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Clerk, Supreme Court of Appeals
Richmond, Va.

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Record No. 5055

In the Supreme Court of Appeals of Virginia at Richmond

GROVER EARL LUCAS

v.

COMMONWEALTH OF VIRGINIA

FROM THE HUSTINGS COURT OF THE CITY OF ROANOKE

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. 5055

VIRGINIA:

In the Clerk's Office of the Supreme Court of Appeals at the Supreme Court of Appeals Building in the City of Richmond on Tuesday the 4th day of August, 1959.

GROVER EARL LUCAS, Plaintiff in Error,

against

COMMONWEALTH OF VIRGINIA, Defendant in Error.

From the Hustings Court of the City of Roanoke

Upon the petition of Grover Earl Lucas a writ of error and *supersedeas* was awarded him by one of the Justices of the Supreme Court of Appeals on July 29, 1959, to a judgment rendered by the Hustings Court of the City of Roanoke on the 16th day of March, 1959, in a prosecution by the Commonwealth against the said petitioner for a felony; but said *supersedeas,* however, is not to operate to discharge the petitioner from custody, if in custody, or to release his bond if out on bail.

RECORD

* * * * *

Virginia:

In the Hustings Court for the City of Roanoke.

Commonwealth of Virginia,
City of Roanoke, to-wit:

The grand jurors in and for the body of the said City of Roanoke, Virginia, and now attending said Court at its JUNE TERM, in the Year 1958, upon their oaths do present:

That GROVER EARL LUCAS, heretofore, to-wit: on the .... day of April, 1958, within the jurisdiction of this Court, in the said City of Roanoke, Virginia, feloniously did kill and murder one Connie Maxey Lucas, against the peace and dignity of the Commonwealth of Virginia.

page 2 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 2nd day of June, 1958.

This day Landon G. Buchanan, T. W. Wimmer, Frank Aaron, Douglas M. Frantz and Wm. A. Fink, appeared in Court to serve as Special Grand Jurors pursuant to a writ of *venire facias* issued under the direction of the Judge of this Court and duly executed upon them, were examined and accepted as the law directs.

Thereupon the Court selected Landon G. Buchanan as foreman, who took the oath prescribed by law, and he together with T. W. Wimmer, Frank Aaron, Douglas M. Frantz and Wm. A. Fink were sworn a Special Grand Jury in and for the body of the City of Roanoke, Virginia and having received their charge, retired into their room to consider their indictments and after some time returned into Court the following indictments, viz:

Commonwealth of Virginia,

v. 3 Felonies

Grover Earl Lucas.

Murder
"A true bill,

LANDON G. BUCHANAN, Foreman."

And the Special Grand Jury, having finished the business before them, were discharged for the term.

A Copy—Teste:

Seal W. H. CARR, Clerk
By R. F. FINNELL, Deputy Clerk.

page 3 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 2nd day of June, 1958.

Commonwealth of Virginia,
v. 27214-5
Charles E. Alexander.

Commonwealth of Virginia.
v. 27232
Claude Lewis Davidson.

Commonwealth of Virginia,
v. 27230
Isaac Jones.

Commonwealth of Virginia,
v. 27234-7
Grover Earl Lucas.

Commonwealth of Virginia,
v. 27224-5
Kenneth Kyle Kelly.

Commonwealth of Virginia,
v. 27240
John E. Chapman.

It appearing to the Court that the defendants in the eleven (11) foregoing cases are unable to employ counsel for their defense, Richard E. Viar is appointed to defend Charles E. Alexander; J. Glenwood Strickler to defend Kenneth Kyle Kelly; George P. Lawrence to defend Isaac Jones; Ernest W. Ballou to defend Claude Lewis Davidson; G. W. Reed, Jr. to defend Grover Earl Lucas; and Ransom B. Houchins to *to* defend John E. Chapman.

A Copy—Teste:

Seal W. H. CARR, Clerk
By R. F. FINNELL, Deputy Clerk.

page 4 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 2nd day of June, 1958.

• • • • •

27234-37.

Upon motion of the Attorney for the Commonwealth of Virginia, it is ordered that Dr. Charles M. Irvin be, and he is hereby, appointed to examine the mental condition of the defendant, Grover Earl Lucas, charged with four felonies and report his findings to the Court.

• • • • •

page 5 } Filed 6/9/58.

D. A. K.

June 6, 1958.

Honorable Dirk A. Kuyk
Judge of the Hustings Court
Roanoke, Virginia

Dear Judge Kuyk:

As requested, I have examined Grover Earl Lucas, white, male of the age of forty-eight years.

The examination consisted of physical, neurological and limited psychiatric. As of today, he denies any memory regarding the alleged crime with which he is charged. He also gives a history of several head injuries and claims that he has been unconscious as a result of some of these. While his memory is good regarding these head injuries, he is not consistent in his memory regarding the time, etc. of his alleged crime.

I feel that this man should have psychiatric observation over a period sufficiently long to more equitably evaluate his mental status.

I therefore recommend that he be committed to Southwestern State Hospital at Marion, Virginia for observation.

Very truly yours,

C. M. IRVIN, M. D.

cc—C. E. Cuddy
Commonwealth's Attorney

page 6 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 9th day of June, 1958.

* * * * *

27234-27237.

This day came the Attorney for the Commonwealth of Virginia, and it appearing to the Court from the report of Dr. Chas M. Irvin, who was appointed by the Court to examine the mental condition of the defendant, Grover Earl Lucas, that the mental condition of the said defendant is such that his confinement in a hospital for the insane is necessary for care, observation and treatment, it is therefore, on motion of the Attorney for the Commonwealth and recommendation of the said Dr. Chas. M. Irvin, ordered that the said Grover Earl Lucas be committed to the criminal department of Southwestern State Hospital at Marion, Virginia and it is ordered that the superintendent of said hospital make careful observation and examination into the mental condition of the said Grover Earl Lucas and report to this Court on his mental condition within sixty (60) days from this date.

It is further ordered that the Sergeant of the City of Roanoke, Virginia or any of his deputies, shall deliver the said defendant into the custody of said Southwestern State Hospital authorities at Marion, Virginia.

It is *futher* ordered that copies of the indictments presented against the said Grover Earl Lucas, report of the examining doctor and this order be certified to the Superintendent of said hospital.

* * * * *

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* * * * *

COMMONWEALTH OF VIRGINIA

JOSEPH R. BLALOCK, M. D.
Superintendent

Department of
MENTAL HYGIENE AND HOSPITALS

July 2, 1958.

The Honorable D. A. Kuyk, Judge,
Hustings Court for the City of Roanoke,
Roanoke, Virginia.

Re: Grover Earl Lucas,
Reg. No. 20975.

Dear Judge Kuyk:

The above-named was admitted to our hospital on June 12, 1958, having been committed by your Court for observation and report. We are not yet in position to report as to his mental condition, but I am writing in confirmation of my telephone call earlier today in which I advised that the above-named had been found to show chest x-ray findings of tuberculosis, and that the diagnosis of tuberculosis has been confirmed by sputum examination.

Written authorization is requested whereby we may be permitted to transfer Grover Earl Lucas out of the Criminal Insane Building into our Tuberculosis Building where he may be able to receive intensive treatment for his tuberculosis for such time as he may be here, and where the building in which he is now placed will be relieved of the danger of contagion and the necessity of setting up special isolation provisions. The building to which it is proposed that he be sent is a locked building under the immediate supervision of a graduate nurse. We feel adequate precautions will be carried out to prevent his escape. From the standpoint of ward care so far he has been entirely cooperative. His care under the proposed security in the Tuberculosis Building will provide adequate security, needed medical care, and protection of others from infection.

Your permission by telephone to place this man on a temporary basis in our Tuberculosis Building pending a written order is appreciated.

Respectfully,

JOSEPH R. BLALOCK, M. D.,
Superintendent.

JRB/st

Received and filed July 3, 1958.

W. R. CARTER, JR., Deputy Clerk.

page 8 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 3rd day of July, 1958.

• • • • •

27234-37.

It appearing to the Court from a letter received from the Superintendent of the Southwestern State Hospital at Marion, Virginia, that the defendant, Grover Earl Lucas, has tuberculosis, it is ordered that the said Grover Earl Lucas be removed from the Criminal Insane Building into the Tuberculosis Building for treatment and observation, pending the investigation and report to this Court.

It is further ordered that the letter, dated July 2, 1958, heretofore referred to, be filed in the papers with these cases.

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COMMONWEALTH OF VIRGINIA

Department of
MENTAL HYGIENE AND HOSPITALS

JOSEPH R. BLALOCK, M. D.
Superintendent

August 11, 1958.

Honorable D. A. Kuyk, Judge
Hustings Court of the City of Roanoke
Roanoke, Virginia

Re: Grover Earl Lucas
Reg. No. 20975

Dear Judge Kuyk:

The above-named was admitted to our Criminal Insane Department on June 12, 1958, having been committed by your Court for observation and report.

Since admission he has been carefully studied and history obtained so far as practical. As a result of our studies and observation we beg to report that he is not now psychotic or insane and has not been psychotic or insane since admission. The official diagnosis is 'Sociopathic Personality Disturbance, Alcoholism (addiction).' He is intellectually subnormal but not to such a degree as to affect his competency.

The electroencephalogram tracings (brain wave tracings) show some abnormal changes suggestive of epilepsy, but during our period of observation no clinical evidence of epilepsy was observed. It might be stated that about 15 per cent of non-epileptics show abnormal brain waves and that about 15 per cent of epileptics show normal brain waves.

It is felt that this man is mentally competent and able to stand trial and testify in his own defense.

Attention should be called to the fact that this man was found to have active pulmonary tuberculosis and while here he has been treated with INH 100 milligrams three times a day and PAS tablets 4 three times a times a day. With the permission of the Court we placed him in the Tuberculosis Building where this treatment could be instituted and where isolation precautions with reference to active tuberculosis could be followed. We recommend that this be called to the attention of the physician who will have his supervision in jail.

Respectfully,

JOSEPH R. BLALOCK, M. D.,
Superintendent.

CHAS. A. ZELLER, M. D.,
Clinical Director.

JRB/fm

Received and filed Aug. 13, 1958.

W. R. CARTER, JR., Deputy Clerk.

page 10 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 21st day of August, 1958.

• • • • •

27234-37.

It appearing to the Court from the report of the Superintendent of the Southwestern State Hospital for the insane at Marion, Virginia, that Grover Earl Lucas, who was heretofore committed to the Criminal Department of said hospital for care, observation and treatment, is not insane, it is ordered that the Sergeant of the City of Roanoke, Virginia, or any of his deputies, do proceed to said hospital at Marion, Virginia and return the said Grover Earl Lucas to the jail of the City of Roanoke, Virginia, to await his trial or decision of the Court hearing the cases now pending against him in this Court.

* * * * *

page 11 }

* * * * *

MOTION.

(1) NOW COMES the defendant, by counsel, and moves the Court for an order directing the Superintendent of Southwestern State Hospital at Marion, Virginia, to forthwith furnish counsel for this defendant the electroencephalogram tracings of this defendant, or duplicate copies thereof, made while this defendant was under observation at said hospital pursuant to prior order of this Court, which tracings are mentioned in a written report to this Court from said Superintendent dated August 11, 1958.

(2) And further, the defendant moves the Court for the appointment of a Court Reporter for the recording verbatim of the evidence and incidents of the trial to be had of this defendant, as is provided in Section 17-30.1 Code of Virginia 1950, as amended.

Respectfully submitted,

GROVER EARL LUCAS
By G. W. REED, JR.
Counsel.

Filed 9/9/58.

D. A. K.

page 12 } Virginia:

At a Husting Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 9th day of September, 1958.

* * * * *

27234-7.

This day came the Attorney for the Commonwealth of Virginia and the defendant, Grover Earl Lucas, by his Attorney, and thereupon the Attorney for the Commonwealth moved the Court for an order directing Dr. Joseph R. Blalock, Superintendent of the Southwestern State Hospital at Marion, Virginia, to forthwith furnish the Commonwealth with the electroencephalogram tracings of the defendant, Grover Earl Lucas, mentioned in a report dated August 11, 1958, which motion the Court sustained, it is therefore ordered that the said Dr. Joseph R. Blalock, Superintendent of the Southwestern State Hospital at Marion, Virginia do forthwith deliver unto Edgar L. Winstead, Sergeant of the City of Roanoke, Virginia or one of his deputies, the above mentioned tracings to be delivered to the Judge of the Hustings Court of the City of Roanoke, Virginia.

* * * * *

page 13 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 16th day of September, 1958.

* * * * *

27234-7.

Upon motion in writing filed by the defendant on September 9, 1958, and it appearing to the Court proper, in accordance with Section 17-30.1 of the Code of Virginia 1950 as amended, it is ordered that the Clerk of this Court secure a Court Reporter to record the evidence in this case.

* * * * *

page 14 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 24th day of September, 1958.

• • • • •

27234-7.

It appearing to the Court necessary, the Attorney for the Commonwealth is hereby permitted to summon more than ten (10) witnesses in this case.

• • • • •

page 15 } OATH OF COURT REPORTER

(Required by Rule 1:10)

Virginia:

In the Hustings of the City of Roanoke, Virginia.

Commonwealth of Va.,

v.

Grover Earl Lucas.

CASE NO. 27234.

I, John H. Spangler, a Court Reporter, do solemnly swear that I will take down and transcribe the proceedings faithfully and accurately in the above styled case, to the best of my ability, and be subject to the control and discipline of the Court. So help me God.

JOHN H. SPANGLER.

Subscribed and sworn to before me this 29th day of September, 1958.

R. F. FINNELL, Deputy Clerk.

page 15-A } Virginia:

At a Hustings Court of the City of Roanoke, in the State

of Virginia, at the Courthouse thereof, on the 30th day of September, 1958.

It is ordered that Eunice M. Lewis be appointed by the Court to report the case *or* Commonwealth of Virginia *v.* Grover Earl Lucas, case Number 27234; John H. Spangler, the Court reporter heretofore appointed being unable to report the remainder of the case.

• • • • •

page 16 } OATH OF COURT REPORTER

(Required by Rule 1:10)

Virginia:

In the Hustings Court of the City of Roanoke, Virginia.

Commonwealth of Virginia,

v.

Grover Earl Lucas.

CASE NO. 27234.

I, Eunice M. Lewis, a Court Reporter, do solemnly swear that I will take down and transcribe the proceedings faithfully and accurately in the above styled case, to the best of my ability, and be subject to the control and discipline of the Court. So help me God.

EUNICE M. LEWIS.

Subscribed and sworn to before me this 30th day of September, 1958.

R. F. FINNELL, Deputy Clerk.

page 17 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 29th day of September, 1958.

• • • • •

27234.

This day came the Attorney for the Commonwealth of Virginia and the prisoner, Grover Earl Lucas, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia and set to the bar. Also came the defendant's Attorney.

Thereupon the defendant, by counsel, moved the Court to try cases numbers 27234, 27235, 27236 and 27237 jointly, which motion the Court overruled and the defendant, by counsel excepted, and the Attorney for the Commonwealth elected to try cases number 27234.

Thereupon came a panel of forty (40) persons, citizens of the City of Roanoke, Virginia summoned by the Sergeant of the City of Roanoke, Virginia pursuant to writs of *venire facias* issued as the law directs, and the Court having examined said persons and finding twenty (20) of them free from all legal exceptions and qualified to serve as jurors according to law, the Attorney for the Commonwealth and the prisoner having each alternately struck from said list four (4) of the names thereon, and the Court, having reason to believe that the trial of this case will be a protracted one and that one *of* more of the jurors may have reason to be excused, by agreement of counsel for the defendant, the Attorney for the Commonwealth and the Court, two (2) alternate jurors, who were also found free from all legal exceptions and qualified as the other jurors, were selected, and the prisoner, Grover Earl Lucas, was arraigned and having been advised by counsel appointed by the Court to defend him, pleaded not guilty to the charge of murder alleged against him in the indictment and for his trial puts himself upon the country.

page 18 } Thereupon the fourteen (14) jurors and alternate jurors, to-wit: Ralph L. Hawkins, Carl N. Cassade, Rupert M. Cassell, Beecher D. Poff, Jr., Elbert J. Martin, Howard H. Bourne, Wingfield Minnix, James O. Marshall, Thomas B. Allman, William L. Glenn, M. Norvelle Obenchain and George P. Hillen, jurors, and Arnold W. Adkins and W. Warner Baltimore, alternate jurors, were sworn to well and truly try the prisoner at the bar and having heard the evidence introduced on behalf of the Commonwealth and part of the defendant's evidence, adjourned until September 30, 1958 at ten o'clock, a. m.

And the prisoner is remanded to jail.

• • • • •

page 19 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 30th day of September, 1958.

* * * * *

27234.

This day again came the Attorney for the Commonwealth of Virginia and the prisoner, Grover Earl Lucas, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia, and set to the bar. Also came the defendant's Attorney.

There also came into Court the jurors and alternate jurors sworn in this case pursuant to their adjournment and having heard all the evidence, the defendant, by counsel moved the Court to strike the Commonwealth's evidence on the grounds the Commonwealth did not prove a *corpus delecti,* which motion the Court overruled, and the defendant, by counsel, excepted, and the Court adjourned until October 1, 1958 at nine thirty o'clock a. m.

And the prisoner is remanded to jail.

* * * * *

page 20 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 1st day of October, 1958.

* * * * *

27234.

This day again came the Attorney for the Commonwealth of Virginia and the prisoner, Grover Earl Lucas, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia and set to the bar. Also came the defendant's Attorney.

There also came into Court the jurors and alternate jurors sworn in this case pursuant to their adjournment, and having received the instructions of the Court and heard the argument of counsel, retired to consider their verdict and after some time returned into Court the following verdict, viz:

"We the jury do find the defendant, Grover Earl Lucas, guilty of murder in the first degree and fix his punishment at death in the electric chair.

HOWARD H. BOURNE
Foreman of the Jury."

and the jury were discharged.

Thereupon the defendant, by counsel, moved the Court to set aside the verdict of the jury on the grounds that the same was contrary to the law and evidence and all other reasons assigned in the record, which motion the Court takes time to consider, and argument on said motion is set for hearing on October 20, 1958 at ten o'clock a. m.

And the prisoner is remanded to jail.

* * * * *

page 21 } INSTRUCTION A.

The Court instructs the jury:

That murder is the unlawful killing of any person with malice aforethought.

That to constitute murder in the first degree, the killing must have been willful and deliberate and a premeditated act, but that it is not necessary that the intention to kill should exist for any particular length of time prior to the killing; it is only necessary that such intention should come into existence for the first time at the time of the killing or at any time previous thereto.

That to constitute murder in the second degree, the killing must have been done with malice, but not with premeditation, and it is not necessary that such malice should exist for any particular length of time prior to the killing; it is only necessary that it should be present for the first time at the time of the killing or at any time previous thereto.

Malice, in law, is used in a technical sense, and includes not only anger, hatred and revenge, but every unlawful and unjustifiable motive, and is intended to denote an action flowing from any wicked or corrupt motive and thing done with an evil mind and purpose and wrongful intention.

And the Court tells the jury that every homicide in Virginia is presumed to be murder in the second degree, and in order to elevate the offense to murder in the first degree, the burden is upon the Commonwealth to prove premeditation.

Given.

page 22 } INSTRUCTION B.

The Court instructs the jury that a mortal wound given with a deadly weapon, in the previous possession of the slayer, without any or upon slight provocation is *prima facie* willful, deliberate and premeditated killing and throws upon the accused the necessity of proving extenuating circumstances.

Given.

page 23 } INSTRUCTION C.

The Court further instructs the jury that the punishment for murder in the first degree is death or confinement in the penitentiary for life, or for any period of not less than twenty years; that the punishment for murder in the second degree is by confinement in the penitentiary for a period of not less than five nor more than twenty years.

Given.

page 24 } INSTRUCTION NO. I.

The Court instructs the jury that the indictment in this case raises no presumption of guilt against Grover Lucas, but on the contrary he is presumed, as a matter of law, to be innocent of the crime charged, and the burden is upon the Commonwealth to prove every essential element of the offense with which he is charged beyond a reasonable doubt before the jury would be warranted in finding him guilty, and unless the jury believe from the evidence in the case that the Commonwealth has proven the guilt of the defendant beyond a reasonable doubt, then it is the jury's duty to find Grover Lucas not guilty.

Given.

page 25 } INSTRUCTION NO. II.

The Court instructs the jury that the presumption of innocence is not a mere form, to be discharged by the jury at pleasure, but it is an essential part of the law of the land, and binding on the jury in this case; and it is the duty of the jury to give Grover Lucas in this case the full benefit of the

presumption unless and until the Commonwealth has overcome this presumption by proving the guilt of Grover Lucas beyond a reasonable doubt.

Given.

page 26 } INSTRUCTION NO. III.

The Court instructs the jury that if upon a careful consideration of all the evidence, they have a reasonable doubt as to any fact or element necessary to convict the defendant, Grover Lucas, they will find him not guilty. If, however, they believe from the evidence, beyond a reasonable doubt, that he is guilty, but have a reasonable doubt as to the grade of the offense, that is, of murder in the first degree, or murder in the second degree, then the jury must find him guilty of murder in the second degree.

Given.

page 27 } INSTRUCTION NO. IV.

The Court instructs the jury that in considering what weight to attribute to the admissions of guilt by the defendant, you may consider the condition of the defendant at the time such admissions were made.

Given.

page 28 } INSTRUCTION NO. V.

The Court instructs the jury that in determining the guilt or innocence of the defendant in this case, or the punishment, if any, you are not to consider any other alleged crimes that have been brought out in the evidence and which could otherwise be attributable to the defendant, Grover Lucas.

Given.

page 29 } INSTRUCTION NO. VI.

The Court instructs the jury that the failure of the accused to testify creates no presumption against him, and in considering his guilt or innocence, his failure to testify is not a circumstance which the jury is entitled to consider.

Given.

page 30 } INSTRUCTION NO. 13.

The Court instructs the jury that the absence of evidence of a motive on the part of the defendant to commit the crimes charged in the indictment affords a strong presumption of innocence when the fact is in reasonable doubt as to who committed the crimes.

Refused.

D. A. K.

page 31 } INSTRUCTION NO. 14.

The Court instructs the jury that if you find from the evidence that there was no motive for the defendant to kill the deceased, then the jury may take such into consideration in determining the question of his guilt or innocence of murder.

Refused.

D. A. K.

page 32 } INSTRUCTION NO. 15.

And the Court further instructs you that if, upon the whole evidence there is any reasonable hypothesis consistent with the innocence of the defendant, the jury must find him not guilty.

Refused and Exceptions Noted for Reasons Stated in the Record.

D. A. K., Judge.

page 33 } INSTRUCTION NO. 16.

The Court instructs the jury that a verdict cannot be founded on conjecture or speculation and circumstances of suspicion, no matter how grave, serious or strong, do not amount to proof and cannot be the basis of a verdict.

Refused.

D. A. K.

page 34 } INSTRUCTION NO. 17.

The Court instructs the jury that the jury is the sole and exclusive judge as to whether or not Grover Lucas was insane at the time of the commission of the crime alleged in the indictment.

Refused.

D. A. K.

page 35 } INSTRUCTION NO. 18.

The Court instructs the jury that if you believe from all the evidence that the defendant is guilty of murder of his wife but that the defendant, at the time the murder was committed, was in such a state of intoxication that he was not capable of deliberating and premeditating, then he can only be convicted of murder in the second degree.

Refused.

D. A. K.

page 36 } INSTRUCTION NO. 19.

The Court instructs the jury that if you believe from the evidence that long sustained indulgence in alcoholic beverages by Grover Lucas, without any purpose to commit crime, produced a settled or fixed insanity in the mind of Grover Lucas and that at the time of the commission of the crimes alleged he was insane by reason of habitual drinking then it is your duty to acquit the defendant by reason of insanity.

Refused.

D. A. K.

page 37 } INSTRUCTION NO. 20.

The Court instructs the jury that if you believe that Grover Lucas is afflicted with epilepsy and that prior to the commission of the acts charged in the indictments that he experienced what has been described by the medical evidence in this case as a "psychic equivalent state" or state of "automatism" and that such state continued and existed at the time

of the commission of said acts, then you must acquit Grover Lucas on the grounds of insanity.

Refused.

D. A. K.

page 38 } INSTRUCTION NO. 21.

The Court instructs the jury that if you believe from all the evidence in this case that at the time of the commission of the crimes charged in the indictments that Grover Lucas did not have sufficient mental capacity to distinguish between right and wrong and to understand the nature and character of his act and its consequence, then the law exempts him from responsibility and it shall be your duty to acquit him on the grounds of insanity. This is so unless you should believe that he did not possess such mental capacity solely by reason of the defendant being in an intoxicated state.

Refused.

D. A. K.

page 39 } INSTRUCTION NO. 22.

The Court instructs the jury that in the application of circumstantial evidence to the determination of the case, the utmost caution and vigilance should be used. Such evidence is always insufficient where, assuming all to be true which the evidence tends to prove, some other reasonable hypothesis may still be true, for it is the actual exclusion of every other reasonable hypothesis which invests mere circumstances with the force of truth. Where the evidence leaves it indifferent which of several hypothesis is true, or establishes only some finite probability in favor of one hypothesis, such evidence cannot amount to proof, however, great the probability may be.

Therefore, although the jury may believe from the evidence in this case that there is a strong probability that Grover Lucas is guilty of the offense charged in the indictment, still, if upon the whole evidence, there is any other reasonably hypothesis consistent with his innocence of murder they cannot find him guilty, and this is true, although it may appear from the evidence that the probabilities of his guilt of murder

are greater than the probabilities of his innocence of that crime.

Refused.

D. A. K.

page 40 } INSTRUCTION NO. 23.

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.

D. A. K.

page 41 } Virginia:

In the Hustings Court for the City of Roanoke.

• • • • •

September 29, 1958.

CASE #25234.

Appearances: Mr. C. E. Cuddy, Commonwealth Attorney.
Mr. Arthur B. Crush, Asst. Commonwealth Attorney.

Mr. G. W. Reed, Jr., Attorney for the Defendant.

Reported by: John H. Spangler, Court Reporter, 2447 Tillett Rd., Roanoke, Va.

• • • • •

page 43 } (Mr. Reed moved the Court to try all cases against Grover Earl Lucas at one time, which was overruled by the Court, and excepted to by Mr. Reed).

(A jury of twelve were empanneled and duly sworn, with two alternate jurors sitting).

(The indictment was read to the Defendant, to which the Defendant pleaded not guilty).

(The following motion was made in chambers, during which time the Defendant was present).

Mr. Reed: If your Honor please, this isn't what I originally came in here for—the motion I wanted to make. But in view of the Court's ruling this morning that Mr. Cuddy has the election of trying any one of the four cases, I would like again to ask the Court to reconsider that. I feel that it is in the discretion of the Court. But if Lucas was guilty of killing one, he's guilty of killing all of them. If he was insane when he killed one, he was insane when he killed all. The only thing that can be gained if he's put on trial four times—we can assume he will be—I don't know if Mr. Cuddy thinks so—but I just think that for one reason that is just taking up the time of the Court and counsel and everybody else, to have to go through this thing in the event Mr. Lucas is acquitted, or given a sentence that Mr. Cuddy might think is not sufficient.

For this reason, I'd like to have the Court reconsider that, and to direct Mr. Cuddy to try all four of these page 44 } things this morning, and let's get this over with.

Mr. Cuddy: I think he wrong in his premises, entirely. And we can elect to try one; if by agreement, then try more than one. Perfectly right to select any one of the four to try. And I choose at this time to try one case, which is the murder of his wife.

Mr. Reed: Mr. Cuddy's shoe's been on the other foot. I have been sitting in Court. I don't see what is actually going to be gained. If this jury we have selected out here today—after all these questions propounded by the Court and by counsel for the defendant—if that jury is not good enough to try him on all four of them, I don't know what more we can expect.

The Court: If he went into the trial of all four cases, Mr. Reed, it would extend this trial for maybe several days longer than the trial of one charge of killing his wife. And even

if the law does not give the Commonwealth Attorney the choice of selecting which case he should try, it certainly is within the discretion of the Court, and I see no reason why the selection made by the Commonwealth Attorney should not be approved by the Court in this case.

Then, as to whether or not there will be additional trials, will depend to a large extent upon the outcome of this trial.

For that reason, the Court is going to overrule.

page 45 } Mr. Reed: I'd like to except.

The first matter I'd like to take up—I don't know what the Commonwealth's planning about introducing pictures of the scene and the bodies. If the Commonwealth intends to do that—Mr. Cuddy's got seven or eight police officers here to testify. We'll admit these people were killed. I see no reason—I'd rather make the motion in here, rather than out there in front of the jury—for the pictures Mr. Cuddy might introduce that might tend to excite or inflame the jury. I don't know what his plans are. I want to bring that up. I don't think it's necessary, in view of all these people that can describe what they saw.

The Court: I'll not pass upon that until the evidence is offered before the jury.

Mr. Reed: I want to let the Court know I would make that motion if it were attempted to be introduced.

Only one other question, Mr. Cuddy—I want to ask the Court to separate the witnesses. I notice that this girl, Dorothy Mack Smith was crossed out, and I see she's sitting out there. And I don't know whether Mr. Cuddy intends to use her. I don't think she should be sitting in the court room hearing this testimony—if she's going to testify.

page 46 } The Court: I know nothing about who the girl is.

Mr. Cuddy: I have no objection to taking her out of the court room.

The Court: Mr. Reed, you be sure to let the Sergeant know who she is.

Mr. Cuddy: She's with one of the other witnesses.

(The Court, counsel and the defendant returned to the court room).

(Mr. Cuddy opened to the jury on behalf of the Commonwealth.)

(Mr. Reed opened to the jury on behalf of the defendant).

OFFICER G. K. FORD,
a witness of lawful age, called in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Police Officer G. K. Ford?

A. Yes, sir.

Q. Mr. Ford, on the late afternoon of Monday, April 28th of this year, did you receive a call to go to the intersection of Center Ave. and 12th St., Northwest?

A. Yes, sir; I did.

Q. Is that in the City of Roanoke, Va.?

A. Yes, sir; it is.

Q. Upon your arrival there, Mr. Ford, what did
page 47 } you find?

A. Our call was to meet a Mrs. Williams at this address. On our arrival there we met Mrs. Williams, and she told—made statements to us that she feared something had happened to her relatives—Mrs. Lucas and the family. She told of the incidents that happened—some employee—

Q. Don't go into details about what she told you. She made a statement there to you?

A. Yes, sir; that she feared something was wrong with the family.

Q. Then what officer answered the call with you?

A. Officer W. A. Kelley.

Q. After talking with Mrs. Williams did you go into #1126 Center Ave., Northwest?

A. Yes, sir; I did.

Q. What part of that building did the Lucases occupy as a residence?

A. They occupied an apartment upstairs, on the south side of the building.

Q. All right. Now, how did you get into the building?

A. I crawled through an unlocked bathroom window.

Q. Were the doors all securely locked?

A. Yes, sir.

Q. Upon going into the apartment, what did you find, Mr. Ford?

A. I went into the bathroom, walked a short hall,
page 48 } turned to the left through a doorway into a large room; I stepped through the door; I saw the bodies lying there. I walked over closer to them.

The body of the small boy, Dennis, was lying on the floor.

Officer G. K. Ford.

I touched him; he was apparently dead—he was cold and stiff. The older child, Dorothy Smith, was lying on the floor beside Dennis—closer to the bed; and she was still breathing, and her leg was making a motion—she was lying on her face, and her leg was going up and down and striking the bed. I leaned across her and touched the other child—Mildred—on the bed, and knew at once she was also dead—she was cold. At this time I went to the back door and I couldn't get it open; I told Officer Kelley to kick it open from the outside, which he did, and came into the apartment.

Q. Then what else did you find in the apartment?

A. When we—Officer Kelley came into the apartment, he took one look, and looked at the girl that was still alive, and went out of the apartment and down the back steps and called for an ambulance and assistance. By the time Officer Kelley came back into the room where the three bodies were—the body of the injured girl—I went into the room which was a bedroom to my right, facing the front of the building, and there I found Mrs. Lucas lying on the bed on her back, with a very severe wound on her left forehead. The other children that were injured—the girl, her head was so matted with blood, you couldn't tell where the injuries were.

page 49 } Q. Now, you found Mrs. Lucas in which room?

A. In a front room; the window faces 12th St.—facing the front of the house, where I was standing in the middle room, would be on my right, to the north side of the apartment.

Q. Was she dead *of* alive?

A. She was dead, and had been dead for quite some time.

Q. Cold and stiff?

A. Yes, sir.

Q. I believe then you and Officer Kelley summoned additional aid?

A. Yes, sir; we did.

Q. And the ambulance for the purpose of taking the little girl out?

A. Yes, sir.

Q. And the Medical Examiner also?

A. Yes, sir.

Q. About what time was it, Mr. Ford, when you got your call that afternoon?

A. We received the call at 6:10 P. M.

Q. And arrived there about what time?

A. Approximately five minutes later.

Q. I believe you stayed on there for some little time?

Officer G. K. Ford.

A. Yes, sir.

Q. And assisted with the detectives who were summoned to the scene?

page 50 } A. Yes, sir; I did.

Q. Were you present at the time Lucas was arrested?

A. I was upstairs in the back, and some one hollered up to me I better get down there, they were having trouble. I didn't know what it was, and I went down the stairs and around to the side of the house on the Center Ave. side, and Officer Huels and Detective Belcher had Lucas, and was just putting Lucas into the car and trying to take him away. I stood beside the car, and went alongside of the car until they got out of the crowd. The crowd was getting quite ugly.

Q. And the officers placed him in the car and took him right away, did they?

A. Yes, sir.

Q. Were you up there at the time of the taking of the photographs?

A. A good many of them; yes, sir; in fact, unless some of them were taken very late—all of them.

Q. (Exhibiting photographs to witness) Were you present when these were taken?

A. Yes, sir.

Mr. Reed: I make that motion I made in chambers, for the same reason I set forth.

The Court: Mr. Reed, I see no reason why the Commonwealth Attorney should not be allowed to introduce those pictures in this case. I think it should be allowed.

page 51 } Mr. Reed: Exception.

Q. Mr. Ford, I show you two pictures—were you present when they were taken?

A. Yes, sir.

Q. Do they show the true condition of the bed and Mrs. Lucas at the time you went into the room?

A. Yes, sir; they do.

Mr. Cuddy: I'd like to introduce these two as Exhibits Nos. 1 and 2.

(Two 8 x 10 photographs marked into evidence as "Plaintiff's Exhibits Nos. 1 and 2.")

Officer G. K. Ford.

Q. (Exhibiting photographs to witness) I show you two additional photographs—were you present when they were taken?

A. Yes, sir; I was.

Q. Do they show the condition and the position of the children—the daughter and son at the time—at the time you entered the room?

A. Yes, sir; they do.

Mr. Cuddy: I'd like to introduce these two additional photographs, marked #3 and #4.

(Two 8 x 10 photographs marked into evidence as "Plaintiff's Exhibits Nos. 3 and 4.")

Q. Now the photographs #1 and #2 are of Mrs. Lucas as you found her in the bed?

A. Yes, sir; they are.

page 52 } Q. Photograph #3—is that a picture of Dennis?

A. Yes, sir; it is.

Q. And photograph #4—is that a picture of the daughter, Mildred?

A. Yes, sir.

Mr. Cuddy: If your Honor please, these have not been exhibited. I wish to withdraw #3 and #4, and only leave those of Mrs. Lucas. I would like to withdraw these; they have not been exhibited.

Mr. Reed: They were marked for exhibits. If you are going to put one in, you ought to put them all in.

Mr. Cuddy: If you want them all, I'll put them all in.

The Court: Mr. Cuddy is privileged to introduce such evidence as he wishes.

Mr. Cuddy: If you want them all, I'll be glad to put them all in there.

Mr. Reed: All right.

Q. You say you got the call at 6:10, and arrived there—

A. Approximately five minutes later.

Q. And summoned assistance from the police department; and the ambulance, and the Medical Examiner?

A. Yes, sir.

Mr. Cuddy: All right. Take the witness.

Officer G. K. Ford.

CROSS EXAMINATION.

By Mr. Reed:

page 53 } Q. After you went into the Lucas home and discovered what was there, you then heard some commotion outside?

A. A while later; yes, sir.

Q. A while later? And a *crowed* had gathered outside, and they were trying to mob Grover Lucas, weren't they?

A. There were very strong feelings. I only got there at the last minute, when they were getting him in the car.

Q. They certainly didn't know who had done this, did they?

A. Apparently.

Q. They did?

A. They did, or had an idea.

Q. Now, when you first went in the door, you stepped through the door—you found Dennis's body?

A. Yes, sir; he was the first one that caught my eye.

Q. Mrs. Lucas was in bed with some form of nightclothes on?

A. It appeared to be a wash dress—coat and wash dress, or something of that sort; it may have been a coat and gown.

Q. Dorothy—or rather, Mildred, was in bed?

A. Yes, sir.

Q. Some form of nightclothes on?

A. She had a dress on, I believe—all the children had clothing on.

page 54 } Q. The boy was on the floor, fully dressed, except for his shoes, wasn't he?

A. Yes, sir; I believe that's correct.

Q. And his shoes were placed about so close together (measures with hands) about five of six feet away from the body?

A. I'm not certain of that.

Q. Well, the rest of the room was in right much disorder?

A. Yes, sir; the whole apartment was.

Q. It was in disorder, wasn't it?

A. Yes, sir.

Q. You don't recall seeing his shoes?

A. There were shoes at the edge of the bed, but who they belonged to, I'm not certain.

Q. And I believe Grover Lucas was found about half a block from the home?

A. That's my understanding.

Q. Shortly after you got there?

A. That's my understanding; yes, sir.

Dr. Charles M. Irvin.

Q. He was within half a block of where his family was killed; is that right?
A. That's my understanding; yes, sir.
Q. That's all.

The witness stands aside.

DR. CHARLES M. IRVIN,
a witness of lawful age, called in behalf of the
page 55 } plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:
Q. You are Dr. Charles M. Irvin?
A. Yes, sir.
Q. A Medical Examiner for the City of Roanoke?
A. Yes, sir.

Mr. Cuddy: You don't want me to go into his qualifications, do you, Mr. Reed?
Mr. Reed: No, sir.
Mr. Cuddy: You admit his qualifications?
Mr. Reed: I'll admit his qualifications as to, I take it, what you're going to prove, but not as far as psychiatry is concerned.
Mr. Cuddy: I'm not going into that.

Q. You were called by the police officers late Monday, the 28th of April, to investigate the death of Mrs. Lucas, Doctor?
A. Yes, sir.
Q. As Medical Examiner, then did you see and examine the body of Mrs. Lucas?
A. I did.
Q. As being Medical Examiner, you must make examinations and report them to the Chief Medical Examiner for the State of Virginia, do you not?
A. Yes, sir.
page 56 } Q. Where did you view the body of Mrs. Lucas?
A. I viewed her at her home, #1126 Center Ave., Northwest; and later I made a more careful examination at Lotz Funeral Home.
Q. Doctor, what wounds did you find on Mrs. Lucas?
A. She had a fracture of the skull in this area (indicating) left temporal area—which was ragged—the skull was frac-

Dr. Charles M. Irvin.

tured under it; the eyes were blue from blood in the soft tissues; there was bleeding from the right ear, which indicated the fracture had extended into the base of the skull.

Q. Now, from your examination, could you determine the cause of death?

A. Yes, sir; the cause of death was due to head injury.

Q. From your examination could you determine about what sort of instrument was used to produce this injury?

A. The wound had the appearance of some—not sharp edge—but an edged instrument having been used. The wound had the appearance of having made by more than one blow. It varied in width from one inch to three inches, and the entire wound was three inches long.

Q. You state that the cause of her death was from the blows she received on her head?

A. Yes.

Mr. Cuddy: All right. Take the witness.

CROSS EXAMINATION.

page 57 } By Mr. Reed:

Q. Dr. Irvin, can't you establish the time of death?

A. I estimated the time of death was 6:00 A. M., the 27th of April, 1958.

Q. 6:00 A. M.?

A. Yes.

Q. Did you make that diagnosis as of the time you saw Connie Lucas at the house?

A. Yes, sir.

Q. At the house?

A. Yes, sir.

Q. You stated that in your opinion she died at 6:00 A. M. on Sunday morning, the 27th?

A. Yes; that was an estimate of time.

Q. And Dr. Irvin, if that were true, then Connie Lucas had been dead for 36 hours?

A. Yes, that's true.

Q. Actually, when a person has been dead over 24 hours, don't you have to perform an autopsy to come within an hour or two of the death?

A. No.

Q. No don't?

A. No, I don't think so.

Dr. Charles M. Irvin.

Q. You say then, that you could tell within, let's say—how far do you think you could be off on the 6:00 A. M. page 58 } time, Doctor?

A. I might off as much as an hour, one way or the other.

Q. No more than an hour, one way or the other?

A. I don't think it's possible to be accurate consistently. Like I said, that's an estimate of time. That was based on body heat; it was based on the condition; it was also based on the condition of her eyes, which showed some opacities that would usually indicate those changes, which don't occur until certain times have elapsed—and it's based on that. I'm making an estimate of 6:00 A. M. was the approximate time death occurred.

Q. Is that a fair statement—in your opinion, death occurred at 6:00 A. M. on Sunday morning, but that you could be off an hour either way? It could have been five or seven?

A. I agree to that.

Q. And that you formed this opinion 36 hours after the deceased had died, while you were viewing her body there at the Lucas home; is that a fair statement?

A. Yes, sir; that's a fair statement.

Q. That's all.

The witness stands aside.

The Court: Mr. Cuddy and Mr. Reed, as I understand it, whether or not the jury shall be kept together is a matter within the discretion of the Court. If any of you have anything to say—I might say right now, unless there's some good reason that I do not know about, the Court page 59 } will dismiss the jury, and let them separate for lunch.

Mr. Reed: Will your Honor give the jury the regular instructions?

The Court: Gentlemen of the jury, we are going to take a recess for lunch, until a quarter to two. While you're out, you are not to discuss this case with any one; you're not to let any one discuss it with you; you're not to read a newspaper report about it; and I hope you'll close your ears to radio or television, if you are where that comes to your ears. Furthermore, you're not to discuss this case even among yourselves. Is that clear? Is there anything else you gentlemen want me to say to the jury?

Mr. Reed: No, sir.

Officer R. L. Belcher.

Mr. Cuddy: No, sir.

(After the Court's recess for lunch, the trial resumes.)

Mr. Cuddy: Do you want the jury polled?
Mr. Reed: No, sir.

OFFICER R. L. BELCHER,
a witness of lawful age, called in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:
Q. You are Police Officer R. L. Belcher?
page 60 } A. Yes, sir.
Q. Mr. Belcher, were you called by Officer Ford and Kelley on the evening of the 28th of April?
A. Yes, sir.
Q. To investigate trouble at the Lucas home?
A. Yes, sir.
Q. About what time were you called in, Mr. Belcher?
A. I arrived at the Lucas home around between 6:30 o'clock and 7:00 o'clock.
Q. Between 6:30 and 7:00 P. M.?
A. Yes, sir.
Q. Did you go into the house?
A. Yes, sir.
Q. What did you find when you went into the house?
A. When I walked into the home at Grover Lucas's, I saw Dennis Lucas was lying on the floor, clothed, all but his shoes; he was on his stomach, in the first room just past the kitchen. He was dead. Then I noticed the little girl, Mildred Lucas, lying at the back of the bed, dead. I walked to the front bedroom and found Mrs. Lucas lying in the bed, and she was dead.
Q. Now, did you make a search for the purpose of finding the weapon that was used?
A. Yes, sir.
Q. Where did you find the weapon?
A. (Indicating pick on counsel table) I found
page 61 } this pick behind a curtain in the bathroom, leaning up against the wall.
Q. (Exhibiting pick to witness) Is that the pick?
A. Yes, sir.

Officer R. L. Belcher.

Q. Stains on the pick?
A. Yes, sir.
Q. As they are?
A. Yes, sir.

Mr. Cuddy: I'd like to introduce it as Exhibit #3.

(Pick marked into evidence as "Plaintiff's Exhibit #3.")

Q. Where was the pick at the time you found it?
A. In the bathroom behind the curtain, leaning against the wall.
Q. While you were there did you get a call from some outsider, or an officer, with reference to taking a man into custody?
A. After I had been in the home for a while I walked outside and was giving the description over the radio to the cars, and also to have them to notify the State Police in Hinton, West Virginia—they said that's where he might have went. That's when they brought—when I was outside they brought Grover Lucas up.
Q. You then placed Grover Lucas under arrest?
A. Officer Huels and I placed him under arrest.
Q. Did you bring him then to the Police Department of the City of Roanoke?
A. Yes, sir.
page 62 } Q. Mr. Belcher, what time was it when you arrived at the Police Department in the City?
A. I arrived at the Police Department at approximately 8:20.
Q. 8:20 P. M. on the 28th?
A. 8:20 P. M. on the 28th, Monday night.
Q. Did you talk with Lucas that night?
A. At 8:30 P. M. I talked with Lucas in the interrogation room in the Detective Bureau.
Q. I believe you and myself and Mr. Crush were present?
A. That's right, sir.
Q. Did Lucas make a statement with reference to what had transpired?
A. Yes, sir; he did.
Q. Was it a free and voluntary statement?
A. He was advised that he did not have to say anything unless he cared to.
Q. Any threat, promise or reward, or any other inducement held out to him for the purpose of making a statement?

Officer R. L. Belcher.

A. No, sir.

Q. I wish you would go ahead and tell the Court and jury the statement which was made by Lucas on the evening of the 28th day of April, at approximately 8:00 o'clock.

Mr. Reed: If your Honor please, I still think before this witness can testify as to any admission or confession, page 63 } that he has to go further to show that no threats were made. But I think that in view of the nature of this case, I think he should testify first as to the state of mind as he saw it; what condition his lips were in.

The Court: You can cross examine him at the time. The question asked by Mr. Cuddy is proper.

Mr. Reed: I except to your Honor's ruling.

The Court: All right.

Q. All right, Mr. Belcher, will you proceed and tell the Court and jury the statement that Mr. Lucas made at approximately 8:00 o'clock in the night of April 28th?

A. (Witness refers to note) Grover Lucas stated to me, Mr. Crush and Mr. Cuddy, at 6:30 P. M., on April 28th, which was Saturday night, that he and his wife had had an argument over him drinking. His wife told him that she was going to have him locked up. He stated—Grover stated that he told his wife if she had him locked up, it would be for something. He stated he went to bed after the argument, and that around 5:30 A. M., Sunday morning, April 27th—

Q. Just a moment, Mr. Belcher. Did he give you an approximate time which he went to bed?

A. 8:30 or 9:00 o'clock, he said he went to bed.

Q. All right, sir.

A. He stated that at 5:30 A. M. Sunday morn- page 64 } ing, April 27th, that he got up out of the bed, went to the bathroom in his underclothes. He stated that he left the bathroom and went down the back steps and picked up a pick from underneath the back porch, carried the pick back to his bedroom and laid the pick on the floor; that his wife was waking up. He stated he got in bed and had a conversation with his wife; then she turned over and went back to sleep. He stated he got up, took the pick *the* hit his wife three times in the head, while she was asleep. He stated he walked to the next room where his children were sleeping, stated that his step-daughter, Dorothy, lying at the front of the bed—he stated he hit Dorothy three times in the head with a pick. After he hit Dorothy three times, his son

Officer R. L. Belcher.

Dennis raised up—he was sleeping in the middle—he hit Dennis one time over the head with the pick. The daughter, who was sleeping behind, turned over and looked up at him, but did not raise up; and he hit her two times on the head with the pick.

He stated he took the pick to the bathroom and placed it behind the curtain in the bathroom, dressed and left the house. He stated he went to 24th St. to the Steakhouse and drank a beer. Then he stated he went to Ora Johnson's, which is #2417 Baker Ave., Northwest, and stayed all night with the man named Gilbert, who lives there. Stated at 2:00 P. M., or 2:30 P. M. on April 28th, which was Monday, he went back to the house; he saw his wife was still lying in bed dressed; his son had crawled out of the bed and was lying on the floor dead; Dorothy also had crawled out of the bed and was lying on the floor—she was still breathing.

page 65 } Mildred was lying in the bed, dead.

He stated he left the house, walked to Nellie Assaid's store on 10th St. and drank a beer.

Q. That was the statement he gave you on the night of the 28th of April?

A. 28th of April; yes, sir.

Q. Mr. Belcher, then on the 30th of April, at approximately 11:30 in the morning, did you go with Capt. Allman to the jail of the City of Roanoke?

A. I did, sir.

Q. Talk with Grover Lucas at that time?

A. Yes, sir.

Q. Did he give a statement almost verbatim to that statement which you reiterated?

A. Yes, sir; and more in detail.

Q. More in detail?

A. Yes, sir.

Q. That was given in the jail in the City of Roanoke on the 30th?

A. He started—Capt. Allman started talking to Grover at 11:20 A. M., and he signed the statement at 12:30 P. M.

Q. On the 30th?

A. On the 30th; yes, sir.

Q. Did you find the pick in the place where he has told you it was placed?

A. Yes, sir.

page 66 } Q. All right, sir.

Mr. Cuddy: Take the witness.

Officer R. L. Belcher.

CROSS EXAMINATION.

By Mr. Reed:

Q. Mr. Belcher, you are with the Detective Bureau of the City of Roanoke?

A. Yes, sir.

Q. And I'm sure you talked to a number of witnesses—interrogated them regarding this tragedy, did you not?

A. Yes, sir.

Q. First of all, let's go back to the beginning. You got there about 6:30 or 7:00 o'clock, and you saw the situation?

A. Yes, sir.

Q. That existed at that time?

A. Yes, sir.

Q. Then you began looking for a weapon?

A. We searched the house for a weapon.

Q. And it was behind a drape in the bathroom?

A. That's correct, sir.

Q. Didn't take you a long time find it, did it—I mean, right behind the drape in the bathroom?

A. Well, quite a while, because the drape had—as the drape hangs down over the wall, and it's a small pick—that pick sitting behind there, it hid it completely; you couldn't walk in there and pick it up.

page 67 } Q. It was in the bathroom?

A. Yes, sir.

Q. Did you find any clothes of Grover Lucas had blood on them?

A. Not in the home.

Q. Sir?

A. Not at home.

Q. Find it anywhere?

A. The clothing that Grover Lucas had on—his undershorts had blood on them.

Q. Let me get this straight—You didn't find any clothing in the apartment that had blood on them of his?

A. Not as I remember; no, sir.

Q. All right, sir. Then while you were there—Am I correct in saying, while you were there, some one found Grover Lucas?

A. Yes, sir; while I was at the scene.

Q. While you were still there at the scene?

A. Yes, sir.

Q. And I believe he was found about half a block from where he lived?

Officer R. L. Belcher.

A. They said he was found in 12th St., just below the house—how far, I don't know.

Q. Wasn't very far, was it?

A. No, sir.

page 68 } Q. Then you testified that you wrote down 8:20 as the time you arrived at the Police Department with Grover Lucas?

A. Yes, sir.

Q. Did you bring him down?

A. Officer Huels and myself brought him down.

Q. What kind of condition was he in?

A. He had been drinking.

Q. Had you ever seen Grover Lucas before?

A. No, sir; I don't believe I have, just to be truthful about it; I don't think I have seen him before.

Q. You could tell he had been drinking? Had he been drinking heavily?

A. Well, he hadn't been drinking too heavily, I wouldn't say. His walk and speech were clear when we brought him in.

Q. You had never seen him before—not actually, whether he was intoxicated or not? That was the first time you saw him?

A. The first time I saw him.

Q. Have to help him any?

A. No, sir.

Q. Didn't have to help him?

A. No, sir; just like any one else we arrested—we hold on to him.

Q. Didn't have to hold him up?

A. No, sir.

page 69 } Q. And that was at 8:20? Now, you testified that at 8:30 you and Capt. Allman and Mr. Crush, I believe, took him into the interrogation room, and he gave you the statement?

A. Mr. Cuddy and Mr. Crush and myself.

Q. Capt. Allman wasn't there at that time?

A. No, sir; not at that time.

Q. Now, did you tell us everything that Grover Lucas told you—you have given us a complete statement?

A. I have given you a complete statement I took from him.

Q. You took from him? Now, then, he told you that at 6:30 P. M., he and his wife had an argument, and she said she was going to lock him up for drinking?

Officer R. L. Belcher.

A. That's correct.
Q. They went to bed about 8:00 o'clock, or 8:30?
A. That's right.
Q. And he got up at five next morning?
A. 5:30.
Q. 5:00 or 5:30?
A. 5:30 he told me.
Q. Went down stairs and got the pick, came back, and Connie—his wife, Connie woke up and they had some conversation, and she went back to sleep; is that what he told you?
A. That's what he told me; yes, sir.
Q. That he then used the pick in the manner you have described; is that correct?
page 70 } A. That's correct.
Q. Now, did he tell you—as I understood he told you, from Mr. Cuddy's opening remarks, that he killed his wife because she was going to have him locked up; is that right?
A. Killed his wife because she was going to have him locked up—and always nagging him.
Q. Always nagging him?
A. Yes.
Q. And then at this time, or the time on April 30th that you talked to him, did he tell you that the reason that he killed Dennis, Mildred, and tried to kill Dorothy, was because he had killed Connie, and that he would be electrocuted, and there'd be nobody to support the children; did he tell you that?
A. Not about Dorothy. He said that Dorothy talked hateful to him, and she wouldn't mind him, and she stayed out in the street and smoked cigarettes until 9:00 o'clock.
Q. But as far as the other two children were concerned, he killed them because Connie was dead, and there was nobody to support them?
A. He said he killed his daughter and his son because they wouldn't have a place to stay.
Q. Wouldn't have a place to stay?
A. Yes.
Q. Now just a couple more questions I'm going to ask you, Mr. Belcher. You say that he went from there to
page 71 } 24th St. and had a beer?
A. That's correct, sir.
Q. And then he went to Ord Johnson's?
A. That's correct, sir.

Officer R. L. Belcher.

Q. I want to see if I've got this correct—Then he went to Ord Johnson's, and stayed all night at Ord Johnson's?

A. That's right, sir.

Q. And you said he went back home. I didn't catch the time when that was, or the hour when he was supposed to have gone back home, rather, and Dorothy was still alive. When was that, sir?

A. He stated that he stayed all night at Ora Johnson's home, and then he left her home between 2:00 and 3:00 P. M. on April 28th—that was Monday.

Q. Sunday?

A. Monday.

Q. You're right. He left there about 2:30?

A. 2:00 or 2:30 P. M., April 28th, Monday.

Q. And then he went to Nellie Assaid's and drank a beer?

A. That's right.

Q. Did he tell you whether or not he had anything to drink at home on Saturday night?

A. When I took the first statement from him, he did not.

Q. You took a second statement from him? What did he tell you?

page 72 } A. The second statement, he said that he had woke up during the night and had taken a drink—had been drinking wine.

Q. Had taken a drink, or had been drinking wine?

A. Had been drinking wine.

Q. That night?

A. Yes, sir.

Q. You bring the pick in?

A. The pick was brought into the Detective Bureau.

Q. Did you take any finger prints off the pick?

A. No, sir. Wood of that type—it would be awful hard to remove a finger print from it. The finger print is oil—just like oil poured on paper or wood, or something, would penetrate—it wouldn't hold the shape of the print.

Q. Did you try to take any prints off the pick?

A. No, sir.

Q. After one of the most atrocious crimes in the City of Roanoke, and you didn't try to see whose prints were on the pick?

A. After we talked to Grover Lucas, and he had admitted using the pick—and also told us where the pick was left: and it was found at that place—it didn't seem necessary at the time.

Officer R. L. Belcher.

Q. In other words, you relied on what Grover Lucas told you—mainly that night you relied on his admission?

A. From his admission of just exactly the scene, and exactly where the pick was found, was exactly the way we found it.

Q. All right, sir. Let me ask you one more
page 73 } question to clarify one point, and I'm through.
I may have asked you this before, but I didn't make a notation of it—Grover Lucas went back to the house and got a picture of what was there after it happened, did he not—in his mind?

A. He said that when he returned to the home that his son Dennis had crawled out of the bed and was lying in the floor.

Q. Would you tell me what time he claimed he went back?

A. (Reading) He stated he left Ora Johnson's around 2:00 or 2:30 P. M. on April 28th, Monday.

Q. And that was when he went home?

A. That was when—the first time he went home.

Q. That was in his statement—he went home around 2:00 or 2:30 on Monday?

A. 2:00 or 2:30 on Monday—P. M.

Q. Now, getting back to the first question I started to ask you—did you take—I don't know what the people said—I want to ask you this question: Did you take any statements from the people that lived downstairs below the Lucases?

A. Later on I did; yes, sir.

Q. Did you take a statement from Buck Rucker—Mr. Rucker?

A. Took statements from several.

Q. Sir?

A. I took statements from several. I'd like to check.

Q. Did any other person take statements, besides
page 74 } you?

A. Some of the other officers took statements. Capt. Allman did.

Q. You're not sure about William Rucker?

A. Rucker? I don't know whether I talked with William Rucker or not, sir.

Q. We'll find out from the other witnesses. What about Donald Flowers—you take a statement from him?

A. Capt. Allman and myself took a statement from Mr. and Mrs. Flowers.

Q. Mr. and Mrs. Flowers—James Flowers? You don't remember about the Ruckers?

Capt. K. E. Allman.

(Capt. Allman proffers note to witness).

A. (Reading) No, sir. Detective Penn took the statement from William Rucker.

Q. And you took the statement of both Flowers? What about the other people that lived in there—Gladys Burnett and Wilbur Burnett?

A. (Reading) No, sir; I don't believe I took a statement from him.

Q. All right, sir. Would you tell me, then, when you took the statement from the Flowers—how long after the bodies were found, approximately? I'm not trying to pin you down to the hour.

A. (Witness examines file of papers) The statement was taken from Charlotte Flowers on April 29th.

page 75 } Q. On Tuesday?

A. Tuesday.

Q. The same with Don Flowers?

A. Yes, sir.

Q. Sir?

A. Yes, sir.

Q. That's all.

The witness stands aside.

CAPT. K. E. ALLMAN,

a witness of lawful age, called in behalf of the plaintiff, being duly sworn, testified as followed:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Capt. K. E. Allman, Captain of Detectives for the City of Roanoke?

A. Yes, sir.

Q. Capt. Allman, I believe you were out of town on the night of the 28th, when this arrest was made?

A. Yes, sir.

Q. On the morning of the 30th of April, 1958, did you and Officer Belcher go to the jail in the City of Roanoke and there talk to Grover Lucas with reference to this crime?

A. Yes, sir.

Q. Did he make a statement to you with refer-

page 76 } ence to the crime?

A. Yes, sir.

Capt. K. E. Allman.

Q. Was that statement a free and voluntary statement?

A. Yes, sir.

Q. Were any threats, or promises of reward, or any inducement of any kind held out to him for the purpose of making that statement?

A. No, sir.

Q. Capt. Allman, I wish you would go ahead and tell the Court and jury the contents of the statement which Grover Lucas made to you on the 30th day of April.

A. Lucas stated that on Saturday evening, April 26, approximately 6:00 o'clock—between 6:00 and 6:30 P. M.—he and his wife had an argument. They argued for 15 or 20 minutes; and the argument was about his drinking—his wife threatened to have him put in jail and locked up, if he didn't stop drinking—and about his work record. He stated that approximately 15 or 20 minutes after the argument that he then went to bed. He removed his pants and his shirt and his shoes and went to bed.

During the night he woke up two or three times, and he drank some wine. On Sunday morning, between 5:00 o'clock and 5:30 A. M., he got up to go to the bathroom; and after he went to the bathroom—he was only clad in his underwear at the time—he went down the back steps and got this pick (indicates pick on counsel table) from under the back steps, took it back to his bedroom and laid it beside the bed, and then

page 77 } got back in bed with his wife. His wife waked up and they had a few words. He said they did not argue at that time, but they talked for a few minutes; and then she went back to sleep. And after she went back to sleep, he got back out of the bed and got the pick and he hit her two, three, possibly four times in the head with the pick. Then he immediately went into the other room—which is a much larger bedroom; Dorothy Smith, the step-daughter, was laying on the outside; Dennis, the little boy, was in the middle; and Mildred was next to the wall, with her face to the wall. He said he struck Dorothy two or three times in the head with the pick—they all were covered up; they all were asleep. After he hit Dorothy in the head with the pick, Dennis raised up—he said to almost a sitting position—propped himself up on his hands (witness demonstrates)—

Q. At that time did he make a demonstration?

A. Yes, sir.

Q. What was said?

A. He said the boy was waking up and looking, and he was almost in a sitting position, with his hands behind him, prop-

ping himself up in the bed—the little boy was laying on his back—and when he did that, he hit Dennis in the head with the pick two or three times. And while he was striking Dennis in the head with the pick, Mildred, who had her face to the wall, turned to look in his direction, and when she did, he struck her two or three times with the side of the pick.

And then he went back and put his clothes on,
page 78 } put his shoes on, overall pants and shirt; and before he left the apartment, he noticed that Dorothy and Dennis were lying in the bed, still covered up, wiggling and kicking and breathing hard. So he left the apartment—locked the doors and left. He went from there to a store on 7th St. Northwest, and got some wine. And then he went to 24th St.—the Steakhouse—and drank a beer. And from there he went to Ora Johnson's house, Baker Ave., Northwest, where he stayed Sunday night, and up till the afternoon of Monday—he says approximately 2:00 o'clock or 2:30—when he left Ora Johnson's house.

And after he left her house, he went to the Crystal Springs Laundry, where his wife had been employed, and there he talked with one of the employees about the possibility of getting his wife's pay check. He was advised that he could not get her pay check; that it wasn't pay day, in the first place. So he tried to borrow $10. He stated that he told the employee there at the laundry that his wife and children had been killed in an automobile accident near Beckley, W. Va.; so he tried to borrow $10 from the employee at the Crystal Springs Laundry. It was refused.

He then returned to his apartment at #1126 Center Ave., Northwest. He said when he got to the apartment he noticed Dennis out in the floor; Dorothy was lying beside the bed, but alive, and still breathing. So he left the apartment again and went to Nellie Assaid's store to get a beer.

Q. Was that statement made to you by Grover
page 79 } Lucas?

A. Yes, sir.

Q. On the 30th day of April?

A. Yes, sir.

Mr. Cuddy: Take the witness.

CROSS EXAMINATION.

By Mr. Reed:

Q. Capt. Allman, had you ever seen Grover Lucas before?

Capt. K. E. Allman.

Did you interrogate him the first time?
A. That's the first time I'd seen him.
Q. And that was on the 30th of April?
A. That's correct.
Q. Wednesday?
A. Wednesday.
Q. He was incarcerated about 8:20 on Monday, and you saw him about 11:00 o'clock in the morning, I believe it was, wasn't it?
A. 20 minutes past 11:00 when we—
Q. In the morning?
A. In the morning; yes, sir.
Q. What kind of shape was he in then?
A. He was rational; perfectly sober.
Q. Perfectly sober?
A. Calm—well, to my opinion.
Q. In your opinion he was?
A. He was, in my opinion. He was not nervous. We had been up there the day before and he said he was
page 80 } having some stomach disorder, and he'd rather wait till Wednesday. But he was calm and rational.
Q. All right. He was calm and rational at that time?
A. And sober.
Q. Calm, rational and sober. Now, the statement that you related almost coincides with the statement that Mr. Belcher gave, doesn't it?
A. Yes, sir.
Q. Now, leaving the killing out of this—out of consideration for just a minute—did everything else that he told you coincide with what you actually found out he did, through your investigation?
A. Yes, everything that he said he did was verified.
Q. Came out—
A. Investigation revealed that he was right; that he was telling the truth; revealed where he put the pick after he killed the family.
Q. Now, I'm talking about what he did after he left the apartment on Sunday morning—you traced him; you know what he did from that moment practically, until the time he was picked up, don't you?
A. That's right.
Q. Now, I'm asking you, did that part of his statement to you coincide with what you actually found out he did?
A. Yes.
page 81 } Q. That's all.

Capt. K. E. Allman.

RE-DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Capt. Allman, when you questioned Lucas up in the jail, did you have him to take off his shirt and pants?

A. Yes, sir.

Q. (Exhibiting underwear to witness) Is that the underwear he was wearing at the time?

A. Yes, sir.

Q. I wish you would—are there stains on the underclothing?

A. Yes, sir.

Q. I wish you would hold them up and exhibit them.

(The witness exhibits underclothing to the Court and jury from the witness stand).

RE-CROSS EXAMINATION.

By Mr. Reed:

Q. Quite a few stains on there, aren't there, sir?

Mr. Cuddy: I'd like to introduce those.

(Undershirt and underpants marked into evidence as "Plaintiff's Exhibit #4.)

A. Quite a few stains.

Q. What are those other stains on there—on those shorts there?

A. Appeared to be blood on there.

Q. Appeared to be?

page 82 } A. This underclothing was removed from him on Wednesday, April 30th.

Q. But you say it appeared to be blood? You don't know whether it's blood, do you?

A. It appeared to be blood; it looked identical to blood stains at that time.

Q. Can't you tell it was human blood by laboratory analysis—that can be determined, can't it?

A. Oh, yeah.

Q. Did you do that?

A. No, sir.

Q. That's all.

Ora Johnson.

By Mr. Cuddy:

Q. He stated those were the underclothing he was wearing at that time?

A. He did.

The witness stands aside.

ORA JOHNSON,

a witness of lawful age, called in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. Your name is Ora Johnson?

A. Yes, sir.

Q. Ora, you live at #2417 Baker Ave., Northwest?

A. Yes, sir.

page 83 } Q. Ora, on Sunday morning, April 27th, did you see Grover Lucas?

A. Yes, sir; he came to our house about 8:00 o'clock, or a little after, and stayed from Sunday until Monday, around between 12:00 and 12:30 Monday.

Q. He left your house Monday afternoon?

A. He told us at the time he was going to get a check and he would pay me for staying all night; and I thought it was an unemployed check; I didn't know it was his wife's check.

Q. Told you he was going to get a check?

A. Yes, sir.

Q. And he came there about what time?

A. A little after 8:00 o'clock.

Q. After 8:00 o'clock in the morning?

A. Yes, sir.

Q. And what seemed to be his condition with reference—

A. He was just a little nervous; and he told us when he came in—first of the week—Saturday he worked on a car at our house, and it was Mr. Simpson's car and he done a perfect job on the car and motor. And he left our house a little after 3:00 o'clock. And next time he came was a little after 8:00 o'clock Sunday morning, and he came there, and when he first came he said his wife runned him off, and he had slept in the car down at Eckles' car lot during the night. And I said, "Why didn't you come back here?" And we'd known Grover 15 years, and he'd worked on cars 10 years. He

page 84 } said the only wine he drank during the whole day

Ora Johnson.

Monday was after 8:00 o'clock. He got on a fifth at the Steakhouse, and that's all he had from Sunday until Monday when he left our house.

Q. You say he appeared about 8:00 o'clock in the morning?

A. Yes, sir.

Q. And told you that his wife had run him off?

A. Said he had slept in a car at Mr. Eckles' car lot.

Q. And he left your house somewhere after noon?

A. Monday.

Q. You didn't see him any more?

A. Next thing I knowed we seen on a television where he had committed this crime and kind of shocked me because Grover had a quiet disposition around the home.

CROSS EXAMINATION.

By Mr. Reed:

Q. Ora, now Grover was up at your house on Baker St. on Saturday?

A. Yes, sir.

Q. And he worked on a car?

A. Yes, sir.

Q. Ed. Simpson?

A. Yes, sir.

Q. Ed Simpson live at the same address? What time did he come up there?

A. A little after—I'm not positive, because when
page 85 } Grover first come up Saturday, I didn't pay much attention to him—a little after nine, and stayed until three, or a little after three.

Q. Now, did he drink any that day?

A. Now on Saturday I couldn't say, because I have seen Grover intoxicated—I mean drinking continuously—Grover's an alcoholic.

Q. Did he drink any beer on Saturday?

A. I couldn't tell you definitely about that, because Grover all the time would usually drink beer and wine—that was his two drinks—he drinked beer and wine.

Q. As a matter of fact, did you take Grover in the car on Saturday to get some parts?

A. Down to Shenandoah Auto Parts.

Q. Down to Shenandoah Auto Parts?

A. And also up to Hall's.

Q. Did he drink any beer at that time?

A. He had gotten two or three drinks of Country Club beer

Ora Johnson.

at the Steakhouse on Saturday; that's all I seen him have.

Q. You did see him drink some on Saturday? Did you see him drink any wine on Saturday?

A. Nope.

Q. Left around 3:00 o'clock on Saturday?

A. Yes, sir.

Q. And the next thing you saw of Grover Lucas
page 86 } was Sunday morning around 8:00 o'clock?

A. Eight or a little after; not much after eight.

Q. Could have been around nine?

A. Nope; because tell you what—Grover come in the house and we talked about getting—a little before nine—around nine, maybe, or a little after—I said something about sending down to Goff's Restaurant and getting some coal; I didn't want to get a ton—just get a little bag. Grover asked me how much I paid for coal, and I said, "55¢ a bag." He said, "You give me a dollar, and I'll get you three bags of coal"—which he did, at the L & S Grocery. He and Ed Simpson—also he sold Mr. Simpson a carton of Lucky Strike cigarettes for $1.57.

Q. All right. Now—

A. And he went over there and he got that between 9:30 and a quarter of ten when he was at the L & S Grovery, and he came on back.

Q. Ora, just answer the questions I ask you, please. He went over to the L & S Grovery—he and Ed Simpson?

A. That's right.

Q. And he went in and bought some coal?

A. That's right.

Q. Sold you three bags of coal that cost $1.50?

A. 55¢ a bag—anyhow, he got it for a dollar; he got it cheap—probably bought it on credit—that's right.

Q. And he bought a carton of cigarettes for Ed
page 87 } Simpson?

A. That's right.

Q. And got the money from him for that?

A. Um-hum.

Q. Did he come back with any wine?

A. Well, now, they had stopped at the Steakhouse.

Q. Tell us what you know. You weren't—

A. Stopped at the Steakhouse and got a fifth of wine on Sunday.

Q. All right. Did he bring that back to the house?

A. Yes, sir.

Q. Did he drink that there?

Ora Johnson.

A. I couldn't tell you, because I had asked Grover not to bring nothing to drink in the house.
Q. But he did have a fifth?
A. Yes.
Q. And he stayed there all day Sunday?
A. That's right.
Q. And what time is it you say Grover and Ed Simpson went out?
A. It was 9:30 or something like that.
Q. That's when he left the house?
A. That's right.
Q. Sunday?
A. Sunday morning.
Q. Now, he came back—Grover stayed there all
page 88 } day?
A. That's right.
Q. Slept there that night?
A. (Witness nods head).
Q. Got up the next morning?
A. Got up about 8:00 o'clock, I reckon, and built a fire in the cook stove—and said he had a better night's sleep than he had for months.
Q. Had a better night's sleep then he had for months?
A. Yes, sir. He got a fifth of wine.
Q. How'd he get that?
A. Got Annie Hazelett to go in the Steakhouse and get it for him.
Q. Brought it back to the house?
A. Yes, sir.
Q. Drink that?
A. Yes, sir.
Q. You see him drink this beer?
A. No. He went on back upstairs and laid down—taken the wine with him and went back upstairs.
Q. But that was wine he had drunk, wasn't it?
A. Yes, sir.
Q. What time did he leave your house?
A. It was a little after dinner, between 12:30 and 1:00 o'clock.
Q. On Monday?
page 89 } A. That's right.
Q. And he said he was going down to get a check to pay you for letting him *aleep* up there?
A. That's right.
Q. Did Ed Simpson help him work on the car?

Harry Gray.

A. Saturday; yes, sir.

Q. Now, you told us that you knew that he drank three cans of beer on Saturday. I believe you said he bought that at the Steakhouse on 24th St.? Did he leave any time during the time—

A. The only time, when he worked on the car—he left that evening and stayed all night Saturday night. I don't know where he stayed.

Q. I'm speaking of the time he was there?

A. From Sunday till Monday he was not gone, except he went to the L & S Grocery.

Q. Sunday and Monday?

A. He was there.

Q. Ora, I think what you said was that he did not leave your place on Sunday or Monday, except when he and Ed Simpson went to the L & S Grocery?

A. That's right.

Q. You are positive?

A. Um-hum.

Q. And he got there at 8:00 o'clock in the morn-
page 90 } ing on Sunday?

A. Yes, sir.

Q. That's all.

The witness stands aside.

HARRY GRAY,

a witness of lawful age, called in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Mr. Harry Gray?

A. That's right.

Q. Mr. Gray, you live at #2217 Orange Ave.?

A. That's right.

Q. And you are employed by the Crystal Spring Laundry?

A. Yes, sir.

Q. What is your position with Crystal Spring Laundry?

A. Superintendent.

Q. Mr. Gray, speak out a little; it's awfully hard to hear.

A. Superintendent.

Q. Superintendent of Crystal Spring Laundry?

A. That's right.

Harry Gray.

Q. Mr. Gray, was Connie Maxie Lucas employed by your company?

A. She was.

Q. Approximately how long did she work there?

A. I'd say, roughly, nine or ten years.

page 91 } Q. Nine or ten years?

A. That's right.

Q. Now, on the 28th of April, did you see Grover Lucas?

A. I'm not sure of the date—it was on Monday.

Q. On Monday?

A. Between 4:00 and 4:30 that afternoon.

Q. Well, it was before the time you learned of Mrs. Lucas' death?

A. Yes.

Q. Where did you see Mr. Lucas?

A. He come to the plant somewhere, I would say, between 4:00 and 4:30 Monday afternoon.

Q. And you talked with him there?

A. I did.

Q. What was the conversation that you had with Grover Lucas?

A. Mr. Lucas asked me could he get his wife's check. I told him that I didn't think so. He went on to say that his family had been killed in an automobile accident somewhere in West Virginia. I told him I'd go see what I could do. So I went to the office and I found I couldn't get the check. I come back and told Mr. Lucas I couldn't get the check, and he asked me to loan him $10; said he wanted to go to West Virginia and see about it. I told him I didn't have $10. And that was all. He left the plant then. I don't know where he went.

page 92 } Q. As her employer did you try to inquire then as to where Mrs. Lucas was?

A. On the way home I went by the apartment and talked to Mrs. Gladys Burnett, and asked them if they had heard a story of that type. She said she'd heard it, but she didn't believe it. So I went on home, and I didn't know any more till, oh, sometime after I had my evening meal. Mrs. Janey Collins' husband called me and told me what they had found.

Q. Was the result of the call to the Crystral Spring Laundry, for the purpose of trying to secure a check, that Mrs. Williams—Mrs. Lucas's sister—was contacted?

A. Someone told me that Janey had called her; yes.

Q. Janey works at the laundry?

A. She didn't at the time.

Mrs. Fred Williams.

Q. But was employed there?
A. Connie was the only one employed there.
Q. Did Janey, this girl you're talking about, work there?
A. That's right.

CROSS EXAMINATION.

By Mr. Reed:
Q. Mr. Gray, did you know Grover Lucas?
A. I knew him when I saw him.
Q. Did you see him up at the plant often?
A. Quite frequently.
Q. Had he been drinking when you saw him on page 93 } Monday?
A. I couldn't say for sure, whether he was or wasn't.
Q. You don't know whether he was or wasn't?
A. No, sir.
Q. Smell anything on him?
A. No.
Q. That's all.

The witness stands aside.

MRS. FRED WILLIAMS,
a witness of lawful age, called in behalf of the plaintiff, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:
Q. You are Mrs. Fred Williams?
A. That's right.
Q. You live on Route #481, Roanoke County?
A. That's right.
Q. Mrs. Williams, I believe you are the sister of Mrs. Connie Lucas?
A. Yes, sir.
Q. Were you contacted by some one late Monday afternoon?
A. Yes.
Q. About what time was it?
A. It was around 5:00 o'clock, I'd say.
Q. And who was the person who contacted you?
A. Mrs. Merritt.

J. T. Wood.

Q. I believe the information had been conveyed
page 94 } to you that Grover Lucas had been to the laundry?
A. Yes, sir.
Q. And had made a statement with reference to the death of his wife and children?
A. In an accident.
Q. Did you then go to your sister's home?
A. Yes. First I called another sister of mine to go with me, and then we went to the house.
Q. You went to the house?
A. Yes—twice.
Q. You couldn't get in?
A. No.
Q. I believe you then had the officers summoned to the place?
A. I did.
Q. And the officers talked with you immediately upon arrival there?
A. Yes, sir.
Q. You are the lady the officers first talked with?
A. That's right.

CROSS EXAMINATION.

Mr. Reed: I have no questions.

The witness stands aside.

Mr. Cuddy: The State rests.

page 95 } MR. J. T. WOOD,
a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You are J. T. Wood?
A. Yes, sir.
Q. Where do you live, Mr. Wood?
A. #614 Keats St., Northwest.
Q. You know Grover Lucas?
A. Yes, sir.
Q. How long have you known Grover Lucas?

J. T. Wood.

A. Probably 15 years.

Q. Do you recall when his wife Connie, and two children were found dead in their apartment?

A. No, sir—I recall; yes, sir.

Q. Back in April?

A. When it happened?

Q. Found on Monday, April 27th. Before that time, when was the last time you saw Grover Lucas?

A. On a Saturday, around 12:00 o'clock.

Q. Probably around 12:00? Was it on Saturday or Friday?

A. It was on a Saturday. On Friday he had me put a clutch in a Ford car, right in front of my house, and I brought him on down to his house; and I took him over and got some groceries and brought him back to his house; and that was the last I saw of him.

page 96 } Q. All right. On Friday morning you and he were putting a clutch in a Ford?

A. Yes, sir.

Q. What kind of condition was Grover Lucas in at that time?

A. Well, he had been drinking.

Q. How was his work? Is he a mechanic?

A. Yes, sir; he's as good a mechanic as in Roanoke when he's not drinking.

Q. And he was drinking on this Friday morning?

A. Yes, sir; he was.

Q. Was he doing his work properly?

A. Well, he was nervous. Only thing I saw—he was nervous.

Q. Did you make any comment to him about his drinking?

A. I was always talking to him about his drinking—not at that particular time.

Q. Do you know him to be a man that drank right much?

A. Yes, sir; he was a man that drink considerably all the time.

Q. All the time?

A. All the time; yes, sir.

Q. Did you ever know him when he wasn't drinking?

A. I have seen him go a week or two at a time

page 97 } when he was drinking.

Q. What kind of disposition did Grover Lucas have?

A. Time I have been knowing him, he was never mad; he

was a quiet fellow. Been to my home, and I been to his home. Never had an argument out of him.

Q. He was a quiet person?

A. Yes, sir.

Q. Do you know his wife, Connie Lucas?

A. Yes, sir.

Q. How long have you known her?

A. Probably eight years.

Q. How did Grover Lucas and his wife get along?

A. When I was in their home several times I never heard them have a cross word.

Q. Now, you stated on Friday that you took Grover Lucas some place in your car?

A. Yes, sir.

Q. Did he have anything to drink with him that night?

A. Well, he had some wine he got at the Steakhouse that we come down from finishing the job up. He brought it by his house, and never did open it, to my knowledge. But he bought a fifth of wine and then I took him down to Southeast to the grocery store, and come back and let him out at his house, and that was the last time I saw him.

Q. That's all.

page 98 } CROSS EXAMINATION.

By Mr. Cuddy:

Q. You say he worked with you on your automobile on Friday?

A. No, sir; it was not my car; it was a neighbor's car.

Q. A neighbor's car?

A. Yes, sir.

Q. You all were working together?

A. Yes, sir.

Q. And the only thing you noticed about him, he was a little nervous?

A. Yes, sir.

Q. Did satisfactory work?

A. Yes, sir; his work was satisfactory.

Q. Then you took him on to the store, and back home, and let him go?

A. Yes, sir. That was the last I saw of him.

Q. All right, sir.

The witness stands aside.

ED. SIMPSON,

a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are Edward Simpson?

A. Yes, sir.

page 99 } Q. You live at #2417 Baker Ave., Northwest?

A. Yes, sir.

Q. There at Ora Johnson's?

A. Yes, sir.

Q. Now, did you see Grover Lucas on Saturday, April 26?

A. Yes, sir; he worked on my car on Saturday.

Q. Where did he work on your car?

A. At home, up there at #2417 Baker Ave.

Q. What time did he get there on Saturday?

A. Well, around about 9:00 o'clock, 9:30 somewhere along there.

Q. About 9:00 o'clock, or 9:30?

A. Yes, sir.

Q. And what time did he leave?

A. Around about 3:00 or 3:30.

Q. Did he do any drinking on that morning?

A. Well—

Q. Now if he did, tell the Court and jury what he did with regard to drinking.

A. Well, he worked on my car. He done a good job on it. I don't know whether he was drinking, or whether he was sober—as I knowed.

Q. You don't know whether he had anything to drink?

A. On Saturday morning? No, sir.

Q. What about Saturday afternoon?

page 100 } A. On Saturday afternoon he didn't drink any that I seen.

Q. Sir?

A. He didn't drink any Saturday evening or Saturday afternoon that I know of.

Q. When was the next time you saw him?

A. Sunday morning.

Q. What time did you see him Sunday morning?

A. Well, around about 8:30.

Q. Did he come up to your house then?

A. Yes, sir.

Q. Did he come alone?

A. Yes, sir.

Ed. Simpson.

Q. And what happened after that?
A. Came about 8:30—
Q. Go ahead and tell the Court what happened after that.
A. Well, he come up there about 8:30 and talked a little while, and we went and got three bags of coal over to the store. First he said we'd go to the store and get three bags of coal. and I took him down by the house before we went to the store, and he went in and got him a piece of chewing tobacco and he come out and we went to the store and got three bags of coal and a carton of cigarettes, and come back and unloaded it.
Q. About what time was it you left the house?
A. About 10:00 o'clock.
Q. About 10:00 o'clock—on the way to the
page 101 } grocery store?
A. Yes, sir.
Q. You stopped and let him off at his house?
A. Yes, sir.
Q. And he went in to get some chewing tobacco and came back?
A. Yes, sir.
Q. And you went to the store and got coal?
A. Yes, sir.
Q. I believe Ora Johnson got the coal?
A. Yes, sir.
Q. Did you buy anything from him?
A. I bought a carton of cigarettes.
Q. Did he have anything to drink that Sunday morning?
A. No, sir; I didn't see anything that Sunday morning.
Q. What did he do with the money?
A. Well, I don't know what he done with the money.
Q. Didn't see him buy any wine?
A. Well, when we come back from the store, and I had to go up to the light to make the left turn, and he said—well, he says, "Ed run me up to the Steakhouse." I went up to the Steakhouse and he said, "You going to get out and go in with me?" And I said, "No, I'll stay in the car." And he went in and came back out. I guessed he had some wine.
Q. He did buy some wine?
page 102 } A. Yes, sir.
Q. Now, he stayed there, I believe, till some time Monday?
A. Yeah.
Q. Buy any wine on Monday?
A. Buy any on Monday?

Ed. Simpson.

Q. Did he get any wine on Monday?
A. No, sir—I got up and went to work that morning.
Q. You don't know whether he did or not?
A. No, sir.
Q. Now, Mr. Simpson, how long have you known Grover Lucas?
A. How long have I knowed him?
Q. Yes, sir.
A. I have knowned him around about six years.
Q. Have you been with him much during the five or six years?
A. Off and on when he'd worked on my car. I'd get him to work on my car. He'd fix anything needed to be fixed. I'd get him to fix that for me—the distributor.
Q. Did he do any heavy drinking during that time you have known him?
A. I never did see him when he wasn't drinking to some extent.

Q. You never did see him when he wasn't drink
page 103 } ing to some extent?
A. That's right.

Q. What kind of disposition did he have? By that I mean —when I say what kind of disposition did he have—you know what I mean?
A. Yeah.
Q. Was he a violent person, or is he a calm person, or a loud person, or soft-spoken person?
A. He's a kind of soft-talking fellow.
Q. Never did get in trouble with you while he was drinking?
A. I never did have no trouble with him.
Q. That's all.

CROSS EXAMINATION.

By Mr. Cuddy:
Q. Ed, I want to ask you a few questions. You live over at Ora Johnson's house, don't you?
A. Yes, sir.
Q. Or stay there—room there?
A. Yes, sir.
Q. And Grover came over and worked on your car on Saturday?
A. Yes, sir.
Q. What time did he start working on it?

Ed. Simpson.

A. Well, he started on it around about—let me see, he got there about 9:30.

page 104 } Q. About 9:00 or 9:30, and worked on it until about 3:00 or 3:30 in the afternoon?

A. Yes, sir.

Q. Do a good job?

A. Yes, sir.

Q. Perfectly satisfactory work?

Q. Then he left you, and you didn't see him any more then, did you?

A. No, sir.

Q. On Sunday morning were you at Ora's when he came back?

A. Yes, sir.

Q. He came back about what time?

A. Around about 8:00; about 8:30.

Q. Nervous at that time, wasn't he?

A. Yeah.

Q. Grover was nervous and excited when he came in, wasn't he?

A. Well, he come in just like he always come by the house when he'd come by to work on my car on Saturday—like he did Saturday when he worked on my car.

Q. When he came by there on Sunday, about 10:00 or 11:00 o'clock Ora said something about some coal, didn't she?

A. Yeah.

Q. And you drove the car after the coal?

page 105 } A. Yes, sir.

Q. And Grover said if she'd give him the money, he'd get coal for her, didn't he?

A. That's right.

Q. And you drove over to the L & S Grovery Co.?

A. Yes, sir.

Q. Over on—what's that—on Park St. where it's located?

A. Salem Ave., I believe.

Q. Salem Ave.? Did you go with him?

A. Yeah.

Q. He charged that coal and carton of cigarettes to his wife, didn't he; to his wife's account?

A. Well, I don't know.

Q. He charged it? Anyway, he didn't pay for it?

A. Yes, sir.

Q. What else did he get?

A. He got a can of tomato juice.

Q. Three bags of coal and a carton of cigarettes? He sold you the cigarettes?
A. Yes, sir.
Q. How much?
A. $1.57.
Q. And he sold the coal to Ora for $1, and took the coal up there to her?
page 106 } A. Um-hum.
Q. On your way to the store—Grover chews tobacco, doesn't he?
A. Yes, sir.
Q. Chews tobacco practically all the time?
A. That's right.
Q. On the way to the store did you stop anywhere?
A. Didn't stop anywhere till we got to the house to pick up the piece of chewing tobacco.
Q. You stopped at his house?
A. Yes, sir.
Q. That's at #1126 Center Ave.?
A. Yes, sir.
Q. And he told you to stay out in the car, didn't he?
A. He said, "Stop at the house and let me out, and I'll go up and get my chewing tobacco and come back to the car."
Q. He told you to remain in the car?
A. Yes, sir.
Q. He told you to stay in the car, and you stayed in the car?
A. Yes, sir.
Q. And he came back and you went over to the store?
A. That's right.
Q. And went back to Ora's, and he stayed there? And he was there the next morning when you went to
page 107 } work?
A. That's right.
Q. You didn't see him any more?
A. No, sir.
Q. All right. Stand aside.

The witness stands aside.

MR. BURRELL F. ALLS,
a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

Burrell F. Alls.

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are Burrell F. Alls?

A. That's right.

Q. Where do you live?

A. I live on Catawba Road at my sister's.

Q. I believe you are some relation to Grover Lucas?

A. Second cousin.

Q. Do you spend much time in Roanoke?

A. About every weekend as a general thing. I come over to my sister's. I got a sister up in Norwich on Roanoke Ave.

Q. Were you in Roanoke on the weekend of April 26 and 27?

A. On Saturday before the murder?

Q. Yes.

A. Yes, sir.

Q. Did you see Grover Lucas on Saturday, April 26th?

A. I was at his house that evening.

page 108 } Q. About what time were you at his house?

A. Well, it was late in the evening—just before dark, I guess. Couldn't tell you the exact time.

Q. Don't tell the exact time. Approximately what time were you there?

A. I don't know—just don't know what time it was. It gets dark—I think I left his house about the time it got dark.

Q. How long were you there?

A. I wasn't there but just a little bit—15 or 20 minutes, maybe.

Q. Who all was there?

A. Grover and his wife and three or four children.

Q. Did you notice anything out of the ordinary?

A. No.

Q. During that time you were there?

A. Talking like always.

Q. Any arguments?

A. No, I didn't hear no argument while I was there.

Q. You stayed about 15 or 20 minutes and then left?

A. Yes, sir; as well as my remembrance. I didn't stay over 15 or 20 minutes.

Q. Didn't have anything to drink?

A. He have anything to drink?

Burrell F. Alls.

Q. Yes.

A. I don't know whether he did or not. I guess
page 109 } he had been drinking. I never seen nothing to drink.

Q. You didn't see anything to drink?

A. No.

Q. What kind of shape was Grover in?

A. He seemed to be in very good shape. He had been drinking—I don't say he was drunk.

Q. He had been drinking?

A. I think so.

Q. All right, sir.

A. Best of my estimation of it.

Q. Then you left?

A. Yes, sir.

Q. When was the next time you saw Grover Lucas?

A. I seen him on Sunday morning.

Q. About what time you see him on Sunday morning?

A. I would guess it to be right around 9:00 o'clock.

Q. And where was he?

A. He was going up Center Ave. there, about three blocks above the house.

Q. Which direction was he going?

A. Toward Shaffers Crossing.

Q. Walking toward Shaffers Crossing?

A. Yes, sir.

Q. Three blocks away?

A. Two or three blocks away.

page 110 } Q. About 9:00 o'clock on Sunday.

A. I'd say about 9:00 o'clock.

Q. Did you have any way of establishing the time?

A. No, I did not. I stayed over at my sister's, and they don't get up till late on Sunday, and they get breakfast, and they go to church about 9:00. I don't know whether I left before they did, or after they did—and I went straight on over.

Q. So it was around—

A. Around 9:00, best of my knowledge.

Q. And which way were you going?

A. I was coming toward town—going east.

Q. You were going in the opposite direction?

A. I was coming east; he was going west.

Q. All right, sir. Did you stop?

A. Yeah, I stopped. He come across to me.

Burrell F. Alls.

Q. What happened then?

A. He told me he was going up to Ora Johnson's to fix a man's car; and asked me where I was going, and I said, "Well, I'm just riding around." And he asked about taking him back up there, and I circled the block and took him up there and let him out in front of her house.

Q. You didn't go in?

A. No, sir; I never even got out of the car; never even killed the motor.

Q. All right. Did he seem to be drinking on
page 111 } Sunday morning?

A. Well, I believe he was; yeah. He acted kind of like he was drinking.

Q. Now, did you ever see Grover after that?

A. No, I never seen him any more till he was locked up.

Q. Did you go to the Lucas home at any time on Sunday?

A. No, I was by there. I was over at Tick-Tock Restaurant.

Q. Did you go to the house?

A. Right up—

Q. Did nothing? Go up the steps at all?

A. Not at my recollection, I didn't go up the steps—and I don't think he did. I was at the restaurant.

Q. I see. Now, had you been drinking with Grover Lucas very often?

A. Sometimes I would, and sometimes I wouldn't.

Q. Did you drink—

A. Sometimes I'd take a drink with him.

Q. Did you drink with him often?

A. Not too often.

Q. Were you ever with Grover Lucas within the past, well, say year, before this happened—at which time his actions were not normal?

A. Yeah, I have seen him when he wasn't normal, exactly.

He'd had a heart attack. He fell out of the
page 112 } house—in the bathroom—and they had to put him
to bed.

Q. Have you ever seen him have one?

A. I never seen him take one; I have seen him laying in the floor, and you had to pick him up.

Q. Where?

A. At his house in the bathroom.

Q. You sure there's no other time you have seen him fall down?

Burrell F. Alls.

A. Well, out there I have seen him laying up in the floor, and they had to pick him up.
Q. Have you ever seen him any place other than the house?
A. No.
Q. That's all.

CROSS EXAMINATION.

By Mr. Cuddy:
Q. You saw him, you say one time, when he apparently had a heart attack—you say?
A. That's what he said it was—a heart attack.
Q. Complain of something in his chest?
A. Yes, sir; he said he had a heart attack.
Q. And now you saw him on Saturday night?
A. On Saturday evening before the murder.
Q. You saw him on Saturday evening before the murder?
A. That's right.
Q. You went to his home?
page 113 } A. Yes, sir.
Q. You talk with him quite a bit?
A. Well, not long.
Q. You talked with him? You said you were there 15 or 20 minutes?
A. That's right.
Q. You talked with him and his family? He talked all right?
A. He seemed to.
Q. And then the following morning, when you were leaving your sister's home—
A. My sister's home?
Q. You saw him and took him to Ora Johnson's on Sunday morning?
A. That's right.
Q. He seemed to be all right then?
A. Excepting he acted like he was drinking there for a few minutes. He acted all right while we was going up there.
Q. You talked to him?
A. I talked to him in the car.
Q. He talked to you perfectly all right?
A. Yes, sir.

The witness stands aside.

MRS. GLADYS BURNETT,
a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

page 114 } DIRECT EXAMINATION.

By Mr. Reed:
Q. You are Gladys Burnett?
A. Yes, sir.
Q. Where are you living now?
A. I live on Fourth St.—#417 Fourth St., Southeast.
Q. Did you ever live in the apartment beneath the Lucas family?
A. Yes, sir.
Q. Were you living there on April 26 and 27?
A. Yes, sir.
Q. Of this year? How long have you lived there?
A. I have lived there about a year.
Q. Speak up and look forward.
A. I lived there about a year.
Q. You recall when Connie and the two children were killed in the house?
A. No, sir. Last time I saw them was on Saturday.
Q. Last time you saw Connie?
A. I saw Mrs. Lucas Saturday morning before she went to work, and I saw her off and on all day; and I saw the children up till late afternoon on Saturday.
Q. Late afternoon on Saturday?
A. Yes, sir.
Q. Did you hear anything unusual occur?
page 115 } A. No, sir.
Q. Upstairs on Saturday night?
A. No, sir.
Q. Did you hear anything unusual on Sunday morning?
A. No, sir.
Q. Now, you know what time Connie Lucas generally got up in the morning?
A. Around 4:00 o'clock, between 4:00 and 4:30.
Q. You positive of that?
A. Yes, sir.
Q. Now do you know that?
A. Because when she got up she always drawed water about that time. Could always set my clock between the time she got up—between 4:00 and 4:30.
Q. Always got up 4:00 or 4:30?
A. Yes, sir.

Gladys Burnett.

Q. What time you get up on Sunday morning?
A. Sometimes I got up at six; sometimes I have different times for getting up.
Q. You recall what time you got up on this Sunday morning?
A. I'm not for sure; it was around between 6:00 and 6:30.
Q. Did you hear any noises upstairs when you got up?
A. No, sir.
Q. Ma'am?
page 116 } A. No, sir.
Q. Did you see Grover Lucas on Sunday morning?
A. No, sir; I haven't saw him since last time I saw him—was on Monday afternoon when they picked him up.
Q. Now, where was your apartment with regard to the steps that led up to the Lucas apartment?
A. Next to the street.
Q. It was near the steps?
A. Yes, sir; my back door was at the steps.
Q. Only one way to get up the Lucas apartment?
A. They had the front and back.
Q. Which way did they generally go in?
A. In the back.
Q. Now, did you see any of the Lucas family Sunday?
A. No, sir.
Q. Did you see anybody at the Lucas home on Sunday morning?
A. I saw Mr. Alls go up Sunday morning, but I'm not positive what time—it could be around 8:00 or could be 9:00—I'm not for sure.
Q. You did see somebody go up the steps that morning?
A. Yes, sir.
Q. Around 8:00 or 9:00?
A. Yes, sir.
Q. And who did you say that was?
A. Mr. Alls.
page 117 } Q. What kind of a person was Grover Lucas with regard to his disposition?
A. Well, all I can tell you, he was a good man—so his wife was, too. They always, when they do you a favor, wouldn't go around talking about you—go and forget about you.
Q. Mind their own business?
A. Yes, sir.

Mr. Cuddy: If Your Honor please, I don't mind giving him a lot of leeway—

The Court: You are giving them a lot of leeway. Go ahead, Mr. Reed. Mr. Cuddy's not objecting.

Mr. Reed: Just about finished.

Q. Who else lives downstairs, besides you?

A. Mr. Rucker and his grand-daughter and Mrs. Flowers.

Q. Mr. and Mrs. Rucker, and Mr. and Mrs. Flowers?

A. Yes, sir.

Q. Did you see or hear them that Sunday morning?

A. No, sir.

Q. You know whether or not Grover Lucas drank much?

A. Well, I saw him drunk maybe once or twice*t* or three times.

Q. And you say you saw him drunk? What do you mean?

A. I saw him twice*t*—he was so drunk he had to have somebody help him up the steps.

Q. Help him up the steps? Other times you saw page 118 } him, he was able to navigate on his own?

A. Yes, sir.

Q. That's all.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. How long have you known him?

A. I have knowed him about a year, I have knowed him.

Q. About a year? You didn't see or hear anything up there on Sunday morning at all?

A. No, sir.

Q. Stand aside.

The witness stands aside.

WILLIAM RUCKER,

a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are William Rucker?

A. Yes, sir.

Q. Where are you now living, Mr. Rucker?

William Rucker.

A. I live at #427 Eighth St., Vinton.
Q. Where were you living in April, 1958?
A. April, 1958?
Q. This year?
A. This year?
Q. Yes.
page 119 } A. Same place—you mean when the man is claimed done all the killing?
Q. Yes.
A. I was living right down under Mr. Lucas.
Q. Who else was living under Mr. Lucas besides you?
A. Mr. Flowers—Don Flowers and his wife.
Q. And you and your wife—Maggie Rucker, she's your wife?
A. That's right.
Q. Did you give a statement to the police shortly after this thing happened?
A. I don't think so. I may have done it; I wouldn't say positive.
Q. Wouldn't say positive?
A. No.
Q. Well, on Sunday, April 27th, the morning that this thing was supposed to have happened, what time did you get up; you recall?
A. We got up between six and seven, but those folks were up upstairs before that time. We heard them drawing water.
Q. You heard them drawing water on Sunday before this time?
A. That's right.
Q. What time did Connie Lucas generally get up, if you know?
page 120 } A. Well, she got up always pretty early in the morning; I would say around five more every morning.
Q. Up around five, or a little better?
A. Yes, sir.
Q. Now you got up around six—between six and seven at that time?
A. Somewhere along there. We wasn't in no hurry that morning—wasn't nothing to do.
Q. You are positive we are talking about Sunday, the 27th day of April?
A. The morning that the accident happened.
Q. All right. Did you see any of the Lucas family on Sunday morning?

William Rucker.

A. On Sunday morning I seen Mr. Lucas there; and I didn't see the little boy, but I heard—

Q. You saw Mr. Lucas at what time?

A. I would say between seven and eight. He owed me a little money, and come down and said he'd pay me about 10:30.

Q. Where did this conversation take place?

A. Right on my back porch.

Q. You say you did not hear—did not see the Lucas boy? You heard him?

A. What happened, he always come through and gathered up cigarette ducks, and he come through the hall, coming from Mr. Flowers' room, and says, "Mr. Rucker, you page 121 } got any cigarette ducks?" I told him, "No, wasn't none."

Q. Did you see him?

A. Never seen him.

Q. Know his voice?

A. Knowed his voice.

Q. Positive about that?

A. I'm sure of it.

Q. Is there any way that you could be more certain that this occurred on Sunday instead of Saturday?

A. I'm satisfied it occurred on Sunday. On Saturday evening that man's wife and these two little children went down town, and then she come back and was standing right at Mrs. Burnett's step, right where she goes up a step—4:30. This was Sunday morning after.

Q. Sunday morning after she'd gone to town?

A. That's right.

Q. That's all you know?

A. That's all I know about it.

Q. You did hear some noise?

A. Didn't hear a bit of noise, except drawing water.

Q. Drawing water?

A. Drawing water.

Q. That's all.

CROSS EXAMINATION.

By Mr. Cuddy:

page 122 } Q. You lived in the downstairs apartment?

A. Right under them; yes, sir.

Q. (Indicating Exhibit #3) That's your pick?

A. Yes, sir.

William Rucker.

Q. You kept it under the steps?
A. Under the steps—it went upstairs.
Q. Went up to the—
A. Been there ever since I have been living there.
Q. Been there for some time? You say that you talked to Grover Lucas on what day?
A. It was on Sunday morning—I don't know what day or month it was, or nothing—Sunday morning.
Q. Sunday morning?
A. Yes, sir.
Q. You sure?
A. I'm sure. You think I'd tell a lie?
Q. I don't think it makes any difference.
A. I'm telling the truth.
Q. What else did you hear up there?
A. Nothing but drawing water.
Q. Nothing but drawing water?
A. That's the truth.
Q. And when did you hear that?
A. Between 5:00 and 6:00 o'clock.
Q. You say you heard the little boy?
page 123 } A. The little boy come through the room—from the front room in where Don Flowers lived, and come out through and hollers—said, "Mr. Rucker, you got any cigarette butts?" I told him no.
Q. You heard all that Sunday morning?
A. That's right.
Q. Now, you remember talking to Officer Penn?
A. Well, I don't know Mr. Penn.

Mr. Cuddy: Stand up, Mr. Penn.

Q. Remember talking to that officer?
A. Yes, I have seen him up there.
Q. And you talked to him on the night that they found Mrs. Lucas and the two children dead, and the other girl in the apartment upstairs very badly injured, didn't you?
A. I—well, I don't remember exactly when it was I was talking to him.
Q. You don't remember all that?
A. No, sir.
Q. He did come up and talk to you?
A. I'd talked to him.
Q. And you told him there at that time that you last saw the family on Saturday at noon?

William Rucker.

A. That was right, too.
Q. Last saw the family on Saturday at noon?
A. 4:30—wasn't no noon to it.
Q. And you stated you heard some groaning?
page 124 } A. That groaning was heard all day Sunday.
Q. All day Sunday?
A. And I thought it was Mr. Lucas, because he drinked a whole lot and got down in the floor and wallowed. I thought it was him.
Q. You heard groaning on Sunday, didn't you?
A. All day Sunday.
Q. Up there?
A. Yes, sir.
Q. And you heard them groaning?
A. I certainly did.
Q. And that was all day Sunday?
A. Well, mighty nigh all day; all the time I was there I heard some of that groaning going on.
Q. You stated to Mr. Penn that you last saw the family around noon Saturday; that you "heard groaning last around 8:00 P. M. last night."
A. No, I didn't state no such stuff as that.
Q. But you thought it was some one drunk?
A. I did hear some one on Saturday—on Sunday morning—all day—but I thought it was him drunk.
Q. You told Mr. Penn that you last saw any of these people on Saturday?
A. Saturday at 4:30.
Q. And you told them that on the night they
page 125 } found them—the night of the 28th, didn't you?
A. The night—on Saturday at 4:30 was the last time we seen them till next morning.
Q. You didn't say anything to him about the next morning. You deny you made this statement to Mr. Penn around 8:00 o'clock, or a little after, on the night of April 28th—that you last saw the family around noon Saturday?
A. I don't know what I told Mr. Penn. I seen them on Saturday. I don't know what he set down. Mr. Reed come to my house the other day, and he started to set down I stated a certain time I didn't say. No certain time at all. I told him, "Don't you set that down."
Q. Actually you didn't see them after Saturday?
A. No, sir. I seen Mr. Lucas that morning, but I didn't see none of the rest.
Q. Now, on Tuesday night, Capt. Allman and Mr. Belcher

came up there and talked to you all, didn't he?

A. I don't know one of those policemen from another.

Q. That man with the yellow pad in his hand? (Pointing to Capt. Allman)

A. Yes, sir.

Q. He was up at your house Tuesday night?

A. They talked to Mrs. Flowers.

Q. They were talking to you? You were there, and Mrs. Rucker was there, and Mrs. Burnett was there—

page 126 } weren't they?

A. All around there.

Q. Talking to you? And isn't it a fact that you, and Mr. Burnett and Mr. Flowers said it was on Saturday night, and your wife kept saying, "No, they did not. It was on Sunday you saw the little boy"?

A. No. It was a Sunday morning the little boy come through the house. I didn't see him at all.

Q. Stand aside.

By Mr. Reed:

Q. Is Maggie Rucker your wife?

A. Yes, sir.

The witness stands aside.

MRS. MAGGIE RUCKER,

a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are Maggie Rucker?

A. Yes, sir.

Q. You are the wife of William Rucker?

A. Yes, sir.

Q. You live down on Eighth St. in Vinton?

A. Yes, sir.

Q. Speak up loud Mrs. Rucker, and look forward so that the Court and jury can hear what you have got to say. You used to live below the Lucas family?

page 127 } A. Yes, we did.

Q. How long had you lived there?

A. I imagine it was about around about three months.

Q. About three months?

Maggie Rucker.

A. Yeah.
Q. Who lived with you and your husband?
A. Well, my granddaughter and her husband and two children.
Q. What granddaughter is that?
A. Jean Flowers.
Q. Jane Flowers? And Donald Flowers is her husband?
A. Yes.
Q. Now, do you recall Sunday, April 27th, when Mrs. Lucas and the two children were killed?
A. No, I don't. I heard water—somebody drawing water upstairs around about 5:00 or 5:30, and that's the last I heard anybody.
Q. That's the last time you heard anything?
A. Last I heard anybody.
Q. Between 5:00—
A. 5:00 and 5:30.
Q. What time did Mrs. Lucas generally get up in the morning?
A. Well, she generally got up always around 5:00 or 5:30—about the same time we got up. Sometimes she
page 128 } got up at 4:00 o'clock. And she worked.
Q. What time was she due at work; you know?
A. I think she went to work between 7:00 and 7:30. I used to get up at the same time. And I always left around about 7:30—and she left before I did.
Q. Now, on Sunday morning did you hear any unusual noises?
A. No, sir; I didn't.
Q. Other than drawing water?
A. No, I didn't. Heard water drawing—that's all I heard.
Q. Did you see Grover Lucas on Sunday?
A. No, I didn't. I didn't see him at all.
Q. Did you see any member of the family on Sunday morning?
A. No, I didn't see any of them.
Q. Didn't see any of them at all?
A. Huhn-un.
Q. That's all.

CROSS EXAMINATION.

By Mr. Cuddy:
Q. Stand aside.

The witness stands aside.

MRS. JEAN FLOWERS,
a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

page 129 } By Mr. Reed:

Q. You are Jean Flowers?

A. Um-hum.

Q. Where were you and your husband living in April of 1958?

A. Living up there on 12th St.

Q. Did you live in the builidng in which the Lucas family lived?

A. Yes, sir.

Q. You lived below them?

A. Um-hum.

Q. You recall Sunday morning that Mrs. Lucas and the children were killed—that particular Sunday; you recall that?

A. Um-hum.

Q. What time did you get up that Sunday morning?

A. We got up about a quarter of nine, or maybe a little before that.

Q. Had you heard any noises during the night, or early Sunday morning?

A. No, sir.

Q. Upstairs?

A. No, sir.

Q. Did you see any of the Lucas family on Sunday morning?

A. Yes, sir; I did.

Q. You saw Denny?

page 130 } A. Yes, sir.

Q. Where did you see Denny?

A. Denny was in my kitchen when we was eating breakfast.

Q. In your kitchen while you were eating breakfast?

A. Yes, sir.

Q. About what time was that?

A. Maybe ten, or maybe a little after ten.

Q. How long was he there?

A. He was there just a few minutes.

Q. Who all was there that saw Denny?

A. My husband was there; my brother was there.

Q. What's his name?

A. My brother?

Q. Yes.

Jean Flowers.

A. James Blessard.

Q. All right. Why is it you know that it was on a Sunday, and not another day?

A. Well, he was down there Saturday, and he went and got me some bleach to wash my clothes with. And he was always down there Sunday morning—I tell you why—I was washing Saturday night's dishes Sunday morning.

Q. You were washing Saturday night's dishes Sunday morning?

A. Yes, sir.

Q. That was the day you say he was down
page 131 } there; he stayed just a few minutes?

A. Um-hum. And he also was down there when I was ironing the clothes between 12:30, somewhere along there.

Q. He was down there while you were ironing clothes?

A. Um-hum.

Q. Sunday?

A. Um-hum.

Q. What time?

A. Between 11:30 and 12:30, somewhere along there.

Q. How long did he stay?

A. He stayed there, and I told him he wasn't going to see the television, and he went outside.

Q. You weren't going to cut it on?

A. He wanted to watch television.

Q. Did you give a statement to the police, or any of the detectives?

A. Yes, sir.

Q. Shortly after the body was discovered—any time after that?

A. I think it was the next day. They said we was mistaken, but we wasn't mistaken.

Q. The police asked you on the next day?

A. Yes, I think it was the next day they was down there.

Q. And they told you you was mistaken?

A. Wrote in the paper that we were.

page 132 } Q. Postively tell the Court and jury Denny went down there on two occasions on Sunday morning, the 27th of April?

A. Yes, sir.

Q. Your husband was there?

A. Yes, sir; but he said he couldn't be sure.

Q. We'll ask him.

A. All right.

Jean Flowers.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You said they said in the paper you were mistaken?

A. Um-hum.

Q. Newspaper reporter—and not the police officers?

A. Um-hum.

Q. They came up there and talked to you and your husband, and to Mr. and Mrs. Rucker, didn't they?

A. Um-hum.

Q. And there was quite a bit of conversation between the four of you as to which day it was, wasn't it?

A. (Witness does not respond).

Q. Your husband said it was—he thought it was on Saturday; you said no, you knew it was on Sunday?

A. No; huhn-un.

Q. What was it?

A. He said that he was Sunday, too—Saturday, too, with the fishing reel his mama went and got.

page 133 } Q. There was quite a bit of conversation between you and Mr. Flowers, and Mrs. Rucker, your husband and Mr. Rucker, as to whether it was Saturday you saw him, or Sunday morning, wasn't it?

A. (Witness shakes head).

Q. This officer right here, and that officer over there (points to officers) were up there talking with you all, weren't they?

A. Allman was up there?

Q. Mr. Allman, right here (indicating) and Mr. Belcher over there—those are the officers that came around?

A. He don't look much like the one that was up there, to me.

Q. You all had quite a little time deciding whether it was *Satuday* or Sunday, didn't you?

A. No, I told them straight out it—

Q. You deny you did said—

A. I told him straight out it was Saturday—I told him Sunday morning he was down there.

Q. And your husband said he thought it was on a Saturday?

A. He wasn't sure.

Q. Mr. Rucker said he thought it was on a Saturday, didn't he? Remember what she said? Didn't she say—

A. Just like this—I can't recollect what she

page 134 } said. I know what I said.

Q. Didn't Mr. Rucker say no, he thought it was on Saturday?

A. So much said, you don't know what was said.

Q. Your husband said no, he thought it was on a Saturday, didn't he? Isn't that what he said?

A. He said the kid was down there Saturday with the reel his mama got him.

Q. He was down there Saturday? He didn't think he was down there Sunday?

A. I don't know whether he said he was down there Sunday or not.

Q. What program did he want to see?

A. He just comes down and watches television.

Q. What program did he want to see—and you weren't going to turn the television on?

A. He comes down all during the day.

Q. For any particular day program?

A. No, sir.

Q. Did you tell the detectives on the 28th the same thing you have told this Court and jury today?

A. That the kid was down there Sunday?

Q. Yes.

A. Yes, sir; he was.

Mr. Reed: That's not proper.

page 135 } Mr. Cuddy: Why is it improper?

The Court: It's just a question of going over the same thing again. You asked her that question on direct examination, and she hasn't changed her story in the least.

The witness stands aside.

DONALD FLOWERS,

a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are Donald Flowers?

A. Yes, sir.

Q. And you used to live beneath the Lucases up on Center Ave. and 12th St.; is that right?

A. Yes, sir.

Q. Now, Mr. Flowers, do you remember Sunday, April 27th, of this year, the day that Mr. Lucas was charged with killing his wife and two children; do you recall that day?

Donald Flowers.

A. Yes, sir; I do.
Q. You do remember that day?
A. Yes, sir.
Q. What time did you get up on Sunday morning?
A. Oh, I don't know, around about—I don't know exactly, to tell you the truth, what time it was; I didn't pay no attention to it.
page 136 } Q. Don't remember what time you got up? Did you see Grover Lucas Sunday morning?
A. No, sir; I couldn't say whether I did, or whether I didn't.
Q. You don't know whether you did or not?
A. No, sir.
Q. You see any other members of the Lucas family on Sunday morning?
A. No, sir; I can't say I did.
Q. You can't say that you did?
A. No, sir.
Q. Can't say whether you did or not?
A. No, sir.
Q. Is that right?
A. Yes, sir.
Q. Do you recall whether you saw any of the family on Saturday, the day before?
A. Yes, sir; I seen them on Saturday.
Q. Who'd you see on Saturday?
A. That boy—he come out to the car.
Q. Came out to the car?
A. Yes, sir; me and my wife's brother was sitting out in the car, and he had a little old 98¢ fishing rod—reel.
Q. That was on Saturday?
A. Saturday evening.
page 137 } Q. What time you eat breakfast—it was on Sunday morning; you know that?
A. Nine or ten, something like that; I don't know exactly.
Q. Was there anybody else there besides you and your wife?
A. I don't know. I don't know whether my wife's brother was over there or not.

The Court: Speak out a little louder.

Q. What is your wife's brother's name?
A. Butch Blessard.
Q. James Blessard?

Charlotte Beckner.

A. Yes, sir.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You live in the same house—occupy one of the apartments?

A. Yes, sir.

Q. And on Saturday afternoon you saw the little boy get a present that his mother had just given him—a little fishing rod?

A. Yeah.

Q. And so far as you know, that's the last time you saw any of the Lucases?

A. Yes, sir.

page 138 } The witness stands aside.

MISS CHARLOTTE BECKNER,

a Minor, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are Charlotte Beckner?

A. Yes, sir.

Q. Charlotte, it's awfully hard to hear in here, and I'm going to ask you to look straight ahead and speak up in a loud voice. Can you do that?

A. I'll try. I'm scared.

Q. You're scared?

A. Yes.

Q. Do the best you can. How old are you Charlotte?

A. 16.

Q. Where do you live now?

A. Ypsilanti, Mich.

Q. You live in Michigan?

A. Yes, sir.

Q. Are you related to Grover Lucas?

A. Yes, sir; I am.

Q. What relationship?

A. I am his niece.

Q. Did you used to live in Roanoke?

Charlotte Beckner.

A. Yes, sir; I did.
page 139 } Q. Have you ever lived with the Lucas family?
A. Yes, sir; I did.
Q. When?
A. I went up there to live about March 25th or 26th, I can't remember which.
Q. Of this year?
A. Yes, I did.
Q. And how long did you live there this year?
A. I left the 5th of April.
A. You left on the 5th of April of this year?
A. Yes, I did.
Q. Have you ever stayed with the family before?
A. I have stayed all night and weekends, and things like that.
Q. Would you be about the same age as Dorothy Smith?
A. I am from April to November older than Dorothy.
Q. April to November older than Dorothy?
A. Yes, sir.
Q. Now, when did you last see your uncle, not counting the time he'd been in jail; when did you last see him?
A. I seen him on the Monday when they picked him up.
Q. About what time was that?
A. About 4:25 or 4:30.
Q. Where was he then?
A. He went up Day Ave. right by my mother's
page 140 } house.
Q. Right by your mother's house? Is that where you were on the day after—
A. I was living with her after I moved out.
Q. Was anybody with him?
A. No.
Q. How did he walk when you saw him?
A. He was staggering.
Q. When did you see him—the last time before that time?
A. On Friday evening before that happened.
Q. And that would been, then, the 26th—25th of April, Friday evening before it happened?
A. Yes, sir.
Q. And where did you see him then?
A. Him and my aunt was going up a street by my mother's house.
Q. Now, what date did you say you went to their house in March?
A. 25th or 26th—I forget which.

Virgil Thomas.

Q. You stayed till the 5th of April?
A. Yes.
Q. Tell the Court and jury what time Connie Lucas generally got up in the morning.
A. She got up about four—between four and 5:00 o'clock every morning.
page 141 } Q. Including Sunday morning?
A. Yes, sir.
Q. What would she do on Sunday morning?
A. She would get up and listen to the preaching on the radio.
Q. Would the children get up with her?
A. Sometimes, and sometimes they didn't.
Q. Now, during the time that you stayed there, did Grover Lucas do any drinking?
A. Yes, sir; he was.
Q. How often would he drink?
A. He drank just about every day.
Q. Drank every day? What did he drink, Charlotte?
A. He drank beer, and drank some wine.
Q. How did he treat his family?
A. Well, kind—I mean, I don't know now, how.
Q. I can't hear you.
A. Ok; I guess.
Q. Don't you know?
A. Well, I mean they had their ups and downs. I mean, I couldn't exactly put it into words. I mean, him and my aunt fussed some, but they'd make up.
Q. That's all.

CROSS EXAMINATION.

Mr. Cuddy: No questions.

page 142 } VIRGIL THOMAS,
a witness of lawful age, called in behalf of the defendant, being duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You are Mr. Virgil Thomas?
A. Yes, sir.
Q. And I believe you're employed as a member of the City Sergeant's Office here in Roanoke?

Virgil Thomas.

A. Yes, sir.
Q. And I believe—what's your capacity—jailer?
A. Yes, sir.
Q. You're a jailer? Do your work up in the jail?
A. Yes, sir.
Q. Mr. Thomas, were you on duty when Mr. Lucas was taken up to jail?
A. No, sir.
Q. When did you first see Grover Lucas?
A. First time I saw him was on Tuesday morning.
Q. He was picked up on Monday, and you saw him on Tuesday?
A. Yes, sir.
Q. What was his condition on Tuesday morning?
A. I don't know, sir.
Q. Did you have anything to say to him?
A. No, sir.
page 143 } Q. Did he have anything to say to you?
A. No, sir.
Q. Then when did you next see him?
A. I didn't see him any more then until Wednesday morning.
Q. What, if anything, happened on Wednesday morning?
A. Did anything happen?
Q. Yes. Did you observe his condition on Wednesday morning?
A. He seemed to be a little nervous.
Q. And after that when did you see him?
A. Well, I saw him off and on practically all day Wednesday while I was on duty.
Q. What did he do most of the time?
A. Laid on his cot most of the time.
Q. Have much to say?
A. Very little. In fact, I never got in any conversation with him.
Q. Never did?
A. No, sir.
Q. Did anything—after Wednesday—occur that you recall Grover was involved in in the jail?
A. After Wednesday?
Q. Yes.
A. It was either Thursday or Friday; I don't
page 144 } recall which day.
Q. What happened?

Virgil Thomas.

A. It was that one of the men in the cell with Mr. Lucas called for one of the jailers. And Mr. Ball— one of the other jailers—and I were on duty, and we went up there to where his cell was, and—well, as I recall, he was laying on the floor.

Q. What was he doing?

A. Well, to me it appeared like some one had fainted, or had some type of spell, or something.

Q. And he was laying on the floor?

A. Yes, sir.

Q. What did you do for him, if anything?

A. Well, by the time we got into his cell, he was—he wasn't exactly conscious, to my opinion—but just enough so he was trying to get up himself. We helped him up and set him on his bunk. And all he was talking about was wanting some wine.

Q. What did you do?

A. We obliged him.

Q. Gave him some wine?

A. Yes, sir.

Q. On either Thursday or Friday?

A. I can't recall.

Q. One of those two days?

A. Yes, sir.

Q. And Mr. Ball was with you at the time—the page 145 } other jailer?

A. He was.

Q. Do you know whether or not you have seen—I'm sure you have—a lot of people come in the jail that have had an awful lot to drink?

A. Well, as a rule when we get them up there they are sober.

Q. Because they stay downstairs, and then they are brought up here?

A. Yes, sir.

Q. Do you know whether or not—how did he act after he got the wine?

A. Well, he calmed down, and we laid him on his bed, and we kept pretty close watch on him there for a while; and as well as I recall, he went off to sleep in a little bit.

Q. And after that experience, did you have any more like experiences?

A. No, sir; not while I was on duty.

Virgil Thomas.

Q. But I ask you again—you have seen an awful lot of people been put in jail after they had a lot to drink?

A. Quite a few, sir.

Q. Tell the Court, in your opinion, from what you have observed as a jailer, if Grover Lucas had quite a bit to drink before he was apprehended?

page 146 } A. Well—no, I can't say that. Because most of the people that come up there—even if it's their first time—they are not exactly calm, due to the fact they are in jail. But I can't answer that, sir.

Q. Who was on duty when Mr. Lucas was brought upstairs?

A. Mr. Taylor.

Q. Where is he now?

A. Mr. Taylor is in the hospital, sir.

Q. That's all.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. Now when he was brought up Monday evening around 9:00 o'clock you were not on duty?

A. I wasn't on duty at that time, sir.

Q. You saw him on Tuesday?

A. I saw him Tuesday morning, just for a few minutes.

Q. That's when we came up and asked you to bring him out?

A. Not Tuesday, sir.

Q. You weren't there when we asked that he be brought out?

A. I went to work Monday night at midnight .

Q. And—

A. And I got off from work at 8:00 o'clock Tuesday morning. So I didn't see him any more then till Wednesday morning at 8:00 o'clock when I came back.

page 147 } Q. Then you saw him just a short while Tuesday morning?

A. Yes, sir.

Q. In the place?

A. Yes, sir.

Q. On Wednesday when you saw him he seemed to be—the only thing you noticed was a little bit of nervousness?

A. That's true, sir.

Q. And he was there all day Wednesday? And you either

brought him out there, or had some one of your assistants bring him out when Capt. Allman and I talked to him?

A. I brought him out for the detectives once or twice—I don't recall, sir.

Q. You did on Wednesday morning?

A. On Wednesday; yes, sir; I did.

Q. Did you notice anything other than a little nervousness?

A. That's all, sir.

Q. Thursday he was perfectly all right?

A. He was all right until one of the men in the cell called for him.

Q. Was that Thursday or Friday?

A. I can't recall, sir; it was either Thursday or Friday.

Q. Either Thursday or Friday?

A. Yes, sir.

Q. But it was after he had been up there several

page 148 } days?

A. That's right.

Q. And it appeared he might have fainted?

A. Well, of course we don't know those things.

Q. From appearances had it looked as if he had fainted?

A. He was on the floor, sir.

The witness stands aside.

The Court: The newspapers will probably be full of accounts of this trial, and so will the radio and television. I want to warn you not to read any newspaper articles, not to listen to the radio or television about this case. Very briefly, from this point on I want you to get no information about this case except what you hear from this witness stand. You're excused until tomorrow morning at 10:00 o'clock.

(Court adjourned for the day at 5:10 P. M., this trial to be continued the following day, September 30, 1958).

page 149 } I, John H. Spangler, court reporter, do hereby certify that I was duly sworn prior to the commencement of this cause; that the proceedings herein contained were taken down by me in machine shorthand and accurately transcribed to the best of my abilities, and that this transcript is a true and accurate account of all of the evidence taken, motions made and the Court's action with

respect thereto, all of the objections and exceptions, and other incidents of the trial of the Commonwealth of Virginia *v.* Grover Earl Lucas, tried in the Hustings Court for the City of Roanoke, Virginia, on the 29th day of September, 1958.

JOHN H. SPANGLER
Court Reporter
2447 Tillett Rd.
Roanoke, Va.

page 150 } CLERK'S CERTIFICATE.

I, W. H. Carr, Clerk of the *Hurtings* Courts for the City of Roanoke, Virginia, do hereby certify that the foregoing stenographic copy or report of testimony and other incidents in the trial of the case of the Commonwealth of Virginia *v.* Grover Earl Lucas, was filed with me as Clerk of said Court on the 13th day of May, 1958.

W. H. CARR, Clerk.

page 151 } JUDGE'S CERTIFICATE.

I, Dirk A. Kuyk, Judge of the Hustings Court for the City of Roanoke, Virginia, do hereby certify that the foregoing is a true and correct stenographic copy or report of all the testimony that was introduced, and other incidents of the trial therein, all questions raised and all *ruings* thereon, and the exceptions noted in the case of the Commonwealth of Virginia *v.* Grover Earl Lucas, tried in the Hustings Court for the City of Roanoke, Virginia, on the 29th day of September, 1958; and it appears in writing that the Commonwealth Attorney has had reasonable notice of the time and place when this report of the testimony and other incidents of trial would be tendered and presented to the undersigned for certification, which was presented to me within sixty days after final judgment and signed by me within seventy days.

I also certify that the court reporter reporting said case was sworn to take down and transcribe the proceedings faithfully and accurately, to the best of his ability.

Given under my hand this the 13th day of May, 1959.

DIRK A. KUYK, Judge.

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Durwood Davis.

Transcript of proceedings had and evidence introduced before the Honorable Dirk A. Kuyk, Judge of the Hustings Court of the City of Roanoke, Virginia, and a Jury of twelve, on September 30, 1958, and October 1, 1958, being the second and third days of the above captioned trial, and being continued from September 29, 1958.

Appearances: C. E. Cuddy, Esq., Arthur B. Crush, Esq., for the Commonwealth;
G. W. Reed, Jr., Esq., Counsel for the Defendant.

Eunice M. Lewis
Court Reporter
Roanoke, Virginia.

• • • • •

page 155 } The Court: Mr. Reed, you want the jury polled?
Mr. Reed: No, sir.
The Court: Mr. Cuddy?
Mr. Cuddy: No, sir.
The Court: The defense may go ahead.
Mr. Reed: I would like to call Durwood Davis.

DURWOOD DAVIS,
a witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You are Durwood Davis?
A. Yes, sir.
Q. Where do you live, Mr. Davis?
A. 1213 Pleasant View Avenue.
Q. What type of business are you in?
A. Grocery business.
Q. And where is your grocery business located?
page 156 } A. At Tenth Street and Center Avenue, N. W.
Q. You look at Judge Kirk and the jury so that they can hear you. You say your grocery business is located at Tenth Street and Center Avenue, N. W.?
A. Yes, sir.

Durwood Davis.

Q. Do you have a license to sell beer and wine at your grocery store?
A. Yes.
Q. Do you know Grover Lucas?
A. Yes.
Q. You work in the store yourself?
A. Yes.
Q. Did Grover Lucas frequently come in your store?
A. Yes, sir.
Q. Did he ever buy any wine or beer from you?
A. Yes, sir.
Q. Tell the Court and jury how often Grover Lucas came in, and about when he started to come in, and how much beer or wine he would purchase a day?
A. The last two or three years he's been coming into the store at least once, sometimes twice a day, every day for maybe three or four weeks at a time; and then maybe I wouldn't see him for a few days, and then he would start back for every day for three or four weeks.

page 157 } Q. And when he would make a purchase what would he purchase?

A. Always a quart.
Q. And how often would he purchase a quart?
A. Whenever he came into the store, at least once a day, sometimes twice.
Q. Has this been as recent as April, 1958?
A. Yes, sir.
Q. Mr. Davis, did you ever observe Grover Lucas staggering or with a speech impediment?
A. I never saw him stagger; he could drink a whole lot without it being noticeable.
Q. Without being detected?
A. Yes, sir.
Q. Do you know Grover Lucas' reputation for being a peaceful, law abiding citizen?
A. He was always quiet.

Mr. Cuddy: I object.
The Court: You had better qualify him first as to whether he knows his reputation among the people with whom Mr. Lucas is associated.

Mr. Reed:

page 158 } Q. You've heard the question, Mr. Davis, do you know the people that Mr. Lucas associated with?

Durwood Davis.

A. The fellows he worked for usually came into the store with him.

Q. Well, the people in the community where he lived, do you know those people?

A. Well, his family came into the store too and, of course, all of his neighbors.

Q. What is his reputation in the community for being a peaceful, law abiding citizen.

A. Well, he was always quiet when he came into the store—

Mr. Cuddy: I object.

Mr. Reed:

Q. Just tell what his reputation is?

The Court: Just tell his reputation, not what you think of him, but what his reputation is.

A. A drunkard.

Q. You know his reputation as a law abiding and peaceful person?

A. No, sir.

Q. You don't know it?

A. Well, there was one incident. One time—

Mr. Cuddy: I object.

page 159 } A. Don't tell about the incident.

Mr. Reed: That's all right, cross examine.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You run a grocery store?

A. Yes, sir.

Q. And you have license to sell wine and beer?

A. Yes, sir.

Q. And you say he would come in there sometimes each day for a week or so, and then you wouldn't see him for awhile, and then he would come back again, and he bought a quart, a quart of what?

A. Wine, sir.

Q. Did you ever sell it to him when you thought he was under the influence of intoxicants?

Nellie Assaid.

A. No, sir, I never saw him drunk.

Q. You never saw him drunk, and during all the time that he came into your store and made the purchases you have never seen him when you thought he was under the influence of intoxicants, have you?

A. He could drink a whole lot and you'd never know it, and he never staggered.

Q. You have never seen him when you considered him under the influence of intoxicants?

A. No, sir, I don't think I have.

page 160 } Mr. Cuddy: All right, stand aside.

Witness stands aside.

Mr. Reed: Call Nellie Assaid.

Mr. Cuddy: There she is in the Courtroom. I suggest that all the witnesses that are going to be used and has not been used be excluded on his motion.

Mr. Reed: I didn't know they were in the Courtroom.

The Court: Are there any others summoned here as witnesses in the Courtroom, those of you who have not testified?

(There being none examination of next witness was started).

NELLIE ASSAID,

another witness on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are Nellie Assaid?

A. Yes.

page 161 } Q. Where do you live?

A. 933 Shenandoah Avenue, N. W.

Q. Do you have a place of business at that address?

A. Yes.

Q. What kind of business you have?

A. Grocery, wine and beer and lunch.

Q. You sell wine and beer there?

A. Yes.

Q. You have license to do so?

A. Yes.

Nellie Assaid.

Q. Nellie, do you know Grover Lucas?
A. Yes, I do.
Q. Did he ever come in your store?
A. Yes, he did, for every day.
Q. For how long?
A. For two or three weeks at a time, and then he would stop for awhile and then he would start up again.
Q. What would he buy?
A. Well, he would buy tobacc*a,* wine and beer.
Q. Did he ever drink any beer and wine in your place?
A. He drank beer.
Q. When he would come in on these intervals of two or three weeks at a time and purchase beer and wine, how much would he purchase at a time?
page 162 } A. He would buy one small can of beer and he would drink that, and he usually bought a bottle of wine and took that out with him, and that was in the morning. And then he come in at lunch time for another can of beer, and then in the evening he would come back and get a beer and a wine.
Q. You mean he would buy as much as two quarts of wine and three bottles a day from you?
A. Yes, about three beers and one or two wines every day.
Q. One or two wines every day. And was this going on back in April, 1958?
A. Yes.
Q. Did you ever see Grover Lucas in a condition in which you would refuse to sell him beer or wine?
A. I refused him twice in all the times he came in my store.
Q. You refused him twice. After he would drink this did he display the fact that he had been drinking in any of his actions?
A. No.
Q. Miss Assaid, did you see Grover Lucas on Saturday, April 26th, or Sunday?
A. I don't know the dates, but the first time I saw Grover Lucas was on Sunday morning. He came in Sunday morning and brought a pair of shoes in there and wanted to
page 163 } sell them to me for 75¢. I didn't see him on Friday and I didn't see him on Saturday, but Sunday he came in and wanted to sell me a pair of sandals.
Q. What time was that?
A. I can't recall the time, but I was getting dressed to go

to church, and my sister said somebody wanted to see me, and I came down and I saw the shoes and I told him I didn't want them, and he walked out. My sister told him to take the shoes home to his wife—

Q. Wait just a minute now. Can you give us any idea what time it was Sunday morning?

A. I was getting ready to go to early Mass.

Q. About what time would that be?

A. Somewhere about 8:00 or 8:30.

Q. And he wanted to sell the sandals for 75¢?

A. Yes.

Q. What does a fifth of wine cost?

A. Well, at that time it was about 70¢.

Q. And you did not purchase the shoes?

A. I did not.

Q. And he left?

A. Yes.

Q. That was on Sunday morning, the 27th, around 8:00 or 8:30 in the morning. Now, when did you next see Grover Lucas after that?

page 164 } A. I saw him on the afternoon of the evening they found his family dead. He came in my store around two o'clock and he was crying—

Q. This is Monday, is it?

A. Yeah. And he sat down on the stool and I said, "Grover, what's wrong with you?" And he said, "I just got word from West Virginia that my family had been killed in a car wreck." And I told him that I had had the radio on all day and hadn't heard any such a story and it was not true. And I said, "Do you want me to call the Times and World News to verify that?" And he said, "I wish you would." And so I called and whoever I talked with said they had no such a story. And I went back up there where he was standing and I said, "Grover, are you drunk?" He said, "No, I'm not drunk." I said, "Then you must be crazy." So then he went out.

Q. Then he left there that Monday afternoon?

A. Yes, he left and was gone a few hours and he came back, and he had some groceries in a box and he called me to the back of the store and asked me if I would buy those groceries for another 75¢. I said, "Grover, take the groceries home to your family, I don't want them." He had some sweet milk and some grapefruit and something else—I can't recall what it was.

Q. About what time was that Nellie?

Nellie Assaid.

A. I don't know, but several hours after the first time he was there.

Q. And you say the first time it was around
page 165 } two?

A. Yes.

Q. And you didn't trade with him?

A. No.

Q. He left then, did he?

A. Yes.

Q. Did you see him any more after that?

A. No.

Q. Nellie, I want to ask you a question. You live in the same neighborhood that Grover Lucas lived in?

A. Yes.

Q. Your place is at Tenth and he lived at Twelfth and Center?

A. That's right.

Q. Do you know the people he associated with?

A. I never did see him associate with anybody.

Q. Do you know what his reputation in this community was for being a peaceful, law abiding citizen?

A. Well, I never heard any comments on him only that he drank.

Q. Only that he drank.

A. Yes.

Mr. Reed: That's all.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. He's been coming in your store for several years?

A. Yes.

page 166 } Q. During the several years that he's been coming there you've only seen him sufficiently under the influence of intoxicants that you would not sell him wine or beer only on two occasions?

A. Right.

Q. On Sunday morning when he came in there it was somewhere around eight or nine o'clock?

A. Yes.

Q. He was sober then, wasn't he?

A. I was in a hurry to get ready for church and I didn't pay much attention.

Sam Williams.

Q. You didn't pay much attention, but so far as you could ascertain by looking at him he certainly was not drunk?
A. No.
Q. He came back then on Monday?
A. Yes, sir.
Q. And he told you about his wife and whole family being killed in an automobile accident in West Virginia?
A. That's right.
Q. And he was not drunk at that time?
A. He didn't appear to be drunk.
Q. And his condition during the entire time of approximately two years, when he came in your store on various occasions, he was sober enough that you did not think it was wrong to sell him wine or beer?
A. No, sir.

page 167 } Mr. Cuddy: All right, stand aside.

Witness stands aside.

SAM WILLIAMS,
another witness on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You are Sam Williams?
A. Yes, sir.
Q. Where do you live?
A. 1018 Center Avenue.
Q. What do you do?
A. I work at contracting.
Q. Do you know Grover Lucas?
A. I know a little about him.
Q. You know a little about him?
A. Yes.
Q. You remember the day that they discovered his wife and his children in the upstairs apartment on Monday?
A. No, I don't know nothing about that.
Q. You don't remember that particular day.
page 168 } A. I know when he come down that Monday where I was cutting wood.
Q. That's what I want you to tell about. You were cutting wood on Monday?

Sam Williams.

A. That's right.
Q. What time was it?
A. I would judge it must have been around about 5:30, or somewhere along there.
Q. About 5:30 Monday?
A. Yes.
Q. Where were you cutting wood?
A. Down at my house near the alley.
Q. Back behind your house near the alley?
A. Next to the sign place.
Q. All right, sir, now while you were there cutting wood did you see Grover Lucas?
A. Yes, he come by there.
Q. Where did he come from?
A. He come from down towards the way he lived.
Q. Down the alley?
A. Yes, sir.
Q. Just tell the Court now in your own words just what took place at the time he came down there where you were?
A. Well, he asked me did I want a drink of wine.
Q. Did he have a bottle of wine with him?
page 169 } A. Well, he had wine. And I told him, "No, I didn't want no wine because I had high blood." And he sat there for awhile.
Q. Was he drinking wine there?
A. He went behind the chicken house and took himself a drink of wine, and he asked me could he sit down and I told him yeah, go ahead.
Q. Now, he went behind the chicken house and came back?
A. That's right.
Q. All right, what happened then?
A. Then after that the ambulance went up Center Avenue. And he said, "Oh, there goes the ambulance now going up my way." I said, "What happened?" He said, "I killed every God damned one of 'em."
Q. What did you say?
A. I said, "I told you that wine was going to run you crazy."

Mr. Reed: Your witness.

CROSS EXAMINATION.

By Mr. Cuddy:
Q. You were cutting wood and he was sitting there on the

wood pile, was he?
page 170 } A. Yes.
Q. And when he heard the *ambulace* go by he made the remark that there was the *ambulace* going to his place?
A. That's right.
Q. He knew what he was talking about, didn't he?
A. He must did.
Q. And he made the remark and you asked him how he knew, didn't you?
A. He said it was going up his way.
Q. And you made a reply to him, what did you say?
A. I didn't say nothing, except I asked him what happened.
Q. You asked him what happened and he made the statement that he had killed the whole God damn family?
A. That's what he said.

Mr. Cuddy: That's all.

RE-DIRECT EXAMINATION.

By Mr. Reed:
Q. And what did you say to him after that?

Mr. Cuddy: I object.
The Court: He has already testified to that on direct examination.
page 171 } Mr. Reed: That's all.

Witness stands aside.

RAYMOND E. LAWSON,
another witness on behalf of the defendant, after being first duly sworn, testifyed as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You're Raymond E. Lawson?
A. Yes, sir.
Q. Where do you live, Mr. Lawson?
A. 2006 Staunton Avenue, N. W.
Q. And what is your business?
A. Used car dealer.
Q. Where is your business located?

Raymond E. Lawson.

A. 220 Twenty-fourth Street, N. W.
Q. On Twenty-fourth Street, N. W.?
A. Yes.
Q. Is it right across from the Steak House?
A. Yes, sir.
Q. Mr. Lawson, do you know Grover Lucas?
A. Yes, sir.
Q. When did you first come to know Grover
page 172 } Lucas?
A. About 12 years ago.
Q. How come you to know him?
A. He worked for me one time about two weeks.
Q. About twelve years ago?
A. In 1952.
Q. You have known him for about twelve years?
A. Yes.
Q. And he worked for you in 1952?
A. Yes.
Q. When he was working for you in 1952 was he doing any drinking?
A. Yes, sir.
Q. How come him to cease working for you?
A. On account of drinking.

Mr. Cuddy: Wait a minute, I object.
The Court: I sustain the objection as to that. That could have no positive bearing on this case.

Mr. Reed:
Q. But he was drinking then?
A. Yes, sir.
Q. You recall when his wife's body and his children's bodies were discovered in their apartment on Monday, the 27th of April, 1958?
page 173 } A. Yes, sir.
Q. Did you see Grover Lucas on that day?
A. I seen him on Monday morning. I didn't know what had happened, but on Monday morning he came in the Steak House over there about 7:30 or 8:00 o'clock and purchased a bottle of wine.
Q. Did he stay in there?
A. No, he got the wine and left, and I spoke to him.
Q. You spoke to him and he took the bottle of wine and left about 8:00 or 8:30?
A. Yes.

Q. You didn't see him any more after that?
A. No, sir.
Q. Was William C. Price with you at that time?
A. Yes, sir.

Mr. Reed: Your witness.
Mr. Cuddy: Stand aside.

Witness stands aside.

page 174 } WILLIAM BALL,
another witness on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You're Mr. William Ball?
A. Yes, sir.
Q. I believe you are jailer?
A. Yes, sir.
Q. You weren't on duty when Mr. Lucas was brought in, were you?
A. No, sir.
Q. When did you first come on duty after that?
A. The next day.
Q. Did you see him on Monday?
A. On Monday?
Q. Yes, sir.
A. No, he was asleep practically all day.
Q. Slept practically all day?
A. Yes, sir.

Mr. Cuddy: Wait now, what day.

A. I mean Tuesday.

Mr. Reed:
Q. You were referring to Tuesday instead of
page 175 } Monday?
A. Yes, sir, the 28th.
Q. What did he do on Wednesday?
A. On Wednesday?
Q. Yes, as you recall.

William Ball.

A. I don't recall off-hand exact, but I observed him several times and he was sitting on his bunk with the other prisoners, and he didn't have much to say.

Q. Didn't have much to say?

A. No.

Q. Did anything unusual happen on Thursday or Friday?

A. Thursday or Friday, what you have reference to?

Q. Were you called to his cell by any of the other inmates, or the hall boys?

A. It was either on Thursday or Friday that they called us that Mr. Lucas had some type of seizure, and when we got up there he was on the floor.

Q. What was he doing?

A. He was just laying there mumbling.

Q. Laying there mumbling?

A. Yes, sir.

Q. How long did you observe him on the floor?

A. Five, seven, or possibly ten minutes.

Q. Possibly ten minutes. Did he go through any motions?

A. No, just laying on the floor.

page 176 } Q. What did you do after that?

A. I understood the boys to say he was saying something about wine, and I asked him if he would like to have some wine, and he said he believed he would.

Q. You mean he was talking about wine while he was laying on the floor?

A. Yes, sir.

Q. And he said he believed he would have some?

A. That's right.

Q. Did you give him some?

A. Yes, sir, I give him some.

Q. Did that calm him down?

A. Yes.

Q. And he was all right after that?

A. Yes, sir.

Mr. Reed: Your witness.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. You saw him on Tuesday for the first time?

A. Yes, sir.

Q. At that time he certainly wasn't under the influence of any intoxicants, was he?

Carl Decker.

A. Well, he was asleep.

page 177 } Q. He came out somewhere around eleven o'clock and you all brought him out into the little conference room there, and he sat in there and talked to Captain Allman and myself for some few minutes, and then you put him on back?

A. Yes, sir.

Q. And he was perfectly okay at that time?

A. Yes.

Q. And then on Wednesday he came out and came into the conference room and stayed in there and talked with us in the neighborhood of an hour, didn't he?

A. Yes, sir.

Q. And he was perfectly all right then?

A. Yes, sir.

Q. When you saw him on the floor he wasn't frothing at the mouth at all, was he?

A. No, he didn't.

Q. He wasn't chewing his tongue, was he?

A. No, sir.

Q. You say the only thing you noticed was that he was mumbling something about wine?

A. Yes.

Q. And when you spoke to him and asked him if he wanted some wine he certainly knew what you were *taking* about, and when you gave him wine he took it?

A. Yes.

Q. And it quieted him down a little?

page 178 } A. That's right.

Q. He was somewhat nervous?

A. That's right.

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

Witness stands aside.

CARL DECKER,

another witness on *bahelf* of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You are Carl Decker:

A. That's right.

Carl Decker.

Q. I believe you have a garage up on Eleventh Street, N. W., known as Decker's Garage?
A. Yes, sir.
Q. Mr. Decker, do you know Grover Lucas?
A. Yes, sir.
Q. How long have you known him?
A. I'd say seven or eight years.
Q. Did he ever work for you?
A. Yes, sir.
Q. For what period of time did he work for
page 179 } you?
A. I'd say off and on for four or five years.
Q. Up until what time?
A. Up until about six months or seven.
Q. Six or seven months before this happened?
A. Yes.
Q. During the time that he worked for you did you ever observe whether or not he was doing any drinking?
A. Yes, he was an awful heavy drinker.
Q. An awful heavy drinker.
A. The reason I got rid of him—
Q. Let's don't tell why you got rid of him, but tell the Court and Jury whether or not while he was working for you, at the time in which you observed him drinking, whether or not it appeared to you that he had possession of all his mental facualties?
A. Well, he would be working on a car and he would back it out of the shop and put it back in and he would say that he had never seen that car before.
Q. In other words, he would back the car out of the garage and come back in and say he'd never seen it before?
A. That's right.

Mr. Reed: That's all.

CROSS EXAMINATION.

By Mr. Cuddy:
page 180 } Q. How many times did he do that?
A. Well, the last of it he got pretty bad.
Q. Drinking right much?
A. Yes, drinking all the time.
Q. You know quite a few other people who drink a lot too, don't you?

A. Well, he drank wine and that's the worse thing in the world a man can drink.

Q. You know a number of others who do the same thing?

A. I reckon so.

Q. And in that corner of society there's quite a bit of wine and beer drinking, isn't there—the class of people he lives with and runs with?

A. It seems that wine pulls them off more than anything.

Q. And you know a number of people do it in this corner of society and group of people, isn't that right?

A. I don't know about that.

Mr. Cuddy: All right, stand aside.

Witness stands aside.

page 181 } CALVIN DECKER,

another witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. You're Mr. Calvin Decker?

A. Yes, sir.

Q. What do you do, Calvin?

A. I run a body shop and a mechanic shop at 210 Fourth Street, N. W.

Q. You know Grover Lucas?

A. Yes, sir.

Q. How long have you known him?

A. I'd say since 1947 or 8.

Q. Did he ever work for you?

A. Yes.

Q. How long did he work for you?

A. He started to work for me the first of this year, this past year.

Q. The year of '58?

Q. How long did he work for you?

A. I believe that it was sometime in April that

page 182 } he left.

Q. While he was working for you did you observe whether or not he was doing any drinking?

A. Yes, sir, that's the biggest fault I had with him.

Calvin Decker.

Q. You did observe him drinking while he was working?
A. I didn't see him doing it but I could smell it on him right often.
Q. I want you to look at Grover Lucas sitting here right now. Does he look the same as he did in April, 1958?
A. No, sir, he's fattened up quite a bit.
Q. Does he look better or worse?
A. He looks better.

Mr. Reed: That's all.

CROSS EXAMINATION.

By Mr. Cuddy:
Q. He's gained a little weight?
A. Yes.
Q. You say he was working for you during the early part of the year and up to sometime in April?
A. Yes, sir.
Q. And was his work satisfactory?
A. Yes, sir.
Q. He knew what he was doing?
page 183 } A. Yes, sir.
Q. He did a good job?
A. Yes, sir.
Q. And the only thing you know is frequently you smelled alcohol on his breath?
A. Yes, sir.
Q. He was capable of taking care of his position there in your body shop?
A. Yes, but at that time I don't think he was capable of doing the work.
Q. He did the work, didn't he?
A. Yes, he did the work, but sometimes I had to go over it.
Q. Sometimes you had to go over it. But as a general proposition his work was satisfactory?
A. Yes, sir.
Q. And you kept him on there up until sometime in April?
A. Yes, sir.

Mr. Cuddy: Stand aside.

Witness stands aside.

page 184 } HOWARD ECHOLS,

another witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. Mr. Echols, what do you do?

A. Well, I'm down here running a used car place, but years ago I had a garage.

Q. Where was your garage?

A. 602 Center Avenue.

Q. Was your garage at 602 Center back in April of this year?

A. No, sir.

Q. You had moved prior to that?

A. Yes, sir.

Q. Do you know Grover Lucas?

A. Yes, sir.

Q. How long have you known him?

A. About 15 years.

Q. About fifteen years. Did he ever work for you?

A. Yes, sir, he worked, I reckon, three or four years, but that's been about six or eight years ago.

Q. Did he work regularly for three or four years?

A. Yes.

page 185 } Q. During that period of three or four years did you observe whether or not he did any drinking?

A. He drank all the time.

Q. He drank all the time. That's all.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. He worked for you for three or four years?

A. Yes, sir.

Q. And during all the time he was capable of taking care of his job, wasn't he?

A. Yes, he didn't drink anything but beer.

Q. You know a number of people who drink beer practically all the time, don't you; take beer several times during the day?

A. Yes.

Q. And that's what he was doing, drinking beer several times a day?

A. Yes.

Q. But as far as his work and employment was concerned it was perfectly satisfactory?
A. It sure was at that time.

Mr. Reed:
Q. At that time?
A. Yes, at that time it was.

page 186 } Mr. Cuddy: That's all, stand aside.

Witness stands aside.

MRS. ADA MEADOR,
another witness on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You are Mrs. Ada Meador?
A. Yes, sir.
Q. And where do you live, Mrs. Meador?
A. I live out of Hinton about seven miles, Hinton, West Virginia.
Q. In West Virginia. Have you lived there most of your life?
A. I lived around there all my life.
Q. I believe that Grover Lucas is your brother?
A. Yes, sir.
Q. How old are you, Mrs. Meador?
A. I'm fifty.
Q. How old is Grover?
A. He's forty-eight.
Q. You sure of that?
page 187 } A. Yes, sir.
Q. How is your memory for recalling events in your early childhood?
A. Well, I remember very well.
Q. Do you remember back when Grover Lucas was a small boy?
A. Yes, sir.
Q. At what age?
A. Well, I'd say from around four or five.
Q. Can you remember back that far?

Ada Meador.

A. I can remember when I was four.

Q. You can remember back when you were four years old?

A. Yes, sir.

Q. When you were four Grover would have been two, is that right?

A. Right at two.

Q. Can you remember when you were ten and he was eight?

A. Yes, sir.

Q. During that period of time, did you ever observe your brother have any kind of disorders?

A. Just what do you mean by disorders?

Q. Did you ever see him do anything unusual, or things other boys and girls didn't do as far as their
page 188 } health is concerned—I'm trying not to lead the witness, but I'll ask you this question. Did you ever see him have any fits?

A. Well, he had convulsions, fits like, we called them.

Q. When did he have convulsions?

A. Well, just most any time he would take them. We would be out playing and he would just fall over.

Q. What would he do?

A. He would shake, quiver and bite his tongue if we didn't get something in his mouth, and maybe turn a little blue looking.

Q. How long you remember his doing that, from what period?

A. Well, I would say from the time I could remember up until he was probably ten or maybe 12 years old.

Q. How often would he do that?

A. Sometimes right often and then maybe it would be sometime before he would have another one.

Q. Did anybody ever have to put anything in his mouth?

A. Yes, sir.

Q. What would you put in his mouth?

A. Mother usually got a spoon. I have carried spoons to her to put in his mouth.

Q. Anybody else in your family have any
page 189 } similar spells?

A. Yes, sir, I have a first cousin that has had as high as 35 in one night.

Mr. Cuddy: Your Honor, please, I think that's going aw-

fully far afield, and certainly should not be permitted in the trial of a case like this.

The Court: Yes, that is.

Mr. Reed: I would like to take the matter up with the Court in chambers.

The Court: All right, the Jury may go to their room.

In chambers.

Mr. Reed: We are attempting to show and introduce evidence to the effect that epilepsy was in this family on the maternal side, and Mr. Cuddy objected. We want to offer this as a foundation for the testimony of Dr. Hurt to show that was part of the diagnosis, and I think the witnesses, the family who seen him as a boy, are entitled to testify as to whether or not an epileptic condition existed in the family.

Mr. Cuddy: You're bringing in a fact removed from the immediate family, and she is making the statement that she was told that one cousin had 35 seizures in one night, which

page 190 } was obtained on hearsay and is not proper evidence to be admitted in determining whether or not he might have been, or his immediate family, afflicted with epilepsy.

The Court: Did she testify she was told?

Mr. Reed: I have not had a chance to finish with the witness to see what she knows.

Mr. Cuddy: I object to that series of questioning.

Mr. Reed: I would like to put Dr. Hurt on now.

The Court: All right.

DR. JOHN O. HURT,

being called as a witness on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed: For this purpose would you waive his qualification?

Mr. Cuddy: Yes.

Mr. Reed:

Q. Dr. Hurt, have you examined Grover Lucas

page 191 } with a view of determining his mental state?

A. Yes.

Dr. John O. Hurt.

Q. Have you examined him to determine whether or not he is an epileptic?

A. As far as I could.

Q. How does any doctor diagnose a mental disease?

A. By examination, tests and history.

Q. History of what?

A. His past history.

Q. Does medical science take into consideration in the question of epilepsy whether or not other members of the family have had or experienced epilepsy during their lives, whether or not a given person is an epileptic?

A. Yes, a family history is important in epilepsy and in other mental diseases.

Q. Would it be important if a first cousin on the maternal side was an epileptic?

A. Yes, and especially if his mother had epilepsy.

Q. And that is the way medical science would diagnose a patient?

A. Yes, that is the way you would determine and with other tests and *clincical* symptoms.

CROSS EXAMINATION.

By Mr. Cuddy:

page 192 } Q. You say in examining a patient it is important to see if the mother was an epileptic?

A. Yes.

Q. But removed to the cousin stage is not material in the examination, is that right?

A. It is not as material as his mother having it would be.

Q. It may have come through the paternal side, and had no connection with his branch of the family?

A. It could have.

Mr. Cuddy: I submit that unless you prove that it came from the mother's side it is improper.

RE-DIRECT EXAMINATION.

By Mr. Reed:

Q. What did you find in the history of this patient as to epilepsy in the family?

A. His sister said he had spells when he was quite young; that his mother had seizures, and mentioned this maternal cousin and he denied ever having had any.

Ada Meador.

Q. He didn't remember having any and you have to rely on what somebody else tells you?
A. They're unconscious when they have a spell.
Q. And that's true in every case?
A. Yes.
page 193 } Q. Then it is material if any member of the family were afflicted and just a question of degree?
A. Well, it is to have all the family history, it is a form of mental disorder.

The Court: If the evidence would show that the defendant's mother had epile*y*sy could it be material that the defendant's first cousin also had epile*y*sy?

A. *It if* was on his mother's sister's or brother's side that would be a collateral line, but it would be significant. He might come from a whole family of epile*y*sy.

The Court: Mr. Reed, if you can show that the mother had epilepsy, based on Dr. Hurt's testimony I'm going to let you show that line down directly to the first cousin and that would be proper, otherwise not.

Dr. Hurt stands aside.

Return to courtroom and jury returns to jury box.

MRS. ADA MEADOR,
examination of Mrs. Ada Meador is resumed.

page 194 } Mr. Reed:
Q. Mrs. Meador, I want you to testify only to things you know of your own knowledge, not what someone else has told you. You understand that?
A. Yes, sir.
Q. Tell what you know, what you saw.
A. Yes, sir.
Q. Now, you testified that a cousin of yours had fits.
A. He does.
Q. What is his name?
A. We call him Perry Lyone, I don't know whether that's his right name or not.
Q. On which side of the family is he on?
A. My mother's sister.

Ada Meador.

Q. On your mother's side?
A. My mother's sister's son.
Q. Your mother's sister's son?
A. Yes.
Q. Did you ever see Perry Lyone have any fits?
A. I saw him in light ones, not bad ones, he'd just pass out, and like my brother.
Q. Just like the same thing you saw your brother have?
A. Yes, sir.
Q. Now, with regard to your mother, did she—
page 195 } A. My mother had those spells all of her life, as long as I remember.
Q. Have you ever seen her have them?
A. Yes, sir.
Q. Is she living?
A. No, my mother's dead.
Q. Is your father dead?
A. My father is dead.
Q. You say she has had them as long as you can remember?
A. She had them as long as I can remember.
Q. When did she die?
A. She died in '41.
Q. Where were you and the family living at the time you testified you saw your brother, Grover Lucas, have these convulsions?
A. We lived at True, West Virginia.
Q. True, West Virginia.
A. Yes, sir.
Q. How long did you live there?
A. Well, we lived there practically all our life, until I was married and got to moving around in the neighborhood.

Mr. Reed: Your witness.

page 196 } CROSS EXAMINATION.

By Mr. Cuddy:
Q. You are a sister of Grover?
A. Yes, sir.
Q. And you were interviewed before about Grover's condition, weren't you?
A. Yes, sir, I've talked to the doctors at Marion.
Q. You talked to the doctors at Marion. You didn't give them any such statement as that, did you?

Ada Meador.

A. I did.

Q. In talking with them did not you tell the investigating officers there that—start with your mother—at times she had quite a temper and would get riled up and whip the children?

A. I didn't say that.

Q. You didn't?

A. No, I didn't.

Q. You deny it?

A. I didn't say that.

Q. You told—

Mr. Reed: I think to qualify that she should know what these questions were.

Mr. Cuddy: If I haven't told her what the
page 197 } questions were I don't know.

Mr. Reed: You haven't.

The Court: I don't understand the objection. She's on cross examination and he asked her what statements she had made.

Mr. Reed: He's laid no foundation, he never said who the statement was made to, and when, and where made.

The Court: All right. The exact time may not have been called to her attention, but the other matters have been I'm sure. When was it?

Mr. Cuddy:

Q. You were questioned by social workers and doctors with reference to getting a family history of Grover Lucas in Marion, Virginia?

A. Yes, sir.

Q. And it was on July 1, 1958, that you spoke and talked with Elaine McIntire, the social worker there, wasn't it?

A. Yes, sir.

Q. And you told her at that time that your mother was not as easy going as your father?

A. She wasn't.

page 198 } Q. And would get riled up?

A. Well, she would at times.

Q. And would whip the children?

A. She didn't whip the children when she got riled.

Q. But she did get riled up?

A. Yes, she had a temper.

Q. And you were born in 1908, and in 1910 Grover was born?

Ada Meador.

A. Yes, that's right.

Q. Shortly before the birth of this younger child, which was another child, Ida Virginia, in 1921, when Grover was eleven years old, your mother had a nervous breakdown, and you told them that, didn't you?

A. Well, she did.

Q. She had a nervous breakdown; she was never sent to a mental hospital?

A. She wasn't too mentally bad.

Q. The only thing she couldn't do her housework for sometime?

A. No, she couldn't, I did the work.

Q. And at sometimes she was irrational?

A. I didn't say that.

Q. Well, was extremely weak?

A. She was weak, all right.

page 199 } Q. You told that she got over her nervous breakdown and did go back where she could do her work, or most all of her housework?

A. She did all of her work.

Q. You told the people up there the cause of her death, didn't you?

A. Well, I told them what the doctors told me?

Q. And it was erysipelas?

A. Yes, that's what the doctors said.

Q. Erysipelas, which is an infection?

A. Yes, that's what they told me.

Q. You never mentioned to them at any time or any place about having any sort of seizures?

A. Just what does that mean?

Q. Well, fits as you speak of?

A. Well, I don't remember whether I told them that or not.

Q. You don't remember?

A. But I told them about my brother.

Q. You told them about your brother. Now, this is what you told them about your brother:

He was the only boy and three sisters. You told them that, didn't you?

A. Yes.

page 200 } Q. You told them that; that he was quite spoiled?

A. That's right, he was kinda—he was spoiled some.

Ada Meador.

Q. And always seemed to get his way?
A. I didn't put it that way.
Q. You didn't, how did you put it?
A. I said he always liked his way.
Q. Always liked his way. You told them that he frequently had temper tantrums, didn't you? You told them that he frequently had temper tantrums?
A. I did, any child will do that.
Q. And that is the method that he's used to get his way, didn't you?
A. No, I didn't tell them that.
Q. I'm asking you that question?
A. I didn't answer it that way.
Q. I'm not asking you what you answered them, I'm asking you now the temper tantrums is the method he used to see that he got his way, wasn't it?
A. He didn't get his way.
Q. Now, you didn't mention, not one time, to either the doctors, the social workers, or anyone that interviewed you for the purpose of getting the history that there were any fits on the part of Grover Lucas, did you?
page 201 } A. I did so. I told them he had these convulsions. I certainly told the doctor right there that he had spells, but I didn't know whether they were fits or convulsions or what you call them.
Q. Well, if you saw any of them describe them. How did he have a convulsion or a fit; what did he do?
A. He'd just be playing and he would pass out; he'd draw up, shake, quiver.
Q. What else?
A. Bite his tongue.
Q. Bite his tongue.
A. Foam at the mouth and turn blue looking.
Q. Did he chew his tongue?
A. He would if you didn't put something in his mouth.
Q. Did he ever bite his tongue?
A. Yes, he has bit it.
Q. And you saw blood coming from his mouth?
A. That's right.
Q. You saw that frequently?
A. When he was a child.
Q. That you saw the blood coming from his mouth?
A. I absolutely have.
Q. Yet you didn't mention that one time to the doctors or

Ada Meador.

social workers?

page 202 } A. I told the doctor at Marion.

Q. Which doctor did you tell?

A. I don't remember the doctor's name; I never talked with him but one time. We was in a hurry and he was in his office and talked with me for a little while.

Q. They brought you from West Virginia over to Marion trying to get all the information they could, didn't they?

A. I tried to give it to them.

Q. And you say you told them?

A. I did.

RE-DIRECT EXAMINATION.

By Mr. Reed:

Q. Now, Mrs. Meador, you know you're under oath?

A. Yes, sir.

Q. Have you told the Court and Jury the truth about what—

Mr. Cuddy: I object.

The Court: It will be assumed that she told the truth.

Mr. Reed: All right, I'll ask this question.

Q. I take it that Elaine McIntire is the lady that you talked to over at Marion?

page 203 } A. Yes, sir.

Q. Did you know her name?

A. I think that's the one, I'm not sure.

Q. Did Elaine McIntire, whoever she is, ask you whether or not any members of your family, or your brother had any fits or convulsions?

A. Not in my memory she didn't.

Q. Who else did you talk to, how many other people did you talk to?

A. Just one doctor.

Q. Did this doctor ask you whether or not your brother had ever had any fits?

A. No, he did not.

Q. Did he ever ask you whether any other member of your family had ever had any fits?

A. No.

Mr. Reed: That's all. You may leave the stand.

Witness stands aside.

page 204 } CLAUDE ASHLEY FARLEY,
another witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. I believe you're a little hard of hearing, Mr. Farley?

A. Yes, I am.

Q. Speak up loud so that we can hear you. What is your full name?

A. Claude Ashley Farley.

Q. I didn't get it, Claude Ashley?

A. Yes, sir.

Q. Look right straight ahead, will you please, sir, and speak out as loud as you can.

Where do you live, Mr. Farley?

A. Shady Springs.

Q. Shady Springs, is that in West Virginia?

A. Yes, sir.

Q. What relation, if any, are you to Grover Lucas?

A. I'm his uncle.

Q. On which side of the family?

A. The Farley side.

Q. Is that his mother's side or his father's?

A. Yes, his mother's.

page 205 } Q. Then you are his mother's brother?

A. Yes, sir.

Q. Mr. Farley, when Grover Lucas was a small boy where were you living?

A. I was living a part of the time at True, Summers County.

Q. At True?

A. Yes, sir, that's where his father lived.

Q. Did you ever spend any time at Grover Lucas' home while he was a boy?

A. I use to work for his father.

Q. Did you know Grover Lucas when he was a boy four and five years old?

A. Yes, sir. I was there off and on until he was about eighteen years old.

Q. You saw him off and on?

A. Yes, sir, pretty much.

Q. Pretty much up until he was eighteen years old?

A. Yes, sir.

Claude Ashley Farley.

Q. Mr. Farley, I'm going to ask you this question and I want you to state and testify only to what you saw or know of your own knowledge, you understand me?

A. Well—

page 206 } Q. Wait a minute, I haven't asked you the question yet.

Are there any members of your sister, his mother's family that had any kind of seizures, or fits, or convulsions that you know of and actually saw yourself?

A. Well, his mother had convulsions and fits, and he also had convulsions and fits.

Q. Did you see them?

A. Yes, sir.

Q. When did you first observe them?

A. Well, his mother had them before she was ever married.

Q. All right, what did his mother do, describe to the Court and Jury what his mother would do?

A. She would draw double and froth at the mouth.

Q. Would she be in a standing, sitting or laying position?

A. Well, lots of times she would take them and she would be standing and she would just fall and go unconscious.

Q. She would fall and go unconscious?

A. Yes.

Q. This occurred up before she was married?

A. She had those before she was ever married.

Q. Did she have any after she was married?

page 207 } A. Yes.

Q. How often did that occur?

A. I couldn't say after she left home, but she had them pretty often.

Q. How long had she been married before she left home?

A. After she left home?

Q. I thought you said after she left home, I may have misunderstood you?

A. She was married and I don't know just exactly how old she was, I don't recollect.

Q. Mr. Farley, please look straight ahead and speak up so the members of the Jury and the Court can hear you?

A. I said I didn't know exactly how old she was, but she was up in her twenties when she was married.

Q. Did you observe her have any of these after she was married?

A. Yes, sir.

Claude Ashley Farley.

Q. And for how long a period of time did you observe this?

A. She had them on up until she died.

Q. When did she die?

A. She's been dead, I can't recollect just how long, but somewhere between ten and fifteen years.

page 208 } Q. Mr. Farley, are there any other members of your family that you know of that had the same type of ailment?

A. I have a nephew of one of my other sisters and she has a boy that has those fits.

Q. Have you ever seen him have them?

A. Yes, and I've seen Grover have them.

Q. You've seen Grover have them, but let's get back to this other nephew, what's his name?

A. Well, he falls out and he lays unconscious.

Q. I asked you what is his name?

A. What is his name?

Q. Yes, sir.

A. Perry Lyone.

Q. Where does he live?

A. He lives in Hinton.

Q. And when did you observe Perry Lyone having these convulsions?

A. He's had them ever since he was a child.

Q. Does he still have them?

A. Yes, sir, he still has them.

Q. Now, you said something a minute ago that you had seen Grover Lucas having them. When did you observe Grover Lucas have them?

A. Sir?

page 209 } Q. You said a minute ago—you started to say that you had seen Grover Lucas have these convulsions. When was that?

A. Well, he's had them ever since he was a child, but I haven't been around him much since he was eighteen years old.

Q. You have observed him having these convulsions, fits, seizures?

A. Well, when he was a child he had them.

Q. Did they seem to get worse or did they seem to get better?

A. They seemed to get worse and the doctors told—

Q. That's all right, don't testify to what you heard.

A. He seemed to be getting worse all the time.

Claude Ashley Farley.

Q. And you haven't seen him since—you weren't with him after that?
A. I've seen him have them maybe fifteen or twenty minutes at a time.
Q. Actually, you haven't been around him much since he was eighteen?
A. No, sir, I haven't been around him much since he was about eighteen.

Mr. Reed: You may have the witness.

page 210 } CROSS EXAMINATION.

By Mr. Cuddy:
Q. You say you have seen him have some sort of seizure or fit, as you call it?
A. Yes, sir.
Q. What would happen when he would have them?
A. He would draw up, he would fall out and be unconscious for maybe two or three hours.
Q. He would fall out?
A. Yes, sir.
Q. He wasn't capable of doing anything at all then, was he?
A. No, sir.
Q. He couldn't move?
A. Well, no, and when he did he was just like something—just like a dog with the rabies or something.
Q. Just like a dog with the rabies, he was just laying on the floor or ground or wherever you saw him just quivering?
A. Yes, quivering and when he would come to himself he would just want to run.
Q. Did you notice anything about his mouth?
A. He would froth and slobber.
Q. Froth and slobber?
A. Yes, sir.
Q. Chew his tongue?
page 211 } A. Yes, sir, he would chew his tongue.
Q. Did you ever see his tongue bleeding?
A. Yes, sir, I have.
Q. You would see blood pour from his tongue?
A. Yes, sir. I've seen blood come from his tongue.
Q. What relation are you to him?
A. I'm his uncle.
Q. His uncle on which side of the family?

Claude Ashley Farley.

A. His mother's.
Q. His mother's side.
A. The Farley side.
Q. Now, which is it, his mother's side or his father's side?
A. I said on the Farley side, his mother was a Farley?
Q. Oh, then you are the brother of his mother?
A. Yes, sir, I'm the brother of his mother.
Q. Did you ever have any seizures?
A. Sir?
Q. Did you ever have any seizures?
A. (No answer).
Q. Do you have epile*y*sy?
A. No, sir.
Q. You don't have it?
A. No, sir.
Q. You've never had a seizure?
page 212 } A. No, sir.
Q. And you've never fallen out and frothed at the mouth?
A. No, sir.
Q. Although you're his mother's brother?
A. Yes, sir.
Q. And this other person you talked about, what relation is he to Grover?
A. He's a first cousin.
Q. On which side, the mother's side or father's side?
A. His mother's side.
Q. Then Grover's mother and this other boy's mother were sisters, is that right?
A. They were sisters.
Q. Did you ever see the other boy's mother have any seizures?
A. No, sir.
Q. She didn't at all?
A. No, sir, she never had no seizures.
Q. And you don't have any?
A. No, sir.
Q. You have any other brothers and sisters?
A. Yes, sir.
Q. How many?
A. I have five sisters living and one brother.
page 213 } Q. And Grover's mother was the only one that had seizures?
A. Yes, sir.

Virginia Whitaker.

Q. The only one at all, none of the rest did?
A. The only one of my brothers and sisters.
Q. And the mother of the other cousin she didn't have them?
A. No, sir.

Mr. Cuddy: All right. Stand aside.

Witness stands aside.

VIRGINIA WHITAKER,
another witness called on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You are Virginia Whitaker?
A. I am.
Q. I believe you are a sister of Grover Lucas?
A. Yes, sir.
Q. Where do you now live?
A. At Hinton, West Virginia.
Q. Look forward now and speak loud.
A. I live in Hinton, West Virginia.
page 214 } Q. How old are you?
A. Thirty-seven.
Q. How old is Grover Lucas?
A. He's forty-eight.
Q. You're eleven years younger than he?
A. Yes, sir.
Q. Did you ever live in Roanoke or around Roanoke?
A. Yes, sir, I sure did. I was here for twenty years.
Q. Were you living in Roanoke the latter part of April, 1958?
A. Yes, sir. I was living at 365 Day Avenue, S. W.
Q. Were you living there on the 25th, 26th, 27th and 28th of April?
A. Yes, sir. I lived there from the 17th of March until the 16th or 17th day of May.
Q. Did you ever live in the Lucas household?
A. Yes, sir, I did.
Q. When was that?
A. I lived with my brother—lived in the house with them

at Glenvar before the boy was born, I believe it was '47 or '48.

Q. When the boy was born?

A. Before he was born. I moved out just before he was born, but I kept the other children when he was born.

Q. When did Grover Lucas and Connie get

page 215 } married?

A. They were married in June of '52 or '53. Their license was issued in Salem and they were married up on Melrose Avenue, I believe, at a Baptist Church.

Q. In '53. Now, did you live in the Lucas household anytime in 1958 before April?

A. Yes, sir, my brother was in West Virginia and I stayed with my sister-in-law and the children from the 18th of October of last fall, a year ago this fall, until the 5th day of November, the day my brother came back from West Virginia when he came back home.

Q. In other words, you lived there from October—'58 or '57?

A. A year ago, it would be '57.

Q. And you stayed there from October, '57 until November, '58?

A. Until November, '57.

Q. November, '57?

A. Uh huh.

Q. Then you didn't live there in 1958?

A. No, sir.

Q. Now, I just want *yo* ask you—

A. I spent one night in their house in 1958.

Q. What time did Connie Lucas generally get up of a morning?

A. She always was up anywhere from four to a

page 216 } few minutes after four, and she never did go back to bed to my knowing of a morning after she was up; she was always up and fixed breakfast, went to the laundry to work, and if she didn't have to work she was always up and doing her housework.

Mr. Cuddy: Your Honor, I submit that that is absolutely improper; she's giving something that is customary to being done.

The Court: She hasn't lived in the house, as I understand it, with Mrs. Lucas for a long, long time.

Mr. Cuddy: It only becomes material if she can state that on the morning she was killed that she was up at that time.

Virginia Whitaker.

What she did on other days as far as that has nothing to do with it.

The Court: I can't see that it has anything to do with it, Mr. Reed. She testified that she had not been in the home for a long time except for one occasion.

Mr. Reed: We except to the Court's ruling.

Q. You were living on Day Avenue, you said in April?
A. Yes, sir.
Q. Did you see your brother on April 26th, Saturday?
A. No, sir, I saw him on Friday.
page 217 } Q. You saw him on Friday, the 25th?
A. The 25th.
Q. Where did you see him?
A. I saw him and his wife after she came off from work; they came up Day Avenue and they were talking loud, and I looked out on the street and that's who it was, and they got right where you cross Fourth Street, and she had a shopping bag and he aimed to carry it and she jerked it back and wouldn't let him carry it.
Q. That was what time?
A. Twenty minutes until five.
Q. Did you see him on Saturday?
A. No, sir, I didn't, I saw him on Monday.
Q. What time was that?
A. Twenty-five minutes past four.
Q. How did you know it was that time?
A. I looked at the clock and wondered why she wasn't with him, but he was on the opposite side of the street from my house.
Q. That was 4:25 on Monday?
A. Yes, sir.
Q. Did you observe the manner in which he walked?
A. He was from one side of the street to the other and drunk.
Q. You observed that?
page 218 } A. Yes, sir.

Mr. Reed: Take the witness.

CROSS EXAMINATION.

By Mr. Cuddy:

Q. That is the same time your daughter saw him going up the street?

A. Yes, she was at my house.
Q. And she saw him at the same time going up the street?
A. Yes, sir.
Q. Both of you saw him?
A. Yes, sir.

Mr. Cuddy: Stand aside.

Witness stands aside.

page 219 } DR. JOHN O. HURT,
another witness called on behalf of the Defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. You are Dr. John O. Hurt?
A. Yes, sir.
Q. Are you a medical doctor?
A. Yes, sir.
Q. Where do you practice?
A. I have my office in Vinton, Virginia, but I practice in this whole community.
Q. Practice in this whole community. What type of practice do you have.

Mr. Cuddy: I will admit the qualifications of Dr. Hurt.
Mr. Reed: Will you admit that he is a qualified psychiatrist.
Mr. Cuddy: I will admit that he is a qualified practicing physician, specialized in psychiatry, and practices psychiatry in conjunction with his medicine.
page 220 } Mr. Reed: All right, sir, that's fine. I'll just ask you a couple of questions, doctor.

Q. Have you had any specialty in epilepsy?
A. I worked at the State Colony for epileptics and feeble minded for three and a half years.
Q. Have you had any special training in alcoholism?
A. Yes, sir.
Q. In what respect?
A. I was at Western State Hospital altogether about four years, and much of that time was on alcoholic service. They treated at that time all the committed alcoholics in the state.

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Q. Dr. Hurt, have you examined the defendant, Grover Lucas with a view of obtaining what information you could as to his mental condition?

A. Yes, sir.

Q. Do you recall how many times you have seen him?

A. I saw him three times.

Q. Have you diagnosed his mental condition, made a diagnosis?

A. I have an opinion.

Q. You have an opinion. You are entitled to give us your opinion. Tell us about, doctor, how—before you tell us what your opinion is—tell us how you arrived at your

page 221 } opinion, through what means?

A. Well, I examined Grover Lucas in the psychiatric examination, interviews. I interviewed some of his relatives for history; I saw his statements he gave to the police; I saw the report from the Southwestern State Hospital at Marion, and I reviewed his electroencephalogram tracings that were made at Marion.

Q. We will come back to his electroencephalogram tracings later, doctor. The manner in which you diagnosed his condition is that the normal procedure in psychiatry?

A. The electroencephalogram is part of it.

Q. I mean, you say you got his history, is that always done?

A. Yes, sir.

Q. Is it an important thing in the diagnosis to know whether there is any history of any type of mental disorder?

A. Yes, sir.

Q. That's important to know?

A. Yes, sir.

Q. Now, Dr. Hurt, we'll talk about these electroencephalograms for a few minutes. I don't think the jury—they may not know exactly what electroencephalography is, and would you explain it to them first of all if you have had any special experience in diagnosing mental diseases from it?

A. I have operated and made right many tests

page 222 } on the electroencephalograph in the past. You mean, explain what the machine is?

Q. I just want you to explain what the principle is in lay terms, so that they will know what we're talking about?

A. It is a very sensitive apparatus. You attach electrodes to various parts of the skull to pick up electrical brain impulses that travel through the brain, and that amplifies the

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brain waves and you pick them up and make a recording of them on a tracing.

Q. It makes lines or tracing on a paper?

A. Yes, the same principal as an electrocardiogram. It is an amplified electric impulse.

Q. And from examining the electroencephalogram a psychiatrist can tell whether or not a person has a mental disorder, is that correct?

A. You can use that as part of your study; it's not an absolute clear-cut diagnosis. That with the history and the clinical symptoms—it's just a test. It's not an infallible test but it's a very reliable test.

Q. A very reliable test. Did you examine the electroencephalogram that was taken of Grover Lucas while he was at Southwestern State?

A. Yes, sir.

Q. Did you examine those?

A. Yes, sir.

page 223 } Q. They were made available to you?

A. Yes, sir.

Q. Now, doctor, in view of the fact that you have diagnosed his mental condition, I want you to tell the Court and the Jury in your own words just what, in your opinion as a psychiatrist, is his mental condition?

A. My diagnosis of Grover Lucas is that he is a sociopathic personality; he has personality disturbances; a chronic alcoholic; and he has many findings suggestive of epilepsy.

Q. He was found to be chronic alcoholic and many findings suggestive of epilepsy. We will take up the chronic alcohol first. Could you elaborate on your findings in regard to chronic alcoholism?

A. Well, he's consumed according to him and his—

Q. Excuse me for interrupting you, doctor, but let me ask you this question. Have you been in the courtroom this morning?

A. Yes, sir.

Q. Did you hear the *stestimony* of the witnesses?

A. Yes, sir.

Q. All right, go ahead.

A. Well, no doubt about his being a chronic alcoholic; it seemed like he lived off of wine and beer for several years.

He had symptoms of a chronic alcoholic; he has

page 224 } physical symptoms. He has an ironical facial expression; he has a slow recall and memory. He

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is almost at a flattened aspect; he shows little or no remorse or feeling and rather indifferent to his situation; and that with the history of consuming large quantities of alcoholic beverages is the best diagnosis in my mind that he is a chronic alcoholic with deterioration.

Q. Is there any other name for it? Is that a disease of the mind?

A. Yes, a disease of the brain. Another name could be called a cronic brain sindrone due to alcoholism.

Q. Still speaking about alcoholism, what is a pathological intoxication?

A. That is a term that is used for a person who has consumed quantities of alcohol over a long period of time and to the extent that they get beyond drunkeness but get to a pathological state; that is the disease status that their judgment is impaired and their reasoning is impaired, and they blame their troubles on other people. And at times when they are in an extreme acute condition, the same as under a very potent drug, they's not responsible for what they're doing. They're just drunk, that's all.

Q. In acute stages where they have consumed a large quantity of alcoholic beverages do they know the differences from right and wrong?

A. While they're drunk?

Q. Yes, sir.

page 225 } A. People can become so intoxicated that they don't know where they are or what they're doing.

Q. Do they know the difference between right and wrong?

A. Not when they're dead drunk.

Q. Not when they're dead drunk. Can they judge the nature and consequences and character of their actions?

A. They don't stop to reason when they're intoxicated to that degree.

Q. Do they appreciate the consequences of their acts?

A. They appreciate nothing.

Q. They appreciate nothing. Did you diagnose Grover Lucas to be pathological or to have pathologic intoxication?

A. Well, now, I saw Grover Lucas after he came back from Marion. He showed symptoms of chronic alcoholism.

Q. That was after he came back from Marion; that was on August 28th, I believe.

A. Several of the jailers told me that, when I saw him the first time that he—

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Mr. Cuddy: Now, wait a minute. I object to what people told you.

page 226 } The Court: Don't tell what people told you.

A. I did not see him in a state of profound intoxication.

Q. That was sometime after April 28th when you saw him?

A. Yes.

Q. Is it more probable or more unprobable, based on your diagnosis and your opinion as a psychiatrist, that Grover Lucas is effected as a pathological intoxication?

Mr. Cuddy: I object to that.

Mr. Reed: He has given an opinion.

Mr. Cuddy: It is not probable or more probable.

The Court: Just let him state his opinion.

Mr. Reed:

Q. Then what is your opinion, doctor, in that regard?

A. My opinion as to that is that he was under the influence of large quantities of alcohol for months and weeks, and that he was drunk and stayed drunk.

Q. When this crime was committed?

page 227 } A. Yes.

Q. But you have not expressed an opinion, doctor, as to whether or not, in your opinion, at the time when these crimes were committed, based on the testimony that you have heard, the amount of wine and beer he had consumed, whether or not at that time he was effected as a pathological?

A. I believe he was profoundly intoxicated.

Q. Profoundly intoxicated. Doctor, let me ask you this. Is this chronic alcoholic, I believe you call it, is that an insanity?

A. Yes, it is.

Q. Is it a fixed and settled insanity?

A. After it progresses to a certain point it is practically an irreversal mental disease.

Q. Irreversal mental disease?

A. There are organic changes in the brain.

Q. Do people appear normal when they are not intoxicated?

A. No.

Q. The type of person who has abstained from alcohol for sometime, how do they appear afterwards?

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A. You mean after people have been drinking and drinking and drinking over a period of years? They show the effects the balance of their life in one way or another, thinking, acting and feeling, and then their physical side of them is damaged.

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Q. Their physical side is damaged also.

Now, doctor, we're still talking about alcohol. What effect, if any, does indulgence in alcohol have upon the disease of epilepsy?

A. Well, it is supposed to aggravate it. It is an irritant and supposed to aggravate it, and increase of intake of fluids will produce seizures if you take too much.

Q. Increase—say that again?

A. An increase in the consumption of fluids is bad for an epileptic.

Q. Bad for an epileptic. What did you say about seizures?

A. And alcohol aggravates the disease.

Q. Doctor, when a person has an epileptic fit of the grand mal type what—let me ask this, is epilepsy a diseaes or a symptom?

A. Well there are two kinds of epilepsy. There is idiopathic epilepsy that don't understand and don't know. And symptomatic epilepsy can be due to brain injuries, disease of the brain and toxic conditions, poisons etc. The idiopathic epilepsy you would have to say it was a disease.

Q. A disease.

A. You also have epilepsy as a symptom of other diseases, epileptic attacks.

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Q. A symptom of some brain disturbance?

A. Yes, sir.

Q. Doctor, after a person has an epileptic seizure what frequently occurs to their mental state after they come out of the seizure?

A. Well, varying things take place. It depends on the severity of the attack and the period of the attack. They are confused; some of them their pupils are dialated, and they're disorientated and out of contact for awhile. It depends on the individual.

Q. It depends on the individual. What is the medical term for this?

A. That is a post convulsion confusion, that is.

Q. I use the term automatism or psychic equivalent state, are we talking about the same thing?

A. That is a state that occurs with people before they have

a seizure. They may not have a seizure at all, but they have those psychotic episodes.

Q. Describe this psychotic episode, doctor? Is the name for them automatism?

A. Yes, they call it equivalent state, automatism, fuguism, and there are lots of names for it.

Q. Epileptic insanity?

A. Yes, sir.

page 230 } Q. Describe to the Jury what this confused period is?

A. It is an attack whereas a person does not have a convulsion. He had this mental episode; he becomes wild, confused, irrational, sometimes combative, attacks people around him, makes threats, and violent, and then sometimes they just lie around in a stupor. Certainly in my experience we've had to keep them secluded in a protective room for several days sometimes. They come out of it on drugs, on medication, and some of them have a hard convulsion and come out of it and get better after having a hard convulsion. Some will come out of it on medication.

Q. During this period you're describing is a person that comes out of this state—what does he remember about it?

A. You have an amnesiaic period in there, they don't remember anything about it.

Q. Don't remember anything at all. Now, are we talking about something unusual, doctor, or is this just commonly seen in patients who have epilepsy?

A. That isn't very common. I'm glad it isn't.

Q. You're glad it isn't?

A. Yes. Sometimes we would average eight or nine hundred epileptics at a time, and I guess you would see ten or twelve a year.

page 231 } Mr. Cuddy: Your Honor, please, this is all very enlightening, but I submit that what is to be presented here is something directly connected with the defendant, and not a course in the results of an epileptic mind.

The Court: I think Dr. Hurt ought to make his evidence apply to the defendant himself, and not go into this medical testimony unless you can connect it with the defendant himself.

Mr. Reed: Can you do that, doctor?

A. I'm just answering your questions.

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Q. We mean to connect this. You started to say something about amnesia?

A. They are amnesic during the time, they don't remember.

Q. Can you connect this period of time you're speaking of with Grover Lucas and his case? Have you examined him with regard to the events that occurred during his life shortly before or after the crime was committed?

A. Did I examine him?

Q. Yes, sir. Did you examine him to see what his recollection of it was of the time during his life immediately before or after this?

A. Yes, I got a history from him up to—of his
page 232 } drinking and activities up until the 19th of April.

And after the 19th of April he gave me nothing. No history whatsoever of what happened or what occurred. He couldn't recall after repeated and repeated interrogations and every method I knew, what took place from the 19th to the 28th or 9th, and he gave me absolutely no history whatsoever of what occurred.

However, he gave a statement that was read here in this court, which I read to the police, Mr. Allman, and Mr. Cuddy.

Q. I understand.

A. But he gave me no history whatsoever. Whether he was amnesic I do not know. I can't definitely say. He couldn't recall it after he was sober to me.

Q. Let me ask you this question, doctor. During the time that a patient is in one of these psychoequivalent states does he know what he did from day to day while he's in that state?

A. Well, I've treated right many in that state and they talk to you and they threaten you and they say all kinds of things, but after it's all over they don't recall it. And I don't think they would.

Q. I hope you understood what I'm trying to find out. If a person in a psychic equivalent state did an act today and he was still in that psychic equivalent state on the next day, would he remember on the next day what he had done on the day before while he was in that state?

A. He probably would while he was in it.

Q. While he was in it. Doctor, tell us what then
page 233 } you found from your examination of the electroencephalogram?

A. The way I interpret the electroencephalogram he had certain spikings and wave lengths in there that suggested a seizure, suggested an abnormal brain wave. They were not

constant but there was some suggestion. And it is difficult to interpret an electroencephalogram that you did not do yourself or know the operator's technique because they knew what was happening during the test, certain movements or certain excitement and such things; external interferences may cause various readings, but as a whole he had some definite spiking, alpha spikings.

Q. What is spiking, is that something suggestive?

A. The needle writes up and down in spikes, whereas it is a pretty normal smooth *rythm.*

Q. What does that spiking tell you?

A. That there is abnormal disturbances in the brain.

Q. Now, doctor, one more question and I'm through. What percentage of epileptics show abnormal brain tracings on the electroencephalogram?

A. Oh, well, I guess around about 70 or 75% show abnormal tracings, epileptics.

Q. 70 or 75%.

A. Roughly that.

Mr. Reed: Your witness.

page 234 } CROSS EXAMINATION.

By Mr. Cuddy:

Q. Doctor, is Grover Lucas an epileptic?

A. Based on the information that I was able to obtain I would have to say that he is a probable epileptic. I have not seen him have a clinical attack.

Q. I didn't say probable, I said is he an epileptic?

A. I do not know for sure.

Q. You do not know for sure.

You have examined the electroencephalogram tracings that were prepared at Marion?

A. Yes, sir.

Q. And you found on there some spikes, you call them, or alpha spikes, I believe you call them?

Q. It is just like any other electrical apparatus for the purpose of making tests, would you say, and one tests the heart and this is one that tests the brain waves?

A. Yes.

Q. It is made by affixing electrodes to various parts of the head, or sections of the head?

A. Yes, sir.

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Q. And the one that you examined was an eight electrode machine?

A. Yes, sir, eight channel.

Q. Eight channels. And you found that there were some indications that were merely indicative of epi-
page 235 } lepsy?

A. Yes, sir.

Q. Now, a true epileptic that line would be just continuous with peaks, wouldn't it?

A. No, just when the abnormal wave came through, but it would be more constant.

Q. It would be in a pattern, wouldn't it?

A. Yes, but there would be periods where it would be pretty normal.

Q. But it would follow a definite pattern. In this instance you found just spasmodically an alpha peak or a peak that would indicate epilepsy. Those machines are extremely sensitive, aren't they?

A. Yes, sir.

Q. That peak could come from a man blinking his eye, couldn't it?

A. You would get an abnormal wave, a change in wave. Yes, it would.

Q. So that the peaks you examined in there could have come by the man blinking his eye at the time the peak was made?

A. Yes, sir, it is possible to show an abnormal wave, any movement at all on the part of the patient.

Q. Any movement at all on the part of the patient. Any slight movement or disturbance in the vicinity that he could observe would do it, wouldn't it?

A. Yes, sir.

page 236 } Q. The operator of the machine by moving a hand could have caused it, couldn't it?

A. Yes, sir.

Q. Now, in examining that tracing certainly there were about the same number of peaks that you would find in examining most any normal mind, wouldn't it?

A. It was a little more than there would be in a normal mind.

Q. In a completely and totally normal mind you would still find those peaks, don't you?

A. Occasionally, yes, sir.

Q. And you say they can be produced from any sort of disturbance or movement at all either of the machine, the

operator of the machine, or the person who was being tested?

A. Yes, sir.

Q. Doctor, is a person who has committed a crime, and on the day following the commission of the crime, who sits down and gives a detailed statement of everything that happened, could a person suffering from epilepsy do that?

A. Yes.

Q. Could make a statement and give in details, a patient suffering from epilepsy?

A. Yes.

Q. After it happened during a time of seizure?

A. Hardly, no, sir.

Q. He couldn't do it, could he. He is com-
page 237 } pletely and totally blank as to any activity that might have taken place during the time of the seizure, isn't he?

A. Yes, sir.

Q. And if a person has committed a crime and can sit down on the following day and give a detailed account of it, and can sit down on the third day following and reiterate and amplify his statement as to the operation of it, certainly a person suffering from a seizure could not do that, could he?

A. No, sir.

Q. Now, you've got all your information with reference to the history etc. from Grover Lucas, didn't you?

A. No, sir.

Q. Well, you got quite a bit of it, didn't you?

A. Yeah.

Q. You asked questions about his history. Now, you cannot tell whether or not he remembers what happened, do you—can you?

A. No, sir.

Q. The mere fact that he told you that he remembers nothing from the 19th day of April until the 27th, or 28th, or 29th or whatever day it was, you don't know whether he's just covering up or not, do you?

A. No, it's impossible for me to tell.

Q. Impossible for you to tell. Now, a person who has made a statement prior to the time you examined him would certainly know what was going on when he gave details of it, wouldn't he?

page 238 } A. Yes, unless he was in one of these drunken things that have an amnesia afterwards, but still

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drunk, they can talk, but I don't know what his condition was.

Q. You don't know his condition. If a person who is an alcoholic commits a crime and then comes in when arrested and is not drunk, who gives a detailed statement of it, who is not drunk two days hence and gives a detailed statement of it, they certainly had remembrance for what they did?

A. Yes, sir.

Q. Now, you examined him for the purpose of determining his sanity also, didn't you?

A. Yes, sir.

Q. What is his condition now, sane or insane?

A. He's sane now.

Q. He's sane now, isn't he? He certainly knows right from wrong, doesn't he?

A. Now, yes.

Q. He knows the consequences of his acts, doesn't he?

A. Yes, sir.

Q. And he has the ability to plan, do, carry into execution anything that he might try or want to do?

A. I think he does now.

Q. A person who has an argument with another person, who arises and arms himself with a deadly weapon, who conceals that weapon during a period in which the page 239 victim might have seen it, who waits and lets that person go to sleep, and then gets up and hits them or strikes them with the deadly weapon and killing them, and then can recall definitely his doing it two and four days later certainly knew what they were doing, didn't they?

A. I think a man that committed a crime like that something was wrong with him.

Q. It is not a question of you begging for the life of a man.

A. I'm not begging for his life. I think he knew what he was doing.

Q. You're convinced that he knew what he was doing?

A. Yes.

Q. You're convinced he knew the difference between right and wrong?

A. He does now, I don't know about then.

Q. There's nothing on which you can base an opinion that he didn't know it then?

A. No.

Q. You know that he knows right from wrong now?

A. Yes.

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Q. You know that he realizes the consequences of his acts? And can carry them into execution? And you believe that when he did it he knew what he was doing?

A. Not when he did it I don't know.

Q. If he can give detailed statements of it and give a specific reason for doing it, wouldn't you say he

page 240 } knew what he was doing?

A. He was awfully drunk when he was questioned the first time.

Q. Doctor, he was not.

A. He knew what he was doing then.

Q. A man who was questioned, who can walk in and be observed and is not drunk and makes those statements he knew what he was doing, didn't he?

A. He probably did, yes, sir.

Q. Now, you don't have any idea of how much he had had to drink, or if anything?

A. I don't know, no, sir.

Q. Now, a person who is drinking and has gone to bed and slept the entire night, or slept from approximately 8:00 or 8:30 at night, at 5:00 o'clock in the morning, or 5:30 or 6:00 in the morning any *drunkeness* he might have had during the time has practically all worn off, hasn't it?

A. It should have.

Q. All right, over a period of seven or eight or nine hours if he were intoxicated he would be sober when he awoke?

A. He should have, yes, sir.

Q. And you can't say—you're certainly saying now that he's completely and totally sane in so far as knowing right from wrong and his ability to carry into execution his plans or anything he wills.

A. Yes, he's competent now, yes, sir.

Q. He's competent now. In so far as you know

page 241 } he was competent on the morning on which this crime was committed, wasn't he so far as you know?

A. So far as I know he was or wasn't; I don't know.

Q. You don't know?

A. No, nobody knows.

Q. You can't tell and you have no means of telling whether or not this man is just consciously, intentionally and purposely trying to conceal from you facts which he knows, remembers and has a vivid memory of, do you?

A. I said in my opening testimony that he did not tell me

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one thing regarding the crime no matter how hard I tried to reconstruct the events. He told me nothing.

Q. You do not know and there's no way on earth of telling whether he actually remembers every detail of it?

A. I can't tell.

Q. In your experience I ask you another hypothetical question. In your experience in the practice of psychiatry, particularly in your army experience and in connection with the state hospitals, isn't it frequent that a person with a guilty conscious, faced with a severe punishment for their acts, will purposely conceal all of the helpful information they might give to you?

A. Yes.

Q. Doctor, you made the statement that you thought—in one statement—that you thought he probably didn't know what he was doing. Now, you predicated that page 242 } opinion on the information which you had gotten from Lucas himself, didn't you?

A. As I said, from the 19th of April until about the time he left for the Southwestern State Hospital he could tell me nothing of what happened.

Q. He wouldn't tell you anything, or didn't tell you anything?

A. I tried every way in my power to work with him and get it out of him.

Q. I understand, but he didn't tell you anything?

A. He did not.

Q. What I'm talking about is the statement that you made with reference that there was some question in your mind as to whether or not he knew what he was doing at the time. Your opinion was predicated on the fact of the lack of information which he gave you. In other words, you got your information on lack of information from Grover Lucas himself which caused you to form that opinion?

A. And I also said if he was profoundly drunk at the time he did not know.

Q. If he said he was?

A. He didn't say. I said if he was. Mr. Reed said he was drinking all this quantity, and if he was drinking to that extent then he didn't know what he was doing. And then he didn't tell me a thing, so I would have to assume that he didn't know anything.

Q. So then it was based entirely on his not telling you anything?

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A. That's right.

page 243 } Q. And the assumption that he was profoundly drunk?

A. That's right.

Q. Now neither one of those facts do you know?

A. That's right.

Q. One of them is coming from the fact that he did a lot of drinking?

A. Yes, sir.

Q. And the other facts or lack of facts is coming because Grover Lucas would not, or did not tell you anything or give you any information with reference to the commission of the crime?

A. Yes.

RE-DIRECT EXAMINATION.

By Mr. Reed:

Q. Dr. Hurt, in making your diagnosis of Grover Lucas' mental condition at the time of these deaths did you have the advantage of the report sent to the Court by Dr. Zeller and Dr. Blalock?

Mr. Cuddy: Now, your Honor, I object to this.

Mr. Reed: Just a minute.

Mr. Cuddy: Let me finish this objection. That was nothing that was brought out on cross examination. He wasn't asked about the information on which he based his

page 244 } opinion. Now there's nothing new brought out on cross examination whatsoever, and I submit he's examined his witness and unless there's new material he has no right to take him back on direct.

Mr. Reed: If you don't want the Jury to know I won't ask him.

Mr. Cuddy: It's not that I'm trying to conceal; I'm merely trying to follow the rules of the Court, Mr. Reed.

The Court: There has been no mention of that report by the witness to this point, and he did state upon what information he based his report, and it seems to me now, Mr. Reed, that you are in effect attempting to cross examine your witness to bring out something that may have been lacking on direct examination and which Mr. Cuddy has not gone into on cross examination.

Mr. Reed: May I be permitted to ask the doctor—I don't recall all the long testimony—whether or not he mentioned

the fact of this report. I don't recall to be perfectly frank with you.

Mr. Cuddy: Your Honor, we submit that's not proper. I don't know what report he's talking about a report from the Southwestern Hospital it is a matter of public record and was available to anybody who wanted to see it. It has been in the Court's papers every since it was returned.

page 245 } The Court: The witness has not referred to that as having any basis whatever for his opinion in this case. I don't see any reason to go back now and let him change his testimony in any way. It is something that should have been brought out on direct examination if it is a fact.

Mr. Reed: Can the Court say that Dr. Hurt didn't say that? I simply don't recall.

The Court: I don't want to be put in the position of remembering all the evidence, but frankly I'm satisfied that the report up to this moment has not been mentioned.

Mr. Reed: I except to the Court's ruling.

Q. Dr. Hurt, I just want to ask you one question. Mr. Cuddy asked you, I believe, that if Grover Lucas had an epileptic seizure and then during that seizure, I believe,—I may stand corrected—during that seizure if these things happened would he remember in detail to explain that to the police officers, if he did?

Mr. Cuddy: I object. That was gone into on his examination and he went through it.

Mr. Reed: I merely want Dr. Hurt to explain what kind of a seizure he was talking about, whether he was talking

page 246 } about a convulsive seizure, or whether he was speaking in a broad term of his psychic equivalent state, that's all I want him to bring out.

The Court: Mr. Reed, it's the Court's opinion that you went into that on direct examination at some length.

Mr. Reed: I did sir, but I'm merely trying to determine what,—when Dr. Hurt answered Mr. Cuddy's question on cross examination what he meant. I'm not trying to rehash it; I'm just trying to figure what he meant.

The Court: All right, I'm going to allow it.

Mr. Reed:

Q. What were you referring to at that time?

Sgt. R. L. Belcher.

A. What was the question? If he remembered what happened during a seizure?
Q. Yes, what kind of a seizure are you speaking of?
A. A convulsion.
Q. Nobody knows what happens in a convulsion; no epileptic does, do they?
A. That's right.
Q. You were speaking of a convulsion—

The Court: All right, you've been into that now.
Mr. Reed: That's all; that's all.

page 247 } RE-CROSS EXAMINATION.

By Mr. Cuddy:
Q. In a convulsion seizure no one is capable of doing anything; they can't do anything?
A. Not in a seizure.

Mr. Cuddy: That's all.

Witness stands aside.

page 248 } SGT. R. L. BELCHER,
being called as a witness on behalf of the defendant, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:
Q. Sgt. Belcher, I believe you testified in this case on yesterday?
A. Yes.
Q. I believe that at 8:20 or 8:30 on Monday, the 29th of April, that you, and I believe, Mr. Allman, Mr. Cuddy and Mr. Crush took a statement from Grover Lucas in the conference room downstairs, is that right?
A. Yes, sir.
Q. What time did that statement begin?
A. On Monday night, April 29th at 8:30 P. M.
Q. What time did it end?
A. He was put on docket at 9:10 P. M., and it happened between 8:30 and 9:00 o'clock.
Q. Did you write the statement out?
A. I wrote the statement out in notes.

Sgt. R. L. Belcher.

Q. Did he sign it?
A. No, sir, he didn't.
Q. Did you ask him to sign it?
A. No, sir.
page 249 } Q. Why didn't you?
A. At the time we took Mr. Lucas in the interrogation room, as stated earlier in the statement, he had been drinking. The room was real hot—the interrogation room was very hot and after we had talked to Mr. Lucas in the interrogation room the last of it his tongue seemed to get heavy.
Q. His tongue got heavy?
A. Yes, sir.

Mr. Reed: That's all.

CROSS EXAMINATION.

By Mr. Cuddy:
Q. Also, were you told by me that I did not want him to sign that statement?
A. Correct.
Q. And that any statement that would be signed would be done later on?
A. Yes, sir.
Q. As a matter of fact, at that time you had taken and written in your own handwriting notes of it as you went along?
A. Yes, sir.
Q. It was not prepared then?
A. No, sir.

page 250 } Mr. Cuddy: That's all.

Witness stands aside.

Court adjourned for lunch at 12:30 until 2:00 P. M.

In chambers at 2:00 P. M.

Mr. Reed: If your Honor, please, in concluding Dr. Hurt's testimony the Court will recall that I attempted to go back to the report sent to the Court by Dr. Zeller and Dr. Blalock, a written report, and the Court refused to permit counsel for the defendant to refer to this report on the grounds that

the subject was not covered on direct examination, to which action the defendant excepted.

During the lunch hour I have asked the reporter to check her notes and she has gone over her notes as to the part of Dr. Hurt's testimony, and Dr. Hurt testified that in making his diagnosis one of the things which he took into consideration was the report of the Southwestern State Hospital at Marion, and reviewed his electroencephalogram tracings that were made at Marion, which was a part of the report.

Again I want to renew my motion to permit me to put Dr. Hurt back on the stand and go into one or two matters concerning that report.

page 251 } The Court: Mr. Cuddy didn't go into that report, and if Dr. Hurt did so on direct examination why should you be allowed to go back now and take up matters contained in that report, when he referred to it on direct examination and you dropped the matter then.

Mr. Reed: I hope that the Court will appreciate that counsel for the defendant being unfamiliar with medical terms had a world of things to cover and that it's impossible to remember in this case each and every one of the things the report mentioned.

The report was referred to by Dr. Hurt and the electroencephalogram tracing, which was a part of the report, was a basis of his diagnosis, and I think counsel is entitled to go back to that at this time. I understand the Court's ruling is that it was brought out on direct examination?

The Court: I said I couldn't recall it's being mentioned.

Mr. Reed: We are prepared to show that it was.

Mr. Cuddy: The Court's ruling is that nothing new was brought out on cross examination at all that would involve that.

Mr. Crush: You asked Dr. Hurt if he didn't have the benefit of those reports and at that point it stopped.

page 252 } Mr. Reed: We're talking about whether or not that report was referred to on direct examination.

The Court: It was not referred to in cross examination.

Mr. Reed: The electroencephalogram tracing was referred to and that was a part of the report.

Mr. Cuddy: What did I bring out that was different, contrary and new of the examination you made of Dr. Hurt?

Mr. Reed: I don't know that you brought out anything, but Dr. Hurt used that report as part of his basis of his diagnosis of this defendant, and part of the diagnosis made by him was in agreement with the diagnosis of the doctors at

Marion that the electroencephalograms were suggestive of epilepsy.

The Court: That should have been brought out on direct examination. If it was not that is substantially what he testified to.

Mr. Cuddy: He went into detail.

Mr. Reed: I didn't as to anything about that report except merely as to the result of the doctors' diagnosis.

The Court: Mr. Cuddy didn't go into the part
page 253 } you're talking about.

Mr. Reed: I don't think the defendant is limited to what the Commonwealth goes into on cross examination. That's a new rule to me. He didn't have to bring up anything new because we were talking about the same thing. The electroencephalogram is part of that report.

Mr. Cuddy: Certainly I questioned him on it.

Mr. Reed: And I have the right to go back to it.

Mr. Cuddy: I submit you do not.

The Court: I know of no reason why the defendant should be allowed to go back and make any further examination of this witness.

Mr. Cuddy: When you take a witness and examine him and announce you're through and he is taken on cross examination, unless there is some material which is completely and totally new you have no right to put him back on re-direct examination.

Mr. Reed: I can come back and show that the hospital based its report on the same thing as Dr. Hurt, the electroencephalogram tracings were suggestive of epilepsy.

The Court: He testified to that.

page 254 } Mr. Reed: But then you came back, Mr. Cuddy, and tried to discredit that by saying the man blinking his eye would cause a peak.

Mr. Cuddy: Certainly.

Mr. Reed: I can show that the hospital in Marion on those same electroencephalograms reported that it was suggestive of epilepsy.

Mr. Cuddy: Isn't that what Dr. Hurt said?

Mr. Reed: Then, your Honor, the point I'm trying to make is that Dr. Hurt examined the electroencephalogram, and he said it was suggestive of epilepsy. He was not there when it was made.

Further, on cross examination he said when Mr. Cuddy brought out these lines, spikings, and asked him if that could be caused from a man blinking his eye, or any movement or disturbance in the vicinity would do it, and he tried to discredit that, and my point is to come back to the report—

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The Court: You mean a written report filed along with these graphs?

Mr. Reed: The letter said this, your Honor, in effect: The electroencephalograph tracings of this man are suggestive of *eiplepsy.* I want to go back and say: Dr. Hurt

page 255 } you examined this report as part of your diagnosis and what did the report say? Mr. Cuddy has discredited that subject brought up on direct examination and taken on cross examination, and I have a right to come back to the subject.

The Court: It is something you should have brought out on direct examination.

Mr. Reed: Can't I enlarge on it.

The Court: I don't think you're entitled to it at this stage. I'm convinced that's a proper holding.

Mr. Reed: We again except to the ruling of the Court.

Return to courtroom (2:14 P. M.)

Defense rests, your Honor.

page 256 } DR. CHARLES A. ZELLER,

being called in rebuttal, after being first duly sworn, testified as follows:

DIRECT EXAMINATION.

By Mr. Cuddy:

Q. You are Dr. Charles A. Zeller?

A. I am.

Q. Dr. Zeller, I believe you are Clinical Director of the Southwestern State Hospital?

A. I am.

Q. Dr. Zeller, where did you take your undergraduate work?

A. Bucknell University and the University of West Virginia where I had my first three years of medicine, and I graduated from the University of Buffalo in 1927.

Q. Did you have an A. B. degree from Bucknell?

A. That's right.

Q. A B. S. degree from the University of West Virginia?

A. That's right.

Q. And an M. D. degree from the University of Buffalo?

A. Right.

Q. After your graduation as a medical doctor, I wish you

would state your experience in the study of mental diseases, the connection and which hospitals etc.?

page 257 } A. After my graduation in 1927 I interned at the Scranton State Hospital, which was an approved general hospital, 1927-1928. I then accepted a position as junior assistant at Dansville State Hospital, at Dansville, Pennsylvania.

Q. Is that a mental hospital?

A. That's a mental hospital. Then I went through four grades and was made senior physician in 1931. The same year I was transferred to the Parview State Hospital at Waymart, Pennsylvania.

Q. Is that a mental hospital?

A. That is a Pennsylvania hospital for the criminal mentally ill, as assistant superintendent and was made superintendent in 1936.

Then in 1941 I was transferred to the Philadelphia State Hospital, which is another mental hospital, where I remained until 1945. In 1945 I was appointed Director of Mental Health of the State of Michigan and set up the department of mental health there. And then accepted a position as Director of Mental Health of the State of Indiana, where I set up their department of mental health, remaining there two years. And then was appointed Superintendent of the Weston State Hospital at Weston, West Virginia.

Q. Is that a mental institution?

A. That's another mental hospital.

Then in 1951 I accepted the position of Chief of the Department of Psychiatry at the Veterans Admi-

page 258 } nistration Hospital at Clarksburg, West Virginia, where I remained until July 1st, when I accepted the position of Clinical Director of the Southwestern State Hospital, Marion, Virginia.

Q. Doctor, how many years have you been engaged in the practice of mental disorders?

A. Thirty.

Q. You're now Chief Clinical Director at the Southwestern State Hospital at Marion, Virginia?

A. I am.

Q. Dr. Zeller, I believe you observed, studied, and examined the defendant, Grover Lucas?

A. I did.

Q. For what length of time did you and your staff have him under observation?

A. Mr. Lucas was admitted to our hospital on June 12,

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1958. He remained there until August 28, 1958, at which time we discharged him, which is a period of approximately 76 days.

Q. Now, what did your examination of Lucas—you and your associates and workers at the hospital—consist of?

A. It consisted of first obtaining a history, psychiatric history of patient from his relatives, Commonwealth's Attorney, officers who had observed him and others from all sources which we could obtain; a physical examination, neurological examination, all laboratory proceedings that were available, psychological examination, and that about completes it.

Q. I believe you had various conferences with
page 259 } him?

A. We did.

Q. Dr. Zeller, from your examination of Grover Lucas did you come to a conclusion as to his sanity at the time of the examination and at the time he was under your observation?

A. We did.

Q. What was your conclusion with reference to his sanity?

A. Our conclusion was that he was sane.

Q. Does he know the difference between right and wrong?

A. In our opinion, yes.

Q. Does he have the ability to plan and carry into execution the plans which he may formulate?

A. He does.

Q. Does he realize the consequences of his acts?

A. In my opinion, yes.

Q. I will ask you, Dr. Zeller, upon your examination did you form an opinion as to his ability and of his sanity at the time of the commission of the crime?

A. We did.

Q. What was your conclusion as to his sanity at the time of the commission of the crime?

A. It was our opinion that he was sane.

Q. By sane you mean knowing the difference between right and wrong?

page 260 } A. Yes.

Q. He had the ability to plan and carry into execution any plans he might formulate?

A. Yes.

Q. And understand and realize the consequences of his acts?

A. Yes.

Q. Dr. Zeller, was this man examined thoroughly to determine whether or not he was an epileptic?

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A. He was.

Q. Is he an epileptic?

A. It's our opinion that he is not.

Q. Dr. Zeller, you examined him with reference to alcoholic addiction?

A. We did.

Q. And the results of alcoholic addition and all phases of it?

A. We did.

Q. In your opinion is he what was referred to as a pathological alcoholic?

A. What is commonly referred to, we did not find him insane or psychotic due to alcoholism.

Q. But not insane due to alcoholism?

A. No.

Q. Now, Dr. Zeller, I want to put this hypothetical question to you.

page 261 } If a person should commit a crime, the details of which you have heard related, while suffering from epilepsy in any form, would he at a future date, the day following and three days afterwards, have any remembrance whatsoever of the commission of the crime?

A. He would not.

Q. Another hypothetical question.

If a person suffering from pathological alcoholism or acute alcoholism that results in the commission of a crime, commits a crime as has been detailed, would he have any recollection of the crime on the day following or on the third day thereafter and be able to give details of it?

A. He would not.

Q. I believe Doctor, you have heard related by several witnesses with reference to the form of seizure he had?

A. I have.

Q. Was his body, and particularly his tongue, examined with reference to trying to find any evidence or marks showing an epileptic condition?

A. They were.

Q. Were any found?

A. No.

Q. Doctor, from your observation of this man, examination of him, the study that you have made with re-

page 262 } ference to his complete history etc., can you form an opinion as to whether or not Grover Lucas remembers the details of the crime which he committed?

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A. We are of the opinion that he does remember, but does not wish to express it.

Q. Because of what?

A. Well, probably in protection of the acts which he committed.

Q. Doctor, if a person commits a crime and on the day thereafter and two days subsequent to that gives a detail statement of the crime could that person be suffering either from epilepsy during the commission of the crime or an acute alcoholic condition which would cause him to commit it?

A. I will have to state that this way. He could be suffering from epilepsy but it's according to whether he had—if he were suffering from epilepsy did he have a seizure at the time, or was there a known amnesia?

Q. If he had a seizure at the time and was suffering from amnesia would he ever have any recollection of the commission of the crime?

A. He would not.

Q. Doctor, you have heard the details of the commission of the crime, and you have studied the defendant, what is your opinion as to Grover Lucas knowing and carrying into execution the commission of this crime?

page 263 } A. That he would remember and have full details of it.

Q. You believe that he does?

A. I believe that he does.

Mr. Cuddy: All right, take the witness.

CROSS EXAMINATION.

By Mr. Reed:

Q. Your answers are rather emphatic, aren't they, doctor?

A. I only form my opinions, which are honest and according to what I see in the patient.

Q. Grover Lucas was sent to Southwestern State Hospital under the direction of this Court, was he not?

A. He was.

Q. And you were directed to determine whether or not Grover Lucas was sane or insane?

A. We were.

Q. You are the Clinical Director of the Southwestern State?

A. I am.

Dr. Charles A. Zeller.

Q. Dr. Joseph R. Blalock is the Superintendent
page 264 } of Southwestern State?
A. Yes, that's right.
Q. You and Dr. Blalock over your signature signed a report giving this Court your opinion as to whether or not Grover Lucas was sane or insane?
A. We did.
Q. That report was dated August 11, 1958?
A. Yes.
Q. In that report you told the Court that in your opinion Grover Lucas was not now insane or psychotic?
A. That's right.

The Court: Was not now what?
Mr. Reed: Was not now insane or psychotic.

A. That's right.
Q. You have the report before you?
A. Yes, I have.
Q. There is no place in that report in which you stated that in your opinion was Grover Lucas insane at the time of the commission of this crime?
A. That's right.
Q. You weren't asked to determine that, were
page 265 } you?
A. We weren't asked to.
Q. And you did not so find?
A. Pardon me just a moment. We were asked to make a careful observation and examination into the mental condition of the said Grover Earl Lucas and report to this Court on his mental condition.
Q. You did not in your report state to the Court that in your opinion and the opinion of Dr. Blalock that Grover Lucas was insane at the time of the commission of the crime?
A. We did not.
Q. When you saw Grover Lucas it was on June 12, 1958?
A. I didn't see him on June 12th.
Q. That was when he was sent to Southwestern State?
A. That's right.
Q. He was sent there on June 12th, about three months after he had been incarcerated. He was incarcerated on April 28th, about two months, a little over two months, is that right?
A. Less than two months.

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Q. But he had no alcohol in his system at the time I take it?

A. No.

Q. And he was there from June 12, 1958, until he returned here on August 28, a period as you have stated

page 266 } for 76 days?

A. That's right.

Q. During that time how many times did you see Grover Lucas?

A. Numerous and various times.

Q. Numerous and various times. You mean you just observed him at the institution numerous times, or did you actually sit down and confer with him?

A. I sat down with this man, I believe it was on July 18th, and again on August 8th, at which time I spent about an hour or an hour and a half with him.

Q. Give me those dates again please, sir?

A. July 18th and August 8th, if I remember rightly.

Q. Then the first time you actually attempted your diagnosis in so far as talking to him was not on June 12th, but over a month later?

A. No, I saw him around July 2nd or 3rd.

Q. Then you're wrong if you said you didn't see him until July 18th?

A. I didn't attempt to make any diagnosis.

Q. You didn't attempt to make any diagnosis until July 18, 1958?

A. That's right.

Q. Over a month after he had been in the hospital?

A. That's right.

Q. How long did you spend with him at that time?

A. An hour and a half.

page 267 } Q. And about an hour on August 8th?

A. An hour and a half on August 8th.

Q. Or a total of three hours you spent with Grover Lucas?

A. That's right.

Q. Now, Doctor, you stated that since the admission to the hospital of Grover Lucas he had been carefully studied and a history obtained so far as practical, is that correct?

A. That's correct.

Q. Did you yourself talk to any of his relatives?

A. I did not.

Q. Did you ask Mrs. Meador, whom you saw take the stand, whether or not Grover Lucas ever had any epileptic fits?

A. I did not.

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Q. Did you ask Grover Lucas' uncle, who you also saw take the stand, whether or not Grover Lucas had any epileptic fits?

A. I did not.

Q. Did you ask whether or not Grover Lucas' mother had ever had epileptic fits?

A. I did not.

Q. Did you ask whether or not a maternal cousin had had epileptic fits?

A. I never interviewed any of his relatives. We have social service for that.

page 268 } Q. You have somebody else to do that?

A. That's right.

Q. A case worker, and in this case a Mrs. McIntire, or Miss McIntire?

A. That's right.

Q. You leave that up to them?

A. That's right.

Q. Is it not true that epilepsy is an hereditary disease?

A. Not essentially so, no.

Q. Can it be caused by a brain trauma?

A. Well, no, we have Jacksonian type of epilepsy from brain trauma.

Q. Dr. Zeller, isn't it true that 7% of trauma to the brain, where the skull is fractured, that 7% of those people result in epilepsy?

A. You can have various percentages if you have fractures of the skull.

Q. That's right, so therefore epilepsy can come from the brain?

A. And it can come from concussion.

Q. It can come from concussion. Those are known causes of *spilepsy*. What about heredity, is heredity a known cause of *spilepsy?*

A. Not essentially so, no.

page 269 } Q. But it is important in determining your diagnosis whether or not there is epilepsy in the patient's family; that's part of your diagnosis, isn't it?

A. We generally ask, yes, we like to get a family history.

Q. You like to get a family history. Do you consider it important to get a family history?

A. We do.

Q. Yet, in this case there was no history obtained so far as epilepsy appearing in this man's family?

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A. We had a social service report history to the effect that possibly the mother might have had, and that there were two maternal aunts, if I remember correctly, and one cousin. But most of the report concerning the mother was on the physical side relating to physical disease, wherein she in her last illness showed some swelling or something of that character, which might have been a heart condition.

Q. Then during your investigation as to the history it was suggestive that the mother had epilepsy?

A. In reading the report, yes.

Q. And also a cousin?

A. That's right.

Q. Dr. Zeller, there's another type of epilepsy and I believe they call it idiopathic?

A. No, idiopathic means arising without cause, or unknown cause.

page 270 } Q. That's right.

A. Any disease can be idiopathic.

Q. But there's an idopathic type of *eplipsy,* isn't there?

A. I would say idiopathic in character.

Q. Because you don't know what caused it?

A. That's right.

Q. And epilepsy is not a disease itself, it's a symptom, isn't it?

A. That's right.

Q. Just like a fever is a symptom?

A. Yes. We're beginning to feel that epilepsy in itself is not a disease, and we're beginning to feel that it is more of a symptom because there are many other conditions that can cause convulsive seizures.

Q. That's right, and it may not be epilepsy?

A. Brain tumors.

Q. Sunstroke?

A. Possibly so. And erysipelas, etc.

Q. And you did find out that there was a history.

Now, doctor, your official diagnosis in your report is that he was a physiopathic personality, alcoholic addiction. Is that a new term for psychopathic?

A. Well, I was on the committee of nomenclature years ago, of the American Psychiatric Association, and

page 271 } we've been trying to get away from this idea of psysiopathic personality.

Q. To a broader term?

A. To more pinpointing our diagnostic efforts, so it was very recognizable that we had personalities by pattern; we

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have personalities by trait, and we have personalities what we call sociopathic.

Q. You also took electroencephalograms?

A. We did, three of them.

Q. Three of them. That's the usual number?

A. Yes.

Q. And you reported to the Court that the electroencephalogram tracings, brain wave tracings, showed some abnormal tracings suggestive of epilepsy?

A. That's right. Pardon me just a moment (witness consults report). That's right.

Q. Now, Doctor, if a person has epilepsy—let me ask you this. A person can't feign epilepsy, can he?

A. There are some types of personalities that can. Yes, I've seen them.

Q. Feign epilepsy?

A. That's right.

Q. But generally you can rely on your electroencephalogram to tell whether or not it is feigned, can you not?

A. Not always because anywhere from 65, 70 to 75% would be variable on various investigators. With your true epilepsy, which first of all, it can be described as those who page 272 } have a feeling that something's going to happen; then they cry; then they fall; then the seizure, the chronic contraction of the muscles; they wet themselves and have bowel movements etc. involuntarily, and the chronic contractions is variable, they may be one minute, five minutes or they may be longer in various cases. Those are your true cases of epilepsy.

Q. I don't think you quite answered my question, Doctor. I asked you if you cannot determine by the use of the electroencephalogram whether or not a person is attempting to feign epilepsy?

A. Not always because some true cases of epilepsy will not show up always on the electroencephalogram examination, while there are those that are normal will show abnormal waves.

Q. We're coming to that. You stated in your report, and I quote, "It might be stated that about 15% of non-epileptics show abnormal brain waves."

A. That's right.

Q. You didn't state to the Court that about 85% of epileptics show abnormal brain waves, and that's the same thing? In other words, 85% of epileptics show abnormal brain waves?

A. Yes, approximately. It will vary in various investiga-

tors and they will find such as gibbs, clinics, and others who have made a great study of this they have various percentages.

Q. All right, Doctor, you say 85%

A. Yes.

Q. And 15% of epileptics show normal brain
page 273 } waves?

A. Yes.

Q. Therefore, you're putting Grover Lucas in the 15% class rather than in the 85%, aren't you, in view of the fact that the history gave epilepsy in the family, and what was shown on the electroencephalogram that you sent here to be examined by his psychiatrist, is that right?

A. That's right.

Q. You put him in the 15% bracket?

A. Yes.

Q. Now, tell the Court whether or not in your opinion Grover Lucas has, or does not have epilepsy?

A. In our opinion he does not have epilepsy?

Q. You are sure of that?

A. We *fell* quite sure of it after having had him under observation for the period of time that we had him, and the finding of various other symptoms, etc.

Q. Let me ask you this: can you positively tell the Court and Jury that Grover Lucas does not have epilepsy?

A. Can I positively state?

Q. Yes, sir.

A. The question was am I positive that he doesn't have?

Q. Yes, sir.

A. Anything is probable, but I'm almost positive that he does not have what is known as true epilepsy.

Q. I didn't ask you that. I asked you if he had
page 274 } epilepsy, and if you know, yes or no.

A. I will have to say that he does not have epilepsy. There is a possibility that he might show a psychomotor type.

Q. In other words, you're telling the Court and the Jury that in view of your report which suggested epilepsy, you're now telling the Court that he does not have spilepsy?

A. That's right.

Q. Now, is it true that a patient can have epilepsy in the early stages of life, and that epilepsy will disappear, and that it will come back later in life, is that true?

A. Usually those that have it in the juvenile period, and it clears up it does not return.

Dr. Charles A. Zeller.

Q. But it has been known to?
A. Anything is possible.
Q. I'm not asking you what is possible.
A. Not in so far as I have noted in my experience.
Q. It could be that it would reoccur later in life?
A. But it would be most unusual.
Q. Well, this is a most unusual case, isn't it, Doctor?
A. (No answer).
Q. Now, Doctor, you went on in your report and stated that he was mentally competent, and you also stated that he had active tuberculosis?
A. We did, which could be problematical too because there was some question on the report of the rotenologist who gave the opinion of the x-ray that it might be a fungus infection.

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Q. Let me tell you what you reported to the Court.
A. Yes, we reported to the Court because later on we did—
Q. Just let me tell you what you reported.
A. All right.
Q. Attention should be called to the fact that this man was found to have active pulmonary tuberculosis, and he was—there he was treated with INH 100 millograms three times a day, and PAS tablets, four, three times a day, and with the permission of the Court we placed him in the tuberculosis building, where this treatment could be instituted and where isolation with reference to active tuberculosis could be followed, and then you recommended that this procedure be called to the attention of the jailer, did you not?
A. Yes.
Q. That was in your report that he had active pulmonary tuberculosis?
A. Yes.
Q. Doctor, let's get back to this epilepsy.
After an epileptic has a seizure frequently, does not the patient go into what we talked about this morning as psychic equivalent states?
A. No. Psychic equivalent is just a term that we now know in this respect, if you will allow me to explain that.
Q. Let me see if we're using the right term. Do they go into a state of automatism?

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A. Not always, no.
Q. I didn't ask you always, I asked you if it does not occur?
A. Not always, no.

Dr. Charles A. Zeller.

Q. But it does occur, and a person who has an epileptic seizure, or who is subject to epileptic seizures, may go into a state of automatism, which may replace or which may follow a seizure, is that correct or not?

A. I would have to answer that in this way. With grand mal epilepsy, and after a severe seizure, a sensorium may be clouded for variable times. It maybe a minute, five minutes, it may be an hour, it maybe two hours. That would have to be with the true case of what we call grand mal epilepsy. There are grand mal, petit mal, psychomotor, and I don't place epileptic equivalence in epilepsy.

Q. You don't place it?

A. No, I do not.

Q. But you've never written a book on the subject, have you?

A. No.

Q. Have you read anything on the subject?

A. Everything I could read about it.

Q. You've read plenty about it, haven't you?

A. Yes.

Q. You've read about automatism, haven't you?

page 277 } A. Yes.

Q. All right, Doctor, you talked about grand mal epilepsy?

A. That's right.

Q. Let's talk about petit mal epilepsy. There is more *frequentcy* in that type than there is in the grand mal type, because you don't have all those convulsions, do you?

A. No.

Q. There's generally a loss of memory for a minute or a few minutes?

A. That's right.

Q. And a person might go on about his business and not know that he had had a seizure, isn't that right?

A. He might have a slight contraction of the muscles.

Q. And that's caused by some disturbance in the brain?

A. Petit mal.

Q. That's what I'm talking about, petit mal. All right, now. After, isn't it more common in petit mal epilepsy for a patient to go into a period of automatism?

A. Yes.

Q. When you said no you were talking about grand mal, but on this petit mal you do have this period of automatism, it's not uncommon, is it?

A. Not uncommon.

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Q. And that may last for days, and it may last
page 278 } for a week?

A. I have to disagree with you there; it wouldn't last for days, but generally only lasts for a few moments in my experience.

Q. In your reading of the subject have you ever heard of it lasting for days and even weeks?

A. That would be mostly in the epileptic equivalence.

Q. I thought we were talking about the epileptic equivalence or automatism; we're talking about the same thing, aren't we?

A. Well, there's a difference of understanding in so far as those two terms among various *reserchers.*

Q. Well, all I'm trying to say, regardless of what we call it, I'm trying to find out whether or not an epileptic frequently goes into a period at which time his actions are automatic; he may have a sudden outburst of violence in which homicide results; he may do very complex acts, and during that time he's in what we call—I don't know what you want to call it—but I've heard it called confused automatism, epileptic insanity. Now, is there such a thing as that, Doctor, that's what I'm trying to find out, in petit mal epilepsy?

A. That's mostly when they go into fugue, or as you call it. F-U-G-U-E means running away from. That's sometimes mostly comes in the stage of the aura—A-U-R-A—, or period preceding.

page 279 } Q. Doctor, you're getting back on the grand mal epilepsy, and we're trying to talk about petit mal.

A. Petit mal is only another division which is not as severe as grand mal.

Q. I understand that, we're not talking about the severity of the disease. We're talking about this condition that existed after; that's what we're trying to confine our discussion to?

A. Where there would be any automatism or loss of memory in that respect it would be. Petit mal is only for a short period of time.

Q. The actual seizure for a short period of time?

A. Yes, and it has been my experience and most of them agree today that the loss of memory is only for a short period of time.

Q. That's in your experience?

A. Yes.

Q. I'm asking you if in the experience of authorities who have written on the subject, have you not learned through

Dr. Charles A. Zeller.

your studies that this period we're talking about, automatism, can last for days or weeks?

A. I wouldn't know in my reading of petit mal.

Q. You don't know?

A. No.

Q. You're not saying yes or no?

A. I'm not saying yes or no.

page 280 } Q. What is the longest period of this automatism that you know about in your experience?

A. Possibly ten or fifteen minutes.

Q. Ten or fifteen minutes.

A. Yes.

Q. During this time does the patient know what he's doing?

A. Not exactly, no.

Q. Not exactly. And after this period lasted he has a true state of amnesia, does he not? He doesn't know what he did during that time, does he?

A. That will vary with various patients.

Q. Generally he doesn't know what happened?

A. It could be cloudy. As I said that will vary with various patients.

Q. Then are you saying that a person who comes out of one of these states doesn't know what he has done?

A. It's all according to the patient.

Q. Isn't it true that epileptics, psychopaths, people who have sustained head injuries, sunstroke, or any other condition which interferred with his mentality that they are far more subject to disassociation with the use of alcohol?

A. Again that will be variable with the patient. I must put that in the same category, as I said, all patients. We all have a different chemical makeup.

page 281 } Q. Such a person can commit murder without the slightest motive, can't they?

A. Disssociation is a branch of psychoneurosis. Disassociation is a category of anxiety, and impressive reaction coming in that group.

Q. In other words, we seem to be having a play on words, don't we?

A. Just so we get the understanding.

Q. I mention one term and you go to something else?

Mr. Cuddy: I object to his arguing with the witness.

The Court: Objection sustained.

Mr. Reed:

Dr. Charles A. Zeller.

Q. Doctor, in your experience have you found that patients in this state of automatism—I hope I'm using the right word there—may have a *ferrocious,* aggressive outburst in which homicide and other criminal acts may occur?

A. I have seen outburst such as you describe in quite a number of the true cases of epilepsy which were diagnosed as grand mal in type.

Q. After the seizure?

A. Some were before and some were after; even the aura stage, it will vary.

Q. I thought you just said there was no such
page 282 } thing in grand mal?

A. I didn't say that. If I did I didn't mean to.

Q. I certainly understood you to say that in the beginning when we were talking about the other types?

A. You were talking about petit mal.

Q. Yes, sir, and then we were talking about grand mal.

Mr. Cuddy: I object to his arguing with the witness.

The Court: Don't argue with the witness.

Mr. Reed:

Q. Is it true, Doctor, that alcohol aggravates epilepsy?

A. I won't say it's true in all cases; it might; it would have to be according to the individual.

Q. It might or it might not, is that right?

A. It might or it might not.

Q. Depending upon the individual?

A. Correct.

Q. Now, when you answered Mr. Cuddy's hypothetical question you said that a person suffering from epilepsy would not have any remembrance of the commission of the crime?

A. The amnesia—I'm not going to answer that hypothetical question except this way—the amnesia of the psychomotor type of epilepsy is never recalled, no matter how you may
probe the unconscious, but you cannot recall the
page 283 } true amnesia of what I classify as psychomotor
epilepsy. It cannot be recalled.

Q. It cannot be recalled?

A. It cannot.

Q. And during a period of this automatism it can not be?

Dr. Charles A. Zeller.

A. The term you're mentioning I've never paid too much attention to because it's only automatic reactions etc., which you don't see in every case.

Q. You say you haven't paid much attention to that?

A. No. It's just simply automatic actions or reactions.

Q. That's right, automatic?

A. That's right.

Q. And during a period of this automatic reaction, during the state we're talking about, a patient would remember what he did the day before while he was in that state if, we'll say, it lasted that long a time?

A. Would you repeat that question?

Q. During a state of automatism, if it lasted or if it could last longer than a few minutes as you have suggested, if it lasted we'll say a day, a patient in such a state would know in the afternoon probably what he did in the morning?

A. If it was that severe again I would have to put that on the basis of seeing the patient, knowing the patient, and depending on the type that he might have that page 284 } development.

Q. You just haven't read much about these automatism reactions, have you, Doctor?

A. Automatism is something that maybe one will write about, but a number of other investigators will pay little or no attention to.

Q. They pay little or no attention to what the authorities write about?

A. A. There may be one writing about it, but I would have to say that we go mostly by the symptoms that I have expressed. Automatism is simply automatic actions, which you see in some cases and some you don't. And I have never seen in my experience, that is, too many as you are trying to describe there and trying to get me to describe.

Q. Doctor, I'm trying to get you to describe the condition, not whether or not you had seen it, one or two, but whether or not in the medical writings there is not such a state? That's all I want to know.

A. Maybe one or two investigators have noticed it or written about it, and maybe many others have paid no attention to it. I have to answer it that way.

Q. Doctor, have you had any experience in epileysy?

A. A lot.

Q. A lot.

A. Yes.

Dr. Charles A. Zeller.

Q. Yet you don't know too much about this
page 285 } automatism, do you?
A. I know considerable about it, but as I said I haven't noticed it too much.

Q. Doctor, just one or two more questions. You say Grover Lucas does remember what happened?

A. He does, in my opinion.

Q. In your opinion he knows. You didn't see him a week or ten days before this occurred, did you?

A. I did not.

Q. You didn't see him on Saturday night to know whether what his condition was with reference to alcoholism, did you?

A. I most certainly did not.

Q. Of course, you didn't. And you don't know what his condition was on Sunday morning, April 27, 1958, do you?

A. The only thing I can answer—

Q. Do you know it?

A. I do not.

Q. Then you don't know whether he remembers or not, do you?

A. I will have to say from what we call a longitudinal study of the patient it was my opinion that he did.

Q. And your opinion was based on your two conferences
with him, one on July 18th and one on August
page 286 } 8th, is that right?
A. Yes, and observing him in many other situations.

Q. You watched him?

A. Yes, he was under constant supervision, because we had to move him day and night—we had to transfer him from what we had as our old C. I. building, and we have now opened our new, which is the Finley-Gale Building. At the time of his first x-ray of the chest we thought that he might have a hystoplasmosis, which is a fungus infection, which we're beginning to find a great deal in southwest Virginia. And moving in the morning and at night, putting him in the TB building during the day and in the C. I. building at night I observed him quite often because I was fearful of what might happen.

Q. Doctor, you thought he might have some kind of fungus infection?

A. Until we got a positive sputum, which was positive for tubercular bacilli.

Dr. John O. Hurt.

Q. I thought you started out to say you didn't think he had tuberculosis?

A. If I did I gave the wrong impression to you, because at first when I read the x-ray plates I said we thought he had a fungus infection until we had a positive sputum.

Q. I'm sorry, Doctor, and I apologize if I misunderstood you. Then he had active pulmonary tuberculosis?

A. Clinically—our clinical and physical examination did not show—did not reveal itself by any rales, but

page 287 } x-ray examinations, as I stated, when we first read the plates we were of the opinion that it might be a fungus infection, which we're now finding a lot of in this section of the state, which is known as a hystoplasmosis, which can be often mistaken in an infection of tubercular type.

Q. Doctor, will you answer one question for me, and I'm through. Does this man have active pulmonary tuberculosis?

A. We are of the opinion now that possibly he does.

Q. And you report to the Court that attention should be called to the fact that he has active pulmonary tuberculosis?

A. Yes.

Q. And you told the Court to call the attention of this to the jailer?

A. Yes, for the protection of the others.

Mr. Reed: That's all.

Mr. Cuddy: Stand aside.

Witness stands aside.

Commonwealth rests.

Mr. Reed: Your Honor, please, I would like to call Dr. Hurt in rebuttal.

page 288 } DR. JOHN O. HURT,

being called in sur-rebuttal on behalf of the Defendant, testified as follows:

DIRECT EXAMINATION.

By Mr. Reed:

Q. Dr. Hurt, you testified this morning and I think you went on back to your office and I called you back up here is the reason for the delay; you weren't here?

Dr. John O. Hurt.

A. Yes.

Q. Dr. Hurt, this morning we talked about psychic equivalent states and automatism?

A. Yes.

Q. And did you explain to the Jury what that was?

A. I tried to.

Q. Are they the same thing?

A. That is a term used synonymously.

Q. Are there any other names for it?

A. Psychic equivalent state, fugue, automatism, and epleptic psychosis, and various terms.

Q. In other words, they are used synonymously, are they not?

A. Yes.

Q. Doctor, have you done much reading in epilepsy in your experience?

A. Yes, sir, quite a bit.

Q. Did you have any trouble finding anything in page 289 } the books on automatism?

A. Most every text book has a lot of chapters on the symptoms of epilepsy, and some dwell quite a bit on equivalent state, and some pass it over in a paragraph.

Q. It is generally found in the text book?

A. Yeah.

Q. Doctor, one more question. In your observation during your practice have you ever seen a patient that was in one of these states you're talking about?

A. Yes, I've seen quite a few of them.

Q. What is the longest period of time that you've ever observed a patient being in state of automatism?

A. About ten days, one fellow at Western State Hospital was in an equivalent state which lasted around, as well as I remember—it has been sometime ago—it lasted about ten days.

Q. Ten days. That's all.

The witness is excused.

Defense rests.

The Court: We just as well let the Jury go for the afternoon and take up instructions in chambers. (4:00 P. M.)

Court adjourned until 10:00 o'clock tomorrow morning.

page 290 } In Chambers:

Mr. Reed: I would like to make this motion for whatever it may be worth.

I move to strike the Commonwealth's evidence on the grounds that they haven't proved the *corpus delecti* for the reason that all the evidence is circumstantial, with the exception of the admissions of Grover Lucas.

The weapon introduced as the murder weapon did not have any finger prints on it, nor were any attempted to be taken from it. There is no one that saw the crime. There has been some testimony contrary to the evidence introduced by the Commonwealth as to the time the crime was committed.

The Commonwealth has one thing in this case that shows that Grover Lucas is the guilty party, and that is the admissions of Grover Lucas that he committed the crime, and we know under what circumstances those admissions were made.

Therefore, the cases I have read held that the *corpus delictae* must be proved beyond a reasonable doubt, other than by admission of the defendant.

The Court: You want to answer, Mr. Cuddy?

Mr. Cuddy: No, sir.

page 291 } The Court: I overrule the motion.

Mr. Reed: Exception.

INSTRUCTIONS.

Instruction A offered by the Commonwealth, amended and given.

Instruction B offered by the Commonwealth given without objection.

Instruction C offered by the Commonwealth given without objection.

Instruction I offered by the Defendant, amended and given.

Instruction II offered by the Defendant given.

Instruction III offered by the Defendant was given.

Instruction IV offered by the Defendant was given.

Instruction V offered by the Defendant was given.

Instruction VI offered by the Defendant was given.

Instruction No. 13 offered by the Defendant and objected to by the Commonwealth.

The Court: Is there any absence of a motive?

A. No.

Mr. Cuddy: There's certainly no doubt as to
page 292 } who committed the crime.

Mr. Reed: Here's why I offer this instruction. The first part of it the motive as alleged by the Commonwealth is that Lucas killed his wife because she was going to have him locked up, and we're only trying the one case, but the Commonwealth goes further and says that the motive for killing the two children is so that there would be nobody left to support them since his wife was dead; and I'm confused about Dorothy. I think first of all the Jury is entitled to say if that is a motive. It seems to be stretching it a little. I've not heard of many cases where a man goes in and kills his wife because she's going to lock him up,—why he's been in this condition for years and years.

The Court: I would practically be telling the Jury that there was no evidence of a motive. I'm going to refuse that one.

Mr. Reed: I except to the Court's ruling.

Instruction No. 14 offered by the Defendant.

Mr. Curry: Under the evidence in the case there is a statement by him which states and sets forth his reason for doing this, and there's no denial from anybody that it didn't take place.

The Court: Refused. There's no evidence upon which it can be based.

Mr. Reed: Exception.

page 293 } Instruction No. 15 offered by the Defendant.

Mr. Cuddy: This is quite a bit confusing.

Mr. Reed: The reasons for offering this instruction are as follows:

That the deceased, Connie Lucas, was *kiled* between the hours of 5:00 and 7:00 A. M., Sunday morning, and that at the same time the deceased, Denny Lucas, was killed. The evidence offered by the defendant is to the effect that the boy Dennis was alive as late as 11:00 or 12:00 Noon on Sunday of said date; whereas, the evidence of the Commonwealth was to the effect that Grover Lucas, the defendant, was at the home of Ora Johnson from around 8:00 or 9:00 o'clock on said date, Sunday morning, and was with her at her house at all times, except as testified to, until around two or three o'clock on the following day. Therefore, it is the defendant's position that the Jury should be permitted to determine whether

or not such a hypothesis is reasonable and consistent with the innocence of the defendant.

Mr. Cuddy: The objection is that there is no evidence on which to base such an instruction, certainly no reasonable hypothesis that anyone other than the defendant committed the crime. I might add that only one witness stated that he saw the boy after that hour and was contradicted by three witnesses in the same family, who was supposed to have seen the child at the same time.

page 294 } The Court: I don't think the instruction should be given, and as far as this case is concerned it makes no difference how long Dennis Lucas lived on Sunday morning or thereafter.

Mr. Reed: I object to the ruling of the Court.

Having reached the hour of 5:00 P. M. further consideration of instructions was continued until 9:30 tomorrow morning.

October 1, 1958, 9:30 A. M., consideration of instructions was resumed.

Instruction No. 16 offered by the Defendant.

Mr. Cuddy: I don't think there's anything in the case whatsoever on which to base this instruction. There's nothing as to conjecture or speculation in there.

Mr. Reed: That's an instruction that should be given in all criminal cases.

The Court: I don't see that the Commonwealth's case could be based on conjecture or speculation. Refused.

Mr. Reed: Exception.

page 295 } Instruction No. 17 offered by the Defendant.

Mr. Cuddy: I object to this.

The Court: State your reasons?

Mr. Cuddy: Because I don't think there is any evidence in the case at any stage to show insanity on the part of Grover Lucas. Both physicians on cross examination say that at this time he is sane. And the only thing Dr. Hurt said was that he couldn't say whether he was insane at the time of the commission of the crime; he didn't say he was or he was not. And the other doctors say he was sane at the time of the commission of the crime. So there is no evidence that should be considered by the Jury establishing insanity.

It must be established by positive evidence on the part of the defendant to raise or create a doubt, and there's no such evidence in the case upon which that can be predicated.

Mr. Reed: I'm surprised in view of the testimony that was given by the defendant's witness, Dr. Hurt, who testified that Grover Lucas was probably an epileptic. He testified what frequently happens in the case of an epileptic; he testified to the state of automatism time and time again, and in his opinion it was probable that the man was in an amnesic state, a state of insanity; he testified that he was a chronic alcoholic; that chronic alcoholism produces a diseased mind, and he was asked, "Does it produce a fixed and settled insanity?" and he said, "Yes." He couldn't tell this Court in page 296 } all honesty whether or not Grover Lucas was insane at the time of this act because he doesn't know, and God only knows. That is our only defense, and I want the Jury to pass on the question based on your own witnesses' testimony.

Mr. Cuddy: There's absolutely no evidence in this case on which to base a plea of insanity.

The Court: I mentioned to Mr. Reed that I had a restless night.

This is the thing that worried me because I dislike so much to take away from Mr. Reed his only real defense, and the defendant's real defense.

After I listened to the evidence yesterday I just about came to the conclusion that there was no evidence of insanity in this case.

Dr. Hurt testified that he might have been an epileptic; that he might not have understood the consequences of his acts and all the other legal requirements, but the evidence, in my opinion, is just not sufficient to go to the Jury on a question of insanity. Apparently he was very normal on the day before and did work as a mechanic on an automobile. The next day, considering what he had done or accused of having done, he was quite normal and quite normal on Monday. I realize the position it will put you in if the Court does not allow an instruction on insanity.

Mr. Reed: I don't think there's any question page 297 } in the Court's mind if the Court will offer the instruction telling the Jury if they believe that this man didn't know the difference between right and wrong, and couldn't judge the nature and consequences of his acts, which I don't see how that instruction could be refused in this case. If the Court *doen't* give that instruction then this wouldn't be proper.

The Court: That covers the point we're taking up now. If I gave that instruction I would have to give this one.

Mr. Reed: There was so much medical testimony yesterday that I don't think you can pick any one little piece out and

say the doctor said this or he didn't say that. Dr. Hurt couldn't tell you positively, and no doctor could tell you positively that this man is an epileptic, when all medical science agrees that 15% show normal brain wave tracings. The Jury is not going to be able to determine whether he was in the 15% or 85% category. The spikings the doctor told you about is the symptom of a confused, disorganized mind.

The Court: He said almost anything might cause those spikings.

Mr. Reed: Because he was not present when the tracings were made; he said a man might blink his eye or make a motion, and he wasn't there and didn't know.

page 298 } But come right back to the Commonwealth's testimony the report was suggestive of epilepsy. He was putting this Defendant in the 15% category and that's what the Court is not letting the Jury pass on. We proved from the Commonwealth's evidence by Dr. Zeller that he knew what the history was in the family. He admitted those people told him and that's supposed to be considered in his diagnosis. Dr. Hurt said that was important. He was a chronic alcoholic, the result of which is a diseased mind. The report from Richmond said he was an alcohol addict. If the Court takes that away the Defendant has nothing at all on which to go to the Jury.

The Court: That's the reason it worries me so.

Mr. Reed: I think any doubt in the Court's mind should be resolved in behalf of the defendant, just like that Jury.

I'm not trying to argue with the Court but there was so much medical testimony that the Court never heard before, and I never heard before, until I read some books on it. There's a Wisconsin case right along the line of this case.

The Court: I would be glad to be informed correctly as to what the law is from either side.

Mr. Cuddy: There is absolutely no evidence in

page 299 } which to justify this instruction; both are saying that he is sane.

Mr. Reed: We're not arguing that.

Mr. Cuddy: If you're using epilepsy as a defense you must show that he was in an epileptic seizure and suffering from it, and there's not one scintilla of evidence in the case showing that he was suffering from an epileptic situation.

The Court: He understood perfectly afterwards what took place. He informed the colored man on Monday afternoon that he had "killed the whole God damn family."

Mr. Reed: And that witness said to him, "If you don't quit drinking that wine, Grover Lucas, you're going to run yourself crazy."

The Commonwealth had an admission of guilt. That was not hurting me a bit because the Commonwealth had that. It is my theory of the case, and Dr. Hurt testified yesterday afternoon when I called him back from the office, when I said, "Dr. Hurt, what period of time have you observed in your experience in which a person was in this state of automatism?"

The Court: Where is there any evidence that he ever was in such a state prior to or at the time of this crime.

page 300 } Mr. Reed: The evidence is that Dr. Hurt said he had tried every way in his power to determine whether or not this defendant remembers what happened. He said, "He can't tell me a thing; he didn't tell me; or I couldn't get out of him what happened from the 19th of April." That is evidence of amnesia, and that's up to the Jury to decide. Nobody knows what goes on up here (indicating head). How can anybody say so and so was insane at any particular time, nobody knows that.

The Court: I understand that.

Mr. Cuddy: Along the line that Dr. Hurt told you he said the greatest length of time was ten hours.

Mr. Reed: Dr. Hurt said ten days.

The Court: I'm satisfied he said ten days when he was called back yesterday.

Mr. Reed: There's testimony in the case that this man had amnesia.

Mr. Cuddy: There is not.

The Court: The Jury may speculate that he did.

Mr. Cuddy: Dr. Hurt said it was possible; he

page 301 } didn't say he did or didn't.

Mr. Reed: Doesn't the Court feel that is for the Jury to determine whether he is wilfully withholding that, or from Dr. Hurt's diagnosis that he talked with the patient, cross examined the patient in a medical way and he says he doesn't know.

The Court: If there had been evidence that the patient didn't know and backed up with Dr. Hurt we would be confronted with an entirely different situation.

Mr. Reed: You are in effect saying that I have to put my client on the stand, which the law says I don't have to.

The Court: There are certain facts you have to prove, neither the Court or Jury can speculate as to what the facts would be.

Mr. Reed: Dr. Hurt said that in making his diagnosis, part of which was to talk to the family, and that he talked to the defendant and that he did not recall anything, and if the Jury wants to believe that he doesn't recall they can, or

if the Jury wants to believe that he doesn't recall because he doesn't want to be punished for his crime the Jury has a right to believe that. The Jury has the right to pass on whether or not the defendant was in a true amnesic state, which both Dr. Hurt and Dr. Zeller agree is a condition in some cases, and it's directly connected to epilepsy.

page 302 } That's it. I think it comes down to that, whether or not you're going to let the Jury decide whether he's in the 15% or 85% bracket, or whether he experienced a true amnesic state, and I submit in all fairness, your Honor, that I believe that if the Court has a reasonable doubt in that respect that the doubt should be resolved in favor of the defendant, and that these instructions should be given. If the Commonwealth wants to accept the theory that he is sane it's not upon him to prove, but upon the defendant to prove, and I think that the Jury is entitled under this medical testimony to judge whether or not Dr. Hurt's diagnosis, because as he said he couldn't find out whether this defendant knew or didn't know.

The Court: Mr. Reed, as I have said, I don't disagree with the medical testimony at all, but as far as I see the evidence in this case there is no evidence whatever that at the time of the commission of this offense that this man was in any state of seizure or was insane in any way. The doctor says that he might have been in a state of seizure, and if I allow the Jury to consider the question of insanity I will have to let them speculate as to what this man's condition was at the time of the commission of the events, and I cannot let the Jury speculate as to what might have happened.

Mr. Reed: Exception.

page 303 } The Court: I appreciate fully the position counsel for the defendant is put in by this ruling, but I feel it my duty to so construe the law, and this instruction is refused.

Mr. Reed: I except to the Court's ruling.

Instruction No. 18 offered by the Defendant.

Mr. Cuddy: There's absolutely no evidence on which to base it.

Mr. Reed: Dr. Hurt testified on cross examination in his opinion that this man was drunk, and you crossed your arms and said, "He was not." Your own testimony was that he drank wine that night.

Mr. Cuddy: The same situation applies here as to insanity and you have to be beyond a stage of being able to premeditate. The law goes further than that. If he willed and pre-

meditated an act, which the evidence shows that he did, and then he got so drunk that during the act he couldn't remember, he would still be guilty of murder in the first degree.

Mr. Crush: He was drunk when he gave the statement on Monday evening.

Mr. Reed: You're right.

The Court: There's no evidence whatever as
page 304 } to his condition after about 7:00 o'clock on Saturday afternoon, at which time one witness said he went by his home and stayed for 15 or 20 minutes, and he stated that at that time the defendant was not under the influence of intoxicants, and that is the last evidence as to what his condition was, according to my recollection, before the commission of the offense.

I feel I must refuse this instruction.

Mr. Reed: The evidence on both sides of this case was that this man had been a prolonged drinker of alcoholic beverages. Two witnesses for the defendant testified that he not only bought from one or two quarts of wine a day from each of these witnesses, but that he also drank beer, and that they had never seen him draw a sober breath and that he was drunk all the time. That's the evidence—maybe not in those words, but that's substantially the evidence.

The Court: There's no question that he drank wine and beer rather consistently, but it shows quite definitely that the day before the commission of this offense he was sufficiently normal to do what might be considered a normal day's work, and as far as the evidence is concerned he did a rather good job of it.

Mr. Reed: Didn't Dr. Hurt state that a man in this state might not be discernable. Talking about the day before, when he was up at Ora Johnson's house, she testified he drank
some beer that morning and bought a fifth of wine.
page 305 } Mr. Crush: Her testimony was that it was afterwards.

Mr. Reed: He drank some beer that morning.

The Court: If I gave this instruction I will allow the Jury to speculate as to what the man's condition might have been, so I refuse Instruction No. 18.

Mr. Reed: Exception.

Instruction No. 19 offered by the Defendant, and objected to by the Commonwealth.

The Court: This would allow the Jury to speculate as to what his condition was.

Mr. Reed: Exception.

Instruction No. 20 offered by the Defendant, and objected to by the Commonwealth.

The Court: I will have to refuse this instruction for the same reason that I refused Instruction No. 17.
Mr. Reed: Exception on the grounds that it states the law.

Instruction No. 21 offered by the Defendant, and objected to by the Commonwealth.

page 306 } The Court: I will have to refuse it for the same reason that I refused similar instructions.
Mr. Reed: Exception.

Instruction No. 22 offered by the defendant, and objected to by the Commonwealth on the ground that there was no evidence to support such an instruction.

The Court: For that reason the Court will have to refuse it.
Mr. Reed: The defendant excepts to the refusal of this instruction on the grounds previously stated with regard to an instruction on reasonable hypothesis consistent with the innocence of the defendant.

Instruction No. 23 offered by the Defendant, and objected to by the Commonwealth on the grounds that it is an invitation for a hung jury.

The Court: I so construe it, and the instruction is refused.
Mr. Reed: Exception.

page 307 } Mr. Reed: The thing that I was talking about yesterday you marked four pictures for identification and changed your mind and said you were not offering them in evidence.
Mr. Cuddy: I said offered but not exhibited.
Mr. Reed: I didn't understand that they had not been exhibited to the Jury.
Mr. Cuddy: I submit they were not introduced in evidence, they were withdrawn.
Mr. Reed: I'm talking about the two that are in there.
Mr. Cuddy: The two pictures of the deceased and the condition at the time of the finding of the body.
The Court: What is your point you're making here now?

Mr. Reed: The point I'm making is, going back to the first of this trial—what does the Court feel is the statute of those two pictures that lay on the table for two and a half days.

page 308 } The Court: As to these two not withdrawn I understood they were introduced in evidence and I asked that they be marked as Exhibits Nos. 1 and 2.

Mr. Cuddy: And I asked the Court to withdraw the others since they were not exhibited.

The Court: As far as I know the Jury have not seen these two pictures.

Mr. Reed: Yes, but they will in a few minutes.

The Court, counsel and jury return to courtroom.

The Jury was instructed, argument was had and Court recessed at 12:07 P. M. for lunch until 2:00 P. M.

At 2:00 P. M. the Jury retired to their room to consider of their verdict and at 2:50 P. M. returned to the Courtroom and rendered their verdict, and was discharged.

page 309 } Mr. Reed: I move the Court to set aside the verdict of the Jury on the grounds that it is contrary to the law and the evidence and for other reasons which are to be put in the record.

The Court: In view of the verdict of the Jury the Court will give you an opportunity to be heard.

page 310 } CERTIFICATE.

I, Dirk A. Kuyk, Judge of the Hustings Court of the City of Roanoke, Virginia, do hereby certify that the foregoing is a true and correct stenographic copy and report of the evidence and other incidents of the trial therein, all questions raised and all rulings thereon and exceptions noted in the case of the Commonwealth of Virginia *v.* Grover Earl Lucas, in said Court at Roanoke, Virginia, on September 29th, 30th and October 1st, 1958; and it appears in writing that the Commonwealth had reasonable notice when this report of the testimony and other incidents of the trial would be presented for certification, and which was presented to me within sixty days after final judgment and signed by me within seventy days.

I also certify that the Court Reporters reporting said case were sworn to take down and transcribe said testimony

and other incidents faithfully and accurately to the best of their ability.

Given under my hand this 13th day of May, 1959.

DIRK A. KUYK
Judge of the Hustings Court of the City of Roanoke, Virginia.

page 311 } I, W. H. Carr, Clerk of the Hustings Court of the City of Roanoke, Virginia, do hereby certify that the foregoing stenographic copy or report of the testimony and other incidents of the trial in the case of the Commonwealth of Virginia *v.* Grover Earl Lucas, was filed with me as Clerk of said Court on the 13 day of May, 1959.

W. H. CARR
Clerk of the Hustings Court of the City of Roanoke, Virginia.

page 312 } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 30th day of October, 1958.

• • • • •

27234.

This day again came the Attorney for the Commonwealth of Virginia and the prisoner, Grover Earl Lucas, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia and set to the bar. Also came the defendant's Attorney.

Thereupon the Court having heard argument of counsel for the defendant on his motion to set aside the verdict of the jury rendered in this case on the 1st day of October, 1958 and not being advised as to a decision, continues said motion until the *futher* order of the Court.

And the prisoner is remanded to jail.

• • • • •

page 312-A } Virginia:

At a Hustings Court of the City of Roanoke, in the State

of Virginia, at the Courthouse thereof, on the 16th day of March, 1959.

* * * * *

27234.

This day again came the Attorney for the Commonwealth of Virginia and the prisoner, Grover Earl Lucas, was brought into Court in the custody of the Sergeant of the City of Roanoke, Virginia and set to the bar. Also came the defendant's Attorney.

Thereupon the Court having heard the argument of counsel on the motion to set aside the verdict of the jury rendered in this case on the 1st day of October, 1958, and maturely considered the same, said motion is hereby overruled, and the defendant, by counsel, excepted.

It is therefore considered by the Court that the said Grover Earl Lucas be sentenced to death, and the Court did sentence the said Grover Earl Lucas to death by electrocution, the punishment by the jury in their verdict ascertained, and it is ordered that, as soon as practicable, the said Grover Earl Lucas be removed from the jail of the City of Roanoke, Virginia and safely conveyed to the State Penitentiary at Richmond, Virginia therein to be detained until the 5th day of June, 1959, at which time the said Grover Earl Lucas shall be executed as provided by law.

And the prisoner is remanded to jail.

* * * * *

page 312-B } Virginia:

At a Hustings Court of the City of Roanoke, in the State of Virginia, at the Courthouse thereof, on the 17th day of April, 1959.

* * * * *

27234.

This day came Eunice M. Lewis and asked leave of Court to withdraw a portion of Dr. John O. Hurt's transcribed evidence in this case for the purpose of incorporating it into the original record, which leave is granted.

* * * * *

page 313 }

* * * * *

NOTICE.

To: Honorable C. E. Cuddy,
Commonwealth's Attorney for the
City of Roanoke, Virginia.

You are hereby notified that on the 13th day of May, 1959, at 11:00 o'clock a. m., the undersigned, by Counsel, will present to the Honorable Dirk A. Kuyk, Judge of the Hustings Court of the City of Roanoke, Virginia, for certification, the transcript of the testimony of the trial of Grover Earl Lucas had on September 29 and 30 and October 1, 1958, and other proceedings and incidents of the trial of said case.

Given under my hand this 7th day of May, 1959.

GROVER EARL LUCAS
By G. W. REED, JR.
Counsel.

G. W. REED, JR.
306 Shenandoah Building
Roanoke, Virginia
Counsel for Grover Earl Lucas.

Service of the above Notice is hereby accepted this 7th day of May, 1959.

C. E. CUDDY
Commonwealth's Attorney for
the City of Roanoke, Virginia.

Received and filed May 13, 1959.

W. H. CARR, Clerk.

page 314 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: W. H. Carr,
Clerk of the Hustings Court of
the City of Roanoke, Virginia.

NOTICE is hereby given that the defendant, Grover Earl Lucas, appeals from a final judgment of the Hustings Court of the City of Roanoke, Virginia, entered on the 16th day of March, 1959, and to that end will apply to the Supreme Court of Appeals of Virginia for a Writ of Error and *Supersedeas* to said judgment.

In support of the application for a Writ of Error and *Supersedeas,* Grover Earl Lucas will rely upon the following:

ASSIGNMENTS OF ERROR.

ONE.

The Court erred in overruling the motion of the defendant to strike the Commonwealth's evidence on the grounds that the extra judicial confessions of the defendant were not corroborated by other evidence sufficient to establish the *corpus delicti* beyond a reasonable doubt. Reasons assigned on Page 290 of the Record.

TWO.

The Court erred in failing and refusing to give Defendant's Instruction No. 13 for the reasons assigned on Page 292 of the Record.

THREE.

The Court erred in failing and refusing to give Defendant's Instruction No. 14 for the reasons assigned on Page 292 of the Record.

page 315 } FOUR.

The Court erred in failing and refusing to give Defendant's Instruction No. 15 for the reasons assigned on Page 293 of the Record.

FIVE.

The Court erred in failing and refusing to give Defendant's Instruction No. 16 for the reasons assigned on Page 294 of the Record.

SIX.

The Court erred in failing and refusing to give Defendant's

Instruction No. 17 for the reasons assigned on Pages 295 to 302 inclusive of the Record.

SEVEN.

The Court erred in failing and refusing to give Defendant's Instruction No. 18 for the reasons assigned on Pages 303 to 305 inclusive of the Record.

EIGHT.

The Court erred in failing and refusing to give Defendant's Instruction No. 19 for the same reasons assigned on Pages 303 to 305 inclusive of the Record.

NINE.

The Court erred in failing and refusing to give Defendant's Instruction No. 20 for the reasons assigned on Pages 295 to 302 inclusive of the Record.

TEN.

The Court erred in failing and refusing to give Defendant's Instruction No. 21 for the reasons assigned on Pages 295 to 302 inclusive of the Record.

ELEVEN.

The Court erred in failing and refusing to give Defendant's Instruction No. 22 for the reasons assigned on Page 295 and Page 302 of the Record.

page 316 } TWELVE.

The Court erred in failing and refusing to set aside the verdict of the jury and enter judgment of acquittal of the defendant or else award him a new trial for the reasons that the verdict of the jury is contrary to the law and the evidence.

THIRTEEN.

The Court erred in failing to grant the Defendant's motion, made at the outset of the trial, to consolidate for trial in the present case, the four felony indictments pending in the Trial

Court against the defendant for the reasons assigned on Pages 43 to 45 inclusive of the Record.

Respectfully submitted,

GROVER EARL LUCAS
By G. W. REED, JR.
Counsel.

G. W. REED, JR.
306 Shenandoah Building
Roanoke, Virginia
Counsel for Grover Earl Lucas.

CERTIFICATE.

I, G. W. Reed, Jr., Attorney for Grover Earl Lucas, do hereby certify that on the 13th day of May, 1959, the original of the foregoing Notice of Appeal and Assignments of Error was filed in the Clerk's Office of the Hustings Court of the City of Roanoke, Virginia, and a true and correct copy of the same delivered to the Honorable C. E. Cuddy, Commonwealth's Attorney for the City of Roanoke, Virginia.

Given under my hand this 13th day of May, 1959.

G. W. REED, JR.

page 317 } Virginia:

In the Hustings Court for the City of Roanoke.

The Commonwealth of Virginia,

v.

Grover Earl Lucas.

ORDER.

Case No. 27234.

This day came Grover Earl Lucas, the defendant, by counsel, G. W. Reed, Jr., and also the attorney for the Commonwealth of Virginia; whereupon counsel for the defendant, Grover Earl Lucas, moved the Court for a stay of execution of sentence of death pronounced against the said Grover Earl Lucas by order of this Court entered on the 16th day of March, 1959, fixing the date for the execution of said sentence of death by electrocution as of the 5th day of June, 1959.

And it appearing to the Court that the defendant, by his attorney, has indicated an intention to apply to the Supreme Court of Appeals of Virginia for a writ of error from the judgment of this Court and that a stay of execution is necessary in order for the defendant to have the time within which to make said application, it is, therefore, ORDERED and DECREED that the execution of said Grover Earl Lucas by electrocution on the 5th day of June, 1959, be and the same is hereby stayed until the further order of this Court or any other court of competent jurisdiction.

It is further ordered that the Clerk for the Hustings Court of the City of Roanoke do transmit to the Sergeant of the City of Richmond three certified copies of this order, and that the Sergeant of the City of Richmond is hereby directed to serve one copy of said order on the Superintendent of the State Penitentiary at Richmond, Virginia, and one copy upon the condemned felon, Grover Earl Lucas, and shall make his returns on the 3rd copy, returning same to the Clerk of the Hustings Court for the City of Roanoke, Virginia.

Enter May 14, 1959.

D. A. K., Judge.

Executed in the City of Richmond, Virginia, this 20 day of May 1959 by delivering a true copy of the within order in writing to W. Frank Smyth in person Superintendent, Virginia State Penitentiary.

FRANK A. CAVEDO
Sergeant City of Richmond, Va.
By M. C. LARRY, III
Deputy Sergeant.

Executed in the City of Richmond, Virginia, this 20 day of May 1959, by delivering a true copy of the within order in writing to Grover Earl Lucas in person.

FRANK A. CAVEDO
Sergeant City of Richmond, Va.
By M. C. LARRY, III
Deputy Sergeant.

Received and filed May 21, 1959.

W. R. CARTER, JR., Deputy Clerk.

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.

CLERK
SUPREME COURT OF APPEALS
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