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Richmond, Va.

# Record No. 5067

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

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## HARRY EUGENE FULLER

v.

## COMMONWEALTH OF VIRGINIA

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FROM THE CORPORATION COURT OF THE CITY OF ALEXANDRIA

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### RULE 5:12—BRIEFS

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

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

HOWARD G. TURNER, Clerk.

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

IN THE

# Supreme Court of Appeals of Virginia

AT RICHMOND

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## Record No. 5067

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VIRGINIA:

In the Supreme Court of Appeals held at the Masonic Building in the City of Staunton on Thursday the 3rd day of September, 1959.

HARRY EUGENE FULLER, Plaintiff in Error,

*against*

COMMONWEALTH OF VIRGINIA, Defendant in Error.

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From the Corporation Court of the City of Alexandria

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Upon the petition of Harry Eugene Fuller a writ of error and *supersedeas* is awarded him to a judgment rendered by the Corporation Court of the City of Alexandria on the 10th day of April, 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

* * * * *

page 10 } INSTRUCTION NO. 2.

The Court instructs the jury that one of three verdicts may be found under the indictment in this case, if the evidence in the case so warrants; (1) murder in the first degree; (2) murder in the second degree and (3) not guilty.

You are further instructed that murder in the first degree is any wilful, deliberate and premeditated killing with malice aforethought; that murder in the second degree is when one person kills another unlawfully and maliciously, but not wilfully, deliberately or premeditatedly.

The Court further instructs the jury that if they find the defendant guilty as charged in the indictment, they shall further find whether he is guilty of murder in the first degree, or murder in the second degree. If they find him guilty of murder in the first degree, they may punish him by death or confinement in the penitentiary for life, or for any term not less than twenty years. If the jury finds the defendant guilty of murder in the second degree they may punish him by confinement in the penitentiary for not less than five nor more than twenty years.

F. P. B.

* * * * *

page 26 } INSTRUCTION A.

The Court instructs the jury that if the jury should believe from the evidence that the defendant shot the deceased under a reasonable belief that his own life was in danger, or that he was in danger of serious bodily harm, as the facts and circumstances reasonably appeared to him at the time, he was excusable in so doing, whether such danger was real or not. The question for the jury in this case is, not whether the taking of the life of the deceased might have been safely avoided, but whether the defendant might reasonably have believed and did believe, it necessary to shoot as he did, resulting in the death of the deceased, in order to save his own life, or avoid serious bodily harm.

Refused.

F. P. B.

page 27 } INSTRUCTION B.

The Court instructs the jury that if you do not believe beyond a reasonable doubt that the deceased officer had reasonable grounds to believe that the defendant had committed a felony, then the officer was making an illegal arrest.

The jury is further instructed that if the officer undertook to arrest the defendant unlawfully, the defendant had a right to resist the arrest. A person has a right to resist an illegal arrest, and if, in so doing, he kills the person who undertakes to arrest him, he is guilty of manslaughter only, unless the circumstances show malice, in which case he is guilty of murder. The law excuses the act only to the extent that it is presumed the accused acted, not with malice, but from the excitement of the moment.

Refused.

F. P. B.

* * * * *

page 29 } INSTRUCTION J.

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

Refused.

F. P. B.

page 30 } INSTRUCTION K.

The Court instructs the jury that under our law, murder in the first degree is murder by poison, lying in wait, imprisonment, starving, or by any wilful, deliberate and premeditated killing, or in the commission of, or attempt to commit, arson, rape, robbery or burglary. All other murder is murder of the second degree.

Refused.

F. P. B.

* * * * *

page 35 } Corporation Court of the City of Alexandria, on Thursday the 26th day of March, in the year of our Lord, one thousand nine hundred and fifty-nine:

* * * * *

This day came the Attorney for the Commonwealth and the accused, Harry Eugene Fuller, appeared in court, in custody of the jailer and accompanied by his counsel, to answer an indictment heretofore returned against him in this court charging him with the commission of a felony to-wit: Murder, upon which he was previously duly and properly arraigned, and after being advised by his counsel, entered a plea of not guilty, which plea was tendered in person.

Thereupon a panel of twenty persons, free from all exceptions and in all respects duly qualified jurors, having been selected, the accused and the Commonwealth struck from the said panel the names of four persons, and the remaining twelve, to-wit: Leon C. Baltimore, Jr., Carl H. Benz, John A. Schuman, Vincent DiFelice, William Bowes, John F. Dorr, Urban S. Lambert, Jr., Charles G. Allen, Carlton A. Doster, Robert V. Arpia, William M. Baker and Harvey Williams, constituting the jury for the trial of the case, were duly sworn to well and truly try and true deliverance make between the Commonwealth and the accused at the bar whom they shall have in charge and a true verdict render in accordance with the law and evidence. Whereupon the Clerk charged the Jury according to law and the Attorney for the Commonwealth and the Attorney for the accused having made their opening statements to the Jury, the taking of evidence was commenced and continued until 1:00 o'clock, P. M., at which time the court adjourned until 2:00 o'clock, P. M., and the jury and witnesses were admonished by the court not to discuss the case with anyone and not to allow anyone to discuss the case with them.

Pursuant to said adjournment the accused again appeared in court at 2:00 o'clock, P. M., in the custody of the jailer and with his counsel, and the Attorney for the Commonwealth also came; and the Jury again appeared pursuant to adjournment, and the taking of evidence on behalf of the Commonwealth and the accused was resumed and concluded in the presence of the court and the Defendant, and the
page 36 } court having instructed the Jury and the Attorney for the Commonwealth and the Attorney for the accused having argued the case to the jury, the jury retired to their room to consult of their verdict and after a time returned into court and presented the following verdict to-wit: "We the Jury on the issue joined between the Commonwealth and the defendant, Harry Eugene Fuller, find the said Harry Eugene Fuller, guilty of Murder in the first degree and fix the penalty at death. Urban S. Lambert, Jr.,

Foreman." The Jury was then polled by the Clerk and said verdict was then declared unanimous.

Whereupon, on motion of the defendant, by his counsel, the court doth continue this case until Friday the 10th day of April, 1959, at 10 o'clock, A. M., for imposition of sentence. And the prisoner is again remanded to jail.

(s) FRANKLIN P. BACKUS, Judge
Corporation Court, Alex., Va.

* * * * *

page 37 } Corporation Court of the City of Alexandria, on Friday the 10th day of April, in the year of our Lord, one thousand nine hundred and fifty-nine:

* * * * *

Harry Eugene Fuller, who stands convicted of Murder in the first degree, was this day led to the bar in the custody of the jailor of this Court and accompanied by his counsel, and also came the Attorney for the Commonwealth.

Whereupon the defendant, by counsel, moved the court to set aside the verdict of the Jury, as being contrary to the law and the evidence and grant a new trial, which motions the court doth overrule and to which ruling of the court defendant, by counsel, noted an exception thereto.

Whereupon the defendant, by counsel, moved the court to suspend execution of sentence for a time sufficient to apply to the Supreme Court of Appeals for a writ of error, which request the court stated would be provided for by fixing the date of execution of sentence on September 17th, 1959.

Whereupon it being demanded of him if anything for himself he had or knew to say why the court should not proceed to pronounce judgment against him according to law and nothing being offered or alleged in delay of judgment, it is accordingly the judgment of this court that the said Harry Eugene Fuller be and he is hereby sentenced to death.

And the defendant, by counsel, having asked for time to apply for a writ of error the execution of this sentence is postponed to September 17th, 1959, on which date it is ordered that execution of this sentence upon him, the said Harry Eugene Fuller, be made and done by the Superintendent of the Penitentiary of this Commonwealth, or by some assistant or assistants appointed by him, by electrocution within the confines of the said Penitentiary, at Richmond, according to law.

It is now ordered that the said Harry Eugene Fuller be re-

manded to the custody of the jailer of this city, and to be by him delivered over to the guards of the State Penitentiary dispatched by the Superintendent of said Peni-
page 38 } tentiary to convey him thereto, and there to be kept imprisoned and treated in the manner prescribed by law until the due execution of this sentence and judgment. The court certifies that at all times during the trial of this case the accused was personally present. And the prisoner is again remanded to jail.

(s) FRANKLIN P. BACKUS, Judge
Corporation Court
Alexandria, Va.

* * * * *

page 41 }

* * * * *

NOTICE OF APPEAL AND ASSIGNMENTS OF ERROR.

To: The Clerk of the Corporation Court of the City of Alexandria, Virginia:

Counsel for Harry Eugene Fuller, defendant in this proceeding, hereby gives Notice of Appeal from Order entered in this cause on April 10, 1959, and sets forth the following Assignments of Error:

1. The Court erred in admitting testimony of Officer Joseph Serafin concerning conversation he had with Jessie Brown at police headquarters, wherein Jessie Brown made certain statements concerning an alleged assault on him by the defendant. Said statements being hearsay and admitted over objection of defendant.

2. The Court erred in admitting testimony of Lt. Warren W. Zimmerman concerning statements which defendant made to Officer Zimmerman in response to questions asked by the officer at the time he apprehended the defendant. The said statements were admitted over objection of the defendant and the defendant had not been advised of his constitutional rights.

3. The Court erred in granting Commonwealth's Instruction "2" over objection of defendant.

page 42 } 4. The Court erred in refusing, over the objection of the defendant, to grant defendant's Instruction "A."

5. The Court erred in refusing, over the objection of the defendant, to grant defendant's Instruction "B."
6. The Court erred in refusing, over the objection of the defendant, to grant defendant's Instruction "J."
7. The Court erred in refusing, over the objection of the defendant, to grant defendant's Instruction "K."
8. The Court erred in refusing to grant the motion of the defendant to set aside the verdict of the jury as being contrary to the law and the evidence.

LEWIS D. MORRIS
Attorney for Harry Eugene Fuller
128 N. Pitt Street
Alexandria, Virginia.

Filed Jun 4, 12:15 P. M. '59, Clerk of Courts City of Alexandria.

EARL R. SULLIVAN, Clerk
By ....., Deputy Clerk.

* * * * *

page 8 } POLICE OFFICER JOSEPH SERAPHIN,
a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Wagner:
Q. Officer, will you state your full name, please?
A. Joseph Seraphin.
Q. Are you a member of the Police Department of the City of Alexandria?
A. Yes, sir.
Q. How long have you been a member of the Police Department of the City of Alexandria?
A. Approximately five years.
Q. Directing your attention to the 4th day of February, this year, at 12:00 o'clock midnight, were you on duty?
A. Yes, I was.
Q. And you reported to the Police Headquarters at midnight on that date?
A. I did.
Q. Officer, can you tell us what happened when you reported for duty?

*Police Officer Joseph Seraphin.*

A. When I arrived at headquarters, I came down for roll call at headquarters.

Q. What time was that?

A. Approximately 12:10 a. m.

Q. Where is headquarters?

A. 126 North Fairfax Street.

page 9 } Q. Where did you have roll call?

A. At Cameron and Royal Streets.

Q. Tell us what happened.

A. When I arrived, Jessie Brown was in there bleeding very badly from the head. I, at this time, went to my locker, got the rest of my gear, and came back out. The desk officer asked him where he lived and where did it take place.

Mr. Morris: I object to anything the desk officer may have told the officer.

Judge: Are you going to try to get in the conversations between Jessie Brown and the desk officer?

Mr. Wagner: Not necessarily. You don't have to tell us. Tell what instructions you had.

Mr. Morris: The instructions would still be hearsay evidence.

Mr. Wagner: If somebody told him to report to 125 South West Street, I think that is permissible.

Mr. Morris: But, I don't think he should testify to what anybody else told him.

Judge: Let me see you gentlemen in Chambers. We will recess for just a minute.

(The Judge, counsel, defendant and stenographer retired to the Judge's Chambers.)

Judge: The Commonwealth Attorney has advised the Court that he intends to ask the police officer questions concerning Jessie Brown's condition, and what the

page 10 } person in authority told him concerning Jessie Brown's condition, and who caused said condition, for the purpose of attempting to prove that Officer Seraphin had reasonable cause to believe a felony had been committed by Eugene Fuller. The defendant, by his counsel, excepts to the ruling of the Court on the basis that such statements would be hearsay.

(This matter was taken up in Chambers in the presence of the defendant, with the understanding that the exception noted

by counsel for the defendant would apply without specific objections made before the jury.)

(The trial resumed in the Courtroom, with Officer Seraphin on the witness stand.)

By Mr. Wagner:

Q. Officer, when you arrived at headquarters, I believe you said you got some of your gear?

A. Yes, sir.

Q. And did you see Jessie Brown at that time?

A. Yes, sir.

Q. What was his condition at that time?

A. He was bleeding badly from his head. There was blood over his face and clothes.

Q. Did you have any conversation with him at that time?

A. When I came back.

Q. Tell us what the conversation was.

page 11 } A. I asked Jessie Brown what happened. He said he was hit over the head with an object. I said, "Who did it?" He said, "Fuller." I said, "What happened there?" He said, "It was at 125 South West Street." That was on my beat. I was patrolling that area that night. I was instructed to make the call.

Q. Who instructed you to make the call?

A. The desk officer.

Q. At that time, was Officer Padgett present?

A. Yes. He was standing on my left.

Q. Are you able to tell the Court whether he heard the conversations with Jessie Brown?

Mr. Morris: I think we should first ascertain the distance he was standing away.

Judge: I sustain the objection.

Q. How far were you from Jessie Brown and Bobby Padgett?

A. When he made these statements?

Q. Yes. Had he heard the conversation?

A. Yes. We were speaking loudly.

Q. Where is his beat.

A. East of mine on West Street.

Q. Who instructed you to make the call?

A. The desk officer.

*Police Officer Joseph Seraphin.*

Q. What else happened?

A. I requested the keys to my cruiser. At that time my cruiser was in the street. Bobby Padgett offered

page 12 } to assist me with this call since his cruiser was in. Bobby Padgett left headquarters. I told him to go slow, or better, to wait for me. He stated that he would wait for me.

Q. Did you have reason to believe a felony had been committed?

A. Yes. At that time Jessie Brown stated that a woman at 125 South West Street might be dead. I—

Mr. Morris (Interrupting): I think he is going out of the realm of what we agreed in Chambers. He is trying to prove he had reason to believe a felony had been committed. That wouldn't have anything to do with giving the officers the right to go to West Street.

Judge: Suppose Jessie Brown said the woman was dead?

Mr. Morris: Yes, Your Honor, but there was no outward appearance. Jessie Brown was bleeding, which is the reason for telling the officer to slow down, because of Jessie Brown. I think Jessie Brown is here to testify, and Jessie Brown should relate these things.

Mr. Wagner: I don't see what difference it makes whether it was assault or murder.

Judge: I overrule your objection, Mr. Morris, and instruct the jury that the questions the officer is being asked now are admissible only for the purpose of establishing why the police officer went to the 100 block of South West Street.

Mr. Morris: I would like to take exception, and have it noted in the record.

page 13 } Q. Then Officer Padgett left after you told him to take it easy?

A. Yes, sir.

Q. What did you do then?

A. My cruiser arrived shortly thereafter. I got in the cruiser and went to 125 South West Street. When I arrived, Officer Padgett's cruiser was double-parked in the lane of traffic. I parked behind Officer Padgett's cruiser. When I got out of the cruiser I noticed—

Q. May I interrupt? I would like to give the witness these photographs. They might aid the witness in his directions down there.

*Police Officer Joseph Seraphin.*

Judge: Officer Seraphin, each of those photographs is marked on the back, 2-A, 2-B, etc., so if you are referring to any particular photograph it would be well to state to which photograph you are referring. I don't know whether the jury can see the photographs in the jury box or not, but if you are going to testify to these photographs, I think the photographs should be shown to the jury and identified with the testimony.

A. This is photograph 2-A.

Judge: Suppose you show that to the jury.

(The picture was shown to the jury.)

Q. You arrived there. Officer Padgett was there before you?
A. Yes, sir. His cruiser was parked.
Q. It was double-parked? Then what did you
page 14 } do?
A. I got out of my car.
Q. Where did you park?
A. Directly behind Officer Padgett's cruiser.
Q. I show you this photograph. Which cruiser is yours?
A. Mine is the second one.
Q. And the first one is Officer Padgett's cruiser?
A. Yes, sir.
Q. And that is the way it was that night when you arrived?
A. Yes, sir.
Q. Go ahead.
A. When I got out of the cruiser, I noticed a colored male and female standing by 115 South West Street.

Judge: Just a moment. If the jury is looking at the picture, I want them to hear what the office says. So, give them a chance to look at the picture.

Q. All right. You got out of the cruiser, and then what happened?
A. Yes. It was raining that night. The streets were icy. I walked to the front of the cruiser and approached the subjects on the sidewalk. I asked the colored subject his name. He said, "Harry Eugene Fuller." I placed him under arrest. At this time, I noticed Officer Padgett approaching 125 South

*Police Officer Joseph Seraphin.*

West Street. He climbed the steps to knock on the door. I called and said, "This is the man we are looking for."

Q. How far away was he at that time?

A. Officer Padgett?

page 15 } Q. Yes.

A. Roughly about 15 or 20 feet. Officer Padgett came by the defendant, Eugene Fuller, and myself. Eugene Fuller stated he wanted to talk to his wife. I told him o. k. During the course of the conversation he was instructing his wife to get a bondsman to get him out of jail. He didn't want to spend the night in jail. He asked what he was being arrested for. Officer Padgett said, "For felonious assault on Jessie Brown." The defendant then started talking to his wife, and when he started walking away from the scene I grabbed one arm and Officer Padgett grabbed the other. I pulled out my cuffs. I placed one cuff on his wrist.

Q. Which wrist?

A. I believe it was the right wrist. During the scuffle, Officer Padgett tried to get his arm around back to get the cuff on his wrist. While we were scuffling, we slid into the gutter.

Q. At that time, did he resist your putting the cuffs on, the other man?

A. Yes. When we landed in the gutter Officer Padgett was on the bottom, Fuller was on top of Padgett, and I was on top of Fuller.

Q. At that time, did either you or Officer Padgett attempt to pull your guns?

A. No, sir.

Q. Did you have your night stick with you at that

page 16 } time?

A. We had our night sticks, but they were in the cruisers. During the scuffle on the ground I had one arm around the defendant's neck and the other arm on his left hand. I raised Fuller's back to Officer Padgett. Officer Padgett was trying to pull Fuller up.

Q. Was Officer Padgett then on his back?

A. Yes, he was on his back. Fuller was on top of him, and I was on top of Fuller. Officer Padgett was pushing Fuller up with both hands, and I was pulling Fuller by the neck backwards. When I had him in a sitting position, I told Padgett to get to the cruiser and call for help, and get the night sticks.

Q. Would you say Officer Padgett attempted to get his gun?

A. No. He had both hands on the defendant's chest. We started scuffling, and we were sliding on the road. Shortly

thereafter when we were scuffling, Officer Padgett hollered, "He has a gun," or, "He has my gun." At that time, Officer Padgett tried to get away to the cruiser to get help. When Officer Padgett yelled, "He has a gun," or, "He has my gun," two shots were fired. At the second one, Officer Padgett screamed. Then he turned around and fired a shot at me . At this time, I was on South West Street, and I tried to get around the car.

Q. When Officer Padgett said, "He has a gun," or, "He has my gun," what did you do?

A. At this time, Fuller was more or less on his knees, like in a sitting position on his knees. When the first
page 17 } shot was fired, I let go to get away from him and get under cover. When I got my hands from his neck, the second shot was fired and I was going across the street to my car.

Q. How far away were you?

A. I was approximately 6 feet away from the defendant when the first shot got me in my left arm. I was in the process of moving across the street to get in the parked car across the street. I was hit and knocked on my belly. Before I did, I turned to see if the defendant was coming after me. He was. I crawled on the curb and got behind a parked car.

Q. Where were you shot?

A. In the left arm, just below the elbow. When I got around the car, I got on both feet. Fuller was running around the car.

Q. Have you got any photographs, and will you indicate what car you make reference to?

A. This is the best photograph here, Exhibit #2-B.

Q. I wonder if you could show the jury what cars you went around and where you fell. Step down here and indicate to them.

A. (Showing the picture to the jury): It was this first car. When I fell, my head was approximately at the left rear of this car. I started to crawl, and I crawled up on the curb to this sidewalk and got around this car here.

Q. All right, Officer. Continue.

A. When I was behind this parked car on the west side of the street, the defendant was at the rear. I was at
page 18 } the front. He fired another shot at me. This time, my intention was to get back to the cruiser, get to the radio, and get help. When I started across the street, the defendant was behind me, so I went around the second car to the right front door of my cruiser. At this time, the

*Police Officer Joseph Seraphin.*

defendant was standing in the middle of the street, between both cruisers. I then got my gun out and started firing at the defendant.

Q. Is that the first time you had your gun out?

A. Yes. I didn't have a chance before. When I started firing the defendant turned and put both hands over his head and was side ways in the street. I don't know how many shots he fired, but he fired again and came after me again, and chased me north on West Street. I noticed the proprietor of Anne & Boogie's open the front door. I ran in and asked them to call headquarters and an ambulance, that Officer Padgett was shot.

Q. Did you see Officer Padgett after he had been shot by the defendant?

A. No. The last time I saw Officer Padgett his head was facing west on West Street. At first, it was east. That is how he was lying when we were struggling.

Q. Could you tell how far Officer Padgett was from the first cruiser, just an estimation in feet, if you can?

A. We weren't very far from it, about 4 or 5 feet.

Q. His head was facing west?

A. Yes.

Q And what did you do after you got into Anne page 19 } & Boogie's?

A. When I got into Anne & Boogie's, the proprietor was there, Mr. Harrington, and another subject, and they said, "You have been shot, also."

Mr. Morris: I object to what somebody else said.

Q. Don't tell us what they said. Tell us what you did.

A. I was standing at the bar catching my breath. They took my coat off and my gun. At this time, I told the second subject to give my gun back. They wouldn't give it back to me, and they locked the door and told me I couldn't go out there.

Mr. Morris: I object for the same reason.

Judge: Objection sustained.

A. But I walked outside and a cruiser came along with Officer Yost behind the wheel. I asked him to call an ambulance. We looked south on West Street and saw that Lieutenant Zimmerman had the defendant. I said, "Hold him." I told Lieutenant Zimmerman he had a gun on him.

*Police Officer Joseph Seraphin.*

After they put Officer Padgett in the ambulance I handed my gun to Lieutenant Zimmerman.

Q. I show you this gun and ask you whether or not you can identify that?

A. Yes, this is my gun.

Q. Leave it open. I would like to offer this in evidence as Commonwealth's Exhibit #4, I believe. It is the gun belonging to Officer Seraphin.

Judge: Any objection?

Mr. Morris: No, Your Honor.

page 20 } Q. What type of cartridge were you using that night?

A. The regular issue of lead cartridge.

Q. It had a lead jacket?

A. Yes, sir.

Q. Do you know what type cartridge was used by Officer Padgett?

A. I did not know at that time, sir.

Q. That is all I have.

By Mr. Morris:

Q. Officer Seraphin, what time did you get to headquarters that night?

A. From roll call?

Q. Yes, from roll call. What time did you report in?

A. I reported in at 11:30.

Q. Had you finished roll call?

A. Yes, sir.

Q. Where is the roll call held?

A. At Cameron and Royal Streets.

Q. Was Officer Padgett at that particular roll call?

A. Yes, I believe he was.

Q. Did he come to headquarters with you?

A. Yes. We talked about getting a cup of coffee after we got our cruisers.

Q. Where were you when you first saw Jessie Brown?

A. As soon as I opened the door at headquarters I saw Jessie Brown.

Q. Where was he standing?

page 21 } A. In front of the desk downstairs.

Q. You stated he was bleeding rather profusely, is that right?

A. Yes, sir.

*Police Officer Joseph Seraphin.*

Q. There was blood all over his clothing?
A. On the back of his neck.
Q. How much clothing was covered with blood?
A. Over his shoulder and the back of his neck. If there was any more, I don't know.
Q. Did he have a hat on?
A. No, sir.
Q. How was he dressed, if you know?
A. He had on a shirt and a pair of trousers.
Q. He didn't have a coat on?
A. No. I don't remember seeing a coat on him.
Q. Was he in the process of talking to somebody at the desk when you came in the door?
A. No, sir.
Q. You don't know if he was outside before you came in?
A. No, sir.
Q. When you walked in, was he still bleeding?
A. Yes, sir.
Q. He had not been taken to the hospital at that time?
A. No, sir.
Q. Did you take him to the hospital?
A. No, somebody else took him to the hospital.
page 22 } Q. How long was he standing there bleeding profusely before you left headquarters?
A. About five or ten minutes. He was telling us what happened.
Q. Where did the blood appear to be coming from?
A. From the top of his head.
Q. And he was standing there talking for five or ten minutes before you left?
A. Yes, sir.
Q. And at that time he related the conversation you spoke of between himself, Officer Padgett and the desk man?
A. Yes, sir.
Q. Was it the Sergeant who told you to go to 125 South West Street?
A. No, sir.
Q. Who told you to go?
A. I believe it was Officer Webb, or Officer Warring.
Q. At that time, had a warrant been gotten for Fuller?
A. No, sir.
Q. You didn't have a warrant?
A. No, sir.
Q. And Officer Padgett didn't have a warrant?

*Police Officer Joseph Seraphin.*

A. No, sir.

Q. You told Officer Padgett to go slowly, that you would catch up with him?

A. Yes, sir.

page 23 } Q. Did you ever catch up with him before you arrived at the scene?

A. No, sir.

Q. When you arrived, he was talking to the defendant, or was he at the house?

A. At that time, when I got there, he was approaching 125 South West Street, getting ready to climb the steps.

Q. That is on the west side of West Street?

A. Yes, sir.

Q. And there is a vacant lot 40 or 50 feet wide next to it?

A. Yes, sir.

Q. And a row of houses south of that?

A. Yes. These are the houses here.

Q. There are about five or six houses there to an alley, is that right?

A. Yes, sir.

Q. And that is behind Mr. Howard's repair shop?

A. Yes, sir.

Q. And at the time you parked your cruiser, until you saw Officer Padgett's cruiser, was it up here or down near the alley?

A. It was parked right at 119 or 117 South West Street.

Q. 119 or 117?

A. Yes, sir.

Q. This photograph has been marked Exhibit #2-E. Had the cruisers been moved at the time this was taken?

A. I don't know, because the pictures were taken

page 24 } after I left the scene.

Q. Can you recognize either of those as being your cruiser?

A. No, sir.

Q. Then the cars are actually parked between the open lot next to 125 South West Street and the alley behind Mr. Howard's place? Would you say they are between there?

A. A little better than half way, I believe.

Q. When you say a little better than half way, do you mean towards Jessie Brown's house?

A. Yes, sir.

Q. So actually the cruisers are closer to Jessie Brown's house?

A. Yes, than to Howard's.

*Police Officer Joseph Seraphin.*

Q. When you got there, did you recognize Bobby Padgett's cruiser?
A. Yes, sir.
Q. Did he have his lights on?
A. His parking lights.
Q. Did you turn your lights off?
A. I had my parking lights on.
Q. Where was the defendant when you first saw him with regard to 125 South West Street?
A. I believe this is the picture, 2-E. Here is Officer Padgett's hat laying there. We were standing between 117 and 115 South West Street, somewhere along in there.

Mr. Wagner: Would you indicate to the jury, please, Officer Seraphin?

page 25 } A. Yes, sir.

Judge: Are you looking at picture #2-E?

A. Yes, sir. This is Officer Padgett's hat on the sidewalk. We were standing between 117 and 115 South West Street along in here somewhere.
Q. When you say we, who do you mean was standing there?
A. Officer Padgett, the defendant, the defendant's wife and myself.
Q. Officer Padgett was actually talking to the defendant when you first saw him?
A. No. Officer Padgett was nowhere around the defendant.
Q. You were the first one that had actually contacted him that night?
A. I don't know if Officer Padgett had spoken to them before I did or not.
Q. But Officer Padgett was somewhere near when you started talking to them?
A. Yes, sir.
Q. Did you have a flashlight in your hand?
A. I believe I did.
Q. Did Officer Padgett have a flashlight in his hand?
A. I believe he did.
Q. When you first saw the defendant and his wife, were they on the sidewalk?
A. Yes. I was in the street.
page 26 } Q. Did you shine the flashlight in the defendant's face?

*Police Officer Joseph Seraphin.*

A. No, sir.
Q. Did you shine the light on him at all?
A. No, sir.
Q. Did you shine the light on the houses along there?
A. No, sir.
Q. Did you use the flashlight at all?
A. I might have shown it toward the cruiser to see where I was going.
Q. At no time did you shine the light in the defendant's face and say, "Who are you?"
A. No. I never shine a light in a man's face.
Q. Did you tell him to stop?
A. No. They were just standing there.
Q. You walked up to them and they were standing there?
A. Yes, sir.
Q. Did you see anything in his or her hand?
A. No, sir.
Q. What was the first thing you said?
A. I asked Fuller his name.
Q. What did he say?
A. He said, "Harry Eugene Fuller."
Q. Then what happened?
A. He started talking to his wife.
Q. What did you do?
page 27 } A. I placed him under arrest.
Q. His wife was standing there when you said you were placing him under arrest?
A. She was close enough to hear me.
Q. Did you tell him what you were placing him under arrest for?
A. No, I did not. He asked to talk to his wife. He was asking her to contact a bondsman because he didn't want to spend the night in jail.
Q. He didn't move away?
A. No. He stood there talking to her.
Q. Where was Officer Padgett then?
A. He was up at the house.
Q. Did you holler for him?
A. Yes. Just as he started climbing the steps, I hollered for him.
Q. Were there lights on the street there?
A. Yes, sir.
Q. Right at the intersection of West Street, Commerce and Prince?

*Police Officer Joseph Seraphin.*

A. I believe there are lights in the middle of the block there.

Q. But these lights are not lighted at nighttime, are they? It is dark there?

A. Yes, sir.

Q. And you were in the vicinity of 125 South West Street?

A. Yes, sir.

Q. And you could plainly see him there in the
page 28 } dark?

A. Yes, sir.

Q. When Officer Padgett came down, had you at that time put the handcuffs on the defendant?

A. No, sir.

Q. Had you attempted to restrain the defendant in any way?

A. No. I just stayed there and let him talk to his wife.

Q. When he finished talking to his wife, what happened?

A. He never finished. When Officer Padgett came there, he said, "What am I being arrested for?" Officer Padgett said, "You are under arrest for assaulting Jessie Brown."

Q. Did the defendant make any move at that time?

A. He started talking to his wife again.

Q. Who was the first officer who attempted to put handcuffs on the defendant?

A. When he started to walk away, I grabbed one arm and Officer Padgett grabbed the other arm.

Q. When you say he started to walk away, do you mean he walked down West Street?

A. Yes, sir.

Q. Did he say anything about, "I am leaving," or "Are you going to arrest me"?

A. No, but he was walking away from the cruisers.

Q. Were both of you officers there at that time?

A. Yes, sir.

Q. And he started to walk which way?

page 29 } A. Toward King Street.

Q. His wife started walking along with him?

A. His wife started walking away before I put the cuffs on him. That is when he started walking away also.

Q. She started walking which way?

A. Toward King Street.

Q. And then what happened?

A. I grabbed him by one arm and Officer Padgett grabbed him by the other arm, and I put the cuffs on his wrist.

Q. You were the first one to put cuffs on him?

*Police Officer Joseph Seraphin.*

A. Yes, I was the first one to put cuffs on him.

Q. Officer Padgett was in the process of putting a cuff on the other arm?

A. Yes. He tried to get the arm around so that he could get the cuff on.

Q. Do you recall any remark from either yourself or Officer Padgett when the defendant asked what he was being arrested for? Do you remember his asking what he was being arrested for?

A. No. The second time, he asked what he was being arrested for, when Officer Padgett said he was being arrested.

Q. Do you remember a remark made, "Never mind, you will find out at headquarters"?

A. No, sir.

Q. When you started putting the handcuffs on him, that was when you all fell to the ground?

page 30 } A. No. We scuffled around a bit.

Q. You were still in the area of 117 and 119 South West Street?

A. Yes, in that area.

Q. When you started fighting, did his wife run, or did she stay there?

A. I wasn't paying no attention to his wife.

Q. Did he actually grab Officer Padgett or you, or did you grab him first?

A. We grabbed him first.

Q. And you had the cuffs on him?

A. Yes, sir.

Q. And Officer Padgett had told him he was being arrested because of an assault on Jessie Brown?

A. Yes, sir.

Q. And you started to fight?

A. Yes, sir.

Q. And you carried a gun with a holster?

A. Yes, sir.

Q. That was around your waist?

A. Yes, sir.

Q. And the gun was loaded all the time?

A. Yes, sir.

Q. And you said on the particular night in question you used lead jackets?

A. The bullet itself is all lead.

page 31 } Q. Are there other type bullets, too?

A. Yes, sir.

Q. Do some of the fellows use the other type?

*Police Officer Joseph Seraphin.*

A. If there was, I wasn't aware of it.
Q. What is the other type?
A. Steel. Dum-dums, they call them.
Q. You are issued these particular bullets?
A. Yes, sir.
Q. Does the Police Department issue both types?
A. They issue the lead type.
Q. If a man has a right, can he use the other type?

Mr. Wagner: I object.

Q. Does the Police Department permit a man to use the other type?

Judge: On what grounds?

Q. This man was shot. It could have been with Officer Seraphin's or Officer Padgett's gun. Does the Police Department permit a man to use other than the standard issue?
A. No. We are not instructed as to what type we can carry, but they issue the lead jackets.
Q. You don't know what type bullet Officer Padgett had at that time?
A. No. At that time, I did not know.
Q. When Fuller and Officer Padgett were wrestling, did you at any time see Officer Padgett reach for his gun?
A. No. I did not see Officer Padgett reach for
page 32 } his gun.
Q. Did you see the defendant reaching for his gun?
A. No, I did not.
Q. Did you ever see the gun lying on the ground or in the gutter?
A. No, I did not.
Q. And how the defendant got the gun, you don't know?
A. No, sir.
Q. You never saw any grabbing of the gun by the defendant?
A. No, sir.
Q. Did you ever at any time see Officer Padgett strike the defendant, either with a rock or a brick?
A. No. While we were struggling on the ground he had no chance to strike Officer Padgett.
Q. Then you heard Officer Padgett scream?
A. Yes, sir.

*Police Officer Joseph Seraphin.*

Q. And what did you do then?
A. At that time I let go of his neck and went for cover.
Q. Were you all on the west side of the street?
A. Yes, sir.
Q. Were there any cars on the west side that night?
A. Yes, the cruisers were there.
Q. But the cruisers were double-parked, weren't they?
A. Yes, sir.
Q. This fight took place in the street, or on the sidewalk. Which?
A. On the sidewalk.
page 33 } Q. When you were fighting, were you actually in the street?
A. Yes, sir.
Q. In fact, the officer fell right in front of the cruiser, did he not?
A. No, not exactly right in front of the cruiser. He fell in the gutter. We scuffled in the gutter, and eventually worked our way towards the center of the street.
Q. And you tried to get under cover?
A. Yes, sir.
Q. You tried to cross the street and get behind the automobile?
A. Yes, sir.
Q. While you were crossing, the defendant shot?
A. Yes. He got me with the first shot.
Q. Was he on the west side of the street?
A. No. He was in the center of the street, and he started coming after me.
Q. Was he on his knees?
A. No, he was standing up at that time.
Q. At the time you started to go for cover, for the automobile?
A. After I was shot, I was on my belly crawling.
Q. And the defendant was in the center of the street?
A. Yes, sir.
Q. And he was firing towards you, is that right?
A. Yes, sir.
Q. Did he hit you the second time?
page 34 } A. No, he did not.
Q. But he fired two shots while Officer Padgett was on the ground?
A. Yes, he did.
Q. And he fired how many shots at you while you were crawling along?

*Police Officer Joseph Seraphin.*

A. On the second shot he hit me. At the second shot, both of us were on the sidewalk on the east side of the street. He fired in a northerly direction.

Q. Were you standing at that time?

A. Yes, sir, and when I got behind the cruiser he fired at me.

Q. You went behind the cruiser?

A. Yes, and I ran from the 100 block of South West Street.

Q. You went behind the cruiser?

A. Yes, sir.

Q. And the defendant was running after you all the time?

A. He was right behind me.

Q. Was he firing any shots at you at that time?

A. I told you the shots he fired. When I was on the east side of the street he fired, and on the west side he fired.

Q. How many then?

A. I didn't think he would ever run out.

Q. How many shells did the gun hold?

A. Six.

Q. Did you know of four or five that were fired?

page 35 } A. Yes, sir.

Q. Then you started firing back at him?

A. When I got on the west side of the street behind the car, he was in the middle of the street when I was behind the car, and I fired at him. He put his hands over his head and turned sideways to make a smaller target of himself.

Q. Did you ever get back to your cruiser to make a call for more help?

A. The only time I got there was when I got back to the west side of the street, to the right front door. He was standing in the middle of the street. I tried to get in the cruiser. He shot at me again.

Q. Was this the last shot fired, was this when you were at the cruiser?

A. Yes, sir.

Q. Do you know whether it hit the cruiser?

A. At that time, no.

Q. Did you have any words with him while you were firing shots?

A. No, sir.

Q. Did he have any words with you?

A. No, sir.

Q. When he fired the last shot, where was he?

A. When he fired the last shot, he was standing in approxi-

mately the middle of the street, and after he fired the shot, he started coming after me.

page 36 } Q. Where did you go?

A. I ran west on King Street. Mr. Harrington opened the door, and I went in Anne & Boogie's.

Q. Was the defendant chasing you at that time?

A. I don't know. I didn't turn around to look. I was ready to pass out.

Q. When you got in the restaurant, how long were you there before you saw Lieutenant Zimmerman come up?

A. A couple of minutes, maybe three to five minutes.

Q. When you saw the other cruiser?

A. I didn't see the other cruiser until I came through the door.

Q. Was Lieutenant Zimmerman in a cruiser?

A. No, sir.

Q. That was Officer Yost?

A. Yes, sir.

Q. When did you see Lieutenant Zimmerman?

A. I saw Lieutenant Zimmerman after I asked Officer Yost to call an ambulance. Then, I looked down the street and saw Lieutenant Zimmerman with the defendant.

Q. You don't know where he apprehended him?

A. No. I didn't know until I saw Lieutenant Zimmerman with him.

Q. You are certain you had not fired your gun at all before these two shots went off?

A. No, sir. My gun was holstered until I got back to the west side of the street, after he chased me from east

page 37 } to west.

Q. Did you talk to the defendant that night after this happened?

A. No, I did not.

Q. Is that curbing raised along there on West Street?

A. It is approximately 6 to 8 inches.

Q. 6 to 8 inches higher than street level?

A. Yes, sir.

Q. There is a curbing that runs along there?

A. Yes, sir.

Q. When they were fighting, which direction was Officer Padgett's head lying when you saw him?

A. The last time I saw Officer Padgett, his head was in a westerly direction, and his feet were in an easterly direction.

Q. And his head was lying on the curb, in the gutter?

A. His head was lying in the gutter, towards the gutter.

*Police Officer Joseph Seraphin.*

Q. Are there any rough cobble stones along that gutter?
A. I don't believe so.
Q. Do you know if it is a smooth curb?
A. It is a smooth curb, yes.
Q. There is a break, or something, along there?
A. There is a gutter, yes.
Q. That is all I have.

By Mr. Wagner:
Q. Officer Seraphin, you said you counted five shots fired by the defendant? Is that right?
A. Yes, sir.
page 38 } Q. How many cartridges do these regulation guns hold?
A. Six.
Q. You can't account for the sixth one, can you?
A. I can't account for the sixth one, no.
Q. Did you at any time while you were scuffling on the ground see Officer Padgett attempt to get his gun out?
A. No, sir.
Q. If he had, would you have noticed it?
A. Yes, I would have.

Mr. Morris: I object. That is merely speculation on his part there.
Judge: Objection sustained.

Q. I respectfully say I think he should have been in a position to know if he had gone for a gun. He would have known it.

Judge: He has already testified he didn't go for it.

Q. Very well, sir. Officer Seraphin, this scuffle you had, was that in the City of Alexandria?
A. Yes, sir.
Q. No further questions.

By the Judge:
Q. Which wrist did you put the handcuff on?
A. I believe it was the right wrist.
Q. You said the right wrist?
A. I believe so, Your Honor.
Q. Are there any further questions?

*Lieutenant Warren W. Zimmerman.*

page 39 } Mr. Morris: No, Your Honor.
Mr. Wagner: No, Your Honor.

* * * * *

LIEUTENANT WARREN W. ZIMMERMAN,
a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Wagner:

Q. Lieutenant Zimmerman, will you state your full name, please?

A. Warren W. Zimmerman.

Q. You are a lieutenant of the Police Department in the City of Alexandria?

A. That is right.

Q. How long have you been a police officer?

A. Twenty-three years.

page 40 } Q. You were in charge on February 4th, the 12:00 to 8:00 shift, you were Lieutenant-in-Charge?

A. No. I got off at 12:00 o'clock on the 3rd.

Q. Who was the officer in charge of the 12:00 to 8:00 shift?

A. Lieutenant Saunders.

Q. Do you know whether or not Officer Padgett was a member of the Police Department of the City of Alexandria?

A. Yes, he was.

Q. On February 4th, he was?

A. Yes.

Q. What shift was he working that night?

A. The 12:00 to 8:00 shift.

Q. Did you have occasion to make a call on February 4th of this year to West Street in the City of Alexandria?

A. Yes, sir.

Q. I wonder if you would tell the Court, and the jury, please, what you did in response to that call?

A. I was in the station a few minutes after midnight. A colored fellow came in the station with his head busted open, his head torn up, his shirt torn, he was bleeding badly. He started telling us about the fellow—

Q. (Interrupting) What was the name of the colored fellow?

A. Jessie Brown.

Q. Go ahead.

A. He started telling us he had been hit in the
page 41 } head at 125 South West Street by Fuller. Two men were dispatched from the station to answer the

*Lieutenant Warren W. Zimmerman.*

call. I had been relieved of duty, and I went to my car parked on Cameron Street. There was quite a bit of ice on it. I scratched it off, then I started down the street, made a left turn and headed south on West Street. When I reached the intersection at King Street, the light was green. I waited for the light. While I was waiting for the light, I observed a police car parked double in the 100 block of South West Street, headed south. At that time I could see the figure of a man standing in the middle of the street. The figure walked north on West Street to the rear of Howard's Appliance Repair Shop at King and West Streets. He then turned around and started south on West Street. At that time the light was about ready to change, and I went on through. When I reached the middle of the block, the 100 block of South West Street, I watched this figure. He ducked between two houses on the west side of West Street. I parked my car so the headlights would shine up the sidewalk. I got out of the car and ran for the alley, shining my flashlight. I went through the alley to 113 or 115 West Street. Right to 113 and left to 115, I flashed the light. At 115 South West Street I saw a figure in the yard which appeared to be trying to go over an old wire fence. I called to the man to halt, and to come back here. He threw up his hands and came back to where I was in the rear of the houses. I asked page 42 } his name. He said, "Eugene Fuller." I said, "You are the man we are looking for, then." I asked what he had been doing. He said, "I have been messing around." I searched him around the upper part of his body, then around his trousers. He had no weapon on him. I said, "Where are you going now?"

Mr. Morris: I object until such time as Mr. Wagner lays a proper foundation. He is being asked an account of a criminal act here. There has been no mention about constitutional rights. I object until the foundation is laid.

Q. You don't have to advise anybody of their constitutional rights. I don't know of any rule of law that says they must be advised of their constitutional rights.

Q. Did you say you had a conversation with him when he approached you in the yard in back of 113 or 115 South West Street?

A. Yes, sir.

Q. Was anybody else present at that time?

A. Nobody.

*Lieutenant Warren W. Zimmerman.*

Q. What time of night was that?
A. It was approximately between 10 or 15 minutes after 12:00.
Q. Tell us the conversation, please?

Mr. Morris: I raise the same objection. This man is accused of a criminal offense and he had not been advised of his constitutional rights. He is going to say he made admissions of a criminal act. I still object to the admission.

Judge: Of course, I don't know what the officer
page 43 } is going to testify to.

(There was a short recess at 12:30 o'clock p. m. The Judge, counsel, witness defendant and stenographer retired to the Judge's Chambers.)

Judge: Officer Zimmerman was examined in Chambers as to the conversation that took place when he apprehended Mr. Fuller. Officer Zimmerman stated he was going to testify as to statements made by Mr. Fuller, part of it back in the alley and part of it out in the street after Lieutenant Zimmerman saw Officer Padgett's body. The defendant, by his counsel, excepted on the grounds that it is not a freely and voluntarily made statement, and that the defendant had not been advised of his constitutional rights. The exception was overruled by the Court, and it is understood that the exceptions are made even though not made before the jury.

(The Judge, counsel, witness and stenographer returned to the Courtroom.)

Lieutenant Warren W. Zimmerman returned to the stand, and testified as follows:

By Mr. Wagner:
Q. Lieutenant, would you tell the Court and jury what the conversation was that you had with this defendant in the backyard?
A. When the defendant identified himself as Fuller, I told him at that time he was the man we were looking for. I searched him and no weapons were found. I asked
page 44 } him why he was roaming around. He said that he had to fight his way through the house and try to get to his wife, that he had to break a door down to get her, and the G. D. police came along and tried to put the cuffs on

*Lieutenant Warren W. Zimmerman.*

him. I told him to go to the street and we would find out what it was all about.

Q. Let me interrupt. At that time did you know there was a shooting that took place between anyone?

A. No, sir. I led him back through the alley to the sidewalk. When we reached the sidewalk there were two police cruisers parked double. I led him to the front of the first police car on the south end of West Street. I saw a figure lying in the street. I could only see the legs. I didn't know who it was. I led Fuller to the front of the parked cruiser to where the figure was lying, flashed the light on the figure, and discovered it was Officer Padgett. He was lying partly on his stomach with his head turned to the left. There was quite a bit of blood around. There was no motion or signs of life in Officer Padgett at that time.

Q. Where was he lying in relation to the first cruiser?

A. There were two cruisers there. This was the first cruiser to the south, headed south on West Street. His left shoulder was lying up under the left corner of the wheel, the left front corner of the car. He was full of blood at that time. At the time I discovered who it was, Officer Seraphin was coming away from King Street back towards the scene. He

page 45 } hollered, "Hold him, Lieutenant. That is the man who shot Officer Padgett. He has a gun." I frisked him again. He had no gun on him. I then turned to him, and said, "Did you shoot this man?" He said, "You are goddamned right I shot him." I said, "What did you do with the gun?" He said, "I threw it away under the police car." At that time, Officer Seraphin and several, I would say eight or ten, citizens were standing around. I said, "The same thing could happen to you, boy." He said, "I don't give a goddamn. Go ahead and kill me now if you want to." Officer Seraphin walked up. He had his coat off, he was in his shirt sleeves, and I noticed his left arm was dripping of blood. I told him to go get medical aid. Somebody in the crowd said, "Have you called an ambulance?" I said, "I don't know. Make sure. Use the cruiser radio." Officer Bratcher had come up. I told Officer Bratcher to get him away and lock him up. Officer Yost had also arrived. I instructed him to see if he could find the gun. About the time I turned Fuller over to Officer Bratcher, Officer Yost called, "Lieutenant, here it is." He was there at the second car in West Street, down on his knees, shining a light on the car. I said, "Don't touch it. Get your pencil and pick up

the gun case," which he did, and he laid the gun on the front seat of the police car.

Q. Were you able to identify that gun, if I showed it to you now?

A. No. I didn't take any numbers off the gun, or

page 46 } examine it at all.

Q. Where was the defendant at that time?

A. The defendant then was back about car lengths. We were putting handcuffs on him. He already had one on. I didn't know it at that time. Then, we put the other one on.

Q. Was he sent to police headquarters?

A. Yes, sir.

Q. Then what did you do?

A. I went to the Alexandria Hospital.

Q. Your witness.

By Mr. Morris:

Q. At the time Jessie Brown came into headquarters, you had finished your tour of duty?

A. That is right.

Q. And what time was it he walked into headquarters, if you know?

A. In the neighborhood of midnight. It might have been a few minutes before or after.

Q. Had you actually checked off?

A. We don't have a time-clock. We have a sheet we sign.

Q. You had signed out, which would indicate it was a little after twelve?

A. Not necessarily. It may have been before that.

Q. When Jessie Brown came into headquarters, did you have conversations with Jessie Brown?

A. I was standing there during the conversations, but I didn't ask any questions.

page 47 } Q. Did you notice anything unusual about Jessie Brown?

A. His head was busted open, and his shirt was torn off.

Q. Did he have any over-garments on, an overcoat?

A. No, sir.

Q. Did he have a hat on?

A. No, sir.

Q. Was there any blood on him?

A. There was blood running down the side of his face.

Q. How long did he stand there and talk?

*Lieutenant Warren W. Zimmerman.*

A. It was almost simultaneous. He came in, and the relief crew came in.

Q. There might have been six or eight officers standing around?

A. Six or eight officers. That is correct.

Q. That is in the window where the J. P. sits?

A. Yes, sir.

Q. How wide is it there?

A. Maybe eight feet.

Q. Maybe eight feet?

A. Maybe eight or nine feet wide, and twelve feet long.

Q. It runs to the hall?

A. Yes, sir.

Q. And there may have been six or eight officers there at that time?

A. Yes, sir.

Q. Did anyone say anything about taking Jessie page 48 } Brown to the hospital?

A. I couldn't say.

Q. Do you know whether or not a warrant had been issued for Fuller at that time?

A. No, sir.

Q. He merely related to the police that he had been hit in the head by Fuller?

(No reply heard.)

Q. Did you see Officer Seraphin there at that time?

A. I did.

Q. Did you see Officer Padgett there at that time?

A. I did.

Q. Do you recall the names of any other officers who may have been standing there at that time?

A. No, I can't. Officer Seraphin was given the call, and his car he was to operate that night was not in. Officer Padgett's car was there. They told Officer Padgett to go up. About the time Officer Padgett left, the man using Officer Seraphin's car came in, so he went behind him. I would say they had gone at the time I left.

Q. You did not go home? You decided to go up there?

A. That is right.

Q. When you reached the restaurant called Anne & Boogie's, did you see any lights? Was it open?

*Lieutenant Warren W. Zimmerman.*

A. I didn't pay any attention to it.

page 49 } Q. You say you saw a man standing in the middle of the block?

A. Right where the police cars were parked, yes.

Q. Then you drove towards Howard's Appliance Store?

A. While I was waiting for the light, he walked towards the rear of Howard's Appliance Store. He walked on the sidewalk; then he walked back.

Q. Were any cars parked beside the cruiser?

A. Possibly three or four cars were parked along there.

Q. When you saw this person go back, you saw him go into the alley?

A. That is right.

Q. And you shined your light, and you didn't see him until you got in back, then you saw him by the fence?

A. Yes, sir.

Q. Then what happened?

A. I told him to halt, to come back here. He came back.

Q. At that time you didn't know Officer Padgett was shot?

A. No, sir.

Q. When he came back, did you notice the handcuff on him?

A. I did not.

Q. Do you recall seeing any handcuffs when you first frisked him?

A. No. He had his hands in the air at all times, and I imagine the cuff was in his sleeve.

Q. When did you see this cuff?

A. Not until Officer Bratcher arrived, and I

page 50 } turned him over to Officer Bratcher, and he got hold of his hand; he had the cuff on. He said, "He has one on now." I said, "Put the other one on him."

Q. That was the first time you saw the cuff?

A. Yes, that was the first time I saw the cuff.

Q. When you got outside, was the defendant upset or excited about it?

A. No, sir.

Q. That is when you saw Officer Padgett lying to the left by the cruiser?

A. Yes, sir.

Q. And he was facing toward the west or east?

A. His head was facing north, and his head was turned into the cruisers.

*Sergeant Thomas J. McGowan.*

Q. Did he at any time attempt to escape while you and Officer Bratcher were talking to him?
A. No. I had a pretty good hold on him.
Q. After Officer Bratcher took him, did you come back to headquarters yourself?
A. No, sir.
Q. You didn't have any further conversations that night with the defendant?
A. No, sir.
Q. You don't know whether this gun has been fingerprinted, or anything like that, do you?
page 51 } A. I couldn't say.
Q. That is all.

Mr. Wagner: No further questions.
Mr. Morris: Let me ask this one question. Did you at any time examine Officer Padgett's gun that night?

A. No, I did not.

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SERGEANT THOMAS J. McGOWAN,
a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Wagner:
Q. Officer McGowan, will you state your name, please?
A. Sergeant Thomas J. McGowan.
Q. Are you a member of the Police Department of the City of Alexandria?
A. Yes, sir.
Q. How long have you been a member of the Police Department?
A. Twenty-one years.
Q. Directing your attention to the 4th day of February, 1959, did you have occasion to question this defendant, Harry Eugene Fuller?
A. Yes, I did, sir.
Q. Where did you first see him on February 4th, 1959?
A. It was approximately 3:00 a. m. on the 4th of February.

*Sergeant Thomas J. McGowan.*

I was in the station. I had just come off of a stakeout. Harry Eugene Fuller was brought into headquarters and charged with statutory burglary, two counts of felonious assault and one count of murder. Right after he was booked, Sergeant Gosney and myself carried Fuller to the booking room where he gave us a statement of the offenses he was
page 75 } charged with.

Q. Do you have that statement with you?

A. Yes, sir.

Q. Was that made at the Police Department?

A. Yes, sir.

Q. At 3:00 a. m.?

A. Yes, sir.

Q. Who took the statement?

A. Sergeant Gosney took the statement. I took it in longhand, and Officer Bratcher stood outside the door while it was being taken. After he sat in the chair, we informed the defendant he did not have to make any statements whatsoever, and if he did, they would be used against him, and he was entitled to counsel, and he said yes, and he gave us the statement.

Q. Do you have that statement with you?

A. Yes, I do.

Q. Will you give us the statement, please?

Mr. Morris: I believe I would like to examine the officer before this is admitted, with regard to taking the statement.

Judge: In Chambers, or here, Mr. Morris?

Mr. Morris: Right here.

Judge: I think you are entitled to that.

By Mr. Morris:

Q. Did you say you were in headquarters when the defendant was brought in?

A. Yes, sir. I was in headquarters.

page 76 } Q. Did Sergeant Gosney bring him in?

A. Yes, sir.

Q. And this was 3:00 a. m. in the morning?

A. Approximately 3:00 a. m. in the morning.

Q. Right after the booking, he was taken into the booking room?

A. Yes, sir.

Q. At that time, who was present in the interrogation room?

A. Sergeant Gosney and myself.

Q. And no one else?

*Sergeant Thomas J. McGowan.*

A. Officer Bratcher was standing outside the door. The door was left open.

Q. And you advised him he did not have to make any statement?

A. That is right.

Q. And that he was entitled to have counsel?

A. That is right.

Q. Did he make any remark to the effect that he did not want to have counsel?

A. Yes, sir.

Q. You are the one who advised him of his rights?

A. Yes, sir.

Q. When you took the statement, did you ask him anything about his education?

A. Yes, sir.

Q. And he did not write the statement?

A. I wrote it, but he was standing here.

page 77 } Q. Were you keeping up with him while he was giving his statement?

A. Yes, sir.

Q. And everything on the statement is from his own mouth, not your own version?

A. That is right.

Q. And did you read the statement back to him?

A. Yes, and also he said some corrections which we made then.

Q. I suppose he had a hard time signing it, didn't he?

A. Yes. He said he had a third grade education. He said he did not want to read it himself. He said, "No, you read it to me." That was done.

Q. Did he tell you he couldn't read at all?

A. No, sir.

Q. Did he ask you to read it?

A. I asked him.

Q. Was there any alcohol on his breath?

A. No, sir.

Q. Was there anything noticeable?

A. He was very cool, and I thought in a little pain, because he was in a stooped position.

Q. But he was able to give you the version?

A. He was very coherent.

Q. That is all.

page 78 } By Mr. Wagner:

Q. Officer, will you read that, please?

*Sergeant Thomas J. McGowan.*

A. Yes, sir. "February 4th, 1959. I, Harry Eugene Fuller, now held by the police in connection with burglary, murder, and felonious assault, make the following voluntary statement about the matter to Sergeant William Gosney and Sergeant Thomas J. McGowan, who have identified themselves to me as officers of the Alexandria Police Department. I have been advised I do not have to make any statement, and my statement I do make can be used against me in a Court of Law. I have also been advised that I can also consult an attorney. No threats, promises or offers of reward have been made to me in securing this statement. Q. What is the extent of your education? A. Third grade. Q. Can you read and write? A. No, but can write my name only. I have been watching Jessie Brown's house for approximately three weeks because I knew my wife, Madeline Fuller, was staying there. I have been by the house many times, and the lock was on the front door. The house was 125 South West Street, Alexandria, Virginia. Tonight, February 4th, 1959, I decided to go to Jessie Brown's home and look for my wife, as I felt she was with Jessie." At that particular time, he gave another sentence, and we had to correct it, and in the correction he has initials in front of it. He said, "I parked my car at 234 North Payne Street," but then he said, "I am page 79 } ahead of myself." He then said, "I was in my car with Eugene Roy of 234 North Payne Street. I was driving. I got a piece of iron from behind me and put it under my coat. I stopped for the traffic light at King and West Streets and got out, telling Eugene to drive my car to the front of his home and park it, to leave the keys in it, and I would pick it up later. I walked on down West Street to Jessie's house. There was a lock on the front door, but I walked around to the side door and it was closed. It had some glass windows. I broke out one window with the tire tool (iron rod). I reached in and opened the door. The door let me in the kitchen. In the kitchen was another locked door that is an entrance to the front room. I busted through the bottom of this door with my feet and crawled through. There was no one in the front room, so I went upstairs. One of the doors was open. The other one was fastened from the outside, and the other from the inside. I pushed up against this door and found it open. At this time I still had my tire tool. When I got in the room, Jessie got out of bed and began to look for his shotgun. I did not know this until I had hit him and ran out of the house. I went back to his room and turned the light on, and saw his shotgun. When we were in the bed-

*Sergeant Thomas J. McGowan.*

room, I believe I hit him once. I followed him downstairs. It was downstairs that I hit him several times with the tire tool. Jessie ran out the back door, and I went back upstairs and met my wife. I told her to get her things, that page 80 } I was taking her to my room where my brother lived. I waited for her to dress, and had left the house, and was on the sidewalk just in front of the vacant lot where a house had been torn down. I saw two police officers walking up the street. I dropped the tire tool. One of the police came up to me and asked my name. I told him my name. He walked a short distance passed me, and the other officer asked me my name. I told him my name. When I told him my name, he said, 'This is him.' This officer pulled out his handcuffs and put the cuff on my left wrist. I said, 'Let me speak to my wife, because if you all lock me up Jessie will have her back in that house.' At this time the other officer bent my arm behind me, and they said, 'You are not trying to resist arrest, are you?' At this time all three of us began to scuffle. I suppose I was upset because I was being arrested. In the scuffling, I fell on my face. One of the officers fell along side of me, and one on my back. I believe the officer was on my left side. The officer on my left side must have reached for his gun, or it may have fell from his holster, as it fell in front of me. I grabbed the gun. He then grabbed my hand that held the gun. I began to pull the trigger. I don't know how many times the gun went off. The officer that was fighting for the gun never got off the ground. When I pulled the trigger of the gun, it was pointed at the officer. The other officer, when I saw him, was some distance from me in the street, and he began to page 81 } shoot at me. He hit me once, but did not knock me down. I believe I shot one time at this officer. When I got the gun from the officer that fell along side of me, I stuck him in the head two or three times with the gun barrel. I then began to shoot him. When all the shooting was over, I threw the officer's gun underneath one of the police cars. While all this was going on, I still had the handcuff on one of my wrists. I left the scene and was walking in a small alley between two houses, and a police officer came up to me and shined a light in my face, and told me to stop. I have read this statement, and certify by my signature that is a true statement to the best of my knowledge. Signed: Harry E. Fuller, witnessed by myself and Sergeant Gosney." And, as I said, the one I brought to your attention was the first page

where he said he went on and parked the car, and then he said, "No, I forgot to tell you about Eugene Roy," so we had to scratch that out and initial it.

Q. Your Honor, I would like to offer this in evidence as Commonwealth's Exhibit #9.

Judge: The statement of Harry Eugene Fuller, introduced into evidence, will be marked Commonwealth's Exhibit #9.

Q. Did you at any time show this iron bar here, marked Commonwealth's Exhibit #8 to the defendant?

A. No, sir. Sergeant Gosney showed it to the defendant.

Q. In your presence?

page 82 } A. No, sir. I know I was not present.

Q. Did there come a time you re-enacted this scene with this defendant?

A. Yes, I did.

Q. When was that?

A. The next morning at approximately 10:00 o'clock, I went back to the cellblock and asked the defendant would he go to the scene and re-enact the offenses. He consented and went to the scene. We arrived there approximately 11:30. In the presence was Captain Baber, Lieutenant Johnson, Sergeant Gosney and myself. He re-enacted the entire crime from the beginning to the end.

Q. Tell us what he did.

A. We pulled up and stopped and got out. We were right alongside Howard's Washing Machine Company there at the corner of King and West Streets. He stated he was coming from Bailey's X-Roads with his friend, Eugene Roy, and he was driving east on King Street. The light was red so he stopped. He reached around and got the tire rod and stuck it under his coat. He told Roy to drive the car to 234 North Payne Street, and he would pick it up later. He walked until he reached 125 South West Street. He observed the lock hanging on the door. He walked to the north side of this building. There was a screen door on the north side of the building. He reached through a cut in the screen and bashed out a window pane. Then, he reached in and took

page 83 } the glass from this window and dropped it on the ground so he could get his hand in and unlock the door. He unlocked the door, and took the tire rod with him into the house. After he got in this room he wanted to get in another room, and he found this was secured. He then

*Sergeant Thomas J. McGowan.*

succeeded in getting this panel out and crawled through, carrying the tire rod with him. He went through this room, and to the right is the stairway. He went to the top of the steps and found one door open, one secured by a lock, and one shut. He pushed his shoulder against this door. When he went in, he tried to find the light. It was quite dark there. By that time, he heard this moan he suspected as being Jessie Brown. He swung around. As he swung around, he said, "I don't know if I hit him, or not," but he was right behind him and followed him to the living room where he had bashed the panel out. Brown was trying to get the door open. He was pounding with this rod. Finally, Brown got the door open and left through the exit where Fuller had entered. Fuller went upstairs and got his wife and started down the street, still carrying the tire rod with him. So these cars pull up. One car pulls up, and another car behind it. Then he saw one of the officers get out and start up the sidewalk. As he saw the officers start up the sidewalk, he was at the edge of this vacant lot. He threw aside his tire rod and continued going north on West Street. At that time, the officers—one in front and one in the back—the first officer approached page 84 } him and asked what his name was. He told him his name. This officer went to his left a short distance, and was shining the flashlight as if looking for a number. By that time, the second officer was facing him. He asked him his name. Fuller gave him his name. The second officer said to the other officer, "This is the man we are looking for." As he said that, the second officer placed his hand on his wrist as if to put the handcuffs on him. By that time, the other officer had approached him from the rear and a struggle started on the sidewalk. It had been raining. The ground had a slick skim of ice on it. They struggled for some distance, and they all fell together. One officer fell beneath him and the other officer was on his back. He says he doesn't know how the gun got out of the officer's holster. He said the first time he saw the officer's gun, it was on the ground and he grabbed it. He said, "I held on to the gun and started pulling the trigger. I don't know how many times I shot." He said, "Then, when I got up, the other officer had left me, and I started after him, leaving the other officer on the ground. The other officer went across the street, then circled back as if he was going to his car." Then there was an exchange of gunfire, the officer shooting at him, and he shooting at the officer. Then, he said, "I took the gun, there was no more ammunition in the gun." He said the other

*Sergeant Thomas J. McGowan.*

page 85 } officer had left the scene completely and had gone on down the street. Fuller went down the street almost to the rear of Howard's Laundry Machine Repair Company, and he started down a ways, then turned, and went into an alley between 115 and 117 South West Street. He went through the alley and was in the yard, and he heard someone yell at him, "Come here," He put the flashlight in his face and he come back. When he come back, the handcuffs were still on his wrist. He said the offider asked what his name was. Another officer came up. He said, "That is the man who shot Gean." He said, "Then he placed me in the car and took me away." While we were there at the scene, a young lady came out of the home, I think it was 115 or 113 South West Street. No, she came out of 115 South West Street, and said, "Officer, I would like to show you something." I left them for the time being and went up there, and in the second-story window, I felt—

Mr. Morris (interrupting): I object to that as hearsay.

Q. Don't tell what the lady told you. Tell what you found.

A. I went into 113 or 115 South West Street to the second floor, and found in the window sill a steel projectile. It went into the putty, and dropped there. I put it into my pocket and left there.

Q. Did I understand you to say that was a steel bullet?

A. Yes, sir, a steel bullet, that is correct. After we came out on the street, we began to look around, and it come to our

page 86 } attention from the re-enactment of the scene, and trying to determine where the bullets had gone, and so forth, along with the idea we had located five places you might say where the bullets had struck, and that was in the rear of the Kline Bros. Furniture Company in almost a direct line from exactly where the defendant Fuller and Police Officer Seraphin had exchanged shots. One of these bullets had gone through the panel door, and was found on the inside of the door, and that was a lead bullet, not a steel bullet. Further investigation revealed Officer Seraphin did carry lead pellets in his weapon. That accounted for five lead bullets.

Q. Will you show the jury, please?

A. Two had struck the wall as you will notice.

Judge: What picture are you referring to there?

*Sergeant Thomas J. McGowan.*

A. The 100 block of South West Street.

Judge: What is the exhibit number?

A. Commonwealth's Exhibit #2-H. There was two indentations in the brick wall with small fragments of lead. One had pierced the door and had come to rest on the inside of the building. The third bullet had gone through the water spigot. The fourth bullet had entered a tree which is Commonwealth's Exhibit #2-G. The sixth bullet we later found was in the body of the defendant, Harry Eugene Fuller. On the 6th of February I went to Alexandria Hospital with Fuller, and in the presence of Doctor Pablo Zaleros, he removed the bullet from his right shoulder and
page 87 } handed the bullet to me with forceps. That accounted for six bullets Officer Seraphin was carrying in his weapon.

By Mr. Morris:

Q. Officer McGowan, how do you know they were lead bullets fired in this building in Exhibit #2-H?

A. From the lead fragment in the break. This one was recovered.

Q. Was it definitely lead?

A. Little slivers, little shiny particles of lead.

Q. And you found one in the tree?

A. That struck the tree. We couldn't say whether that was lead.

Q. Did you see the two weapons that night?

A. No, sir.

Q. Do you know how many shots were fired that night?

A. Twelve.

Q. And you accounted for six.

A. I accounted for six from Officer Seraphin's gun, and we know of three from the Fuller gun, the one in Private Padgett, the one in the street, and the one in a woman's window.

Q. Can you identify that bullet?

A. Yes, sir. This is the pellet that was removed from the defendant Fuller in my presence. You will note I have T. M. in the base of that bullet, if you have good eyes.

Q. How about this one here? Can you identify that?

A. No, sir. Sergeant Gosney would have to identify that. That is a different type of bullet from your lead
page 88 } and your steel. This is known as a steel jacket. The penetrating power of this particular one you

will note has a steel jacket. The lead will disintegrate quicker than steel.

Q. Which type did you find in the window sill?

A. This one here. This type was found in the window sill. Another of the same type was found in the street, and another was removed from the body of Private Padgett. I can account for three expelled bullets, but there was six empty cases. Of course, you must realize one also went through Officer Seraphin. Where it went, we don't know. If you want to count that as four, but we don't know. It is possible more than one went through Officer Seraphin. I might say one thing. The only discrepancy I could ever find in Fuller as far as our investigation was concerned, everything else he told us, was the fact we could only form our own opinion, when he actually beat Officer Padgett in the head with the gun after, it was before or after, the shooting.

Q. Did he ever tell you he had done it before?

A. Yes, he did. He told me in this fashion. "I don't know how many times I stuck the officer. I struck him many times, and fast."

Q. I gather he told you fists were flying rather fast at that time?

A. No, sir.

Q. Did he say anything about his being excited at page 89 } that time?

A. The only time he said anything as far as his excitement was concerned was that he got angry when the officers were trying to arrest him.

Q. What did he tell you regarding that?

A. It was nothing there except that they tried to put the cuffs on him, and he said one of the officers told him he was under arrest, and he wanted to speak to his wife, and he was concerned about his wife being there with Jessie.

Q. What time did you take the statement from him?

A. It started approximately 3:00 a. m.

Q. Two and a half, or three hours after it happened?

A. That is correct.

Q. In that statement, did he tell you the officers refused to let him talk to his wife?

A. No, sir.

Q. In other words, you were writing it down as he was saying it?

A. Yes, as quickly as he was saying it.

Q. And nothing in there is your own opinion?

A. No, sir. I was not even aware what had happened. I

was in another section of the city. I come into headquarters, and I come into it that way.

Q. And the defendant cooperated 100 per cent with you? Is that right?

A. Yes, that is correct. He never denied anything.

page 90 } Q. When you went to the scene of the crime, was Jessie Brown or Madeline Fuller in the house at that time?

A. No, sir.

Q. You never went into the house?

A. We went into the house. We pulled up in the car and we went into Jessie Brown's home.

Q. How did you get in?

A. The door was broken open.

Q. There was no one there at the house?

A. Not that I recall.

Q. Did you ever talk to Jessie Brown in his presence?

A. Not in his presence, but I did talk to Jessie.

Q. Then he traced the steps from the back to the front room, and then on up the steps to the room where they were?

A. Yes, sir, that is right; and from there he went into the street and pointed out where the struggle was, and where the shooting took place, and where the shooting of the other officer took place.

Q. That is all.

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WILLIE SIMMS,

a witness of lawful age, being first duly sworn, testified as follows:

page 95 } By Mr. Wagner:

Q. Willie, will you state your full name, please?

A. Willie Simms.

Q. Where do you live?

A. 119 South West Street.

Q. In the City of Alexandria?

A. Yes, sir.

Q. Where do you work, Willie?

*Willie Simms.*

A. For S. A. Bruner. I am working down at Lorton.

Q. Directing your attention to the 4th day of February, this year about midnight, did it come to your attention a noise or ruckus or something taking place in front of your house?

A. Yes, about 12:15 I guess it was.

Q. What did you hear at that time?

A. I heard somebody arguing, so I woke up. In a minute or two I heard two or three shots, so I got up and looked out of the side window.

Q. Can you tell us the interval between the time of the shots? Were they "bang-bang," or was there some time between?

A. They were just "bang-bang-bang."

Q. There were three rapidly fired shots?

A. Yes, sir. I looked out and didn't see anybody from the side, so I looked from the front and saw a man crossing from this side of West Street.

Q. You looked out the window and said you saw
page 96 } a man?

A. Yes, sir.

Q. On which side of the street was that?

A. That was in front of my house.

Q. That would be the west side?

A. Yes, sir.

Q. Where did you see that man?

A. I just looked out the front window. In a second I saw another man come out. As the man stepped off the curb, I heard one or two shots. There was a man close to the car. A man had fallen to the corner of the left front fender, and he fell to the ground.

Q. Was that a police cruiser he fell on?

A. Yes, sir, on top of a car like that.

Q. That is the west side of the street?

A. Yes, sir, it seemed like to me he kicked him. I don't know.

Q. Where did he come from?

A. From this side of the street.

Q. Was he coming down the street, or what?

A. There was a car in front of my house. He come from in back of this car, facing my house again. This man was laying face down, and it seemed to me he kicked him. I said to my wife, "Jesus Christ, call the police." I didn't turn the light on. I called the police. They said, "Is it an emergency?" I said, "Yes, a man was shot in front of my

house." He asked me my phone number. I said page 97 } it was King 8-4540. Then, I hung up. The telephone rang one time, and the lady said, "Did you get the police?" I said, "The police are already here." I threw on my pants and shoes and went through the front door. About that time the ambulance arrived. I walked out in the street. I noticed two cars in front, and two policemen holding another man. When they picked the man off the ground, I saw it was a white fellow.

Q. Is that the fellow you saw fall on the car?

A. Yes, sir.

Q. And you saw somebody hitting him?

A. I saw somebody hit him in the face.

Q. Could you tell whether he was white at that time?

A. No, sir.

Q. Could you tell whether it was a police officer?

A. No, sir.

Q. Could you tell whether the man got a beating?

A. No, it was dark, and I couldn't see. They picked the man from the ground. I saw it was a white fellow, and I saw it was a police officer, and that is all I know.

Q. When you looked out, you only saw two people?

A. That is all I saw, two people.

Q. You saw one walk towards the car?

A. I saw one walk towards the car.

Q. And you saw the other man come across the street?

A. One man went across the street first. The page 98 } other man went toward him, and fell over the car right on his fact. Then this other man seemed like he kicked him. I don't know what he had in his hand, or nothing.

Q. O. K.

By Mr. Morris:

Q. How long have you lived at 119 South West Street?

A. Since last July.

Q. Last year? July, 1958?

(No reply heard.)

Q. How long have you known Jessie Brown?

A. I haven't known him long.

Q. How long have you seen him across the field across from your house?

A. Ever since I have been living there.

*Willie Simms.*

Q. Jessie lived there when you moved there, did he not?
A. Yes, sir.
Q. I show you Exhibit #2-F. Would you identify the house in the picture on the left side? Whose house is that?
A. I don't know.
Q. Whose automobile is that?
A. That is my automobile.
Q. Whose house is that beside the automobile?
A. That is where I live.
Q. And that is the house where Jessie Brown lives?
A. Yes, sir.
page 99 } Q. There is an empty field between where you live and Jessie Brown's house?
A. Yes, sir.
Q. Do you know Madeline Fuller?
A. Not that I know of.
Q. Did you ever see sort of a round, fat colored woman living there with Jessie?
A. No, sir.
Q. You never saw a woman living with Jessie?
A. You never saw a woman living with Jessie?
A. No, sir.
Q. The only one you saw was Jessie?
A. I saw him sitting on the steps when I came in.
Q. Where is your bedroom?
A. The two front windows.
Q. Is that looking towards Jessie's house?
A. Yes, sir.
Q. When you looked out of the window, you were looking towards Jessie's house?
A. Yes, sir.
Q. When you looked out, did you see anyone there at all?
A. No, sir.
Q. Then what did you do?
A. I went right here to the front.
Q. What did you see?
A. I saw a man about there. I heard two shots.
page 100 } Then a man came across the street.
Q. Were you in bed when you heard the first two shots?
A. Yes, sir.
Q. Where is the telephone in your house?
A. Right here in the bedroom.
Q. Did anyone else live in that house?
A. Just me and my wife.

*Willie Simms.*

Q. And you went outside, did you not?
A. Yes, after I called the police.
Q. How many shots did you hear?
A. Possibly two or three before this man fell in front of the car.
Q. And you heard more shots before you went outside?
A. I didn't go outside until after I called the police.
Q. Then you went outside?
A. Yes. I put on my pants and shoes and went outside.
Q. How many shots did you hear that night?
A. Five or six. It scared me. It seemed like it was at my bed.
Q. And a man appeared to be hitting somebody?
A. The man on the ground. The man was face down on the ground, and didn't move.
Q. You mean a person came across the street and started hitting a man on the ground?
A. The man didn't move. The man was on the ground.

page 101 } Q. Did you keep your eye on him all the time?
A. Except when I was on the telephone. After I called the police, my wife was there, and as I left someone called back.

Q. Did you actually see any men fighting out there, or wrestling?
A. No, sir.
Q. You did not at that time?
A. No, sir. The only thing I saw was a man go across the street, and a man came from the other side, and I saw him hitting.
Q. You did not see what happened, did you?
A. Yes, sir.
Q. It was pretty dark there, wasn't it?
A. Yes, sir.
Q. Is your street lit up there at nighttime?
A. No, but this car had its lights on. You can see a person in the street from Prince to Duke Street. You can see anybody walking in the street.
Q. This person lying in the street, was he close to the curb or in the middle of the street?
A. The car he fell under was double-parked, so that made it close to the middle of the street.
Q. Did you see him fall?
A. Yes, sir, I saw him fall. I saw a man come from the other side of the street. It seemed he kicked him. I went back to the telephone and dialed in the dark. I called the

police. I said a man had been shot.

Q. What happened when you came back?

page 102 } A. I rang about three times. My wife said, "Call the police." I hung up. Then, I rang. She said, "Did you get the police?" I said, "They have arrived." I saw the police car there with a light on the top, so I put on my shoes and pants and went outside.

Q. Did you ever see this man there, Harry Fuller?

A. Yes. I did not know his name was Fuller. We call him Curly.

Q. How long have you known him?

A. Approximately two years.

Q. Did you ever see him come to 125 South West Street with sort of a stout colored woman?

A. No. I have never seen him there at all, only in the poolroom.

Q. You have never seen him there at all?

A. No, sir.

Q. That is all.

JESSIE BROWN,

a witness of lawful age, being first duly sworn, testified as follows:

By Mr. Wagner:

Q. Jessie, will you state your name, please?

A. Jessie Brown.

Q. Where do you live?

A. 125 South West Street.

Q. Do you know the defendant here, Harry Eugene Fuller?

A. Yes, sir.

page 103 } Q. How long have you known him?

A. I haven't been knowing him long.

Q. Do you remember him coming to your house on February 4th of this year?

A. Yes, sir.

Q. Was that down at 125 South West Street?

A. Yes, sir.

Q. Here in Alexandria?

A. Yes, sir.

Q. What time did he come in that night?

A. Around about 12:00, or something like that.

Q. Where do you work?

A. At the Fruit Growers Express.

Q. What do you do?

*Jessie Brown.*

A. Labor work.

Q. Tell the jury what happened that night when Fuller came to your place.

A. That night, when I was about sleeping, she asked me—

Q. (Interrupting) Who is she?

A. The defendant's wife. She asked me could she lay down. I said yes, to help herself. At that time I heard glass break in the door. He done got in before I could get out of bed.

Q. What did you do then?

A. Nothing. He hit me.

Q. You got out of bed?

page 104 } A. Yes, sir.

Q. Where did he hit you?

A. Up here.

Q. Do you know what he hit you with?

A. A piece of iron.

Q. Then what happened?

A. I went downstairs. He got up and hit me again. At that time I got out. I ran down West Street and knocked on the restaurant door. I was bleeding so, and the bus was coming, so I asked the driver to take me to the hospital. He took me to Cameron and Washington Streets, and then he looked at me and told me he would take me to Police Headquarters.

Q. Did you tell them what happened? At Police Headquarters?

A. Yes, sir.

Q. Do you remember how many times he hit you?

A. I remember he hit me twice.

Q. Who lives there at that house with you?

A. Now?

Q. No, at that time.

A. Nobody then. A boy stayed there, he and his wife.

Q. Did Madeline Fuller live there at that time?

A. She had a room there.

Q. Who rents that house?

A. Mr. Boss on Washington Street.

Q. But you actually rent the house?

page 105 } A. Yes. Then I pay him.

Q. And you rent to other people?

A. Yes, sir.

Q. And they pay you?

A. Yes, sir.

Q. And Madeline Fuller was one who was paying you?

A. Yes, sir.

*Jessie Brown.*

Q. How long did she live there?
A. Around about three months, as close as I could get at it.
Q. Did she live with you before at that house?
A. No, sir.
Q. She never lived there before?
A. No, sir.
Q. How long have you known her?
A. I haven't been knowing her so long, to tell the truth.
Q. You haven't?
A. No, sir.

By Mr. Morris:
Q. Jessie, how long have you lived at 125 South West Street?
A. I don't know. Altogether I guess I have stayed on that street pretty close to—
Q. (Interrupting) No. This particular house, how long have you lived there?
A. Fifteen or sixteen years, I believe.
Q. At 125 South West Street you have lived
page 106 } fifteen to sixteen years?
A. Yes. A man and his daughter, called Dave White, he stayed there a long time. He had made it here in 1934.
Q. Did they move away when she was married?
A. No, he died.
Q. And how long did you stay there after that?
A. I mean about three years ago my step-daddy died.
Q. You are not married?
A. No, sir.
Q. And Madeline Fuller came there about three months ago to live with you?
A. Yes, she stayed there about two months.
Q. Which room did she have?
A. The front room.
Q. Upstairs or downstairs?
A. Upstairs.
Q. Which room did you have?
A. I had the back room.
Q. When you saw Harry Fuller that night, what room were you in then?
A. In my room.
Q. Which room is that?
A. In the back room.

*Jessie Brown.*

Q. This is where you and Harry Fuller had this fight?
A. No, in my room, in the back room.
Q. Is your hearth in the back room?
page 107 } A. Yes, sir.
Q. Where was Madeline?
A. Just getting warm in the back room, by the fire.
Q. Was it cold that night?
A. Yes, sir.
Q. What kind of heat do you have in there?
A. A fireplace.
Q. And you had a fire in that room?
A. Yes, a little fire that night.
Q. Isn't it true you and she were in the same bed when he came?
A. No. To tell the truth I was in bed by myself.
Q. You and she were the only ones in the house living there? Isn't that right?
A. No, sir. This boy lived there about a week ago.
Q. But he wasn't living there before, was he?
A. No, sir.
Q. At this time Madeline rented a room and lived there with you?
A. No, sir.
Q. At no time did you live together as man and wife?
A. No, sir. I am telling you the truth.
Q. How long before Harry Fuller came did she live there with you?
A. I don't know how long.
Q. Was it two or three years?
A. As I recall, it was about a month.
Q. Before this happened?
page 108 } A. Yes, sir.
Q. You didn't know she was married to Harry Fuller until about a month before this happened?
A. No, sir. She told me did I have a vacant room. I said yes. She said she was not living with her husband and wanted a room. I told her she could have a room.
Q. Did you see Harry Fuller before this?
A. Yes, about a week before.
Q. What did he do when he came over before?
A. They went across the street.
Q. Was Madeline still there?
A. Yes, sir.
Q. They were both there?
A. Yes, sir.

*Jessie Brown.*

Q. Did you have a fight with him that night?
A. No, sir.
Q. I mean the week before?
A. No, sir.
Q. Did he come in your house at that time?
A. I believe he come to the door.
Q. The night he came there on the 4th of February and hit you with the iron rod, you say that was upstairs in the back room that he hit you?
A. Yes, sir.
Q. Did he follow you downstairs and hit you
page 109 } some more?
A. Yes, sir.
Q. Did you ever get a gun after him?
A. No, sir.
Q. Did you ever tell him to stay away from there?
A. No, sir. I never told him to stay away.
Q. After he left, you don't know what he did?
A. No, sir.
Q. You came down and got the bus?
A. Yes, sir, to Cameron and Washington.
Q. Were you bleeding at that time?
A. Yes, sir.
Q. Did you have anything on your head?
A. No, sir, nothing on my head.
Q. You had no hat on?
A. No, sir.
Q. Was the blood running down your shirt?
A. No, just drained on my shirt.
Q. Had you stopped bleeding?
A. Yes, sir.
Q. When you got to the Police Station, what did you do there?
A. When I got to headquarters, I told them they had better go to 125 South West Street, that a fellow hit me there.
Q. What did you do after that?
A. A man took me away.
Q. Where did he take you?
page 110 } A. To Alexandria Hospital.
Q. What happened there?
A. They started sewing on me.
Q. Were you brought back down to headquarters?
A. Yes, to police headquarters.
Q. What time was it you got back to police headquarters?
A. Nighttime.

*Jessie Brown.*

Q. Was it dark?
A. Yes, it was dark.
Q. 5:00 or 6:00 o'clock in the morning?
A. Yes, 5:00 or 6:00 o'clock in the morning, or something like that.
Q. Had you up to that time gotten a warrant, or charged this man with hitting you?
A. The detective told me—I said I had to go to the house. He said I had to stay there until the peace man got there.
Q. The Justice of the Peace?
A. Yes, sir. I stayed until he come. He told me I would have to get a warrant for him.
Q. That was 5:00 or 6:00 o'clock in the morning?
A. Yes, something like that.
Q. Did you go back to West Street then?
A. Yes, sir. The Officer took me back there.
Q. Did Madeline come right back with you that night?
A. No, sir. I was there by myself.
page 111 } Q. How long were you there by yourself?
A. It was pretty near morning I went there.
Q. Did you go to work the next morning?
A. No, sir, I wasn't able.
Q. Did Madeline come back that night then?
A. No, sir. I didn't see her that night.
Q. When did you first see her after that happened?
A. Down here in jail.
Q. When did she come back and start living with you after he had hit you in the head?
A. Yes, she come back there. I told her she better stay around until the Court come off. I didn't know what day it was coming off
Q. Within the next day or so she was back in your home?
A. Yes, sir.
Q. And she has been there ever since?
A. Yes, sir.
Q. At no time did you ever have any words with this man?
A. No, no words with this man.
Q. And you had no fight with him?
A. No, sir.
Q. That is all.

* * * * *

page 112 }

* * * * *

Mr. Morris: I would like to make a motion at this time to strike the Commonwealth's evidence, based on the fact that I don't believe the Commonwealth has produced evidence to convict the defendant on first-degree murder as charged in the warrant, and I don't feel there is sufficient evidence in this case to infer the question of guilt on the defendant, and that as a matter of law, the Court should strike the Commonwealth's evidence.

Judge: The motion of the defendant by counsel to strike the evidence of the Commonwealth is overruled.

Mr. Morris: I take exception to that.

(The trial reconvened at 4:20 o'clock p. m.)

Mr. Morris: Your Honor, please, I understand the Commonwealth has rested its case. In talking to the defendant, the defendant feels there is nothing he can give to add to the description in the statement which was taken within two hours after this happened, nothing to contradict that statement, so the defendant will stand on his statement introduced as a Commonwealth's Exhibit. There will be no testimony from the defendant.

Judge: Then you have no other evidence at all, Mr. Morris?

Mr. Morris: No, Your Honor.

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page 113 }

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The instructions of the Commonwealth were considered first.

Instruction 1. Granted.

Instruction 2:

Judge: In regard to Instruction 2 offered by the Commonwealth, the defendant, by his attorney, objected on the grounds that there should be an instruction as to voluntary manslaughter. The position of the defendant being that if an officer is making an illegal arrest, the defendant has the right to resist an arrest, and in such a case malice is not presumed, but has to be proved beyond a reasonable doubt by the Commonwealth when the officer is killed by a person whom the officer is attempting to arrest.

The defendant admits that an officer may arrest without a warrant, if the officer has reasonable grounds to believe that

the person whom he is attempting to arrest has committed a felony. The position of the defendant is that in page 114 } this case the question of whether or not the officers had reasonable grounds to believe that the defendant Fuller had committed a felony is a question of fact to be determined by the jury. If the jury believes that the officers had reasonable grounds to believe that the defendant had committed a felony, then the attempt to arrest was lawful, and the defendant had no right to resist, on the other hand, if the jury believes from evidence that the officers did not have such grounds, then the arrest would be illegal and the defendant had the right to resist, and the killing would not be murder unless the Commonwealth proves express malice.

The Court, being of the opinion that there is no evidence in this case to the effect that the officers did not have reasonable grounds to believe that the defendant Fuller had committed a felony, the objection of the defendant is overruled, which ruling of the Court the defendant, by his attorney, duly noted exception.

Instruction 3. Granted.
Instruction 4. Granted.

(Mr. Wagner stated that he was withdrawing Instruction 9.)

Instruction 5:

Judge: With regard to Instruction 5, offered by the Commonwealth, the defendant objected to the giving of this Instruction, on the grounds that the presumption only arises where the deadly weapon is in the slayer's prev- page 115 } ious possession, and that it does not come into his possession during the affray, which resulted in the killing. The Court sustains the objection of the defendant, to which the attorney for the complainant duly noted an exception.

Instruction 5 is refused as submitted, and Mr. Wagner noted an exception.

Instruction 6. Granted.
Instruction 7. Granted.
Instruction 8. Granted.

(The instructions of the counsel for the defendant were next considered.)

Instruction A.

Mr. Morris: Note my exception to Instruction A. The defendant excepts to the refusal of the Court to give Instruction A on the grounds that it takes the position that there is a jury question with respect to the arrest, that is whether or not it was a lawful arrest, or that the officers had reasonable grounds to believe that a felony had been committed at the time they arrested the defendant, that this question should be resolved, and if resolved in favor of the defendant, he had a right to resist the arrest, and under the circumstances, had a right to use the defense of self-defense.

Instruction B is refused for the same reason and exception taken for the same reason.

page 116 } Instruction C. Granted with the following amendment: The word "A" was substituted for the word "all." The words following the word "innocent" were deleted.

Instruction D. Granted with the following change: "A reasonable doubt."
Instruction E. Granted.
Instruction F. Granted.

(At this point, there was an Instruction withdrawn by Mr. Morris.)

Instruction G. Granted with the following amendment: The word "provable" changed to "favorable." The "s" was *striken* from the word "defendants."
Instruction H. Granted.
Instruction I. Granted.
Instruction J.

Judge: Instruction J, offered by the defendant, was refused, to which act of the Court the defendant, by counsel, duly excepted for the following reason:

Mr. Morris: That would be for the same reason I objected to Commonwealth's Instruction 2.

Instruction K.

Judge: Instruction K, offered by the defendant, was refused, on the grounds that the other Instructions in the case permit first-degree murder. If the jury believes beyond a

reasonable doubt that the killing was done willfully, deliberately and premeditatively, and the second paragraph of Instruction 2 offered by the Commonwealth tells the
page 117 } jury that if the killing was done without willfullness, deliberation and premeditation, it is murder in the second degree, to which ruling of the Court the defendant, by counsel, duly excepted on the grounds the Instruction states the definition of first-degree murder.

Instruction L was withdrawn by Mr. Morris.

Instruction M. Mr. Wagner objected, but the Judge granted the Instruction, to which Mr. Wagner took exception.

* * * * *

A Copy—Teste:

H. G. TURNER, Clerk.

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## RULE 5:12—BRIEFS

**§1. Form and Contents of Appellant's Brief.** The opening brief of appellant shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. The citation of Virginia cases shall be to the official Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A brief statement of the material proceedings in the lower court, the errors assigned and the questions involved in the appeal.

(c) A clear and concise statement of the facts, with references to the pages of the printed record when there is any possibility that the other side may question the statement. When the facts are in dispute the brief shall so state.

(d) With respect to each assignment of error relied on, the principles of law, the argument and the authorities shall be stated in one place and not scattered through the brief.

(e) The signature of at least one attorney practicing in this Court, and his address.

**§2. Form and Contents of Appellee's Brief.** The brief for the appellee shall contain:

(a) A subject index and table of citations with cases alphabetically arranged. Citations of Virginia cases must refer to the Virginia Reports and, in addition, may refer to other reports containing such cases.

(b) A statement of the case and of the points involved, if the appellee disagrees with the statement of appellant.

(c) A statement of the facts which are necessary to correct or amplify the statement in appellant's brief in so far as it is deemed erroneous or inadequate, with appropriate references to the pages of the record.

(d) Argument in support of the position of appellee.

The brief shall be signed by at least one attorney practicing in this Court, giving his address.

**§3. Reply Brief.** The reply brief (if any) of the appellant shall contain all the authorities relied on by him not referred to in his opening brief. In other respects it shall conform to the requirements for appellee's brief.

**§4. Time of Filing.** As soon as the estimated cost of printing the record is paid by the appellant, the clerk shall forthwith proceed to have printed a sufficient number of copies of record or the designated parts. Upon receipt of the printed copies or of the substituted copies allowed in lieu of printed copies under Rule 5:2, the clerk shall forthwith mark the filing date on each copy and transmit three copies of the printed record to each counsel of record, or notify each counsel of record of the filing date of the substituted copies.

(a) If the petition for appeal is adopted as the opening brief, the brief of the appellee shall be filed in the clerk's office within thirty-five days after the date the printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office. If the petition for appeal is not so adopted, the opening brief of the appellant shall be filed in the clerk's office within thirty-five days after the date printed copies of the record, or the substituted copies allowed under Rule 5:2, are filed in the clerk's office, and the brief of the appellee shall be filed in the clerk's office within thirty-five days after the opening brief of the appellant is filed in the clerk's office.

(b) Within fourteen days after the brief of the appellee is filed in the clerk's office, the appellant may file a reply brief in the clerk's office. The case will be called at a session of the Court commencing after the expiration of the fourteen days unless counsel agree that it be called at a session of the Court commencing at an earlier time; provided, however, that a criminal case may be called at the next session if the Commonwealth's brief is filed at least fourteen days prior to the calling of the case, in which event the reply brief for the appellant shall be filed not later than the day before the case is called. This paragraph does not extend the time allowed by paragraph (a) above for the filing of the appellant's brief.

(c) With the consent of the Chief Justice or the Court, counsel for opposing parties may file with the clerk a written stipulation changing the time for filing briefs in any case; provided, however, that all briefs must be filed not later than the day before such case is to be heard.

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

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

**§7. Effect of Noncompliance.** If neither party has filed a brief in compliance with the requirements of this rule, the Court will not hear oral argument. If one party has but the other has not filed such a brief, the party in default will not be heard orally.

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