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Clerk, Supreme Court of Appeals
Richmond, Va.

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# Record No. 4916

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

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## RUSSELL E. FARRAR

v.

## COMMONWEALTH OF VIRGINIA

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FROM THE CORPORATION COURT FOR THE CITY OF LYNCHBURG

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RULE 5:12—BRIEFS.

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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## Record No. 4916

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VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 3rd day of June, 1958.

RUSSELL E. FARRAR, Plaintiff in Error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in Error.

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From the Corporation Court for the City of Lynchburg

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Upon the petition of Russell E. Farrar a writ of error and *supersedeas* is awarded him by one of the Justices of the Supreme Court of Appeals on June 3, 1958, to a judgment rendered by the Corporation Court for the City of Lynchburg on the 14th day of January, 1958, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

# RECORD

* * * * *

Virginia,
City of Lynchburg, to-wit:

Be it remembered, that on the 5th day of December, 1957 Russell E. Farrar brought before me, Judge of Municipal Court for the City of Lynchburg, charged with a felony in this that he did in said City feloniously commit sodomy with Alfred W. Howard as charged in within warrant was by me, upon the evidence, on oath of J. J. Tribble et al. found guilty of said offense, wherefore I adjudge that he appear before the Grand Jury of the City of Lynchburg.

JOS. P. McCARRON, Judge.

* * * * *

page 4 } Commnwealth of Virginia—In the Corporation Court of the City of Lynchburg, to-wit:

The Grand Jurors of the Commonwealth of Virginia in and for the body of the City of Lynchburg, and now attending the Corporation Court for the said city upon their oaths present: That Russell E. Farrar, on or about the 24th day of November, 1957, within the said City, unlawfully and feloniously did voluntarily submit to an assault upon him, by Alfred W. Howard, and then and there feloniously did commit the detestable and abominable crime against nature, by then and there, to-wit:—on the day and year aforesaid, in the City aforesaid, feloniously, voluntarily submit to having carnal knowledge of the body with Alfred W. Howard, by the mouth, against the order of nature and against the peace and dignity of the Commonwealth of Virginia.

THIS INDICTMENT found at the January Term, 1958, of the Corporation Court of Lynchburg, on the evidence of J. J. Tribble and W. L. Farrow witnesses sworn and sent to the Jury by the Court.

Filed Jan. 6, 1958.

H. H. M., Clk.

(on back)

We the jury find the accused, Russell E. Farrar, guilty as charged in the within indictment and fix his punishment at one year in the penitentiary.

H. W. SANDERSON, Foreman.

INDICTMENT FOR SODOMY.

A true bill.

H. L. MORRISON, Foreman.

WITNESSES:

1. J. J. Tribble
2. W. L. Farrow

The foregoing witnesses sworn in Court to give evidence before the Grand Jury.

Teste:

H. H. MARTIN, Clk.

* * * * *

page 13 } Virginia:

At Lynchburg Corporation Court, January 14th, 1958.

* * * * *

This day, the day on which this case was set for trial, came the Commonwealth's attorney, and the said Russell E. Farrar, who stands indicted of sodomy, a felony, appeared in court in his own proper person according to the condition of his recognizance, and the said accused also appeared by his attorneys, and the accused being duly arraigned, in his own proper person pleaded not guilty to the indictment, and thereupon came a jury, to-wit, John A. Blankenship, Joseph H. Coleman, Jr., Eugene R. Patterson, John M. Payne, C. W. Potter, Percy O. Ragland, Roy A. Tibbs, John R. Dietz, E. H. Benson, Howard C. Bowers, Herbert C. Bryant and George W. Sanderson, who having been duly summoned, selected, tried and sworn according to law, there being no objection or exception prior to their having been so sworn, for any

irregularity or omission as is mentioned in the provisions of Section 19-176 of the Code of Virginia, and having heard the evidence and argument of counsel, and having received the instructions of the court, were sent to their room to consult and consider of their verdict, and after some time returned into court and presented their verdict, written on the back of the indictment, in the words and figures following, to-wit, "We the jury find the accused, Russell E. Farrar, guilty as charged in the within indictment and fix his punishment at one year in the penitentiary. G. W. Sanderson, Foreman." Thereupon the accused by his attorneys moved the court to set aside said verdict on the ground that it is contrary to the law and the evidence, that there is not sufficient credible evidence to support a verdict of conviction, and that the evidence introduced by the Commonwealth is incredible and cannot be believed, which motion the court overruled, and the accused by his attorneys excepted. Thereupon it being demanded of the accused if anything for himself he had or knew to say why the court should not proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay thereof, it is considered by the court that the accused, the said Russell E. Farrar, be confined in the penitentiary of this Commonwealth for the aforesaid term of one year, to be computed from the date of

page 14 } this judgment, no time having been spent by the accused in jail awaiting trial, and that he pay the costs of this prosecution. And it is ordered that the city sergeant of this city, upon a proper warrant from the lawful authorities of said penitentiary, do deliver the body of the said Russell E. Farrar, who has been present in his own proper person at all time throughout the trial of this case, to the duly authorized agent of the superintendent of the said penitentiary, to be conveyed hence to said institution, therein to be confined and treated in the manner directed by law.

At the instance of the accused who by his attorneys intimated his intention to apply for a writ of error and *supersedeas,* the court doth order that execution of the foregoing judgment be suspended until the 8th day of April, 1958, and the accused is allowed bail.

Thereupon the said Russell E. Farrar, together with W. L. Johnson and Daisy Estelle Johnson, his sureties, who justified as to their sufficiency, was duly recognized in the sum of $1,500.00, upon condition that if the said Russell E. Farrar shall make his personal appearance before the corporation court for the city of Lynchburg, at the courthouse thereof,

on the 8th day of April, 1958, at 9:30 o'clock A. M., to answer said charge of sodomy and to answer the foregoing judgment, and shall make his personal appearance at any time or times to which this case may be continued or further heard, before any court, judge or justice having or holding any proceeding in connection therewith, to answer said charge and judgment, and shall not depart thence without leave of court, judge or justice, then said recognizance to be void, otherwise to remain in full force and effect.

Filed Jan. 14, 1958.

H. H. M., Clk.

* * * * *

page 15 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERRORS ON A CHARGE OF SODOMY.

Tried January 14, 1958.

To the Honorable Royston Jester, III and the Honorable J. Murrell Daniel, Attorneys for the Commonwealth for the city of Lynchburg, Virginia:

PLEASE TAKE NOTICE:

That the undersigned will, as soon as can conveniently be done, apply to the Supreme Court of Appeals of Virginia for a writ of error and *supersedeas* to a charge of sodomy against the said Russell E. Farrar, which was tried January 14th, 1958, in the Corporation Court for the City of Lynchburg, Virginia, for which the said Russell E. Farrar received a sentence of one year in the State Penitentiary.

As his grounds of appeal, the said Russell E. Farrar alleges the following errors:

1. The Court erred in allowing the eight jurors to serve who were on the venire in the Alfred Howard case. Pages 2a.—2f. of the transcript of the evidence.

2. The Court erred in not granting a view of the premises. Pages 121 and 122 of the transcript of the evidence.

3. The Court erred in giving instruction No. 1, as offered by the Commonwealth. Page 123 of the transcript of the evidence.

4. The Court erred in failing to set aside the verdict of the jury. Page 130 of the transcript of the evidence.

page 16 } Respectfully,

RUSSELL E. FARRAR
By PAUL WHITEHEAD
Counsel.

HAROLD B. SINGLETON
Counsel.

Filed Mar. 12, 1958.

H. H. M., Clk.

* * * * *

VIRGINIA:

In the Corporation Court for the City of Lynchburg.
January 14, 1958.

* * * * *

Before: Hon. S. Duval Martin, Judge, and Jury.
Charged With: Sodomy.
Pleads Not Guilty.

Attorneys for the Commonwealth: Royston Jester, III, Esq., J. Murrell Daniel, Esq.

Attorneys for the Defendant: Paul Whitehead, Esq., Harold B. Singleton, Esq.

* * * * *

page 2-a } IN THE JUDGE'S CHAMBERS

Mr. Singleton: The defendant by counsel moves the Court to quash the venire of eight members of the venire this morning left over from the trial of Alfred W. Howard on Friday, the 10th of January, for the reason that these jurymen were

in the Court Room when Howard was arraigned and pleaded and saw the prisoner Howard, and we feel that also, due to the fact that the results of that trial have been in the newspapers, that would impress upon the minds of these jurymen, the eight left over from the twenty that tried Howard. We are not talking about the venire of twelve. In addition we feel that they would be prejudiced against this defendant and we have here Michie's Juris Prudence Jury Trials 37, page 513, Volume II (reading).

The Court: The Court is in thorough accord with the principle that the accused must have a fair and impartial trial by a jury that is free from any bias or prejudice. If I understand what you are driving at, it arises out of the following facts: That a regular venire was summoned here at the opening of this Court, *venire facias,* containing twenty-four names drawn by lot from the jury box, the City Sergeant being directed to summons twenty of that twenty-four. He did summons twenty of that twenty-four. The work of the Court proceeded with those twenty men so summoned.

page 2-b } They tried cases, including a case against Alfred W. Howard for sodomy. In that case, after the twelve jurors had been selected from the panel of twenty, the eight of the twenty who were stricken from that trial were excused and excluded from the Court Room. They heard none of the evidence adduced in the trial of Howard. They were present when that prisoner was arraigned and pleaded but when the twelve were selected, those remaining eight and every other person whose presence was not needed in that trial were excluded from the Court Room. Counsel for the prisoner requested the Court for a separate trial of the prisoner, Russell E. Farrar, who was also indicted separately for sodomy, and he expressed a desire for a separate and different jury. It is to be borne in mind that Howard and Farrar were not jointly indicted but were separately indicted. Section 19-177 provides for separate trial of only persons who were jointly indicted. However, since these two men were separately indicted for the same offense committed by one upon the other, the Court, in an effort to see that this defendant would have in fact a fair and impartial trial, issued a venire for additional jurors, directing the City Sergeant to summon twelve from a list of sixteen jurors drawn from the jury

page 2-c } box, such twelve to go with the eight original jurors who were stricken in the trial of Howard, now constitute the panel of twenty for the trial of the present case against Russell E. Farrar.

The Court is of the opinion that everything proper to be

done to insure the prisoner Farrar a fair and impartial trial with reference to the jury has been done. Now, as to any bias or prejudice being created from publication in the newspaper, so far as this Court knows, there has been very little newspaper publicity given to either of these cases. Counsel does not point out anything with reference to newspaper publications. So far as this Court can recall, there may have been in the newspaper upon the arrest of these parties a mere statement of their arrest and the charges for which they were arrested; that following their preliminary hearing, a mere statement that they had been sent on to the Grand Jury upon this charge. As to the trial in this Court of Alfred W. Howard, my recollection is that there was a very skimpy account of same, consisting mainly of simply a statement that he had been tried, found guilty of this offense, and giving the punishment imposed upon him. There has certainly been no
page 2-d } undue publicity about these cases in any manner by the Press so far as this Court is advised. However, the question of whether any of the panel in this case has made up or formed any opinion of the guilt of the accused or is in any way biased or prejudiced, either from the newspaper accounts or any other way, will have to be determined in the examination of those jurors upon their voirdire. The mere suggestion by counsel that he feels that there may be some prejudice arising from newspaper accounts or from the fact that the eight persons stricken as jurors in the trial of the case against Howard and in the absence of any evidence that there is any prejudice by any of them against the accused, does not warrant this Court in assuming that any such prejudice exists. The motion is overruled.

Mr. Singleton: We would like to file the accounts and introduce in evidence the Lynchburg News, Lynchburg, Virginia, for Saturday, January 11, 1958, on page 13, fifth column, next to the last article in that column, where this is said: "Two men given prison terms. Paragraph. Two defendants were found guilty as charged and sentenced to prison terms after trials in Corporation Court yesterday. Paragraph. Robert Carl Cox, 618 Pearl Street, indicted on a charge of grand larceny, was sentenced to two years in the State Penitentiary. Cox, accused for the theft of a check, pleaded not guilty. Paragraph. Alfred W. Howard, thirty-year old negro, 1002 Fifth St., indicted on a sod-
page 2-e } omy charge, was sentenced to eighteen months in prison. Paragraph. Russell Earl Farrar, 54, Route 2, Madison Heights, was indicted along with Howard on the offense. This trial was set for January the 14th." We'd like

to offer this paper in evidence and ask leave to file said newspaper as "Exhibit No. 1" for the Defendant.

I would like also to file as "Exhibit No. 2" a copy of the Daily Advance, Lynchburg, Virginia, Saturday, January, 11, 1958, containing on page 4, column 1, the following: "Two men sentenced after court trials. Two defendants were sentenced to prison terms after trials in Corporation Court yesterday. Paragraph. Robert Earl Cox, 618 Pearl Street, was sentenced to two years on a charge of grand larceny. Paragraph. Alfred W. Howard, 30, negro, 1002 Fifth Street, was sentenced to eighteen months on a moral charge. Paragraph. Russell Earl Farrar, 54, Route 2, Madison Heights, indicted along with Howard, will stand trial January 14th." If Your Honor please, we'd like to file these.

The Court: The Commonwealth's Attorney being present, the Court will hear any reply he wishes to make in the matter.

Mr. Jester: With reference to the items appearing in the Lynchburg News of January 11, 1958, and The Advance of January 11, 1958, counsel would bring to the Court's attention that at the opening of the trial counsel for the Commonwealth brought to the attention of the Court that due to the nature of the evidence which was anticipated would be inroduced in Court that he deemed it proper to exclude from the Court Room all persons whose presence were not necessary for the orderly procedure of the trial. This motion was granted and no newspaper reporter was present in the Court Room or anyone else, other than the Court Officers, the Attorney for the Commonwealth and the attorney for the accused Howard, besides the twelve jurors and the witness testifying. All witnesses not testifying being excluded from the Court Room.

page 2-f

Upon a reading of the above mentioned exhibits, Numbered 1 and 2, offered by the Defendant Farrar, it will be observed that there was no factual reporting of the incidents of trial and so far as counsel for the Commonwealth knows and believes, there has been no public interest or manifestation of public interest in this case which would have caused a discussion of the same amongst the people of the City of Lynchburg.

The Court: The Court adheres to its former ruling and overrules the said motion.

Mr. Singleton: We wish to note an exception, if Your Honor please, for the reasons that the jury would not be free

of bias or prejudice if the said eight jurors are permitted to serve and the defendant would get a fair trial.

page 3 } EVIDENCE INTRODUCED ON BEHALF OF THE COMMONWEALTH.

The witness,

WINIFRED SANDIDGE,

having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Daniel:

Q. Your name is Winifred Sandidge, is it not?

A. Yes, sir.

Q. Now will you talk so the gentlemen of the jury can hear you in the far end of the box?

A. All right.

Q. Where do you live?

A. On Sixth Street.

Q. Sixth Street whereabouts?

A. 1116 Sixth Street.

Q. All right. On the night of November the 24th, 1957, did you walk by the Texaco filling station at the corner of Park Avenue and Fifth Street?

A. Yes, on this side of Park Avenue. We was coming from Fifth Street; had been down on Fifth Street.

Q. Did you observe anything which caused you to make a report to the police officers?

A. (Nods head)

Q. What was that?

A. About Howard.

Q. What did you observe that caused you to make page 4 } a report?

A. I saw him went in on this side next to Dr. Wesley's.

Q. You saw him go in there where?

A. Farrar's place.

Q. Farrar's place. Is that the Texaco Company filling station at the corner of Park Avenue and Fifth?

A. That's right.

Q. Park Avenue and Fifth Street?

A. That's right.

*Winifred Sandidge.*

Q. How was this man Howard dressed?
A. He was dressed in a red shirt and blue slacks.
Q. Were they men's or women's slacks?
A. Women's.
Q. Did you see anything take place there that caused you to make a report to the police officers?
A. I didn't go on inside. I just know what went on outside. I don't know what went on inside.
Q. Were the lights on in the filling station when this man Howard went into the filling station?
A. That's right.
Q. Did you see Mr. Farrar here at that filling station that night?
A. At the filling station? Yes.
Q. You did see him.
A. Yes.
page 5 } Q. Where was he when this man Howard went into the filling station? Where did you see Mr. Farrar?
A. He was on in the front, on the front.
Q. In the building?
A. Unhuh.
Q. In the front room there?
A. That's right.
Q. Did you ever see the man Howard in the front room there?
A. Howard, he went into the back door next to Dr. Wesley's.
Q. Did you see him after he went in any more?
A. I didn't see him any more.
Q. Did the lights stay on all the time you were there?
A. No, they went out.
Q. How long was it after he went in before the lights went out?
A. Oh, it was about, I'd say, about nine or nine-thirty.
Q. I mean how many minutes did you estimate it was after Howard went into the filling station before the lights went out?
A. How many minutes?
Q. Approximately.
A. It was about—It was about two or three minutes, something like that.
page 6 } Q. Did you see who cut the lights out?
A. I didn't see who cut them out. They went out.

*Winifred Sandidge.*

Q. Do you know Mr. Farrar here?
A. Mr. Farrar? I have seen him going down there sometimes, getting pop.
Q. Have you ever had any fuss with him?
A. No.
Q. Have you ever had any row of any kind with him?
A. No.
Q. Do you bear any ill will towards him?
A. No.
Q. You may examine the witness.

CROSS-EXAMINATION.

By Mr. Singleton:
Q. Winifred, you say it was about 9:30 when you were by there?
A. Yes, sir, about nine or nine-thirty.
Q. Now, where were you standing when you saw Howard?
A. I was standing on this side next to the television place, coming up by the television place. I was on my way home by the brick house.
Q. Were you across the street on Park Avenue?
A. Yes, that's right.
Q. Which way were you going, up the street towards Dr. Wesley's office, or down the street?
A. I was on my way to Sixth and Park Avenue.
page 7 } Q. Sixth and Park?
A. Unhuh.
Q. Did you turn around and go back down the street?
A. I didn't turn around and go back.
Q. You did not turn around and go back?
A. No, I went on home then.
Q. You went straight on home?
A. Yes, straight on.
Q. Well, now, Winifred, when you were standing there you say you saw Howard go in the back door?
A. That's right.
Q. Did you see those oil drums in front of the back door?
A. Yeah.
Q. How did he get by the oil drums?
A. He pushed the door open. He got by there all right.
Q. Did he climb over the oil drums?
A. That's right.
Q. And got in the back door?

*Winifred Sandidge.*

A. (Nods head)

Q. Now when you saw the lights go off did the outside lights go off or the inside lights?

A. The inside lights.

Q. Were the outside lights left on?

A. No, the outside lights were off.

Q. Which went off first?

page 8 } A. The inside lights went off first.

Q. Then the outside lights went off?

A. That's right.

Q. Did he leave the little cigarette machine light on?

A. No, he didn't have that on.

Q. He didn't have on any light?

A. No, they cut all of them out.

Q. Do you know who turned the lights off?

A. I don't know who turned them off. They went off.

Q. You don't know who turned them off. You have been dealing there quite a bit, haven't you?

A. Yeah, I have been going there getting things for other people.

Q. Haven't you had some argument with the boys that worked there?

A. (Shakes head)

Q. About your change?

A. Yeah, they short changed me.

Q. They short changed you?

A. Yeah.

Q. Didn't you complain about their short changing you?

A. Yeah, I have. I went back. The person I went for sent me back down there to get the change. I went to the store for somebody else.

Q. They short changed you.

page 9 } A. Unhuh.

Q. Then you came back. Didn't they tell you not to come there any more?

A. They didn't tell me that.

Q. You deny they told you not to come there any more.

A. They didn't tell me not to come back any more.

Q. Didn't you tell them you were going to get them?

A. No, I didn't tell them that. I didn't tell them that.

Q. Winifred, after you saw the the lights go off, did you go immediately for the police?

A. Yeah.

Q. How far did you have to go before you found the police?

*Winifred Sandidge.*

A. Right there next to the little restaurant there on the corner next to the Harrison Theater.
Q. That is in the 900 block?
A. That's right.
Q. A block and a half from this place.
A. That's right.
Q. Now did the police go up there immediately?
A. That's right.
Q. Right away?
A. That's right.
Q. Do you know how long it was before the police got there?
page 10 } A. I don't know how long. They went straight on.
Q. Did you watch them go there?
A. No, I came on; went straight on home afterwards.
Q. What policeman did you report it to?
A. Farrow.
Q. Where do you live?
A. On Sixth Street, Sixth and Park Avenue.
Q. Where had you been that night?
A. I went to the drugstore.
Q. What drugstore?
A. Harry Reid's.
Q. Harry Reid. You were on your way home?
A. That's right.
Q. I believe what excited your attention was the dress of Howard?
A. That's right.
Q. Well, now, why did that excite your attention?
A. Excite it?
Q. Why did you pay so much attention to that?
A. Well, I thought maybe he was breaking in.
Q. You thought he was breaking in?
A. Unhuh.
Q. You mean his dress made you think he was breaking in?
page 11 } A. What do you mean by that?
Q. You said you were interested because of the dress of Howard. Isn't that what you told us?
A. That's right.
Q. Well, how was he dressed?
A. Dressed in red shirt and blue slacks.
Q. Well, don't a lot of men wear red shirts?

*Winifred Sandidge.*

A. He had on a red shirt and blue slacks.

Q. And you were across the street from him, weren't you?

A. I had crossed the street beside of where the brick house was. I wasn't far from it, right in front, across from Dr. Wesley's. The brick house is in front of Dr. Wesley's. I was on that side.

Q. Do you know how he'd have to go to get back in the place he was if he came in the back door?

A. I don't know.

Q. You don't know whether he could have gotten where he was if he came in the back door, do you?

A. He was standing out in the street at first. All at once he went into the side door next to Dr. Wesley's.

Q. You were easily seen?

A. Yeah.

Q. He could see you?

A. He didn't see me.

Q. If he had looked he could have seen you?

page 12 } A. That's right.

Q. Then right when you saw that you turned around and went back down the street?

A. Walked back down the street.

Q. Were the officers on foot?

A. That's right, on foot.

Q. When you came back were you behind the officers or in front of them coming back?

A. Behind.

Q. Did you see the lights off then or on when you got there?

A. It was on when we first got there.

Q. When you got back?

A. Yeah, and that's when the lights went out.

Q. You were going home?

A. That's right.

Q. And you suddenly saw the lights go off after Howard went in.

A. That's right.

Q. Did you know who was there that night at that time?

A. I don't know who was there but someone.

Q. You don't know who was there.

A. No.

page 13 } RE-DIRECT EXAMINATION.

By Mr. Daniel:

Q. About this short changing business, I believe you said

that was some boys there. Did the boys at the place short change you?

A. I didn't say no boys. Yes, the boys short changed me.

Q. Did you have any words with this man (indicating the accused)?

A. No, not him, the boy, his son.

Q. Did you ever make any statement you were going to get him or anything?

A. No, I haven't made no statement.

Q. You said you saw this man Howard stand there before going in. Was he doing anything while he was standing there? Did he walk around the building?

A. He walked around and came back on the sidewalk, then in a little while he ran around and went into the back door next to Dr. Wesley's.

Q. He was around some little time before he went in?

A. That's right.

Q. Do you know if any cars came in or any people were there before Howard came in?

page 14 } A. They say two boys were standing there at the time.

Q. Had those two boys left when Howard went into the building?

A. That's right.

Witness stands aside.

The Witness,

J. J. TRIBBLE,

having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Daniel:

Q. You are Mr. J. J. Tribble, are you not?

A. That's right.

Q. How long have you been a police officer in the City of Lynchburg?

A. Going on three years.

Q. On November 24, 1957, did you make an investigation upon complaint at the Texaco Filling Station, situated at or near the intersection of Park Avenue and Fifth Street?

*J. J. Tribble.*

A. I did.

Q. Just tell the jury in your own words what caused you to go there and what you found when you got there.

A. On November the 24th, approximately at 9:45 P. M., Officer W. L. Farrow and myself was working Fifth Street division. We were in the 900 block of Fifth Street and two colored ladies come down the street and told us we ought to go to the service station, something funny was
page 15 } going on up there; this funny man went in and cut the lights off. We went on up and got to the service station on foot. The lights were off the service station. I went to the main entrance of the service station and Farrow went to the wash pits and I got hold of the front door and it was locked.

Q. Just one minute. Can you explain to the jury a little bit about how the wash pit door is made, where it is situated, and where the front door is that you checked?

A. I went to the front door, the main entrance of the service station. You have to go by there; the wash pits and grease pits is up above the main entrance. Officer Farrow went to the wash pit and grease pits.

Q. Are there windows and doors to the wash and grease pits?

A. Yes, sir.

Q. What type?

A. They have got glass windows all over them.

Q. How do they open?

A. They go up.

Q. Now, this door that you checked, the entrance to the room where goods are sold, is that a glass door or wooden door, or how is it constructed?

A. It is wooden bottom and glass penels in it.

Q. Can you see through the door all right?

A. Yes.

page 16 } Q. Did you check the door?

A. I did.

Q. Was it locked?

A. It was.

Q. Then did you check inside with your flashlight?

A. It is a cigarette machine there and it's got a small light in it. The lights in front of the service station was out. I didn't see nobody there. I stepped out and threw my light through the window.

Q. Which window was that?

*J. J. Tribble.*

A. The window to the right of the main entrance of the service station.

Q. Is there a doorway directly back of the window as you look into it?

A. Yes, sir.

Q. What does the door lead to?

A. It is a storage room, if I ain't mistaken. I am not too familiar with the service station.

Q. Can you tell the jury approximately how wide that room is, in other words, from the point at the window where you were shining the light to the door at the other side of the main room, approximately how wide is that?

A. I would say from where I was standing to the door leading to the storage room would have been around twelve or fourteen feet.

Q. To the doorway?

page 17 } A. To the doorway leading to the storage room.

Q. Then the storage room, is this a storage room or hallway you are talking about?

A. If I ain't mistaken, it is storage room.

Q. About how big is the storage room?

A. I wouldn't know how to say.

Q. Could you estimate it?

A. I would estimate it to be around six by ten, something like that, just glancing at it. I didn't pay particular attention to it.

Q. Go ahead. You flashed your light. Tell the jury what you found.

A. My light went in. I threw my light through the window. Mr. Farrar was sitting on the floor with his back and shoulders up against the pile of boxes there and Alfred Howard, the colored man, was laying across his legs with his penis in his mouth.

Q. Mr. Tribble, about how far were these men from you at that time?

A. About the distance from me to you.

Q. Was your flashlight working properly?

A. Yes, it was.

Q. Could you see clearly what you have testified to?

page 18 } A. Yes, sir, I sure could.

Q. Is there any doubt the white man's penis was in the colored man's mouth?

A. No doubt.

*J. J. Tribble.*

Q. Do you wear glasses?
A. No, sir.
Q. Have you ever had trouble with your eyes?
A. No.
Q. Do you have twenty-twenty vision?
A. Yes, sir, twenty-twenty.
Q. Did you know Mr. Farrar?
A. No, sir, I didn't even know the man's name. I had seen him there.
Q. Had you ever had any trouble with Mr. Farrar or his relatives?
A. No.
Q. Do you bear any malice against Mr. Farrar or Howard?
A. No.
Q. The door was locked I believe?
A. Yes, sir.
Q. Mr. Farrow was where, this other police officer?
A. He was at the wash pit door to the right of me.
Q. He was there. Did you gain entrance to that room there?
A. No, sir, not until Mr. Farrar got up and put his clothes on.

page 19 } Q. Tell what happened when the light was flashed in there.

A. When my light hit on them, the colored boy ran backwards and Mr. Farrar got up, pulled his clothes on, cut the lights on, come and unlocked the main entrance to the door. I asked him, "Are you by yourself?" He said, "Yes, I am." I said, "You are not by yourself. I am going inside." When I got inside Howard was standing in the back putting on his overcoat and wiping his mouth off.
Q. Did you notice anything unusual about the condition of Mr. Farrar when you went there?
A. Nothing but the way he was dressed. He had on ladies' shoes.
Q. Mr. Farrar. About Mr. Farrar.
A. Excuse me. No, sir.
Q. About his physical condition I mean.
A. Yes, sir, I did, when he came out.
Q. What was that?
A. His penis was still erect when he came out in the service station.
Q. Did you notice anything unusual about the man Howard?
A. His mouth and all was red. He was wiping his mouth.

*J. J. Tribble.*

Q. How was he dressed?

page 20 } A. He had on a pair of ladies' corduroy slacks that zip up the side, a pair of women's shoes, white socks, red corduroy shirt and gabardine overcoat.

Q. Did Mr. Farrar or this man Howard at any time explain to you what they were doing back there?

A. No, sir. I asked what they meant by the act they committed. Both of them stated to me, "We have not done nothing as of yet".

Q. Are you sure they were the words they used?

A. Yes, sir.

Q. You may examine.

CROSS-EXAMINATION.

By Mr. Whitehead:

Q. Mr. Tribble, as I understand it, you were with Officer Farrow and you all were down on Fifth Street.

A. Yes, sir, that's right, sir.

Q. And then you say you got this message from this colored woman, then you walked up to Fifth and Park where this service station is.

A. Yes, sir, that's right, sir.

Q. When you got up there were the lights on or off then?

A. Lights were off, sir.

Q. Were there any lights on at all?

page 21 } A. No lights on the service station except a light in a cigarette machine sits back in the service station with a 25-watt bulb in it.

Q. At that time was that cigarette machine near the entrance to this alleyway?

A. No, sir, the cigarette machine sets directly in front of the main entrance.

Q. It was beside the door?

A. It is setting beside the door, yes, sir, beside of the door leading back to the storage room.

Q. That is what I meant. Now, as I understand, when you walked up there, of course you didn't have your flashlight on at that time, when you walked up to the premises, did you?

A. No, sir.

Q. But all the lights were off outside and inside you say except for one on the cigarette machine.

A. That's right.

*J. J. Tribble.*

Q. Was there any light on over the clock?

A. No, sir, I didn't notice any. It could have been. I didn't notice any. The light in the cigarette machine was the only light I saw.

Q. You say the light could have been on but you didn't notice it over the clock?

A. That's correct.

page 22 } Q. Now, then, when you all walked up there was it at that time that Officer Farrow then went around on the side to the wash pit?

A. Officer Farrow kept up by the gas tanks to the right of them, up to the wash pit. I stepped to the left and to the main entrance of the service station.

Q. Then you went to the door and tried to get in?

A. I went and caught hold of the door and saw the door was locked.

Q. You had to push the door to see that it was locked, didn't you?

A. That's right.

Q. You had to push down on the handle and you found it locked?

A. That's right.

Q. Then at that time, when you pushed on the door and looked in, you saw nothing, did you?

A. That's right.

Q. Then it was that you went a little to the right of the door looking in and then you flashed your flashlight at that time.

A. That's right, sir.

Q. And then you say you saw Mr. Farrar, the defendant, down on the floor?

A. That's right, sir.

Q. I believe you say he had his pants down

page 23 } around his ankles.

A. Pants and underclothes down around his ankles.

Q. Do you know where the entrance to the men's room is in there?

A. No, sir, I do not.

Q. Well, I will ask you this. Do you know where you start into the alleyway, in other words, right where the cigarette machine is?

A. Like into the storage room? Yes, sir, I do.

Q. Now, from the point that you start into the alleyway

*J. J. Tribble.*

how far back was Mr. Farrar sitting? What distance did you go in that alleyway before you got to where Mr. Farrar was sitting?

A. You mean from the door back to where he was sitting?

Q. Well, that entrance way where the cigarette machine was—

By the Court: Do you mean the main entrance to the service station?

Mr. Whitehead: No, sir.

A. The doorway leading back into the storage room?

Q. The doorway leading back into the storage room.

A. Well, I would say he won't setting over three foot from the entrance.

Q. You would say not over three foot from that entrance?

page 24 } A. Yes, sir.

Q. And you say he was sitting there. Was his back towards, well, we'll say was his back towards Park Avenue or was his back the other way?

A. His back was sitting south on Fifth Street.

Q. So I can get it straight, which way was Mr. Farrar facing?

A. Mr. Farrar was facing towards town.

Q. Would that be Park Avenue?

A. Yes, sir, that's right.

Q. Mr. Farrar was sitting facing towards Park Avenue?

A. That's right.

Q. Now,—

By the Court:

Q. Let me inquire there. Then he was facing towards where you were standing when you threw the flashlight in?

A. No, sir, he was facing—I threw my flashlight in this way, sideways of him.

Q. He was on an angle from the front door?

A. That's right, sir. Yes, sir.

By Mr. Whitehead:

Q. Now, you say he was sitting on the floor.

A. Yes, that's right.

Q. And with his back up against some boxes?

*J. J. Tribble.*

A. His shoulders and head back against the
page 25 } boxes.

Q. Well, then, would that have also put his lower part of his back and his shoulders and head up against the boxes?

A. No, sir, his rump, back here, was slid out and shoulders and head back against the boxes.

Q. What I am saying is actually his rump where he was sitting—He was sitting on the floor, is that correct?

A. That's right.

Q. And did you notice those boxes to see what type of boxes they were?

A. No, I didn't.

Q. And which way was the man named Howard facing?

A. His head was kind of parallel with me. He was laying across his legs, his head more or less. He was heading the other way. Farrar was facing this way.

Q. Howard was across Farrar but facing you?

A. More or less facing me, yes, sir.

Q. Let me ask you this. Was Howard's feet or his head nearest you?

A. His head.

Q. Now, then, did you go in there to see what was the width in that alleyway or passageway?

A. No, sir, I didn't.

Q. You don't know about that.

A. No, sir, I didn't pay no attention to it.

page 26 } Q. Now, then Mr. Tribble, after you flashed this light and then you say you saw Farrar on the floor and you saw Howard, who had hold of Mr. Farrar's privates?

A. Howard.

Q. Howard had hold of his privates with his hand?

A. With one hand around it.

Q. Then did you see them long enough to see where the end of Mr. Farrar's privates were?

A. I did.

Q. Whereabouts were they?

A. In his mouth.

Q. Do you know how much of it was?

A. No, sir, I do not.

Q. Now, then, after you had seen all of this, then what happened?

A. Then my light hit them and Howard ran backwards. Mr. Farrar got up, pulled his clothes up, cut the lights on,

unlocked the front door, came out and started locking up the gas tanks. I said, "Mister, are you by yourself?" He said, "Yes, I am just locking up." I said, "Sir, you are not by yourself. I am going in." I walked in and found Howard in the back room. He pulled his overcoat on and wiped his mouth off.

Q. Where was he?

A. He had run backwards, back in behind the
page 27 } door.

Q. Have you been in the place since that time? Do you know about it?

A. No, sir, I have never been in the station over half a dozen times.

Q. Where you found Howard, is that back where they store the soft drinks?

A. I don't know, sir. He was standing back behind the door.

Q. In other words, he was standing where you couldn't see him when you looked down the alleyway, is that correct?

A. That's right, sir.

By the Court:

Q. Officer, there has been reference to alleyways and passageways. Will you please tell us when you open the door to what you describe as the back room or storage room is there any enclosed plastered or boarded up alleyway or hallway into this back room, which you say is the storage room?

A. No, sir, it is not.

Q. It is just an open room?

A. That's right. It is a partition cuts the front of the service station off from the storage room and a door leading into it.

Q. Partition across the back of the main room and a door from that partition leads into the back room?

A. Yes, sir.

page 28 } Q. No hallway or enclosed walkway or alleyway back in this backroom or leading to it.

A. No, sir.

Q. It is just a front room and a back room.

A. That's right.

Q. With a door.

A. That's right.

Q. Between the two. All right.

*J. J. Tribble.*

By Mr. Whitehead:

Q. You say that according to your recollection there is a door when you start in the alleyway or passageway?

A. Yes. It is a doorway. Whether it is a door there or not, I don't know.

Q. Well, was that door open or closed?

A. That door was open.

Q. In other words, if there were a door there then, if it had been closed you could not have seen what you told us.

A. That's right, I sure couldn't.

Q. There was no door closed at that time.

A. No, sir.

Q. It gave you a plain view down there, this alleyway, and you said he was down in there about three feet?

A. From the inside door, yes, sir.

Q. Now, as I understood you to tell us, when you flashed your light in there, then Howard jumped up and

page 29 } ran backwards, is that correct?

A. That's right.

Q. Well, if Howard jumped up when you flashed the light in there, if he jumped up and ran backwards, how did you see the penis of Mr. Farrar in the mouth of Howard?

A. It was in his mouth when my light hit him, and when my light hit him, he jumped up and ran backwards.

Q. In other words, he did not get up or move until you had time to see what you told us.

A. That's right, sir.

Q. Now, when you say that he went backwards, would that be, well, we'll call it uphill or going up Park Avenue?

A. No, sir, it woud have been coming back this way, sir.

Q. Would have been coming back towards you?

A. It would have been coming towards Fifth Street, coming back towards Park Avenue instead of going up Fifth.

Q. Then were you holding the light there all the time after that?

A. I did I held my light on Mr. Farrar and he pulled his clothes up and cut the inside lights on.

Q. You say Mr. Farrar got up off the floor?

A. Yes, sir.

Q. At the time he got up off the floor where

page 30 } where was his pants?

A. Down around his ankles.

Q. Then he stood up and then pulled his pants up?

*J. J. Tribble.*

A. That's right, he pulled his pants up.

Q. Where did he go to cut the lights on?

A. He cut on the light when he come to the door. I don't know whether he cut it on at the back or front door. I on a beach, anywhere, showing us, please, sir, how you saw don't recall which one.

Q. In other words, he came back to near the front door before he cut the lights on?

A. He never did cut the outside lights on. He cut the lights on in the main part of the service station.

Q. Then you say it was then he came and unlocked the door. You say his penis was still erect?

A. I did, sir.

Q. Well, he had his clothes on then, didn't he?

A. Yes, he did.

Q. You mean you are telling that from the way his clothes were pushed out?

A. Absolutely.

Q. Well, what space of time, how long, would you tell us if you can, it took him to get off the floor, pull his pants up, cut the lights on, and walk to let you in the door?

A. He didn't let me in the door.

Q. He unlocked the door?

page 31 } A. Yes, sir.

Q. He did let you in.

A. He came out and I went in. Yes, sir, he unlocked the door.

Q. What space of time was that?

A. I would say it wouldn't have been over a minute or minute and a half.

Q. A minute to a minute and a half?

A. One or two minutes, that's right.

Q. Then when he came to the door and unlocked the door, then you went on in you say. Didn't he then go on and check his gas tanks?

A. After he talked to me he went and locked his gas tanks and came back in the service station after we got Howard out the back part of it.

Q. You say that you did ask him if anybody was in there and he told you no?

A. He did, sir.

Q. Well, now, were you back there long enough to observe, to know if you were back in the back part, through that alleyway or passageway, that there is no way physically to

get out of there except to come back through that passage way?

A. No, sir, I didn't pay no attention to it, sir.

Q. You don't know about that. You know you

page 32 } did go down the alleyway back into the back part. You did find Howard back there.

A. I did, sir.

Q. Mr. Tribble, would you mind sitting in a chair or sitting on a bench, anywhere, showing us, please, sir, how you saw Mr. Farrar sitting when you looked through the window with your flashlight, please, sir? If you want to sit on the floor, that is all right.

A. (The witness sits on the floor with his head and shoulders and upper part of his back leaning back against the front of the dais behind which the Judge is seated, his lower back and buttocks being one or two inches from the front of the dais, and his legs stretched straight out in front of him) He was sitting just in this position, sir.

Q. In that position?

A. I looked in across this way (indicating from his left).

Q. Mr. Tribble, would you say in other words that when you looked across you'd see his left side first?

A. That's right. Yes, sir.

Q. And his legs were stretched out in that fashion?

A. That's right.

Q. And I believe you say that the shoulders and upper part of his back and head were leaning against some boxes?

A. That's right, sir.

Q. Now, then, assume that you are shooting

page 33 } the light through there in that direction which you have just stated that would be standing to your left as you are sitting now.

A. That's correct.

Q. Now, then, where was Howard?

A. He was laying across this leg (indicating the right leg) of Mr. Farrar.

Q. Laying across?

A. Across Mr. Farrar's right leg.

Q. Now do you know which hand that Howard was using?

A. No, I do not. I wouldn't say.

Q. You know you saw him using one hand or the other.

A. That's right.

Q. And, Mr. Tribble, then—I don't want to repeat—as I understand, when you flashed the light in, after you saw what

you told us you have seen, then did Howard go back away from you in that direction, which would be to your right like you are sitting?

A. No, sir, he went back—This would be coming back toward you.

Q. Then, rather than going back part of the place or going to the front of the room, he went in the opposite direction from which Mr. Farrar was facing.

A. That's right, sir.

Q. And then when he went back did he dispage 34 } appear?

A. He did.

Q. Now, may I ask you while you are sitting there, as I understand then, when Mr. Farrar unlocked the door and you went in, where was Officer Farrow at that time?

A. When I saw them, when my light hit them, I told Officer Farrow, I said, "Farrow, here they are right here," and he came on down to the doorway where I was at. He was up at the wash pit door or grease pit door.

Q. I see. When Officer Farrow came around, didn't you tell Officer Farrow at that time Mr. Farrar was sitting on some boxes?

A. No, sir, I said he was sitting against some boxes.

Q. Now a few days, within a week we'll say, after this thing,—Do you know a man named John Scruggs?

A. I do.

Q. Did you talk to John Scruggs about this event on that night?

A. No more than John asked me were they really in the act and I said, "John, they sure were." (The witness returns to the witness stand)

Q. Mr. Tribble, I will ask you if on that occasion you did not tell Mr. Scruggs that you didn't actually see them in the act but you knew what they were doing?

A. No, sir, I did not, sir.

Q. How long have you been on the police force?

A. I came here September 27th, 1955, which is page 35 } about two years and a half.

Q. September the 27th, 1955?

A. That's right.

Q. And, Mr. Tribble, how tall are you, please, sir?

A. I am five foot nine and a half inches.

Q. And what is your weight, please, sir?

A. Stripped or what? I weigh 205 without my clothes on.

*J. J. Tribble.*

Q. What is your age, please, sir?
A. I am 29 the tenth day of May.

RE-DIRECT EXAMINATION.

By Mr. Daniel:

Q. Mr. Tribble, I want you to stay where you are for this. When you were sitting there a moment ago, I believe you testified if you were sitting like you were, you shined the light this way (indicating).

A. That's right.

Q. When Howard backed off this way, he got out of your view?

A. Yes, sir.

Q. I will ask you to tell the jury and Court whether or not when you go through the door there is some obstruction there which would permit him to get behind?

A. It is a partition there. The doorway leads in. I don't know how far.

page 36 } Q. As you go in the doorway you are talking about, isn't it narrow for a little ways before spreading out?

A. Yes, sir, I think it is.

Q. Then that is what, as far as you know, Howard got behind when he backed up, is it not?

A. That's right.

Q. Now, I only want to ask you one more thing about John Scruggs. Do you know the John Scruggs Mr. Whitehead asked you about? I anticipate he will be a witness.

A. Yes, sir, I have known John two years.

Q. How was it he happened to get into the conversation with you?

A. About three weeks ago, sir, I was off duty. I stopped at Wood's Gulf Service at Fifth and Federal. I started to leave and John said, "Wait a minute, I want to ask you something." He got in my car and sat down and closed the door. He asked me did I really catch them in the act. I said, "John, I sure did." He said, "You know Mr. Farrar is nearly dead?" I said, "John, I am sorry, I can't help it. I have got my job to do like you or anybody else."

Q. Had you seen the man at any time when you had another police officer with you since you made the arrest? Has John Scruggs had an opportunity to talk to you when you were

*W. L. Farrow.*

with another police officer after this arrest was
page 37 } made?
A. No, sir, I don't recall it.
Q. You don't remember seeing him.
A. I see John about every day.
Q. No one else was in the car with you?
A. No one.
Q. You are positive of what you told us?
A. I am positive of what I said.

Witness stands aside.

The witness,

W. L. FARROW,

having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Daniel:
Q. You are Police Officer W. L. Farrow, are you not?
A. That's right.
Q. You are a police officer for the city?
A. Yes, sir.
Q. How long have you been such an officer?
A. A little over a year now.
Q. On November 24th, 1957, did you take part in the arrest of this accused here?
A. Yes, sir, I did.
Q. Will you tell the jury what led up to that arrest, how you happened to go there, and where you were when the report was made?
page 38 } A. We was in the 900 block.
Q. Who was "we"?
A. Officer Tribble and I were in the 900 block of Fifth Street when two women came up to us and told us that a man had went in the filling station through the back door and he acted funny.
Q. Did he tell you what filling station?
A. Yes, sir, at Fifth and Park.
Q. The Texaco Filling Station?
A. Texaco filling station. He went in the filling station and he acted funny. We thanked her and went up there.

*W. L. Farrow.*

When we got there we noticed all his lights out around and I went to the doors where they wash cars at.

Q. As you go up there to get to the doors where they wash cars you had to go past the main entrance door?

A. That's right.

Q. Where did Mr. Tribble go?

A. He stopped at the main door, to the window to the right, and I was looking in the two big doors and Officer Tribble called me, said, "*Farrar,* I see them." When I went over there he said that he saw—

Mr. Whitehead: We object to him saying what he saw.

The Court: Objection is sustained.

Q. He called you and you went over to where the main door was?

page 39 } A. That's right.

Q. Was the main door open at that time?

A. No, it was locked.

Q. While you were there with Officer Tribble did you see this accused, Russell E. Farrar, at that filling station?

A. Yes, sir, I did.

Q. Tell the jury exactly what happened after you went over to the door pursuant to Mr. Tribble's call.

A. After I went to the main door, Mr. Farrar was on his way to the door. He opened the door. We asked him was he alone. He said yes he was getting ready to close up. He closed the door behind him and came out. He walked around a few minutes. We said we wanted to see who was in there with him, so he opened the door and we went in. We went directly to the back room. In the back room we saw Alfred Howard putting on his clothes and wiping his mouth.

Q. How was he dressed at that time, Howard?

A. He had on a pair of black slacks, a red shirt and a jacket and had on a pair of these sandals, soft shoes.

Q. Those slacks that he had on, was it anything unusual about those?

A. They zipped up the side.

Q. Were they women's slacks?

A. Yes, sir.

page 40 } Q. When you talked to Mr. Farrar was there anything unusual about his condition?

A. Yes, sir, we noticed his penis was erect.

Q. Did you all ask the men what they had been doing there?

A. Yes, sir.

*W. L. Farrow.*

Q. What was their reply?
A. Their reply was, "We haven't done anything yet."
Q. Did you see Mr. Farrar with his pants down?
A. Yes, sir, I did.
Q. Did you see him pull them up?
A. Yes, sir.
Q. You did not actually—

Mr. Singleton: He ought not to ask leading questions.
The Court: Are you making an objection? The objection is well taken. Don't lead the witness.

Q. Did you see this accused and this man Howard together in the little back room there?
A. No, sir, I didn't see them.
Q. You didn't see that yourself.
A. No, sir.
Q. Let me ask you this. Did you look through the window to the right hand side of the main entrance door? Did you look through that window?
A. Yes, sir.
page 41 } Q. Did you look through there with a flashlight on?
A. Officer Tribble had his light on.
Q. Could you see clearly by the light of the flashlight?
A. Yes, sir.
Q. Was the door to the back room open?
A. To my knowing it wasn't.
Q. I mean the room as you go into the main door, then there is a little storage room off of that. Was that door open?
A. Oh, yes, sir.
Q. That was open.
A. Yes, sir.
Q. Officer *Farrar,* do you know the accused here?
A. I have seen him but I don't know him personally.
Q. Have you ever done business with him?
A. When another policeman worked with me I have been there about twice and bought a soda.
Q. Have you ever had any trouble with this man here?
A. No, sir.
Q. Do you bear him any ill will, any malice?
A. No, sir.
Q. Did they give you any explanation as to what the two

of them were doing with the lights off?

page 42 } A. Alfred said he came in to get some oil. We asked him where was his container for oil.

Mr. Singleton: Unless it was said in the presence of the defendant, we object.

By The Court:

Q. Was the defendant in this case present during the conversation?

A. That's right.

By Mr. Daniel:

Q. Go ahead.

A. We asked where was his container. He said that he brought a bottle to get some oil.

Q. Did he ever show you the bottle?

A. No, sir.

Q. Did Mr. Farrar make any explanation as to what they were doing?

A. No, sir.

Q. All right.

CROSS-EXAMINATION.

By Mr. Singleton:

Q. Officer Farrow, when these two women came up to you, whereabouts were you on Fifth Street?

A. We was at the little store, standing at the store. It is almost to the corner of Fifth and Jackson.

page 43 } Q. Now, was that south of the Harrison Theater or not?

A. That is, yes, sir.

Q. Well, how far south of the Harrison Theater was it?

A. The store is right beside the Harrison.

Q. Did you walk up there right straight?

A. Yes, sir, when she told us, we went directly up there.

Q. Did you walk up there fast?

A. Average speed I'd say.

Q. When you got up there how did Officer Tribble proceed to the front door, which way did he go?

A. Well, both of us went up the street together and don't have to turn the corner at all. We went directly in front of the place.

*W. L. Farrow.*

Q. Directly in front of the place.
A. Yes, sir.
Q. You were how far from Officer Tribble?
A. I imagine I couldn't have been over ten feet at the most.
Q. Ten feet?
A. Yes, sir.
Q. Did you shine your light into the wash pit?
A. Yes, sir.
Q. Did you see the back door when you shined your light in there?
page 44 } A. No, sir, I didn't because I think it was two cars in there. They sort of blocked my view.
Q. Couldn't you see that back door was closed with some oil cans and things up against it?
A. No, sir, I couldn't see that.
Q. You could not see it.
A. No, sir.
Q. So you came down there when Mr. Tribble called you.
A. Yes, sir.
Q. At that time wasn't Mr. Farrar coming out of the door, having unlocked it?
A. No, sir.
Q. Where was he at that time?
A. At the time he was pulling his pants up.
Q. That's when he turned the lights on?
A. No, sir, wasn't no light on the whole time he was coming to the door, not a light was on.
Q. Wasn't it a light on in the cigarette machine?
A. As far as I know, it wasn't.
Q. No light on at the cigarette machine?
A. I didn't notice it. It might have been but I didn't notice it.
Q. In other words, there was no light on in the building at all anywhere.
A. I didn't notice it if it was. I didn't notice it.
Q. Now, when Officer—When Mr. Farrar came
page 45 } out of the building, didn't you all ask him if you could go in and look around?
A. Yes, sir, we asked him, "Are you here by yourself?" He said, "Yes, I am getting ready to close up." We said, "We are going in and look around. You are not here by yourself." That's the words we told him.
Q. When you went in to look around, he went to check the pumps?

*W. L. Farrow.*

A. No, sir, before we seen anything we asked him was he here by himself. He said, yes, and went around and did something, I don't know what he did.

Q. He went where and did something?

A. He walked around us. We were standing in the door. He passed by us.

Q. He did something outside of the building?

A. Yes, he did something outside of the building.

Q. You don't know what.

A. No, sir, I was talking to Officer Tribble.

Q. Was it at that time you asked him could you go in?

A. When he came back to the door we asked him. We said we wanted to take a look around; he wasn't in there by himself.

Q. Well, now, then after that did you go in the
page 46 } place there and get Howard or did he go?

A. Officer Tribble and I both went in there.

Q. Did you have the light on at that time?

A. Yes, sir, Officer Tribble had the light on.

Q. Where did he go to cut the lights on?

A. It is a wall switch. He found it.

Q. Was that in the front sales room or back room?

A. I couldn't tell you because the officer cut it on. I didn't pay any attention to it.

Q. Where was Farrar at that time?

A. He was in there with us.

Q. Did he tell you where to cut the light on?

A. No, sir.

Q. Now, Mr. *Farrar,* when you went back towards the back room, you had to go through a little door, didn't you?

A. Yes, sir.

Q. How wide is that little door?

A. I'd say I guess it is approximately three to five feet, I'd say.

Q. It could have been five feet wide?

A. Could have been.

Q. Just to the right of that door after you go in is the men's room, isn't it?

A. It is on the right. Yes, sir.

page 47 } Q. Did you check the door to the men's room?

A. Did I check it?

Q. How it opened.

A. I didn't hear your question.

Q. Did you check the door to the men's room, how it opened and closed?

A. No, sir, I didn't.

Q. Well, don't you know if that men's room door is open that it closes that little door to the back?

A. No, sir, I don't know that.

Q. You don't know that.

A. No, sir.

Q. Now don't you know, Mr. Farrar, as you go back into that back room there that for about two feet there is a wall on each side? Do you know that?

A. Yes, sir, I noticed a wall on each side.

Q. Then to the left of that there is a furnace, is it not?

A. I couldn't tell you.

Q. You don't know?

A. No, sir.

Q. Officer, you have testified in a case involving these facts before, have you not?

A. Yes, sir.

Q. In none of those times have you said anything about Mr. Farrar having his pants down and fixing up his pants.

page 48 } A. No, sir, because I wasn't asked.

Q. This is the first time you have said anything about it.

A. I told Mr. Daniel.

Q. Whereabouts were you standing, Officer, when you saw Mr. Farrar fixing his pants?

A. I was standing next to Officer Tribble.

Q. Next to Officer Tribble?

A. Yes, sir.

Q. Where was Farrar standing?

A. Where was he standing?

Q. Where was the defendant here?

A. He was back in the back.

Q. Back in the back?

A. Yes, sir.

Q. Had he gone back further in the back or come up closer in the back?

A. I couldn't tell you where he was.

Q. You don't know where he was?

A. I couldn't tell you where he had gone, whether he had gone back or come up; I couldn't tell you. I did not see where he was at first.

Q. How far was he from you at that time?

*W. L. Farrow.*

A. Oh, I would say approximately ten to 12 feet.
Q. Ten to twelve feet.
page 49 } A. Yes, sir.
Q. How old are you, Officer?
A. 23.
Q. How tall are you?
A. About five feet ten and a half, I guess.
Q. How much do you weigh?
A. About two ten or two twelve.
Q. Did Officer Tribble tell you that Mr. Farrar was sitting on some boxes?
A. That's the impression I got.
Q. That the defendant was sitting on some boxes?
A. That's the impression I got.

RE-DIRECT EXAMINATION.

By Mr. Daniel:
Q. That impression I guess you got was there as he was telling you about something he had seen?
A. Yes.
Q. Are you positive that he said he was on a box, against a box, or what not? Are you positive one way or the other?
A. I couldn't be positive.
Q. Regarding your height, the windows you looked through at the filling station where you and he were looking through, do you have to tiptoe or anything to look through the windows?
A. No, sir.
page 50 } Q. How far down from the top would you say the windows go? Would they go as high as your waist?
A. They might.
Q. Wouldn't go over that, would it?
A. No, sir.

Witness stands aside.

THE COMMONWEALTH RESTS.

At 1:00 'clock P. M. Court was adjourned for lunch and reconvened at 2:00 o'clock P. M.

*M. Lyman Johnson.*

## EVIDENCE INTRODUCED ON BEHALF OF THE DEFENDANT.

The witness,

M. LYMAN JOHNSON,

having first been duly sworn, on examination testified, as follows:

Mr. Singleton: Your Honor, we wish to introduce this scaled drawing of the filling station.

The Court: This plat doesn't show anything to the Court by which I can tell a thing about it. It is no front to it, no street here, nothing but just a naked outline of the building, no indication which is the front, what street it is. How can I orient myself? Before offering this you had best have something to indicate which is the front or something to indicate the lay of this in reference to the street.

Mr. Singleton: Mr. Johnson made this drawing. page 51 } He will be able to so mark it.

### DIRECT EXAMINATION.

By Mr. Singleton:

Q. Mr. Johnson, what is your occupation?

A. Structural Engineer.

Q. Do you practice in Lynchburg?

A. That's right.

Q. What is your name? What is your firm name?

A. Cress and Johnson, Architect and Engineer.

Q. Where did you receive your engineering training, Mr. Johnson?

A. V. P. I.

Mr. Daniel: We will concede his qualifications.

Q. Mr. Johnson, pursuant to the request from attorneys for Mr. Farrar, did you proceed to make a scaled drawing of the service station at Fifth and Park Avenue?

A. Yes.

Q. Now, which part of this station is the front?

The Court: Put this on the map, where the building fronts.

*M. Lyman Johnson.*

A. Fifth Street.

By The Court:
Q. Let me look at that. The front of that is on Fifth Street?
A. That's right, sir.
Q. And Park Avenue comes on down here that way, slanting. This is Park Avenue?
page 52 } A. Yes, sir.
Q. That will help me.

By Mr. Singleton:
Q. And have you marked on there where Park Avenue is?
A. Yes.
Q. And Fifth Street?
A. Yes.

Mr. Singleton: We'd like to present this map and mark it "Defendant's Exhibit No. 3".

The Court: All right, mark it and present it to the Court. Take the map he has before him, not the copy. Let him testify whether all measurements shown on here are true.

(The map was received in evidence and marked for indentification as "Defendant's Exhibit No. 3")

By Mr. Singleton:
Q. Are all measurements on here according to scale?
A. They are.
Q. And are they true and accurate?
A. They are.
Q. What is your scale?
A. Three-eights of an inch equal to one foot.

Mr. Singleton: Could we put it on the board and point it out to the jury?

The Court: You can do whatever you please about that. You ought to let the jury see the map.

(The map is placed on easel in view of the jury).

page 53 } Q. Mr. Johnson, now which part of this map represents Fifth Street so far as this filling station is concerned?

*M. Lyman Johnson.*

A. Fifth Street runs in this direction, Park Avenue in this direction (indicating on map).

Q. Now, whereabouts is the service station?

A. At Fifth Street and Park Avenue, the corner, the intersection.

Q. Do you show on here what is the front door?

A. Yes, sir, right here (indicating).

Q. Is that the sales room (indicating)?

A. Yes.

Q. Now, does it show a window to the right? Does your plat show the window to the right of this door?

A. Yes.

Q. What is in front of that window?

A. On the inside there is a drink box.

Q. How wide is this front room or sales room, how deep is it?

A. Nine feet, five inches.

Q. Where is the door leading to the back room?

A. Right here (indicating on map) and it is two feet and three-quarters of an inch, the actual opening size.

Q. Two feet and three-quarters of an inch. That is how wide the door is. Now, how wide is that after you

page 54 } get in that door, Mr. Johnson?

A. Two feet, four and three-quarters of an inch.

Q. It is two feet, four and three-quarters of an inch. How far back is this room two feet, four and three-quarters of an inch wide?

A. One foot, ten inches, from plaster to plaster, twenty-two inches.

Q. Now, after that, what do you find in that room?

A. Well, the objects?

Q. Yes, sir.

A. Well, when this was made it was a furnace, ladder, shelves and compressor all in that room occupying that area there.

Q. If you went to your left you'd find a furnace after one foot and ten inches?

A. That's right.

Q. How far is it from wall to the furnace?

A. Thirty-six inches.

Q. Thirty-six inches from the wall to the furnace. How far does that furnace go back?

A. Two feet, five inches.

Q. Two feet, five inches. So, with the other one foot, ten

inches, the furnace and other wall go back how far?

A. (Measuring) Four feet, three inches.

page 55 } Q. So, in other words, the edge of the furnace is four feet, three inches from the door.

A. From this wall on the interior side of this room.

Q. From the door that opens into the back how far is it?

A. It would be another five and a half inches. Four feet, eight and a half inches.

Q. Now, what is just next to the furnace or wall?

A. Right here? A ladder.

Q. How far is it from this wall on the right as you look back to that ladder?

A. When I measured it, it was one inch less than that, this total of two feet, three and three-quarters inches.

Q. Two feet, three and three-quarters inches.

A. That's right.

Q. Just beyond the furnace to your left as you go back did you find anything else?

A. At this point are shelves which are three feet long, four feet, six inches high. The shelf itself is thirteen inches wide and the end of that shelf, seven feet, eight and three-quarters of an inch from the side of the plaster of that room.

Q. So, the end of the shelf on the left is seven feet—

A. Seven feet, eight and three quarters inches.

Q. Now, Mr. Johnson, as you go back, after you get beyond that shelf, what happens to the room then?

page 56 } A. The room from that point on is six feet, six and three-quarters of an inch wide, with the shelves three feet, one inch high at the rear corner.

Q. Now, Mr. Johnson, where is the men's room?

A. The men's room is directly to the right of this little corridor. The door is immediately after you enter the corridor to the right.

By The Court:

Q. Stop right there, please, sir. On this map that door is shown to be half open into the corridor. That was done simply to show the way the door swings, is that right?

A. That's right, purely indicative.

Q. Not to show anything about the position of the door. That is just to show how it swings.

A. That's right.

Q. It wasn't intended to show the door was open at any time.

*M. Lyman Johnson.*

A. That's right.

Q. One other question. The sales room which is to the front, in which is a drink box, display case and cash register, etc., is separated by a solid wall to its rear except for an opening therein which is shown to be two feet and three-quarters of an inch wide?

A. That's right, sir.

page 57 } Q. All right. There is no door at all in that opening separating the front room from the back?

A. That's right.

Q. None at all but there is a door to the right that leads into the men's room.

A. That's right.

Q. And that door was shown on this map to be half open, and was so shown to show the way the door swings.

A. That's right.

By Mr. Singleton:

Q. Now, if you open that door to the men's room, what does it do to the room in the back, this door here to the room to the back?

A. I don't follow you.

Q. If you open the door to the men's room?

A. That would in effect close off this entire opening.

Q. It would close off the door to the back room?

A. That's right. The door itself is two foot, four inches. The opening is two feet, four and three-quarters of an inch.

Q. Now, Mr. Johnson, you have shown in the men's room a steel window. What kind of window is that?

A. It is a steel sash window, obscure glass.

Q. Can you see through that window?

A. I couldn't.

page 59 } Q. Now, when you go back to the back here seven feet and some inches then you said this room widens out, is that right?

A. That's right.

Q. If you got back then behind this compressor and furnace and other things, could you be seen from the front?

A. I don't know. I can draw you a line of sight which will be more than my opinion. (Draws a pencil line on map)

Q. Well, now, if you were back over next to the soft drink storage room, could you be seen?

A. No.

Q. So it would be possible to get so you could not be seen

by going in the men's room, back over where the drink storage room is, or by closing the door to the back room, is that right?

A. That's right. Yes.

Q. Now, Mr. Johnson, will you show us the back door to this service station on here?

A. There again the door is shown open, purely indicative that it does swing in that direction (indicating on map).

Q. That door, is that the position it was in?

A. No, the door when I took these dimensions was closed.

page 59 } Q. Was it locked?

A. I didn't check that but at the time I took these dimensions there was a grease pump in there which was movable but was located at that particular point right here (indicating on map). It is on rollers.

Q. Now, is there any way you can get into this back room except through that door, which is two feet, three-quarters of inch wide, Mr. Johnson?

A. Not that I could see in the work that I did up there.

Q. Now, where was the cash register in this front room?

A. Right here (indicating).

Q. Where do they turn off the lights, Mr. Johnson? Where are the light switches?

A. They are to be found on the right, on this wall right here (indicating).

Q. In the back?

A. That's right.

Q. Mr. Johnson, I will ask you again. This door to the men's room, if it is open to the men's room, what will it do to the door you go into the back room through?

A. It will shut off all view through it.

page 60 } By The Court:

Q. I understood you to say something about a line of vision. Are you an occulist or expert about vision or eyes?

A. Well, I don't think I could pose as that.

Q. Is it a fact that if I am looking through a place like this that after my vision goes past the obstructions on each side it tends to widen out and I can see more than what is in between?

A. That is true.

Q. Did you indicate that?

A. What I indicated was the actual limit here of having your eye in the far right hand corner of this window, have it

*M. Lyman Johnson.*

up immediately against the side of it, and limit of the vision as it extended through that room based on that.

Q. Let me see that. The witness is putting something on the map that deals with vision. After my vision passes the obstruction here, doesn't it keep widening?

A. Yes, sir.

Q. You put a line on the map?

A. Here is the limit of your vision.

Q. How do you know that is the limit of the vision? You had better not bother the map. Rub it out. (Handing map to the witness)

A. (The witness erases the line from the map) The light rays from your eye go out in those directions and go straight

page 61 } and they can't see to the right nor left of this object. They don't go out and turn to the right nor turn to the left; they would go straight and limit your vision.

Q. You don't mean to show where he was standing. You are just arbitrarily putting a man at a certain point?

A. That's right.

By Mr. Singleton:

Q. Let me ask you this, Mr. Johnson. Suppose you are looking through the window right next to the door, the front door, how far could you see from there?

A. Then you'd be limited on the left by this line right here (indicating).

Q. Mr. Johnson, that furnace shown there, is that a solid something?

A. The furnace itself? Yes, it is a cabinet model furnace.

Q. You say it was thirty-six inches from this wall to that furnace.

A. Yes.

Q. The front of the furnace is black?

A. That's right.

CROSS-EXAMINATION.

By Mr. Daniel:

Q. Thirty-six inches from the right hand wall to the furnace?

page 62 } A. Yes.

Q. After you get past the furnace, how much space from the wall over here to the compressor?

*M. Lyman Johnson.*

A. To the compressor, that would be four feet and seven and three-quarters inches to the cylinder of the compressor. It is a vertical tank.

Q. From this line over to the compressor there is a space in there a distance of four feet, seven and three-fourths inches.

A. That's right.

Q. Now, I believe you testified there is a drink box in front of the right window. How tall is that?

A. It doesn't come to the sill of the window.

Q. Did you stand here in front of the window and look directly back in there?

A. Did I? No.

Q. Do you know if there is anything obscuring your vision in looking through the window? The drink box does not.

A. No, sir.

Q. A person walking up to the window, he'd have window from here on up (indicating his waist)?

A. That's right.

page 63 } Q. You didn't check to see whether or not you could see back through there? Did you look through the window to see if you could look back in there?

A. Not with that purpose in mind.

Q. Any obstruction between this window and back through there, from the window on the street?

A. Not that I saw, except when this door was closed, until you get back here to this case, which is four feet, six inches high.

Q. But that is back in this room. Could you tell me approximately how far it is from the steel window back to the far edge of the furnace?

A. This is from the sash itself, fourteen feet, six inches.

Q. You can go back to the box. Can you estimate for us from that stand approximately how far fourteen feet and six inches would be? Am I approximately that distance from you?

A. I would say you are a little more than that.

## RE-DIRECT EXAMINATION.

By Mr. Singleton:

Q. Come here, please, sir. Mr. Daniel *ask* you about this compressor, the distance from the wall to the compressor. What was there between the compressor and the wall?

*M. Lyman Johnson.*

A. This shelf you have, which is three feet long, thirteen inches wide and four feet, six inches high.

page 64 } Q. How long?

A. Three feet.

Q. How wide?

A. One foot, one inch.

Q. To get to the compressor would you have to go over these shelves?

A. Yes. Between the furnace and the shelves is six inches.

Q. Now, can you point out to the jury where a point three feet back of the opening of the door is, this door?

A. The door to the back?

The Court: It isn't any door; it is just an opening to the back.

Q. How far back from the opening is three feet?

A. Right here would be approximately the center of the furnace and also the center of that line.

Q. Center of the furnace and center of the ladder. How wide is that aperture right there (indicating)?

A. The wall, plaster to plaster, is two feet, four and three-quarters inches. When I measured it, the ladder was setting about one inch inside of that opening, leaving the actual opening two feet, three and three-quarters inches.

RE-CROSS EXAMINATION.

By Mr. Daniel:

Q. Back in that room anywhere past this fur-

page 65 } nace there is space, room for a man to sit down in, with his back next to this wall?

A. I wouldn't want to make that statement.

Q. Let me ask you this. You do show some oil boxes?

A. That's right.

Q. They are movable, are they not?

A. That's right.

Q. You don't know whether they were there or not?

A. They are all movable, the shelves—

Q. You don't know what the condition of the premises was on November 24th?

A. No.

Q. You can go in the back door, come around and come

through the three foot, seven inches and something opening into the main part?

A. If I might say, at the time I took these dimensions there were barrels and so forth out here. (Indicating on map at rear door)

Q. On the outside?

A. That's right, and this grease pump was stationed there, so at that time that was the condition of it.

Q. Now, I mean if you come in the door, you can come around through here and into the main entrance?

A. That's right.

Witness stands aside.

page 66 } The witness,

T. C. JOHNSON,

having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Singleton:

Q. What is your name?

A. Terry C. Johnson.

Q. Where do you live, Mr. Johnson?

A. 901 Orchard Street.

Q. What is your occupation?

A. General construction carpenter.

Q. Were you up at the service station at the corner of Fifth Street and Park Avenue on the night of November 24th last?

A. I was.

Q. What time did you get there, Mr. Johnson?

A. Well, I'll say between nine-thirty and ten o'clock.

Q. And—

A. When I got there it was approximately twenty minutes, I'd say, of ten.

Q. When you got there or left?

A. When I got there.

Q. What time did you leave?

A. Well, approximately about five minutes of ten.

page 67 } Q. Approximately five minutes of ten?

A. That's right.

*T. C. Johnson.*

Q. Now, was this in the evening, at night?
A. That's right.
Q. Well, what was Mr. Farrar getting ready to do when you left?
A. When I left he was moving some things from the outside in the station, some drums or something. He had a place outside the office.
Q. Was he getting ready to close?
A. I would think so. He appeared to be.
Q. Did you see anybody there, Mr. Johnson, when you were there?
A. No, I didn't.
Q. Did you see Mr. Farrar?
A. Yes.
Q. That is the defendant in this case, this gentleman here.
A. Yes, the gentleman behind you.
Q. Do you remember how he was dressed?
A. Well, he had his uniform on, Texaco.
Q. Did he perform any service for you?
A. Yes.
Q. What did he do?
A. Well, a gas tank that I had purchased from his son, he moved it from the back of the station, from the page 68 } truck to my car, a gas tank.
Q. And then after he did that, did you stay there long?
A. I went back into the inside, went back and washed my hands off.
Q. I believe you say you left at five minutes to ten.
A. About five minutes.
Q. That is all.

## CROSS-EXAMINATION.

By Mr. Daniel:
Q. Mr. Johnson, did you check your watch while you were there, or the clock on the wall?
A. Yes, I checked my watch. I remember looking at it. It was getting late. I was on my way home.
Q. What time of day was it?
A. You mean the exact time?
Q. When you looked at your watch.
A. I'd say approximately five, maybe five of seven minutes of ten.

Q. When you looked at it before you left.
A. Yes.
Q. And you deal there regularly?
A. Well, quite a spell before Mr. Farrar and them owned the station, when another gentleman ran the place.

Witness stands aside.

The witness,

VIRGIL E. FARRAR,

having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:
Q Your name is Virgil E. Farrar?
A. Yes, sir.
Q. What is your age, please, sir?
A. Thirty.
Q. And are you the son of the defendant in this case, Mr. Farrar?
A. Yes.
Q On November 24th, 1957, who was running the Texaco Station at the intersection of Fifth and Park Avenue in the City of Lynchburg?
A. At night?
Q. Who had charge of it?
A. During the day? I did.
Q. I mean were you in charge of the whole station?
A. Yes.
Q. Now, on that day had you worked at the station?
A. Yes, sir.
Q. And what time did you leave the station?
A. Oh, approximately 5:30.
Q. In the afternoon?
A. Yes, sir.
page 70 } Q. Who relieved you?
A. My father.
Q. Now, on this occasion let me ask you this. You left the station about 5:30?
A. That's right.
Q. Now, let me ask you this. On that occasion—Would you

*Virgil E. Farrar.*

please look at this map. Tell the jury what was the location of certain things which I will point out. I will ask you if they were there when you left there and if those same things were there when you reported for work the next morning.

A. You want me to come down there?

Q. If you don't mind.

A. (The witness stands beside the map)

Q. Now, do you understand this plat that has been introduced in evidence? Here is the front of the station.

A. Yes, sir.

Q. Then this leads on back through this passage way which is referred to.

A. Yes, sir.

Q. Now, in the passage way, after you get in this passageway, do you come to the men's room on your right walking in?

A. Yes.

Q. Let me ask you this. If you close the men's room door, does that open up the passage way?

page 71 } A. Yes.

Q. If you open up the men's room door all the way back as far as you can, what then will that do?

A. Well, that closes off the view.

Q. Will that eliminate any view from the passageway back?

A. Yes. The door swings right back to the corner, not flush with this but comes back far enough so you can not see anything.

Q. On that occasion were there or not some boxes containing something you use in a filling station along the wall near where you enter the bathroom?

A. Yes, sir, anti-freeze.

Q. How many containers?

A. Three boxes, two full boxes and one piece of box.

Q. Where was the step-ladder when you left?

A. It was as shown on this map, as you go right in front of the furnace, it was up against the furnace.

Q. Was it in that position when you went back the next morning.

A. Yes, sir.

Q. Did you go back to work the first thing the next morning?

A. I did.

Q. Is the furnace as shown in this plat here cor-

page 72 } rect?

A. Yes, it is.

*Virgil E. Farrar.*

Q. Now, then, if you proceed on in the passageway and go by the furnace, then what will be on your left?

A. Well, you see right there there are these shelves. I pulled the top off the shelf and turned it upside down. In other words, this bottom piece—It is a piece stuck up over the top, come out over on the top.

Q. Is it as shown on the plat?

A. Yes, sir, it's been there for over a year in the same position.

Q. Now, when you left there that night and when you returned the next morning, will you please tell the Court and jury what, if anything, was to obstruct anyone from entering the back door as shown here on this plat?

A. It was approximately ten or twelve 30-gallon oil and lubrication grease containers sitting right here; this side of that is the oil tank to the furnace, 250-gallon tank, plus these 30-gallon drums that are all right in here (indicating).

Q. What, if anything, was on the inside of the building to keep you from opening the door?

A. Well, the first thing would have been the grease gun, which is in the far corner.

Q. Does that door have any particular kind of
page 73 } lock?

A. It has a latch on it. You can push a little button and you can't open it. You turn the lever to let the latch loose.

Q. Is that from the inside or outside?

A. From the inside.

Q. Now, if you come through this back door is there any way to get in the back part of this filling station without coming up into the business room or room on the front?

A. No, it isn't.

Q. Is that the only way you can get in there?

A. Yes, sir.

Q. Now, it is shown on here a window in that men's room with what kind of glass, that window?

A. Well, I don't know what you call it but you can't see through it. I don't know what they call it.

Q. Is it a type of glass you can't see through?

A. Yes, it is.

Q. Now, following on back into this passageway by the men's room and by the furnace, in that area there, and after you pass this rack which you say you have set up and has been there over a year, what do you come to?

*Virgil E. Farrar.*

A. Well, the last thing there is the battery rack sitting right in front of the switch box.

Q. Where is the switch box?

A. The switch box is right there (indicating),
page 74 } (*indicating*) directly behind the passage.

Q. Then if I am at or near the switch box, would turn to my left and go over in here, is it possible for anyone to see me over in that area?

A. No.

Q. Is that where you store the soft drinks?

A. Soft drinks.

Q. I believe you have your soft drinks for sale out in front in the icebox.

A. Yes, sir.

Q. Now, I notice on here a coal door back in this area which is here (indicating). What kind of door is it?

A. It is a steel door they used at one time to put coal in there. They must have used a coal furnace. I don't know how it is locked but it is locked.

Q. As far as you know, has it ever been opened?

A. It never has.

Q. Now, let me ask you one more thing. Now, in what is marked "sales room", is that the room where you have your cash register?

A. Yes, sir.

Q. And drink box, etc?

A. Yes.

Q. Now, as indicated on the map and you have
page 75 } pointed out where the furnace is, where do you keep the step-ladder?

A. Right in front of the furnace.

Q. Was that there when you left?

A. Yes, sir.

Q. Was it there when you returned the next morning?

A. Yes, sir.

Q. Now you say there were some boxes along the line there after you pass the entrance to the men's room. What would those boxes have been opposite?

A. They would have been opposite the shelf that I put in there. I had a buffing machine, light bulbs and gas nozzles, stuff like that, on the shelves.

Q. Where do you turn off the lights in the building or turn them on?

*Virgil E. Farrar.*

A. Through that little passage, all the way back against the wall.

Q. Can you turn on any lights in front?

A. Well, you can turn on the lights to the office but that's all.

Q. You can't turn on the lights from the outside.

A. No.

Q. Now, you have told us where the furnace was and it is shown on there now. Opposite the furnace were there any boxes you referred to?

page 76 } A. Just those anti-freeze boxes.

Q. I show you this box and ask you if that is the type of anti-freeze box you are referring to (shows box to witness which measures approximately twelve to fourteen inches in width).

A. Yes, sir, that is the one.

Q. We'd like to mark this as "Defendant's Exhibit No. 4."

(The box was received in evidence and marked for identification as "Defendant's Exhibit No. 4")

Now, on this occasion, that is when you left the place and when you returned the next morning, how many of those boxes like "Defendant's Exhibit No. 4" were along against the wall you referred to?

A. There was the three of them.

Q. And were all of them on the floor?

A. No, two setting flat and one setting on top of the two.

Q. Where do you turn on the lights to the sales room?

A. Right beside the front door on the left.

Q. Now, are you running that particular filling station now?

A. No, we sold it.

Q. Have you been back to the place recently?

A. Yes, sir, I go there about twice a week.

page 77 } Q. Have you been there within the last week?

A. Yes.

Q. Now, as far as the physical condition of the place, that is where you enter and the furnace, stepladder and the crate that you set up, or what do you call it—

A. Shelves, top of a shelf.

Q. Are they now like they were when you operated it?

A. Yes, sir.

Q. Now, a colored man by the name of Howard, Alfred W. Howard, has that man been in the place of business while you have been running it?

A. Yes, he has.

Q. On numerous occasions?

A. Just occasionally to get kerosene.

Q. Do you all sell kerosene oil there?

A. Yes, sir.

## CROSS EXAMINATION.

By Mr. Daniel:

Q. Mr. Farrar, I understand you cut the lights on outside in that sales room part, the switch right beside the front door, is that right?

A. That's right.

Q. Where do you keep your kerosene?

page 78 } A. Kerosene? It is right in the corner of the grease pit as you go out the door from the sales room.

Q. Not an underground tank or anything?

A. No.

Q. You left there at 5:30 and didn't go back until the next morning?

A. Yes.

Q. And your father was left in charge?

A. Yes, sir.

Witness stands aside.

The witness,

## BILLY CUNNINGHAM,

having first been sworn, on examination testified, as follows:

## DIRECT EXAMINATION.

By Mr. Singleton:

Q. Is your name Billy Cunningham?

A. That's right.

Q. Did you work for Mr. Farrar?

A. Yes, sir.

*Billy Cunningham.*

Q. At the time of November 24th?
A. Yes, sir.
Q. Would you stay in that station sometimes by yourself?
A. Yes, sir.
page 79 } Q. Who did you work for, the old gentleman or the young man?
A. The young one.
Q. The young one. Mr. Cunningham, during the course of your business did you sell things to Winifred Sandidge?
A. Yes, sir.
Q. Did you have any trouble with her?
A. Yes, sir, several times.
Q. What about?
A. Well, she'd come in and buy a loaf of bread or something and go back out and leave the station, then she'd come in and buy something, then she's leave the station, and in a few minutes later she'd come back and say we had cheated her out of her money on something. On this particular day she came in and bought something. I forget how much money she had but the other boy made the change and she left. In a few minutes she came back and said we had cheated her out of seventy-five cents, and him and her were arguing. He came back and got me out the wash pit. I went back and give her the seventy-five cents and told her to stay out; it was a grocery store on the next corner. She left, then come back and said, "I am going to fix you all."
Q. How long before November 24th was that?
A. I'd say it was about two weeks.
page 80 } Q. About two weeks before November 24th.

CROSS EXAMINATION.

By Mr. Daniel:
Q. Who told her to stay out?
A. I did.
Q. Let me ask you something, Mr. Cunningham. Do you see this plat over here? You don't work there any more?
A. Yes, sir.
Q. Were you up there Saturday?
A. No, sir.
Q. When you stand right here at this window in front of the station, the gas tanks and this is the door and window right beside it, and see over here are your wash pits.
A. Yes, sir.

*Billy Cunningham.*

Q. When you stand in front of the window you can see clear to the back without any trouble; looking through this window you can see clear to the back of that room, can you not?

A. You can see.

Q. All right, now, are there shelves back here in the back of the room?

A. Yes, sir.

Q. There are no shelves right this side of the wall as you go back?

A. No shelves.

page 81 } Q. Now, see where the furnace is. As you go back you come to the compressor.

A. Yes, sir.

Q. Across from the compressor there are no shelves but boxes is what is listed here.

A. That's right.

Q. Would you say it is approximately four feet wide, the distance from the compressor to that wall?

A. It could be. I don't know.

RE-DIRECT EXAMINATION.

By Mr. Singleton:

Q. Mr. Cunningham, come down here, please, sir. When you go into that back room do you know where the furnace is?

A. Yes, sir.

Q. Do you know where the ladder in front of the furnace is?

A. Yes, sir.

Q. Do you know where the shelves that Mr. Farrar kept things on are to the left as you go down?

A. Yes, sir.

Q. Well, is it possible to get to the compressor or not because of the shelves?

A. You can reach over top of them.

Q. You can reach over top of them but if it was sitting down on the floor could you reach over the top of

page 82 } them?

A. No, sir.

Q. Actually there are some shelves between the wall and the compressor?

A. Yes, sir.

*John Scruggs.*

RE-CROSS EXAMINATION.

By Mr. Daniel:

Q. You can also reach under the shelves and get to the compressor between the shelves and get to the compressor under the shelves, can't you do that?

A. I don't think so. You might could. I couldn't tell you.

Q. You don't know that?

A. No.

Witness stands aside.

The witness,

JOHN SCRUGGS,

having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Singleton:

Q. What is your name?

A. John Edward Scruggs.

Q. Where do you live?

A. 1101 Sixteenth Street.

Q. What is your occupation?

A. Recapping.

page 83 } Q. Who do you work for?

A. Adams Motor Company.

Q. Do you work for anybody on weekends?

A. Worked at Wood's Service Station, Fifth and Federal.

Q. What kind of station?

A. Gulf.

Q. Mr. Scruggs, after the 24th of November, a few days after that, did you have the occasion to talk to Officer Tribble, J. J. Tribble?

A. Yes, sir.

Q. With reference to this act charged against Mr. Farrar?

A. Yes, sir.

Q. Where did you have that conversation?

A. There at the station.

Q. Was Mr. Tribble on duty or off?

A. On duty.

*John Scruggs.*

Q. He was on duty?
A. Yes, sir.
Q. Whereabouts did you talk to him?
A. On the inside.
Q. On the inside of the service station?
A. Yes, sir.
page 84 } Q. What did you ask him?
A. Well, I heard about what had happened. I knew Russell and I just asked him about it.
Q. What did you ask him?
A. I asked him what did he see.
Q. What did he tell you?
A. He said he saw them in the station but he didn't see nothing, but he saw them in the station together.
Q. Did he say anything else?
A. Nor.
Q. Was that after this occurrence?
A. That's right.
Q. He had been charged with it?
A. Yes, sir.

CROSS EXAMINATION.

By Mr. Daniel:
Q. How long have you known Mr. Farrar?
A. All my life.
Q. Have you lived near him?
A. At one time I did.
Q. Are you related to him in any way?
A. No, sir.
Q. How long have you worked for Adams Motor Company?
A. Oh, a little better than a year.
Q. Where did you work before that?
A. Wood's Service Station.
page 85 } Q. The place you are working part time now?
A. That's right.
Q. How long did you work there?
A. About three years.
Q. How long was this after November 24th that you talked with Mr. Farrar?
A. Well, I don't know exactly.
Q. Well, had it been more than a day or two?
A. A day or so. I wouldn't like to say the date.

Q. Did you talk with Mr. Farrar before you talked with Mr. Tribble?
A. No, sir.
Q. You never had talked with him about it?
A. No, sir.
Q. Who did you first make this report to that Mr. Tribble told you that he didn't see anything there?
A. Mr. Farrar.
Q. You did?
A. Yes, sir.
Q. And did you see Mr. Farrar at his home at that time?
A. *Nor,* I saw him over here in town.
Q. Did you look him up to tell him?
A. No, sir.
Q. Had anyone on his behalf talked with you before that time?
page 86 } A. No, sir.
Q. You just took it on yourself to ask Mr. Tribble that question.
A. Yes, sir.
Q. What were the exact words you asked Mr. Tribble?
A. We were just talking about it.
Q. Where were you?
A. We were at Wood's Service Station.
Q. Inside of the service station?
A. Yes, sir.
Q. Mr. Tribble standing up in there?
A. I think he was. I wouldn't say for sure.
Q. Do you remember going out and getting in Mr. Tribble's car and talking with him?
A. No, sir.
Q. You never did that any time?
A. No, sir.
Q. Are you related by blood or marriage to Mr. Farrar?
A. No, sir.

Witness stands aside.

The witness,

WAYNE DANIELS,

having first been duly sworn, on examination testified, as follows:

*Wayne Daniels.*

DIRECT EXAMINATION.

By Mr. Singleton:

page 87 } Q. What is your name?

A. Wayne Daniels.

Q. Where do you live?

A. 2307 Miller Drive.

Q. Where do you work?

A. Kiger Service Station.

Q. Where did you work on November 24th, 1957?

A. Farrar's Service Station.

Q. Who did you work or, this genlteman here or his son?

A. His son.

Q. Now during the course of your work, prior to November 24th, 1957, did you know this colored woman named Winifred Sandidge?

A. I had seen her in the station.

Q. You know who she is?

A. Yes, sir.

Q. She is the woman who previously testified in this case?

A. Yes, sir.

Q. How did you happen to know her?

A. Well, she was in the station and said we cheated her out of change. When she went out the door, she said, "I'll fix you all."

Q. How long before the 24th of November was that?

A. I couldn't tell you exactly how long.

page 88 } Q. It wasn't very long?

A. No, sir.

Q. Approximately how long was it?

A. I couldn't tell you.

CROSS EXAMINATION.

By Mr. Daniel:

Q. At that filling station when you are standing in front of the window and you are right beside the door, you can see clearly back into the back end of this furnace room, can't you?

A. Yes, sir.

Q. Will you come over here and look at this map. You

are familiar with the furnace and the position of it and then the next thing is a compressor, is it not?

A. Yes, sir.

Q. Aren't there some shelves in front of the compressor?

A. Yes, sir.

Q. From the shelves to the wall can you tell us approximately what the distance is?

A. I don't know.

Q. It is more than three feet, isn't it?

A. Something like that.

Q. You haven't measured it, have you?

A. No, sir.

Witness stands aside.

page 89 } The defendant,

RUSSELL E. FARRAR,

testifying in his own behalf, having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Would you please state your full name?

A. Russell Early Farrar.

Q. What is your age, Mr. Farrar?

A. 54.

Q. Where do you live?

A. Madison Heights.

Q. That is in Amherst County?

A. Yes, sir.

Q. Mr. Farrar, where do you work now?

A. I work for Calco Chemical at Piney River.

Q. What is your business?

A. Electrician.

Q. Has that been your business all along, electrician and lineman?

A. And lineman, yes, sir.

Q. Did you work for Calco all your life or someone else?

A. I worked for Appalachian Power Company about thirty years.

Q. Now, in the fall of 1957, in November, 1957, did you ever assist or help your son at the filling station he was

*Russell E. Farrar.*

operating at Park and Fifth Street, Lynchburg,
page 90 } Virginia?

A. Yes, sir.

Q. Would you help him some on weekends?

A. Yes, sir.

Q. Now, on Sunday, November 24th, 1957, did you relieve him on that day?

A. Yes, sir.

Q. Approximately what time did you go to work?

A. Around about 5:30.

Q. That is P. M.?

A. Yes, sir.

Q. Now, Mr. Farrar, do you recall a gentleman coming in there shortly before you closed up named Mr. Johnson?

A. Yes, sir.

Q. Now, I want you to start along about that time, or shortly before you closed up, and tell us what took place until the officers came there and got you.

A. Well, Mr. Johnson, he came down and him and I were talking a little bit and he had a gas tank.

The Court: Is that material to the case? Has his talking with Mr. Johnson got anything to do with this case?

Q. I will ask you this. Had you started closing up when Johnson left there?

A. Yes, sir. We had three cans out in the front near the gas tanks where we usually keep our empty oil cans. I had gotten those in and the water cans where we put water in the cars, and put them on the inside.

page 91 } Q. Now when was the first time that you saw this man, Alfred W. Howard?

A. Well, I was getting ready to close. He went—I was around behind this little counter. It is a cigar box we keep our change in there.

Q. Is that out in the business office?

A. It is in the business office.

Q. The showroom?

A. Yes, sir. Well, I was reaching down under the counter getting the cigar box and was going to cut the lights off, and when I raised up he was inside of the door and he went on in the men's room. I turned the key in the door. I always do that at night when we close up. If anybody is in there, when they get ready to go out, I let them go. I closed

the door and locked it to keep other people from coming in. I got out all my things, went straight back to the light panel. It is a panel straight in the back of the alley. I was cutting my lights off. When I got my lights cut off, about the time I got the lights cut off on the inside,—I had the lights cut off on the outside, all except the cigarette machine, and it was a light up over the door, fluorescent light in the clock that stayed on, and a flashlight shined through the window. The light of it hit me in the back. I was ready to go outside to check my tanks. I went on outside and I checked my tanks and came back to the door. Officer Tribble and this page 92 } other fellow, Farrow, they were there, and they asked me if they could go in and look around. I said, "Help yourself," and they went on in and looked around. They went in the back and got this fellow and brought him out.

Q. When you told them to go in and help themselves, where did you go? Did you go too?

A. Well, I went on back on the inside of the building.

Q. Had you checked the tanks then?

A. Yes, sir, I had already checked my tanks.

Q. When you were checking the tanks, what were the officers doing?

A. They were standing at the door.

Q. In other words, you saw the light flash on you.

A. Yes, sir.

Q. On your back?

A. Yes.

Q. You were back at the light switch?

A. In the back part of the building.

Q. Then you say you turned and walked to the door and unlocked the door?

A. Yes, sir.

Q. Then you walked from there to the tanks?

A. Out to the tanks.

page 93 } Q. What were you doing to the tanks?

A. Well, you've got to roll the last sale back, take the handle off the thing, and pull it out and see if the tanks will start. I always do that every day to make sure the tanks are cut off. You've got to go in the back to cut the tanks off and outside lights.

Q. Then you came back to where the officers were in front of the place?

A. No, they were standing on the outside of the door.

*Russell E. Farrar.*

Q. Now, did they ask you whether or not there was anybody else in the building or not?

A. No, sir, they did not.

Q. What did they say to you?

A. They asked me if they could go in and look around. I told them to help themselves.

Q. Then they went in the back and came back with this fellow Howard, is that correct?

A. Yes, sir.

Q. Now, Mr. Farrar, Mr. Tribble testified this morning that when he flashed the light in there, flashed the flashlight in, that in this passageway about three feet back that you were sitting on the floor with your pants down around your ankles and leaning kind of back against some boxes. Now is that so?

A. No, sir.

page 94 } Q. Were you ever sitting on the floor?

A. No, sir.

Q. Did you ever have your pants down?

A. No, sir, I never did.

Q. Now, he furthermore says that as he flashed his light in there that then he saw you, with your legs stretched out, and this fellow Howard had hold of your privates with one hand and also had your privates in his mouth. Now is that so or not?

A. That is not so.

Q. Has that fellow Howard touched your privates or have you had anything to do with him whatsoever?

A. No, sir.

Q. Had that man ever been to that place while you were running it before?

A. Yes, sir, he had.

Q. What does he come there and buy, if anything?

A. He buys coal oil.

Q. Did he ask you for any coal oil that night?

A. He hadn't asked me for any coal oil then. He went on in the back.

Q. Now, the officer also said that they asked you, "What have you all been doing in here?" and that you immediately said, "We ain't done anything yet," or words to that effect. Is that correct or not?

A. I might have said or told them we hadn't

page 95 } done nothing.

Q. Now, then, also the Officer testified that when

you got up off the floor you pulled your pants up. Did you ever have your pants down to pull them up?

A. No, sir.

Q. You say you never were on the floor?

A. Never was on the floor.

Q. Did you have on an erection at that time?

A. Nor.

Q. The Officer says, although after you had gotten your pants on, you had an erection in and he could see it.

A. That is not right.

Q. Now, you know this station well, the physical location of the station, do you not?

A. Yes, sir.

Q. You have been helping your son there up until he stopped running the station?

A. Just a little over two years.

Q. Now, what door did this darky Howard come in?

A. He come in the front door next to Fifth Street.

Q. Well, is that the same door which the Officer said he flashed his light in the window next to the door?

A. That's right.

Q. Did you have any conversation at all with Howard?

A. Never have.

Q. When he came in there that night?

page 96 } A. No, sir.

Q. Now, is there any way to get to the passageway leading back by where the men's room is except through the front office?

A. No, sir.

Q. Well, now, do you know where the men's room is?

A. Yes, sir.

Q. Is there a window from the men's room to the wash pits?

A. Yes, sir, through the grease pits.

Q. Can you see through that glass or not?

A. No, sir, you can't. It is thick glass.

Q. You know the door that closes the men's room, do you not?

A. Yes, sir.

Q. Did you open that door all the way—If you open that door all the way will it or not cut the view off if you are standing in the front office looking back through that alleyway?

A. It will cut every bit of it off.

*Russell E. Farrar.*

Q. Now, it has been described on that plat where you keep the store of soft drinks in that back room.

A. That's right.

Q. Now, if you are in the back room is there any way to see you in that room from the outside?

A. No, sir.

page 97 } Q. When was the first time that you had any information that the officers were going to take you to police headquarters?

A. Well, after they had got this fellow out of there, they called a fellow downtown and he came up there and they talked a little bit, then asked me, "We want to take you downtown to answer a few questions." I said, "All right. How about me taking my truck on down and I won't have to come back to the station?" They said, "Nor, we'll bring you back in a few minutes."

Q. Well, then, they took you down and then they held you there?

A. Yes, sir.

Q. Now, Mr. Farrar, have you been up to the filling station here in question recently?

A. Yes, sir.

Q. Well, I will ask you if you will tell the Court and jury as far as the physical layout, is the furnace, the door to the men's room, that passageway there and the shelves which they have to put things on, are they as they were on November 24th or not?

A. Yes, sir.

Q. Now, I wish you'd come here, please, sir, and tell us something. You see this passageway into this opening here (indicating on map); you see this is the bathroom door where it can be closed or open back that way, is

page 98 } that correct?

A. That's right.

Q. When you come on this is a solid wall down here, is it not?

A. That's right, yes, sir.

Q. Now, then, over on this side, is that the furnace?

A. That's the furnace right there. (Indicating)

Q. Is that the ladder (indicating)?

A. It is the ladder.

Q. Was that ladder there that night?

A. Yes, sir.

Q. Now, then, entering the passageway and going by the

furnace and by the ladder, what is up there to obstruct you from getting over to the compressor, whatever you call it?

A. It was an old top of a shelf, I reckon about that high (measuring a few inches), and on top of it is a flat board, like a flat board that is turned bottom upwards, laying on the floor. The top part of the shelf is laying on the floor. It's got two or three shelves. They usually keep nozzles, rags and soap, stuff like that, and buffing machine.

Q. Do the shelves have a back to it?

A. Yes, sir.

page 99 } Q. Well, now, if you are sitting on the floor in this passageway, either opposite the ladder or the furnace or either opposite those shelves which you refer to, is it any opening there for you to get your feet through the shelves?

A. No, sir.

Q. Is it completely blocked off?

A. Blocked off.

Q. All right. Now, you see this "Defendant's Exhibit 4," this box here?

A. Yes, sir.

Q. Now, were any of those boxes sitting along the wall opposite the furnace and opposite those shelves that night?

A. It was two on the floor and one on the top, three of the boxes.

Q. Mr. Farrar, I will ask you this. After you enter this passageway from along by the furnace, then by all of those shelves, down this way, what is the widest space from the wall over to the ladder or to those shelves which you refer to, if you know?

A. I expect it is around about twenty-nine inches, pretty close to twenty-nine or thirty inches.

Q. You would say somewhere around thirty inches is the widest place?

A. Yes, sir, thirty inches.

page 100 } Q. Well, now, on this scaled map which is introduced, at one point from the shelf over to the wall is shown as two feet, seven and a half inches. That would be thirty-one and a half inches, wouldn't it?

A. Yes, sir.

Q. Now I am going to ask you, please, sir, if you will take this ruler and measure from right out there (indicating from the front of the dais) thirty-two inches.

A. (The witness measures with a ruler thirty-two inches

*Russell E. Farrar.*

from the front of the dais)

Q. Do you see 32 inches on there?

A. Yes, sir.

Q. Will you please put that box around like that?

A. (The witness places the box lengthwise parallel with front of the dais and 32 inches therefrom).

Q. Now, along by the furnace and along down at this rack where you say the thing was turned over, at any point there would it have been any way to push your feet under the furnace or by the furnace or through this rack?

A. No, sir.

Q. Now, will you please sit down on the floor there, please. I will try to hold the box steady.

A. (The witness sits on the floor with his back against front of the dais, between it and the box, with his knees drawn up).

Q. Now, how tall are you?

page 101 } A. I am five foot, eleven inches.

Q. Is there any way within that space that you can stretch out your legs?

A. I can't get them out any farther than that.

Q. Push them as far against the box as you can.

A. (The witness pushes feet against the box).

Q. Now, could you open your legs up any more than you have got them? That is all you can get them open?

A. It is about all.

Q. Can you stretch them out any more towards me than that?

A. No, sir.

Q. All right, now you can get up, please sir. (The witness returns to the witness stand) This Officer says when he threw the flashlight in there, you had your feet stretched out straight.

The Court: Mr. Whitehead, the officers never testified he was sitting with his feet across like that, but on the contrary, that he was sitting on a bias.

Mr. Whitehead: I beg your pardon. I asked him exactly that.

The Court: The position in which I saw him on the floor was not that the feet were straight across the passage way.

Mr. Whitehead: I beg your pardon. He stretched his feet straight out to me.

*Russell E. Farrar.*

Q. You say you are how tall?
A. Five foot, eleven inches.
page 102 } Q. How much do you weigh?
A. Two hundred and ten pounds.
Q. Now, Mr. Farrar, up to the time that this charge was put against you on November 24th, 1957, had you ever been charged with any crime of any nature whatsoever before that time?
A. No, sir.
Q. Had you ever been in any kind of trouble with the law?
A. Never.
Q. Now I will ask you this. If you will come here again, please, sir. Do you recall whether these boxes that were on the floor and one on top, was that box sitting long ways or short ways against the wall?
A. Short.
Q. In other words, the width would be less the way it is sitting now (placing box with short end against the dais).
A. Yes, sir.
Q. Is that the way it was sitting at that time?
A. Way they were sitting, yes, sir.
Q. Now, I will ask you, sir, if you will try to sit down there with that box against there and see if you can stretch out any.
A. (The witness sits on the floor).
Q. Can you open your legs up any more? Is that all you can stretch towards me?
page 103 } A. Yes, sir. (Witness returns to witness stand).
Q. All right. When the officer came in there were your pants unbuttoned?
A. No, sir. I didn't have any buttons. It is a zipper on it.
Q. Were they unzipped then?
A. No, sir.
Q. When the light was flashed on you, you say you were back at the light switch?
A. Back at the light panel. It is a panel back there in the back.
Q. That is in the back?
A. Yes, sir.
Q. When that took place, did you immediately turn around and go to the door?

A. Yes, sir, I turned right around. I was coming back out to the door, going outside to the tanks.

Q. And you unlocked the door?

A. Yes, sir.

Q. That is where the two officers were then?

A. That's right.

Q. Now, was there any light on in the building before you saw the flashlight from the officer's light?

A. It was a cigarette machine and this light over the clock. It is in the clock. It is a fluorescent light; it is a tube about that long (measuring about a foot).

page 104 } Q. Will that light up all that front office so so you can see at night all right?

A. It is a right good light.

Q. Now, when the lights were turned on, who turned the lights on?

A. I did.

Q. Were those lights turned on from the inside of the building or outside with a switch on the inside or outside?

A. On the inside.

Q. All right, sir.

## CROSS EXAMINATION.

By Mr. Daniel:

Q. Mr. Farrar, when you were in the back of that building as you say you were and found the light flashing on your back, you say you were at the back of the building where the panel is?

A. Yes, sir.

Q. Where was the man Howard at that time?

A. When I went back to the back, he was in the rest room.

Q. He was in the rest room?

A. Yes, sir.

Q. Is that rest room for white and colored?

A Yes, sir.

page 105 } Q. Used both ways.

A. Yes, sir.

Q. You don't have separate facilities.

A. One for ladies, one for men.

Q. Did he tell you when he came in there what he came for?

A. No, he didn't say anything, just came right on through and went in the rest room.

*Russell E. Farrar.*

Q. Had you cut out all the lights while you were in there?

A. All except the cigarette machine and light over the clock.

Q. That is a short machine, maybe as tall as the jury box?

A. Yes, sir.

Q. It doesn't have a glass face except for one little face?

A. Space about that long (measures several inches).

Q. It doesn't put out any great amount of light to light up the sales room, does it?

A. Not too much.

Q. And that clock light is built within the clock and illuminates the dial?

A. It is a fluorescent light. It gives a pretty good light. It's got a fourteen-inch tube that gives a right

page 106 } good light.

Q. It is designed to illuminate the dial of the clock?

A. It might be for that. It gives good light.

Q. Did you think it strange when police officers come at ten o'clock and want to take a look around in your place?

A. I was wondering what they wanted.

Q. Did you ask them what they wanted?

A. I told them to go right ahead and look.

Q. Could you hear any sound coming from Howard at the time the police officers were in there?

A. No, sir.

Q. You couldn't hear a sound, could you?

A. No, sir.

Q. Was he still in the bathroom?

A. When they got him I don't know whether he was in the bathroom or not.

Q. Did they ask you what you meant by the act you were doing?

A. No, they asked me, "What were you doing?"

Q. "What were you doing"?

A. I told them I wasn't doing anything.

Q. Did you tell them you hadn't done anything yet?

A. I might have said it that way.

Q. Did Howard say the same thing?

page 107 } A. He said he wasn't doing anything.

Q. Did you not in fact tell the police officers Howard came there to get some oil?

*Russell E. Farrar.*

A. No, sir.
Q. Did he tell them?
A. He might have told them that himself.
Q. He didn't tell it in your presence?
A. I believe he said it when he came back out there that he came after some oil.
Q. He didn't have any container with him, did he?
A. I don't know. I didn't see any myself.
Q. He hadn't said anything to you about getting any oil, had he?
A. No, sir.
Q. Do you know why he would tell the police he came there to get oil if he wasn't doing anything wrong, when in fact he didn't come to get oil, kerosene?
A. I couldn't tell you.
Q. Well, the police actually did arrest you on the spot, did they not?
A. Well, the police asked me if I would go downtown with them and answer a few questions.
Q. Suppose you'd have said no. You knew they were arresting you, didn't you?
A. No, I did not.
page 108 } Q. You didn't ask them what kind of questions.
A. I didn't ask them anything.
Q. Didn't it seem strange to you then to have the police come to that place that time of night and take you in for questioning when you hadn't done anything? Wasn't it natural to wonder what you had done, why they were arresting you?
A. It kind of surprised me.
Q. You made no objection or asked any questions at that time, did you?
A. I didn't happen to ask them.
Q. You deny that your pants were down.
A. Yes, sir.
Q. How many times had the man Howard been there when you were there?
A. I couldn't tell you how many times but a good many times.
Q. Did you ever notice anything unusual about him before this?
A. No, sir, he'd come in. He never did say nothing to anybody, and he'd go on.

*Russell E. Farrar.*

Q. Did he ever dress in women's clothes before?

A. To tell you the truth, I never paid any
page 109 } attention to the way he was dressed.

Q. How about his hair style? Did he have a different hair style?

A. His hair looked a little long.

Q. Have you ever had any words or trouble with Winifred Sandidge?

A. No, sir, the only thing that she ever told me, she came down one afternoon and got some bread for somebody and asked if I'd let her have a loaf of bread and she'd pay me the next day. I said, "If you will pay me tomorrow, I'll let you have a loaf."

Q. Did you have any argument?

A. No, sir.

Q. How about the trouble with Farrow or Tribble, ever have any with them?

A. Never had any trouble with them.

Q. You heard the testimony that they gave; you were sitting here.

A. Yes, sir.

Q. Do you know of any reason they would have to come here and tell the story they have told, make it up out of the blue?

A. I can't see why they would.

Q. Now, that hall back there where they found you that you have been testifying about, in fact there are
page 110 } several places not narrowed to two feet or two and a half feet, aren't there?

A. I don't believe it is a one in there not narrowed down to two and a half feet.

Q. How about where you turn to go to the storage room, the soft drink storage room, it is nothing in front of that door, is it?

A. No, sir.

Q. That is six feet, six and three-fourths inches?

A. Yes, sir.

Q. These shelves run all the way back to the door right here (indicating on map), don't they?

A. They don't go all the way back. These shelves here go back in a line with this door here.

Q. How deep are the shelves?

A. They are about that wide (measuring with his hands).

Q. How tall are they?

*Mary Lee Farrar.*

A. They start on the bottom, lay flat on the bottom, and I reckon they are that high (measures almost to his shoulder).

Q. How much space is between them? How deep are they?

A. About a foot or something.

Q. All right, sir, I believe that is all.

page 111 } RE-DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Mr. Farrar, on the night of November 24th, this night while you were working there at the filling station, were you or not expecting your wife to come over there?

A. I was.

Q. Now, I want to ask you this. Have you and your wife had normal marital relations?

A. Yes, sir.

Q. And do you have that now?

A. Yes, sir.

Q. All right, sir.

RE-CROSS EXAMINATION.

By Mr. Daniel:

Q. Did your wife ever come over there that night?

A. No, sir, she didn't.

Witness stands aside.

The witness,

MRS. MARY LEE FARRAR,

having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Singleton:

Q. Will you please state your name?

page 112 } A. I am Mrs. Russell Farrar.

Q. What is your real name?

A. Mary Lee Farrar.

Q. Mrs. Farrar, how long have you and Mr. Farrar been married?

A. Thirty-one years.
Q. How old are you?
A. Forty-eight.
Q. Whereabouts do you and your husband live?
A. We live in Madison Heights, on Wright Shop Road.
Q. Who lives in the home with you?
A. My son and my daughter-in-law.
Q. Mrs. Farrar, were you expecting to come over to the service station where your husband was working on the night of the 24th of November?
A. Yes, sir.
Q. And did you advise him you were coming over?
A. Yes, I did.
Q. Why is it you didn't come over that night?
A. I went to sleep and I didn't wake up.

By the Court:
Q. What time were you supposed to be there, Mrs. Farrar?
A. I told him I'd be there around nine o'clock.

By Mr. Singleton:
Q. Do you and your husband have a normal
page 113 } married life?
A. I think we do. I am sure we do.
Q. You have normal marital relations with each other?
A. Yes, we do.
Q. Do you have a happy marriage?
A. Yes, we do.
Q. Your witness.

CROSS EXAMINATION.

By Mr. Daniel:
Q. You didn't go over to the filling station, did you, Mrs. Farrar?
A. No, I didn't.

Witness stands aside.

The witness,

CURTIS P. CLEVELAND,

having been first been duly sworn, on examination testified, as follows:

*Raymond H. Goff, Sr.*

DIRECT EXAMINATION.

By Mr. Whitehead:

Q. Would you please state your name?

A. Curtis P. Cleveland.

Q. What is your occupation?

A. I am a minister.

Q. Of what church?

A. Kendrick Baptist Church, Kendrick, Virginia.

Q. Did you live in Madison Heights a long period of time?

A. I was pastor of Madison Heights Baptist

page 114 } Church for ten years and ten months.

Q. Now, do you know the defendant in this case, Russell E. Farrar?

A. I do.

Q. How long have you known him, sir?

A. Fifteen years.

Q. Do you know what his general reputation is in the community in which he lives for being a peaceful, law abiding citizen?

A. Good.

Q. Do you know it?

A. Yes.

Q. You say it is good.

A. Good.

Q. Do you know what his general reputation is in the community in which he lives for truth and veracity, that is for telling the truth?

A. Good.

Q. Knowing that reputation as you do, would you believe him under oath in a matter in which he is personally interested?

A. I would.

Q. Thank you, sir.

(No questions on cross examination).

Witness stands aside.

page 115 The witness,

RAYMOND H. GOFF, SR.,

having first been duly sworn, on examination testified, as follows:

*Raymond H. Goff, Sr.*

DIRECT EXAMINATION.

By Mr. Singleton:

Q. Will you please state your name.

A. Raymond H. Goff, Sr.

Q. Mr. Goff, what is your business?

A. I am a Representative of Pilot Life Insurance Company.

Q. Where do you live, Mr. Goff?

A. Woody's Lane, Madison Heights.

Q. Do you know the defendant, Russell Early Farrar?

A. Yes, sir, I do.

Q. How long have you known him?

A. I have been knowing Mr. Farrar a little over thirty years.

Q. Do you know his reputation in the community, his general reputation in the community in which he lives, for being a peaceable and law abiding citizen?

A. I do.

Q. Is it good or bad?

A. Good.

Q. Do you know his general reputation in the community in which he lives for truth and veracity?

page 116 } A. I do.

Q. Is it good or bad?

A. Good.

Q. Mr. Goff, from your knowledge of his general reputation for truth and veracity, would you believe him on oath in a matter in which he is personally interested, sir?

A. Yes, sir, I would. Yes, sir.

CROSS EXAMINATION.

By Mr. Daniel:

Q. Do you know anything about this charge which is supposed to have occurred on November 24th that is against this man now?

A. Do I know anything about it?

Q. About the facts of it?

A. No, sir, no more than a few things I have seen in the paper, that's all.

Witness stands aside.

The witness,

H. C. GODSEY,
having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Singleton:
Q. Will you please state your name.
A. H. C. Godsey.
page 117 } Q. Where do you live, Mr. Godsey?
A. Madison Heights.
Q. Mr. Godsey, do you know this man, Russell Early Farrar?
A. Yes, sir.
Q. How long have you known him?
A. 45 years.
Q. Do you know his reputation in the community in which he lives for being a peaceable and a law abiding citizen?
A. Yes, sir.
Q. Is it good or bad?
A. Good.
Q. Do you know his general reputation in the community in which he lives for telling the truth?
A. Yes, sir.
Q. What is it?
A. It is good.
Q. From your knowledge of that general reputation, would you believe him on oath in a matter in which he is personally interested?
A. Yes, sir.

(No questions on cross examination).

Witness stands aside.

page 118 } The witness,

R. B. HOLT,
having first been duly sworn, on examination testified, as follows:

DIRECT EXAMINATION.

By Mr. Whitehead:
Q. Your name is Mr. R. B. Holt?

A. Yes, sir.
Q. What do you do, Mr Holt?
A. I am with the First National Trust and Savings Bank.
Q. What is your position there?
A. Cashier.
Q. What is your age, Mr. Holt?
A. Fifty.
Q. Where do you live?
A. In Madison Heights.
Q. Mr. Holt, do you know the defendant in this rase, Russell Farrar?
A. Yes, sir, I do.
Q. How long have you known him?
A. I have known Mr. Farrar since about March of 1949.
Q. For a while did he live near you?
A. About six years approximately.
Q. How near?
A. There was one house in between where he lived and where I lived.

page 119 } Q. Mr. Holt, do you know what Mr. Farrar's general reputation is in the community in which he lives for being a peaceful, law abiding citizen?

A. Excellent.
Q. Do you know it?
A. Yes, sir.
Q. And what is it?
A. His reputation is excellent.
Q. Do you know what his general reputation is for truth and veracity, that is for telling the truth?
A. Yes, sir, his reputation is excellent in that line too.
Q. Knowing that reputation as you do, would you believe him under oath in a matter in which he is personally interested?
A. Yes, sir, I would.
Q. All right.

## CROSS EXAMINATION.

By Mr. Daniel:
Q. You know a little something about human nature, don't you, sir?
A. Yes, sir.
Q. Then wouldn't you say a person who is charged with an offense similar to the one Mr. Farrar is charged with,

wouldn't that be apt to cause anyone to maybe change their reputation for being truthful in order to save
page 120 } themselves?

A. I don't think so.

Witness stands aside.

The defense rests.

The witness,

J. J. TRIBBLE,

having previously been sworn, on being recalled by the Court, testified, as follows:

By the Court:

Q. Officer, I do not know whether you orally testified about this point or whether you simply undertook to show when you were sitting on the floor here, and from the position as the Court saw you on the floor, it wants some clarification of the fact of whether or not this accused, at the time you say you saw him sitting on the floor and described the other events, whether he was sitting with his back against boxes and his feet straight across the alleyway, or whether he was sitting with his back against the boxes on an angle, or partly lengthwise with the alleyway. Did you testify on that or just simply try to describe it?

A. I just tried to describe it.

Q. Well, can you help us by clarification, by clarifying that as to which way he was sitting, the position of his feet?

A. No, sir, I wouldn't say he was sitting directly straight and I would not say that he wasn't. He could have been sitting with his back on the boxes; he could have
page 121 } been. I will not say either way.

Q. Your position on the floor and your oral testimony was undertaking to portray that point.

A. That's right.

Witness stands aside.

Both the Commonwealth and the defense rest.

The Court and counsel retire to the Judge's chambers.

Mr. Whitehead: The defendant by counsel respectfully re-

quests the Court to let the jury go to the filling station and look at it, have a view.

The Court: Is there any proof that the situation today is like it was then, as to the boxes and things that may be in there today?

Mr. Daniel: I don't believe there is any evidence it is like it was on November 24th. There was a witness who testified the boxes the next day were the same way and the step-ladder the next day.

The Court: We are dealing with the evidence before the Court. Is there any evidence to show that the situation today with reference to the boxes and things that are inside of that store in the back room are the same now as they were the day this alleged offense occurred? I don't recall any.

Mr. Whitehead: The two Farrars testified, if Your Honor please, they were there within the last few days and they were the same. If I recall correctly, I don't believe anybody testified that they had been there today and it is

page 122 } exactly the same.

The Court: If the Commonwealth's Attorney does not object and you have got transportation ready, they can go right away and come back. Does the Commonwealth have any objection?

Mr. Daniel: The only thing that bothers me, Judge, those boxes and things are something that can be readily moved and they could be changed every day for all I know. You could set that thing up any way you wanted to. I would object for that reason. The shelves could be moved or anything of that kind could be moved so as to change the conditions from what they were from the day the offense happened. I can't imagine they haven't been moved. They are articles that move in the normal course of business. That room is so situated that a box moved maybe a foot might change the whole picture.

The Court: The motion is overruled.

Mr. Whitehead: If Your Honor please, the defendant by counsel excepts to the ruling of the Court on the ground that if the jury were permitted to view the premises they could see with their own eyes that it would be physically impossible for the crime to have taken place as related by the witness for the Commonwealth.

The Court: We will now take up the instructions as offered, taking up first the instructions offered on behalf of the Commonwealth, which bear arabic numbers 1, 2, 3 and 4.

Have counsel for the accused any objection to any of those four?

page 123 } Mr. Whitehead: Yes, sir.

The Court: Please state your objection.

Mr. Whitehead: Our objection to Instruction No. 1 "that the accused is guilty of sodomy." We say that the word "sodomy" should not be in there. There is no evidence that he has committed sodomy.

Mr. Daniel: If Your Honor please, I think the word "sodomy" as used in Instruction 1 of the Commonwealth's instructions covers the crime with which the accused is charged in this case. My authority for this position is contained in Michie's *Juris Prudence,* Volume 16, page 532, under the heading of "Sodomy," paragraph 1 (reading).

The Court: The Court will give Instruction 1 as offered

Mr. Whitehead: The defendant by counsel excepts to the ruling of the Court in giving Instruction 1 with the use of the word "sodomy" on the grounds that he is indicted under a special statute, being Section 18-98 of the Code of Virginia, and there is no use of the word "sodomy" in the statute.

The Court: Is there any objection to Instruction No. 2?

Mr. Whitehead: No objection.

The Court: The Court observes a typographical error in the fourth paragraph, last line. The word "if" should be "is." I changed the instruction in that respect and will give it as offered.

Is there any objection to Instruction No. 3?

page 124 } Mr. Whitehead: No objection.

The Court: The Court will give Instruction No. 3 as offered. Is there any objection to Instruction No. 4 as offered?

Mr. Whitehead: No objection.

The Court: The Court will give Instruction No. 4 as offered.

We will now take up the instructions offered on behalf of the accused, which are numbered alphabetically "A," "B," "C," "D" and "E." Has the Attorney for the Commonwealth any objection to Instruction A?

Mr. Daniel: I don't believe so.

The Court: The Court will give Instruction A as offered.

Is there any objection to Instruction B?

Mr. Daniel: I think Instruction B is incomplete in that it tends to define a reasonable doubt in four lines. I don't think that is hardly possible, but I don't object to that one.

The Court: Since the Commonwealth's Attorney does not object in this instance, I will give the instruction.

Is there any objection to Instruction C?

Mr. Daniel: I think Instruction C is objectionable because in line 2 it says that the character of the defendant when proven good or bad is a fact to be considered by the jury. I think it is a factor. I will withdraw the objection.

The Court: The objection being withdrawn to the instruction, the instruction will be given as offered.

Mr. Singleton: We wish to withdraw Instruction D.

page 125 }

The Court: The defendant by counsel having withdrawn Instruction D, it will not be considered by the Court. What objection has the Commonwealth's Attorney to Instruction E as offered?

Mr. Whitehead: We wish to make some changes in the instruction. (The changes are made)

The Court: Does the Commonwealth's Attorney have any objection to Instruction E as so amended?

Mr. Daniel: No objection.

The Court: Instruction E as so amended will be given.

Counsel having agreed to limit their arguments to no more than twenty minutes to the side, they will be so limited.

## INSTRUCTION NUMBERED 1 AS OFFERED BY THE COMMONWEALTH.

(Granted):

"The Court instructs the jury that under the indictment in this case, if warranted by the evidence, you may find one of the following verdicts, to-wit:

"1. That the accused is guilty of sodomy, as charged. The punishment for this offense is by confinement in the penitentiary for not less than one nor more than three years, or

"2. That the accused is not guilty."

page 126 }

## INSTRUCTION NUMBERED 2, AS OFFERED BY THE COMMONWEALTH.

(Granted):

"The Court instructs the jury that the defendant's plea of not guilty is a denial of every charge against him, and the

burden of proof rests upon the Commonwealth throughout the case and never shifts. To bear this burden of proof the Commonwealth by competent evidence must prove the defendant's guilt beyond a reasonable doubt of a crime, and every material element thereof, as charged.

"The defendant does not have to prove his innocence, nor does he have to prove the truth of his defense or of any fact; for all that is necessary to entitle him to an acquittal is that from the evidence as a whole, or lack of evidence, there is raised in the mind of the jury a reasonable doubt of his guilt.

"To warrant a conviction of the defendant the facts proven must not only be consistent with his guilt but be inconsistent with his innocence and exclude every reasonable hypothesis of his innocence.

"Proof of the defendant's guilt by a mere preponderance of evidence, or by evidence that raises in the mind of the jury only suspicion of guilt however strong, or by evidence that for any proper reason falls short of satisfying the jury of his guilt beyond a reasonable doubt, is insufficient to warrant a conviction.

page 127 } "There is, however, no burden upon the Commonwealth to prove the defendant's guilt to a mathematical certainty or beyond all possibility of mistake, or to do more than satisfy the jury that upon the evidence as a whole he is guilty beyond a reasonable doubt.

"If the preponderance and weight of the evidence as a whole be so greatly in favor of his guilt as to satisfy the jury beyond a reasonable doubt of his guilt of a crime and every material element thereof, as charged, they should convict the defendant thereof.

"If the jury have a reasonable doubt of the defendant's guilt upon the case as a whole or upon any material element thereof, they should give him the benefit thereof and acquit him."

## INSTRUCTION NUMBERED 3, OFFERED BY THE COMMONWEALTH.

(Granted):

"The Court instructs the jury that the fact that the accused has been charged with a criminal offense or indicted therefor, raises no presumption that the accused is guilty thereof.

"The accused is presumed to be innocent of every charge against him until he is proven guilty thereof beyond a reasonable doubt. This presumption of innocence is not a mere form to be disregarded by the jury at pleasure, but constitutes a substantial right of the accused and the jury must give the accused the benefit thereof; it goes with the
page 128 } accused throughout the trial and applies at every stage thereof until the jury has reached an unanimous verdict; and if the case is a doubtful one it is sufficient to turn the scales in favor of the accused."

INSTRUCTION NUMBERED 4, OFFERED BY THE COMMONWEALTH.

(Granted):

"The Court instructs the jury that if you believe from the evidence in this case, beyond a reasonable doubt, that the defendant, Russell E. Farrar, on the date and place mentioned in the evidence, voluntarily submitted to having carnal knowledge of the body with Alfred W. Howard, by then and there, permitting the said Alfred W. Howard to place the penis of the said Russell E. Farrar, in the mouth of the said Alfred W. Howard, then the said Farrar would be guilty of sodomy."

INSTRUCTION LETTERED A, OFFERED BY THE DEFENSE.

(Granted):

"The Court tells the jury that they are the exclusive judges of the credibility of the witnesses, and the weight to be given their testimony, but that they have no right to arbitrarily disregard the testimony of any witness; but in determining the credibility of witnesses, and the weight to be given their testimony, the jury may take into consideration the interest of the witness in the thing about which he testifies, his means of knowledge, bias, and prejudice in regard to the thing about which he testifies and his demeanor while testifying. And, when the jury have considered the testimony of
page 129 } witnesses according to these principles, they should give to the testimony of each witness all the weight to which his testimony is entitled, if any."

INSTRUCTION LETTERED B, AS OFFERED BY THE DEFENSE

(Granted):

"The Court instructs the jury that a reasonable doubt is such a doubt as may be honestly and reasonably entertained as to any substantial and material fact essential to prove the offense charged."

INSTRUCTION LETTERED C, AS OFFERED BY THE DEFENSE

(Granted):

"The character of a defendant when proven, whether good or bad, is a fact to be considered by the jury, but its weight as affecting the guilt or innocence of the prisoner is a matter for the determination of the jury in connection with the other facts proven in the case."

INSTRUCTION LETTERED E, AS OFFERED BY THE DEFENSE.

(Granted):

"The Court instructs the jury that before you can convict the defendant, you must believe from the evidence beyond a reasonable doubt that the penis of the defendant was placed in Howard's mouth and that the defendant voluntarily submitted thereto and if the Commonwealth fails to prove same by the evidence beyond a reasonable doubt, or if the evidence raises in your minds a reasonable doubt as to either or both of said elements of the crime charged, then you shall give the defendant the benefit of said doubt and find him not guilty."

page 130 } In the court room.

After having the instructions read to them by the Court and hearing arguments of counsel, the jury retired to the jury room to consider of their verdict at 5:30 P. M. At 6:30 P. M., having not reached a verdict, the jury went out for supper and returned at 8:00 o'clock P. M., returned to the Jury room, and brought in the following verdict at 10:45 P. M.:

"We, the jury, find the accused Russell E. Farrar guilty as charged in the within indictment and fix his punishment at one year in the penitentiary. (Signed) G. W. Sanderson, Foreman."

Mr. Whitehead: If Your Honor please, may we make a motion? If Your Honor please, the defendant by counsel moves the Court to set aside the verdict of the jury on the following grounds: First, that the verdict is contrary to the law and the evidence. Second, that there is not sufficient credible evidence to base a verdict of conviction on. Third, that the evidence adduced by the Commonwealth's witness is incredible and cannot be believed. Fourth, that the Court erred in allowing the eight jurors to serve who were on the venire in the Alfred Howard case. Fifth, that the Court erred in not granting a view of the premises.

The Court: The Court cannot find any merit in the motion and will overrule it.

Mr. Whitehead: The defendant by counsel excepts to the ruling of the Court in not setting aside the verdict. Would Your Honor give us a stay of execution to give us time to apply for a writ of error?

page 130-a } The Court: Yes, sir, I think you are entitled to that and will give you a stay of execution for sixty days.

page 131 } The foregoing oral testimony and other incidents of trial were reported and transcribed by the undersigned Court Reporter, who was first duly sworn according to law.

ELLA J. BOYER
Court Reporter.

The undersigned, Attorneys for the Commonwealth and Defendant, respectively, in the case of Commonwealth of Virginia against Russell E. Farrar, lately pending in the Corporation Court for the City of Lynchburg, Virginia, final judgment wherein was rendered January 14th, 1958, hereby affix their signatures to the foregoing transcript of the oral testimony and other incidents of the trial of said case, as provided by Rule 5:1, section 3 (e) of the Rules of the Supreme Court of Appeals, to the end that the same may become part of the record on appeal.

Given under our hands this 11th day of March, 1958:

J. MURRELL DANIEL, Asst.
to the Commonwealth atty.

PAUL WHITEHEAD
HAROLD B. SINGLETON
Attorneys for the Defendant.

page 132 } Tendered on the 12th day of March, 1958, and within sixty days after final judgment.

S. DuVAL MARTIN
Judge of the Corporation Court
of the City of Lynchburg,
Virginia.

Signed on this, the 13th day of March, 1958, and within seventy days after final judgment.

S. DuVAL MARTIN
Judge of the Corporation Court
of the City of Lynchburg,
Virginia.

I, Hubert H. Martin, Clerk of the Corporation Court of the City of Lynchburg, Virginia, do hereby certify that the foregoing transcript of the oral evidence and incidents of trial of the case of Commonwealth of Virginia *against* Russell E. Farrar was received by me on this, the 13th day of March, 1958.

HUBERT H. MARTIN,
Clerk of the Corporation Court
of the City of Lynchburg,
Virginia.

A Copy—Teste:

H. G. TURNER, Clerk.

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## RULE 5:12—BRIEFS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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