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Record No. 4993

In the Supreme Court of Appeals of Virginia at Richmond

OLLIE ADAMS, JR.

v.

COMMONWEALTH OF VIRGINIA

FROM THE CORPORATION COURT OF THE CITY OF NORFOLK, PART TWO

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.

Record No. 4993

VIRGINIA:

In the Supreme Court of Appeals held at the Supreme Court of Appeals Building in the City of Richmond on Thursday the 29th day of January, 1959.

OLLIE ADAMS, JR., Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Corporation Court of the City of Norfolk, Part Two

Upon the petition of Ollie Adams, Jr., a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Norfolk, Part Two, on the 31st day of July, 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

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In the Corporation Court of the City of Norfolk, Part Two, on the 31st day of July, 1958.

Ollie Adams, Jr., who stands indicted for Murder, this day again appeared in Court pursuant to the terms of his recognizance, and came as well the Attorney for the Commonwealth, and the Attorneys for the defendant, said attorneys being of the defendant's own choosing, and again came the jury heretofore sworn, pursuant to adjournment order of July, 30th, 1958, and thereupon the defendant, by counsel, moved the Court to strike the evidence introduced on behalf of the Commonwealth as to the offense of Murder in the First Degree as charged in the indictment, which motion, being fully heard, is overruled, and to the action of the Court in overruling said motion the defendant, by counsel, duly excepted, and thereupon the defendant, by counsel, moved the Court to strike the evidence introduced on behalf of the Commonwealth as to the offense of Murder in the Second Degree as charged in the indictment, which motion, being fully heard, is overruled, and to the action of the Court in overruling said motion the defendant, by counsel, duly excepted, and thereupon the defendant, by counsel, moved the Court to strike the evidence introduced on behalf of the Commonwealth as to the offenses of Voluntary Manslaughter and Involuntary Manslaughter as charged in the indictment, which motion, being fully heard is overruled, and to the action of the Court in overruling said motion the defendant, by counsel, duly excepted; and at 1:00 o'clock P. M. the aforesaid jury, after having been sworn by the Court as in previous adjournment, were adjourned until 2:00 o'clock P. M.; and at 2:00 o'clock P. M., pursuant to the adjournment order, the defendant again appeared in Court pursuant to the terms of his recognizance, and again came the jury heretofore sworn, and the aforesaid jury, having fully heard the evidence page 7 } and argument of counsel, retired to their room to consider their verdict, and thereupon the defendant, by counsel, moved the Court for a mistrial on the grounds of certain remarks prejudicial to the defendant made by the Attorney for the Commonwealth in his rebuttal argument,

which motion, being fully heard, is overruled, and to the action of the Court in overruling said motion the defendant, by counsel, duly excepted, and the aforesaid jury, after some time, returned into Court and returned a verdict in the following words: "We the Jury, find the defendant guilty of Voluntary Manslaughter and fix his punishment at five years confinement in the penitentiary." Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury and grant him a new trial, on the grounds that said verdict is contrary to the law and the evidence, which motion, being fully heard, is overruled, and to the action of the Court in overruling said motion the defendant, by counsel, duly excepted. Whereupon it being demanded of him if anything for himself he had or knew to say why the Court should not here and now proceed to pronounce judgment against him according to law, and nothing being offered or alleged in delay of judgment, it is therefore ordered that the said Ollie Adams, Jr., be confined in the Penitentiary of this Commonwealth for the term of Five Years, subject to a credit of 1 day spent in jail awaiting trial. Thereupon the said defendant, by counsel, moved the Court for time in which to apply for a writ of error to the foregoing judgment, which motion, having been fully heard, is sustained, and the execution of the foregoing sentence is hereby postponed for the period of sixty days, or until the Supreme Court of Appeals of Virginia shall deny said writ of error if prior thereto. And thereupon the defendant, by counsel, moved the Court to grant him bail in this cause pending aforesaid application for writ of error, and the Court doth hereby cancel the bail bond heretofore given by the defendant in this page 9 } cause, and doth require of the defendant a new bail bond in the penalty of Five Thousand Dollars, with sufficient surety, to be given before the Clerk of this Court. And the prisoner was remanded to jail.

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INSTRUCTION C-1.

The Court instructs the jury that murder is the unlawful killing of any person with malice aforethought.

Murder is distinguished by the law of Virginia as murder in the first degree and as murder in the second degree. The

difference between murder in the first degree and murder in the second degree depends upon whether the killing was wilful, deliberate and premeditated, or not.

The Court instructs the jury, that murder in the first degree is the wilful, deliberate and premediated killing of any person with malice aforethought. All other murder is murder in the second degree.

The Court instructs the jury that every unlawful homicide is presumed to be murder in the second degree, and the burden is upon the Commonwealth to elevate the crime to murder in the first degree; but on the other hand, in order to reduce the offense from murder in the second degree to manslaughter the burden is upon the prisoner to introduce evidence sufficient to raise a reasonable doubt in the minds of the jury as to whether the offense is murder in the second degree, voluntary or involuntary manslaughter or excusable homicide.

The Court further instructs the jury that voluntary manslaughter is the unlawful killing of another without malice, upon sudden heat of passion, on reasonable provocation, or, in mutual combat.

Involuntary manslaughter is the killing of one contrary to the intention of the parties in the prosecution of some unlawful but not felonious act; or in the improper performance of a lawful act.

Assault and battery is any physical injury done to another in an angry, rude or insolent manner.

The Court instructs the jury, as follows:

Murder in the first degree is punishable by death or confinement in the penitentiary for life, or for not less than twenty years.

Murder in the second degree is punishable by confinement in the penitentiary for not less than one nor more than five years.

Voluntary manslaughter is punishable by confinement in the penitentiary for not less than one nor more than five years.

Involuntary manslaughter is punishable by confinement in the penitentiary not less than one, nor more than five years, or, in the discretion of the jury, by fine not exceeding $1,000.00, or confinement in jail not exceeding one year, or both.

Assault and battery is punishable by confinement in jail for a period not to exceed twelve months, or a fine not to exceed $500.00, either or both.

Granted July 31, 1958.

W. A. P.

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INSTRUCTION C-2.

The Court instructs the jury that malice aforethought necessary to constitute the crime of murder, may be either express or implied. The word "malice" is used in a technical sense, and includes not only anger, hatred and revenge, but every unlawful and *unjustifiable* motive. It is not confined to ill will to any one or more particular persons, and is intended to denote an action flowing from any wicked and corrupt motive, done with an evil mind and purpose and wrongful intention, where the act has been attended with such circumstances as to carry in them the plain indication of a heart regardless of social duty and deliberately bent on mischief; therefore malice is implied by law from any wilful, deliberate and cruel act against another, however sudden, and a person is presumed to intend the natural and probable consequences of his act.

Granted July 31, 1958.

W. A. P.

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INSTRUCTION C-3.

The Court instructs the jury that a person is presumed to intend the natural and probable consequences of his acts; and where a mortal wound is inflicted with a deadly weapon, in the previous possession of the slayer, without any, or upon slight, provocation, the killing is presumed to be wilful, deliberate and premeditated, and throws upon the accused the necessity of proving extenuating circumstances.

Granted July 31, 1958.

W. A. P.

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INSTRUCTION C-4.

The Court instructs the jury that you can and should draw reasonable inferences from the facts proven.

Granted July 31, 1958.

W. A. P.

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INSTRUCTION C-5.

The Court instructs the jury that when one without fault himself is attacked by another in such manner or under such circumstances as to furnish reasonable grounds for apprehending a design to take away his life, or to do him some great bodily harm, and there is reasonable ground to believe the danger imminent that such design will be accomplished, and the person assaulted has reasonable ground to believe, and does believe, such danger is imminent, he may act upon such appearance and without retreating, use such force as is necessary against his assailant, if he has reasonable grounds to believe, and does believe that such force is necessary in order to avoid the apparent danger; and the killing under such circumstances is excusable; although it may afterwards turn out that the appearances were false and that there was in fact neither design to do him some serious injury or danger that it would be done. But of all this the jury must judge from all the evidence and circumstances of the case.

Granted July 31, 1958.

W. A. P.

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INSTRUCTION C-6.

The Court instructs the jury that a plea of self-defense is a plea of necessity, and where the plea of self-defense is relied

upon in a trial for murder such plea of self-defense is not available to the accused unless he was without fault in bringing on the alleged necessity, and in any case, the necessity relied upon to justify the killing must not arise out of the accused's own misconduct.

Granted July 31, 1958.

W. A. P.

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INSTRUCTION C-7.

The Court instructs the jury that the credibility of the witnesses is a question exclusively for the jury, and the law is that, where a number of witnesses testify, directly opposite to each other, the jury is not bound to regard the weight of evidence as equally balanced. The jury have the right to consider the appearance of the witnesses on the stand, their manner of testifying and their apparent candor and fairness,their apparent intelligence (or lack of intelligence), their means of information, their relationship to any of the parties, if same is proved, their interest, if any, in the result of the case, their temper, feeling or bias, if any has been shown, and from these and all other surrounding circumstances appearing on the trial, determine which witnesses are more worthy of credit, and to give credit accordingly.

Granted July 31, 1958.

W. A. P.

page 17 } INSTRUCTION X-1.

The Court instructs the jury that the law presumes the accused to be innocent unless and until he is proven guilty as charged by the Commonwealth by evidence beyond all reasonable doubt and to the exclusion of every reasonable theory or hypothesis consistent with his innocence, and this presumption of innocence goes with the accused throughout the whole case and applies to every stage thereof. Even though you may have a suspicion that the accused is guilty, or even though you may believe that the greater weight or preponderance of the evidence is against him, that is not

sufficient to justify a conviction, for if there is any reasonable doubt as to any fact or element necessary to establish the guilt of the accused, the law makes it your duty to acquit him. The law places upon the Commonwealth the burden of proving beyond all reasonable doubt every essential necessary to constitute the crime so clearly that there is no reasonable theory consistent with the evidence upon which he can be innocent and unless the jury have an abiding conviction beyond all reasonable doubt of the guilt of the accused, you must find him not guilty; nor are the jury to speculate, or go outside of the evidence and consider what they think might have taken place, but they are to try this case and confine it to the evidence as given by the witnesses introduced, and if that evidence, when considered along with the evidence for the defense, does not convince the jury beyond all reasonable doubt as to every material element of the guilt of the accused, then the jury must find the accused not guilty.

Granted July 31, 1958.

W. A. P.

page 18 } INSTRUCTION D.-1.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that the opening statement of the prosecution attorney and opening statement of counsel for the defense are not evidence. You are therefore directed to determine the evidence in this case as has been introduced from the witnesses themselves of both the Commonwealth and for the defendant, along with such exhibits as have been introduced in evidence.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 19 } INSTRUCTION D.-2.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that the character of the accused, when proven, whether good or bad, is a fact to be considered by the jury, but its weight as affecting his guilt or innocence is a matter for determination by the jury in connection with all of the other facts and circumstances proven in this case.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 20 } INSTRUCTION D.-3.

Re: Commonwealth *v*. Ollie Adams, Jr.

The Court instructs the jury that if you believe from the evidence that the deceased was the aggressor and the defendant was without fault in provoking the attack and the deceased made an attack upon the defendant, Ollie Adams, Jr., in such a manner or under such circumstances as to furnish reasonable grounds for apprehending a design for doing him some serious bodily harm, and the defendant, Ollie Adams, Jr., reasonably and honestly believed that such danger was imminent, then under the law of self-defense, he had the authority to determine from appearances and, from the actual circumstances with which he was then confronted, to act upon such appearances and, without retreating, stab his assailant, if he reasonably and honestly believed that such stabbing was necessary to avoid the apparent danger of serious bodily harm, and the homicide arising out of such stabbing is deemed in law to be justifiable, even though the jury may determine from their own viewpoint that such stabbing was not, in fact, necessary to repel the attack. For when one attempts to injure another, by a sudden and unprovoked attack, the party attacked has the right to make use of such means to prevent injury as the behavior of his assailant and the immediate situation reasonably make necessary.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 21 } INSTRUCTION D.-3A.

Re: Commonwealth *v*. Ollie Adams, Jr.

The Court instructs the jury that if you believe from the evidence that the deceased was the aggressor and the defendant was in some fault in provoking the attack and the deceased made an attack upon the defendant, Ollie Adams, Jr., in such a manner or under such circumstances as to furnish reasonable grounds for apprehending a design for doing him some serious bodily harm, and the defendant, Ollie Adams, Jr., reasonably and honestly believed that such danger was

imminent, then under the law of self-defense, he had the authority to determine from appearances and, from the actual circumstances with which he was then confronted, to act upon such appearances and after the attack retreated as far as possible and did stab his assailant, if he reasonably and honestly believed that such stabbing was necessary to avoid the apparent danger of serious bodily harm, and the homicide arising out of such stabbing is deemed in law to be excusable, even though the jury may determine from their own viewpoint that such stabbing was not, in fact, necessary to repel the attack. For when one attempts to injure another, by a sudden and unprovoked attack, the party attacked has the right to make use of such means to prevent injury as the behavior of his assailant and the immediate situation reasonably make necessary.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 22 } INSTRUCTION D.-4.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that in passing upon the danger, if any, to which the defendant, Ollie Adams, Jr., was exposed, you will consider the circumstances as they reasonably appeared to the defendant, Ollie Adams, Jr., and draw such conclusions from these circumstances as he (Ollie Adams, Jr.) could reasonably have drawn, situated as he was at the time; in other words, the Court instructs you that the accused is entitled to be tried and judged by facts and circumstances as they reasonably appeared to him and not by any intention that may or may not have existed in the mind of the deceased.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 23 } INSTRUCTION D.-5.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that where a man is threatened with danger, the law authorizes him to determine from appearances and the actual state of things surrounding him as

to the necessity of resorting to force; and, if he acts from reasonable and honest conviction, he will not be held criminally responsible for a mistake as to the actual danger, where other and judicious men would have been mistaken; for, when one man attempts to injure another, it gives the injured man the right to make use of such means to prevent injury as his behavior and the situation make necessary.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 24 } INSTRUCTION D.-6.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that if they believe from the evidence in this case that the defendant, Ollie Adams, Jr., was assaulted by the deceased with such violence as to make it appear to the defendant, Ollie Adams, Jr., at the time that the deceased manifestly intended and endeavored to take his life or do him some great bodily harm, and that the danger was imminent and impending, then in that case the defendant, Ollie Adams, Jr., was not bound to retreat but had the right to stand his ground, repel force with force and if need-be kill his adversary to save his own life or prevent him receiving great bodily injury, and it is not necessary that it shall appear to the jury to have been necessary.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 25 } INSTRUCTION D.-7.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that when a person reasonably apprehends that another intends to attack him for the purpose of killing him or doing him serious bodily harm, then such person has a right to arm himself for his own necessary self-protection.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 26 } INSTRUCTION D.-15.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that the threats made by the deceased prior to the killing, as well as those made to Ollie Adams, Jr. in person and those made to others and communicated to Ollie Adams, Jr., are to be considered by them in the determination of the question as to whether the accused, Ollie Adams, Jr., had, at the time, of the killing, a reasonable ground to apprehend that the deceased, Alexander Jordan, intended to do him (the defendant) serious bodily harm.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 27 } INSTRUCTION D.-17.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that if they have a reasonable doubt as to the grade of offense of which Ollie Adams, Jr., the defendant, may be guilty, they shall resolve that doubt in his favor, and find him guilty of the lower grade. To illustrate, if they have reasonable doubt as to whether he is guilty of murder in the first degree or the second degree, they should find him guilty in the second degree. If they have a reasonable doubt as to whether he is guilty of murder in the second degree or manslaughter, they should find him guilty of manslaughter, and if they have a reasonable doubt as to whether he be guilty at all, they must resolve that doubt in favor of the accused and acquit him.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 28 } INSTRUCTION D.-18.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that in all criminal prosecutions a man has a right to be confronted with his accusers, and the witnesses against him, and no statement made by any witnesses, or other person, elsewhere than in Court, and in the

presence of Ollie Adams, Jr., constitutes evidence against him. The sole purpose for which evidence of any such statement is admitted, or for which it can be used, is to enable the jury to judge whether or not the witness is entitled to credit.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 29 } INSTRUCTION D.-19.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that a reasonable doubt is such a doubt as exists, or would exist, in the mind of an ordinary prudent man as to cause him to hesitate to act in his own most important affairs.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 30 } INSTRUCTION D.-24.

Re: Commonwealth *v.* Ollie Adams, Jr.

The jury are instructed that the indictment in this case is of itself a mere accusation or charge against the defendant, and is not of itself any evidence of the defendant's guilt; and no juror should permit himself to be influenced against the defendant because or on account of the indictment in this case.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 31 } INSTRUCTION D.-26.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that even if you believe from the evidence that the defendant, Ollie Adams, Jr., had committed adultery with Barbara Jordan, and yet, if you further believe that the husband, Alexander Jordan, undertook to take the law in his own hands and to do the defendant, Ollie Adams,

Jr., serious bodily harm, you are instructed that the law of self-defense, as defined in the Instructions is applicable to the defendant, Ollie Adams, Jr.

So, if after hearing all the evidence, you entertain a reasonable doubt on the issue of self-defense, as raised by the defendant, Ollie Adams, Jr., and as outlined in the Instructions you will find the defendant Ollie Adams, Jr., not guilty.

Granted: This 31st day of July, 1958.

W. A. P., Judge.

page 32 } INSTRUCTION D.-9.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that where, as in the case at bar, the defendant relies on the plea of self-defense, the defendant is not required to prove this fact beyond a reasonable doubt, or by a preponderance of the evidence, but the burden is on the Commonwealth to prove beyond a reasonable doubt the offense as alleged in the indictment and under the instructions outlined in Instruction No. C1. Therefore, if after hearing all the evidence, you have a reasonable doubt upon all the evidence in this case that has been presented both for the Commonwealth and for the defendant, then you should find the defendant, Ollie Adams, Jr., not guilty.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 33 } INSTRUCTION D.-10.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that the defendant is presumed to be innocent until his guilt is established by the evidence beyond all reasonable doubt. It is not sufficient that his guilt is probable only, or even more probable than his innocence. Nor can the defendant be convicted upon mere suspicion. No amount of suspicion, however strong, will warrant his conviction. In order to convict the defendant, the evidence of guilt must be so strong as to exclude every reasonable hypothesis consistent with his innocence.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 34 } INSTRUCTION D.-11.

Re: Commonwealth *v*. Ollie Adams, Jr.

The Court instructs the jury that the defendant, Ollie Adams, Jr., stands indicted, and is on trial for the killing of Alexander Jordan, and not for any other offense; and the jury cannot and should not, in determining the guilt or innocence of Ollie Adams consider any other offense committed by him as having a distinct bearing on the guilt or innocence of the accused of the offense charged in the indictment.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 35 } INSTRUCTION D.-12.

Re: Commonwealth *v*. Ollie Adams, Jr.

The Court instructs the jury that the defendant, Ollie Adams, Jr., stands indicted, and is on trial for the killing of Alexander Jordan, and not for any other offense; and the jury cannot and should not, in determining the guilt or innocence of Ollie Adams, Jr., consider any other offense committed by him as having a distinct bearing on the guilt or innocence of the accused of the offense charged in the indictment. And the Court further instructs the jury that such evidence as may have been introduced in this case relative to the matters set forth above in this instruction can be considered by the jury only in so far as it has a distinct bearing on the guilt or innocence of the accused of the offense charged in the indictment, and shall not be considered by the jury for any other purpose whatsoever.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 36 } INSTRUCTION D.-13.

Re: Commonwealth *v*. Ollie Adams, Jr.

The Court instructs the jury that a man upon premises where he has a right to be when attacked is under no duty to retreat, but may resist the aggressor, and in so doing may use such force as appears to him as a prudent man reasonably necessary to repel the attack.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 37 } INSTRUCTION D.13-A.

Re: Commonwealth *v*. Ollie Adams, Jr.

The Court instructs the jury that a man upon his own premises when attacked is under no duty to retreat, but may resist the aggressor and in so doing may use such force as appears to him as a prudent man reasonably necessary to repel the attack.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 38 } INSTRUCTION D.-14.

Re: Commonwealth *v*. Ollie Adams, Jr.

The Court instructs the jury that the occupant of property in the lawful possession of the same has a right to use as much force as is necessary to prevent an unlawful or forcible trespass upon the same, and if they find that the defendant, Ollie Adams, Jr., was standing upon his own ground, or upon ground of which he was in lawful possession, and that in attempting to force a passage over the same, if they so find, the deceased, Alexander Jordan, was violating the law and was a trespasser, with the intent and with the means of committing a felony, and was attempting to *comit* a *felong* against the person of the defendant, Ollie Adams, Jr., then the defendant, Ollie Adams, Jr., as occupier of the land, if they so find, might repel force by force to the extent of killing the said Alexander Jordan, if necessary so to do to prevent the commission of said felony, and such killing would be excusable.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 39 } INSTRUCTION D.-16.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that upon the trial of a criminal case by a jury the law contemplates the concurrence of twelve minds in the conclusion of guilt before a conviction can be had. Each individual juror must be satisfied beyond a reasonable doubt of the defendant's guilt before he can, under his oath, consent to a verdict of guilty; each juror should feel the responsibility resting upon him as a member of the jury, and should realize that his own mind must be convinced beyond a reasonable doubt of defendant's guilt before he can consent to a verdict of guilty. Therefore, if any individual member of the jury, after having duly considered all the evidence in this case, and after consultation with his fellow-jurors, should entertain such reasonable doubt of defendant's guilt as is set forth in certain other instructions in this case, it is his duty not to surrender his own convictions simply because the balance of the jury entertain different convictions.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 40 } INSTRUCTION D.-20.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that the whole of the conversation of Ollie Adams, Jr. with the police, as well as the statements which may be favorable as those which may be unfavorable, are in evidence before you; and you will give to them such weight as upon a consideration of all the evidence in the case, and of all the probabilities or improbabilities of such statements, as you may deem them entitled.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 41 } INSTRUCTION D.-21.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that circumstantial evidence means proving a thing by circumstances; that is to say, after certain circumstances have been proved that the jury might, if they were satisfied that such circumstances were proved, conclude that a certain result followed.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 42 } INSTRUCTION D.-22.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that in this case a conviction is sought upon circumstantial evidence alone, which is also to be acted on with the utmost caution.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 43 } INSTRUCTION D.-23.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that in all cases when the proof is circumstantial evidence, the time, place, means, opportunity, motive and conduct or such of these facts as may be proved with other facts, if any, must all concur in pointing out Ollie Adams, Jr., beyond a reasonable doubt, as the guilty agent.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 44 } INSTRUCTION D.-25.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that the Commonwealth must prove its case beyond all reasonable doubt, and that means that the Commonwealth must prove every material element

beyond sufficient doubt, which constitutes the alleged crime, and it is not sufficient that the jury may believe his guilt probable, or more probable than his innocence; no degree of probability, nor any circumstances, however suspicious, will authorize a conviction, but the evidence must be of such character as to produce a moral certainty of guilt to the exclusion of all reasonable doubt; nor are the jury to speculate, or go outside of the evidence and consider what they think might have taken place, but they are to try this case and confine it to the evidence as given by the witnesses introduced, and if that evidence, when considered along with the evidence for the defense, does not convince the jury beyond all reasonable doubt as to every material element of the guilt of the accused, then the jury must find the accused not guilty.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 45 } INSTRUCTION D.-27.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court further instructs the jury that, as a matter of law under the facts and circumstances of this case, the defendant, Ollie Adams, Jr., is entitled to the law of self-defense, as defined in the instructions of this Court, notwithstanding the fact that he may have committed adultery with Barbara Jordan, the wife of Alexander Jordan, the deceased.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 46 } INSTRUCTION D.-28.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that under the law in Virginia a paramour is entitled to the law of self-defense.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 47 } INSTRUCTION D.-29.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that the fact that the defendant had committed adultery with the wife of the deceased in the past does not deprive him, as a matter of law, of his right of self-defense, as defined in these instructions.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

page 48 } INSTRUCTION D.-30.

Re: Commonwealth *v.* Ollie Adams, Jr.

The Court instructs the jury that even if you believe that the defendant, Ollie Adams, Jr., did commit adultery with the wife of the deceased, and yet you further believe from the evidence that the deceased was the aggressor and made an attack upon the defendant, Ollie Adams, Jr., in such a manner or under such circumstances as to furnish reasonable grounds for apprehending a design for doing him some serious bodily harm, and the defendant, Ollie Adams, Jr., reasonably and honestly believed that such danger was imminent, then under the law of self-defense, he had the authority to determine from appearances and, from the actual circumstances with which he was then confronted, to act upon such appearances and, without retreating, stab his assailant, if he reasonably and honestly believed that such stabbing was necessary to avoid the apparent danger of serious bodily harm, and the homicide arising out of such stabbing is deemed in law to be justifiable, even though the jury may determine from their own viewpoint that such stabbing was not, in fact, necessary to repel the attack. For when one attempts to injure another, by a sudden and unprovoked attack, the party attacked has the right to make use of such means to prevent injury as the behavior of his assailant and the immediate situation reasonably make necessary.

Refused: This 31st day of July, 1958.

W. A. P., Judge.

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ASSIGNMENTS OF ERROR.

1. The Court erred in overruling the motion of the defendant to strike the evidence of the Commonwealth on the conclusion of the Commonwealth's evidence, as contrary to the law and evidence.

2. The Court erred in refusing to grant the defendant a mistrial because of the remark of the Commonwealth's Attorney that a paramour has no right of self-defense.

3. The Court erred in not instructing the jury that the law is that a paramour has a right of self-defense in the Commonwealth of Virginia.

4. The Court erred in permitting the Attorney for the Commonwealth to ask the witness Barbara Jordan what a married woman with three (3) children was doing with a boyfriend.

5. The Court erred in permitting the Attorney for the Commonwealth to ask the witness Barbara Jordan, did the fact that the defendant had five (5) children make any difference to you?

6. The Court erred in permitting the Attorney for the Commonwealth to ask the witness Barbara Jordan, why did your home break up, because your husband wasn't nice to you?

7. The Court erred in permitting the Attorney
page 52 } for the Commonwealth to ask the witness Barbara
Jordan, well is that all it takes for you to run around on your husband, just to like him?

8. The Court erred in permitting the Commonwealth's Exhibit "C-2" to be passed around the jury after an officer testified that objects on the knife could be blood, I suppose.

9. The Court erred in not instructing the jury to strike out the remarks of the Attorney for the Commonwealth when the Attorney for the Commonwealth stated, that, it is hard to keep going with these constant and baseless objections by counsel which he knows are without foundation.

10. The Court erred in permitting the Attorney for the Commonwealth to ask the defendant Ollie Adams, Jr. concerning sexual relations with the witness Barbara Jordan.

11. The Court erred in allowing the Attorney for the Commonwealth to recall the witness Barbara Jordan after the Commonwealth and the defense had rested, as the Commonwealth had not reserved the right when the witness left the stand to recall the witness to the stand.

12. The Court erred in permitting the Attorney for the Commonwealth to cross examine the witness Barbara Jordan when she was recalled to the stand.

13. The Court erred in allowing the Attorney for the Commonwealth to try to impeach his own witness Barbara Jordan on direct examination.

14. The Court erred in granting Instruction No. C-1, C-2, C-3, C-4, C-5, C-6, and C-7.

15. The Court erred in refusing to grant Instruction No. D-3, D-3a, D-9, D-10, D-11, D-12, D-13, D-13a, D-14, D-16, D-20 and D-21.

16. The Court erred in permitting the Attorney for the Commonwealth to argue the issue of adultery to the
page 53 } jury.

17. The Court erred in striking the remarks of counsel for the defendant that it is better to let 99 persons go free than to convict one innocent.

18. The Court erred in allowing the Attorney for the Commonwealth to state that the defendant has the *burnden* of convincing you, as twelve reasonable men, that what they are saying has sufficient truth in it to cause you to have a reasonable doubt of my case.

19. The Court erred in permitting the Attorney for the Commonwealth to make the remark that the defendant's attorney was misleading you (the jury) and fooling you into turning someone loose who has no more business to be turned loose than—

20. The Court erred in allowing the Attorney for the Commonwealth to refer to the defendant's attorney as misleading and fooling you (the jury) in saying after objection, I think you see what I mean.

21. The Court erred in not granting a mistrial because of the remarks of the Attorney for the Commonwealth that defendant's counsel was misleading and fooling the jury.

22. The Court erred in overruling the motion of defendant to strike the evidence of the Commonwealth that the conclusion of the Commonwealth's evidence and the defendant's evidence as contrary to the law and evidence.

23. The Court erred in overruling the motion of the defendant to set aside the verdict of the jury and to grant the defendant a new trial on the grounds that the verdict was contrary to the law and evidence.

Given under my hand this 26th day of September, 1958.

OLLIE ADAMS, JR.
By MORRIS H. FINE
Of Counsel.

* * * * *

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DR. EDWARD D. HARRIS,
called as a witness on behalf of the Commonwealth, having been first duly sworn, was examined and testified as follows:

* * * * *

By Mr. Spencer:

Q. You understand, Doctor, the room is large and it is difficult to hear. What is your name?

page 10 } A. Edward Davis Harris.

Q. And you are a physician practicing in the City of Norfolk?

A. In Norfolk County.

Q. Norfolk County. You are a doctor of medicine, are you not, sir?

A. Yes, sir.

Q. Dr. Harris, on the 16th of June of this year, were you one of the deputy medical examiners for the City of Norfolk?

A. Yes, sir.

Q. On the evening of that day, did you have occasion to examine the body of one, Walker Alexander Jordan?

A. Yes, sir.

Q. Will you describe the body to us, sir, as to sex, race and size?

A. It was a twenty-eight year old colored male who was five-ten and weighed 130 lbs.

Q. What was the cause of death, Dr. Harris, please?

A. A stab wound to the chest.

Q. And in what area of the chest was the stab wound?

A. It was in the lower pole of the breast bone

page 11 } or the sternum, here (indicating).

Q. Will you point out to the jury the point where you mean?

A. Right through the bone (indicating).

Q. That would be just above the second button of your shirt?

A. Third button.

Q. Third button and a little to the right?

A. Yes, sir.

Dr. Edward D. Harris.

Q. Doctor, this wound, did it penetrate into any vital organs, sir?
A. Yes, sir, the heart.
Q. What, please?
A. The heart, right over the top of the heart where the wound was located.
Q. What was the depth of the wound and the exterior dimensions of it, if you can recall, Doctor?
A. The wound in the chest wall and the skin was approximately a one-inch linear wound, one inch in a vertical direction.
Q. When you say "one inch in a vertical direction," do you mean that is the extent of the penetration?
A. No, the wound on the skin. The wound was up and down, this way (demonstrating).
Q. I see. The wound itself was in a vertical
page 12 } position?
A. Yes, sir.
Q. And its linear measurement was one inch?
A. Yes.
Q. Now, what was the depth of the wound, sir?
A. I don't know.
Q. But it did penetrate into the heart?
A. Yes.
Q. And was this the cause of death, sir?
A. Yes, sir.
Q. When and where did you examine the body, Doctor?
A. May I look at the papers to see the address?
Q. Yes.
A. 1817-B Claiborne Avenue in Norfolk, in the backyard of that dwelling.
Q. And at what time, sir?
A. I saw the body at 11:25 P. M.

Mr. Spencer: Your witness, Mr. Fine.
The Witness: Can I say something first of all? You were asking about the depth of the wound?
Mr. Spencer: Yes, sir?
The Witness: May I say something about that?
page 13 } Mr. Spencer: Yes, sir.
The Witness: At the time I probed the wound the wound went clean through the bone, but as far as actual depth of the wound, I cannot say how far it went in.

Dr. Edward D. Harris.

CROSS EXAMINATION.

By Mr. Louis Fine:

Q. Then, I take it, Doctor, that you did not perform a post mortem?

A. No, sir.

Q. Or an autopsy?

A. No, sir.

Q. So when you say that it went into the heart that is purely speculation?

A. That is the probable cause of death, yes, sir.

Q. It is probable, but I mean you have no medical certainty of that?

A. No, sir.

page 14 } Q. And the medical certainty would be an autopsy or post mortem examination?

A. Yes, sir.

Q. And therefore, it is difficult for you to definitely say how deep the wound is, is that correct?

A. The actual depth, yes, sir.

Q. And I understand that it was only one wound?

A. That's right, sir.

Q. And did you actually measure the depth of the wound itself or is that your best judgement?

A. I said I did not measure the depth.

Q. You did not; but I am speaking about you said something about an inch. Did you measure that or was that just by your eye?

A. That's my eye.

Q. I am not critical, I am just trying to get information.

A. Yes, sir.

Q. And frequently it is true that shock is brought on in connection with a lost of blood which also is a cause of death?

A. Yes, sir.

Mr. Louis Fine: That is all. Thank you very much.

page 15 } RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. Dr. Harris, was there any evidence of blood about the body and in the area around the body?

Dr. Edward D. Harris.

A. (Pause) There was blood on his clothes, if that is what you mean. There was no pool of blood around the body—well, there was a little bit of blood, let's see—I can't say exactly how much—blood. There was blood on his clothes. There was enough blood there that someone had stepped in it, but no huge pool. That is my recollection of it. I don't have that written down.

(Thereupon, a photograph was handed to opposing counsel for examination).

By Mr. Spencer:

Q. I show you a picture, Doctor, and ask you, sir, if this is a picture of the man whose body you examined, or the body you examined?

(Shown to the witness for examination).

A. That is the man.

Q. And is that body in the same place at which you examined it?

page 16 } A. The body is in the same place where I saw it, yes.

Q. And is this the condition of the body as to blood at the time you did see it, Doctor?

A. Yes.

Mr. Spencer: I offer this, if your Honor please, in evidence.

Mr. Louis Fine: We object, if your Honor please, on the ground that it is not necessarily material or relevant in this case. It is merely trying to add to what the Doctor said. There is no controversy between this gentleman and the defense.

The Court: The Court overrules the objection. It has been admitted.

Mr. Louis Fine: Note an exception, if your Honor please?

The Court: Exception noted.

(The photograph was thereupon marked and received in evidence as Prosecution's Exhibit Number 1).

Mr. Spencer: I haven't finished my examina-
page 17 } tion.

Mr. Louis Fine: Excuse me, sir.

Dr. Edward D. Harris.

By Mr. Spencer:

Q. Now, Dr. Harris, from your examination—from the condition of the body at the time of your examination, can you state to the jury, sir, the cause of death in this instance?

A. I can state the probable cause of death.

Q. And what is that, sir?

A. A stab wound to the heart.

Mr. Louis Fine: We object to it, if your Honor please, and move to strike it out on the ground this gentleman has already been interrogated on that question and has heretofore answered on direct-examination prior to my cross examination.

Mr. Spencer: I have no further questions.

The Court: The jury has already heard the answer. The Court will overrule the objection and note the exception.

RE-CROSS EXAMINATION.

page 18 } By Mr. Louis Fine:

Q. Now, you spoke about this man's weight. The weight you put down is pure speculation; you did not actually weigh the man, did you?

A. That is an estimate. No, sir, I didn't weigh him.

Q. And the penetrating of the heart is also an estimate?

A. As I say that is the probable cause of death.

Q. But you did not examine the heart to determine whether the heart was wounded?

A. No, sir.

Mr. Louis Fine: Thank you very much.

RE-DIRECT EXAMINATION.

By Mr. Spencer:

Q. Well, Doctor, with a wound in the location of this area of the chest, and I am indicating, I believe, the same point that you have previously indicated, and with the amount of blood which apparently exuded from that wound, what else could have been penetrated that would have produced that blood?

page 19 } Mr. Louis Fine: We object to the question, if your Honor please, on the ground that it is leading, sir.

Dr. Edward D. Harris.

Mr. Spencer: It is not leading. I am asking "if anything else."

The Court: The Court is going to overrule the objection.

Mr. Louis Fine: We save the point.

The Court: All right, exception noted.

A. And the site of the stab wound, if nothing else.

By Mr. Spencer:

Q. If nothing else?

A. Uh-huh.

Q. Then, sir, why do you state that there is no medical certainty that the heart was penetrated?

A. Because I did not see the heart to actually look at it.

Mr. Louis Fine: We object to the prosecution trying to impeach his own witness. He has stated that he did not conduct a post mortem, if your Honor please. He
page 20 } can state what he thinks it is, but so far as the actual post mortem or autopsy this gentleman says he did not conduct it, and I object to my friend's questioning as being argumentative, sir.

The Court: What was the question?

Are you objecting?

Mr. Louis Fine: Yes, in the line of questioning, he having stated why do you say so and so in connection—

The Court: The Court is going to overrule the objection.

Mr. Louis Fine: Note an exception, sir, if your Honor please.

The Court: Yes.

By Mr. Spencer:

Q. Do you recollect the question, Doctor?

A. No, I don't remember it now.

Q. All right, sir. As a physician, is it not true that it may be stated as a fact after close examination of the organs involved, or it may be stated as in your opinion as an expert medically a fact as a result of the surrounding circumstances—you follow me, sir?

A. I follow you.

page 21 } Q. Now, I understand, Doctor, that you did not autopsy this body so that you did not grossly examine the heart, that is, visually examine it. But as a result of the evidence apparent, a gross examination of the

body itself, can you say, sir, whether or not the wound penetrated into the heart?

A. I would say it did penetrate the heart.

Q. Is that your medical opinion?

A. That is my medical opinion.

Mr. Spencer: Thank you.

RE-CROSS EXAMINATION.

By Mr. Louis Fine:

Q. As a matter of fact, Doctor, there are other veins near the heart except the heart organ itself, isn't the aorta there?

A. That is behind the heart. In this case, in this location, it looks up from behind.

Q. Now, how far is the aorta from the sternum bone?

A. It is all the way to the back. It is right along beside the spine.

Q. I appreciate that, but how many inches from
page 22 } the sternum bone?

A. I couldn't say. In various people it varies, the difference between.

Q. Exactly.

A. So, it might be—

Q. So, it might be as much as an inch or two inches away, is that correct? It all depends on the development of the body and the size of the body?

A. In this location, I think it would have to be more than that, because the heart would be between the area.

Q. Well, isn't the heart on the left of the chest?

A. No, sir, the heart is boot shaped and comes down sort of just to the right of the sternum.

Q. Exactly.

A. Loops around the boot and comes around the left nipple and back up again.

Q. I am speaking of the organ itself is on the left, isn't it? And the veins connect wtih the chest bone?

A. The whole organ?

Q. Not the whole organ, but largely on the left?

A. It is more on the left than on the right.

Q. All right, sir. Now, did you make a blood
page 23 } test of this deceased?

A. I beg your pardon?

Q. Did you make a blood test of the deceased?

A. For what?
Q. For alcohol?
A. Well, no, I didn't make any blood test, no, sir.
Q. Didn't check it for alcoholic content or bovine test, did you?
A. No, sir.

Mr. Louis Fine: Thank you, Doctor.

RE-DIRECT EXAMINATION.

By Mr. Spencer:
Q. I must ask one more question, Doctor. Do I understand then that in order for the wound to have penetrated the aorta it would have first to penetrate the heart?
A. That's right, in this location.

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EDWARD GRACE,

called as a witness on behalf of the prosecution, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Spencer:
Q. What is your name, please?
A. Edward Grace.
Q. Where do you live?
A. 1817 Claiborne Avenue, Norfolk.
Q. Do you live in the front or the rear?
A. Front.
Q. Were you living there on June 16th of this year?
A. Yes, I was.
Q. Some time between 10:30 and 11:00 P. M. on the night of June 16th, were you awakened by someone knocking at your door?
A. Yes, I was.

Cornelius Miller.

Q. Tell us what happened, please?

page 26 } A. Well, somebody knocked at my door and asked for somebody. I believe the name was Barbara, and my wife's name is Barbara, but I know it could not be speaking of her, so I told him to try the back apartment—but when he knocked on the door I did not open the door. I peeped through the window glass we have in the door.

Q. Now, after this, what happened; what did you do?

A. I went back and went to the bed.

Q. And did you go right back to sleep or did you lie there for a while?

A. I believe I went back to sleep.

Q. Did you hear anything after that or see anything?

A. Nothing unusual, nothing to wake me up.

Q. When did you next wake up?

A. The next morning.

Q. About what time was this, can you tell us?

A. That I woke up in the morning?

Q. That you woke up that night.

A. I actually could not tell you what time it was.

Q. I show you a picture of a body and ask if you can identify this? Specifically, is that the man who knocked on your door?

page 27 } (Photograph shown to the witness for examination).

A. I couldn't be sure.

Q. You could not be sure?

A. No, sir.

Mr. Spencer: Your witness.

Mr. Louis Fine: No questions, your Honor.

Mr. Spencer: Just a minute.

That's all, come down.

I would like to excuse this witness if I may.

The Court: Do you have any objection?

Mr. Louis Fine: Not at all, sir.

The Court: All right, you may be excused.

Mr. Spencer: Cornelius Miller.

page 28 } CORNELIUS MILLER,

called as a witness on behalf of the prosecution, having been first duly sworn, was examined and testified as follows:

Cornelius Miller.

DIRECT EXAMINATION.

By Mr. Spencer:
Q. What is your name, please?
A. Cornelius Miller.
Q. Where do you live?
A. 411 Rose Avenue.
Q. Does Rose Avenue intersect Claiborne at the end of the 1800 block of Claiborne?
A. Yes, it does.
Q. Actually the house you live in is the corner of Rose and Claiborne, is it not?
A. The house I live in is two doors from Claiborne on Rose.
Q. Two doors from Claiborne on Rose?
A. Right.
Q. Now, were you at home on the night of June 16th of this year?
A. Yes, I was.
Q. At about 11:00 P. M. that night were you
page 29 } awakened?
A. Yes.
Q. What was the cause for your awakening at that time?
A. Well, a lady came over and called my wife and told her—

Mr. Louis Fine: I object to what the lady said.
Mr. Spencer: If your Honor please, I submit it is admissible not for the truth of it, but as an exception to the hearsay rule, to explain why he did what he subsequently did. It's a matter of explaining why he bothered to get out of his bed.
Mr. Louis Fine: If your Honor please, we object to it, sir. We think that is not part of the *res gestae* what somebody said.
The Court: I am going to sustain the objection.

By Mr. Spencer:
Q. All right, sir. Did this lady say something to you?

Mr. Louis Fine: Just yes or no.

A. She did.

page 30 } By Mr. Spencer:

Q. Acting on what she said, what did you do?

A. I got up out of my bed and went over to my mother in the backyard.

Q. And what is the address of your mother's place?

A. 1821 Claiborne.

Q. Where was that with relation to 1817 Claiborne?

A. Well, it's an adjoining building, side by side.

Q. Right next door?

A. That's right.

Q. When you got over there to the backyard of your mother's house, what did you see, if anything?

A. Well, this fellow was kneeling at the back gate and holding another fellow, and there was blood on the ground, on the concrete there just as you go out of the yard.

Q. And who was the fellow who was kneeling?

A. Adams was kneeling.

Q. Is he in Court?

A. Yes, he is.

Q. Point him out, please?

A. That is Adams (pointing).

Q. This defendant?

A. Yes.

Q. I show you a picture which has been prev-
page 31 } iously introduced in evidence as Commonwealth's Exhibit C-1, and ask if that is the person that Adams was holding?

(Handed to the witness for examination).

A. Yes, it is.

Q. All right. When you saw this man in your mother's backyard, what did you do?

A. I immediately went and called the police department.

Q. Did you say anything prior to leaving the yard?

A. I asked what had happened.

Q. Asked who?

A. I asked Adams what had happened.

Q. Did Adams say anything to you?

A. He told me that the fellow had drawn a knife on him and he cut the fellow.

Q. Now, is that the time that you went to call the police?

A. Yes, it is.

Cornelius Miller.

Q. After calling the police did you come back to this area?

A. Yes, I did.

Q. Now, when you came back did you have any further conversations with Adams?

page 32 } A. He said—he told me that he cut the fellow and he said he hoped the fellow didn't die, was the remarks he made.

Q. He said he hoped the fellow didn't die?

A. He asked me how long would it be for somebody to get to help him and I told him that I had called the police and they was on their way.

Q. All right. Were you there when the police arrived?

A. Yes, I was.

Q. After the police arrived, I asked you whether or not you took part in a search of the area?

A. I put an extension cord up so that the police department might be able to find the death weapon, so to speak, and I think we stayed out there until around one o'clock looking for the knife.

Q. Who is "we?"

A. Well, me and some of the detectives that were out there.

Q. You and some of the police officers?

A. Yes.

Q. Was anyone else to your recollection?

A. Well, there were two or three more people, I don't recall their names.

Q. Now, did you find a knife?

page 33 } A. No, the only knife that was found there was one that Adams admitted was his.

Q. Adams said was his?

A. That was the only knife that was found.

(An object was handed to opposing counsel for examination).

By Mr. Spencer:

Q. I show you a boy scout type or a navy type pocketknife and ask if this is the knife that was found and which Adams said was his?

(Handed to the witness for examination).

A. Looks the same. He said it was a navy knife; that is what he said.

Mr. Spencer: I offer this in evidence, sir, as C-2.
The Court: All right, sir.

(Marked and received in evidence as Exhibit C-2).

By Mr. Spencer:
Q. Did all of the events to which you testified today take place in the City of Norfolk?
A. Yes, sir.

Mr. Spencer: Your witness.

page 34 } CROSS EXAMINATION.

By Mr. Louis Fine:
Q. I want to be able to quote you correctly, and I want to ask you if this was what you had said. Did you say that "the fellow drew a knife on him and he cut him?"
A. No, I didn't.
Q. What did you say?
A. I said that Adams said that the fellow did. I didn't say that he drew a knife. I couldn't swear to it because I didn't see.
Q. You said that Adams—

The Court: Would you try to talk a little louder so that we can all hear you?
The Witness: Yes, sir.
The Court: Excuse me.

By Mr. Louis Fine:
Q. Certainly, your Honor. I want you to speak up so all of us can hear you.
A. Okay.
Q. Adams said—I want to write it down—
A. Adams said that the fellow had drawn a knife on him and he cut him.
Q. The fellow had drawn a knife on him and he
page 35 } cut him. Now, when he made that statement to you, was the man there laying down?

Cornelius Miller.

A. The man was at the fence then. He was holding the man around his waist, around here (demonstrating) with his shirt down at the man's belt. He had a T-Shirt, I think it was, and the T-Shirt he was holding was right around the belt.

Q. And when he was holding this man was he doing that to assist him or did he do that to hurt him?

A. It seemed like he might have been trying to help the fellow, but the fellow was weak and had fallen out and he could not get any further with him.

Q. I mean—but there was no fighting when you looked at him and he was there, is that correct?

A. No, he wasn't fighting there.

Q. And there was no cutting going on?

A. No.

Q. And he said to you that he hoped that he wouldn't die, is that what he said?

A. That's correct.

Q. And what did the cut man have to say about it when he told you that he had drawn a knife on him and then he cut him; what did the man say?

A. The cut man hadn't said anything.

Q. Did he tell—

page 36 } A. Until the undertaker moved him.

Q. What?

A. I said that the man that had been cut didn't say anything at that time I was there, until the undertaker moved him.

Q. I appreciate that, but I mean, what did the man—was he able to have heard what he said?

A. Well, he didn't say. I don't know whether he could have heard it or not.

Q. Well, I mean his eyes were open, weren't they?

A. No, they weren't.

Q. Were they shut?

A. Yes.

Q. They were shut?

A. Yes.

Q. And what time did you arrive over there?

A. It must have been around 11:00; shortly after 11:00.

Q. And how many people were there?

A. When I got there there wasn't anybody there in the yard except Adams and the other fellow. Then another lady came after, and after she came I called the police department.

Cornelius Miller.

Q. And how many people congregated between the time that you first went there and you took this statement
page 37 } from Adams about the fellow having drawn a knife on him from the time that you left there to go to the telephone to call the police and return; how long were you gone?

A. Approximately not more than ten minutes, I'm sure.

Q. And during that ten minutes did you, before you went to make the call, did you look for any knives of either one?

A. Not before I called the *plice.*

Q. You did not?

A. No.

Q. So there was ten minutes interim between the time that you had left and the time you returned?

A. Approximately.

Q. Is that correct?

A. Approximately.

Q. Well, I know you didn't take your watch out. And how many people had congregated there upon your return after making a telephone call to the police department?

A. When I got back it wasn't anyone there except Adams and the cut man. After I come back and was there for about five minutes, I think, the one lady came and other people came afterwards.

Q. How many other people came afterwards?

A. That, I don't know.

page 38 } Q. Was there as many as 25 or 30 people there?

A. I wouldn't say it was 25.

Q. Approximately how many?

A. I doubt it.

Q. What's that?

A. It's very doubtful. I don't think there was that many there.

Q. I am not telling you how many were there, that is what I want to know, approximately.

A. Well, it might have been ten or twelve people there at once.

Q. Ten or twelve people there. And you said you looked for some knives?

A. Yes.

Q. And did you look for them with the police, or did you look for them after the police arrived, or did you look for them before the police arrived?

Cornelius Miller.

A. I looked for them with the police.
Q. With the police?
A. Yes.
Q. And how long was it before the police came there?
A. Well, I—

Q. You said it was ten minutes before you got
page 39 } back?

A. Well, they was approximately five—I would say between five and ten minutes after I got back before the police came.

Q. So that would be a total of about 20 minutes before the police came there, or fifteen minutes from the time you called them, is that right?
A. Yes.
Q. Fifteen or twenty minutes?
A. That is possible.
Q. And then when the police came there did they try to render first aid to the man that was cut?
A. Well, after they came one of the officers checked and if I am not mistaken I believe he said that the man was dead. He went back and made another call and then one or two more cars came then.
Q. One or two more cars of policemen?
A. Yes, sir.
Q. I see. And then did he call who after he learned that the man was dying or dead, who did he call, do you know?
A. I don't know exactly. A doctor came over.
Q. I see. How long was it before the doctor came over?
A. Well, I wouldn't say exactly how long.

Q. Approximately.
page 40 } A. It wasn't too much longer after they had called before the doctor came out.

Q. Five, ten minutes, more?
A. Maybe so.
Q. So that would be about 30 minutes, would you say; and then when did they start looking for the knives?
A. Well, after they had started the investigation and taking the pictures and everything, then after I hooked the light up we started looking for the knives.
Q. How long was it before they started—how long was it while they were taking pictures and making their investigation before they looked for all the knives?
A. Well, I wouldn't be able to say, but—
Q. Approximately.
A. I do know that from the time that they started the in-

vestigation we looked for the knives until about one o'clock, because they found one and so one of the officers made a remark that if we could find the other knife it would probably be helpful to Adams. So we stayed there and looked, and I left there at one o'clock because the other officers had gone and told me if I found the knife to notify the police department so that they could have it in this case going to trial.

Q. Did you see this knife known as Exhibit C-2 that night? Did you see that?

page 41 } A. That's the knife, it had the same resemblance.

Q. That's what I say. Was the blade open?

A. I don't recall whether it was open or not. But I know that it was picked up in the grass, right in the walk.

Q. And you can't remember whether this was open or not?

A. I can't.

Q. Can you remember whether there was blood on that knife?

A. I didn't see because the detective picked the knife up.

Q. Did you ever have this knife in your hand?

A. No, I didn't.

Q. Then you don't know whether—whose knife this is?

A. No, that knife was picked up at the scene. Adams quoted to one of the policeman that it was his.

Q. Adams said this was his knife?

A. The one that was picked up at the scene.

Q. And when you saw that knife did you see blood on his knife—on that knife?

A. I wasn't that close enough to the knife. It was too dark to see whether there was blood on the knife.

Q. Then I take your answer to be that you don't

page 42 } know whether there was blood on the knife or not?

A. I couldn't swear to it.

Q. You couldn't swear to it?

A. No.

Q. Now, did you do anything else there that you know of that was material to this matter?

A. Only things that I did was call the police department and try to help find the knife. I hooked up the lights. If there was a knife to be found that they could find it.

Q. And what time was it that you came over there, can you tell us?

A. Well, it was maybe 11:00 or a little after 11:00. I won't swear what time it was.

Q. Between 11:00 and 11:30 would be a fair statement, is that right?

Cornelius Miller.

A. Maybe.

Q. And when this knife was found by the policeman, the defendant Adams was present, wasn't he; he was around?

A. Before they put him in the radio car he was there.

Q. He was there. I mean when they found the knife?

A. Yes, he was.

page 43 } Q. Didn't you hear the police officer say, and when he asked him about this knife, he said there is no blood on this knife, this isn't the weapon that did the cutting? Did you hear the policeman say that in the presence of the defendant?

A. No, I didn't.

Q. What did you hear the policeman say about this knife?

A. He took the knife and asked him was that his knife. He told him, yes, that was his knife. Now, I am not positive he didn't say anything else about the knife. He took the knife and wrapped it.

Q. But did you hear the policeman make any statement as to whether he agreed that this was his knife or not?

A. No, he didn't agree it was. He didn't say it was and he didn't say it wasn't. I think he took his word.

Q. He didn't say anything, yes or no?

A. No, sir.

Mr. Louis Fine: That's all.

RE-DIRECT EXAMINATION.

page 44 } By My Spencer:

Q. Well, now, you say he didn't say anything. A minute ago you said the officer said if he can find the other knife it will help Adams. Did he say that?

A. Yes, he did.

Mr. Spencer: All right.

(Thereupon, photographs were handed to opposing counsel for examination).

Mr. Louis Fine: If your Honor please, we object to this picture as not material and relevant. These pictures may or may not be. I think that is prejudicial and would serve no purpose.

The Court: You have no objection to these?

Mr. Louis Fine: They are not prejudicial and inflammatory.

Cornelius Miller.

The Court: Just a minute, let me get this exhibit. C-3.

(Marked in evidence as Exhibit C-3).

Mr. Spencer: I withdraw the one they object to. Is this the one you object to?

page 45 } Mr. Louis Fine: Yes, sir, thank you, sir.

The Court: Marked as Exhibits C-3 and C-4.

By Mr. Spencer:

Q. I show you two pictures which have been marked Exhibits three and four, and ask you if you can identify the scene shown in these two pictures? Let me withdraw that. Let me show you C-3 first and ask you what that is?

(Handed to the witness for examination).

A. This picture is the picture—

Q. Speak up.

A. This picture is the back of 1817 Claiborne, the apartment in the rear.

Q. Is this apartment owned by your mother and next to her home?

A. Yes, it is.

Q. I show you a second picture, C-4, and ask if that shows—what that shows.

(Handed to the witness for examination).

A. This picture—this is the fence, here (in-

page 46 } dicating).

Q. Turn it so the jury—come down here, please. I think that will be better. Turn so the jury can see and explain.

A. (Witness complied) This picture is, this is my mother's back door, here, of her house. This is the apartment next door. All right. This is the wood house. This cinderblock place is where I connected the light during the time that they were looking for the other knife. This is the gate—anchor fence.

Q. Excuse me a minute, could you hold it like this and look over it?

A. I can.

Q. And explain it, because some of the jurors can't see.

Cornelius Miller.

A. On this side is the gate with the man that died, was lying right in here (indicating).

Q. And as a matter of fact the body is lying there right now, is it not?

A. Yes, it is.

Q. Go on, sir.

A. No, this cinderblock building here is where I connected the light in order to see if the knife could be found. This particular spot here, right in here on this side of this walk is where the knife was found. This is my brother's picture standing on the side of the building.

page 47 } Q. That is your brother?

A. Yes, it is.

Q. All right, go back up there.

A. (Witness resumed witness stand).

Q. Now, in this picture, C-3, there is a dark substance spattered on the walk. Can you tell us if you observed that when you were out there that night?

A. That is blood.

Q. All right. And the same is true on the walk in the picture, C-4, isn't it?

(Handed to the witness for examination).

A. Yes, it is.

Q. Is that blood also?

A. Yes, sir.

Q. Or appears to be blood?

A. Yes.

Q. Now, I ask you whether or not from the stains of blood that can be seen whether you could follow the track of this wounded man?

A. The blood was traced back from this gate here, went back across the yard and back to the steps. That's the way the detectives traced it back that night of the murder.

Q. And were you there watching that?

page 48 } A. Yes, I was.

Q. Can you see these bloodstains that you traced back?

A. Yes, I do.

Q. In the picture, C-3, there is a dark object lying on the grass near the wall of the building and right in front of that

object are what appear to be dark stains. Were they blood also or did they appear to be blood to you?

(Shown exhibit to the witness for examination).

A. Well, this particular larger spot here, I wouldn't say that that was blood, because when I was there I don't know whether it was possible somebody fell on the ground, if it is blood, but I didn't see that large one. But these ones are ones that came across the grass to the fence, to the gate.

Q. Well, let me take this one. You have picture C-3. Hold it back up like you had it, please. I am not speaking of the large back object that appears to be some sort of marker, which the police had placed there, but right under it, look right there, do you see any spots there? Are they the spots that you observed at the time (indicating to the witness)?

A. Yes, it was spots from right off—from the back of the house across the grass coming across the concrete

page 49 } to the gate.

Q. Were there any spots up on the stoop or on the steps?

A. I didn't—I couldn't say that there were spots on the stoop, because the main thing I was interested in was to get to see if I could find a knife that we were looking for.

Mr. Spencer: All right, your witness.
Mr. Louis Fine: No questions.
Mr. Spencer: Come down.

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BARBARA JORDAN,

called as a witness on behalf of the defendant, hav-

page 69 } ing been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Louis Fine:

Barbara Jordan.

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Q. All right. And how long did you live at Greenleaf Drive, at Oakleaf Park?

A. From February, from about the middle of February until—ah—May.

Q. And after that where did you move?

A. Well, I went to stay with a girl friend at 931 Park Avenue.

Q. And when you went to stay with a girl friend did you live with your husband there, or not?

A. No, I left my husband.

Q. Why did you leave your husband?

A. We were having family difficulties.

Q. Having family difficulties?

A. Yes.

Q. All right. And then after you lived at 931 Park Avenue with your girl friend where did you move to?

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A. I had gotten an apartment at 1817 Claiborne Avenue.

Q. All right. Now, how long had you been separated from your husband?

A. About three weeks or four weeks; about three weeks and a half, and you can just as well say four weeks.

Q. All right. Now, you had gotten an apartment you say at 1817 Claiborne Avenue?

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Q. Yes. Paint?

A. Yes, sir.

Barbara Jordan.

Q. And who did you have there to help you paint?
A. Ollie Adams.
Q. Ollie Adams; that is the defendant?
A. Yes.
Q. All right. Now, I am referring you specifically to the night of June the 16th, 1958. What time did he start there; what time did he come there to help?
A. About 6:30.
Q. About 6:30. All right. Then after you all were there, what happened?
A. Well, we had been painting; and about 10:30, between 10:30 and 11:00—
Q. I am going to get over here so you can speak to me, only probably raise your voice a little.
A. About 10:30 or 11:00 o'clock we were getting ready to leave, and my husband came up and knocked on the
page 74 } door.
Q. Now, your husband, that is Alexander Jordan, the deceased?
A. Yes.
Q. Continue.
A. And when he did I went in the bathroom.
Q. You were in the bathroom?
A. Yes.
Q. All right.
A. At least I was going to the bathroom, so I just went in the bathroom.
Q. And what was said?
A. He asked Ollie was I there, and he said that I wasn't.
Q. All right, he told him that you were not there?
A. Yes.
Q. All right.
A. And—
Q. Now, let me interrupt you just a minute. Had you ever lived with him at this address there on Claiborne Avenue?
A. Live with him?
Q. Live with your husband at 1817 Claiborne Avenue?
A. No, I hadn't.
page 75 } Q. Hadn't. How long had you been separated from your husband before the 16th of June, 1958?
A. Well, at the time I was not separated from him. I was staying at the time at his mother-in-law's house. See, during the time that I was staying at Dorothy's I went back home because she said there wasn't enough room over there.
Q. All right, did you live with him as man and wife?

Barbara Jordan.

A. No.

Q. How long had it since you had been separated from him as man and wife, from what time?

A. That was from the time that I went to Dorothy's house when I first separated from him.

Q. Now, when you were staying at Dorothy's house, that is 931 Park Avenue?

A. Yes.

Q. And when was that that you went to 931 Park Avenue; what month?

A. That was in May.

Q. In May. All right, now, continue and tell us what happened. He asked for you and Adams said you were not there?

A. That's right.

Q. Then what did he say?

page 76 } A. Yes. He said—

Q. I am speaking of Jordan.

A. He said that I was there and that he was going to find me.

Q. Yes?

A. And I don't know what he did, because I didn't see him. Then I heard him say to Ollie that this has been going on a long time. He say this was what he had been waiting for, and he said to Ollie that he was going to kill him.

Q. Who said that he was going to kill him?

A. My husband said that to Ollie.

Q. Your husband said that to Ollie?

A. Yes.

Q. What did you do then?

A. I was still in the bathroom.

Q. You were still in the bathroom?

A. Yes.

Q. Then did you hear anything after that?

A. I heard some scuffling.

Q. Heard some scuffling?

A. Yes.

Q. All right. And then when happened?

A. Well, the next thing that I remember Ollie was calling me from the outside.

page 77 } Q. Ollie was calling you from the outside?

A. Yes.

Q. What did he say then?

A. He asked me to come and help him.

Q. Help him to do what?

Barbara Jordan.

A. Well, I was in the house, and I was scared to come out of the house because I think that my husband was going to do something to hurt me, and I didn't know what had happened on the outside and the bathroom door was locked, and I went out of the window and went around and run from there.

Q. You jumped out of the window?

A. Yes, in the bathroom.

Q. All right.

A. And I went around to the front of the house and when I got around there my husband was laying on the ground and Ollie had his head in his hands.

Q. Ollie had what?

A. My husband's head in his hands and he was trying to stop him from bleeding.

Q. Was trying to stop him from bleeding?

A. Yes.

Q. About what time of night was that?

A. It was about 11:00.

page 78 } Q. Now, will you tell his Honor and the gentlemen of the jury what kind of disposition your husband had, whether he was a peaceful or quarrelsome man.

A. Well—

Q. What kind of temper did he have?

A. Well, I would say when my husband was angry he had a very bad temper.

Q. And state whether or not you know of your own knowledge whether he had threatened Ollie Adams's life before this time.

A. Yes, he had.

Q. And will you tell his Honor and the members of the jury the circumstances, please?

A. Well, it happened during the month of May, when I was staying with Dorothy McDaniels.

Q. Tell us all about it, and speak up, please?

A. One night Dorothy and I had been looking for an apartment and Ollie had taken us to find—to try to find an apartment, and when we got back my husband was on the porch hiding under a swing, and he jumped up from behind the swing on the porch and he said: "This is what is going on," and he and Ollie had a few words. Then—between them arguing—then my husband said to Ollie that if he ever caught me with him again that he was going to kill him.

Barbara Jordan.

Q. Did you hear it?
page 79 } A. Yes.
Q. Did you invite your husband to come down to 1817 Claiborne Avenue?
A. No, I did not, my husband didn't know where I was moving to.
Q. When was the last time he had supported you and the children? How long was it?
A. (Pause) February. The last part of January, 1958.
Q. The last part of January, 1958?
A. Yes, sir.

Mr. Louis Fine: Your witness.

CROSS EXAMINATION.

By Mr. Spencer:
Q. Your husband was a real nice fellow, wasn't he?
A. (Pause) No.
Q. He was not?
A. No.
Q. You all had been married—
A. Not to me. I am referring to myself.
page 80 } Q. To you?
A. Yes.
Q. All right, now, how about to other people, was he a real nice fellow?
A. I would say he was pleasant.
Q. Pleasant fellow. How long had you all been married?
A. Two years and four months.
Q. You had three children?
A. Yes.
Q. How long had you been running around with Ollie Adams?

Mr. Louis Fine: I object to that, if your Honor please.
Mr. Spencer: All right, I will withdraw it.

By Mr. Spencer:
Q. Were you running around with Ollie Adams?
Mr. Louis Fine: I object to that, if Your Honor please, on the ground sir, that that is no defense in this case. It doesn't give the man the right to shoot the defendant, and I submit,

if your Honor please, it is prejudicial and move to strike it out.

page 81 } Mr. Spencer: It is absolutely admissible, sir. And obviously the defense is getting to the plea of self-defense, and there are many cases that hold that where a husband catches a wife with a paramour that the paramour has no right of self-defense.

Mr. Louis Fine: If your Honor please, I respectfully submit that that is not the law. A husband has no right to kill and take the law in his own hands. All he can do is to exercise the rights given the parties by operation of law, and I submit the colloquy in this case makes this case highly prejudicial and I would like to make a motion in the absence of the jury.

The Court: All right, the jury will retire to the jury room.

(The jury was excluded and the following motion was made):

Mr. Louis Fine: Now, if your Honor please, I respectfully request the Court for a mistrial in this case on the following grounds:

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The Court: Members of the jury, you will disregard any statements made by counsel, either counsel for the defendant or the Commonwealth attorney as they relate to incidents of law. At the proper time the Court will instruct you gentlemen as to the law.

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page 86 } By Mr. Spencer:

Q. Were you going with Ollie Adams?

A. (Pause) Yes.

Q. How long had you been going with Ollie Adams?

A. About three months.

Barbara Jordan.

Mr. Louis Fine: May it please the Court, may we, without interrupting, have it understood that we object to this line of questioning as not material in connection with the issue involved?

The Court: You have already objected to it. The Court has overruled the objection.

Mr. Spencer: I will stipulate that Mr. Fine will object to any question I ask—

The Court: Well, the Court feels it would be proper that the objection be made at the proper time, the question being improper. Of course you object. The Court does note your objection to this line of questioning.

Mr. Louis Fine: Thank you, sir.

page 87 } The Court: And your exception to the ruling of the Court.

By Mr. Spencer:

Q. Ollie Adams was your boy friend, wasn't he?

A. (Pause) Yes.

Q. Now, what was a married woman with three children doing with a boy friend.

Mr. Louis Fine: We object, if your Honor please, to that as argumentative.

The Court: The objection is overruled.

Mr. Louis Fine: Note an exception, if your Honor please.

The Court: Exception noted.

By Mr. Spencer:

Q. What were you doing with a boy friend?

A. (Pause) Well, things weren't getting along with my husband at home.

Q. So you got a boy friend?

A. (Pause).

Q. Is that what you are saying?

A. (Pause) Yes.

Q. Did you know that Ollie Adams was married?

A. Yes.

page 88 } Q. Did you know that he had five children?

A. Yes.

Q. Did that make any difference to you?

A. (Pause).

Mr. Louis Fine: We object again on the grounds it is argumentative.

Barbara Jordan.

The Court: I overrule the objection.
Mr. Louis Fine: Exception noted.

By Mr. Spencer:
Q. Did that make any difference to you?
A. (Pause) No.
Q. So your position was that you were breaking up your own home and Ollie Adams' home?
A. My home was already broken up.
Q. Why did your home break up; because your husband wasn't nice to you?

Mr. Louis Fine: I object to it, if your Honor please. The question is whether or not self-defense is involved in this case.
Mr. Spencer: And the purpose of my questioning, sir, is to show just what her position was with relation to
page 89 } the deceased, her husband, and the accused, her boy friend.
The Court: All right, sir, the Court is going to allow the question and note your exception.
Mr. Louis Fine: Note an exception, if your Honor please.

By Mr. Spencer:
Q. Do you remember the question?
A. What was the question?

Mr. Spencer: Read the question, Mr. Reporter.

(The question was read by the reporter).

A. My husband had lost his job at the post office, and after he lost his job he began to drink and he gambled and he wasn't supporting the kids and myself.

By Mr. Spencer:
Q. And your husband, the dead man, lost his job and began to drink and gamble and did not support you and the children; right?
A. That's right.
Q. Who was supporting you?
A. Well, I was supporting myself, and we was staying with his mother and she was helping us as much as she
page 90 } could.
Q. And it was his mother and you all were living at his mother's house?

Barbara Jordan.

A. Yes.

Q. And as a matter of fact you had been living at his mother's house for quite some time prior to the killing?

A. Yes.

Q. How long?

A. Since the last of January or the first of February.

Q. And how about this statement you made about living with Dorothy what's her name?

A. McDaniels.

Q. Yes.

A. I left my husband in May.

Q. And how long did you live with Dorothy?

A. About four weeks.

Q. And during that time where were your children?

A. My children were with me.

Q. Were with you?

A. Yes.

Q. Now, this apartment you were moving into, who rented that?

A. I did.

page 91 } Q. Where did you get the money?

A. I was working.

Q. Well, you were also paying for food for your children, weren't you, and helping Dorothy pay the rent?

A. No.

Q. You were not?

A. No.

Q. Dorothy was just taking care of you and the children?

A. I was working when I was staying with Dorothy but I didn't have to help her pay the rent, and I helped buy the food.

Q. How about the food?

A. I helped with the food.

Q. How much rent did you pay?

A. How much rent did I pay where?

Q. At 1817-B Claiborne Avenue.

A. The rent was $50.00 a month.

Q. $55.00 a month?

A. The rent was $50.00 a month.

Q. All right.

A. And when I rented the apartment I only paid the man $25.00.

Q. And then what name did you rent the apart-

page 92 } ment in?

A. Barbara Small.

Q. Is that you?

A. Yes, that is my maiden name.

Q. So you rented the apartment in your maiden name. Why did you do that?

A. Because my husband and I weren't going to be together.

Q. So you just arbitrarily take your maiden name back?

A. Yes.

Q. You weren't trying to hide it from your husband, were you?

A. No; no.

Q. You were not?

A. No.

Q. Well, this particular night, why did you try to hide?

A. Because I was scared of my husband, and I thought my husband was going to do something to hurt me.

Q. You did? You state that as the truth?

A. Yes.

Q. After your husband was killed you were taken in custody as a material witness, weren't you?

A. Yes.

Q. Who bailed you?

page 93 } A. Mr. Ollie Adams, Sr.

Q. This defendant's father?

A. Yes.

Q. Did you have any furniture at this house?

A. (Pause) I had two mattresses and two springs that I had gotten a fellow to take over there for me in the early part of the—

Q. I beg your pardon?

A. Two mattresses and two springs that I had got a friend of mine to take over there in the early part of the day.

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Q. Now, did you ever live in this apartment at 1817-B?

A. No.

Q. Did you ever have the utilities cut on?

A. No.

Q. All this time you were still living with your husband at his mother's?

A. Yes.

Q. Sleeping with him?

Barbara Jordan.

A. No.
Q. You were not?
A. No.
Q. Who were you sleeping with?
A. I was sleeping in a chair.
Q. In a chair?
A. Yes.
Q. In the room where *you* husband was sleeping?
A. Yes.
Q. Nobody knew that, of course, but you and your husband?
A. His mother was there.
Q. Well, did she know that you were not sleeping in bed together?
A. I can't say that she knew.

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Q. Now, in the second room that you enter as you enter this place, you enter into the living room and in front of you there is a door, you walk through the side of the living room and through that door is the bedroom?
A. That's right.
Q. And that is the room that you claim you all were painting in, is that right?
A. No.
Q. You were in the living room?
A. In the front room.
Q. Front room, and the bathroom in this apartment after you enter the bedroom, the bath room is off to your left?
A. That's right.
Q. Now, you say that you—when your husband entered you were going to the bathroom?
A. Yes.
page 101 } Q. For what?
A. We were getting ready to leave the apartment.
Q. Well, I don't mean to embarrass you, but were you going to the bathroom to relieve yourself?
A. I was going to put my clothes on.
Q. Put your clothes on?
A. Yes.
Q. Well, would you explain that to the jury?

A. During the time we were painting I had some shorts on and a blouse.

Q. Some shorts and a blouse?

A. I was painting in shorts and a blouse, and I was going to change my clothes.

Q. So you went in the bathroom to do that?

A. Yes.

Q. And you had your clothes with you?

A. (Pause) No.

Q. Where were your clothes?

A. My clothes were laying on the mattress.

Q. Well, then, when you went in the bathroom you were still in your shorts?

A. (Pause) Yes.

Q. And you got in the bathroom and locked the door from the inside?

A. Yes.

page 102 } Q. Now, at that time you say you heard your husband say, "I want to see my wife?"

A. Well, my husband walked up—he asked Ollie where was I, and Ollie told him that I wasn't there.

Q. Well, why did Ollie tell him that?

A. I don't know.

Q. Had you told Ollie to tell him that?

A. No.

Q. As a matter of fact you were there and you heard your husband asking?

A. Yes.

Q. But you went ahead and ducked into the bathroom and locked the door?

A. Yes.

Q. And you didn't come out through the bathroom door, you climbed out the window?

A. Yes.

Q. Now, let's see this window you climbed out of. How did you do that? How did you get out this window?

(A photograph was thereupon handed to the witness for examination).

A. The bath room—they had a screen in it.

Q. Uh-huh?

A. And the glass was, you know, one of the

page 103 } panes is one of those that slides to the side, pushes to the side, and I pulled the screen out and opened the window and I jumped out the window.

Barbara Jordan.

Q. Well, the screen, as a matter of fact, has two little knotched places in it. One of them is for the handle that latches the window that's on the right-hand side. Do you remember that?

A. (Pause) I remember, but it seems as if it was to the left-hand side.

Q. Well, on the left-hand side at the bottom there is a metal bar that comes through the frame of the screen and has a hook on the end and that is the bar that you use to pull the window in and out with, is that right?

A. Yes.

Q. So you had to exert considerable force to pull this screen out of the window, didn't you?

A. Yes, because the screen was nailed in.

Q. Uh-huh. And then you had to get yourself up and through the window and onto the ground?

A. Yes.

Q. Did you hurt yourself?

A. I slid out the window to jump on the ground.

Q. And it's a six-foot drop from the window to the ground, isn't it?

A. I don't know how far it was.

page 104 } Q. Well, let me show you the picture and ask you if that is the window—excuse me.

(The photographs were thereupon shown to opposing counsel for examination).

By Mr. Spencer:

Q. (Continuing) Is this the window?

(Shown to the witness for examination).

A. The window didn't have any curtains in it.

Q. Well, isn't this the window whether it had curtains or not?

A. Yes, it is, this is the one.

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page 105 }

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Barbara Jordan.

By Mr. Spencer:

Q. Now, I show you a second picture, Number C-7, and ask you if this is the window from the inside?

(Shown to the witness for examination).

A. Yes.

Q. And there on the window sill you can see
page 106 } that bar that I spoke of with the hook on the end,
can't you (indicating)?

A. That's right.

Q. And on the right-hand side you can see the latch?

A. Yes.

Q. Now, then, how were you able to get out this window. You are a small person, but how were you able to get out of this small window; it's only 14½ inches wide.

(Handed to the witness for examination).

A. The bathtub is right by the window from the other picture.

Q. This other picture, C-7, shows the soap dish right over the bathtub, doesn't it?

A. No. Well, anyway—

Q. In the wall over there, the black thing?

A. Anyway the bathtub is to the right. This is on the same side, and I stepped on the bathtub and put my foot through the window and slid out.

Q. You put your foot through and slid out? You mean you put one foot out first—?

A. No, both of them.

Q. Both of them?

page 107 } A. I had both of them, I think, both of my feet
in the window.

Q. Well, now, how did you do that? The bathtub is at least the height of this table beyond that window, isn't it?

A. Yes.

Q. Well, how did you get both feet up in the window? How were you able to get both feet in the window?

A. I don't know, but I know I got out of that window.

Q. Well, I am interested in how you got out, because it is a small window and there is that hook on the window sill.

A. (Pause) I got up to the window from the bathtub and I slid out this window.

Barbara Jordan.

Q. All right. Now, had your husband ever caught you and Ollie Adams before, together? Before this occasion?
A. Yes.
Q. He caught you all together in a car one night when Ollie Adams was bringing you to your home?
A. Yes.
Q. Didn't he?
A. Yes.

Q. And your husband spoke to Ollie about it, page 108 } didn't he?
A. Yes.

Q. He didn't hit him, did he?
A. No.
Q. Didn't threaten him?
A. Yes.
Q. He did?
A. Yes. My husband told Ollie that night that if he ever caught me in the car with him again that he was going to kill him.
Q. So, Ollie then realized that it was dangerous for him to run around with you?
A. (Pause) Yes.
Q. Your husband told him to stop running around "with my wife or I am going to kill you," is that what you say?
A. Yes.
Q. And notwithstanding that you and Ollie continued to run around together?
A. Yes.
Q. Have you ever been married before?
A. No.
Q. Whose children were these three children?
A. One of them was my husband's. The the other two I had when I was married.

* * * * *

page 110 } Q. Do you love Ollie Adams?
A. (Pause) I like him.
Q. Well, is that all it takes for you to run around on your husband with a married man, just to like him?

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page 111 }

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Barbara Jordan.

A. What was the question?

By Mr. Spencer:

Q. I said that is what you were doing, is it not, running around on your husband with a married man just because you liked the married man?

page 112 } A. (Pause) Yes.

Q. Now, let's go back to the time of the killing When your husband came there he knocked on the door?

A. He knocked on the door.

Q. Which door?

A. The front door. It's not but one door to the apartment.

Q. There is a screen door, isn't there?

A. Yes. Well, I can't say which one it was that he knocked on.

Q. Well, let me ask you if you remember if the front door was open?

A. The front door was unlocked but it wasn't open.

Q. But it wasn't standing open?

A. No, it wasn't open.

Q. Had it been open before that night?

A. Yes, it had been open.

Q. Well, why was it closed then at this time?

A. Because I was changing my clothes. We were getting ready to leave the apartment. I was changing my clothes and the door was closed.

Q. Why did you have to close the front door for you to change your clothes?

A. (Pause) Well, it was just closed.

page 113 } Q. Well, the reason is that you were changing your clothes right in the room where you and Ollie had been painting, isn't it?

A. I was going in the bathroom to change my clothes.

Q. Let me ask you again then: Actually you were standing right there in the room where you and Ollie had been painting and where Ollie was standing, changing your clothes when your husband came up, weren't you?

A. I don't understand that question. Ask that question again: I don't understand.

Q. When your husband, Walker, came up you were standing right in the room where you and Ollie had been painting, changing your clothes, weren't you?

A. I was going from the front room to the bedroom. I was going to the bathroom.

Barbara Jordan.

Q. Well, how is it that your slip wound up on the head of the mattress?

A. When I changed my clothes when we first went there there is where I put my clothes, on the mattress.

Q. Why?

A. Well, there wasn't anywhere else to put it.

Q. Well, did you change in that room?

A. When I first went there I changed my clothes in the front room.

Q. Was Ollie there then?

page 114 } A. No, he wasn't.

Q. What time did you go there?

A. I got there about 5:15, between 5:00 and 5:15, I guess.

Q. And what time did it get dark, do you remember?

A. About 8:00 o'clock.

Q. You mean absolutely dark, no more sunlight?

A. (Pause) I'd say about 8:00 or 8:30.

Q. Why didn't you all have some light in there at that time?

A. We did have some light.

Q. You did?

A. Yes, we had the lamp.

Q. Now, there is a walk that goes down right beside that apartment, isn't it?

A. To come into the entrance, like?

Q. Uh-huh?

A. Yes.

Q. The walk that goes between that apartment house and the house where your landlord lived?

A. Yes.

Q. And people use that walk, don't they, going into the back of your landlord's house where there are several apartments in that house?

page 115 } A. Yes.

Q. And anyone coming down that walk would walk right by the windows of the apartment that you were in, weren't they?

A. Yes, that's right.

Q. And the windows are only about this high (demonstrating) off the ground, aren't they?

A. Yes.

Q. On that side, aren't they?

A. Yes.

Q. Now, didn't your husband say the first thing: "Were you there?" Isn't that the first thing he said?

A. (Pause) Yes.

Q. And didn't Ollie say, "No," you weren't?

A. Yes.

Q. And your husband said, Now, listen, all I want to do is talk to her, and I know she is here, isn't that right?

A. Yes.

Q. You didn't tell us that a minute ago, did you?

A. Did you ask me that?

Q. No, I didn't ask you that. You were on direct examination and you were asked what your husband said. Let's go on with it. And after stating that Ollie still said

page 116 } you weren't there, didn't he?

A. Yes.

Q. And all this time you were locked in the bathroom listening?

A. Yes.

Q. Now, your husband came into the house, didn't he?

A. He was in the front room.

Q. And he came into the bedroom, didn't he?

A. Well, I can't say, because I didn't see him.

Q. Well, you heard somebody come into the bedroom, in there?

A. I heard something; I heard some footsteps.

Q. And you heard somebody open the closet door. It's right there?

A. The closet door, if I remember correctly was already open.

Q. Well, you heard somebody come over and walk up to the closet?

A. (Pause) I just heard somebody walking around.

Q. Well, you heard somebody walking in the kitchen too, didn't you?

A. (Pause) Yes, I heard somebody walking in the kitchen.

Q. And it was after all that that you heard this

page 117 } "scuffling?"

A. Yes.

Q. And then you heard Ollie calling you and Ollie was outside calling you?

A. Yes.

Q. Now, at what point did you hear, as you say you heard, at what point did you hear Walker Jordan say, "I am going to kill you?"

A. Well, that was during the time that he was in the house, in it. It was during the time that—after he asked where was I; it was all of that was said just about the same time.

Barbara Jordan.

Q. You saw your husband, didn't you?
A. No, I didn't see my husband until afterwards.
Q. You did not?
A. No.
Q. Didn't you tell the police officers that you saw him?
A. No.
Q. Did you see a knife?
A. When the time—when I saw the knife was when I was on the outside and the police found the knife on the ground, and I saw a knife there.
Q. Is that the only knife you saw?
A. That is the only knife I saw.
page 118 } Q. When you went around there and Ollie Adams was holding your husband up, did you see a knife?
A. No.
Q. Did you see a knife in your husband's hands?
A. No.
Q. Did you see a knife around him anywhere?
A. No, I didn't.
Q. So, the only knife you ever saw was the one the police officers found?
A. Yes.
Q. Did you ever know Walker to carry a knife?
A. No.

Mr. Spencer: That's all.

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By Mr. Louis Fine:
Q. I am particularly anxious to clear up one thing. When did your husband tell Ollie Adams that he was going to kill him?
A. (Pause) Well, it was on two incidents.
Q. What's that?
A. It was on two incidents that I heard. Are you referring to—
page 119 } Q. I am referring first to June the 16th.
A. You asked me when?
Q. Yes.
A. It was during the time that he, you know, came up to the apartment.
Q. Well, now, did he first come in there and ask to see you,

asked if you were there? Tell us what the conversation was.

A. (Pause) Well, the first I remember my husband was asking where was I.

Q. Right?

A. And Ollie told him that I wasn't there.

Q. All right, then what happened then; what was said?

A. My husband says to Ollie: "This is what has been going on, this is what I have been waiting for," and he said, he told Ollie, "I am going to kill you."

Mr. Louis Fine: That's all I wanted to ask you.

RE-CROSS EXAMINATION.

By Mr. Spencer:

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page 121 }

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Q. When Walker Jordan came up to the house he knocked on the door, right?

A. When he came up to the house he—opened the door. The door wasn't locked. He opened the door and came in the apartment.

Q. And did he start walking around right then?

A. (Pause) No.

Q. Did he start talking right then?

A. Yes.

Q. Well, then what was said. You say it was all said together and it was said right after he came in the house, right?

A. Yes.

Q. Including the statement, "I am going to kill you?

A. Yes.

Q. And after he said, "I am going to kill you," then you heard him walking around through the bedroom

page 122 } and into the kitchen and all?

A. (Pause) (Witness shook head negatively.)

Q. Well, then, did the walking around, the search take place? It had to be before or after, and you have already stated the first thing that happened was the conversation.

Barbara Jordan.

A. (Pause) It was before (pause) it was—to be frank I can't remember exactly when.

Q. Well, to be frank it never happened, did it?

A. Yes, it was said.

Q. It was said?

A. Yes.

Q. But you can't remember whether it was before or after?

A. No.

Q. And you did here a "scuffling around?"

A. Yes.

Q. How much scuffling around, a lot or a little bit?

A. It wasn't too much.

Q. Well, did you hear anything falling like somebody gotten struck and knocked down?

A. I heard a glass or something fall.

Q. You heard a glass or something?

A. Yes, a jar or vase or something.

page 123 } Q. Now, on these prior occasions, did your husband use the same words when he threatened to kill Ollie?

A. That is the night that Ollie brought Dorothy and I back from looking for apartments. Then he said if he ever caught me in the car with him again that he was going to kill him.

Q. Haven't you denied that to your brother-in-law, to Walker's brother, Herman?

A. No, I didn't deny that.

Q. Didn't you tell Herman that Walker had never threatened you or Ollie?

A. No, that wasn't what he asked. He asked me did they get in a fight, was any licks passed, and I told him, no.

Q. On several occasions, to your knowledge, your husband called Ollie up and asked him, begged him, to stay away from his wife, didn't he?

A. Well, I remember one occasion.

Q. How long was that before the killing?

A. (Pause) About—I think it was about two weeks, or two weeks and a half, something like that; but it happened during—it was on a Saturday. I was out then, working and I didn't know anything about that.

Mr. Louis Fine: I move to strike it out, if your page 124 } Honor please, if she don't know anything about it.

Two or three weeks somebody told her. I think that it would be hearsay.

Dorothy McDaniels.

By Mr. Spencer:

Q. Did I understand you to say that somebody told you about it one time and you heard your husband tell Ollie one time to please stay away from you?

Mr. Louis Fine: Ask her if she heard it from her husband.

Mr. Spencer: I am on cross examination, I can ask it the way I want.

The Court: I understood she heard it from her husband, was my impression of it.

Mr. Louis Fine: I have no objection if that be the case, sir.

The Court: Ask the question again, Mr. Spencer.

By Mr. Spencer:

Q. Did you hear your husband ask Ollie, "please stay away from you?"

A. Yes. That was—he didn't say "please stay away from me," but the night Ollie brought us home in the
page 125 } car he told Ollie if he caught me in the car again that he was going to kill him.

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page 128 }

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DOROTHY McDANIELS,

called as a witness on behalf of the defendant,
page 129 } having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Louis Fine:

Q. Would you tell the Court and the gentlemen of the jury your full name? And speak up so everybody can hear you, because we have a large ceiling.

A. Dorothy McDaniels.

Q. And your age?

A. Twenty-six.

Q. Your residence?

A. 222, now, East 27th Street.

Q. And your occupation?

Dorothy McDaniels.

A. Beauty operator.

Q. And Mrs. McDaniels, did you or not live at 931 Park Avenue?

A. Yes, I did.

Q. And did or not Barbara Jordan live there with you?

A. Yes.

Q. When did she live there with you?

A. It was May, I think.

page 130 } Q. May of this year?

A. Yes.

Q. And how many children do you have?

A. I have five children.

Q. And how many children did she have?

A. Three childerens.

Q. And how long did she stay there with you and the children?

A. About three and a half weeks.

Q. And at the time she was living there with you was her husband living there with you?

A. No.

Q. Do you remember any occasion when there was any threat made against this defendant, Ollie Adams?

A. One night we went to look for an apartment, me, Bobbie and Adams; and after we came back, he drove up in the yard and I got out of the car and Alec came around the side of Ollie—

Q. "Alec," is that the deceased, her husband?

A. Yes, uh-huh.

Q. All right.

A. He was sitting on the porch swing and he jumped up and said, "This is it," and he told him that—

Q. If you cannot tell the exact words, tell us substantially what was said.

page 131 } A. Well, he just told him, he said, "This is it." He told him not to let him catch him and Bobbie together again, or something. He said if he did that he would kill him.

Q. Who told who that he would kill him?

A. Alec told Ollie if he caught them again he would do it.

Q. How long had Barbara been separated from her husband at that time?

A. They hadn't been separated but about two weeks.

Q. About two weeks?

A. (Witness nodded head affirmatively).

Dorothy McDaniels.

Q. Did he say how he was going to kill him?
A. No, he didn't.

Mr. Louis Fine: Your witness, Mr. Spencer.

CROSS EXAMINATION.

By Mr. Spencer:
Q. Do you remember whether this was towards the end of the three and a half weeks that Barbara stayed with you or was it towards the beginning?
A. I really don't remember the exact time.

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page 133 }

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Q. How did he happen to come there that night?
A. Well, she had asked him to take her to look for the apartment, and he came and picked us up and took us to look for the apartment, and then when we came back that's when Alec was there sitting on the porch and that's when he said—told him that he would—told him that— he didn't want to see—catch them together again, and if he caught them together again what would happen.
Q. Did he appear to be angry?
A. He was angry but they didn't do anything. He just argued, that's all.
Q. He didn't hit him or anything, did he?
A. No.
Q. No fight?
A. No fight.
Q. What did Ollie say?
A. Well, he didn't say anything but just sit there.
Q. Did he say, "Well, all right, if that's the way you feel about it I won't see her anymore?"
A. Seemed like he said something like that, but I wouldn't really don't know; I couldn't say.
Q. What does it seem like that something that he said was?
page 134 } A. Well, mostly he didn't do anything but just sit there, and he did say this, that she asked him to take her to look for the place.

Zephaniah White.

Q. He said that?
A. And he took her; uh-huh.
Q. And you think he said something like "if that is the way you feel about it I won't see her anymore?"
A. Uh-huh.

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ZEPHANIAH WHITE,
called as a witness on behalf of the defendant, having been first duly sworn, was examined and testified as follows:

page 135 } DIRECT EXAMINATION.

By Mr. Louis Fine:
Q. Will you state your name, Mr. White?
A. Zephaniah White.
Q. And your age, Mr. White?
A. Twenty-seven.
Q. Your residence?
A. 902 Dunnerson Avenue, Chesapeake Manor.
Q. And your occupation?
A. Truck driver, Little Creek Amphibious Base.
Q. How long have you been attached to the military? In a civilian capacity? How long have you been working with the Government?
A. Four years and about six months.
Q. State whether or not you were present when the deceased, Alec Jordan made any threats to the defendant.
A. To the defendant?
Q. Yes.
A. No, I wasn't present there.
Q. You were not present?
A. No.
Q. Did you hear any statement made by Alec
page 136 } Jordan?
A. Yes, I did.
Q. Tell the Court what that statement was and where it was.
A. Well, on or about the week of the 30th of May I was coming from my lunch on Church Street, and I met Jordan. He was coming down Church Street in the opposite direction, and he stopped me and he said "Hi, I want to see you," and I stopped and he came across the street. He say "Is Ollie with you?"

Q. Said what?

A. He said "Is Ollie with you." I say, "No." He says, "Is he in the restaurant eating?" I say, No." He says, "Well, do you know where he is?" I say, "No, I don't know." I says, "He is around to his mother's house eating, I left him around to his mother's house to eat."

Q. How did you happen to know he was out to his mother's?

A. Because I left him there.

Q. All right.

A. He said, "Well, I am looking for him," and then he walked on off.

Q. When he said: "I am looking for him," how did he say it, what kind of tone?

page 137 } A. Well, it sounded threatening tone, 'cause after he said it I went and told Alec's father and him about it. I told him that I met the boy.

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page 142 }

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L. J. MATEJCEK,

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

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page 144 }

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Q. All right, sir. And I believe you did see this knife there, did you not, which is Commonwealths Exhibit C-2?

(Handed to the witness for examination).

A. Yes, that appears to be the same knife.

Q. All right, sir. And when you saw that knife was there any blood on it, when you personally saw it?

A. I did not notice it. Of course, it was night time when all this occurred. I couldn't tell definitely whether it was blood on it or not.

Q. And is it not a fact that when the question was asked

the defendant about the knife he said he thought the knife looked like one he had?

A. I didn't ask him about the knife. Detective Woods was there approximately 20 minutes before I arrived on the scene and—

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page 147 }

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CROSS EXAMINATION.

By Mr. Spencer:

Q. Now, look at this knife, Sergeant. What does that look like to you?

page 148 } (Handed to the witness for examination as indicated by counsel).

A. It appears that it could be blood.
Q. And down here near the base of it?
A. That could be blood, too, I suppose.

Mr. Spencer: (To Counsel) Do you want to see it?
Mr. Louis Fine: Yes.

(Handed to opposing counsel for examination).

By Mr. Spencer:

Q. Now, in connection with your search for this knife, did you attempt to trace the path taken by the deceased in reaching the place where he was lying when you found him?

A. Yes, sir.

(Thereupon, a photograph was shown to opposing counsel for examination).

Mr. Louis Fine: We object to this, if your Honor please. The other pictures indicate the same thing. I think that is C-4.

Mr. Spencer: I want to use it, your Honor, to
page 149 } show the path of the bloodstains.

L. J. Matejcek.

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Mr. Spencer: Judge, I may as well pass this
page 150 } knife around. Sergeant Matejcek, will you step
around here, please, sir?

(Witness complied).

By Mr. Spencer:
Q. The stains about which I asked you, they are the stains on the point of the knife on one side and on the base of the blade on both sides?

Mr. Louis Fine: We object to that, if your Honor please. It is purely speculative and guess, and it is part of the Commonwealth's case to have taken a laboratory test to see if that is blood, or—
Mr. Spencer: Judge—
Mr. Louis Fine: —fingerprints or what-not. It is pure speculation and it's opinion. The knife speaks for itself, I respectfully submit. He is not an expert.
Mr. Spencer: Why did you put him on then? Mr. Fine asked him if he saw any blood on the knife.
Mr. Louis Fine: And he said he didn't know, he didn't see any blood.
Mr. Spencer: And I am asking him to look at it
page 151 } again. And he says it is blood.

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page 157 }

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By Mr. Spencer:
Q. Now, you all were conducting an intense
page 158 } search for several hours, were you not?
A. Yes, sir.

Mr. Louis Fine: I object to that, if your Honor please. The witness said he didn't. He said he left there at one o'clock, and didn't arrive there, if your Honor please, until the other officers, and it couldn't have been several hours. It occurred between 11:00 and 11:30, I submit.
Mr. Spencer: Judge, it is hard to keep it going with these

constant baseless objections and arguments by counsel, which he well knows are without foundation. It is ten minutes after three. I have no more questions.

Mr. Louis Fine: I move to strike out the remarks of the Commonwealth Attorney as not proper, if your Honor please.

The Court: You may stand down. Do you have any further questions of the witness?

Mr. Louis Fine: No, sir.

The Court: You are excused.

page 159 } OLLIE ADAMS, JR.,

the defendant, called as a witness on his own behalf, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Louis Fine:

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page 160 } A. I have lived in the City of Norfolk since 1943.

Q. And where are you employed?

A. Naval Amphibious Base, Little Creek.

Q. And have you been continuously employed there for many years?

A. I have been continuously employed there for eight years.

Q. And have you been arrested for anything before this time?

A. No, sir, nothing.

Q. You have not?

A. No, sir.

Q. Where did you get your schooling?

A. Part of my schooling was in Wilson, North Carolina, and from '43 up until 1950, I got my schooling in Norfolk, Booker T. Washington.

Q. Tell the Court, please, when was the first time that you had any threat communicated to you by the deceased.

A. The first threat that I got from Alex Jordan was on the night that I took Barbara Jordan, this lady Dorothy—

Q. Dorothy McDaniels?

A. Mrs. McDaniels—out to look for an apart-
page 161 } ment, and he was there when we returned back.

Q. What did he say?

A. He got up out of the swing and he said: "This is what

has been going on, I finally caught what has been going on. If I ever catch you with my wife again I am going to kill both of you."

Q. What reply did you make to that?

A. I said "You won't ever catch her with me anymore if you feel that way," because he had been a very good friend of mine and we have been neighbors for many years.

Q. At that time was he living with his wife; at that time?

A. Not that I know of.

Q. What other time did you have any communication about a threat to you from the deceased?

A. On the night of June the 16th.

Q. And what were you doing there that night?

A. I was finishing up painting. I had painted three rooms in that apartment before this night, and that night I was finishing the trimming around the windows in the living room, and just before he walked in I was putting my paint brushes in to soak, and I was standing right there.

Q. Putting your paint brushes to soak?

page 162 } A. In kerosene, which I call it "to soak," because I didn't quite finish. That is why we was there that late.

Q. All right, and then what happened?

A. And Alex Jordan walked in the front door. The front door was partially closed, but the screen wasn't hooked, and the door wasn't locked. He walked in and he said: "Is Barbara here?" I says, "No, she is not." He says, "You are lying, she is here." I says, "She is not." And he grabbed me in the collar of my skivvy shirt and pulled me off balance. I pulled back. He said, "This time I am going to kill you."

Q. Then what did he do?

A. He pulled me toward the door right out in the screen on the stoop. I struggled again and tried to get away but he was heavier than I—

Q. How much did he weigh, in your opinion?

A. In my opinion he felt like he weighed about 165 lbs.

Q. Is he taller than you?

A. He is taller than I am.

Q. How much do you weigh?

A. 122.

Q. All right, continue.

A. He cocked his knife up high when he told me

page 163 } he was going to kill me (demonstrating). I was very scared. I didn't know what to do. I tried to

get away from him again. He pulled me again (demonstrating). He pulled me very easy because I was off balance. I reached in my pocket (demonstrating), and I grabbed my knife. I opened it and he swung at me (demonstrating). He swung at my neck (demonstrating). I kept my eye on his knife blade all the time. I saw the lick coming. I bowed low (demonstrating) enough for his fist to hit me on the right side of my neck, and I swung (demonstrating) low underarm by being left-handed and stabbed him in the chest. He said, "You have cut me." Then he released his hold and he began to run toward the gate. I dropped my knife and I ran down behind him. I caught him right at the gate.

I pulled off my skivvy shirt which he had hold of and tried to stop the bleeding. I called his wife. I saw this lady going in the door. I said, "Call the police, call an ambulance, I have hurt this man."

Q. Why did you stab him?

A. To keep him from killing me.

Q. Can you tell the Court whether this is your knife or not, that is known as Exhibit C-2?

(Handed to the witness for examination).

page 164 } A. It looks like my knife.

Q. It looks like your knife?

A. Yes, sir.

Q. Can you tell what kind of knife he had?

A. I only saw the blade; his fist was covering the handle.

Q. When you were interviewed by the police on the scene did you give them the same statement that you are giving to his Honor and the gentlemen of the jury?

Mr. Spencer: Now—

The Court: Don't answer it.

Mr. Spencer: I object.

Mr. Louis Fine: We submit it is part of the *res gestae.* No counsel was present. It was made right there at the scene within ten minutes as the officer stated, that he interviewed him and those facts were given right then and there, and I submit, if your Honor please, it is part of the *res gestae* and an exception to the hearsay rule as an admission for interest or against interest.

Mr. Spencer: It is not a question of hearsay, your Honor.

It wouldn't be hearsay. It is exactly a declara-
page 165 } tion for or against interest. Mr. Fine is going to argue in front of the jury. The policeman to whom he made the statement is right outside. Mr. Fine can call him.

* * * * *

page 166 } Mr. Louis Fine: All right.
The Court: Proceed.

A. Yes, I made a statement to the officer in the car at the front of the building exactly what had happened.

By Mr. Louis Fine:
Q. Is your statement the same as you have made now?
A. The same as I am making now.
Q. Were you afraid of him?
A. I was afraid of him.
Q. Could you have run away from him?
A. No, sir, he grabbed me.
Q. Was there any other door there in that apartment other than that door?
A. Only one there is that door he come in and that's the door he was standing at.

Mr. Louis Fine: Your witness, Mr. Spencer.

CROSS EXAMINATION.

By Mr. Spencer:
Q. How long had you been going with Barbara
page 167 } Jordan?
A. Well, I had been seeing Barbara Jordan for about three weeks.
Q. Not three months?
A. Not three months. I had been a friend of Barbara Jordan ever since she had moved out to Chesapeake Manor.
Q. Well, let's figure out the difference in the word in your mind of seeing and going with. I ask you how long had you been going with her, and you said you had been "seeing her for about thre weeks. Were you "going" with her or "seeing" her?

Ollie Adams, Jr.

A. Going with her about three weeks.
Q. Going with her.

Mr. Louis Fine: Now, if your Honor please, we want to object to this on the ground, sir, that while he may have been guilty of adultery that is irrelevant to the issue here, as to whether or not he acted in self-defense, and we respectfully submit that the line of questioning is prejudicial and improper.
The Court: Objection is overruled.
Mr. Louis Fine: I note an exception.
The Court: Exception is noted.
At the proper time the Court will instruct you
page 168 } as to the law.

By Mr. Spencer:
Q. And you and Barbara had been having intercourse, have you not?
A. I had intercourse with Barbara since her husband and her was separated.
Q. At which time?
A. Which time?
Q. Yes. She testified to something to the effect that she was separated from him for a while back in February, I believe.
A. I don't know anything about that.
Q. Had you had intercourse with her there at that house?
A. No, I haven't.

Mr. Louis Fine: If your Honor please, I don't want to interrupt my friend. I want to have the same objection to the line of questioning in connection with intercourse or adultery as not material or relevant in this issue.
The Court: The Court will note your objection
page 169 } to the line of questioning and overrule your objection and note your exception.

By Mr. Spencer:
Q. Did you have intercourse at Dorothy McDaniels?
A. No, I did not.
Q. Well, where did you?
A. I had intercourse with her in my car.
Q. Was that on the night that he caught you all together?
A. No.
Q. Was that on the night before that?
A. No.

Q. After that?

A. It was in between the time she was living with Dorothy. I don't recall what night.

Q. Did you love his wife?

A. No, I did not.

Q. Why were you running around with her?

A. I wasn't running around with her; I had been seeing her.

Q. Well, a little while ago she testified you had been her boy friend for three months. Is that wrong?

A. Well, I don't know how she felt about it but she wasn't my girl friend.

Q. She was not?

A. No, not that long.

page 170 } Q. You were just being a nice guy helping a poor girl paint the apartment?

A. She asked me to paint. That is my type of work. I do that type of work in spare time, painting and decorating.

Q. Well, you were not charging her for this?

A. I wasn't being paid for this. I charged her what I thought she could pay me for doing her a favor.

Q. You did?

A. That's right.

Q. And in connection with doing this favor did you bring some beer there to drink?

A. No, I don't drink beer.

Q. How did the empty beer cans get there?

A. I don't know. That was hers.

Q. And did you own the transoceanic radio?

A. I did. I just got it out of the pawn shop that night.

Q. You had?

A. That's right.

Q. And your statement then is that you were going to be paid by her to help her paint this apartment?

A. That's what she promised me.

Q. Now, the furniture that was there. That was your furniture, wasn't it?

page 171 } A. It was my furniture. I had bought it for a home I was supposed to buy in Portsmouth. I didn't have room for it so it has stayed at my mother's over a year. My mother wanted to clean out her rooms. I told her to dispose of this furniture anyway she could. Bar—

Q. Now—go ahead.

A. Barbara asked me—told me that she needed some furniture to go in there, and I told her my mother had this furni-

ture that she probably could sell to her and she contacted my mother.

Q. Didn't you take that furniture from your own house saying that you were carrying it to your mother and instead it went on up to Barbara Jordan's apartment?

A. That furniture had not been in my house in over a year.

Q. It hadn't. And were they your clothes that were there?

A. Nope.

Q. Do you know any reason why your mother would pick up somebody else's clothes to take them to her home?

A. The statement my mother gave me is that a lady had rented this apartment since the accident and she called my mother and asked her to get these things out there, or someone get them out of there because the people are

page 172 } ready to move in, and my mother hadn't got paid for them so they were still her furniture.

Q. Your mother is here, isn't she?

A. Yes, she is.

Q. Out in the hall?

A. Right.

Q. Well, Barbara Jordon was going to pay you something for helping her paint, is that right?

A. That's right.

Q. Well, were you going to pay her anything for helping you satisfy your sexual desire?

A. No.

Q. So, she was giving you a little sex life and you were charging her to paint?

A. That's right.

Q. That's right?

A. That's right.

Q. Now, her husband told you to stay away from his wife, didn't he?

A. No, he told me if he ever—"If I ever catched you and Barbara—" "If I ever catch Barbara in your car again, I am going to kill the both of you."

Q. Don't you think that is a pretty good way to warn somebody to stay away from "my wife?"

A. That's right.

page 173 } Q. Why didn't you do it?

A. Well, when she got this apartment she saw me one day on the job. She said: "I have this apartment. Will you paint it for me, it has to be painted. I know you do that type of work, will you paint it for me." I said, "Yes,

I will, where is it?" She gave me an address. After, I bought the paint for her I went around there and painted it.

Q. How many times had you been to this apartment?

A. I would say off and on, several times in the last two weeks.

Q. You would say off and on several times. What does that mean?

A. I work everyday except Saturdays. I would get off work not everyday, but as I had spare time I would go down there and paint.

Q. Well, how many days did you go around there and paint, three days, four days, five days, six days?

A. Well, I didn't have any time limit to get the job painted, so it took several days. I didn't keep any checks. I painted until I finished the job.

Q. All right. Barbara rented the place on June the 2nd. You killed her husband on June the 16th. That is 14 days. Can you fix approximately the number of times you went to that apartment between the 2nd of June and the

page 174 } 16th of June?

A. (Pause) I'd say seven times.

Q. Seven?

A. That's right.

Q. Five and two are seven; seven times?

A. Right.

Q. Now, how long would you stay when you would go on these occasions?

A. I would paint until it got dark, that I couldn't see.

Q. Well, I don't know what time you went there.

A. Well, I got off work at 4:30. I would get home about 5:15, and by the time I eat supper and drive over there it would be about six o'clock, and I would paint maybe two hours.

Q. Well, now, that is all I asked you. You would paint about two hours?

A. That's right.

Q. Now, why would it take you so long to paint such a little apartment?

A. I am a very slow painter and a very careful painter.

Q. Very careful painter?

A. Right.

Q. And on Monday night, June 16th, what were

page 175 } you doing there at 11:00 o'clock still painting?

A. I was trying to finish it up because she said

Ollie Adams, Jr.

she was going to move in the next day.

Q. You weren't so careful that night then, were you?

A. I was trimming the windows.

Q. You were trimming the windows by the light of a smokey kerosene lamp?

A. A smokey kerosene lamp and I held the kerosene lamp on the stepladder as I painted.

Q. One lamp?

A. One lamp.

Q. That was the only light?

A. The only light.

Q. And you are a careful painter and you were trimming the windows with a smokey kerosene lamp?

A. That's right.

Q. At 11:00 o'clock at night?

A. I had finished a little before 11:00 o'clock at night.

Q. Now, when her husband came there where was Barbara?

A. Barbara was in the other room or going through the other room. I didn't pay any attention to where

page 176 } Barbara was, I wasn't even noticing her; but I know she wasn't in that room.

Q. Do you know how her undergarments, her slip happened to be on the head of the mattress?

A. She was there when I got there and the clothes were there when I got there.

Q. Some men's clothes?

A. I don't know what was in the laundry bag.

Q. Why did you say that Barbara wasn't there?

A. Well, he had threatened me once before. I thought maybe if I tell him his wife wasn't there—because he told me if he catched us together again he would kill me. I thought maybe he would go looking for her somewhere else and I'd get a chance to get out of there. Because before painting this apartment I said: "Your husband has threatened me and I don't want any trouble with him. I will do you this favor as long as he doesn't know where you are living." So—

Q. That is what you said to her?

A. That's what I says to her.

Q. Well, were you afraid of him or were you not?

A. I had never been afraid of him before that night, because—

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page 178 } A. He was very violent that night when he walked in. I smelled liquor, he had alcohol on his breath. I knew him to be a very strong drinker, and I smelled alcohol on his breath.

Q. Now, when did you know him to be a strong drinker?

A. I was a very close friend of him for over a year. I lent him money, I lent him my car; he was a friend of mine. He ate at my table.

Q. And then you took his wife?

A. I didn't take his wife. She was his wife until he died.

Q. But you were not afraid of him till the night when he came in?

A. No, he had never harmed me; he had never harmed me in any way.

Q. All right, now, are you through? Is that your answer?

A. Except the threat. He had threatened to kill me if he ever catched me with Barbara.

Q. Now, may I ask my question? If you were not afraid of him prior to that night, then the threats didn't mean anything to you, did it?

A. Yes, they did.

page 179 } Q. Well, you just finished telling us you were not afraid of him till that night when he came in and he seemed to be angry.

A. He—I wasn't afraid of him, but he had threatened me and I respected his threats.

Q. Well, if you respected his threats why didn't you stay away from his wife?

A. His wife wasn't with him.

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MELVIN PUGH,

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

DIRECT EXAMINATION.

By Mr. Louis Fine:

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Melvin Pugh.

Q. And on that night in question did you interview this defendant? Did you talk to him?
A. Marc Woods, Jr. talked to him.
Q. And were you present when he talked to him?
A. Partially; yes, sir.
Q. State what statement—what reason did he give for cutting the man.

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A. He told us that he did stab the man in a tussle, that the man came to the back door and they started an argument and said that the man asked him and says, "Well, this is the way you are painting," and they started to tussle at that point over the man's wife, and he stated that the man drew a knife on him which he said at that time he pulled his knife, and during the tussle that he did stab him. And we did find this man's knife. We couldn't find the other knife at the scene that night or either the next morning.
Q. Did you see any blood on that knife?
A. I did not examine the knife too close.
Q. Did you see any blood on it?
A. No, sir.

Mr. Louis Fine: Thank you.

page 183 } CROSS EXAMINATION.

By Mr. Spencer:
Q. When you got there, Officer Pugh, did you go in the house?
A. Yes, sir, we did.
Q. What did you find when you went into the house?
A. The room—the building was empty except for one room had a mattress in the middle of the floor, had a portable radio—
Q. Where was the radio with relation to the mattress?
A. At the back door as you go in the house the mattress was in the center, approximately the center of the room. The radio was between the mattress and the window. That would be to the rear of the building.

Melvin Pugh.

Q. Well, would that be when you walk in the mattress was on your right over in the room, is that right?

A. Yes, sir, to the right of it.

Q. Was the radio at the end of the mattress nearest you and the door, or was it near the other end of the mattress?

page 184 } A. It was to the right of me between the mattress and the window, which would be over between the wall next to the door.

Q. And what else was there?

A. There was a lamp over next to the window turned down so low that it was—it was a kerosene lamp.

Q. Could you see anything by it?

A. No, sir, we used our flashlights, it was turned down so low.

Q. Was there enough light from that lamp to have, well, you said you couldn't see anything by it. Was anything else in the room?

A. Well, we found two beer cans, one beer can had cigarette butts in it.

Q. What did the other one have in it?

A. Nothing.

Q. Where was that beer can with relation to the lamp?

A. One of the beer cans was by the lamp, between the mattress and the radio.

Q. How close was that to the lamp?

A. Oh, within three feet, I would say.

Q. Could you see the beer can and the radio from the light of the lamp?

A. No, sir.

page 185 } Q. It was that dark that you could not even see the beer can by the light that came from the lamp and it was only three feet away from it?

A. Yes, sir.

Q. Now, when you got there did you see Barbara Jordan?

A. When I went to the back of the building Barbara Jordan was on the back porch or stoop coming out the screen door.

Q. Coming out of the apartment?

A. Apparently coming out, or she had the door open. The wooden door was open. She was on the back porch holding the screen door open.

Q. And what was she doing?

A. She was adjusting her clothes and appeared to be buttoning her buttons and closing the zipper on her skirt.

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page 187 } MARC WOODS, JR.,

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

DIRECT EXAMINATION.

By Mr. Louis Fine:

Q. You are Detective Marc Woods, Jr., of the Norfolk Police Department?

A. I am, sir.

Q. And you have been a member of the Norfolk Police Department for how long, Mr. Woods?

A. About six years.

Q. And I believe it was part of your duty to investigate this alleged homicide?

A. It was.

Q. And at the scene did you or not interview the defendant?

A. I did.

Q. And what statement did he make to you?

A. (Referring to documents).

Q. Do you have a copy of that, Mr. Woods?

A. Yes, sir, I do.

Q. May I see it?

page 188 } A. (Document thereupon was handed to counsel by the witness).

Q. Do you have a copy? This is your original?

A. No, sir, I have the original in my pocket.

Q. You have the original. Would you look at that, please?

A. Yes, sir.

Q. I am speaking of his statement.

A. Yes, sir. I arrived at the scene and went into the back yard of 1817 Claiborne Avenue where Mr. Adams was there and I asked what had happened, and he said that the deceased, Walker Jordan and he had an argument, and he stabbed him. So then we went out to the front of the house where we got the car and I took his statement, from Ollie Adams.

I asked him what had happened and he said that Jordan came in the house and said: "So, this is what is going on. So, you are the one that has been helping her paint." He said that Jordan had a knife in his hand, "and so I reached in my pocket and got mine. He pulled me outside on the stoop and he swung at me and I ducked," and he stabbed him. Jordan said: "You stabbed me," and ran out towards the gate and the car and fell at the fence. "And I asked the man to call

for an ambulance, then I grabbed my T-shirt and
page 189 } tried to stop the wound."

Q. That was the statement that he made to you?

A. Yes, sir, it was.

Mr. Louis Fine: Thank you, Mr. Woods, your witness.

CROSS EXAMINATION.

By Mr. Spencer:

Q. And you searched for the knife and didn't find it?

A. We found Adams' knife.

Q. But you did not find any other knife?

A. No, sir, we didn't.

Q. I ask you whether or not—

Mr. Louis Fine: May it please the Court, we want to object to the Commonwealth attorney cross examining him on anything, sir, that we have not asked on direct examination, because it is his witness in so far as other questions. I think that is the rule, sir, I respectfully submit.

The Court: All right, Mr. Spencer, you may
page 190 } proceed. You hadn't finished asking it.

Mr. Spencer: I didn't think I had, Judge.

By Mr. Spencer:

Q. (Continuing) He also told you, didn't he, that he and Jordan had had bad blood between them for some time?

A. He did, yes, sir.

Q. And he said the reason was that Jordan accused him of going with his wife?

A. He did.

Q. And he—Jordan told him to leave his wife alone?

A. Yes.

Q. And that Jordan had called him up several times?

Mr. Louis Fine: If your Honor please, that is not covered in my direct testimony. I only asked him about the statement, I respectfully submit.

Mr. Spencer: This is part of the statement, sir.

The Court: Objection overruled.

A. This statement was taken down and made to
page 191 } Mrs. Reid, the stenographer and part of the statement that he made at various times wasn't on there.

Barbara Jordan.

By Mr. Spencer:

Q. Now, Sergeant, he told you that Jordan had called him a number of times and told him to leave his wife alone and stay away from her?

A. Yes, sir, they had quite a discussion between Jordan and over Jordan's wife.

Q. And he told you, did he not, that Herman Jordan, Alex's brother, had come to him and had begged him to leave his brother's wife alone?

A. Yes, sir.

Q. And as a matter of fact, did he not tell you that when Herman Jordan came to him that Herman stated "If it was my wife I would punch you in the nose?"

A. There was a statement to that effect but I don't recall right offhand if he made it then or right at the scene.

Q. Did he seem excited or nervous?

A. I would say no more than he is now.

Q. And about what time was this?

A. This was about 11:12 P. M.

Q. When did you get the original call?

A. The message was put out over the radio at page 192 } 11:06.

Q. So this was within a few minutes of the killing?

A. Yes, sir.

Q. And you say he was just as calm as he is right now?

A. Yes, sir.

Q. Did he talk as though he were excited?

A. No, sir, I wouldn't say he did.

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BARBARA JORDAN,

recalled as a witness, having been previously sworn, was examined and testified as follows:

page 229 } CROSS EXAMINATION (Rec).

By Mr. Spencer:

Q. Now, in connection—excuse me. You are Barbara Jordan, and you have previously testified in this matter?

Barbara Jordan.

A. Yes, sir.

Q. When you were first questioned by the police what did you tell them?

Mr. Louis Fine: I object to that, if your Honor please, what she told the police would be hearsay as far as the defendant is concerned, unless it was made in the presence of the defendant.

Mr. Spencer: This is to test her credibility.

Mr. Louis Fine: No, I respectfully submit, if your Honor please, that is not proper rebuttal.

Mr. Spencer: It is not rebuttal, this is cross examination.

Mr. Louis Fine: I submit, if your Honor please, no reservation had been made for cross examination of this witness at any time after we finished with her examination, page 230 } and I submit, if your Honor please, this wouldn't be proper.

The Court: Mr. Spencer indicated to the Court that he did desire to recall her for further cross examination prior to your resting or finishing with the witness.

Mr. Louis Fine: That is correct, sir, but that was made, if your Honor please, after we had put on three character witnesses. He said he had some cross examination of some witness, and I respectfully—

The Court: The Court is going to overrule the objection to his examining her on cross examination or re-cross examination.

Mr. Louis Fine: May we save the point on that?

The Court: All right, sir.

As to the question itself, the Court is going to sustain the objection to the question as posed.

Mr. Spencer: All right, sir.

Q. (Continuing) Now, you have stated in con- page 231 } nection with this case that you were in the house getting ready to go in the bathroom and change clothes when your husband came to the house?

A. Yes.

Q. Immediately following this killing were you questioned by a police officer?

A. Yes.

Q. Did you not tell the police officer that you were in the house next door on the second floor at the time of the killing?

A. Yes.

Q. Why did you do that?

Barbara Jordan.

A. I was nervous; I was upset.

Q. Now, then, later on, did you make a further statement to the police officer—I'm sorry, I withdraw that. Later on, did the police officer tell you that Ollie Adams said you were in the house with him when the killing took place?

Mr. Louis Fine: May it please the Court, that's in the face of the ruling of the court that any statement made out of the presence of this defendant was not proper.

The Court: You will have to restate your question, Mr. Spencer, I didn't catch all of it.

page 232 } Mr. Spencer: (To the reporter) Suppose you read it. Read me the question.

(The last question was read to the Court by the reporter).

Mr. Louis Fine: Now, if your Honor please, excuse me, sir, I want to ask your Honor to strike out the evidence that has already been given on that ground that any statement that she has given that she was in another house was not given in the presence of this defendant and would not be binding on us. And then the Court has already held, as I understand it, sir—now, I may be wrong—but the Court sustained the objection that I made, but held that it was proper for my adversary to cross examine her.

Mr. Spencer: No, sir, to follow Mr. Fine's argument, and to rule that the statement is inadmissible in effect would be to state that a witness can tell any number of stories.

The Court: If you will read that question again

page 233 } so the Court will understand that question.

(The question was reread to the Court by the reporter).

The Court: The Court is going to overrule the motion to strike the previous statement to which exception is noted.

The Court is going to overrule the objection to the question.

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(The reporter read the question as follows: "Q. Later on, did the police officer tell you that Ollie Adams said you were in the house with him when the killing took place?"

Barbara Jordan.

By Mr. Spencer:

Q. To get back on the track, you first stated to the officers that you were on the second floor of 1821, the house next door?

A. Yes.

Q. At the time the killing allegedly took place?

A. Yes.

Q. And later the officers confronted you with the statement by Ollie Adams that you were with him in the house at the time your husband was killed, is that correct?

A. Yes.

Q. And at that time you gave the officers a second oral statement, did you not?

A. Yes.

Q. And I ask you whether or not this is your statement: "I might as well tell you the truth. I was in the bathroom when the argument started. When my husband

page 239 } came to the door and asked Ollie if I was there and Ollie said I wasn't. Jordan said 'I know she is in there and I am going to find her. Then Jordan and Ollie went out into the yard,' and you heard some loud talking and Ollie called you and said he had stabbed Jordan?

A. Yes.

Q. And the next morning on the 17th you added the part about hearing your husband state that he was going to kill somebody?

A. Yes.

Q. Why didn't you tell the officer about your husband threaten to kill somebody the night that it happened. Why did you wait until 2:45 P. M. the following day?

A. At the time when it happened I was upset and my mind was blank. I have fainted about two times, and I just could not recollect everything at that time.

Q. Well, that's right important thing to recollect, isn't it?

A. Yes, it was important but I just wasn't—I just wasn't in my right mind at the moment.

Q. And is that also the reason that you first denied even being in the house?

A. Yes.

Q. You denied being at the house at first and

page 240 } the reason that you did was because that you were so upset that you couldn't recollect?

A. No, at first I was scared.

Q. But you agreed it wasn't until the next day that you

told the officers that you heard your husband say—

A. No, I didn't talk to the officers till the next day. They came over to the jail. They got me and that is when I talked to them.

Q. You talked to them twice on the night it happened, didn't you?

A. I talked when we first—when they first came up. I talked to one of them in the car.

Q. And you told them that you weren't even there, that you were next door, in 1821?

A. I told the policeman—I have talked to the policeman first, and then I talked to one of the detectives.

Q. You told the detective that you weren't there, you didn't know what had happened, you weren't there; you were next door at 1821, didn't you?

A. I told the policeman that I was next door and the policeman told the detective.

Q. All right. And then later you made the second statement. You said "I might as well tell the truth?"

page 241 } A. That's when I was talking to the detective.

Q. And you told the detective that you were in the bathroom when your husband came. You heard your husband come to the door and asked Ollie if you were there and Ollie said you weren't. You heard your husband say "I know she is in there, I am going to find her," and then you heard him go out in the yard, heard some loud talking and then Ollie called and said he had stabbed Jordan?

A. Yes.

Q. And the next day in the afternoon of the next day you added the part that you heard your husband say that he was going to kill Ollie?

A. Yes.

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

RE-DIRECT EXAMINATION (Rec).

By Mr. Louis Fine:

Q. Did you testify in Police Court?

A. (Pause) The next day the detective came over and took me over to the holding department and they—

Q. Do you remember when Ollie Adams was be-

page 242 } fore Judge Amato?

A. I didn't understand you.

Q. Do you remember when Ollie Adams and you were both before the Police Justice in the other court?

Barbara Jordan.

A. That was on the 17th during the evening, when the detectives came, yes.

Q. Did you tell the truth then, that you heard your husband say he was going to kill him? Did you tell the truth?

A. Yes.

Q. At that time?

A. Yes.

Q. That is, your testimony at that time is the same as it was today?

A. Yes.

Q. And was Ollie Adams represented by a lawyer in that case, in that Court there? Did he have a lawyer when you testified?

A. No.

Mr. Louis Fine: That's all.

RE-CROSS EXAMINATION.

By Mr. Spencer:

Q. Was there a Commonwealth attorney there?
page 243 } Was I there?

A. No.

The Court: Any further questions?

Mr. Spencer: Yes, sir, he has gone into that, now.

By Mr. Spencer:

Q. Then in Police Court, when Judge Amato asked you if your husband had had a knife would you have seen it, and you answered, yes, you would, didn't you?

A. No.

Q. You deny that?

A. No, I didn't answer that, because I didn't see my husband until after he was stabbed.

Q. All right. Now, I ask you whether or not in Police Court Judge Amato said to you: "Could you have seen a knife if your husband had one?" And you answered, "Yes?" And he asked you if you could see his hands and if so could you clearly see whether or not he had a knife and you answered "Yes." And he asked you did he have a knife and you said, "No, he did not, there was none." You deny that?

A. Yes.

Q. I warn you that I intend to contradict you.

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R. C. ANDREWS,
called as a witness in rebuttal, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION.

By Mr. Spencer:

Q. You are Detective Sergeant R. C. Andrews, a member of the Norfolk Police Department?

page 246 } A. I am.

Q. Sergeant, were you present in the Police Court of the City of Norfolk on the morning of June 17th of this year?

A. I was, sir.

Q. Did you hear the testimony by the various witnesses in connection with the preliminary hearing of this charge *agains* Ollie Adams?

A. I did, sir.

Q. Did you hear Barbara Jordan testify?

A. I did.

Q. Did you make notes of her testimony?

A. I did.

Q. Are these your notes?

(Handed to the witness for examination).

A. Yes, sir.

Mr. Spencer: All right, sir.

CROSS EXAMINATION.

By Mr. Louis Fine:

Q. I would like to ask for the original notes, if your Honor please, not the typed notes. Have you got them, sir?

page 247 }

A. Not unless they are with the file.

Q. Would you look and see if they are there, I would like to look at them.

Mr. Spencer: Come down, Sergeant, and look in there.

(Witness complied).

By Mr. Louis Fine:
Q. As I understand it, you do not have your original notes?
A. No, sir.

Mr. Louis Fine: All right, sir.
Mr. Spencer: Mr. Fine raised something about the original notes, and he was going to object. I want to give him his opportunity.
Mr. Louis Fine: Now, if your Honor please, unless he has his original notes, and these are just typed memoranda, I respectfully submit, wouldn't be proper.
Furthermore, it is not a stenographer's report. It is a conclusion made by this witness.
The Court: That is going to depend upon the questions asked by the Commonwealth attorney, and for
page 248 } what purpose he is going to file that we don't know. The Court will overrule the objection.
Mr. Louis Fine: Note an exception.
The Court: Yes, sir.

RE-DIRECT EXAMINATION.

By Mr. Spencer:
Q. All right, sir. Sergeant, do you have any recollection of the testimony of Barbara Jordan?
A. Yes, sir, I do.
Q. Specifically, I ask you whether or not she was interrogated by the Police Justice, Judge Amato, on the question of whether or not her husband was armed and whether if he had been armed she would have seen his knife?
A. He did. He questioned—

Mr. Louis Fine: If your Honor please, for purposes of not interrupting, may we except to this line of questioning on the ground, in the first place the testimony in the police court made by this witness, is not proper in testimony of this Court; secondly, we are not bound by what her
page 249 } testimony was in the Police Court at any rate.
The Court: For purposes of questioning, the Commonwealth's attorney has developed that he intended to contradict her, and this is pursuant to that. Whether or not

he does contradict her would be a matter of evidence. I am overruling your objection and note your exception.

Mr. Louis Fine: All right, sir, note an exception.

By Mr. Spencer:

Q. Go on, Sergeant.

A. Judge Amato questioned her about whether her husband while lying dead in the back yard of this address was in such a position, his hands, that if he had a weapon could she have seen it. She testified that his hands were in such a position that if there had been a knife she would have seen it and that she did not see a weapon.

Mr. Spencer: That's all.

Mr. Louis Fine: No questions.

Mr. Spencer: We rest.

page 250 } Mr. Louis Fine: We rest, if your Honor please.

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Mr. Spencer: If it please the Court, gentlemen of the jury, that is all the law applicable to this case.

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page 297 }

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A thing that caught my attention in the case—maybe you won't think it amounts to anything. You know what the old saying is about the milkman who goes broke because he never collects his bills in cash; he always collects them in trade. Well, of course, the basis for a statement such as that, is that when a woman submits to a man sexually he can expect, unless he is a darn fool, he can expect that she is going to make some claim on him for something in return, and it strikes me as being the height of ridiculous testimony for that defendant to sit up there and say, "Sure, I had intercourse." "No, she didn't charge me, but I am going to charge her for paint-

ing that apartment," and that is what he said to you; that is exactly what he said. And he said, "I came there because she asked me to." Well, now, as reasonable men, as reasonable men are you to believe that this man could
page 298 } on the one hand so deathly afraid of this deceased that as soon as he came in he knew he was going to have to fight him to the death and on the other hand he could have come there and disregarded the repeated warnings of Walker Jordan? Now, that's it. If Walker Jordan had wanted to kill him he could have sought him out individually. He could have sought him out and said, "Well, you scoundrel, you have broken up my home and I am going to kill you," and he could have proceeded to attack him. But he didn't do that. He said, "Ollie, stay away from my wife. Don't mess around with my wife." And according to the defendant he said, "All right, the next time I catch you with my wife I am going to kill you."

Well, now, if he said it, is this man so fearless that he is going to disregard it? Was Barbara Jordan such an attractive woman, was the appeal of that woman's body so great that he disregarded this stated threat? Does that sound reasonable to you? Does it? What woman—as
page 299 } reasonable men, what woman can you think of who attracted you so much so that if a person who had a legitimate interest in her had said to you, "If I catch you messing around this woman—

Mr. Louis Fine: We object to that line of argument, if your Honor please, as not proper, as examples in a case.

The Court: Objection overruled.

Mr. Louis Fine: Note an exception, if your Honor please.

The Court: Exception noted.

Mr. Spencer: "If you run around with this woman, she is my wife, should you run around with her, I am going to kill you." What sort of woman would it have to be to make an ordinary man disregard this threat on his life? It must really be something there. But that is what he did according to his version of it. That is what he did.

And I say this to you—the shortest instruction in this stack reads as follows:

"The Court instructs the jury that you can
page 300 } and should draw reasonable inferences from the fact proven." In other words, you don't have to sit there and just accept as Gospel everything that may be said from that chair. People can get on that stand and say some mighty convincing things if you view them as just statements alone, statements unconnected with anything else.

But when they say those things you consider, now, how does that thing he said tie in with the facts, with the situation, and if it looks ridiculous, as it does, then you can say that is not reasonable; that is not reasonable. Reasonable inferences that it did not happen that way.

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page 304 }

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Mr. Morris Fine:

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page 306 }

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Now, those are some of the cardinal principles of law that come into play in this case and are so important. Our law as descended to us, to this very courtroom, from page 307 } the ancient Anglo-Saxon law, starting with the Magna Carta, through Great Britain down through the years that it has evolved into this Commonwealth of Virginia, into this very court, and the law that has evolved to this particular point, that it is better to let ninety-nine guilty people go than to convict one innocent man; and juries, as you know, have been known to convict innocent men.

Mr. Spencer: Now, if your Honor please, that is absolutely improper; absolutely.

Mr. Louis Fine: I submit that that is proper argument. It is better to let ninety-nine guilty go than to convict one innocent man.

Mr. Spencer: As far as that goes, that's all right, up to that point.

Mr. Louis Fine: As a matter of fact it was an instruction in the case of *McHugh against the Commonwealth,* if your Honor please.

The Court: The court is going to advise the page 308 } jury, that, of course, in argument that that is not, of course, a part of the evidence of a case. The purpose of argument is to present the sides of the Common-

wealth and of the defendant in order to assist you in arriving at your verdict.

The Court will ask that you disregard the remarks of counsel.

Mr. Louis Fine: Note an exception.

Mr. Morris Fine: Let us talk about the evidence of the Commonwealth, for the Commonwealth has put on its evidence and it can rise no higher than its evidence.

The first man they bring you is the doctor. And there is some speculation from his testimony exactly how the deceased died.

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Mr. Spencer:

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page 359 }

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Now, the defendant, as the defense counsel pointed out, the defendant does not have the burden that the Com-
page 360 } monwealth has. I am the only one in this court, my side is the only side in this Court that has to prove anything beyond a reasonable doubt with you, gentlemen. The defense does have the burden of proof.

They have the burden of convincing you as twelve reasonable men that what they are saying has sufficient truth in it to cause you to have a reasonable doubt on my case.

Mr. Louis Fine: We object to that statement, if your Honor please. We have no burden in this case whatsoever, if your Honor please.

The burden of proof is on the Commonwealth, and if our issue of self-defense raised reasonable doubt of the Commonwealth's case we are entitled to an acquittal, I respectfully submit, in connection with the *Johnson against Commonwealth* case.

The Court: I do not think the Commonwealth attorney had an opportunity to finish what he started. The Court will overrule the objection.

Mr. Spencer: Judge, I may say that I had
page 361 } finished, and I said exactly what Mr. Fine said except I did not cite *Johnson against The Commonwealth.*

The Court: You may proceed.

Mr. Spencer: Exactly what he said is correct, except he said they have no burden. Well, he is right behind it. "We have no burden except raise a reasonable doubt, and that is what I said to you, and I say it again.

Mr. Louis Fine: We do have to raise a reasonable doubt.

Mr. Spencer: Oh, Judge, the law is so plain. He has—

The Court: All right, I have already ruled on it.

Mr. Louis Fine: I note an exception.

The Court: The instructions are clear and the jury can apply the facts without difficulty.

Mr. Spencer: Now, I will say it again: They have the duty, the burden to produce sufficient evidence in connection with a plea of self-defense to raise in your minds a reasonable doubt and they have not done it.

page 362 } Mr. Louis Fine: If your Honor please, may I just note an exception without interrupting?

The Court: Yes, sir, exception noted.

Mr. Spencer: Well, I don't know what that is. I don't know what that is but it is a part of the same thing that has been going on for two days, an effort to mislead you and to fool you into turning someone loose who has no more business to be turned loose than a—

Mr. Louis Fine: We submit, if your Honor please, that is improper argument and inflammatory.

The Court: I think the Commonwealth's attorney is entitled to state what he has to state. If it is improper the Court will tell the jury to disregard it, but this constant interruption in the middle of the statement that has been going on, it is impossible for the Court to know what is objectionable or what is not objectionable. The Court will overrule the objection.

page 363 } Mr. Louis Fine: Note an exception, if your Honor please.

The Court: Exception noted, sir.

Mr. Spencer: I think you see what I mean, and I am not going to try to say anything else because if I had something to say it would take two or three minutes and there is no telling how long it might take me to get it out.

Gentlemen, you have it. I am not going to ask you to bring

in first-degree murder. I don't think it would be proper. It could be second-degree murder, and I believe that is what it is.

However, you have the right to convict and find him guilty of manslaughter if you like, or for that matter assault and battery. And you have to fix the punishment, the quantum of punishment doesn't matter, whether it's 60 days, 90 days, six months, six years or what it is. It's yours, take it and do with it as you see fit.

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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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