Mrs. Huffman, an employee at
13 Smith Jewelers.

14 Q And what day was it turned back over to her?

15 A Twenty-first of August.

16 Q Detective Eubanks, I show you Commonwealth's
17 Exhibit 3 and ask if you have ever seen those items before,
18 sir?

19 A Yes, sir.

20 Q And where have you seen them?

21 A They would be the three bags that the jewelry
22 and money were in at the store which we removed.

23 Q After you removed the items from the bags,
24 did you keep the bags?

25 A Yes, sir, I did.

1 Q Detective Eubanks, I show you photograph
2 marked Commonwealth's Exhibit Number 14 and ask if you have
3 ever seen that, sir?

4 A Yes, sir.

5 Q And what does that photograph represent, sir?

6 A It's a photo we took at the time of the
7 inventory of the jewelry that was in the bags.

8 Q And does that represent the jewelry that was
9 taken from the bags and put up there for display?

10 A Yes, sir.

11 Q Did you take the photograph?

12 A Yes, sir.

13 Q Detective Eubanks, I hand you item marked
14 Commonwealth's Exhibit 9 and ask you if you have ever seen
15 that before?

16 A Yes.

17 Q And where did you first receive Commonwealth's
18 Exhibit 9?

19 A Received it from Detective Dixon.

20 Q When?

21 A Same date I received the shirt. I would have
22 to look it up in my files as to the exact date.

23 Q I show you item marked Commonwealth's Exhibit
24 Number 13 and ask if you have ever seen that before, sir?

25 A Yes, sir. This was also received at the same

1 time from Detective Dixon.

2 MR. GRIZZARD: At this time, Your Honor,
3 Commonwealth would offer as evidence Commonwealth's
4 Exhibits 1 through 15. I think most of them have
5 been marked for identification other than the
6 photographs from Doctor Presswalla and
7 Commonwealth's Exhibit 7, which was marked for
8 Mrs. Smith's receipt, and the rest of them have been
9 marked for identification purposes. I would offer
10 them at this time as evidence in the case.

11 MR. WOODWARD: Your Honor, subject to the
12 Court's prior ruling, we have no objection. We
13 make no waiver.

14 THE COURT: These items will be marked into
15 evidence.

16 (Commonwealth's Exhibit Numbers 1, 2, 3 and
17 4 were received in evidence by the Clerk.)
18

19 BY MR. GRIZZARD:

20 Q Now, Detective Eubanks, you took possession
21 of Officer Bain's service revolver, as I understand it, on
22 the 12th?

23 A Yes, sir.

24 Q What did you do with that pistol, sir?

25 A I broke it open and looked to see how many

1 times it had been fired and then it was placed in my locker
2 until a later date.

3 Q When you first broke it open, what did it
4 indicate?

5 A It indicated that it had five shots fired
6 is what I thought.

7 Q All right, sir. Did you have occasion at
8 that time to go to Smith Jewelers?

9 A Yes, sir, I did.

10 Q And what did you do in Smith Jewelers?

11 A Well, we photographed the scene. We
12 measured the scene. We also searched for physical evidence.

13 Q Did you find anything in there, sir?

14 A Yes, sir, we did.

15 Q What did you find, sir?

16 A We recovered money and the jewelry. There
17 was also a projectile located in the back room of the jewelry
18 store. There was a cap that came out of the store; a brown
19 paper bag that was also removed from the store and a white
20 pillowcase was removed from the store. There was also --

21 Q Just one minute, sir. Where did you find
22 this round in the back of the store?

23 A There is a storage-type room just off the
24 back of the store and it was located in a cardboard box on
25 the floor.

1 MR. GRIZZARD: Judge, may we have a five-
2 minute recess?

3 THE COURT: Yes, sir.

4 We will take a five-minute recess, ladies
5 and gentlemen.

6 (The Court recessed at 11:35 a.m. The Court
7 reconvened at 11:45 a.m.)

8

9 BY MR. GRIZZARD:

10 Q Detective Eubanks --

11 MR. WOODWARD: Your Honor, we have a motion
12 to make. I'm sorry to inconvenience the jury again.

13 (The jury was excluded from the courtroom,
14 and the following occurred out of the presence of
15 the jury:)

16 MR. SAVAGE: Judge, we indicated back in
17 chambers we're objecting to any introduction of
18 these photographs that Mr. Grizzard has on the
19 grounds that they are not probative of anything;
20 that Detective Eubanks can't tie them in as
21 illustrating bullet holes, which he says that they
22 are, and that they are, therefore, not necessary.
23 We object to their introduction.

24 THE COURT: Well, you can cross-examine on
25 these, gentlemen. I think they are admissible if

1 they have any probative value from what you have
2 indicated to me they may have.

3 All right. I will overrule your objection --

4 MR. SAVAGE: Note our exception.

5 THE COURT: -- and note your exception.

6 (The jury was recalled to the courtroom, and
7 the following occurred in the presence of the jury:)

8
9 BY MR. GRIZZARD:

10 Q Detective Eubanks, after you had left police
11 headquarters, did you have occasion to go to Smith Jewelers?

12 A Yes, sir, I did.

13 Q And did you have occasion at that time, sir,
14 to examine the premises?

15 A Yes, sir, I did.

16 Q What did you notice about the premises
17 itself, sir, as to the back wall?

18 A Yes, sir. There was a hole in the back wall
19 that was pointed out where a shot had been fired and it
20 appeared that a bullet had gone through the wall.

21 Q I show you this photograph, sir --

22 MR. SAVAGE: We renew our objection
23 previously made.

24 THE COURT: All right, sir.

25 MR. SAVAGE: Please note our exception.

1 THE COURT: Yes, sir.

2

3 BY MR. GRIZZARD:

4 Q I show you that photograph and ask if you
5 took that, sir?

6 A Yes, sir.

7 Q What does it represent?

8 A Bullet hole in the wall.

9 Q Which wall?

10 A The back wall of Smith Jewelers.

11 MR. GRIZZARD: Your Honor, we would offer
12 that as Commonwealth's Exhibit Number 16, Your
13 Honor.

14 (Marked in evidence by the Clerk as
15 Commonwealth's Exhibit Number 16.)
16

17 BY MR. GRIZZARD:

18 Q If you go behind this wall, sir, what do you
19 come into at Smith Jewelers?

20 A Directly behind that wall is a small storage
21 room.

22 Q Did you examine or look in the storage room
23 itself, sir?

24 A Yes.

25 Q Would you tell the ladies and gentlemen if

1 anything was found back there.

2 A Yes, sir. In line with this hole, there was
3 an indentation on the molding around the top edge of the
4 back side of that wall, and further examination revealed a
5 projectile in a cardboard box on the floor.

6 Q Did you take a photograph of that, sir?

7 A Yes, sir.

8 Q I show you that photograph, sir, and ask you
9 what it represents?

10 A Yes, sir. That's the cardboard box with the
11 projectile lying in the box.

12 MR. GRIZZARD: Commonwealth would like this
13 marked Commonwealth's Exhibit Number 17.

14 (Marked in evidence by the Clerk as
15 Commonwealth's Exhibit Number 17.)
16

17 BY MR. GRIZZARD:

18 Q Did you take possession of that projectile,
19 sir?

20 A Yes, I did.

21 Q I show you this and ask you if you have ever
22 seen it before, sir?

23 A Yes.

24 Q Where?

25 A That's the projectile that was in the box.

1 MR. GRIZZARD: I would like this projectile
2 marked Commonwealth's Exhibit Number 18.

3 (Marked in evidence by the Clerk as
4 Commonwealth's Exhibit Number 18.)
5

6 BY MR. GRIZZARD:

7 Q Detective Eubanks, after you had examined
8 the premises and what-have-you, did you have occasion to go
9 back to police headquarters and examine the revolver?

10 A Yes, sir. I examined the revolver at a
11 later date closely.

12 Q What date did you examine the revolver?

13 A July 16th.

14 Q And where had it been from the 12th to the
15 16th, sir?

16 A It had been in my locker.

17 Q Has anybody got a key to that locker other
18 than you?

19 A Yes. At that time, Detective Dixon and I
20 were the only two with keys to the locker. The locker is no
21 longer in use.

22 Q When you took out the revolver and examined
23 it, did you check to see if it was loaded?

24 A Yes, sir, I did.

25 Q What did you find?

1 A I found four spent cartridges and two live
2 cartridges in the cylinder. One of the live cartridges had
3 an indentation on the primer.

4 Q What did you do with the spent cartridges?

5 A They were bagged together.

6 Q Did you keep them in your possession?

7 A Yes, sir.

8 Q I show you these four spent cartridges and
9 ask you if you have ever seen them before, sir?

10 A Yes, sir.

11 Q And where?

12 A They are the ones that were removed from
13 Officer Bain's service revolver.

14 MR. GRIZZARD: I offer these in evidence as
15 Commonwealth's Exhibit Number --

16 THE COURT: 19.

17 MR. GRIZZARD: -- 19.

18 (Marked in evidence by the Clerk as
19 Commonwealth's Exhibit Number 19.)

20
21 BY MR. GRIZZARD:

22 Q You indicated, sir, there were two other
23 rounds -- two live rounds, one dented and one complete. What
24 did you do with those, sir?

25 A They were bagged separately, sir.

1 Q Did you keep possession of them, sir?

2 A Yes.

3 Q I show you this cartridge and ask you if
4 you have ever seen it before?

5 A Yes, sir. This is the one with the
6 indentation on the primer that was removed from Officer
7 Bain's service revolver.

8 MR. GRIZZARD: I would like this marked
9 Commonwealth's Exhibit Number 20.

10 (Marked in evidence by the Clerk as
11 Commonwealth's Exhibit Number 20.)

12

13 BY MR. GRIZZARD:

14 Q I show you this shell, sir. Have you ever
15 seen that before, sir?

16 A Yes, sir. This is the live cartridge with
17 no marking.

18 MR. GRIZZARD: I would like this marked
19 Commonwealth's Exhibit Number 21.

20 (Marked in evidence by the Clerk as
21 Commonwealth's Exhibit Number 21.)

22

23 BY MR. GRIZZARD:

24 Q Detective Eubanks, what did you do with the
25 shotgun, the revolver, the bullets, the projectiles,

1 Commonwealth's Exhibits 9 and 13 and the spent shell that
2 you found in the back of Smith Jewelers, Commonwealth's
3 Exhibit 19, sir?

4 A They were packaged on July 27th.

5 Q Can you speak up, sir?

6 A Yes, sir. They were packaged on July 27th
7 and they were carried by me to the Norfolk branch of the
8 State Lab, which is on Colley Avenue in Norfolk, and I signed
9 them over to Mr. Hoppe at 10:53 a.m.

10 Q What Hoppe is that?

11 A He's Firearms Examiner with the State Lab.

12 Q After you turned them over to him, when did
13 you next have occasion to see them?

14 A When I picked them back up from Mr. Hoppe.
15 They were removed by me on August 11th from Mr. Hoppe.

16 MR. GRIZZARD: All right, sir. Answer
17 Mr. Woodward.

18
19 CROSS-EXAMINATION

20
21 BY MR. SAVAGE:

22 Q Detective Eubanks, you are a detective with
23 the Franklin Police Department?

24 A Yes.

25 Q You live around the Franklin area there, do

1 you?

2 A Yes, sir.

3 Q And I take it you're familiar with the area
4 where this incident happened?

5 A Yes, sir.

6 Q Now, you headed up this investigation for
7 this offense, did you not?

8 A More or less; yes, sir.

9 Q For the police department?

10 A Yes, sir.

11 Q You went in the shop there and I think you
12 made certain measurements while you were inside the shop,
13 didn't you?

14 A Yes, sir, I did.

15 Q Now, this is a very small, narrow shop, is it
16 not?

17 A It's considerably small; yes, sir.

18 Q About six or seven feet in the middle aisle
19 between the two counters, the ones on each side?

20 A Roughly six feet something in the middle
21 aisle.

22 Q And stretches back from the street fifty feet
23 more or less from the front door?

24 A Roughly; yes, sir.

25 Q You have indicated something about the

1 photograph and a hole in the wall. You weren't actually in
2 the store when this offense is supposed to have occurred,
3 were you?

4 A No, sir.

5 Q You didn't actually see any shots fired?

6 A No, sir.

7 Q And, of course, you don't really know if
8 this hole, as you described, is a bullet hole or what kind
9 of hole it is?

10 A No, sir.

11 Q July 12, 1978, when this is supposed to have
12 happened, was a Wednesday, I think. It is alleged to have
13 happened around 11 a.m. and we know that this shop is located
14 on Second Avenue, I think they said. That's in downtown
15 Franklin, is it not?

16 A Yes, sir.

17 Q In a shopping area?

18 A Yes, sir.

19 Q And this store is located among other shops
20 in that area, stores and offices and things?

21 A Yes, sir.

22 Q I think this shop is located kind of in the
23 middle of the block with stores on either side?

24 A Yes, sir, approximately.

25 Q And I take it at 11 o'clock on July --

1 Wednesday, there were shoppers in the area?

2 A I couldn't say. I was somewhere else.

3 Q When you were handed these various things
4 that you reported, I assume you took fingerprints of all this
5 equipment?

6 A No, sir.

7 Q Didn't take any fingerprints?

8 A No, sir.

9 Q When you received the shotgun that you
10 mentioned, were there any shells in the shotgun?

11 A Yes, sir. There was one shell jammed in the
12 shotgun that Sergeant Poole and I removed it.

13 Q Is that a five-shot shotgun or three-shot or
14 do you know?

15 A Sir, I have never tried to load it to see how
16 many would go in it. I'm not sure.

17 Q You never tried to fire it or anything?

18 A No, sir.

19 Q The shells that you have identified and put
20 in evidence are Number 8s, look like to me.

21 A They appear to be Number 8 bird-type shot.

22 Q What did you say?

23 A They appear to be Number 8 bird-type shot.

24 Q You saw the defendant at headquarters, did
25 you?

1 A Yes, sir.

2 Q The merchandise that you have identified,
3 I think you said that was inside the shop?

4 A Yes, sir.

5 Q That was not at headquarters?

6 A No, sir.

7 Q When you got to the shop, was the defendant
8 still there or had he been taken to headquarters?

9 A No, sir. The defendant, the only time I saw
10 him was at headquarters.

11 Q And I think you said this merchandise was on
12 the countertops?

13 A Yes, sir.

14 Q Inside the shop. At least three bags, you
15 have indicated?

16 A Yes, sir.

17 Q And one bag had some money in it, right?

18 A Yes, sir.

19 Q And another bag had all these rings?

20 A Yes, sir.

21 Q And you photographed these rings and I think
22 that's Commonwealth's Exhibit Number 6.

23 A I'm not sure what number, but we photographed
24 it, yes.

25 Q You photographed it and your inventory there

1 shows forty-five to forty-six rings, does it not?

2 A Yes, sir. I think it does.

3 Q And they were in two bags or one bag?

4 A The rings?

5 Q Yeah.

6 A Two bags, sir.

7 Q Two bags?

8 A Yes, sir.

9 Q The bullets that you described from the
10 pistol are standard bullets for that type of revolver, are
11 they not?

12 A Yes, sir, they are.

13 Q They are the kind of bullets that are
14 supposed to be used in that revolver?

15 A Yes, sir, they are one of many kinds that can
16 be used in the revolver; yes, sir.

17 Q They are the right caliber --

18 A .38 Special; yes, sir.

19 Q And that's the kind of bullets that were
20 supposed to be used in that pistol?

21 A Yes, sir.

22 Q Is this standard police department issue?

23 A Yes, sir, 158 grain, lead bullets.

24 Q The officers don't buy them themselves, the
25 police department gives them to you?

1 A The department furnishes you with
2 ammunition, yes, sir.

3 Q Do you know whether or not the pistol was in
4 good working condition?

5 A I couldn't testify because I hadn't tried
6 the pistol.

7 Q So four shells had been fired? At least
8 there were four blank cartridges in the pistol?

9 A Yes, sir.

10 Q And one live round in the pistol?

11 A There was two live rounds.

12 Q Two live rounds. One of the live rounds had
13 a dent in the back?

14 A Yes, sir, the primer appeared to have been
15 stroked.

16 Q And, of course, you don't know who stroked
17 the primer on that shell?

18 A No, sir.

19 Q Or when it was stroked?

20 A No, sir.

21 Q Or how long it had been in the gun in that
22 condition?

23 A No, sir.

24 Q When you were making your investigation and
25 after the defendant was carried away, et cetera, and you were

1 at the scene, did you ever find any automobile parked around
2 that was supposed to be the defendant's -- an escape vehicle?

3 A No, sir, I didn't.

4 Q Did your investigation ever reveal whether
5 or not any other people were involved in this with the
6 defendant?

7 A My investigation revealed nobody else; no,
8 sir.

9 MR. SAVAGE: Thank you very much, Detective
10 Eubanks.

11 MR. GRIZZARD: Thank you.

12 Mr. Hoppe. I don't believe Mr. Hoppe has
13 been sworn.

14 (The witness was called up and sworn.)

15
16 -----oOo-----
17
18
19
20
21
22
23
24
25

1 AUGUST O. HOPPE, called as a witness on behalf of
2 the Commonwealth, having been first duly sworn, was examined
3 and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. GRIZZARD:

8 Q Mr. Hoppe, state your name, your address and
9 your occupation, please.

10 A August O. Hoppe, H-o-p-p-e, and I live in
11 Norfolk and I am a firearms identification expert.

12 Q And where are you employed, sir?

13 A By the Commonwealth of Virginia in the
14 crime laboratory -- forensic crime laboratory in Norfolk.

15 Q And what are your qualifications?

16 MR. SAVAGE: Mr. Grizzard, we will stipulate
17 to move this thing along that he's qualified.

18 MR. GRIZZARD: All right. Thank you, sir.

19
20 BY MR. GRIZZARD:

21 Q Mr. Hoppe, I show you Commonwealth's Exhibit
22 Number 1 and ask you if you have ever seen that before?

23 A Yes, I have.

24 Q I show you Commonwealth's Exhibit Number 4
25 and ask you if you have ever seen that before?

1 A Yes, I have.

2 Q I show you Commonwealth's Exhibit Number 13
3 -- projectile -- and ask you if you have ever seen that, sir?

4 A Yes, I have.

5 Q Would you put that in the envelope.

6 I show you Commonwealth's Exhibit Number 9
7 and ask you if you have ever seen that before, sir?

8 A Yes, I have.

9 Q And Commonwealth's Exhibit Number 18?

10 A Yes, I have.

11 Q All right, sir. When did you first see
12 these five items?

13 A On July 27, 1978.

14 Q And from whom did you receive them, sir?

15 A I got those from Detective Eubanks, Franklin
16 Police Department.

17 Q Let's take first the pistol, Commonwealth's
18 Exhibit 4, and the projectiles, Commonwealth's Exhibit 9, 13
19 and 18. Did you have occasion to examine the pistol in
20 connection with those three projectiles?

21 A Yes, I did.

22 Q What examination did you perform, sir?

23 A I determined the caliber of the projectiles,
24 test fired the weapon and compared the test bullets from the
25 weapon against the three -- three bullets that were submitted

1 to me, and I did this under the comparison microscope.

2 Q Explain to the ladies and gentlemen of the
3 jury how that works.

4 A During the course of the manufacture of a
5 firearm, there is certain machining operations that are done,
6 drilling, reaming and rifling. Each one of these operations
7 leaves a minute tool mark within the bore of the gun. As a
8 bullet is fired through the gun -- the barrel -- these tool
9 marks are transferred to the bullet, and each gun that is
10 manufactured is different, and these fine tool marks that you
11 can only see with a microscope were the same on the evidence
12 bullets that were submitted to me and the test bullets that
13 were fired from the gun.

14 Q The pistol -- when you say you test fired,
15 did you find it in mechanical operating order?

16 A Yes.

17 Q In the results of your examination, could you
18 give your opinion as to whether or not the three Commonwealth's
19 Exhibits, 9, 13 and 18, were fired from Commonwealth's Exhibit
20 Number 4?

21 A They were.

22 Q Now, directing your attention to the shotgun,
23 Commonwealth's Exhibit Number 1, could you give a general
24 description of that weapon, sir?

25 A This is a sawed-off shotgun. The stock has

1 been sawed off. It should be cut a little further. I don't
2 know the exact dimensions, but it's been cut off because it's
3 fired from the shoulder. The barrel was longer. That's been
4 cut off.

5 Q Any marks on the barrel showing where it was
6 cut off, sir?

7 A There are -- there are saw marks at the end
8 of the barrel. It's a bolt-action weapon and you close the
9 bolt, push a cartridge in the chamber, lock it in and it's
10 ready to fire.

11 Q What type of cartridge, sir, is fired from
12 that weapon?

13 A Shotgun shell which contains -- there are
14 numerous sizes which have different numbers of shot, and also
15 solid projectiles such as a rifled slug or sometimes some of
16 them are known as pumpkin balls, et cetera.

17 Q The cartridge itself is two-part, self-
18 contained. What type of cartridge is it?

19 A It's made up of a shell, powder -- wad --
20 and also a plastic wad that -- in some cases a plastic wad
21 that contains the shot and it's crimped over on the end.
22 That's the components of the shot shell.

23 Q It's a self-contained cartridge?

24 A Yes, sir.

25 MR. SAVAGE: I object to leading the witness.

1 noise? I guess that's why, obviously.

2 A That's right.

3 Q Now, I have shot a .22. That's kind of a
4 snap, snap, snap. How does that compare with -- what is that?

5 A That's a .38 Special.

6 Q How does that compare with a .38 Special?

7 A In which respect, sir?

8 Q Noise.

9 A Oh, this makes more noise than a .22 would.

10 MR. SAVAGE: Mr. Hoppe, thank you very much.
11 That's all we have.

12

13 REDIRECT EXAMINATION

14

15 BY MR. GRIZZARD:

16 Q Mr. Hoppe, on the shotgun, Mr. Savage asked
17 you how you fired that gun. Was it originally designed to be
18 fired like that?

19 A No, it wasn't.

20 Q How was it originally designed?

21 A To be fired from the shoulder.

22 MR. GRIZZARD: All right, sir. That's all.

23 THE COURT: All right, sir. Thank you very
24 much.

25 Do you need this witness any further?

1 MR. GRIZZARD: I don't think so, Judge. He
2 could wait just a minute before he leaves.

3 Could you wait outside just one minute.

4 MR. SAWYER: We don't need him, Judge.

5 MR. GRIZZARD: Commonwealth rests, I think,
6 Judge.

7 MR. WOODWARD: You rest? We have some
8 motions to make now.

9 THE COURT: All right, gentlemen. Before
10 you make the motions, I'm going to let the jury go
11 to lunch.

12 Will you gentlemen approach the bench a
13 moment.

14 (A side-bar conference was held by the Court
15 with counsel for both sides out of the hearing of
16 the jury and the court reporter.)

17 THE COURT: Ladies and gentlemen, the
18 Commonwealth has concluded its case. Defense has
19 indicated they will offer no evidence; is that
20 correct, gentlemen?

21 MR. WOODWARD: That is our position at this
22 point, Your Honor.

23 THE COURT: I'm going to let you go to lunch
24 at this time. We're going to give you a longer
25 lunch hour because at this time we now have to get

1 the instructions together that I will read to you,
2 which are the law of this case, so we're going to
3 release you at this time until two thirty.

4 Now, I want to caution you again, please do
5 not discuss this case. Do not allow anyone to
6 discuss it with you. Don't stay in the presence of
7 anyone talking about it. Please be back promptly
8 at two thirty and, when you come back, come
9 directly to your jury room. You're now excused
10 until two thirty. Thank you.

11 (The jury was excused at 12:25 p.m.)

12 THE COURT: All right, Mr. Woodward. Do you
13 have any motions at this time?

14 MR. WOODWARD: Your Honor, if the Court will
15 allow us to do so, there are three indictments
16 pending against the defendant. Mr. Savage will
17 speak to one of those and then I will speak to the
18 other one. There are two which we wish to make
19 motions to strike as to.

20 Your Honor, on behalf of the defendant,
21 Willie Lloyd Turner, I move to strike the indictment
22 which alleges that he on the date specified
23 committed murder of, I believe it's W. Jack Smith,
24 Jr., while in the commission of robbery. The
25 offense which is alleged against Mr. Turner in this

1 regard is purely statutory and being purely
2 statutory, of course, we look to it. The section
3 under which he is indicted is 18.2-31E. 18.2-31E
4 sets forth specifically those offenses which shall
5 constitute capital murder. This, of course, is a
6 revision by our Legislature. 18.2-31, which was
7 last amended in 1979, which is not really relevant
8 to the argument I am now making, states in part,
9 "The following offenses shall constitute capital
10 murder, punishable as a Class 1 felony:". It then
11 goes on from there and states in Subsection (d),
12 "The willful, deliberate and premeditated killing of
13 any person in the commission of robbery while armed
14 with a deadly weapon."

15 Compared with that, Your Honor, that being
16 capital murder, you have 18.2-32, which is, "First
17 and second degree murder defined; punishment." And
18 that states, "Murder, other than capital murder, by
19 poison, lying in wait, imprisonment, starving, or
20 by any willful, deliberate, and premeditated killing,
21 or in the commission of, or attempt to commit, arson,
22 rape, robbery, burglary or abduction, except as
23 provided in Section 18.2-31, is murder of the first
24 degree, punishable as a Class 2 felony."

25 Now, each of those sections, of course,

1 mentions the term of murder in the commission of
2 robbery. Now, murder in the commission of a
3 robbery is defined specifically in 18.2-31 and that
4 would take precedence in my opinion over 18.2-32
5 where the commission of robbery is involved, but
6 the language in 18.2-32 says or attempts to commit
7 meaning one who engages in the killing of another
8 in the attempt to commit robbery may be found guilty
9 under 18.2-32.

10 The Legislature did not say in 18.2-31 (d)
11 in the commission of robbery or attempt to commit
12 robbery. Now, these are specifically statutorily-
13 defined sections and, of course, we're dealing with
14 legal language and legal construction. You have
15 heard a number of witnesses -- a number of
16 eyewitnesses who have testified to you. I think it
17 was interesting that Mrs. Cosby, who's a lay person,
18 noted yesterday that it was a robbery attempt.
19 That, of course, is not what our argument goes to.
20 It goes to the exact legal principles involved. I
21 would ask in your considering it, Your Honor, that
22 you remove from your mind that a murder occurred
23 because that really again is not relevant to the
24 particular question I'm speaking to.

25 The question is this: Is the evidence

1 sufficient to prove a robbery or is it sufficient
2 to prove attempted robbery? Now, the Commonwealth
3 has put on all its evidence and the evidence which
4 you have heard indicates in no way that this man
5 here ever touched the bags. Never. The indication
6 is he had the sawed-off shotgun and then he had the
7 sawed-off shotgun in one hand and the pistol in the
8 other. Who handled the bags? Mr. Smith handled
9 the jewelry itself. He handled the money itself
10 and he placed it in there and, if what Detective
11 Eubanks says is correct, as you walk in the store
12 on the right-hand side there were two bags. They
13 had jewelry in it and then at the rear of the store,
14 I guess, in an alcove area or the office or the
15 repair bench, whatever you want to describe it,
16 there is located the third bag, the first in time,
17 with the money in it.

18 What is robbery? Robbery is defined in a
19 number of ways. It is defined as larceny from the
20 person by violence or intimidation. That is a
21 simple definition of robbery and, unlike capital
22 murder and first degree murder in Virginia, robbery
23 has no statutory definition. It is the common-law
24 definition of robbery which we have adopted. The
25 section on robbery deals only with the punishment

1 for the offense of robbery.

2 Now, if you look at a simple larceny
3 indictment, you have common-law language there also.
4 Did take, steal and carry away. Now, those
5 principles which come from the English law have
6 come to the United States are the same as they
7 always have been. Did take, steal and carry away.
8 Now, carry away is asportation. Law school term.
9 Asportation. Our Supreme Court in Virginia has
10 spoken to this point on several occasions.

11 The first case I would like to cite for you
12 is Mason v. Commonwealth, which is reported in
13 200 Va. at Page 253, and in the Mason case, the
14 Court indicates the taking and asportation have to
15 be proven; and, in that, they state, "What
16 constitutes a 'taking' is stated in 32 Am. Jur.,
17 Larceny, Section 12, Pages 397, 398; in 12 M. J.,
18 Larceny, Section 4, Page 4, 'taking' is defined as
19 follows:

20 "All the authorities agree in stating that
21 in every larceny there must be an actual taking, or
22 severance of the goods from the possession of the
23 owner. To 'take' an article, signifies 'to lay hold
24 of, seize or grasp it with the hands or otherwise,'
25 and doing so, animo furandi, constitutes a felonious

1 taking."

2 Same opinion citing again 46 Am. Jur.,
3 Robbery, Section 6, Page 141, says, in part, "The
4 essential element of 'taking and asportation' in
5 robbery is discussed as follows:

6 "The actual taking and asportation of some
7 of the victim's personal property is an essential
8 element of robbery. In other words, there must
9 first be a larceny -- felonious taking.

10 Supplementing the taking, as in larceny, there must
11 be an asportation or carrying away of the goods.
12 Severance of the goods from the owner and absolute
13 control of the property by the taker, even for an
14 instant, constitutes an asportation."

15 Now, in going on in this, one would go back
16 and read a hornbook perhaps. It's common law. It's
17 been common law in many states. Perkins on Criminal
18 Law, which is one of the leading authorities. It's
19 the hornbook that I used in law school. As far as I
20 know, it's still accepted generally. In that under
21 asportation, they say carrying away is essential in
22 a case of robbery. Asportation. It has to be done.

23 Now, in this particular case, Willie Lloyd
24 Turner goes in, the evidence shows, holds the
25 shotgun. There is some conflict. He directs either

1 verbally or otherwise Mr. Smith. Mr. Smith takes
2 the items, places them in bags, places them on the
3 counter. Turner never, never touches the bags. He
4 never moves them in any way. He never does
5 anything whatsoever toward that idea. First of
6 all, taking, and, second of all, asportation.

7 Now, I recognize, Your Honor, that because
8 of the magnitude and severity of this case, it's an
9 easy answer to say, well, he killed him in the
10 commission of a robbery. I submit he killed him in
11 the commission of an attempted robbery and no
12 matter how much we want to change that, that's what
13 the law says. Citing again Perkins, Perkins
14 indicates, and I think this is very interesting,
15 that most states have asportation as a requirement.
16 Texas has changed that. In Texas the requirement
17 of asportation may be eliminated entirely or it has
18 been done. This is what Perkins says. An exact
19 quote from Page 22. "The requirement of
20 asportation may be eliminated entirely by statute
21 as has been done in Texas, but so long as it has
22 sustained the common-law concept of carrying away,
23 movement should be required."

24 And Virginia, of course, is one of the
25 oldest states. We follow the common law.

1 There are other cases, Your Honor, which
 2 speak to this particular point. In addition, the
 3 case of Mason v. Commonwealth. There is the case
 4 of Green v. Commonwealth, which is cited in 133 Va.
 5 695, decided in 1922, and that case says, again,
 6 taking and asportation have to be proven. You
 7 don't have it. You simply do not. The quandry that
 8 exists, of course, is this: Do we allow our law to
 9 do this, to say to Mr. Bain, wait until he's grabbed
 10 the stuff and is out of the store and then grab him.
 11 I don't have the answer to that, but what I do have
 12 the answer to, Your Honor, is what our law says now.
 13 Maybe it should be modified. Maybe it should be
 14 changed. The Legislature wrestled at length with
 15 it, but they did not make the attempted robbery-
 16 murder capital murder. They simply did not state
 17 it. They could have, but chose not to.

18 Now, there is another case which I would ask
 19 to cite to the Court and that is Jones v.
 20 Commonwealth. This is a case which appears in 218
 21 Va., Page 18. It was decided in 1977. I'm quoting
 22 in part from that opinion -- the gist of it. Robbery
 23 is the taking and carrying away of the personal
 24 property of another by force or intimidation. So they
 25 have spoken to it. Our Supreme Court has spoken to

1 it as shorter distance or shorter time as two
2 years ago; and, what we say to you, Your Honor, is
3 this: That under definition of taking and
4 asportation, Mr. Grizzard has not proven the crime.
5 He has not proven the crime that comes under
6 18.2-31. Go back through all the other cases,
7 Wye, Stamper, Clark and name every other one over
8 and the question is not raised and, in those cases,
9 you have got a completed offense.

10 In this case, we submit, you have an
11 attempt. The question arises what is an attempt
12 and the definition which is given in Volume I of
13 the new criminal instructions which have been
14 approved by our Chief Justices in very glowing
15 terms, the preface to that particular volume
16 indicates that these instructions are the product
17 of the labors of lawyers, judges, scholars,
18 et cetera. As the Court is familiar, each of those
19 instructions is followed by an informational
20 section. Under Attempts, it says, citing at Page
21 152 of Volume I, in general terms, "An attempt in
22 criminal law is an intended, apparent, unfinished
23 crime. It consists of an intent to commit the
24 crime and the doing of some direct act toward its
25 consummation without actually committing the crime

1 itself." Without actually committing the crime
2 itself.

3 Now, the issue, I believe, that the Court
4 has to decide is is it an attempted robbery. We
5 submit the evidence is more than adequate at this
6 point, certainly giving every inference to the
7 Commonwealth's testimony. It is adequate. It is
8 overwhelming. It proves attempted robbery and it
9 proves murder in the commission of attempted
10 robbery, but it does not prove under any definition
11 of robbery that's ever been recognized that the
12 robbery had been completed, and when they say in
13 the commission of robbery -- this is drawn by
14 lawyers. If they wanted it to be in the commission
15 of attempted robbery, they should have put it in.
16 Instead, 18.2-32, it says except as provided in the
17 capital murder. Murder in the commission of
18 robbery or in the attempt to commit robbery. And
19 that is the section we submit that controls this
20 particular case.

21 Now, if I might look at notes for just one
22 moment, Your Honor.

23 There is a further case of Durham v.
24 Commonwealth. This is in 214 Va. at Page 166. In
25 Durham v. Commonwealth, the Supreme Court spoke to

1 the question of movement. The question of movement.
2 What constituted movement. Asportation. And in
3 that particular case, which was also a capital case,
4 which was decided in 1973 under the old statute,
5 which is now 18.2-32, the Supreme Court held that
6 the movement in the house of the television and of
7 a chair constituted the movement necessary, but
8 what they said further was this: "The putting in
9 fear and violence were concurrent or concomitant
10 with the larceny or attempt to commit larceny and
11 indicate an intent to commit, or an attempt to
12 commit robbery." That's the old statute, 18.2-32,
13 but when the General Assembly split the two of them,
14 it did not foresee that this particular case would
15 come under 18.2-31. The language is simple. The
16 language could have been included very simply and
17 it was not and, since it's not, Mr. Grizzard put on
18 an excellent case. He's put on every bit of
19 evidence he has; but, we say to you, he cannot
20 override the common law of the State and case law
21 of our Supreme Court.

22 We respectfully move that the indictment
23 relating to the murder of Mr. Smith in the commission
24 of robbery has to fail and that the evidence has to
25 be struck. I believe Mr. Savage is going to speak

1 to the other indictment or, if you want, I assume
2 maybe Mr. Grizzard wants to take them one at a
3 time.

4 MR. GRIZZARD: I prefer to go ahead and
5 take this one, Judge.

6 THE COURT: All right.

7 MR. GRIZZARD: If it please the Court, you
8 are hearing a unique argument advanced by
9 Mr. Woodward in the Mason case that he is citing,
10 200 Va. 253, is one that's cited in the cases of
11 Baskell, Biggarstaff and Lenden dealing with
12 murder in the City of Norfolk. The factual
13 situation in that case is a case where a group of
14 individuals jumped on a sailor with the ostensible
15 purpose of robbing that sailor. They found out he
16 had nothing to rob, period. So then they started
17 trying to get away, and then this one sailor
18 started jumping on them and tried to keep them from
19 running; and, in that case, in the process of
20 trying to effect their escape from him, then he,
21 the sailor, was killed.

22 And, in dealing with the robbery question in
23 that case, they went back to the Mason case, the
24 case cited by Mr. Woodward, and the Mason case
25 started out as a breaking and entering and the

1 proprietor was in the store hiding. The accused in
2 the case had taken a TV set and handed it outside to
3 an accomplice, at which time he was surprised by
4 the owner and the man threw a portable radio or
5 something at the owner, and he was charged with
6 robbery. And the Supreme Court in that case --
7 the ruling in the Mason case was that the violence
8 and intimidation in that case occurred after
9 rather than contemporaneous with the taking. That
10 case of taking had already been perfected and the
11 violence there occurred after the taking,
12 therefore, it was not robbery. That's the rule in
13 the Mason case. What Mr. Woodward, I think, is
14 arguing is the dictum in the Mason case.

15 In the Durham case, also discussed in the
16 Maskell cases -- the cases that I cited to the
17 Court -- this was the felony-murder rule
18 determination in the State of Virginia and, here
19 again, it was a question whether or not the force
20 and violence occurred after the taking or during
21 an attempt to escape. The question is if the
22 taking has been done, then you are attempting to
23 escape and the murder occurs, is it a felony-murder?
24 That's what Durham is all about.

25 The Court, after reviewing many different

1 aspects of the law in various states throughout
2 the union, came up with the idea that it's a
3 relative situation from a factual standpoint; that
4 the evidence showed there was not five feet from
5 the place of the robbery where the killing
6 occurred, therefore, they upheld the felony-murder.
7 If it had been 500 yards or a mile down the road,
8 there is an indication that the factual situation
9 would make it different, but what we have in this
10 case is not dealing with the Mason cases or the
11 Durham cases. We have an ongoing robbery of
12 W. Jack Smith. Robbery is defined in one of the
13 cases dealing with capital murder as the taking
14 with intent to steal of the personal property of
15 another from his person or in his presence, against
16 his will by violence or intimidation.

17 As I understand Mr. Woodward's argument, he
18 tells us first that Willie Lloyd Turner never put
19 his hands on the money or the jewelry. I think
20 from the evidence that you have heard from the
21 witness stand, granted, he never physically took
22 the money out of the cash register and put it in
23 the bag. He never physically took the rings from
24 under the counter in the glass containers and put
25 them in the bags. We don't dispute that, but

1 Mr. Smith -- and the evidence is quite clear on
2 this -- Mr. Smith did as he was directed. It was
3 under the threat of a sawed-off shotgun that he
4 removed the money. It was under the threat of the
5 pistol and the sawed-off shotgun that he removed
6 the jewels.

7 Now, taking -- going back to the common-law
8 definition of asportation. If I physically picked
9 up Mr. Woodward's book here with the intent to
10 steal it and it is moved over here, under the common
11 law that is asportation. That is taking under the
12 law. The crime is completed, and the particular
13 factual situation we have today, the taking is by
14 threat and intimidation. William Smith -- Jack
15 Smith -- excuse me -- is moving substances under
16 the direction and under the control of the
17 defendant in this case, Willie Lloyd Turner. He's
18 doing so under threat of presenting of firearms.
19 The robbery is in process. The robbery of Bain.
20 He's taken Bain's pistol already. He has not left
21 the scene. He is on the grounds.

22 This is similar to the Haskell, Biggerstaff
23 and Landon cases. He is still at the scene. He
24 has not left the scene of the robbery. The robbery
25 is still under way at the time the shooting takes

1 place. It's not completed. It's still in the
2 process. It's still in the commission of, as
3 stated in a definition of capital murder. The
4 robbery is an ongoing process. Would not be
5 completed until he had left the premises
6 voluntarily on his own. He was prevented from
7 doing so by the actions of the Franklin police,
8 but that does not stop the commission of the
9 robbery.

10 The statute does not require that the
11 robbery be complete. That would be the next
12 argument, if the robbery was complete. The
13 shooting was after the robbery, therefore, it's not
14 during the commission of a robbery. You can't have
15 it both ways. The robbery is ongoing. Willie
16 Lloyd Turner has not left the premises. He has not
17 gone away from the premises. The robbery is still
18 in the process of commission. There has been
19 asportation but under threat of his weapons. The
20 robbery is completed. The robbery being complete,
21 then, what are the other elements? It's commission
22 of a robbery while armed with a deadly weapon and
23 murder.

24 For these reasons, we ask the Court to
25 overrule that motion to strike.

1 MR. WOODWARD: Well, Your Honor,

2 Mr. Grizzard, I think, has adopted part of our
3 argument and that is when he concedes to you in
4 argument that the robbery is not complete, he's
5 talking about the technical offense and it's not
6 complete, and not only is it not complete because
7 he didn't leave the store, I don't think that's
8 going to be required under 18.2-31, but the
9 definition of robbery has to be followed.

10 Now, the General Assembly, they know the
11 language they are using. They are not a bunch of
12 lay people up there in Richmond and they said "in
13 the commission of robbery" and robbery has a
14 definition.

15 Now, I cited Phage v. Commonwealth, not for
16 the holding in the case, but that's where our
17 Supreme Court has set out legal authorities in
18 which the definition of robbery is defined and what
19 larceny constitutes, which is an underlying basis
20 of robbery. It's a very simplistic form of the
21 definition of robbery.

22 Now, again, when you're talking about
23 statutory construction, you construe strictly what
24 the Legislature has said. I'm sure Mr. Grizzard
25 would like to say during the commission of robbery,

1 which is a technical term. We understand what
2 robbery is. It has a technical definition. If
3 they had said robbery or the attempted robbery or
4 the attempt to commit robbery, I would not make the
5 motion. Clearly it is an attempted robbery, but my
6 question is, and one that he doesn't answer, when
7 does the taking and asportation occur? And I
8 submit what he says to you about pointing the gun at
9 him and his picking it up does not constitute the
10 taking; doesnot constitute the asportation or, at
11 the very best, giving something to him, conceding
12 his side of it. It may constitute taking, but not
13 asportation, and I submit again, Your Honor, if you
14 remove the murder factor, if no one were shot and
15 you were hearing the case and in walks Willie Lloyd
16 Turner and everything occurs except the shooting
17 part -- he's got a weapon -- that you would not
18 convict him of robbery but, instead, you would
19 convict him of attempted robbery and, if that is so,
20 then this man cannot stand trial further for
21 capital murder. He stands trial further for first
22 degree murder.

23 THE COURT: Well, gentlemen, I'm of the
24 opinion that this crime was committed in the
25 commission of armed robbery with a deadly weapon.

1 Now, the defendant goes in the store. He holds two
2 guns on Smith, the victim, orders him to fill bags,
3 place them on the counter. He has absolute
4 dominion and control over both the victim and the
5 property. He was interrupted by the arrival of the
6 police. Smith is killed, and I am of the opinion
7 that this crime was committed in the commission of
8 armed robbery with a deadly weapon. I'm going to
9 overrule your motion to strike on that basis and
10 note your exception in the record.

11 All right, Mr. Savage.

12 MR. SAVAGE: Judge, one of the other
13 indictments against the defendant is a charge of a
14 sawed-off shotgun. The charge arose under Section
15 13.2-299 of the Code and, as the Court knows, there
16 is no common-law offense of a sawed-off shotgun.
17 That's a creature purely of statute and, because of
18 that, the statute must be strictly complied with.
19 What is a sawed-off shotgun is defined in the Code
20 section, and Mr. Grizzard had his book open there
21 as he was examining Mr. Hoppe, making an effort to
22 touch on each and every point and element prescribed
23 in the Code section. There are, in fact, under that
24 Code section five things that the Commonwealth must
25 prove in order to establish the offense of a

1 determination of the jury that was this a saved-off
2 shotgun and, because of that, the elements of the
3 Code have to be established. That element was not
4 and, therefore, that charge -- that indictment must
5 fail.

6 MR. CREZARD: Judge, Mr. Kopps said it's
7 one of these things you pull that releases the sear.
8 The firing pin goes forward and the pressure on the
9 firing pin ignites it. That's one of the functions
10 of the firing pin.

11 THE COURT: I think you have covered very
12 thoroughly how the gun was fired and how you pull
13 the trigger and it went off. I'm going to overrule
14 your motion on that, Mr. Savage, and note your
15 exception.

16 MR. WOODWARD: Your Honor, as we stated to
17 you previously, we did not intend to introduce any
18 evidence. We would renew the motions which we have
19 previously made and ask that you consider them now
20 in the different light which is shed upon them.
21 That is you now have to make a different
22 determination, really, from the initial motion to
23 strike. I recognize the Court's rulings. I
24 disagree with the Court, quite obviously. I again
25 say to you on the capital murder offense that

1 neither you nor Mr. Grizzard nor I or any other
2 reasonable person can supply what the Legislature
3 failed to do. Maybe this is the type of case that
4 gets them to do that. Where you're talking about
5 capital murder in technical terms, I don't believe
6 the Court can override the use in the next section
7 of the word "attempt". We think that that is the
8 language which controls this particular situation.

9 **THE COURT:** All right, gentlemen. I'm
10 going to overrule your motions to strike at the
11 conclusion of all the evidence and note your
12 exceptions. Now --

13 **MR. WOODWARD:** Your Honor, so that the
14 record is not deficient, we would renew at this
15 time also the motions which we made through the
16 course of the trial as to the admissibility of
17 certain evidence, as to the voir dire examination,
18 as to various motions for mistrial, so that those
19 particular motions, objections, et cetera, will be
20 preserved.

21 **THE COURT:** All right, sir. They will be
22 overruled. Your exceptions noted.

23 All right, gentlemen. I think perhaps maybe
24 what we should do now is go to lunch and come back
25 as quickly as possible and we will take up the

1 instructions after lunch.

2 (The Court recessed for lunch at 1 o'clock
3 p.m. The Court reconvened at 3:52 p.m.)

4 MR. WOODWARD: Your Honor, we would ask if
5 there are any witnesses in the courtroom or any
6 potential witnesses or any persons who anticipate
7 that they might be witnesses, those persons then
8 remove themselves at this time.

9 THE SHERIFF: Are you all ready for your
10 jurors?

11 THE COURT: Yes.

12 (The jury was recalled to the courtroom, and
13 the following occurred in the presence of the jury:)

14 THE COURT: Ladies and gentlemen of the jury,
15 at this time, I will read to you the Court's
16 instructions. As I told you yesterday, these
17 instructions are the law of this case and you will
18 take them with you when you retire to your jury
19 room to arrive at your verdicts.

20 You must not consider any matter that was
21 rejected or stricken by the Court. It is not
22 evidence and should be disregarded.

23 The fact that the defendant has been
24 indicted by a Grand Jury is not evidence against
25 him and you should not consider it.

1 Failure of the defendant to testify creates
2 no presumption against him and, in considering his
3 innocence or guilt, his failure to testify is not
4 a circumstance which the jury is entitled to
5 consider.

6 The defendant is presumed to be innocent.
7 You should not assume the defendant is guilty
8 because he has been indicted and is on trial. This
9 presumption of innocence remains with the defendant
10 throughout the trial and is enough to require you
11 to find the defendant not guilty unless and until
12 the Commonwealth proves each and every element of
13 the offense beyond a reasonable doubt. This does
14 not require proof beyond all possible doubt, nor is
15 the Commonwealth required to disprove every
16 conceivable circumstance of innocence. However,
17 suspicion or probability of guilt is not enough for
18 a conviction.

19 There is no burden on the defendant to
20 produce any evidence.

21 A reasonable doubt is a doubt based on your
22 sound judgment after a full and impartial
23 consideration of all the evidence in the case.

24 Under the charge against the defendant of
25 unlawfully using a pistol in the commission of the

1 accordingly.

2 All right, sir.

3 MR. GRIZZARD: May it please the Court,
4 Mr. Woodward, Mr. Savage, ladies and gentlemen of
5 the jury, I want to thank you for your attention
6 in this matter the past two days. We begin now
7 what we call final arguments. I caution you that
8 what I say at this point is not evidence in the
9 case, what Mr. Woodward and what Mr. Savage say
10 after me in their argument is not evidence in the
11 case. Again, the evidence is what you as a group
12 of men and women have heard from that witness stand
13 and from these exhibits which have been placed into
14 evidence.

15 The Court has instructed you on the law and,
16 some of the instructions, I will review. You will
17 be given all of them and you can take them to your
18 jury room so you will have occasion to study them
19 and see what they mean, determine for yourselves
20 what the law is. Then you as a group of twelve
21 will take the facts as you determine them and apply
22 them to the law that the Court has given you to
23 reach your verdict.

24 Instruction Number 1 deals with presumption
25 of innocence. It basically tells you that the

1 defendant is presumed innocent when he walks in
2 this courtroom and this presumption of innocence
3 stays with him until such time as you as a jury
4 finds that he is guilty. This instruction also
5 tells you that the burden is on the Commonwealth to
6 prove the guilt of the defendant beyond a
7 reasonable doubt. Now, this doesn't mean beyond all
8 possible doubt or beyond imagination, just beyond a
9 reasonable doubt based on your sound judgment. The
10 instruction tells you that you cannot base your
11 doubt on suspicion or a probability of guilt, but,
12 I submit to you, as we review the facts in the case
13 today, there is no suspicion as to the elements in
14 these crimes and there is no probability that the
15 defendant is guilty. It has been proved absolutely
16 that he is guilty as charged.

17 Now, you have three cases that you're trying.
18 In two of those cases, you will find verdicts and
19 you will impose sentence. In the third case, you
20 will find a verdict. I will take them one at a
21 time. I want to go through the elements which you
22 can find in each case and then review the evidence.
23 The first case I want to discuss is the charge of
24 using a pistol in the commission of a murder.
25 Instruction 3 tells you that you can find the

1 were two alternate jurors chosen in this case.
2 They will be excused. Charles Luman, Jr., and
3 Linda Frances Turner. You are now excused. You
4 may go. Thank you very much for your services.
5 You are now excused.

6 All right, Sheriff.

7 (The jury retired to consider their verdict
8 at 4:35 p.m.)

9 THE COURT: Now, gentlemen, will you
10 dictate your exceptions to any instructions in the
11 record while the jury is out.

12 MR. WOODWARD: The defendant objects to the
13 granting of Instruction Number 1 on the basis that
14 the Commonwealth Attorney tendered the instruction
15 as opposed to defendant. Defendant was prepared to
16 tender Instructions 100.13 and 100.14A from Virginia
17 Jury Instructions by Douglas, Earech and Marhiga,
18 and defendant reserves the right to submit
19 subsequently, as has been indicated by the Court,
20 those instructions. Instructions granted by the
21 Court are from the new Douglas volume instruction
22 set and defendant objects on the basis that it
23 combines the presumption of innocence and the
24 burden of reasonable doubt which befalls the
25 Commonwealth in a criminal case. The last sentence

1 in that Instruction A, "Reasonable doubt is a
2 doubt based on your sound judgment after a full
3 and impartial consideration of all the evidence in
4 the case," is one of the more ridiculous statements
5 ever put in any instruction by anybody at any time
6 and, apparently, was not drafted by anyone with
7 any legal experience whatsoever.

8 The long-standing instruction that's stated
9 in Douglas, Section 100.144 is much superior and
10 has been generally recognized by Courts throughout
11 the Commonwealth as being not only an adequate but
12 an accurate statement of what a reasonable doubt is.
13 The defendant objects to the granting of
14 Instruction Number 7 which states for the jury that
15 under the law the weapon in this case was a sawed-
16 off shotgun. Defendant contends that even though
17 Mr. Hoppe testified in detail, that the jury is the
18 trier of fact, is the one properly instructed to
19 determine if the charge has been proven beyond a
20 reasonable doubt. Effectively, the Court by the
21 granting of the instruction has directed a verdict
22 in the indictment alleging the use of a sawed-off
23 shotgun in the robbery of Officer Bain. Each and
24 every element has to be proven in a criminal case
25 and the Court has found as a matter of law that one

1 of the elements has been proven.

2 The same objection applies to Instruction
3 Number 8 granted by the Court concerning the
4 definition of sawed-off shotgun. The defendant, as
5 has been indicated to the Court, also intends to
6 present an instruction which the Court indicated
7 it would not grant, which relates to the charge of
8 capital murder and the granting of an instruction
9 which stated that if the jury believed that the
10 defendant was guilty of attempted robbery as
11 opposed to robbery that then he was guilty of first
12 degree murder, assuming that the other elements had
13 been proven by the Commonwealth.

14 Instruction 13A was refused on the basis by
15 the Court that it concluded as a matter of law that
16 defendant had committed robbery of W. Jack Smith,
17 Jr. Effectively, the Court through its refusal to
18 grant the instruction has again directed a verdict
19 in a criminal case, which does not lie with the
20 Court but with the jury as the trier of fact. The
21 jury should have been properly instructed as to
22 both possible elements of robbery and attempted
23 robbery and what verdicts it could render in each
24 and, again, for the record, we preserve our right
25 to submit subsequently, as the Court has indicated

1 we might, an instruction embodying attempted
2 robbery as such. The same argument applies to
3 Instruction 13B, which also was refused by the Court.

4 THE SHERIFF: Now, they don't know what they
5 want.

6 THE COURT: Well, bring the jury out here
7 and let me ask them what they need.

8 MR. WOODWARD: Judge, I think it's up to the
9 jury to ask if it wants to ask a question; that they
10 are the ones who have to come forward and inquire
11 of the Court. They have now sent back word by the
12 Deputy Sheriff that they don't have a question.

13 MR. ROBINS: They are talking about whether
14 to ask a question.

15 THE COURT: All right. We will just wait.

16 (The jury returned to the courtroom at
17 6:40 p.m.)

18 THE COURT: All right, sir.

19 JURY FOREMAN: Your Honor, the jury would
20 like to address the bench.

21 THE COURT: All right, sir.

22 JURY FOREMAN: The jury wishes to know does
23 the word "capital murder" mean capital punishment?

24 THE COURT: Capital murder may be punishable
25 by death. That's the way I will have to answer it.

1 It may be. It is not -- that is not mandatory, but
2 a capital offense may be punishable by death.

3 (The jury returned to the jury room to
4 consider their verdict.)

5 MR. WOODWARD: Judge, the Court has made
6 some statement to the jury as to the definition of
7 capital murder and what it is and what it is not.
8 We believe that the jury was fully informed through
9 the Court's instructions as to what the law is in
10 this particular case and that any further
11 explanation of that law would be inconsistent with
12 the principles of the instructions previously
13 submitted. We did not interrupt the question or the
14 answer by you, but we would like to now pose our
15 objection to it and again move for a mistrial based
16 on the Court's answer just propounded by the Court.

17 THE COURT: I'm going to overrule the motion
18 for a mistrial and note your exception.

19 (The jury returned to the courtroom at
20 6:42 p.m.)

21 JURY FOREMAN: Excuse me, Your Honor. The
22 jury would like to address the bench again. It
23 states here, "If you find from the evidence that
24 the Commonwealth has proven beyond a reasonable
25 doubt the offense as charged, then you shall find the

1 defendant guilty and fix his punishment at a term
2 of imprisonment for life or for any term of not
3 less than twenty years." Is it our prerogative to
4 affix that punishment?

5 THE COURT: Yes. You must fix the
6 punishment in that case within the Court's
7 instructions.

8 JURY FOREMAN: Thank you.

9 THE COURT: In accordance with the
10 instructions.

11 (The jury retired to the jury room to
12 further consider their verdict at 6:43 p.m.)

13 (The jury returned to the courtroom at
14 7 o'clock p.m.)

15 THE COURT: Have you arrived at a verdict,
16 ladies and gentlemen?

17 JURY FOREMAN: Yes.

18 THE COURT: Would you hand me the verdict,
19 Sheriff.

20 Would you read the verdicts, please.

21 THE CLERK: "We, the jury, on the charge of
22 the use of a firearm in the commission of a felony,
23 find the accused guilty as charged in the indictment
24 and fix his punishment at one year in the Virginia
25 State Penitentiary." Signed by Foreman, J. Worsley.

1 Ladies and gentlemen of the jury, is this
2 your verdict on this charge, so say you all?

3 THE JURY: Yes.

4 THE CLERK: "We, the jury, on the charge of
5 possession of a sawed-off shotgun in the commission
6 of a felony, find the accused guilty and fix his
7 punishment at life imprisonment." Signed by
8 Foreman, J. Worsley.

9 Is this your verdict, so say you all, ladies
10 and gentlemen of the jury?

11 THE JURY: Yes.

12 THE CLERK: "We, the jury, in the case of
13 capital murder, find the accused guilty as charged
14 in the indictment." Signed by Foreman, J. Worsley.

15 Ladies and gentlemen of the jury, is this
16 your verdict and so say you all?

17 THE JURY: Yes.

18 THE COURT: Would you like the jury polled?

19 MR. WOODWARD: No, Your Honor.

20 THE COURT: Ladies and gentlemen, we
21 appreciate your service here these past two days.
22 Now, it will be necessary for you to be back
23 tomorrow morning. We will have one other matter
24 for your consideration. We will ask that you be
25 back at nine thirty tomorrow morning.

1 Do you want to start at nine thirty,
2 gentlemen? Would you ladies and gentlemen prefer
3 to start at nine thirty or 10 o'clock? Would that
4 be easier?

5 A JUROR: As early as possible.

6 THE COURT: Well, I will ask you, please,
7 do not discuss this case with anyone. Don't let
8 anyone discuss it with you. Don't read about it.
9 Don't watch anything if anything should be on any
10 news media, but please be back at nine thirty
11 tomorrow morning. You're now excused until that
12 time. Thank you very much.

13 (The Court adjourned at 7:03 p.m.)

14 THE COURT: All right, gentlemen.

15 MR. WOODWARD: Your Honor, for purposes of
16 the record, we previously moved to sequester the
17 jury after the verdict was returned. You have
18 indicated to us formerly that you would not do so.
19 We believe the sequestration was essential so that
20 the jurors would not be exposed to any outside
21 publicity. The Court has indicated its ruling to
22 us and for purposes of the record, we except to the
23 ruling which you have made.

24 THE COURT: All right, sir.

25 MR. WOODWARD: We further would preserve for

1 the record such motions as we might make as to the
2 two cases, considering the verdict that has been
3 returned until such time as sentence is imposed by
4 the Court.

5 THE COURT: All right, sir. We will defer
6 sentencing in those two cases until the other case
7 is concluded.

8 MR. WOODWARD: All right, sir.

9 THE COURT: All right, gentlemen. We will
10 recess or adjourn now until nine thirty tomorrow
11 morning.

12 (The Court adjourned at 7:05 p.m., December
13 4, 1979.)

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1 MR. SAVAGE: If Your Honor please, at the
2 beginning of this trial, we moved that the case
3 be continued because of the publicity of other
4 offenses which had occurred. We also moved that
5 the jury be sequestered throughout all the
6 portions of the trial to avoid any possibility of
7 contamination by contact with publicity or
8 otherwise.

9 The Eastern Shore today's Virginian-Pilot
10 paper has an account of yesterday's trial,
11 reporting the results of the jury verdict; and,
12 even worse than that, this article singles out and
13 overemphasizes the testimony of one particular
14 witness, that witness being Judy Cosby. Not only
15 is that the most dramatic, but her testimony is
16 in conflict with another Commonwealth witness,
17 that being Officer Bain. Officer Bain's testimony
18 is not set forth in the article.

19 We, at this time, move the Court for a
20 mistrial on the grounds of this publicity which,
21 undoubtedly, was available and there is no way for
22 the Judge to say it did not come in contact with
23 these jurors, and for the Court's refusal to grant
24 our earlier motions for a continuance and for
25 sequestering.

1 I ask that this article be admitted as an
2 exhibit on behalf of the defendant.

3 THE COURT: All right, sir. I will file it
4 and make it a part of the record. I'm going to
5 deny your motion and make it a part of the record.

6 Is there anything else now before we call
7 the jury back?

8 MR. WOODWARD: Your Honor, one of the
9 witnesses whom we had summoned was Chief O'Brien
10 of the Franklin Police Department. I do not
11 believe that he is here as yet. I would ask that
12 the Sheriff determine his whereabouts in order
13 that we may be certain of his appearance.

14 DEPUTY BARNES: He said he wouldn't be here
15 until 12 o'clock today. He said he would be at
16 the motel if you needed him.

17 THE COURT: All right, sir.

18 Is there anything else, gentlemen?

19 Now, do you gentlemen want to make opening
20 statements to the jury?

21 MR. GRIZZARD: Very briefly, Your Honor.

22 THE COURT: Mr. Woodward? Mr. Savage?

23 (Mr. Woodward and Mr. Savage nodding heads
24 affirmatively.)

25 THE COURT: I will instruct the jury as to

1 what this hearing is all about at this time and
2 then you gentlemen can make your opening
3 statements.

4 All right, sir.

5 MR. SAVAGE: Just a minute, Sheriff.

6 MR. GRIZZARD: Your Honor says he is going
7 to instruct the jury as to the procedures in this
8 trial and also --

9 THE COURT: Yes, sir. I'm going to tell
10 them what the procedure will be just as I did in
11 the prior trial.

12 MR. WOODWARD: Your Honor, in the first
13 stage of this proceeding, you instructed the jury
14 initially that there was a presumption of innocence
15 which attached and accrued to the defendant
16 throughout the proceedings. Of course, there is
17 no presumption of innocence as such at this point.
18 We do believe, however, that there is a presumption
19 against the death penalty given the burden which
20 has to be met by the Commonwealth. Even if it
21 meets it, it is still not mandatory, of course.
22 We would ask that they be instructed that there is
23 a presumption against the application of the death
24 penalty in this particular case.

25 THE COURT: I'm not going into instructions

1 as such at this time. I'm simply going to tell
2 them what they will hear and what their duties are
3 at this point, the procedure involved. Now, I
4 will tell them that I will give them additional
5 written instructions at the conclusion of the
6 evidence in this hearing just as in the first
7 stage, but I'm not going into instructions on
8 presumptions or anything else at this point, in
9 this stage of the trial.

10 MR. WOODWARD: We except to the Court's
11 ruling.

12 (The jury was called to the courtroom, and
13 the following occurred in the presence of the jury:)

14 THE COURT: Ladies and gentlemen of the
15 jury, we have concluded the first phase of this
16 trial. The defendant, Willie Lloyd Turner, has
17 been found guilty of capital murder as charged.

18 Now, in the second stage of this trial, you
19 must determine at this point what punishment will
20 be imposed upon Willie Lloyd Turner, the defendant.
21 There are only two possible punishments that can
22 be imposed by you, either life imprisonment or
23 punishment by death.

24 You will hear from the Commonwealth and
25 from the defense; and, after you have heard the

1 evidence, the Court will give you further written
2 instructions with regard to this matter and at
3 that time you will retire to your jury room to
4 arrive at your verdict with reference to punishment
5 in this case.

6 At this time you will hear a brief opening
7 statement from the attorneys.

8 MR. GRIZZARD: If it please the Court,
9 Mr. Woodward, Mr. Savage, ladies and gentlemen of
10 the jury, again I caution you that what I say in
11 this opening statement is not evidence that you
12 will consider. What Mr. Woodward or Mr. Savage
13 say in this opening statement at this stage of the
14 trial is not evidence that you will consider. The
15 purpose of this statement again is to give you
16 some idea of what we expect the evidence to be
17 that you will hear from that witness stand and
18 that we will present to you for your consideration
19 today.

20 The Commonwealth will present testimony
21 from Mr. Lesley Wright. He will tell you that he
22 is the Custodian of Records at the Department of
23 Corrections with the Virginia Penal System and
24 that being familiar with the records, he will tell
25 you that in 1976 Willie Lloyd Turner was convicted

1 MR. GRIZZARD: Mr. Lesley Wright.

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7 L. G. WRIGHT, called as a witness on behalf of the
8 Commonwealth, having been first duly sworn, was examined and
9 testified as follows:

10
11 DIRECT EXAMINATION

12
13 BY MR. GRIZZARD:

14 Q Mr. Wright, state your name, your address
15 and your occupation, please.

16 A L. G. Wright, 3117 West Clay Street. I'm a
17 Supervisor with the Virginia Department of Corrections.

18 Q And what is your particular area of
19 supervision with the Virginia Department of Corrections?

20 A Classification and inmate records.

21 Q And as Supervisor of the records in
22 Richmond, are you familiar with the records of different
23 inmates at that institution?

24 A Yes, sir, I am.

25 Q In particular, have you had occasion to

1 examine and check the record of the defendant in this
2 particular case, Willie Lloyd Turner?

3 A That's correct, sir.

4 Q Do your records reflect, sir, when he was
5 first committed to the institution?

6 A Yes, sir, they do. We received Mr. Turner
7 on September 28, 1970.

8 Q And for what did you receive him, sir?

9 A We received him per an order of the
10 Southampton County Circuit Court, dated September 21, 1970,
11 on a charge of malicious waiming. Five years.

12 Q Do you have a copy of that conviction
13 record?

14 A Yes, sir, I do.

15 (Document shown to defense counsel for
16 examination.)

17 Q For purposes of identification, Mr. Wright,
18 is this a photostatic copy of the original order?

19 A That is the original order.

20 MR. GRIZZARD: At this time, Your Honor,
21 the Commonwealth would offer the conviction record
22 from the Clerk of Court of Southampton County as
23 Commonwealth's Exhibit 21.

24 (Marked in evidence by the Court as
25 Commonwealth's Exhibit Number 21.)

1 BY MR. GRIZZARD:

2 Q After the defendant was received into the
3 institution in September of 1970, sir, are you familiar with
4 his record as regards criminal violations from that date,
5 sir?

6 A Yes, sir.

7 Q What do your records reflect, sir?

8 A Our records show four additional sentences,
9 first one being a conviction in the Richmond City Circuit
10 Court, dated March 22, 1972. The crime was escape.

11 Q All right, sir. Do you have a copy of that
12 record with you?

13 A Yes, sir.

14 Q Is this a copy of that order?

15 A Yes, sir. That's an attested copy of that
16 order.

17 Q And what was the sentence in that case?

18 A The sentence in that case was one year and
19 two months suspended.

20 MR. GRIZZARD: Commonwealth would offer
21 these conviction and escape as Commonwealth's
22 Exhibit 23.

23 (Marked in evidence by the Court as
24 Commonwealth's Exhibit Number 23.)
25

1 BY MR. GRIZZARD:

2 Q Are there any more convictions?

3 A Yes, sir. We have a conviction from the
4 Powhatan County Circuit Court, dated February 12, 1973, for
5 unlawful wounding. Five years.

6 Q What was the date on that, sir?

7 A February 12, 1973. Unlawful wounding. The
8 sentence was five years with four years suspended.

9 Q Do you have a copy of that record?

10 A Yes, sir, I do.

11 (Document shown to defense counsel for
12 examination.)

13 Q I show you this, sir, and ask you if this
14 is a copy of the conviction from Powhatan?

15 A Yes, sir, it is.

16 Q Certified copy?

17 A Yes, sir.

18 MR. GRIZZARD: Commonwealth would offer
19 this as Commonwealth's Exhibit Number 24.

20 (Marked in evidence by the Court as
21 Commonwealth's Exhibit Number 24.)

22
23 BY MR. GRIZZARD:

24 Q Subsequent to the conviction for unlawful
25 wounding from Powhatan, sir, were there any other convictions?

1 A Yes, sir. We have a sentence from
2 Chesapeake City Circuit Court, dated September 26, 1973,
3 malicious wounding. Two years.

4 Q Do you have a copy of that record?

5 A Yes, sir, I do.

6 (Document shown to defense counsel for
7 examination.)

8 Q Is this a certified copy of the order from
9 City of Chesapeake, sir?

10 A Yes, sir, it is.

11 MR. GRIZZARD: Commonwealth would offer
12 this as Commonwealth's Exhibit Number 25.

13 (Marked in evidence by the Court as
14 Commonwealth's Exhibit Number 25.)

15
16 BY MR. GRIZZARD:

17 Q Subsequent to the conviction for maiming
18 in Chesapeake in 1973, was the conviction -- was the
19 defendant convicted of any other felonies while he was in
20 the penitentiary?

21 A Yes, sir. We have a sentence from Powhatan
22 County Circuit Court, dated March 21, 1974, murder, second
23 degree, 10 years.

24 Q Do you have a copy of that record, sir?

25 A Yes, sir, I do.

1 (Document shown to defense counsel for
2 examination.)

3 Q I show you this document and ask you if
4 it's a photostat of a certified copy of that conviction?

5 A Yes, sir.

6 MR. GRIZZARD: Commonwealth would offer
7 into evidence a certified copy of the order as
8 Commonwealth's Exhibit Number 26.

9 (Marked in evidence by the Court as
10 Commonwealth's Exhibit Number 26.)

11 MR. GRIZZARD: All right, sir. Answer
12 defense counsel.

13

14 CROSS-EXAMINATION

15

16 BY MR. WOODWARD:

17 Q Mr. Wright, the last four conviction orders
18 that you read were offenses which had occurred within the
19 penal system itself?

20 A Yes, sir.

21 MR. WOODWARD: That's all I have. Thank you.

22 THE COURT: Do you need this witness any
23 further?

24 MR. GRIZZARD: I don't believe so, Your
25 Honor. I don't think we do.

1 THE COURT: All right, sir. Would you wait
2 outside.

3 MR. GRIZZARD: Sergeant Poole.
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9 DICK E. POOLE, called as a witness on behalf of
10 the Commonwealth, having been first duly sworn, was examined
11 and testified as follows:
12

13 DIRECT EXAMINATION
14

15 BY MR. GRIZZARD:

16 Q Sergeant Poole, state your name, your
17 address and your occupation, please, sir.

18 A Dick E. Poole, 125 Brandon Lane, Franklin,
19 Virginia. Sergeant on the Franklin City Police force.

20 Q Sergeant Poole, directing your attention to
21 July 12, 1978, did you have occasion that date, sir, to go
22 to Smith Jewelers in Franklin?

23 A I did.

24 Q When you went in, sir, could you tell the
25 ladies and gentlemen of the jury what you first observed?

1 A I observed Officer Bain standing over a
2 colored male with his gun pointed at him.

3 Q What did you do at that time, sir?

4 A I handcuffed him with his hands behind his
5 back and turned him over. He made the statement to me, "I
6 guess I'm on the way back."

7 Q And who was this man that you handcuffed?

8 A Willie Lloyd Turner.

9 MR. GRIZZARD: All right, sir. Answer
10 Mr. Woodward.

11 MR. WOODWARD: I have no questions of
12 Sergeant Poole.

13 MR. GRIZZARD: Thank you. You can wait
14 outside.

15 Commonwealth rests.

16 MR. WOODWARD: Your Honor, we have a motion
17 we would like to make.

18 THE COURT: All right, sir. If you would
19 take the jury out, please.

20 (The jury was excluded from the courtroom,
21 and the following occurred out of the presence of
22 the jury:)

23 MR. WOODWARD: Your Honor, we would move to
24 strike the Commonwealth's evidence in the
25 presentation of this phase. One of two things has

1 to be shown under the statute for the Commonwealth
2 to go forward or for the jury even to go forward
3 and those two standards are commonly known as
4 dangerousness of the defendant to society in the
5 future -- some arbitrary standard of predictability
6 which I submit no man can determine, whether he
7 be on jury, judge, commonwealth attorney or
8 otherwise -- and the second standard is
9 atrociousness of the crime.

10 Mr. Grizzard has made his opening statement.
11 He told them, he said, "There are two factors."
12 He has not mentioned atrociousness. He has no
13 evidence of atrociousness. He has produced nothing
14 whatsoever to indicate atrociousness to the jury
15 at this particular phase.

16 Now, crimes as such do not speak for
17 themselves. The Court well knows in its experience
18 and in the experience of the judicial system
19 throughout the state that what occurred in this
20 particular case as compared with other cases does
21 not meet and cannot meet the standard of
22 atrociousness as set forth in the state code. That
23 standard indicates brutality. The mere shooting
24 of someone legally is not brutality.

25 In this case, we don't have Macra over here

1 in Northampton County. We don't have Stamper.
2 We don't have Waye. We don't have Coppola. We
3 don't have any of the cases. It doesn't even
4 remotely approach any of the cases. The only one
5 that's the exception to that rule is the murder
6 for hire and that was brutal on top of being murder
7 for hire.

8 I submit that the Commonwealth in this
9 phase has the burden of going forward with the
10 evidence. He has to prove beyond a reasonable
11 doubt and he has to make out a prima facie case.
12 He has not done so.

13 In this instance, we have a total of three
14 shots being fired. The second two of which,
15 according to Officer Bain, were fired in rapid
16 succession. There is no indication of brutality
17 as such legally again. There is no evidence of
18 torture. There is no evidence of depraved mind.
19 There are none of these things and for the Court
20 to say to the jury, "I'm going to let you speculate
21 about atrociousness," would be beyond, we believe,
22 the parameters as provided in that particular
23 statute.

24 Mr. Grizzard in the testimony which he has
25 presented has relegated himself to one factor and

1 that is dangerousness, and we ask that the entire
2 matter now be struck for failure to prove either
3 of those two elements.

4 I recognize the Supreme Court's case of
5 prior record being an element of predictability of
6 future behavior and the jurors understand that,
7 but atrociousness is something else again, and he
8 has to present evidence toward that particular
9 point. He has not done so. He hasn't even
10 mentioned it to them and I say to you he has now
11 precluded himself of going forward on that
12 particular aspect. He has one aspect and that's
13 dangerousness.

14 THE COURT: Mr. Grizzard.

15 MR. GRIZZARD: If it please the Court, the
16 evidence that has previously been presented in
17 this case covering through Exhibits 1 through 21,
18 I believe, show clearly that you have a defendant
19 who is a very cold, very calculated individual,
20 very methodical in his thinking, very methodical
21 in his actions. The evidence shows clearly from
22 the testimony of Officer Bain that the defendant
23 responded after he saw him. He said, "If I see any
24 more cops, I'm going to start killing," and then
25 as he moves out of the store, he starts killing

1 and the man he starts killing is W. Jack Smith.

2 Who is W. Jack Smith? Jack Smith is the
3 one man who cut the alarm off. He is the one man
4 who put him in the situation that he is not going
5 to be able to do what he had started out to do
6 and that's commit the robbery.

7 When you deal with the instructions of the
8 law as regards the possible findings, there are
9 two. One is after consideration of the criminal
10 record, there is a probability. It's not
11 possibility, but a probability that he would commit
12 criminal acts of violence in the future that would
13 constitute a continuous, serious threat to society.
14 I think it's clear from his record. You have got
15 naming that originally put him in the penitentiary
16 system. You have got an escape, putting him back
17 on the public at large. Then you have two further
18 naming cases in the penitentiary system. You have
19 a murder in the penitentiary system.

20 All of these things indicate an individual
21 prone to acts of violence. There is the
22 probability in this situation that anytime -- basing
23 it on the factual situation in this particular case,
24 what happened in Smith Jewelers, there is the
25 possibility and the probability that this man will

1 continue anytime he is threatened or in his
2 thoughts he feels threatened, he is going to
3 punish the person who threatens him. That
4 punishment is going to take the idea of violence.
5 That's the only response he has ever exhibited in
6 any of these cases. Violence.

7 The jury can on the evidence we have had
8 on the record alone come back with a capital murder
9 death sentence. Without going into any elaborate
10 detail of argument, I disagree with what
11 Mr. Woodward has said. I have got all the
12 evidence in the case, all the facts in the case.
13 I can argue to the jury that his conduct was
14 outrageous; that it was wantonly vile; that it
15 was horrible; that it was inhuman and that it
16 showed a depravity of mind and it was an aggravated
17 battery, more than was necessary to commit the act
18 of murder. I have got the evidence we have had in
19 the last two days of the trial to present to the
20 jury on that point. Without belaboring the point,
21 I think clearly the jury on either basis could
22 return a verdict of capital murder and the death
23 sentence which the Court would have to sustain.

24 MR. WOODWARD: Your Honor, before the jury
25 gets to consider whether it wishes to impose the

1 death penalty, which is a selective decision on
2 its part, the Commonwealth must prove beyond a
3 reasonable doubt one of two factors. The first of
4 which is dangerousness based upon his prior
5 conviction and the second of which -- and it's in
6 the alternative -- or that his conduct in
7 committing the offense for which he stands charged
8 was outrageously or wantonly vile, horrible or
9 inhuman in that it involved torture, depravity of
10 mind or an aggravated battery to the victim.

11 In nowise does this involve torture. In
12 nowise does it involve depravity of mind such as
13 was apparent in the case of Mason, the case of
14 Wayne, the case of Coppola, the case of Stamper.
15 The last thing is aggravated battery.

16 Now, the Supreme Court has said more than
17 is reasonably necessary to accomplish the act.
18 What Mr. Grizzard cannot escape at this point is
19 Dr. Faruk Presswalla testified yesterday which of
20 the shots was fatal and he told you either of the
21 last two shots could have been fatal. Officer Alan
22 Bain testified yesterday that they were fired in
23 rapid succession. The fact that one shoots someone
24 twice instead of once in rapid succession does not
25 constitute an aggravated battery as has been

1 defined by the Supreme Court.

2 Mr. Grizzard at this point, Your Honor, in
3 this criminal case has no evidence, we submit, for
4 you to say to the jury, "I'm going to let you
5 speculate later about whether it's vile, whether
6 it's outrageous." We say to you at this point that
7 particular element, the evidence must be struck.
8 Mr. Grizzard can go forward on the other elements
9 in accordance with the Supreme Court, the human
10 experience of jurors, et cetera.

11 THE COURT: Well, gentlemen, I think it's
12 purely a jury question at this point. I think the
13 jury can consider any evidence presented during
14 the entire trial and both stages of the trial in
15 arriving at their punishment. I'm going to
16 overrule your motion to strike and note your
17 exception in the record.

18 MR. WOODWARD: Excuse me one moment, please.

19 THE COURT: Yes, sir.

20 MR. WOODWARD: We're ready to proceed, Your
21 Honor, if the Commonwealth is.

22 THE COURT: All right, sir. Bring the jury
23 back, Sheriff.

24 (The jury was recalled to the courtroom, and
25 the following occurred in the presence of the jury:)

1 THE COURT: All right, Mr. Woodward.

2 MR. WOODWARD: Your Honor, we would call
3 Chief William O'Brien of the Franklin Police
4 Department.

5 THE COURT: All right. Chief O'Brien.
6 (The witness was called up and sworn.)
7
8

9 -----OOO-----
10
11

12 WILLIAM G. O'BRIEN, called as a witness on behalf
13 of the defendant, having been first duly sworn, was examined
14 and testified as follows:
15

16 DIRECT EXAMINATION
17

18 BY MR. WOODWARD:

19 Q State your name, please.

20 A I'm William G. O'Brien, Chief of Police of
21 the City of Franklin.

22 Q And how long have you been Chief of Police
23 there?

24 A Seven years, sir.

25 Q Prior to that time, were you engaged in

1 police work, generally?

2 A Yes, sir, I was.

3 Q Chief O'Brien, in the City of Franklin, do
4 you have with certain merchants what is commonly known as a
5 silent alarm system?

6 A Yes, sir.

7 Q And is that an alarm which rings in the
8 police station or elsewhere to indicate that there is some
9 help necessary?

10 A Yes, sir.

11 Q And does the Franklin Police Department have
12 a procedure concerning the response of its officers who may
13 be dispatched on such a call?

14 A Yes, sir.

15 Q And what is that approach?

16 A When the alarm goes off, the communication
17 center informs the officer on patrol that alarm's off at a
18 certain establishment and the officer then alerts the other
19 officers that's working and then they proceed to the
20 establishment where the alarm has gone off.

21 Q What is the procedure to be followed by the
22 first officer on the scene?

23 A Well, if -- it depends on how many officers
24 are working and available. Not all the time -- let's say if
25 there is three officers working, it may be that the other two

1 are tied up and cannot leave at that minute. Well, the
2 other officer then proceeds to the scene of the alarm and
3 then the other officers try to leave the work that they are
4 doing at that particular time and also respond, so it's
5 possible that one officer could respond a few seconds or a
6 few minutes before one or two other officers arrive.

7 Q Again, Chief O'Brien, what is the first
8 officer who arrives on the scene supposed to do?

9 A Well, there is no set policy since this is
10 a tactical situation. It depends on the location of the
11 establishment. It depends on the information that he has
12 in answering this call. You know, I can't say that this
13 officer will go in the front door or the back door. He's
14 more or less -- uses his own good judgment once he arrives
15 at the scene along with the shift sergeant that's working.

16 Q So really then, Chief O'Brien, there is no
17 stated procedure of how the first officer will handle the
18 situation?

19 A Well, there is no stated procedure in the
20 tactical movements that he will make, no, sir, but there is
21 a set procedure of -- he will answer the call. He will
22 arrive at the scene and then from there on in, it's his --
23 his judgment and what's presented there at the scene.

24 Q Chief O'Brien, an experienced police officer
25 who is notified to respond to a scene such as the one we have

1 described, is that officer supposed to walk in the front
2 door and say, "Your alarm is off again"?

3 MR. GRIZZARD: If it please the Court, I
4 think we need to lay a foundation for that type
5 of question. I object to it. It's going to
6 ultimate conclusions.

7 MR. WOODWARD: I don't think so, Your Honor.
8 We have laid the foundation. I'm asking him if
9 that's what an officer is supposed to do in the
10 exercise of his judgment.

11 THE COURT: All right. Go ahead.

12
13 BY MR. WOODWARD:

14 Q Chief O'Brien, is that what an experienced
15 officer is supposed to do when he's dispatched on such a
16 call, to walk in the front door and say, "Hey, your alarm is
17 off again"?

18 A Well, there again, in this particular
19 establishment, it's impossible to see in unless you get
20 right up to the window and do just like this. (Demonstrating)

21 Q There are windows through which one can
22 look, are there not?

23 A There is the front door. The front display
24 windows are elevated where it's hard to see in there. You
25 can't stand on the street and just occasionally look and see

1 who's inside and then with the officer receiving several
2 hundred calls a year and every one of them being false and
3 this officer has worked five to six years. Every call is
4 received has been a false call.

5 Q Well, Chief O'Brien, are you saying that
6 because other calls may have been false then you assume that
7 the next call is false also?

8 A No, sir. I didn't say that. I say it's a
9 human nature tendency that in working the five or six years
10 as Officer Bain has worked answering all calls which were
11 false, it's difficult to subdue this human nature thing --
12 here's another call that is false. However, in going -- in
13 approaching the establishment, as I said before, he could
14 not see in.

15 Q Chief, you could have tried to look through
16 the windows, couldn't you?

17 A Yes, sir. You could have attempted to look
18 through the windows.

19 Q And you could have looked through the door?

20 A You could have looked through the door, but
21 that doesn't mean he's going to see a perpetrator inside by
22 doing that.

23 Q It's a solid glass door, is it not?

24 A Yes, it is. If the perpetrator is concealed
25 then you would not see him.

1 Q Chief O'Brien, given what you have said,
2 wouldn't you prefer that your officers respond in a cautious
3 manner as opposed to an incautious manner?

4 A Now, am I understanding you to say that the
5 approach was not in a cautious manner or are you just citing
6 a cautious and incautious manner? Are you relating this to
7 the establishment?

8 Q Well, Chief O'Brien, would you not prefer
9 as Chief that your officer look through the windows; that
10 he look through the door and that if he were uncertain that
11 he not enter and make a statement at the front door, "Hey,
12 your alarm is off again"?

13 A Yes, sir, I would.

14 MR. WOODWARD: That's all I have. Thank
15 you.

16
17 CROSS-EXAMINATION

18
19 BY MR. CRIZZARD:

20 Q Chief O'Brien, these silent alarms -- you
21 said several hundred false calls over a period of a few years.
22 These silent alarms that are in these business establishments,
23 what sets them off?

24 A Well, they can be set off by various ways.
25 If the alarm is functioning properly, the alarm will go off

1 if someone enters the door or a window or if it's
2 intentionally set off by an operator, proprietor or employee
3 of the establishment and also they are set off by various
4 elements such as a storm, wind blowing, thunder, a truck
5 rambling over an uneven pavement, a train, someone rattling
6 the door. There is various elements can set these alarms
7 off.

8 Q And during -- let's take the summer of 1978,
9 say, from June 1st to July 12th. Were there many of these
10 false alarms in the City of Franklin?

11 A This was of July 12th?

12 Q Not just that date. Say from June 1st to
13 July 12th.

14 A Well, I would say it's approximately on the
15 average -- there is approximately 15 to 30 alarms a month
16 that are answered by our men and every one of them has been
17 false.

18 Q You have been a Chief there for seven years.
19 This seven-year period of time, with all the silent alarms
20 in the City of Franklin and all the silent alarms going on,
21 have the Franklin police ever answered a call where there
22 was an actual robbery in progress other than this one?

23 A No, sir.

24 MR. GRIZZARD: That's all.
25

REDIRECT EXAMINATION

BY MR. WOODWARD:

Q Chief O'Brien, all the alarms were false except one, were they not?

A That's correct, sir.

Q And I ask you if you had ever had an alarm from Smith Jewelers previously?

A I'm trying to recall this. I can't -- I'm unable to answer that question previously. You stated previous to this. I'm unable to answer that.

Q And since July 12, 1978, have you changed your procedure?

A We have modified it; yes, sir.

Q What is your procedure now?

MR. CRIZZARD: If it please the Court, I realize this is very liberal. I think Mr. Woodward is going a little far afield in his questioning and I object.

MR. WOODWARD: I don't think so, Your Honor. It's not a civil case of negligence.

THE COURT: I will allow the answer. Go ahead.

1 BY MR. WOODWARD:

2 Q And what is your procedure now?

3 A Mr. Woodward, are you asking me have we
4 changed our procedure per se to the alarm system? We are
5 constantly changing our procedures in all phases of police
6 operation and administration.

7 Q As to the alarms?

8 A With everything. There is always a better
9 way to do something. I have never found a perfect way,
10 ultimate perfection in my 30-some years as a police officer,
11 so we are continually trying to find a better response and
12 a better way to operate. In your question have we changed
13 the procedure of the alarm, we have modified it in a way that
14 when an alarm is answered now we have the dispatcher to call,
15 which we have had before. They call the operator of the
16 establishment and ask them would they send someone outside --
17 a representative of this business to come outside, walk away
18 from the door and meet the officer. Then the officer will
19 be somewhere in that proximity where he can observe the
20 proprietor or the employee of the store when he comes out
21 and if they advise that everything is all right then we feel
22 reasonably sure that this person is not under the influence
23 of a perpetrator in a store because he's gotten away from the
24 store windows and the door and he's free to run. He's free
25 from fear and the officer proceeds then to go to make sure

1 that it's all right, so the only difference that we have
2 modified is having someone of the store to come out, walk
3 away from the door or the window and advise the officer that
4 it's all right. Up until this point, the procedure was the
5 same. This is the additional change in the procedure.

6 Q So that's the modification since July 12,
7 1978?

8 A Yes, sir.

9 Q What if the phone at the store is busy?

10 A Well, in this case, the dispatcher attempted
11 to call the store and could not get any answer from the store.

12 Q In which case are you talking about?

13 A We're talking about the present case here
14 in court. When the alarm went off this time, the dispatcher
15 attempted to call the store on the telephone.

16 Q And the phone rang?

17 A I don't know whether the phone rang, but
18 there was no response. No one answered.

19 Q That's what your understanding is?

20 A Yes, sir. The officer will not go -- now.
21 the officer will not go in the store unless the operator
22 comes out, say, for approximately 15 minutes. If no one
23 comes out then we assume that there is someone in the store
24 and then we go in, like I say, in a tactical way.

25 Q In a professional manner?

1 A Yes, sir.

2 MR. WOODWARD: That's all I have, Chief.
3 Thank you.

4 MR. GRIZZARD: Thank you, Detective.

5 THE COURT: All right. Thank you, Chief.

6 THE WITNESS: Sir, would you like for me
7 to stay?

8 THE COURT: Do you need Chief O'Brien?

9 MR. WOODWARD: I don't believe so.

10 THE WITNESS: Thank you, sir.

11 MR. WOODWARD: Your Honor, we would call
12 Officer Alan Bain.

13

14

15 -----OO-----

16

17

18 ALAN BAIN, called as a witness on behalf of the
19 defendant, having been first duly sworn, was examined and
20 testified as follows:

21

22 DIRECT EXAMINATION

23

24 BY MR. WOODWARD:

25 Q You are Officer Alan Bain of the Franklin

1 Police Department?

2 A Yes, sir.

3 Q And, Officer Bain, how long did you indicate
4 yesterday you had been a police officer?

5 A I believe this April makes six years.

6 Q And when you responded to the call at Smith
7 Jewelers, I believe, on July 12, 1978, in the late morning,
8 were you dispatched to the scene?

9 A Yes, sir.

10 Q You understood, did you not, Officer Bain,
11 that a silent alarm had been sounded from that store?

12 A I was told an alarm had gone off.

13 Q When you arrived at the scene, you didn't
14 hear the front burglar alarm ringing, did you?

15 A No, sir.

16 Q I believe you have indicated to us yesterday
17 you parked your police cruiser beside the building?

18 A Uh-huh.

19 Q From that point, you walked into the store?

20 A Not directly walked in. I walked up to the
21 store. I couldn't see into the store when I got there.

22 Q What did you do then?

23 A Then I entered the store.

24 Q Did you look through the front glass?

25 A I couldn't see into the store because of the

1 display case in the windows blocked my vision in the store.
2 I was blinded by both that and the door. There was no way
3 to see into the store.

4 Q There was no way to see through the glass
5 door?

6 A No, sir. Today you can see all the way
7 into the store.

8 Q Officer Bain, wasn't the front door solid
9 glass?

10 A Yes, sir.

11 Q Did you look?

12 A When I was looking in, I don't know whether
13 it was lights in the store or what. All I could see was
14 darkness in there.

15 Q Then you stepped inside the store?

16 A Yes, sir.

17 Q What was the procedure that you understood
18 you were to follow in answering calls from silent alarms?

19 A Well, usually --

20 MR. GRIZZARD: May it please the Court, now,
21 the procedure has been explained by the Chief.
22 We're interested in really what was done on this
23 particular date. I think -- my objection is to the
24 continuing line of questioning.

25 THE COURT: I will allow it. Go ahead.

1 BY MR. WOODWARD:

2 Q Prior to that date, Officer Bain, what were
3 the procedures that you were to follow?

4 A When we got a call, we watched the back of
5 the store. One would be in the front and someone would go
6 into the place of business.

7 Q On this particular date, you were the only
8 officer there, were you not?

9 A Yes, sir.

10 Q And in entering the store, did you have any
11 procedure if you were unsure as to what was occurring inside?

12 A If I was unsure what was going on inside.
13 When I got there, I couldn't see anything going on. I thought
14 it was a false alarm like it had been in the past.

15 Q If you were unsure then, what were you to do?

16 A I couldn't answer that.

17 Q So there was no set procedure?

18 A As far as -- what I indicated before that.
19 If we had personnel to watch it, someone would go into the
20 store.

21 Q There was no set procedure?

22 A Just that.

23 Q Was it left to your own judgment as to what
24 you were to do and not to do?

25 A On that particular day, I was the only unit.

1 I had to use what judgment I had with me. As I indicated,
2 I couldn't see in the store so I had no way of knowing what
3 was going on until I got into the store.

4 Q Now, Officer Bain, yesterday in your
5 testimony you indicated that after the first shot was fired
6 that at that time the defendant indicated if he saw or heard
7 any more police officers he was going to start shooting.

8 A He was going to start killing.

9 Q And then I believe you testified that prior
10 to that statement the siren had already sounded?

11 A That's what I heard.

12 Q So in sequence of events, your testimony
13 was, I believe, this yesterday and I inquired of you twice
14 that the siren sounded, then the statement was made, and
15 then Mr. Smith was shot?

16 A He wasn't shot immediately after that.

17 Q At some time --

18 A I heard the siren. Whether anybody else
19 heard it, I don't know.

20 Q All I'm asking you, Officer Bain, as between
21 the sounding of the siren and the statement the defendant
22 made that the siren was first in time?

23 A At the time he shot Mr. Smith, there had
24 been some time between that and the time I heard the siren.

25 Q Yes, sir, I understand your answer to that.

1 Any inquiry is toward when the siren sounded.

2 A Uh-huh.

3 Q The defendant then made the statement if he
4 saw or heard any more police or police officers that he was
5 going to start killing?

6 A (Witness nodding head affirmatively.)

7 Q And that the statement that he made
8 followed the sounding of the siren?

9 A Yes, sir.

10 Q Is that correct?

11 A Yes, sir.

12 Q And that was your testimony yesterday?

13 A (Witness nodding head affirmatively.)

14 Q Now, Officer Bain, I ask if you recall your
15 testimony in a hearing in this matter on March 26, 1979,
16 concerning the same question?

17 A I would have to see the statement. I don't
18 know what you're talking about.

19 Q Do you recall my asking you some questions
20 at that time?

21 A Yes, sir.

22 Q And you answered, I assume, as best you
23 could then also?

24 A Yes, sir.

25 Q And, Officer Bain, if I might refresh your

1 memory as to that.

2 MR. WOODWARD: Page 23, Mr. Grizzard.

3
4 BY MR. WOODWARD:

5 Q (Continuing) This refers to the first shot.
6 The question was, 'Now, after it discharged, was anything
7 said by the person holding the weapon? Answer: At that time
8 he got ready to come out and he said if he heard or saw any
9 more police that he was going to start killing, and at that
10 time I heard a siren and I said to myself, oh, my God, and
11 from then I just tried to look for a way to get to him before
12 something was going to happen. Question: So after he made
13 this statement then the siren went off? Answer: Yes, sir."

14 A Uh-huh.

15 Q Is that the sequence of events, Officer
16 Bain?

17 A To my -- best of my knowledge, yes, sir.

18 Q Officer Bain, in fact, the sounding of that
19 siren alerted and disturbed you, did it not?

20 A I don't know if you would say disturb. It
21 just brought my attention to the fact that it happened.

22 MR. WOODWARD: Thank you very much, Officer
23 Bain.

CROSS-EXAMINATION

BY MR. GRIZZARD:

Q Officer Bain, from the time you walked in that store on July 12 until the time that you had the opportunity to subdue the defendant, what was his general action?

A As far as -- are you talking about as far as the way he acted in the store?

Q Right.

A He had full command over everyone in there.

MR. WOODWARD: I object to that.

THE COURT: Well, he can explain it.

BY MR. GRIZZARD:

Q What do you mean by "he had full command"?

A He knew exactly what he was doing.

MR. WOODWARD: I object to that also, Your Honor.

MR. GRIZZARD: Your Honor, there are only so many words in the English language. I think the officer is clearly capable of explaining to the jury and using his English as to his impression what the defendant was doing.

THE COURT: Well, he can recite again what

1 he observed the defendant do and I think the jury
2 would have to draw their own impression from that.

3 MR. WOODWARD: He testified at length
4 yesterday, Your Honor.

5 THE COURT: Yes, sir.

6
7 BY MR. GRIZZARD:

8 Q At any time, Officer Bain, when the robbery
9 was in progress, did the defendant appear nervous?

10 A No, sir.

11 Q At any time during the robbery did he appear
12 upset?

13 A No, sir.

14 MR. WOODWARD: Your Honor, I would object
15 to Officer Bain's impression of the scene.

16 THE COURT: Yes, sir.

17
18 BY MR. GRIZZARD:

19 Q Was he deliberate in his actions?

20 MR. WOODWARD: I object to that question.

21 THE COURT: Well, he can describe what he
22 did. It's up to the jury to decide.

23
24 BY MR. GRIZZARD:

25 Q Officer Bain, you have testified earlier

1 that one shot was in the wall?

2 A Yes, sir.

3 Q And then you have heard him say, "If I see
4 any more police, I'm going to start killing"?

5 A Uh-huh.

6 Q Then you heard the siren?

7 A (Witness nodding head affirmatively.)

8 Q Was there an immediate response on his part
9 or was there some lag between then and when he fired at
10 Mr. Smith the first time?

11 A When he fired at Mr. Smith the first time?

12 Q The first time, right.

13 A There was a time lapse between that.

14 Q Then after he had fired at Mr. Smith the
15 first time, did he immediately go -- lean over the counter
16 and start shooting at him?

17 A No, sir.

18 Q Was there a time lapse there?

19 A Yes, sir.

20 Q Any police at the door or coming in the
21 place of business?

22 A No, sir, because at that time I was facing
23 the door and I was engaged in talking to the subject. I was
24 trying to get his attention. I was offering to take him any
25 place he wanted to go. I offered to carry the stuff out of

1 the store and at the same time I was talking to him, I was
2 able to see Mary Ruffman and another subject making their
3 way out towards the front door.

4 Q So there was some time there?

5 A Yes, sir.

6 Q And then it was at this point, as I recall
7 your testimony, that he said, "I'm going to kill that nigger
8 for squealing on me"?

9 A All right. After they had gone out the
10 door, he had turned to me and faced me and made that
11 statement that he was going to kill that nigger squealer.

12 Q And that's when he leaned over and fired --

13 A Yes, sir.

14 Q -- twice?

15 A Yes, sir.

16 Q Were his hands staking at that time?

17 A No, sir.

18 Q Was he looking to see if anybody else was
19 coming in the store at that time?

20 A No, sir.

21 Q Was his full attention directed at Mr. Smith?

22 A As far as I can remember, yes, he was
23 looking right over the counter when he was firing the shots.
24 Whether he saw him I cannot tell you because I was on the
25 other side of the counter.

1 Q That is the one person that Willie Lloyd
2 Turner was interested in at that time?

3 MR. WOODWARD: I object to his leading the
4 testimony. I object to his going back over the
5 same testimony as has been previously presented.

6 THE COURT: That's argument, gentlemen.

7 MR. GRIZZARD: He's on cross-examination,
8 sir.

9 THE COURT: He testified what he was doing.

10 MR. GRIZZARD: All right. That's all I
11 have.

12 REDIRECT EXAMINATION

13
14 BY MR. WOODWARD:

15 Q Officer Bain, one final question. If you
16 had it to do over again --

17 MR. GRIZZARD: I object, Your Honor.

18 THE COURT: Sustain the objection.

19 MR. WOODWARD: I withdraw the question.

20 Thank you, Officer Bain.

21 Your Honor, may we have a brief recess,
22 please?

23 THE COURT: Yes, sir.

24 (The Court recessed at 11:15 a. m. The
25

1 ROBERT C. BRANSFIELD, called as a witness on behalf
2 of the defendant, having been first duly sworn, was examined
3 and testified as follows:

4
5 DIRECT EXAMINATION

6
7 BY MR. SAVAGE:

8 Q You are Dr. Robert C. Bransfield?

9 A Yes.

10 Q You're now a resident of the State of
11 New Jersey?

12 A Yes.

13 Q At one time you were a resident of Tidewater,
14 Virginia?

15 A That's correct.

16 Q And you practiced in the Tidewater area of
17 Virginia?

18 A Correct.

19 Q What is your profession, Doctor?

20 MR. GRIZZARD: Your Honor, I will stipulate
21 that he is a qualified psychiatrist licensed to
22 practice.

23 THE COURT: All right, sir.

24 MR. SAVAGE: Thank you, Mr. Grizzard.
25

1 BY MR. SAVAGE:

2 Q On the basis of that stipulation, Doctor,
3 would you tell the members of the jury whether or not you
4 have had any special training in criminal psychology.

5 MR. GRIZZARD: Your Honor, I have already
6 stipulated to his expert qualifications.

7 MR. SAVAGE: If he will also stipulate his
8 qualifications in criminal psychology then we will
9 move ahead.

10 MR. GRIZZARD: I stipulated he's an expert
11 in the field of psychiatry, Your Honor.

12 THE COURT: All right.

13
14 BY MR. SAVAGE:

15 Q Dr. Bransfield, you were called upon to
16 examine the defendant in this case, Willie Turner, correct?

17 A Yes.

18 Q When did you first see Willie Turner?

19 A On November 27, 1978.

20 Q How many times did you see the defendant in
21 all?

22 A Three times.

23 Q After either of those visits, did you
24 prescribe any medicine for the defendant?

25 A Yes. After the first visit, I prescribed

1 medication and I changed it after the second visit.

2 Q Do your notes reflect what that was?

3 A It was Mellaril and imipramine.

4 Q Did that have any effect on the defendant?

5 A Yes.

6 Q Was that effect discernible by you in the
7 subsequent visits?

8 A Yes. He showed an improvement after he was
9 placed on the medication. He showed an improvement in his
10 depressive symptoms and he showed an improvement in his
11 psychotic tendencies after being placed on it.

12 Q In your examination of the defendant, did
13 you deem it important to get background information from
14 the defendant?

15 A Yes.

16 Q Did you deem it important to develop a
17 history from the defendant?

18 A Yes.

19 Q Would you tell us, please, what history was
20 given to you.

21 A In the immediate time preceding the incident
22 or life history are you referring to?

23 Q The life history.

24 A He had a history of growing up in a family
25 where he had quite a significant amount of abuse. He could

1 not remember a significant portion of his life from age seven
2 to 14. He recalls that he was beaten by his father who is
3 an alcoholic and he felt it was on an average of once or
4 twice a day as well as by other family members. He states
5 that he was not really -- it was not explained to him why he
6 was being beaten. He states that he was from a very poor
7 family and he went a number of times to live with other
8 families. He said that the food was better and he was
9 treated better and there were four children altogether and
10 a lot of times they would prefer to live in these other
11 places.

12 He claims that he saw violence as a way of
13 handling things. That is what he grew up with. He claimed
14 that he had a scar on the left side of his face from one of
15 the beatings that he had had from his grandmother. A part
16 of this history medically was noncontributory. There weren't
17 any medical problems that seemed significant in regard to
18 psychiatric difficulties. There was no family history that
19 was significant in regard to any psychiatric problems.

20 MR. GRIZZARD: Your Honor, he keeps speaking
21 of psychiatric problems. I think he needs to
22 establish that for us. It has not been established.

23 THE COURT: All right.

24 MR. SAVAGE: Judge, we're trying to lay a
25 foundation by getting the history.

1 THE COURT: All right. Let's move along.

2 A (Continuing) That was he also describes
3 having auditory hallucinations which he claims began at the
4 age of seven. He said these would take the form of him
5 hearing someone say something and turning around and no one
6 would be there. They would be more than likely to occur at
7 times of stress.

8 He also described a number of other
9 symptoms that seemed like had been going on over quite a
10 period of time. They were auditory illusions which he would
11 feel. He would see things in the corner of his eye and he
12 would look and nothing would be there.

13 He also described quite a long history of
14 having nightmares which would occur while he was falling
15 asleep. They would seem to happen when he lied down but
16 before actually falling asleep. He said that while he was
17 having these, he would feel that he was unable to move. The
18 nightmares would consist of animals or monster-like images.
19 He says that he would have frequent feelings of being in a
20 place and feeling he had been there before. This can be a
21 fairly normal thing, but when it's to an excessive amount,
22 it can be a pathological symptom.

23 He also described frequent insomnia --
24 restlessness at night. He described feelings of excessive
25 self-importance -- grandiosity is the word we use -- of

1 feeling -- seeing himself as having more powers, more
2 importance than one would think would be realistic.

3 Those were the main things in the past
4 history that we covered.

5
6 BY MR. SAVAGE:

7 Q Did you have an initial impression after
8 the first visit?

9 A After the first visit, in view of the
10 history that he had given as well as other things such as
11 feelings of suspiciousness, feelings that people were out to
12 get him, feelings that people were following him and a
13 suspiciousness that he had in relating to me when I spoke to
14 him about medication, I suspected that he had paranoid
15 tendencies and I questioned the possibility of whether there
16 should be a schizophrenic process present. My tentative
17 diagnosis after the first evaluation was latent schizophrenia
18 with paranoid features.

19 What that means is a person who can go in
20 and out of episodes where they have trouble telling the
21 difference with what's real and what's imagined and I ordered
22 psychological testing to further evaluate that and I wanted
23 to see him again for another visit to also further evaluate
24 him.

25 Q You felt that further examinations on your

1 part were necessary before you reached a final diagnosis?

2 A Yes.

3 Q In fact, you did see him two other times?

4 A Yes.

5 Q During the period that you had Willie
6 Turner under treatment, did you have available to you the
7 statements of the eyewitnesses to this event?

8 A Yes.

9 Q And had you read and studied those
10 statements?

11 A Yes.

12 Q Following your examination of Willie Turner
13 on these three instances and the history that you received
14 and the data that you studied, did you form an opinion or a
15 diagnosis as to his condition and, if so, what was that?

16 A My final impression was antisocial
17 personality with paranoid tendencies. He showed a combination
18 of both paranoid tendencies and antisocial tendencies and I
19 felt that the paranoid tendencies tended to come out more in
20 times of stress and at other times they did not appear to be
21 present, such as the other two times I examined him they were
22 less significant or really almost nonexistent as compared to
23 the first time.

24 Now, that was different from my initial
25 impression. My initial impression, I was focusing more at the

1 psychotic potential as being more of a major problem. After
2 getting more history, seeing him a couple more times, I
3 thought it was more something that came out at times of
4 stress rather than his major difficulty.

5 Q This condition that you have described, is
6 that a normal condition?

7 A No.

8 Q This is not a normal person?

9 A No.

10 Q Did you find that the medicine that you had
11 prescribed and that he was taking helped him?

12 A Yes, it did.

13 Q Would the continuous taking of this
14 medication help him?

15 A Yes.

16 Q Doctor, during the course of your
17 examination, did you have occasion to develop a history or
18 information of events prior to and leading up to the incident
19 that we're here today about?

20 A Yes.

21 Q Would you tell us what of those occurrences
22 you considered significant.

23 A The occurrences leading up to the incident
24 of July 12?

25 Q Yes, sir.

1 A Okay. He had been out of the penitentiary
2 as I recall about six months and he had some difficulty
3 adjusting, especially in about the three weeks before July
4 12. It seemed he had an increase of problems at that time.
5 He had lost his job. He had difficulties with the neighbors.
6 He felt that he had been unjustly accused by the neighbors
7 regarding an incident involving a child in the family. He
8 felt that there was a problem between the girlfriend and
9 himself. He reacted to that by disappearing for a couple
10 days. That was about a week before the incident on July 12.

11 He had in one of the previous interviews
12 mentioned about evil spells that he sometimes had where he
13 would find himself more irritable and tending to be more
14 readily provoked than he normally would be and he appeared
15 to be having a greater amount of that problem in these few
16 weeks before July 12.

17 Q How would you describe his mental state in
18 these few weeks before July 12?

19 A He was -- he appeared to be showing an
20 increased amount of paranoid symptoms at that time and he
21 seemed like he was becoming more depressed and more rigid
22 than he normally would have been and he seemed to be using
23 more denial, blocking things out of his mind than he
24 normally would have.

25 Q Dr. Bransfield, based on your admitted

1 expert qualifications and expertise, your examination of
2 Willie Turner and the history that you took from him and the
3 visits that you had with him, do you have an opinion with
4 reasonable medical certainty as to whether when this murder
5 was committed the defendant, Willie Lloyd Turner, was under
6 the influence of extreme mental or emotional disturbance?

7 MR. GRIZZARD: May it please the Court, I
8 object to the question. It's improper. It's
9 calling for a conclusion from the jury. That's
10 the precise point that the Smith v. Jenkins case
11 out of Texas was overruled on.

12 MR. SAVAGE: We would like to take it up.

13 THE COURT: Would you take the jury out,
14 Sheriff.

15 (The jury was excluded from the courtroom,
16 and the following occurred out of the presence of
17 the jury:)

18 THE COURT: All right, sir.

19 MR. SAVAGE: Judge, the ultimate
20 determination to be made by the jury will be set
21 forth in the Court's instructions on that and
22 Mr. Grizzard has already told the jury what the two
23 things are that they can consider or the two findings
24 they can make to return the ultimate penalty. The
25 Code section addresses itself to this. 19.2-264.4,

1 THE COURT: All right, sir.

2
3 BY MR. SAUCE: ~~THE COURT: All right, sir.~~

4 Q Dr. Bransfield, the question that we were
5 asking was based on your examination of Willie Turner, your
6 professional background, the history that you took, the
7 statements of the witnesses that you read and the other
8 examinations that you made, do you have an opinion with
9 reasonable medical certainty as to whether this crime was
10 committed while Willie Turner was under the influence of
11 extreme mental or emotional disturbance?

12 A Yes, I do have an opinion.

13 Q And what is that opinion, sir?

14 A That I feel he was under the influence of
15 mental disturbance while he was committing the crime.

16 MR. SAUCE: No further questions.

17 THE COURT: All right, Mr. Grizzard.

18
19 CROSS-EXAMINATION

20
21 BY MR. GRIZZARD:

22 Q Dr. Bransfield, in your initial interview
23 with the defendant, Willis Lloyd Turner, on November 27,
24 1979, he expressed to you at that time that he was worried
25 and upset about the trial, did he not?

1 A I believe he did. I'm looking to see where
2 I put it down.

3 Q And this problem that he had being worried
4 about the trial and the legal issues followed him throughout
5 the entire state of your interview that day and supplemental
6 interviews?

7 A Yes, he was worried about the trial in all
8 interviews.

9 Q Worried about what might happen to him?

10 A Yes.

11 Q In all of your interviews, Dr. Bransfield,
12 not one time did he mention that he was sorry or had any
13 remorse whatsoever for killing Jack Smith, Jr., did he?

14 A He did not.

15 Q Now, in your initial interview also on
16 November 27, 1978, the defendant had a complete lack of
17 memory, according to what he told you, as to the events of
18 July 12, 1978?

19 A No, not a complete lack.

20 Q Well, did he remember anything about the
21 jewelry store incident at all?

22 A He remembered going in and he remembered a
23 man and a woman running out and he remembered being on the
24 floor with an officer on top of him and that's the extent of
25 his memory.

1 Q Well, these people that ran out,
2 Dr. Bransfield, ran out just as he was walking in the door,
3 didn't they?

4 A That's not my recollection.

5 Q Would you turn to the first page of your
6 report on November 27th.

7 A I have it.

8 Q Second full paragraph, fifth line -- sixth
9 line.

10 A His memory was that he walked in and someone
11 ran out. That, of course, conflicted with what the witnesses
12 said, but that was -- what he told me was what I wrote there.

13 Q Right. And he had no remembrance of any
14 of the other events that actually took place in the jewelry
15 store?

16 A No.

17 Q Or didn't give you any of the events?

18 A (Witness shaking head negatively.)

19 Q Did you find him at that time pretty
20 familiar with the English language, able to express his ideas?

21 A Yes.

22 Q And the ability to converse was very good at
23 that time for Willie Turner?

24 A It was better on the next two visits than it
25 was on November 27th.

1 Q You didn't have any difficulty the first
2 interview, did you?

3 A He was able to communicate. Not as clearly.
4 I could understand him.

5 Q He related some of his past history to you
6 on that date, did he not, sir?

7 A Yes, he did.

8 Q Looking on Page 4 of your report, sir, as
9 regards a felonious assault charge. What did he give as an
10 explanation for that, sir?

11 A The charge with the friend at the top of the
12 page? Is that what you're referring to? He stated that he
13 assaulted a friend and he claimed that the friend had pistol-
14 whipped him and had threatened to pistol-whip him again and
15 he responded to this by shooting the friend and he was in the
16 penitentiary for this. This was the charge that put him in
17 the penitentiary the time prior to his being released in
18 January, '79.

19 Q In the penitentiary itself where he told you
20 he had the felonious assault charge and the murder charge in
21 the penitentiary, what explanation did he give, sir? That's
22 the question.

23 A He explained that he was being attacked;
24 that there was a homosexual assault and he claimed that he
25 was defending himself.

1 Q Let's take the first -- let's take the
2 felonious assault charges. What did he say about them, sir?

3 A The ones --

4 Q In the penitentiary.

5 A Okay. I only went into one. We only
6 discussed one with him. The other two I did not really go
7 into it.

8 Q Look on Page 4 of your report, eight lines
9 down from the top. Now, I ask you, Dr. Bransfield, did you
10 discuss the felonious assault charges and murder with him?

11 A Just in one brief sentence which he said --
12 he responded to by saying he had difficulty adjusting to
13 prison and his only defense was violence.

14 Q His only defense was violence?

15 A Yes. He stated that that was all he had
16 known prior to the time.

17 Q Anytime he has trouble adjusting, his
18 defense is violence. That's what he told you?

19 A That's what he described, yes, at that point.

20 Q And then as regards the murder charge, he
21 considered this self-defense, you indicated earlier?

22 A Yes.

23 Q Did he go into the details of that or tell
24 you that he didn't remember what happened?

25 A He stated that he did not remember. He was

1 not able to describe to me him stabbing the man involved.

2 Q He didn't remember the details?

3 A No. He said that he remembered that better
4 than the incident at the jewelry store, but he was not really
5 able to give me details.

6 Q But the fact is in that murder he told you,
7 "I don't remember the details. I just remember stabbing the
8 man." Is that right or wrong?

9 A That's wrong.

10 Q That's wrong?

11 A Yes.

12 Q Well, what does your report say?

13 A That he does not remember stabbing the man.

14 Q Excuse me. I stand corrected. I left the
15 word "not" out.

16 In other words, in that fight he didn't
17 remember the details of that fight and didn't remember killing
18 that man either?

19 A Correct.

20 Q But yet he told you that was the result of a
21 homosexual assault?

22 A Yes, sir.

23 Q Does that indicate to you, Dr. Bransfield,
24 somebody who can pick out and state what they think is
25 beneficial to them and withhold what they think is damaging

1 to them?

2 A No.

3 Q What does it show then?

4 A It shows that he has blocked out the memory
5 of things that have been upsetting to him. When a person
6 blocks out something from memory, it could be either of two
7 ways that that can be done. One is a voluntary trying to
8 bury that memory which is something where it takes more of a
9 conscious effort to try not think about it. The other is
10 what we call denial where a person has buried it so deeply
11 that really it's very -- they cannot bring it to their mind
12 except with very extensive psychotherapy. They really feel
13 as if -- they can -- in the latter incident, a person can
14 feel as if it did not really happen. It can be blocked out,
15 similar to what may have happened in -- in his experience
16 between age seven and fourteen.

17 Q All right. Let's take one other explanation
18 in one of your later interviews with the defendant. He told
19 you again he didn't remember the details. You then said --
20 quoted to him a statement that he is supposed to have made,
21 "I guess I'm on the way back."

22 A Yes.

23 Q Did he have the knowledge to deny making
24 that statement?

25 A He stated that he did not remember making

1 that statement.

2 Q Excuse me just one minute, Doctor. Your
3 answer was what, now?

4 A My answer was he stated he did not remember
5 making that statement.

6 Q He didn't remember making the statement?

7 A That he claimed he did not make the
8 statement.

9 Q Well, that's a denial then, isn't it,
10 Dr. Bransfield?

11 A Yes.

12 Q Similar to -- he's got a memory for events
13 he wants to record and he's got the ability to realize when
14 he's made an incriminating statement and deny it?

15 A Not exactly. It's not as selective. A
16 statement -- he said he had trouble beaming in his thoughts
17 and trouble with his memory. When a person uses denial,
18 there can be a tendency to bury things that you want to
19 remember, just not -- you just can't block out upsetting
20 things. You often block out useful memories as well, which
21 is different from suppression where it's more selective.

22 Q The point, Dr. Bransfield, I'm trying to get
23 straight in my mind is that this man, Willie Lloyd Turner,
24 in relating events to you has the ability to put forth what
25 he wants to put forth and keeps back what he wants to keep to

1 himself.

2 A Not always.

3 Q Well, you give me an example of one time in
4 all of your interviews when he did not.

5 A He did not hold back or offer --

6 Q Where he did not say what was convenient
7 for him and look good for him and withhold information that
8 would be damaging to him.

9 A He told me a number of things that would be
10 damaging to him.

11 Q They are not in your report, are they?

12 A Yes.

13 Q Where are they? I want one example.

14 A When he mentioned about -- when he mentioned
15 about the incident with the baby -- with the child. It was
16 damaging for him, at least in my opinion, for him to go into
17 that with me.

18 Q Damaging to him when he told you, as I
19 understand it -- as I recall your report as to what he said,
20 "I was accused of this, but I didn't do it"?

21 A Uh-huh.

22 Q What is damaging about that statement?

23 A It seemed damaging for him to bring that up
24 to me since he was being tried on the murder charge for him
25 to bring up testimony to say that he's been accused of

1 assaulting a five-year-old, I would think would be very
2 damaging to him, and I would think that if he were really
3 just telling me what was useful for his case in holding back
4 what might be damaging to him, he would not have told me
5 that.

6 Q The point, Dr. Bransfield, is in his
7 explanation of that event to you, he was unjustly accused.
8 He was falsely accused and he did not do that thing.

9 A That's what he said.

10 Q So what he is explaining to you is that,
11 "I am totally free of any guilt as regards that"?

12 A That's what his words were, right.

13 Q And that puts him in a good light as regards
14 to that incident?

15 A I would think he would have been in a better
16 light by not saying it.

17 Q I understand it, Doctor. Can you answer my
18 question? Does that put him in a good light? Yes or no?

19 A Yes.

20 Q I want one example in all of your interviews
21 in which he did not put himself in good light to you.

22 A Well, he told me that he had a tendency to
23 be -- I'm looking for what the word was -- evil; that he had
24 spells and when he had evil spells, he could be provoked more
25 easily.

1 Q But, Dr. Bransfield, these evil spells and
2 being easily provoked, doesn't that work to his benefit in a
3 murder case?

4 A I'm not sure.

5 Q Doesn't it give him some excuse of: "I
6 didn't know what I was doing. I can't remember it. I was
7 under an evil spell; therefore, you have to forgive me for
8 what I have done"?

9 A He didn't seem -- it's possible.

10 Q Thank you. In your very first interview
11 with him, did the defendant make the statement, "I'm really
12 paranoid. I don't trust anybody"?

13 A Yes, he did.

14 Q Does that indicate an awareness on the part
15 of the defendant that, "You know, if I can act a little bit
16 funny, I might be able to get myself out of this thing"?

17 A Not necessarily, but it raised some question
18 in my mind that maybe he knew what paranoia was.

19 Q Maybe he knew what it was. Maybe he had been
20 down the road and he knows how to go to a psychiatrist and
21 talk to a psychiatrist to serve his benefit. That's an
22 indication from that statement, isn't it?

23 A It was a question that was in my mind when
24 he said that.

25 Q Yes, sir. And he was so convincing,

1 Dr. Bransfield, in his initial interview that you diagnosed
2 him as schizophrenic. Latent type with paranoid tendencies.
3 Right or wrong?

4 A That was my impression at that time.

5 Q You didn't list it on your report as a
6 tentative diagnosis, did you?

7 A I stated that I wanted to evaluate him
8 further. That was my working diagnosis at the time.

9 Q I understand that, but that was your
10 diagnosis, which is not tentative, is it?

11 A I did not say tentative there, but I
12 continued the workup.

13 Q I understand you continued to examine him.
14 You had other tests run, et cetera. You testified to these
15 ladies and gentlemen of the jury today what your tentative
16 diagnosis was, but your report says diagnosis.

17 A Yes.

18 Q Now, you have testified he showed
19 improvement with his medication. How do you know that he
20 took his medication?

21 A I can't be sure.

22 Q Thank you. Did you, Dr. Bransfield, in
23 your examinations of the defendant find him to have the
24 ability or attempt to manipulate people?

25 A Yes.

1 Q And when you try to manipulate people, isn't
2 that where you try to say something to make them respond in
3 a certain way?

4 A Yes.

5 Q And do what you want to do?

6 A Yes.

7 Q And say what you want said?

8 A That's manipulation, right.

9 Q And you think Willie Lloyd Turner has that
10 ability?

11 A I think he has the ability. I think he did
12 try with me in the sessions. More so in the last session
13 than the second session.

14 Q Now, Dr. Bransfield, you have related in
15 your testimony the defendant for several weeks prior to
16 July 12, 1978 -- I believe you said he had lost his job. He
17 had had some problems with his girlfriend. He was unjustly
18 accused about a child in the family and all of this were
19 events that led up, you know, prior to July 12.

20 A Uh-huh.

21 Q I ask you, sir, if you found any signs of
22 him being under any particular stress on July 12, 1978?

23 A The session on November 27th and we went
24 into it again in lesser detail in another session. It was
25 the 14th of December. He mentioned sort -- let me read his

1 words. He claimed that he walked into the store. Someone
2 ran out -- a male -- and then another person ran out -- a
3 female -- and then he heard a voice that said, "Don't move,"
4 so he laid down with his face against the floor and someone
5 hit him from behind. The next thing he recalled was someone
6 pulling him off the floor while he was handcuffed. He
7 stated that everything happened so quick it was like walking
8 into a nightmare.

9 I would like to focus on that aspect of
10 "walking into a nightmare." He claimed that, "It all mounted
11 up to a dream I had a few weeks before. The dream was
12 similar, but I got shot up in the dream." He stated that
13 while he was down on the floor the dream came back to him.
14 The next thing he recalled was someone pulling him off the
15 floor. At this point, we spoke about some of his symptoms
16 and he stated that he had had dreams like this before, and
17 the dreams often tell him about something that is about to
18 happen to him.

19 Q Yes, sir. I understand that, but my
20 question, I think, is there anything, Dr. Bransfield, in his
21 past history or anything else to indicate or from what he
22 told you that he was under any stress on the date of the
23 robbery, July 12, 1978, and the murder?

24 A Okay. On that date, he walked in, which --
25 he walked in without -- it seemed a plan of escape; that he

1 went into a store in the middle of town in the middle of the
2 day on foot and it sounds like he was paying attention to
3 some details, but there were others he completely overlooked,
4 which it would seem to me in his healthier state of mind,
5 those are details that he would have paid more attention to.
6 He says that when he's not doing well, he has trouble hearing
7 his thoughts in and trouble concentrating. He did not plan
8 from what I could gather how he was going to get out of there.
9 When he knew the police were coming, he did not alter his
10 behavior accordingly, and after he had shot Mr. Smith, it
11 seemed that he walked -- he stood there and it looked like
12 he really didn't resist being captured with his fullest
13 possible -- if he were really in full control.

14 Q You mean he didn't need to shoot anybody
15 else to prevent being captured?

16 A No. It seemed that he put himself in a
17 position where someone could come up and grab him which, from
18 what I could read from the eyewitness reports, it sounded
19 like he might have almost allowed that to happen.

20 Q Let me give you another interpretation,
21 Dr. Bransfield. Could it be --

22 MR. SAVAGE: Your Honor, there is no
23 interpretation. He asked the question and we object
24 to the form of the question which gives the
25 interpretation.

1 MR. GRIZZARD: Well, Judge, Dr. Bransfield
2 has concluded that the plan allowed him to be
3 captured like he wanted to. I'm going to ask him
4 if this is a possible alternative to his
5 conclusion from reading the statements of the
6 witnesses.

7 THE COURT: All right, sir.

8
9 BY MR. GRIZZARD:

10 Q Now, Mr. Smith is over on the counter this
11 way and he has finished shooting him for the second time
12 through the chest and to get to Mr. Smith from around the
13 counter, he moves down this way so he can turn and come back
14 to the counter. Is that a possible explanation, so he can
15 get to Mr. Smith again?

16 A That's a possible.

17 Q Thank you. Dr. Bransfield, I have asked
18 you twice. I'm going to ask you the third time. Is there
19 any evidence of stress on July 12, 1978, on the part of Willie
20 Lloyd Turner?

21 MR. SAVAGE: If Your Honor please, that is
22 what his answer was.

23 MR. GRIZZARD: Judge, he hasn't answered the
24 question yet.

25 MR. SAVAGE: He described the factors

1 indicating stress on that day. That is what his
2 answer represented. He answered it twice and it's
3 been answered.

4 MR. GRIZZARD: Let me change it again. I
5 will use a different word.

6
7 BY MR. GRIZZARD:

8 Q Was there ever any evidence of psychotic
9 problems of Willie Lloyd Turner on July 12, 1978?

10 A Yes.

11 Q What were they?

12 A The denial.

13 Q The denial? On July 12, 1978. The denial?
14 Do you understand my question?

15 A Yes.

16 Q My question is on the date of the events,
17 is there any evidence of psychotic behavior on that day?

18 A Okay. With the way he described this dream
19 about being shot up in the dream, it was my opinion that
20 there was some things motivating his behavior that were not
21 -- that were unconscious motivations and I think that those
22 imparted a self-destructive component.

23 Q All right. Would you look to your report
24 dated January 19, 1979, Page 3, the last full paragraph on
25 the page.

- 1 A January?
- 2 Q January 19, 1979.
- 3 A It's a letter?
- 4 Q Yes, sir.
- 5 A Okay.
- 6 Q This is your letter, is it not, sir?
- 7 A Right.
- 8 Q That's your signature?
- 9 A Yes, sir.
- 10 Q This is the report you prepared?
- 11 A Yes, sir.
- 12 Q Did you write, "On July 12, 1978, there is
- 13 no history to support that any unusual events happened that
- 14 day to adversely affect Mr. Turner"?
- 15 A Yes.
- 16 Q Looking further in the same paragraph, it
- 17 does appear in the weeks prior he lost his job. Had some
- 18 tendencies toward regression. He was aggressive toward his
- 19 girlfriend.
- 20 MR. SAVAGE: Your Honor please, if he's
- 21 asking the question then it should be phrased as
- 22 a question rather than reading Dr. Bransfield's
- 23 report.
- 24 MR. GRIZZARD: I'm going to read the preview
- 25 of the sentence. I want to ask him if he wrote

1 this, Judge.

2 MR. SAVAGE: I don't think he's denied that
3 he wrote it. He answered yes before.

4 MR. GRIZZARD: That's one sentence.

5 Judge, I think I'm entitled to lay the
6 foundation. I'm reading his report. Then I'm
7 going to ask him a question as to whether or not
8 he wrote something in this report.

9 THE COURT: I don't think you have got to
10 read the whole paragraph in order to ask the
11 question. Can't you phrase the question and let
12 him answer it?

13 MR. GRIZZARD: All right.

14

15 BY MR. GRIZZARD:

16 Q Now, you have testified in your report --
17 you have indicated that he had lost his job; he had troubles
18 with his girlfriend prior to that. Police had been called in
19 because of his violent behavior, et cetera, and so forth and
20 might have laid the groundwork for some regression.

21 A Yes, sir.

22 Q Did you then state after having those
23 conclusions or those facts on January 19, 1979, 'There is no
24 evidence to support the presence of any psychotic behavior
25 at this time'?

1 A Speaking of July 12, 1978? Yes, I did.

2 Q Would you explain to the ladies and
3 gentlemen of the jury the difference between your statement
4 today on that witness stand that he had a lot of problems on
5 the date of July 12th and this report of January 19, 1979.

6 A He had psychotic symptoms which were present
7 for at least three weeks before July 12th. I could list what
8 those symptoms are. They seemed to influence his behavior.
9 I could not prove -- there was no evidence that I could see
10 to show that his shooting Mr. Smith was fully and completely
11 a psychotic act; however, I do feel that he was affected by
12 psychotic problems which impaired his ability to perform in
13 a rational manner and the symptoms that he had, I could list.

14 Q We have had them listed three times, I
15 believe. The loss of the job --

16 A No. Those were the situations that put him
17 under stress.

18 Q All right. Well, we're going to get to them
19 in a few minutes, Dr. Bransfield. Going to Page 4. You read
20 the statements of all the witnesses, people who actually
21 observed him in the store, people who actually saw what took
22 place -- witnessed what took place. Did you not state,
23 Dr. Bransfield, "I did not read statements from any of the
24 witnesses which supported presence of an acute psychotic
25 episode nor did Mr. Turner give me any history which would

1 have supported the presence of an acute psychotic episode"?

2 A By that I meant acute episode at that
3 moment, yes.

4 Q Further, did you say in the same letter,
5 "I do not feel he was psychotic"?

6 A I felt he had some psychotic symptoms, but
7 I don't feel he had enough to make him fully psychotic, to
8 make him totally across the border of what would compare
9 nonpsychotic versus psychotic. He did have some psychotic
10 symptoms.

11 Q Had some of them?

12 A Yes.

13 Q A lot of us have some paranoid tendencies,
14 don't we?

15 A No.

16 Q Didn't you say there are paranoid tendencies
17 that may have had some impact on his behavior, but you don't
18 feel they were of any great degree?

19 A Where was that?

20 Q In the same paragraph.

21 A What I said was that, "The paranoid tendencies
22 may have had some impact on his behavior, but I do not feel" --

23 Q All right, Dr. Bransfield. I think you
24 would be getting into improper --

25 Turner liked to control the situation and

1 people, didn't he?

2 A Yes.

3 Q And his reaction throughout his life has
4 been when he can't control something or when something
5 doesn't go to suit him to react with violence?

6 A At times, yes.

7 Q That's his whole history?

8 A At times, when he has been in trouble, yes.

9 Q Even in his history as a child, the periods
10 of time that he can remember, didn't he state to you, "I
11 react with violence"?

12 A Yes, he did.

13 Q "That is my mechanism"?

14 A Yes.

15 Q "That is what I consider right"?

16 A I don't know if he used that exact word.

17 MR. SAVAGE: The final sentence was supplied
18 by Mr. Grizzard, not by the defendant.

19
20 BY MR. GRIZZARD:

21 Q Did not the defendant tell you,
22 Dr. Bransfield, "I thought violence was right and didn't know
23 anything about reason or other ways of handling problems"?

24 MR. SAVAGE: Which report are you on?

25 MR. GRIZZARD: November 27, 1973, Page 5.

1 A Yes. That was the words he used.

2
3 BY MR. GRIEZARD:

4 Q And throughout his history in all events
5 that he has given to you, when things get out of his control,
6 when he no longer can handle exactly what's going on, he
7 resorts to violence?

8 A He's done that on many occasions. I don't
9 know if that's the only thing he's done, but he has done
10 that on many occasions.

11 Q That's his normal reaction?

12 A He has shown a tendency to be depressed at
13 times, too, as well as violent.

14 Q Well, Dr. Bransfield, with this history,
15 and he's been doing it for some time, you take a situation
16 where he involves himself in a robbery and then events get
17 a little bit out of his control, wouldn't his natural
18 reaction be to be violent?

19 A Yes.

20 Q He was, as I understand your statement of
21 January 19th, it says, "obviously angry" when the police
22 came in?

23 A Where did I say that?

24 Q January 19th, third page, fourth sentence
25 from the bottom.

1 A Yes.

2 Q He was angry because his robbery attempt
3 had been interrupted; is that not right?

4 A Yes.

5 Q And who had interrupted his or caused the
6 interruption of his robbery attempt?

7 A The policeman.

8 Q Well, who set off the alarm?

9 A Mr. Smith.

10 Q Mr. Smith. Mr. Smith is like the friend of
11 his who he said in one explanation had whipped him -- pistol-
12 whipped him and he shot him; is that not right?

13 A There is a comparison, yes.

14 Q Mr. Smith is like the people in the felonious
15 assaults in the penitentiary. He couldn't get along with
16 them, had trouble adjusting to the prison system so he reacted
17 with violence and was guilty of maiming of two inmates?

18 A There is a similarity with that as well.

19 Q And then Mr. Smith is like the man in the
20 penitentiary that he didn't like, Remarsell Douglas, I
21 believe was his name or he had some difficulty with and he
22 killed him, right? I realize you don't know the man's name.

23 A I can't draw too close a connection because
24 I don't know too much what happened with that incident, but
25 in both instances, he seemed cornered and explosive and

1 reacted in a violent way.

2 Q In a violent way. Now, let's go to
3 somebody who is extremely paranoid and reacts with violence.
4 Wouldn't somebody who does not have the ability to reason,
5 the ability to think, the ability to just strike out, shoot
6 indiscriminately at anyone?

7 A I didn't understand how you were phrasing
8 your question.

9 MR. SAVAGE: Your Honor please, none of
10 those things represent Dr. Bransfield's
11 characterization of the defendant. This
12 hypothetical question has some purpose and by
13 comparison is fine, but, of course, the
14 characterization and factors illustrated in that
15 question did not comply with the things he has
16 stated or his symptoms. If he's going to ask
17 questions about him then he must state his symptoms.
18 We're going on and on and on. I have been trying
19 not to object, but he's getting further and further
20 into dangerous water.

21 MR. GRIZZARD: Your Honor, I don't think
22 it's dangerous water. I think we're getting down
23 to the point now, the whole issue in the case.

24 THE COURT: All right. I'm going to allow
25 the question.

1 A If someone does not have the ability to
2 react in a healthy way, they are going to react in an
3 unhealthy way. One way of which could be violence or other
4 unhealthy ways such as depression or paranoia.

5
6 BY MR. GRIZZARD:

7 Q I don't think that answered my question,
8 Dr. Bransfield.

9 A Do you want to go through it again?

10 MR. GRIZZARD: Would you read the question,
11 please.

12 (The following question was read by the
13 court reporter:

14 "Question: Wouldn't somebody who does not
15 have the ability to reason, the ability to think,
16 the ability to just strike out, shoot
17 indiscriminately at anyone"?)

18 A Someone who does not have the ability to
19 think, who does not have the ability to reason, who only has
20 the ability to strike out, could shoot indiscriminately.

21
22 BY MR. GRIZZARD:

23 Q Now, let's take the situation, Dr. Bransfield,
24 where according to you and your report there are no psychotic
25 tendencies present in Willie Lloyd Turner on July 12, 1970.

1 He is in the process of commission of a robbery. The
2 policeman comes in and says, "Your alarm is off" and at that
3 point he realizes that his success with the robbery is
4 minimal.

5 A Uh-huh.

6 Q He makes the statement, "If I see any more
7 cops, I'm going to start killing." He is "obviously angry,"
8 but he systematically then continues with the robbery. Then
9 he says, "I'm going to kill that nigger for squealing on me"
10 and starts shooting at the man who turned in the alarm.

11 A Uh-huh.

12 Q Does that not show an individual that is
13 capable of thinking --

14 MR. SAVAGE: Excuse me. If he's trying to
15 phrase a hypothetical, he's left out some very
16 important points. He's got to put them all in
17 there, the accidental firing of the pistol, the
18 sounding of the siren which Officer Bain said was
19 a significant factor.

20
21 BY MR. GRIZZARD:

22 Q Let me ask you this: Did Willie Lloyd
23 Turner ever tell you that he had heard a siren?

24 A No, he did not.

25 Q Do you remember my first question?

1 A I don't think you quite finished it. Could
2 you go through it again?

3 Q I thought I did.

4 MR. GRIZZARD: Would you read the question,
5 please.

6 (The following question was read by the
7 court reporter:

8 "Question: Does that not show an individual
9 that is capable of thinking?")

10

11 BY MR. GRIZZARD:

12 Q That was the question on the hypothetical.

13 A It shows an individual that's capable of at
14 least -- definitely capable of some level of thought.

15 Q Some level of thought?

16 A Uh-huh.

17 Q To continue the robbery and then pick out
18 the one man who put him in that predicament?

19 MR. SAVAGE: The question is argumentative.
20 He answered it.

21 MR. GRIZZARD: I will withdraw it.

22

23 BY MR. GRIZZARD:

24 Q Other than the statements to you of Willie
25 Lloyd Turner and some members of his family, is there anything

1 in your examination from statements of the witnesses at the
2 scene or what-have-you that can base any conclusion that he
3 really didn't know what he was doing on July 12th?

4 MR. SAVAGE: Your Honor please, he hasn't
5 said he didn't know what he was doing. He said he
6 was under the influence of certain factors. The
7 question is improper.

8 MR. GRIZZARD: I stand corrected. I thought
9 he said he didn't; that he was under -- strike it.
10 That's all.

11
12 REDIRECT EXAMINATION

13
14 BY MR. SAVAGE:

15 Q Dr. Bransfield, Mr. Grizzard has taken you
16 through a long recitation of various hypotheticals, acts.
17 Do these acts which you have described and related, do they
18 represent the reaction of the normal person, this striking
19 out in violence, et cetera?

20 A No.

21 Q You were asked some question about the siren.
22 Was the reference to the siren contained in any of the
23 statements of any of the witnesses that you read or do you
24 remember?

25 A I don't recall.

1 Q Do you recall whether or not you ever asked
2 Willie Turner about the siren?

3 A I did not.

4 Q You have indicated that he was on a downward
5 regressive plane in the days preceding this incident, did you
6 not?

7 A Yes, I did.

8 Q And that the factors and events that
9 occurred indicated to you this downward trend; is that
10 correct?

11 A Yes, sir.

12 Q If he had received treatment during that
13 period, could it have helped?

14 MR. GRIZZARD: I object, Your Honor. This
15 is going way beyond the realm of direct examination
16 or proper examination.

17 MR. SAVAGE: I don't think it's the least
18 bit far. We're up to the period of offense and I
19 asked if treatment at that time could have helped.
20 I can't think of a more proper question.

21 THE COURT: All right. I will allow him to
22 answer it.

23 A I feel if he would have had treatment at
24 that time, Mr. Smith would not have been killed.

25

1 BY MR. SAVAGE:

2 Q The reference to you of this case was
3 partially to determine whether or not this person was guilty
4 by reason of insanity; is that not correct?

5 A Yes.

6 Q And your investigation in part was to make
7 that determination?

8 A Yes.

9 MR. GRIZZARD: Now, Judge, again we're in
10 a difficult stage and I think that's highly
11 improper. I object to it.

12 MR. SAVAGE: Judge, we're simply trying --

13 MR. GRIZZARD: Judge, if we're going to
14 argue the case, let's get the jury out.

15 MR. SAVAGE: I'm one question away from
16 finishing.

17 (The jury was excluded from the courtroom,
18 and the following occurred out of the presence of
19 the jury:)

20 MR. SAVAGE: Judge, Mr. Grizzard in his
21 cross-examination of Dr. Bransfield made quite a
22 production over the letter of January 19, 1979,
23 which I think was his final report in this case up
24 to that time. In that Dr. Bransfield recites at
25 that time in this letter that he was attempting to

1 consider whether or not the defendant was under
2 the influence of an irresistible impulse. In other
3 words, he was addressing himself to whether or not,
4 Number 1, the defendant was competent to stand
5 trial; Number 2, whether or not he could participate
6 in his own defense; and, Number 3, whether or not
7 he was not guilty by reason of insanity and by
8 reciting all these facts that Mr. Grizzard has made
9 so much of, Dr. Bransfield reached the conclusion
10 that the defendant was not guilty by reason of
11 insanity and we have not offered him for that
12 purpose. He was not called yesterday and we are
13 entitled, I think, either of two ways, whichever
14 the Court prefers, to either go back through this
15 report which Mr. Grizzard took sentences out of
16 context in his direct and show the whole report and
17 the purpose of those observations about the lack
18 of psychotic behavior as being the primary motive
19 for the crime, or we could simply ask him the
20 question as we were trying, "Did you find him not
21 guilty by reason of insanity?" We anticipate his
22 answer to be, "No, I did not." We could either use
23 the report or use the question.

24 MR. GRIZZARD: Judge, the issue as to not
25 guilty by reason of insanity was an issue that

1 defense counsel wanted to be raised. The issue as
2 to Dr. Bransfield's conclusion as to whether or
3 not he's not guilty by reason of insanity is a
4 foreclosed issue by the verdict of the jury.
5 Irresistible impulse is also. What they are trying
6 to do is resurrect a dead horse.

7 MR. SAVAGE: We're not trying to say that.
8 We just want to clarify Page 3, bottom paragraph.
9 The sentences were taken out of context. We're
10 entitled to have the jury to know why he was asking
11 these questions about psychotic behavior and what
12 the consequences of his diagnosis were.

13 THE COURT: You're talking about the
14 sentence which reads, "The paranoid tendencies may
15 have had some impact on his behavior, but I do not
16 feel this was to the degree where he would be
17 unable to tell right from wrong or to maintain
18 contact with reality or to prevent the manifestation
19 of any 'irresistible impulse'? That's on the last page
20 of his last report.

21 MR. SAVAGE: I was actually before and not
22 going into that much detail. Yes, sir, that's the
23 point. Back on Page 3, the page before, in the
24 last paragraph -- about the ninth line down in the
25 last paragraph, the phrase starts with, "however,

1 there is no evidence to support" --

2 THE COURT: All right.

3 MR. SAVAGE: "However, there is no evidence
4 to support the presence of any psychotic behavior
5 at this time." Mr. Grizzard took that statement
6 and made a great deal over it because Dr. Bransfield
7 said the man was influenced by these psychotic
8 tendencies.

9 THE COURT: All right, sir. Excuse me.

10 MR. SAVAGE: He took that sentence out of
11 context, Judge, and cross-examined him at length.
12 The context of it is that Dr. Bransfield did not
13 find that he was under the influence of irresistible
14 impulse; didn't find that he didn't know right from
15 wrong. He simply want to show the jury his finding
16 is not inconsistent with his testimony today. I
17 think we're entitled to show that he had these
18 tendencies; that he did not absolutely know the
19 difference between right and wrong. To state it
20 more simply, as I tried to, that he was not guilty
21 by reason of insanity.

22 MR. GRIZZARD: To begin with, I don't think
23 the sentence was taken out of context. I went
24 through the different things that he talked about.
25 Regression. That was a lost job; injury to the

1 child, and some other -- one third one which is
2 set out in the sentence immediately before that
3 before he goes on and makes his statement. That's
4 not out of context.

5 THE COURT: Well, gentlemen, I'm not going
6 to get into irresistible impulse. Any defense by
7 reason of insanity --

8 MR. SAVAGE: No, sir, we're not offering
9 that. We do not contend there is such a defense.

10 THE COURT: What is this question that you
11 want the Doctor to answer?

12 MR. SAVAGE: One of the determinations that
13 he had to make under the Court order was whether
14 or not he was not guilty and this paragraph that
15 Mr. Grizzard makes so much of is a summary of his
16 -- of the basis for his opinion that he does not
17 have that defense. Now, that does not mean that
18 the man wasn't under the influence of some paranoid
19 or psychotic factors. That's what Dr. Bransfield
20 is saying.

21 THE COURT: That's what he said to
22 Mr. Grizzard, that he was.

23 MR. SAVAGE: But then Mr. Grizzard went back
24 and said -- took this phrase, "however, there is no
25 evidence to support the presence of any psychotic

1 behavior at this time." That phrase was in the
2 part of his report dealing with irresistible impulse
3 and right and wrong and I submit that it's out of
4 context and if the Court will not allow us to ask
5 the question as stated, maybe it was improperly
6 stated. I would like to take the remainder of the
7 paragraph and ask one or two questions about that.

8 THE COURT: What questions would you ask on
9 that, Mr. Savage? Let's get them in before we get
10 the jury back.

11 MR. SAVAGE: I believe that I had already
12 asked him if he was not supposed to determine
13 whether or not the defendant was not guilty by
14 reason of insanity. I think I asked him that and
15 I think he answered, yes, that was one of his
16 determinations, and what I was trying to ask him
17 was that he had not found and was not saying today
18 that he was not guilty by reason of insanity and
19 he was getting ready to say, that's right, I do not
20 suggest that. What I guess he would say is that he
21 is not saying that the person was completely under
22 the control of psychotic abnormality. Rather that
23 these were influences working on the defendant.
24 It's a great difference, and the jury is set up now
25 with Dr. Bransfield being in completely two

1 inconsistent positions when really he had to trace
2 his entire report. First, determine the question
3 of irresistible impulse, not guilty by reason of
4 insanity and then determine if there were any other
5 factors working, and that's why he's here in the
6 sentencing stage because there were factors working,
7 but not enough to make him not guilty by reason of
8 insanity, and we want to show that.

9 THE COURT: The only question you want to
10 ask now, did you find that he was in -- are you
11 going to try to now say that he was not -- that he
12 did not manifest any symptoms of irresistible impulse
13 and that was one of his findings and that he was
14 not insane -- not legally insane? Is that what
15 you're trying to tell the jury at this point?

16 MR. SAVAGE: That's where I was headed, but
17 I sense that you don't like that question.

18 THE COURT: Well, you said you're going to
19 ask that one question.

20 MR. SAVAGE: I would ask him this then. I
21 would ask him if his determination that the person
22 was not completely under the influence of a psychosis
23 was made to determine whether or not he was under
24 an irresistible impulse or didn't know the difference
25 between right and wrong. I would ask him why he

1 has this sentence in here, "however, there is no
2 evidence to support the presence of any psychotic
3 behavior at this time." I think he could say then,
4 "I needed that to determine if he was under an
5 irresistible impulse and didn't know the difference
6 between right and wrong."

7 THE COURT: When you say he is not under
8 the influence of any psychotic tendency, that goes
9 a long way. That doesn't just refer to this one
10 thing, does it? I don't see how the doctor after
11 his prior testimony could say that, even referring
12 to what you're saying.

13 MR. SAVAGE: Judge, possibly you're correct
14 in my phraseology. I would like to show simply or
15 ask the question why he was investigating these
16 items; how that came in the context of his
17 examination of this defendant.

18 MR. GRIZZARD: Your Honor, can the
19 Commonwealth speak to the point?

20 THE COURT: Yes, sir.

21 MR. GRIZZARD: What Mr. Savage, as I
22 understand, is trying to do is get back some sort
23 of way that he can get Dr. Bransfield to say again
24 that he was suffering from some extreme mental
25 or emotional disturbance. I agree with him.

1 Dr. Bransfield has completely contradicted that
2 on cross-examination, but to go back and start
3 talking about guilt by reason of insanity and
4 irresistible impulse, I think the question is getting
5 on shaky ground, especially at this stage of the
6 trial. The jury has no need to know why he was
7 examined. They know that he was examined because
8 he was requested to examine him and that's why
9 they are listening to him here today, but he's
10 given his findings. He's told us what he based it
11 on and he's been cross-examined on it and now he's
12 trying to go into another area. The questions were
13 not taken out of context.

14 THE COURT: All right, sir. I'm going to
15 sustain the objection and note your exception in
16 the record, Mr. Savage.

17 All right. Bring the jury back.

18 MR. WOODWARD: Judge, may we have a brief
19 recess?

20 THE COURT: Yes. I think it might be time
21 to take a short break.

22 (The Court recessed at 3:30 p. m. The Court
23 reconvened at 4 o'clock p. m.)

24 THE COURT: All right, Sheriff.

25 Are you ready for the jury, sir?

1 MR. WOODWARD: Yes.

2 (The jury was recalled to the courtroom, and
3 the following occurred in the presence of the jury:)

4 THE COURT: Ladies and gentlemen of the
5 jury, at this time we will have read a deposition
6 taken of one of the witnesses who is unable to
7 appear here today for medical reasons.

8 MR. WOODWARD: Your Honor, if you would
9 explain to the jury that the witness is --

10 (A side-bar conference was held by the
11 Court with counsel for both sides out of the
12 hearing of the jury and the court reporter.)

13 THE COURT: Ladies and gentlemen, this is
14 the testimony of Gussie Turner, who is the mother
15 of the defendant. She has medical problems. She
16 will not testify here today. A deposition was
17 taken of this witness some weeks ago by
18 Mr. Woodward and Mr. Savage and Mr. Grizzard.
19 Mr. Woodward will read the answers given by Gussie
20 Turner, the witness in this case. He will sit up
21 here on the witness stand and read her answers as
22 the questions are asked by either Mr. Savage or
23 Mr. Grizzard.

24 All right, sir.

25 (Whereupon, the de bene esse deposition was

1 read in open court, as follows:)

2
3
4 -----OO-----
5
6

7 GUSSIE TURNER, called as a witness on behalf of the
8 defendant, having been first duly sworn, was examined and
9 testified as follows:
10

11 DIRECT EXAMINATION
12

13 BY MR. SAVAGE:

14 Q State your name, please.

15 A Gussie Mae Turner.

16 Q And we are now taking your deposition at
17 the Medical Center of America facility on First Colonial Road
18 in Virginia Beach, are we not?

19 A That's right.

20 Q What is your home, Mrs. Turner?

21 A 524 Bank Street in Franklin. Of course, I
22 give up the house when I come here.

23 Q Mrs. Turner, how long have you been either
24 a patient here at the nursing home or at Southampton Memorial
25 Hospital?

1 MR. WOODWARD: Yes.

2 (The jury was recalled to the courtroom, and
3 the following occurred in the presence of the jury:)

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5 jury, at this time we will have read a deposition
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7 GUSSIE TURNER, called as a witness on behalf of the
8 defendant, having been first duly sworn, was examined and
9 testified as follows:
10

11 DIRECT EXAMINATION
12

13 BY MR. SAVAGE:

14 Q State your name, please.

15 A Gussie Mae Turner.

16 Q And we are now taking your deposition at
17 the Medical Center of America facility on First Colonial Road
18 in Virginia Beach, are we not?

19 A That's right.

20 Q What is your home, Mrs. Turner?

21 A 524 Bank Street in Franklin. Of course, I
22 give up the house when I come here.

23 Q Mrs. Turner, how long have you been either
24 a patient here at the nursing home or at Southampton Memorial
25 Hospital?

- 1 A Since September the 7th.
- 2 Q What happened to you on September 7?
- 3 A I fell and broke my hip.
- 4 Q And have you had some problem with your
5 broken hip?
- 6 A Yes.
- 7 Q Are you able to walk at this time at all?
- 8 A No, just take therapy now.
- 9 Q Are you able to put any weight on your
10 injured leg at all?
- 11 A No, no weight at all.
- 12 Q How old are you, Mrs. Turner?
- 13 A Sixty.
- 14 Q And are you married?
- 15 A Widow.
- 16 Q And when did Mr. Turner die?
- 17 A It was the 5th -- August the 5th, 1964.
- 18 Q You have now remarried since he died in
19 1964?
- 20 A No.
- 21 Q How many children did you have by Mr. Turner?
- 22 A Five by him.
- 23 Q And is one of those children a defendant in
24 this case, Willis Lloyd Turner?
- 25 A Yes.

1 Q How did he compare as far as age with your
2 other children? Was he the oldest or youngest or somewhere
3 in between?

4 A He was my fourth child.

5 Q He was your fourth oldest child?

6 A Yes.

7 Q Mrs. Turner, in addition to the other
8 medical problems you have described for me, do you have any
9 other medical ailments?

10 A Asthma and high blood pressure.

11 Q You have asthma and high blood pressure?

12 A And anemia.

13 Q Before you fell in September of this year,
14 were you employed?

15 A Oh, no.

16 Q When is the last time you worked?

17 A In '71.

18 Q Nineteen seventy-one?

19 A Yes.

20 Q For whom did you work at that time?

21 A Dr. Emmell Holland.

22 Q Is Dr. Emmell Holland a lady physician in
23 Franklin?

24 A That's right.

25 Q What type of work did you do for her?

1 A Domestic work. I just did domestic work.

2 Q You worked around her home?

3 A That's right.

4 Q Prior to working for Dr. Ernell Holland,
5 where had you worked during the other years of your grown
6 life?

7 A I have been working on farms, hotels, cafe,
8 different people's houses -- I can't think of the people's
9 name.

10 Q Were you raised on a farm?

11 A Yes.

12 Q Did you and your husband work on the farm
13 while he was alive?

14 A Yes, we lived on the farm until the doctor
15 told me to move off the farm because of the asthma. This was
16 in 1962.

17 Q Did you and your husband own your farm or
18 work on other people's farms?

19 A Working on other people's farms.

20 Q Sharecropping or laborer?

21 A Most of the times labor, sometimes a little
22 some of the corn, on a garden, and sometimes regular labor.

23 Q Do you recall what farm you were living on
24 when your son, Willie Lloyd Turner, was born?

25 A Yes, I was living on the Howard farm down

1 to the Courtland-Capron area.

2 Q The Howard farm between Courtland and
3 Capron?

4 A Yes, the Turner house. The Turner farm not
5 far from Darden's Mill.

6 Q That's out in the country in Southampton
7 County?

8 A That's right.

9 Q Did Willie live with you for the early years
10 of his life?

11 A Yes.

12 Q From the time he was born when you were on
13 the Howard farm, how long was it approximately before you
14 moved anywhere else?

15 A See -- let's see. I moved off -- let me see.
16 He was born in December. The next year -- the next year I was
17 on the Beale farm.

18 Q The Beale farm?

19 A Yes, the Beale farm, part time.

20 Q Is that in Southampton County also?

21 A In Southampton County too.

22 Q How long did you stay on the Beale farm?

23 A Well, I didn't stay there too long because
24 they had so many snakes around the house.

25 Q Had what?

1 A So many snakes around the house. I didn't
2 stay there too long.

3 Q Where did you go after you left that farm?

4 A We went back to the Howard farm until I got
5 ready to move somewhere else.

6 Q During the time that you were moving on
7 these farms and from farm to farm, did your son, Willie
8 Turner, go with you?

9 A Oh, yes, he was with me.

10 Q Did you all ever live in town while Willie
11 was growing up?

12 A No, we didn't live in town because we just
13 moved to town. You know, he was on the farm all the time.

14 Q How many farms did you and your husband
15 and family live on and work on after you made the last move
16 you told us about?

17 A The last move -- let's see, the Brewery farm.

18 Q The Brewery farm?

19 A Then I left the Turner farm and moved to the
20 Brewery farm at Walters.

21 Q Is that a small community in Southampton
22 County?

23 A Yes -- that's in Isle of Wight.

24 Q That's in Isle of Wight County?

25 A Uh-huh.

1 Q And you lived on a farm outside of Walters?
2 After you left there where did you live?

3 A After I left there I went back to the
4 Collier farm down near Courtland.

5 Q Did your son, Willie Turner, even as a small
6 boy work in the fields with you and your husband?

7 A Yes, we took him in the field when he
8 wasn't old enough to work and after he got old enough he
9 would work in the field.

10 Q Did you send him to school during the winter?

11 A Yes, sent them all to school until they got
12 up to the place where they could drop out themselves.

13 Q To where they could drop out themselves?

14 A Yes, I sent them.

15 Q In addition to living with you and your
16 family, when your son Willie was still a boy did he go to
17 live with anybody else?

18 A Yes, he lived with my aunt a little while,
19 you know, in North Carolina, you know, not in school hours,
20 not during school. In between, in Ahoskie and Murfreesboro.

21 Q He went to live with your aunt in Ahoskie?

22 A Yes.

23 Q And also Murfreesboro?

24 A Yes.

25 Q Did he go down there in the summer or go to

1 school?

2 A In Murfreesboro. I think he went there and
3 started to school. I forget what year. Went about a month
4 or so because it was about time for school to close. It was
5 about time for school to close.

6 Q Mrs. Turner, why was Willie sent down to
7 North Carolina to live with your aunt in Aboskie and then
8 your aunt in Murfreesboro?

9 A My aunt in Aboskie just seemed like she
10 wanted someone to stay with her a little while. Both of them
11 wanted somebody to stay a little while. The one in
12 Murfreesboro wanted someone to help them out in the cook shop.

13 Q So that Willie could help them out by
14 cooking?

15 A Yes. He helped them out in Murfreesboro by
16 cooking. They was running a cook shop.

17 Q A restaurant-type place?

18 A That's right.

19 Q Now I want to direct your attention to May
20 of 1978 -- that's May of last year.

21 A Uh-huh.

22 Q Did your son, Willie Lloyd Turner, come home
23 to live with you then?

24 A Yes. He come on account of the probation
25 officer. At least 30 days. They said they preferred him

1 to stay there, but I couldn't pay the extra rent.

2 Q You say that he came there in May of 1973?

3 A Yeah, May of 1978.

4 Q And that the probation officer wanted him
5 to stay with you?

6 A That's right.

7 Q But you weren't able to pay the extra rent?

8 A That's right.

9 Q So what did you do then?

10 A Well, I didn't do nothing but try if I
11 could, and he was working in the barber shop.

12 Q Willie was working in the barber shop?

13 A Yes, working in the barber shop and at the
14 time he paid the rent and the stuff in the barber shop, so
15 he didn't have enough to pay the extra they were charging, so
16 he went and stayed other places.

17 Q Did he stay with you part of the time?

18 A Yes, he stayed with me part of the time. He
19 stayed with me the 30 days they had assigned at first.

20 Q He stayed with you 30 days and then because
21 he couldn't pay the extra rent he stayed from place to place?

22 A Yes.

23 Q Did he stay with you part of the time?

24 A Yes.

25 Q Who else did he stay with part of the time?

1 A Barbara Johnson and my brother, James
2 Peebles, and Cynthia Artis. That's as far as I know, you
3 know.

4 Q When Willie came home in May, 1978, where
5 had he been before then?

6 A In Maryland.

7 Q Had he been living in Maryland?

8 A When he came out of the penitentiary at
9 Lewisburg, Pennsylvania, he came to Maryland with his brother.

10 Q So when he got out of the federal
11 penitentiary in Pennsylvania, he went to live with his
12 brother in Maryland?

13 A That's right.

14 Q And then came down to Franklin to live with
15 you?

16 A That's right.

17 Q During the time that he was there with you,
18 Mrs. Turner, for those 30 days and after that when he was
19 there with you part time, living with you part time, how did
20 he act?

21 A Well, he was very -- he acted real nice at
22 times and then at times it seemed like he was in a daze,
23 looked like he was living in another world.

24 Q He was in a daze?

25 A Yes, looked like he was living in another

1 world, didn't know nobody, seemed like to me.

2 Q When you would try to talk to him when he
3 looked like he was living in another world, did he seem like
4 he didn't know what you were saying to him? Did he respond
5 or answer?

6 A He would answer and then not say nothing
7 for a while and then look like he was in a deep study looking
8 away somewhere else.

9 Q In a deep study looking away somewhere else?

10 A Yes.

11 Q Had he been like that before he came home
12 in May, 1978?

13 A I don't remember it.

14 Q You don't remember his being like that?

15 A No.

16 Q I direct your attention to June of 1978.
17 Were you told at that time something about him and a gun in
18 the street?

19 A Yes, I was.

20 Q You heard that?

21 A Yes, they told me he had it in the street.
22 I didn't see him in the street but they told me he had a
23 sawed-off shotgun in the street. That's when I called the
24 police to check on him because that was one of the days he
25 was in a cage, so I didn't know what.

1 Q Did the police come to your house after you
2 called them about what you heard in the street?

3 A Yes, they come to the house and searched it,
4 but he had got away -- I mean he wasn't there. They looked
5 for him but they didn't find him.

6 Q Did you talk with any police officer on that
7 occasion?

8 A Yes, Sergeant Poole and Mr. White. I don't
9 know the other two names that were with them, but I told them
10 I thought he needed treatment.

11 Q Is that Sergeant Dick Poole of the Police
12 Department?

13 A That's right.

14 Q And Officer White?

15 A Yes.

16 Q Did you know both of them?

17 A Yes, I know both of them, but the other ones,
18 I didn't know them.

19 Q There were two others and you didn't know
20 them?

21 A That's right.

22 Q What did Sergeant Poole or Officer White say
23 to you when you said that the boy needed some help?

24 A At that time they told me to bring him
25 downtown Monday before the judge, but he wasn't home. He

1 didn't come back to the house and I didn't see him for
2 several days.

3 Q You didn't see him for several days?

4 A No.

5 Q I direct your attention to another incident
6 that occurred. Did he tear up your house one time, break the
7 door down?

8 A Yes, he broke the door. Cynthia -- I was
9 in bed and she run in my bedroom and locked the door and he
10 beat on the door and she told me that he was going to kill
11 her.

12 Q Cynthia Artis said that?

13 A That's right.

14 Q Did he damage the door?

15 A Yes, the door is damaged. But, you see,
16 Mr. White had to kick the door open after for us to get out,
17 after he got there. He had to break the lock for us to get
18 out of the bedroom.

19 Q How did you get the police to you if you
20 and Cynthia were in the bedroom?

21 A I hollared out the window for a phone.
22 Somebody went to a phone and called them.

23 Q You mentioned Officer White was there with
24 Sergeant Dick Poole that time, too.

25 A Yes, he was with him, too. I think both

1 times -- several of them there. I don't know how many
2 outdoors, some more outdoors, too, besides the ones that
3 came in the house.

4 Q What did you tell these police officers?

5 A I told them the same thing.

6 Q What was that?

7 A That he needed treatment.

8 Q What did you think he needed treatment for?

9 A I was thinking his mind wasn't right, go
10 in a daze like that. I was thinking he needed treatment for
11 his mind. That's what I thought.

12 Q When he would get in a daze?

13 A Yes, that's what I thought.

14 Q Mrs. Turner, as a mother did you think
15 Willie Lloyd Turner might hurt somebody when he was in one
16 of those dazes?

17 A I felt he might would if he was close, if
18 they would push him. I felt he would if anybody would push
19 him.

20 Q Was it your hope that the police officers
21 would take him and get him where he needed to be?

22 A Yes, I was hoping they would get him where
23 he needed to be.

24 Q Mrs. Turner, you talked about the time
25 that he was, I believe to use your words, in a daze and other

1 times you have described him as happy and normal and so forth.

2 A Yes.

3 Q When he was not in a daze how did he get
4 along with people, with the neighbors and with the people
5 with whom he dealt?

6 A He got along with everybody fine as far as
7 I know, everywhere I see him he would get along fine.

8 Q Did he have any fights or arguments with
9 people when he was getting along all right?

10 A No, not as I know of. I don't know nothing
11 about him having any fights when he was getting along all
12 right.

13 Q Was he a pleasant person to be around or
14 for you to have there at your home when he was not in a daze?

15 A Yes, he was pleasant when he was not in a
16 daze.

17 Q And when he was in a daze was he a different
18 person?

19 A Yes, a different person then.

20
21 **CROSS-EXAMINATION**

22
23 **BY MR. GRIZZARD:**

24 Q Mrs. Turner, let's go to the instances that
25 you are speaking of where you had problems in the house.

1 A Uh-huh.

2 Q Which came first, the problem that you said
3 about the gun or the kicking in of the door?

4 A The gun.

5 Q The problem with the gun came before?

6 A That's right.

7 Q And you are absolutely certain of that?

8 A About the problem with the gun? Yes,
9 because after the problem with the door he didn't stay at
10 my house no more. The children came there, he didn't stay
11 there no more at night like he did before after the problem
12 with the door, but he did stay there some nights after the
13 problem with the gun.

14 Q So then I would be correct then in saying
15 that the instance that the officers came to your house in
16 which you said you had heard --

17 A That he had a gun?

18 Q -- that he had a gun, that happened on one
19 day and then sometime later in the month or later during that
20 period of time you had the problem with him kicking in the
21 door?

22 A That's right.

23 Q Do you know how far apart these instances
24 were? Were they a day or a week?

25 A No, I think about two or three weeks apart.

1 Q Two or three weeks apart?

2 A Yes. I don't remember exactly, but two or
3 three weeks apart.

4 Q Do you know a Sergeant Robert Rhodes of the
5 Franklin police?

6 A No, I wouldn't know him exactly if I saw
7 him, like I would Mr. Poole, I would know him.

8 Q Well, would you describe Sergeant Poole for
9 me?

10 A He was tall -- tall, kind of round-
11 shouldered.

12 Q Kind of what?

13 A Droop shoulders, tall, and wore glasses.

14 Q Was he a big man?

15 A Yes.

16 Q Heavy-set man?

17 A I wouldn't call him too heavy-set. I would
18 call him medium-set. You know, between real heavy and heavy.

19 MR. SAVAGE: I think she's pretty well
20 described him.

21

22 BY MR. GRIZZARD:

23 Q Did he have gray hair?

24 A Yes, he did.

25 Q He has gray hair?

1 A Yes.

2 Q You are absolutely certain then on the night
3 that the gun incident came up it was Sergeant Poole and
4 Officer White?

5 A Yes, but there were more there besides them.

6 Q That came to your house?

7 A Yes, but there was more there.

8 Q But Sergeant Poole is the man you talked to?

9 A Yes.

10 Q And Sergeant Poole and Officer White are
11 the officers that searched your house?

12 A Yes. There was two more that searched but
13 I didn't know their names.

14 Q Two other officers?

15 A That's right.

16 Q And these were younger officers?

17 A That's right. And the ones outdoors, I
18 didn't see the ones outdoors but the ones in the house.

19 Q When they came to your house that night
20 with the problem with the gun -- how many times did they come
21 to your house that night?

22 A They come back in the house once, I think,
23 inside the house. And then they come back -- the last time
24 they come back they said they would be around and watch and
25 see if they could find him, come in the back door, check and

1 see if he had come back to the house.

2 Q Did they search your house?

3 A Yes, they searched the house, searched
4 upstairs.

5 Q Did they search the first time or the second
6 time?

7 A Searched both times.

8 Q Searched both times?

9 A Yes, because see, different ones. They
10 went upstairs and searched upstairs again.

11 Q Were you there by yourself when they came?

12 A No, there was somebody there but I forget
13 who it was.

14 Q Was there a Mr. Rocks there?

15 A Yes, Rocks was there and it seemed like
16 somebody besides Rocks.

17 Q How about Charlie Garfield Beale?

18 A Yes, he was there the early part of the
19 evening, but he wasn't there when they come to search. He had
20 left.

21 Q When they came in -- you say that you called
22 them?

23 A Yes.

24 Q You called the Franklin police?

25 A Yes, I called the Franklin police but Beale

1 had left when I called.

2 Q And what did you tell the Franklin police?

3 A I told them that he was on the street with
4 a gun. I told them like they told me, he said he was going
5 to kill somebody, that is what they told me. I told the police
6 I would appreciate if they would check and see if my son --
7 because I didn't want him to hurt nobody, that's what I told
8 them.

9 Q Had you seen Willie Lloyd Turner with a gun?

10 A No, I saw -- oh, I saw him with a piece of
11 gun, but the police found that. That was the stock of a gun
12 that was in the closet.

13 Q You say they found part of the gun in a
14 closet?

15 A In the closet, but, you know, it was the
16 stock, wasn't no parts you could shoot. That was in there
17 when I left, because I said, let it stay in there. But I
18 guess they have throwed it out now, because I couldn't go
19 back when they moved the things out of the house. I couldn't
20 go back, so it was still there.

21 Q Well, Mrs. Turner, what I'm asking you is
22 when you called the police had you seen Willie Lloyd Turner
23 with a gun that night?

24 A No, I hadn't seen him with a gun.

25 Q Did you just call the police and say --

1 A That they said he was on the street.

2 Q That he's out here with a gun --

3 A That's right.

4 Q -- in the street?

5 A Yes.

6 Q Do you know what kind of gun it was?

7 A They said it was a sawed-off shotgun.

8 Q You did tell them that it was a sawed-off
9 shotgun?

10 A Yes.

11 Q Anything else about the gun?

12 A No, I don't remember if there is.

13 Q You don't remember telling them anything
14 else?

15 A I don't remember.

16 Q Mrs. Turner, did you make a statement to any
17 police officer that you didn't know where he was, that he
18 wasn't at home?

19 A Yes. I didn't know where he was.

20 Q And did you also tell them that you didn't
21 know anything about a sawed-off shotgun?

22 A I told them I didn't know if he had it or
23 not. Yes, I told them that, I didn't know nothing about this.
24 But that's all I saw, was the piece.

25 Q You told them you didn't know anything about

1 a sawed-off shotgun?

2 A Uh-huh.

3 Q This is the first time they came there?

4 A Uh-huh.

5 Q Did Willie come back to the house between
6 the first time the police were there that night and the
7 second time?

8 A Yes, he came back to the house.

9 Q Did you tell him the police were looking
10 for him?

11 A Yes, I told him they were looking for him
12 and asking about the gun, but him and my nephew, they left
13 out of the house.

14 Q Wait a minute. He came and you told him the
15 police were looking for him?

16 A That's right.

17 Q And you told him about the gun?

18 A Yes.

19 Q What did he say?

20 A He told me he didn't have no gun, that's
21 what he said.

22 Q Did he then leave?

23 A Yes, he left straight out again.

24 Q You didn't call the police and tell them he
25 was there?

1 A Yes, they were still looking, because he
2 didn't stay there long enough. He came in the front door
3 and went on out the back. He didn't stay long enough. The
4 police were coming back. They told me they were looking out.

5 Q When the police came back the second time,
6 did you tell the police he had been there or not been there?

7 A I told them he had been there.

8 Q You are certain you told them he had been
9 there?

10 A Yes, I'm certain I told them he had been
11 there.

12 Q This is the second time.

13 A Yes, I'm certain, because they asked me
14 did he go upstairs. I said, "I don't remember him going
15 upstairs." That's what made them go back upstairs to search,
16 because he had been there.

17 Q How long did Willie work for this barber
18 shop?

19 A Let me see -- I reckon not much over a month,
20 because you see, he came there in May and worked part of June.
21 I think he started to work the last of May. A month -- six
22 weeks, something like that.

23 Q Do you know whether or not he had any trouble
24 down at the barber shop or why he quit working down there?

25 A No. If he did, I didn't know nothing about

1 that, either.

2 Q Did he quit working there about the time
3 he left your house?

4 A I don't know. I didn't know he had quit.
5 You know, I thought he was still working when he left my
6 house. So after he left I didn't know -- I didn't know he
7 had quit.

8 Q Was he working at the barber shop, to your
9 knowledge, when this gun thing happened?

10 A Oh, yes, he was working there then.

11 Q Was he working there some two or three weeks
12 later when he kicked the door in with the Artie girl there?

13 A He would leave the house and say he was
14 going to work.

15 Q So you didn't know at that time he wasn't
16 working?

17 A No, I didn't know he wasn't working.

18 Q Prior to 1978 when he came back to live with
19 you, when was the last time you had seen Willie Lloyd Turner?

20 A I hadn't seen him since -- they brought him
21 down here to Virginia Beach for a trial down here for
22 something, the children brought me down here to see him in the
23 jail at Virginia Beach. I hadn't seen him since.

24 Q In the eight years that he was gone --

25 A Yes.

1 Q -- how many times did you see him?

2 A I don't know. I would go to Richmond most
3 of the time. When he was in Richmond I would go up there
4 every month.

5 Q Then you are familiar with the problems
6 that he had during all this period of time?

7 A Somewhat. You know, I would get the message.

8 Q Right.

9 And Willie as a child or as he grew up --
10 strike that.

11 Would you say that Willie Turner had a
12 violent temper?

13 A As he grew up -- sometimes he would.

14 Q When things didn't go to suit he reacted
15 violently, didn't he?

16 A Sometimes.

17 Q Were you afraid of him?

18 A No, I wasn't afraid of him. You know, when
19 he comes in a daze like in another world I am scared then.

20 Q But you never other than this one night went
21 to the Franklin police to come there and get him?

22 A Those two nights.

23 Q Those two nights you're saying you called?

24 A Uh-huh.

25 Q When he came back to the house you never

1 called the Franklin police and said he's here.

2 A No.

3 Q You didn't take any steps on your own to
4 have him examined by a doctor.

5 A No.

6 Q Were you afraid of Willie?

7 A Huh?

8 Q Were you afraid to do that?

9 A No, I just didn't feel up to doing it. I
10 couldn't get around too much myself unless somebody carried
11 me, because this other hip broke, too, and this ankle, too --
12 as a matter of fact, the whole leg.

13 Q Now, this second instance where you had to
14 call the police, as I understand your testimony you said that
15 he had kicked the door in to the point that you and Cynthia
16 Artis were blocked into the bedroom.

17 A Uh-huh.

18 Q You called out the window for somebody to
19 call the police.

20 A Uh-huh.

21 Q And the police actually let you out of that
22 room?

23 A That's right.

24 Q And that police officer was Officer Luther
25 White?

1 A That's right.

2 MR. WOODWARD: That concludes the
3 deposition, Your Honor.

4 THE COURT: All right, sir.

5 MR. WOODWARD: Your Honor, we would call as
6 our next witness Cora Kelly.

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9 -----oCo-----
10
11

12 CORA KELLY, called as a witness on behalf of the
13 defendant, having been first duly sworn, was examined and
14 testified as follows:

15
16 DIRECT EXAMINATION

17
18 BY MR. WOODWARD:

19 Q State your name, please.

20 A Cora Kelly.

21 Q And where do you live, Miss Kelly?

22 A 1209 Virginia Street, Franklin, Virginia.

23 Q And where are you employed?

24 A At Paul D. Camp Library.

25 Q Is that a community college in Southampton

1 County?

2 A Yes, it is.

3 Q What kin, if any, are you to Willie Lloyd
4 Turner?

5 A My first cousin.

6 Q And how is that kinship?

7 A His mother and my father are brothers and
8 sisters.

9 Q How long have you known Willie Turner?

10 A All my life.

11 Q I direct your attention to May of 1978 and
12 following. Did you have occasion to see him during that
13 period of time?

14 A Yes, I did.

15 Q And where would you see him?

16 A At my home.

17 Q How frequently would he come to your home?

18 A Once or twice a day.

19 Q And what would he do while he was there?

20 A Eat meals. Talk.

21 Q Now, did he ever have occasion to spend any
22 nights there at the home of you and your mother, Mrs. Peebles?

23 A Yes, he did.

24 Q Do you recall where he stayed when he stayed
25 there at the home?

1 A Where he slept, you mean?

2 Q Yes, ma'am.

3 A He always sleep on the couch in the den.

4 Q And what type of work was he doing in May
5 of 1978, and following?

6 A He was styling hair at Willie's Barber Shop.

7 Q And where is that located?

8 A On South Street.

9 Q What happened to that job?

10 A What happened to it?

11 Q Did he keep on working there?

12 A He worked there for several weeks.

13 Q Did he lose his job there?

14 A Did he lose it?

15 Q Or leave there?

16 A Yes, he left there.

17 Q Now, how many children do you have, Miss
18 Kelly?

19 A Two.

20 Q How old are those children?

21 A I have a little girl three and a little boy
22 that's two.

23 Q And when Willie Turner would come to your
24 house -- you have indicated once or twice a day -- did he
25 play with your children?

1 A Yeah. That was about the first thing that
2 he done.

3 Q Which of the two was he fonder of?

4 A The little girl, mostly, because the little
5 boy keeps to himself.

6 Q During that period of time, did you have
7 occasion to see him when he was violent?

8 A No.

9 Q Did you ever see him violent with your
10 children and anything other than loving of them?

11 A No, he wasn't that type of person.

12 Q Miss Kelly, were you afraid of him? Any
13 reason for you to be frightened of him?

14 A No.

15 Q When you heard about this incident which
16 occurred on July 12, 1978, and that your cousin, Willie
17 Turner, was involved, what was your reaction?

18 MR. GRIZZARD: If it please the Court, now,
19 this is going well beyond -- I object to the
20 question. We're not interested in her reaction, I
21 don't think. It's not proper.

22 THE COURT: All right, sir. Sustain the
23 objection.

24 MR. WOODWARD: All right, sir. I will
25 withdraw it.

1 BY MR. WOODWARD:

2 Q Miss Kelly, since you have known Willie
3 Turner, known his mother and father and family, what was the
4 situation as far as his mother and father were concerned as
5 far as the use of alcohol?

6 A His father drank heavily and his mother
7 occasionally drank also.

8 Q Willie have anybody to help him?

9 A No.

10 Q Did he have a sister?

11 A Yes. He had a sister.

12 Q Was she a help?

13 A No.

14 Q At any time was Willie ever a bully?

15 A No, he wasn't.

16 Q He was not?

17 A (No response.)

18 MR. WOODWARD: If you would answer
19 Mr. Grizzard's questions.

20 MR. GRIZZARD: No questions.

21 MR. WOODWARD: You can come down, Miss Kelly.
22 Thank you.

23 Your Honor, I would ask that Miss Kelly be
24 excused unless there is some reason to the contrary.

25 THE COURT: All right. You may go. Thank

1 you, Miss Kelly.

2 MR. WOODWARD: Excuse me a moment.

3 Your Honor, we would call Mrs. Lizzie
4 Peebles.

5 MR. WOODWARD: Have a seat right up there,
6 please.

7 THE COURT: Were you sworn this morning?

8 MRS. PEEBLES: Yes, I was.

9
10
11 -----oOo-----
12
13

14 LIZZIE PEEBLES, called as a witness on behalf of
15 the defendant, having been first duly sworn, was examined and
16 testified as follows:

17
18 DIRECT EXAMINATION
19

20 BY MR. WOODWARD:

21 Q State your name, please.

22 A Lizzie Peebles.

23 Q And where do you live, Mrs. Peebles?

24 A 1209 Virginia Street, Franklin, Virginia.

25 Q What kin are you to Cora Kelly?

1 A Her mother.

2 Q And does she reside there with you?

3 A Yes, she does.

4 Q And where are you employed?

5 A Hillcrest Convalescent Center.

6 Q Where is that?

7 A Suffolk, Virginia.

8 Q What type of work do you do there?

9 A Nurse.

10 Q And is it you who are kin to Willie Lloyd
11 Turner or is it your husband?

12 A My husband.

13 Q What kin is he to Willie Lloyd Turner?

14 A His uncle.

15 Q Miss Peebles, I direct your attention to May
16 of 1978 and following that time. Did you have occasion to
17 see Willie Turner during that period of time?

18 A Yes, I did.

19 Q And where would you see him?

20 A In my home.

21 Q Did you have any conversations with him?

22 A Yes, we did.

23 Q And what did you talk with him about?

24 A Well, he was telling me that he wanted to
25 make a better life for himself and -- he was barbering. He

1 was a barber and that he wanted, you know, to have something
2 -- he was going to change and we talked about things like
3 that.

4 Q Did he have occasion to take meals there
5 with you?

6 A Yes, he did.

7 Q Did he have occasion to play with Cora
8 Kelly's children?

9 A A lot.

10 Q Particularly the little girl?

11 A Yes.

12 Q During that period of time, did you ever see
13 him when he was violent towards you or any other member of
14 your family?

15 A No.

16 Q Toward anybody else in May of 1978?

17 A No, I haven't.

18 Q Were you surprised when you learned --

19 MR. GRIZZARD: If it please the Court, the
20 same position I objected to earlier.

21 THE COURT: All right. Sustain the objection.

22
23 BY MR. WOODWARD:

24 Q Mrs. Peebles, from May of 1978 and following
25 on to July 12, 1978, did you think that Willie Turner was the

1 kind of person who would commit murder?

2 MR. GRIZZARD: I would object.

3 THE COURT: Sustain the objection.

4 MR. WOODWARD: We would withdraw the
5 question.

6 Thank you, Mrs. Peebles.

7 MR. GRIZZARD: No questions.

8 MR. WOODWARD: Thank you, ma'am. You can
9 come down.

10 We would ask that Mrs. Peebles be excused.

11 THE COURT: All right. You can leave.

12 MR. WOODWARD: Your Honor, in this stage,
13 that is the defendant's case.

14 THE COURT: Mr. Grizzard, do you have any
15 rebuttal?

16 MR. GRIZZARD: Commonwealth rests, Your
17 Honor. No rebuttal.

18 THE COURT: Ladies and gentlemen of the
19 jury, it's nearly 5 o'clock. We will conclude this
20 part tomorrow morning. I will ask you to be here
21 at nine thirty.

22 In the meantime, gentlemen, we will get the
23 instructions together. Be prepared to start at
24 nine thirty.

25 Please, ladies and gentlemen, do not read

1 anything. Do not discuss this matter with anyone.
2 Do not allow anyone to discuss it with you. When
3 you come in here tomorrow morning, go directly to
4 the jury room, please. Please be here tomorrow
5 morning at nine thirty. You're now excused until
6 that time.

7 MR. WOODWARD: Your Honor, I hate to
8 inconvenience the jury. It seems as if we're
9 always standing up and indicating we have a motion
10 and we do have a motion. If they could step out
11 for just one moment.

12 THE COURT: All right. Just wait one moment
13 in the jury room.

14 (The jury was excluded from the courtroom,
15 and the following occurred out of the presence of
16 the jury:)

17 MR. WOODWARD: Your Honor, at this time, we
18 would like to make two motions, the first of which
19 is to renew our motion as to the atrociousness
20 factor which relates, as we indicated this morning,
21 to brutality, depravity of mind, that sort of
22 thing.

23 THE COURT: Well, we're going to get to that
24 instruction very shortly, I think.

25 MR. WOODWARD: All we were asking, Your

1 Honor, was to renew that motion which we made
2 previously. We spoke long as to -- we felt very
3 strongly about it. We understand your ruling. We
4 think at this time there has been no evidence
5 whatsoever either directly or in rebuttal. In
6 fact, Mr. Grizzard has nothing different from what
7 he had at the time we made our motion. We do
8 believe that that particular factor must be
9 precluded from consideration by the jury. We
10 understand the ruling that you did make previously.

11 THE COURT: Yes, sir. I'm going to overrule
12 your motion and note your exception in the record.

13 MR. WOODWARD: The second motion which we
14 have relates to the jury itself. We had moved
15 previously on several occasions that the Court
16 sequester the jury. The Court indicated that it
17 would not. We are now, however, in between the
18 evidence and the second stage of this bifurcated
19 trial and tomorrow we have the instructions, the
20 argument and the deliberations and the sentence and
21 I submit to you, Your Honor, that the jury
22 previously has been in anticipation of receiving
23 certain evidence or hearing certain things, but it
24 is apparent to my mind at least that now they know
25 we have heard what we are going to hear. That

1 doesn't indicate that they would be precluded, of
2 course, from listening to your instructions. We
3 firmly hope that they do, but I do think now, Your
4 Honor, is the time that they should be sequestered
5 and we would ask that you do so.

6 THE COURT: All right, gentlemen. I'm
7 going to overrule that motion also and note your
8 exception in the record.

9 MR. WOODWARD: And the third and final
10 motion I have today, your having overruled that
11 motion, I notice there is a lady from the press
12 here who was here yesterday. He made a motion for
13 a mistrial based on the article which she wrote
14 yesterday. At this point, I would ask that the
15 Court direct the reporter who is present that such
16 article as she writes for her newspaper and such
17 articles as any other reporters who may be present
18 write for their newspaper not be published in the
19 edition which comes to the Eastern Shore. I think
20 it's unduly prejudicial. You have a small
21 community here on the Shore. The people are very
22 close one to the other. You have a newspaper which
23 comes, I daresay, to almost every household. These
24 people are going to be at home. We don't suggest
25 that they are going to read the newspaper. Many of

1 them have husbands and wives who are going to read
2 it tomorrow morning and say, "I didn't know this
3 was what was happening." We don't mean to imply
4 that this lady will not ably report as she sees it
5 what has occurred, but we do feel that the
6 confines of the newspaper article, which is very
7 limited, cannot possibly accurately state what has
8 occurred; and, even if it could, then that would
9 be something before the jurors either directly or
10 more likely indirectly which could affect such
11 deliberations as they have, and we would ask that
12 she be directed or such other newspaper reporters
13 be directed to withhold from their editions
14 tomorrow that come to the Eastern Shore such
15 articles as they may write for publication.

16 THE COURT: Well, Mr. Woodward, I can
17 appreciate your problem, but the Court, of course,
18 is not able to dictate where newspapers can be
19 published and where they can be sold and what
20 editions the news can be placed in. I will have to
21 overrule that motion also and note your exception.

22 MR. WOODWARD: Thank you, Your Honor.

23 MR. GRIZZARD: And, Your Honor, could I just
24 suggest that again -- I think the Court has already
25 cautioned the jury -- I can't remember -- on

1 reading, but I think you already have. I'm not
2 certain. I can't remember.

3 THE COURT: All right, Sheriff. Bring them
4 back in and I will tell them one more time.

5 (The jury was recalled to the courtroom, and
6 the following occurred in the presence of the jury.)

7 THE COURT: Ladies and gentlemen, I simply
8 want to caution you one more time, please do not
9 read anything about this in the news media; don't
10 watch it; don't listen to it in any way, shape or
11 form until after this case is concluded.

12 All right. You are now excused until
13 tomorrow morning at nine thirty.

14 (The jury was excused at 4:55 p. m.)

15 THE COURT: All right, gentlemen. Suppose
16 we go over the instructions. We will either do it
17 tonight or early tomorrow morning.

18 MR. WOODWARD: We would prefer to do it now.

19 THE COURT: Court stands adjourned.

20 (The Court adjourned at 5 o'clock p. m.,
21 December 5, 1979.)

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1 In the Circuit Court of the County of
2 Northampton, before The Honorable James C. Godwin,
3 Judge, and jury, at 9:45 a.m., December 6, 1979.

4 Appearances same as heretofore noted.
5
6
7

8 -----oOo-----
9

10 MR. SAVAGE: If Your Honor please, at the
11 beginning of this trial way back whenever that was,
12 we moved the Court to sequester the jury throughout
13 the trial to prevent the possibility of there being
14 any publicity or anything that would influence the
15 jury. That motion was denied and at the conclusion
16 of the first portion of this trial, we made another
17 motion that the jury again be sequestered to
18 prevent the possibility that they would be
19 influenced by any publicity or any outside
20 influences and that motion was denied, and when we
21 broke last night at the conclusion of all the
22 evidence and the jury was to return only to hear
23 the argument and to hand down the sentence, we again
24 asked the Court to sequester the jury so the jury
25 would not be susceptible to publicity.

1 We also made a motion of closure, asking
2 the Court to require the press, if any, not to
3 present or publish any articles which would appear
4 in this area in reference to this offense and this
5 trial. In the morning paper of The Virginian-
6 Pilot, the Eastern Shore edition, is an account of
7 this trial entitled "Sentencing Due in Jeweler's
8 Murder." That account recounts some of the events
9 that happened in the trial yesterday. It is not
10 possible for the Court to presume or assume that
11 this article has not been exposed to members of
12 the jury and, if it has, then the possibility is
13 too great and too real for improper influence.

14 The papers are always filled with accounts
15 of our trials on the Shore and in the Eastern Shore
16 newspaper, which is published and distributed
17 throughout Northampton and Accomack Counties.
18 There is an account of the grand jury handing down
19 a rape indictment and rape suspects to be tried in
20 January and in the Virginian-Pilot an account of
21 the trial of a robbery suspect.

22 We submit that all of these articles which
23 could and probably were read by some or all the
24 members of the jury could not have helped but to
25 influence them as they have to decide the issue in

1 this case. We renew our motion for a mistrial as
2 made at various times during this case.

3 For the record, Judge, we have submitted
4 these articles to you and the Court has already
5 marked them.

6 THE COURT: All right, sir. We will file
7 them as part of the record. I'm going to overrule
8 your motion for a mistrial and note your exception
9 on the record.

10 MR. WOODWARD: Your Honor, before we begin,
11 I would ask that the pistol be removed from the
12 bench as it's now situated.

13 THE COURT: All right, sir.

14 Is there anything else, gentlemen, before we
15 bring the jury in?

16 MR. WOODWARD: Let me speak with Mr. Savage.
17 No, Your Honor.

18 THE COURT: Bring the jury in, Sheriff.

19 (The jury was called to the courtroom, and
20 the following occurred in the presence of the jury:)

21 THE COURT: Ladies and gentlemen, at this
22 time, I will read the Court's instructions to you,
23 after which you will hear final argument of counsel.
24 As in the first stage of this trial, the
25 Commonwealth's Attorney has the right to open and

1 close the argument. Defense counsel will argue in
2 between. At the conclusion of all the argument, I
3 will instruct you further.

4 You have convicted the defendant of an
5 offense which may be punished by death. You must
6 decide whether the defendant shall be sentenced to
7 death or to life imprisonment. Before the penalty
8 can be fixed at death, the Commonwealth must prove
9 beyond a reasonable doubt at least one of the
10 following alternatives:

11 (1) That after consideration of his past
12 criminal record there is a probability that he
13 would commit criminal acts of violence that would
14 constitute a continuing serious threat to society;
15 or

16 (2) That his conduct in committing the
17 offense was outrageously or wantonly vile, horrible
18 or inhuman, in that it involved torture, depravity
19 of mind or aggravated battery to the victim beyond
20 the minimum necessary to accomplish the act of
21 murder.

22 If you find from the evidence that the
23 Commonwealth has proven beyond a reasonable doubt
24 either of the two alternatives, then you may fix
25 the punishment of the defendant at death, or if you

1 believe from all the evidence that the death
2 penalty is not justified, then you shall fix the
3 punishment of the defendant at life imprisonment.

4 If the Commonwealth has failed to prove
5 either alternative beyond a reasonable doubt, then
6 you shall fix the punishment of the defendant at
7 life imprisonment.

8 The Court instructs the jury that when
9 determining the punishment to be imposed for a
10 conviction of capital murder, you shall consider
11 the circumstances surrounding the offense, the
12 history and background of the defendant, Willie
13 Lloyd Turner, and any other facts in mitigation of
14 the offense. Facts in mitigation, if proven by
15 the evidence, may include, but shall not be limited
16 to, the following:

17 (1) The capital felony was committed while
18 the defendant, Willie Lloyd Turner, was under the
19 influence of extreme mental or emotional disturbance;
20 or

21 (2) At the time of the commission of the
22 capital felony, the capacity of the defendant,
23 Willie Lloyd Turner, to appreciate the criminality
24 of his conduct or to conform his conduct to the
25 requirements of law was significantly impaired.

1 Failure of the defendant to testify creates
2 no presumption against him and in considering the
3 punishment to be imposed, his failure to testify is
4 not a circumstance which the jury is entitled to
5 consider.

6 The Court instructs the jury that in this
7 proceeding, as in the former where you determined
8 the guilt of the defendant, the burden is upon the
9 Commonwealth to prove each and every fact required
10 for imposition of the death penalty, as set forth
11 in other instructions of this Court, by evidence so
12 strong, so clear, and so conclusive that there is
13 left in the minds of the jury no reasonable doubt.
14 Where the evidence is susceptible to two
15 interpretations, one consistent with the imposition
16 of the death penalty, and the other with the
17 imposition of life imprisonment, you should not
18 adopt that interpretation which is consistent with
19 imposition of the death penalty.

20 If, therefore, upon a consideration of all
21 the evidence, there exists in your minds a
22 reasonable doubt as to any fact or conclusion you
23 are required to find before the death penalty may be
24 imposed, you shall recommend a sentence of life
25 imprisonment.

1 in order to impose the ultimate punishment of
2 capital punishment.

3 Instruction Number 4 deals with the burden
4 of proof at this stage of the trial. As with all
5 criminal cases, the burden of proof is always on
6 the Commonwealth to prove the case beyond a
7 reasonable doubt. This instruction tells you that
8 we must prove to you each and every element of the
9 offense. The evidence must be strong, convincing,
10 clear and conclusive so as to exclude a reasonable
11 doubt. This is one of the basic tenets of the
12 whole American system of law.

13 The Court has also instructed you on the
14 two things that you need to look to to impose the
15 death sentence. Instruction Number 1 tells you
16 that you must decide whether the defendant shall be
17 sentenced to death or to life imprisonment. Before
18 the penalty can be fixed at death, the Commonwealth
19 must prove beyond a reasonable doubt at least one
20 of the following alternatives: There are two of
21 them. The first one:

22 That after consideration of his past criminal
23 record there is a probability that he would commit
24 criminal acts of violence that would constitute a
25 continuing serious threat to society. Now, let's

1 punishment of Willie Lloyd Turner in this case.

2 We have prepared the forms of verdict for your use.

3 Now, when you have arrived at this verdict of

4 punishment, you will have your foreman sign it.

5 Now, you can retire to your jury room to begin your

6 deliberations, taking with you the Court's

7 instructions and all the exhibits admitted into

8 evidence in this case.

9 All right, Sheriff.

10 (The jury retired to consider their verdict
11 at 11:30 a. m.)

12 (The jury returned to the courtroom at
13 11:48 a. m.)

14 THE COURT: Yes, sir.

15 JURY FOREMAN: Your Honor, your instructions
16 have been read by the prosecuting attorney and the
17 defendant attorneys. They have also been read by
18 the foreman to the jurors in the jury room. Before
19 we start deliberating, we would like to know
20 exactly -- we understand what the death penalty
21 means. What does life imprisonment entails (sic)?

22 THE COURT: Of course, you must read the
23 instructions. The instructions mean exactly what
24 it says in the instructions. You need not concern
25 yourselves with what may happen hereafter. You must

1 Follow the Court's instructions and you have, of
2 course, the two alternatives that are set out in
3 that instruction.

4 JURY FOREMAN: Thank you, sir.

5 (The jury retired to consider their verdict
6 at 11:50 a. m.)

7 THE COURT: Do you gentlemen have any motions
8 that you want to make at this time?

9 MR. WOODWARD: Your Honor, we would move at
10 this time for a mistrial. The jury has obviously
11 made an inquiry which concerns what happens in the
12 future. We believe that there is an instruction
13 which the Court could have given to them. I
14 recognize that you stated it in approximately the
15 same language what that instruction is. As I say,
16 we would move for a mistrial based on the question
17 which has been asked by the jury and the answer
18 which was given by you, the question of parole.

19 THE COURT: I realize that. I think the
20 answer was a stock answer that is usually given in
21 these cases. I'm going to overrule your motion for
22 a mistrial and note your exception in the record.

23 THE SHERIFF: Are you ready for the jury?

24 THE COURT: Yes. Bring the jury in,
25 Mr. Sheriff.

1 (The jury returned to the courtroom at
2 12:50 p. m.)

3 THE COURT: Have you arrived at a verdict,
4 ladies and gentlemen?

5 JURY FOREMAN: Yes, Your Honor.

6 THE COURT: Would you hand me the verdict.

7 (The jury verdict was handed to the Court
8 for examination.)

9 THE COURT: Will you read the verdict,
10 please.

11 THE CLERK: "We, the jury, on the issue
12 joined, having found the defendant guilty of
13 capital murder of W. Jack Smith as charged in the
14 indictment and having found that after
15 consideration of the past criminal record that
16 there is a probability that he would commit
17 criminal acts of violence that would constitute a
18 continuing serious threat to society and/or his
19 conduct in committing the offense is outrageously
20 or wantonly vile, horrible or inhuman in that it
21 involved torture, depravity of mind, aggravated
22 battery to the victim beyond the minimum necessary
23 to accomplish the act of murder and having considered
24 the evidence in mitigation of the offense
25 unanimously fix his punishment at death."

1 Signed: J. Worsley, Foreman.

2 THE COURT: Ladies and gentlemen of the
3 jury, is this your verdict and so say you all?

4 THE JURY: Yes, it is.

5 THE COURT: Would you like the jury polled?

6 MR. WOODWARD: Yes, Your Honor, we would.

7 THE COURT: Members of the jury, if this is
8 your verdict, when your name is called, would you
9 please answer "Yes."

10 (The jury was polled.)

11 MR. WOODWARD: Your Honor, before the jury
12 is discharged, we do have a motion to make, please.

13 THE COURT: All right, Sheriff. Would you
14 take the jury back to the jury room, please.

15 (The jury was excluded from the courtroom,
16 and the following occurred out of the presence of
17 the jury:)

18 MR. WOODWARD: Your Honor, the verdict form
19 which was tendered to the jury with the other
20 verdict forms, of course, were those prescribed by
21 the Court. It indicates at the top of that -- it
22 says, "Cross out any paragraph, word or phrase
23 which you do not find beyond a reasonable doubt."
24 Now, I understand that one could read this and
25 understand that they found both of the two elements

1 beyond a reasonable doubt and further determined
2 the penalty to be imposed. I do think, however,
3 that they have to state that; that the jury has to
4 find either both of them or one of them; but, as
5 it is now, you don't really know whether they
6 found both or one and it merely failed to delete
7 the "and" or the "or."

8 THE COURT: The jury as far as the verdict
9 is concerned, gentlemen, they have their
10 instructions. They have found both in accordance
11 with the jury's verdict and I don't think it would
12 be proper to go into their reasons at this time.
13 I think in accordance with this verdict, they have
14 decided that both have been found and I would leave
15 it at that. I will leave it at that, I will put it
16 that way.

17 MR. WOODWARD: We except to the Court's
18 ruling.

19 THE COURT: Yes, sir.

20 Sheriff, would you bring the jury back.

21 (The jury was recalled to the courtroom, and
22 the following occurred in the presence of the jury:)

23 THE COURT: Ladies and gentlemen of the jury,
24 this, of course, has been a rather long trial. I
25 know it's been a strain on you. We appreciate your

1 service. We appreciate your coming here and taking
2 this responsibility. Now, you're now excused.
3 Thank you for very much for your service. You're
4 now free to leave.

5 (The jury was dismissed at 12:55 p. m.)

6 MR. WOODWARD: Your Honor, at this time, we
7 would ask the Court to allow us to reserve such
8 motions as we may make, pending the imposition of
9 sentence by the Court. I believe the presentence
10 report given the verdict is mandatory and
11 sentencing will have to be set. We do wish to
12 renew at this time our motion and motions for
13 mistrials which we have made throughout the
14 evidence and such other motions as we may have made
15 and merely overlooked at this point. As we have
16 indicated to the Court previously, there have been
17 off-the-record discussions concerning instructions.
18 We understand the Court's ruling. We would like to
19 reserve the right to dictate subsequently such
20 objections as we have to the instructions which you
21 tendered today and, further, to give to you for
22 your refusal such instructions as you have indicated
23 to us that you would refuse in order that the
24 record would be accurate and reflect the totality
25 of the proceedings these last four days.

1 THE COURT: All right, sir. We agreed to
2 that at the time we argued the instructions.

3 MR. WOODWARD: Thank you.

4 THE COURT: Now, I will ask the court
5 reporter to prepare the transcript.

6 Do you gentlemen want to set a time for the
7 sentencing?

8 MR. WOODWARD: Your Honor, I failed to bring
9 my schedule here. I will be glad once I return
10 with Mr. Savage and Mr. Grizzard to coordinate that
11 with your secretary.

12 THE COURT: I assume then that the motion
13 that you have now is to set aside the verdict and
14 have the transcript prepared and we will have that
15 argued at the time of sentencing, right?

16 MR. WOODWARD: I believe we can do that if
17 we're given adequate time, Your Honor. I do not
18 formally make that motion, but, for formality's sake,
19 I would ask that the verdict be set aside,
20 preserving any objections and exceptions and any
21 other errors we contend have been committed during
22 the course of the trial. We would ask to be allowed
23 subsequently to argue that particular motion pending
24 the receipt of the transcript from the court
25 reporter.

1 THE COURT: All right, sir. Is there
2 anything you would like to say, Mr. Grizzard?

3 MR. GRIZZARD: Now, the question in my mind,
4 Your Honor, are you going to argue this at the time
5 of the sentencing. He wants to argue the motion to
6 set aside after receipt of the transcript. I
7 assume that that would be at the same time of
8 sentencing. If that's the situation, we're going
9 to need some idea of how soon the transcript could
10 be prepared.

11 THE COURT: We can't set the date today
12 because none of us have our dates at this point.

13 Do you have any idea how soon you could have
14 the transcript ready?

15 THE REPORTER: Would a month be suitable?

16 THE COURT: Yes. We will try to set this
17 matter, gentlemen, for sentencing sometime the
18 latter part of January or the first part of
19 February. It would have to be in that period -- in
20 that time frame because Mrs. Donn will probably get
21 the transcript to us during the middle or latter
22 part of January. The matter will be continued on
23 motion to set aside at this time and sentencing
24 will be deferred until such time as we can hear the
25 motions and have access to the transcript.